

ABUSE, NEGLECT, AND DIVISION DEFINITIONS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill modifies the definition of neglect and eliminates a responsibility of the Division of Child and Family Services.

Highlighted Provisions:

This bill:

- ▶ adds willful, wanton, and reckless negligence to the definition of neglect; and
- ▶ eliminates the division's responsibility to conduct court-ordered home evaluations in custody proceedings.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-105, as last amended by Laws of Utah 2011, Chapter 186

78A-6-105, as last amended by Laws of Utah 2011, Chapter 320

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **62A-4a-105** is amended to read:

62A-4a-105. Division responsibilities.



28 The division shall:

29 (1) administer services to minors and families, including child welfare services,
30 domestic violence services, and all other responsibilities that the Legislature or the executive
31 director may assign to the division;

32 (2) establish standards for all contract providers of out-of-home care for minors and
33 families;

34 (3) cooperate with the federal government in the administration of child welfare and
35 domestic violence programs and other human service activities assigned by the department;

36 (4) provide for the compilation of relevant information, statistics, and reports on child
37 and family service matters in the state;

38 (5) prepare and submit to the department, the governor, and the Legislature reports of
39 the operation and administration of the division in accordance with the requirements of
40 Sections 62A-4a-117 and 62A-4a-118;

41 (6) promote and enforce state and federal laws enacted for the protection of abused,
42 neglected, dependent, delinquent, ungovernable, and runaway children, and status offenders, in
43 accordance with the requirements of this chapter, unless administration is expressly vested in
44 another division or department of the state. In carrying out the provisions of this Subsection
45 (6), the division shall cooperate with the juvenile courts, the Division of Juvenile Justice
46 Services, and with all public and private licensed child welfare agencies and institutions to
47 develop and administer a broad range of services and supports. The division shall take the
48 initiative in all matters involving the protection of abused or neglected children if adequate
49 provisions have not been made or are not likely to be made, and shall make expenditures
50 necessary for the care and protection of those children, within the division's budget. Except to
51 the extent provided by rule made by the division on or after May 10, 2011, the division is not
52 responsible for investigating domestic violence in the presence of a child as described in
53 Section 76-5-109.1;

54 (7) provide substitute care for dependent, abused, neglected, and delinquent children,
55 establish standards for substitute care facilities, and approve those facilities;

56 (8) provide adoption assistance to persons adopting children with special needs under
57 Part 9, Adoption Assistance, of this chapter. The financial support provided under this
58 Subsection (8) may not exceed the amounts the division would provide for the child as a legal

59 ward of the state;

60 (9) cooperate with the Employment Development Division in the Department of
61 Workforce Services in meeting social and economic needs of individuals eligible for public
62 assistance;

63 [~~(10) conduct court-ordered home evaluations for the district and juvenile courts with~~
64 ~~regard to child custody issues. The court shall order either or both parties to reimburse the~~
65 ~~division for the cost of that evaluation, in accordance with the community rate for that service~~
66 ~~or with the department's fee schedule rate;]~~

67 [(~~11~~)] (10) provide noncustodial and in-home preventive services, designed to prevent
68 family breakup, family preservation services, and reunification services to families whose
69 children are in substitute care in accordance with the requirements of this chapter and Title
70 78A, Chapter 6, Juvenile Court Act of 1996;

71 [(~~12~~)] (11) provide protective supervision of a family, upon court order, in an effort to
72 eliminate abuse or neglect of a child in that family;

73 [(~~13~~)] (12) establish programs and provide services to minors who have been placed in
74 the custody of the division for reasons other than abuse or neglect, pursuant to Section
75 62A-4a-250;

76 [(~~14~~)] (13) provide shelter care in accordance with the requirements of this chapter and
77 Title 78A, Chapter 6, Juvenile Court Act of 1996;

78 [(~~15~~)] (14) provide social studies and reports for the juvenile court in accordance with
79 Section 78A-6-605;

80 [(~~16~~)] (15) arrange for and provide training for staff and providers involved in the
81 administration and delivery of services offered by the division in accordance with this chapter;

82 [(~~17~~)] (16) provide domestic violence services in accordance with the requirements of
83 federal law, and establish standards for all direct or contract providers of domestic violence
84 services. Within appropriations from the Legislature, the division shall provide or contract for
85 a variety of domestic violence services and treatment methods;

86 [(~~18~~)] (17) ensure regular, periodic publication, including electronic publication,
87 regarding the number of children in the custody of the division who have a permanency goal of
88 adoption, or for whom a final plan of termination of parental rights has been approved,
89 pursuant to Section 78A-6-314, and promote adoption of those children;

90 [~~(19)~~] (18) provide protective services to victims of domestic violence, as defined in
91 Section 77-36-1, and their children, in accordance with the provisions of this chapter and of
92 Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;

93 [~~(20)~~] (19) refer an individual receiving services from the division to the local
94 substance abuse authority or other private or public resource for court-ordered drug screening
95 test. The court shall order the individual to pay all costs of the tests unless:

96 (a) the cost of the drug screening is specifically funded or provided for by other federal
97 or state programs;

98 (b) the individual is a participant in a drug court; or

99 (c) the court finds that the individual is impecunious;

100 [~~(21)~~] (20) have authority to contract with a private, nonprofit organization to recruit
101 and train foster care families and child welfare volunteers in accordance with Section
102 62A-4a-107.5; and

103 [~~(22)~~] (21) perform such other duties and functions as required by law.

104 Section 2. Section **78A-6-105** is amended to read:

105 **78A-6-105. Definitions.**

106 As used in this chapter:

107 (1) (a) "Abuse" means:

108 (i) nonaccidental harm of a child;

109 (ii) threatened harm of a child;

110 (iii) sexual exploitation; or

111 (iv) sexual abuse.

112 (b) "Abuse" does not include:

113 (i) reasonable discipline or management of a child, including withholding privileges;

114 (ii) conduct described in Section 76-2-401; or

115 (iii) the use of reasonable and necessary physical restraint or force on a child:

116 (A) in self-defense;

117 (B) in defense of others;

118 (C) to protect the child; or

119 (D) to remove a weapon in the possession of a child for any of the reasons described in

120 Subsections (1)(b)(iii)(A) through (C).

- 121 (2) "Abused child" means a child who has been subjected to abuse.
- 122 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
123 alleged in the petition have been proved.
- 124 (4) "Adult" means a person 18 years of age or over, except that a person 18 years or
125 over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall
126 be referred to as a minor.
- 127 (5) "Board" means the Board of Juvenile Court Judges.
- 128 (6) "Child" means a person under 18 years of age.
- 129 (7) "Child placement agency" means:
130 (a) a private agency licensed to receive a child for placement or adoption under this
131 code; or
132 (b) a private agency that receives a child for placement or adoption in another state,
133 which agency is licensed or approved where such license or approval is required by law.
- 134 (8) "Clandestine laboratory operation" is as defined in Section 58-37d-3.
- 135 (9) "Commit" means, unless specified otherwise:
136 (a) with respect to a child, to transfer legal custody; and
137 (b) with respect to a minor who is at least 18 years of age, to transfer custody.
- 138 (10) "Court" means the juvenile court.
- 139 (11) "Dependent child" includes a child who is homeless or without proper care
140 through no fault of the child's parent, guardian, or custodian.
- 141 (12) "Deprivation of custody" means transfer of legal custody by the court from a
142 parent or the parents or a previous legal custodian to another person, agency, or institution.
- 143 (13) "Detention" means home detention and secure detention as defined in Section
144 62A-7-101 for the temporary care of a minor who requires secure custody in a physically
145 restricting facility:
146 (a) pending court disposition or transfer to another jurisdiction; or
147 (b) while under the continuing jurisdiction of the court.
- 148 (14) "Division" means the Division of Child and Family Services.
- 149 (15) "Formal referral" means a written report from a peace officer or other person
150 informing the court that a minor is or appears to be within the court's jurisdiction and that a
151 petition may be filed.

152 (16) "Group rehabilitation therapy" means psychological and social counseling of one
153 or more persons in the group, depending upon the recommendation of the therapist.

154 (17) "Guardianship of the person" includes the authority to consent to:

155 (a) marriage;

156 (b) enlistment in the armed forces;

157 (c) major medical, surgical, or psychiatric treatment; or

158 (d) legal custody, if legal custody is not vested in another person, agency, or institution.

159 (18) "Habitual truant" is as defined in Section 53A-11-101.

160 (19) "Harm" means:

161 (a) physical, emotional, or developmental injury or damage;

162 (b) sexual abuse; or

163 (c) sexual exploitation.

164 (20) (a) "Incest" means engaging in sexual intercourse with a person whom the
165 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
166 nephew, niece, or first cousin.

167 (b) The relationships described in Subsection (20)(a) include:

168 (i) blood relationships of the whole or half blood, without regard to legitimacy;

169 (ii) relationships of parent and child by adoption; and

170 (iii) relationships of stepparent and stepchild while the marriage creating the
171 relationship of a stepparent and stepchild exists.

172 (21) "Legal custody" means a relationship embodying the following rights and duties:

173 (a) the right to physical custody of the minor;

174 (b) the right and duty to protect, train, and discipline the minor;

175 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
176 medical care;

177 (d) the right to determine where and with whom the minor shall live; and

178 (e) the right, in an emergency, to authorize surgery or other extraordinary care.

179 (22) "Minor" means:

180 (a) a child; or

181 (b) a person who is:

182 (i) at least 18 years of age and younger than 21 years of age; and

183 (ii) under the jurisdiction of the juvenile court.

184 (23) "Molestation" means that a person, with the intent to arouse or gratify the sexual
185 desire of any person:

186 (a) touches the anus or any part of the genitals of a child;

187 (b) takes indecent liberties with a child; or

188 (c) causes a child to take indecent liberties with the perpetrator or another.

189 (24) "Natural parent" means a minor's biological or adoptive parent, and includes the
190 minor's noncustodial parent.

191 (25) (a) "Neglect" means action or inaction that is willful, wanton, or reckless
192 negligence, causing:

193 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
194 Relinquishment of a Newborn Child;

195 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,
196 guardian, or custodian;

197 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
198 subsistence, education, or medical care, or any other care necessary for the child's health,
199 safety, morals, or well-being; or

200 (iv) a child to be at risk of being neglected or abused because another child in the same
201 home is neglected or abused.

202 (b) The aspect of neglect relating to education, described in Subsection (25)(a)(iii),
203 means that, after receiving a notice of compulsory education violation under Section
204 53A-11-101.5, or notice that a parent or guardian has failed to cooperate with school
205 authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a), the parent
206 or guardian fails to make a good faith effort to ensure that the child receives an appropriate
207 education.

208 (c) A parent or guardian legitimately practicing religious beliefs and who, for that
209 reason, does not provide specified medical treatment for a child, is not guilty of neglect.

210 (d) (i) Notwithstanding Subsection (25)(a), a health care decision made for a child by
211 the child's parent or guardian does not constitute neglect unless the state or other party to the
212 proceeding shows, by clear and convincing evidence, that the health care decision is not
213 reasonable and informed.

214 (ii) Nothing in Subsection (25)(d)(i) may prohibit a parent or guardian from exercising
215 the right to obtain a second health care opinion.

216 (26) "Neglected child" means a child who has been subjected to neglect.

217 (27) "Nonjudicial adjustment" means closure of the case by the assigned probation
218 officer without judicial determination upon the consent in writing of:

219 (a) the assigned probation officer; and

220 (b) (i) the minor; or

221 (ii) the minor and the minor's parent, legal guardian, or custodian.

222 (28) "Physical abuse" means abuse that results in physical injury or damage to a child.

223 (29) "Probation" means a legal status created by court order following an adjudication
224 on the ground of a violation of law or under Section 78A-6-103, whereby the minor is
225 permitted to remain in the minor's home under prescribed conditions and under supervision by
226 the probation department or other agency designated by the court, subject to return to the court
227 for violation of any of the conditions prescribed.

228 (30) "Protective supervision" means a legal status created by court order following an
229 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
230 remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or
231 dependency is provided by the probation department or other agency designated by the court.

232 (31) (a) "Residual parental rights and duties" means those rights and duties remaining
233 with the parent after legal custody or guardianship, or both, have been vested in another person
234 or agency, including:

235 (i) the responsibility for support;

236 (ii) the right to consent to adoption;

237 (iii) the right to determine the child's religious affiliation; and

238 (iv) the right to reasonable parent-time unless restricted by the court.

239 (b) If no guardian has been appointed, "residual parental rights and duties" also include
240 the right to consent to:

241 (i) marriage;

242 (ii) enlistment; and

243 (iii) major medical, surgical, or psychiatric treatment.

244 (32) "Secure facility" means any facility operated by or under contract with the

245 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
246 youth offenders committed to the division for custody and rehabilitation.

247 (33) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
248 child.

249 (34) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
250 child.

251 (35) "Sexual abuse" means:

252 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
253 directed towards a child; or

254 (b) engaging in any conduct with a child that would constitute an offense under any of
255 the following, regardless of whether the person who engages in the conduct is actually charged
256 with, or convicted of, the offense:

257 (i) Title 76, Chapter 5, Part 4, Sexual Offenses;

258 (ii) child bigamy, Section 76-7-101.5;

259 (iii) incest, Section 76-7-102;

260 (iv) lewdness or sexual battery, Section 76-9-702;

261 (v) lewdness involving a child, Section 76-9-702.5; or

262 (vi) voyeurism, Section 76-9-702.7.

263 (36) "Sexual exploitation" means knowingly:

264 (a) employing, using, persuading, inducing, enticing, or coercing any child to:

265 (i) pose in the nude for the purpose of sexual arousal of any person; or

266 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
267 filming, recording, or displaying in any way the sexual or simulated sexual conduct;

268 (b) displaying, distributing, possessing for the purpose of distribution, or selling
269 material depicting a child:

270 (i) in the nude, for the purpose of sexual arousal of any person; or

271 (ii) engaging in sexual or simulated sexual conduct; or

272 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,

273 Sexual Exploitation of a Minor, regardless of whether the person who engages in the conduct is
274 actually charged with, or convicted of, the offense.

275 (37) "Shelter" means the temporary care of a child in a physically unrestricted facility

276 pending court disposition or transfer to another jurisdiction.

277 (38) "State supervision" means a disposition that provides a more intensive level of
278 intervention than standard probation but is less intensive or restrictive than a community
279 placement with the Division of Juvenile Justice Services.

280 (39) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or
281 substances.

282 (40) "Substantiated" is as defined in Section 62A-4a-101.

283 (41) "Supported" is as defined in Section 62A-4a-101.

284 (42) "Termination of parental rights" means the permanent elimination of all parental
285 rights and duties, including residual parental rights and duties, by court order.

286 (43) "Therapist" means:

287 (a) a person employed by a state division or agency for the purpose of conducting
288 psychological treatment and counseling of a minor in its custody; or

289 (b) any other person licensed or approved by the state for the purpose of conducting
290 psychological treatment and counseling.

291 (44) "Unsubstantiated" is as defined in Section 62A-4a-101.

292 (45) "Without merit" is as defined in Section 62A-4a-101.

Legislative Review Note
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