

CHILD ABUSE REPORTING AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Phil Lyman

Senate Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill amends provisions related to the reporting of child abuse or neglect.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires an individual to report information about heinous child abuse or heinous child neglect, with certain exceptions;
- ▶ requires the Division of Child and Family Services (division) and a law enforcement agency that investigates a report of child abuse or neglect to include certain information in their final report;
- ▶ requires the division to make reports about investigations into reported child abuse or neglect available to the Legislature, under certain conditions;
- ▶ amends provisions related to the investigation of an individual who fails to report abuse or neglect, or who makes a false report of abuse or neglect; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 [80-2-602](#), as renumbered and amended by Laws of Utah 2022, Chapter 334

30 [80-2-609](#), as last amended by Laws of Utah 2022, Chapter 415 and renumbered and
31 amended by Laws of Utah 2022, Chapter 334

32 [80-2-611](#), as renumbered and amended by Laws of Utah 2022, Chapter 334



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

35 Section 1. Section **80-2-602** is amended to read:

36 **80-2-602. Child abuse and neglect reporting requirements -- Exceptions.**

37 (1) As used in this section:

38 (a) "Heinous abuse" means nonaccidental abuse that results in serious physical, mental,
39 or emotional injury, including:

40 (i) a substantial risk of death;

41 (ii) extreme physical pain;

42 (iii) protracted disfigurement;

43 (iv) the loss or impairment of a function of a body member, organ, or mental faculty;

44 (v) an injury to an internal or external organ or the body;

45 (vi) bone fractures;

46 (vii) sexual abuse or sexual exploitation, as those terms are defined in Section

47 [80-1-102](#);

48 (viii) chronic abuse, including physical, emotional, or sexual abuse or sexual
49 exploitation that is repeated or continuing;

50 (ix) torture, including inflicting, participating in, or assisting in inflicting intense
51 physical or emotional pain upon a child repeatedly over a period of time for the purpose of
52 coercing or terrorizing the child, or for the purpose of satisfying the perpetrator's or another's
53 craven, cruel, or prurient desires; or

54 (x) any other similar aggravated circumstance.

55 (b) "Heinous neglect" means nonaccidental neglect that:

56 (i) is chronic, including a persistent pattern of family functioning in which a caregiver
57 has not met or sustained the child's basic needs resulting in harm to the child;

58 (ii) neglect that resulted in a diagnosis of the child as a failure to thrive; or

59 (iii) an act or failure to act by a parent that results in:

60 (A) serious physical or emotional harm;

61 (B) sexual abuse or sexual exploitation;

62 (C) the death or near death of a child; or

63 (D) presents an imminent risk of serious harm to a child.

64 (2) Except as provided in Subsection ~~[(3)]~~ (4), if a person, including an individual
65 licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 67, Utah Medical
66 Practice Act, has reason to believe that a child is, or has been, the subject of heinous abuse or
67 heinous neglect, or observes a child being subjected to conditions or circumstances that would
68 reasonably result in heinous abuse or heinous neglect, and the person has reason to believe that
69 the child is in imminent danger because of the heinous abuse or heinous neglect, the person
70 shall immediately report the suspected abuse or neglect to the division or to the nearest peace
71 officer or law enforcement agency.

72 ~~[(2)]~~ (3) (a) (i) If a peace officer or law enforcement agency receives a report under
73 Subsection ~~[(1)]~~ (2), the peace officer or law enforcement agency shall immediately notify the
74 nearest office of the division.

75 (ii) If the division receives a report under Subsection ~~[(1)]~~ (2), the division shall
76 immediately notify the appropriate local law enforcement agency.

77 (b) (i) The division shall, in addition to the division's own investigation in accordance
78 with Section [80-2-701](#), coordinate with the law enforcement agency on an investigation
79 undertaken by the law enforcement agency to investigate the report of abuse or neglect under
80 Subsection ~~[(1)]~~ (2).

81 (ii) If a law enforcement agency undertakes an investigation of a report under
82 Subsection ~~[(1)]~~ (2), the law enforcement agency shall provide a final investigatory report to
83 the division ~~[upon request]~~.

84 (iii) When conducting an investigation of a report under Subsection (2), the division
85 and a law enforcement agency shall take into account the presumed innocence of the accused
86 while also seeking to secure the safety of the child.

87 (iv) The division and a law enforcement agency that undertakes an investigation of a
88 report under Subsection (2) shall, in the final written report prepared by the division or law
89 enforcement agency, include:

90 (A) the details of the report made under Subsection (2); and

91 (B) a description of the due diligence exercised by the division or law enforcement
 92 agency in investigating the report.

93 (v) The division shall compile all division and law enforcement agency reports made
 94 under this Subsection (3) and, after removing all identifying information from those reports,
 95 make those reports available, upon request and subject to Section 63G-2-206, to the
 96 Legislature, a legislative committee, a member of the Legislature, or a legislative staff member
 97 acting at the request of the Legislature, a legislative committee, or a member of the Legislature.

98 ~~[(3)]~~ (4) Subject to Subsection ~~[(4)]~~ (5), the reporting requirement described in
 99 Subsection ~~[(1)]~~ (2) does not apply to:

100 (a) a member of the clergy, with regard to any confession made to the member of the
 101 clergy while functioning in the ministerial capacity of the member of the clergy and without the
 102 consent of the individual making the confession, if:

103 (i) the perpetrator made the confession directly to the member of the clergy; and

104 (ii) the member of the clergy is, under canon law or church doctrine or practice, bound
 105 to maintain the confidentiality of the confession; ~~[or]~~

106 (b) an attorney, or an individual employed by the attorney, if the knowledge or belief of
 107 the suspected abuse or neglect of a child arises from the representation of a client, unless the
 108 attorney is permitted to reveal the suspected abuse or neglect of the child to prevent reasonably
 109 certain death or substantial bodily harm in accordance with Utah Rules of Professional
 110 Conduct, Rule 1.6[-]; or

111 (c) an individual who reasonably and in good faith believes that making a report under
 112 Subsection (2) would:

113 (i) subject that individual to immediate danger of death or serious bodily injury;

114 (ii) require an extraordinary effort by the individual to make the report; or

115 (iii) increase the danger to the child.

116 ~~[(4)]~~ (5) (a) When a member of the clergy receives information about abuse or neglect
 117 from any source other than confession of the perpetrator, the member of the clergy is required
 118 to report the information even if the member of the clergy also received information about the
 119 abuse or neglect from the confession of the perpetrator.

120 (b) Exemption of the reporting requirement for an individual described in Subsection

121 (3) does not exempt the individual from any other efforts required by law to prevent further
122 abuse or neglect by the perpetrator.

123 [~~5~~] (6) The physician-patient privilege does not:

124 (a) excuse an individual who is licensed under Title 58, Chapter 67, Utah Medical
125 Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, from reporting
126 under this section; or

127 (b) constitute grounds for excluding evidence regarding the child's injuries, or the
128 cause of the child's injuries, in a judicial or administrative proceeding resulting from a report
129 under this section.

130 Section 2. Section **80-2-609** is amended to read:

131 **80-2-609. Failure to report -- Threats and intimidation -- Penalty.**

132 (1) If the division has substantial grounds to believe that a person knowingly failed to
133 report under Section 80-2-602 or 80-2-603, the division shall file a complaint with:

134 (a) the Division of Professional Licensing if the person is a health care provider, as
135 defined in Subsection 80-2-603(1)(a)(i), or a mental health therapist, as defined in Section
136 58-60-102;

137 (b) the appropriate law enforcement agency if the person is a law enforcement officer,
138 as defined in Section 53-13-103; or

139 (c) the State Board of Education if the person is an educator, as defined in Section
140 53E-6-102.

141 (2) (a) A person is guilty of a class B misdemeanor if the person willfully fails to report
142 under Section 80-2-602 or 80-2-603.

143 (b) If a person is convicted under Subsection (2)(a), the court may order the person, in
144 addition to any other sentence the court imposes, to:

145 (i) complete community service hours; or

146 (ii) complete a program on preventing abuse and neglect of children.

147 [~~(c) In determining whether it would be appropriate to charge a person with a violation
148 of Subsection (2)(a), the prosecuting attorney shall take into account whether a reasonable
149 person would not have reported suspected abuse or neglect of a child because reporting would
150 have placed the person in immediate danger of death or serious bodily injury.]~~

151 [~~(d)~~] (c) Notwithstanding any contrary provision of law, a prosecuting attorney may not

152 use a person's violation of Subsection (2)(a) as the basis for charging the person with another
153 offense.

154 ~~[(e)]~~ (d) A prosecution for failure to report under Subsection (2)(a) shall be
155 commenced within two years after the day on which the person had knowledge of the suspected
156 abuse or neglect or the circumstances described in Subsection 80-2-603(2) and willfully failed
157 to report.

158 (3) Under circumstances not amounting to a violation of Section 76-8-508, a person is
159 guilty of a class B misdemeanor if the person threatens, intimidates, or attempts to intimidate a
160 child who is the subject of the report under Section 80-2-602 or 80-2-603, the person who
161 made the report, a witness, or any other person cooperating with an investigation conducted in
162 accordance with this chapter or Chapter 2a, Removal and Protective Custody of a Child.

163 Section 3. Section 80-2-611 is amended to read:

164 **80-2-611. False reports -- Investigation -- Notice of penalty.**

165 (1) The division may conduct an investigation to determine whether a report under
166 Section 80-2-602 or 80-2-603 is false.

167 (2) The division shall send a certified letter to a person who makes a report of abuse or
168 neglect that is placed into or included in any part of the Management Information System, if the
169 division determines, at the conclusion of the division's investigation, that:

170 (a) the report is false;

171 (b) it is more likely than not that the person knew the report was false at the time that
172 person made the report; and

173 (c) the reporting person's address is known or reasonably available.

174 (3) The certified letter described in Subsection (2) shall inform the reporting person of:

175 (a) the division's determination made under Subsection (2);

176 (b) the penalty for submitting false information under Section 76-8-506 and other
177 applicable laws; and

178 (c) the obligation or ability of the division under Subsection (4) to inform law
179 enforcement and the person alleged to have committed abuse or neglect[;].

180 ~~[(i) in the present instance if the division considers an immediate referral of the
181 reporting person to law enforcement to be justified by the facts; or]~~

182 ~~[(ii) if the reporting person submits a subsequent false report involving the same~~

183 ~~alleged perpetrator or victim.]~~

184 (4) The division:

185 (a) ~~[may]~~ shall inform law enforcement and the alleged perpetrator of a report for
186 which a certified letter is required to be sent under Subsection (2)~~[, if an immediate referral is~~
187 ~~justified by the facts]; and~~

188 ~~[(b) shall inform law enforcement and the alleged perpetrator of a report for which a~~
189 ~~certified letter is required to be sent under Subsection (2) if a second letter is sent to the~~
190 ~~reporting person involving the same alleged perpetrator or victim; and]~~

191 ~~[(c)]~~ (b) shall determine, in consultation with law enforcement:

192 (i) what information should be given to an alleged perpetrator relating to a false report;
193 and

194 (ii) whether good cause exists, as defined by the division by rule made in accordance
195 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for not informing an alleged
196 perpetrator about a false report.

197 (5) This section does not require the division to conduct an investigation beyond what
198 is described in Subsections (1) and (2), to determine whether a report is false.