

CHILD AND FAMILY SERVICES AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca P. Edwards

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes amendments related to fetal exposure to a controlled or illegal substance.

Highlighted Provisions:

This bill:

- ▶ amends the definition of "child" for the provision of child welfare services;
- ▶ requires the Division of Child and Family Services to offer in-home services to pregnant mothers in specified circumstances;
- ▶ requires a person to report to the Division of Child and Family Services if the person has reason to believe that a pregnant mother used an illegal drug or overused a prescription drug during pregnancy; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-101, as last amended by Laws of Utah 2017, Chapters 209, 323, and 459

62A-4a-105, as last amended by Laws of Utah 2017, Chapters 209 and 330



28 **62A-4a-403**, as last amended by Laws of Utah 2008, Chapter 299

29 ENACTS:

30 **62a-4a-201.5**, Utah Code Annotated 1953

31

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

33 Section 1. Section **62A-4a-101** is amended to read:

34 **62A-4a-101. Definitions.**

35 As used in this chapter:

36 (1) "Abuse" means the same as that term is defined in Section **78A-6-105**.

37 (2) "Adoption services" means:

38 (a) placing children for adoption;

39 (b) subsidizing adoptions under Section **62A-4a-105**;

40 (c) supervising adoption placements until the adoption is finalized by the court;

41 (d) conducting adoption studies;

42 (e) preparing adoption reports upon request of the court; and

43 (f) providing postadoptive placement services, upon request of a family, for the

44 purpose of stabilizing a possible disruptive placement.

45 (3) "Child" means, except as provided in Part 7, Interstate Compact on Placement of

46 Children~~[, a person]~~:

47 (a) an individual under 18 years [of age.] old; or

48 (b) the unborn child of a pregnant mother who:

49 (i) during pregnancy, uses an illegal drug or uses more of a prescribed medication than

50 is directed by the prescription; and

51 (ii) is within 30 days of the day on which the unborn child is due to be born.

52 (4) "Child protection team" means a team consisting of:

53 (a) the caseworker assigned to the case;

54 (b) the caseworker who made the decision to remove the child;

55 (c) a representative of the school or school district where the child attends school;

56 (d) the peace officer who removed the child from the home;

57 (e) a representative of the appropriate Children's Justice Center, if one is established

58 within the county where the child resides;

59 (f) if appropriate, and known to the division, a therapist or counselor who is familiar
60 with the child's circumstances;

61 (g) members of a child protection unit; and

62 (h) any other individuals determined appropriate and necessary by the team coordinator
63 and chair.

64 (5) "Child protection unit" means any unit created by a chief of police or a sheriff of a
65 city, town, metro township, or county that is composed of at least the following individuals
66 who are trained in the prevention, identification, and treatment of abuse or neglect:

67 (a) a law enforcement officer, as defined in Section 53-13-103; and

68 (b) a child advocate selected by the chief of police or a sheriff.

69 (6) "Chronic abuse" means repeated or patterned abuse.

70 (7) "Chronic neglect" means repeated or patterned neglect.

71 (8) "Consult" means an interaction between two persons in which the initiating person:

72 (a) provides information to another person;

73 (b) provides the other person an opportunity to respond; and

74 (c) takes the other person's response, if any, into consideration.

75 (9) "Consumer" means a person who receives services offered by the division in
76 accordance with this chapter.

77 (10) "Custody," with regard to the division, means the custody of a minor in the
78 division as of the date of disposition.

79 (11) "Day-care services" means care of a child for a portion of the day which is less
80 than 24 hours:

81 (a) in the child's own home by a responsible person; or

82 (b) outside of the child's home in a:

83 (i) day-care center;

84 (ii) family group home; or

85 (iii) family child care home.

86 (12) "Dependent child" or "dependency" means a child, or the condition of a child, who
87 is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

88 (13) "Director" means the director of the Division of Child and Family Services.

89 (14) "Division" means the Division of Child and Family Services.

- 90 (15) "Domestic violence services" means:
- 91 (a) temporary shelter, treatment, and related services to:
- 92 (i) ~~[a person]~~ an individual who is a victim of abuse, as defined in Section [78B-7-102](#);
- 93 and
- 94 (ii) the dependent children of ~~[a person]~~ an individual described in Subsection
- 95 (12)(a)(i); and
- 96 (b) treatment services for ~~[a person]~~ an individual who is alleged to have committed,
- 97 has been convicted of, or has pled guilty to, an act of domestic violence as defined in Section
- 98 [77-36-1](#).
- 99 (16) "Harm" means the same as that term is defined in Section [78A-6-105](#).
- 100 (17) "Homemaking service" means the care of individuals in their domiciles, and help
- 101 given to individual caretaker relatives to achieve improved household and family management
- 102 through the services of a trained homemaker.
- 103 (18) "Illegal drug" means the same as that term is defined in Section [58-37e-2](#).
- 104 ~~[(18)]~~ (19) "Incest" means the same as that term is defined in Section [78A-6-105](#).
- 105 ~~[(19)]~~ (20) "Indian child" means the same as that term is defined in 25 U.S.C. Sec.
- 106 1903.
- 107 ~~[(20)]~~ (21) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec.
- 108 1903.
- 109 ~~[(21)]~~ (22) "Minor" means, except as provided in Part 7, Interstate Compact on
- 110 Placement of Children:
- 111 (a) a child; or
- 112 (b) ~~[a person]~~ an individual:
- 113 (i) who is at least 18 years ~~[of age]~~ old and younger than 21 years ~~[of age]~~ old; and
- 114 (ii) for whom the division has been specifically ordered by the juvenile court to provide
- 115 services.
- 116 ~~[(22)]~~ (23) "Molestation" means the same as that term is defined in Section [78A-6-105](#).
- 117 ~~[(23)]~~ (24) "Mutual case" means a case that has been:
- 118 (a) opened by the division under the division's discretion and procedures;
- 119 (b) opened by the law enforcement agency with jurisdiction over the case; and
- 120 (c) accepted for investigation by the child protection unit established by the chief of

121 police or sheriff, as applicable.

122 ~~[(24)]~~ (25) "Natural parent" means a minor's biological or adoptive parent, and
123 includes a minor's noncustodial parent.

124 ~~[(25)]~~ (26) "Neglect" means the same as that term is defined in Section 78A-6-105.

125 ~~[(26)]~~ (27) "Protective custody," with regard to the division, means the shelter of a
126 child by the division from the time the child is removed from the child's home until the earlier
127 of:

128 (a) the shelter hearing; or

129 (b) the child's return home.

130 ~~[(27)]~~ (28) "Protective services" means expedited services that are provided:

131 (a) in response to evidence of neglect, abuse, or dependency of a child;

132 (b) to a cohabitant who is neglecting or abusing a child, in order to:

133 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the
134 causes of neglect or abuse; and

135 (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and

136 (c) in cases where the child's welfare is endangered:

137 (i) to bring the situation to the attention of the appropriate juvenile court and law
138 enforcement agency;

139 (ii) to cause a protective order to be issued for the protection of the child, when
140 appropriate; and

141 (iii) to protect the child from the circumstances that endanger the child's welfare
142 including, when appropriate:

143 (A) removal from the child's home;

144 (B) placement in substitute care; and

145 (C) petitioning the court for termination of parental rights.

146 ~~[(28)]~~ (29) "Severe abuse" means the same as that term is defined in Section
147 78A-6-105.

148 ~~[(29)]~~ (30) "Severe neglect" means the same as that term is defined in Section
149 78A-6-105.

150 ~~[(30)]~~ (31) "Sexual abuse" means the same as that term is defined in Section
151 78A-6-105.

152 ~~[(31)]~~ (32) "Sexual exploitation" means the same as that term is defined in Section
153 78A-6-105.

154 ~~[(32)]~~ (33) "Shelter care" means the temporary care of a minor in a nonsecure facility.

155 ~~[(33)]~~ (34) "Sibling" means a child who shares or has shared at least one parent in
156 common either by blood or adoption.

157 ~~[(34)]~~ (35) "Sibling visitation" means services provided by the division to facilitate the
158 interaction between a child in division custody with a sibling of that child.

159 ~~[(35)]~~ (36) "State" means:

160 (a) a state of the United States;

161 (b) the District of Columbia;

162 (c) the Commonwealth of Puerto Rico;

163 (d) the Virgin Islands;

164 (e) Guam;

165 (f) the Commonwealth of the Northern Mariana Islands; or

166 (g) a territory or possession administered by the United States.

167 ~~[(36)]~~ (37) "State plan" means the written description of the programs for children,
168 youth, and family services administered by the division in accordance with federal law.

169 ~~[(37)]~~ (38) "Status offense" means a violation of the law that would not be a violation
170 but for the age of the offender.

171 ~~[(38)]~~ (39) "Substance abuse" or "substance use disorder" means the same as that term
172 is defined in Section 78A-6-105.

173 ~~[(39)]~~ (40) "Substantiated" or "substantiation" means a judicial finding based on a
174 preponderance of the evidence that abuse or neglect occurred. Each allegation made or
175 identified in a given case shall be considered separately in determining whether there should be
176 a finding of substantiated.

177 ~~[(40)]~~ (41) "Substitute care" means:

178 (a) the placement of a minor in a family home, group care facility, or other placement
179 outside the minor's own home, either at the request of a parent or other responsible relative, or
180 upon court order, when it is determined that continuation of care in the minor's own home
181 would be contrary to the minor's welfare;

182 (b) services provided for a minor awaiting placement; and

183 (c) the licensing and supervision of a substitute care facility.

184 [~~(41)~~] (42) "Supported" means a finding by the division based on the evidence
185 available at the completion of an investigation that there is a reasonable basis to conclude that
186 abuse, neglect, or dependency occurred. Each allegation made or identified during the course
187 of the investigation shall be considered separately in determining whether there should be a
188 finding of supported.

189 [~~(42)~~] (43) "Temporary custody," with regard to the division, means the custody of a
190 child in the division from the date of the shelter hearing until disposition.

191 [~~(43)~~] (44) "Transportation services" means travel assistance given to an individual
192 with escort service, if necessary, to and from community facilities and resources as part of a
193 service plan.

194 [~~(44)~~] (45) "Unsubstantiated" means a judicial finding that there is insufficient
195 evidence to conclude that abuse or neglect occurred.

196 [~~(45)~~] (46) "Unsupported" means a finding at the completion of an investigation that
197 there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.
198 However, a finding of unsupported means also that the division worker did not conclude that
199 the allegation was without merit.

200 [~~(46)~~] (47) "Without merit" means a finding at the completion of an investigation by
201 the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur,
202 or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

203 Section 2. Section **62A-4a-105** is amended to read:

204 **62A-4a-105. Division responsibilities.**

205 (1) The division shall:

206 (a) administer services to minors and families, including:

207 (i) child welfare services;

208 (ii) domestic violence services; and

209 (iii) all other responsibilities that the Legislature or the executive director may assign
210 to the division;

211 (b) provide the following services:

212 (i) financial and other assistance to an individual adopting a child with special needs
213 under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the

214 child as a legal ward of the state;

215 (ii) non-custodial and in-home services, including:

216 (A) services designed to prevent family break-up; [~~and~~]

217 (B) family preservation services; and

218 (C) services to a pregnant mother, as described in Section 62A-4a-201.5;

219 (iii) reunification services to families whose children are in substitute care in

220 accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act;

221 (iv) protective supervision of a family, upon court order, in an effort to eliminate abuse

222 or neglect of a child in that family;

223 (v) shelter care in accordance with the requirements of this chapter and Title 78A,

224 Chapter 6, Juvenile Court Act;

225 (vi) domestic violence services, in accordance with the requirements of federal law;

226 (vii) protective services to victims of domestic violence, as defined in Section 77-36-1,

227 and their children, in accordance with the provisions of this chapter and Title 78A, Chapter 6,

228 Part 3, Abuse, Neglect, and Dependency Proceedings;

229 (viii) substitute care for dependent, abused, neglected, and delinquent children;

230 (ix) services for minors who are victims of human trafficking or human smuggling as

231 described in Sections 76-5-308 through 76-5-310 or who have engaged in prostitution or sexual

232 solicitation as defined in Section 76-10-1302; and

233 (x) training for staff and providers involved in the administration and delivery of

234 services offered by the division in accordance with this chapter;

235 (c) establish standards for all:

236 (i) contract providers of out-of-home care for minors and families;

237 (ii) facilities that provide substitute care for dependent, abused, neglected, and

238 delinquent children placed in the custody of the division; and

239 (iii) direct or contract providers of domestic violence services described in Subsection

240 (1)(b)(vi);

241 (d) have authority to:

242 (i) contract with a private, nonprofit organization to recruit and train foster care

243 families and child welfare volunteers in accordance with Section 62A-4a-107.5; and

244 (ii) approve facilities that meet the standards established under Subsection (1)(c) to

245 provide substitute care for dependent, abused, neglected, and delinquent children placed in the
246 custody of the division;

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

249 (f) if there is a privacy agreement with an Indian tribe to protect the confidentiality of
250 division records to the same extent that the division is required to protect division records,
251 cooperate with and share all appropriate information in the division's possession regarding an
252 Indian child, the Indian child's parent or guardian, or a proposed placement for the Indian child
253 with the Indian tribe that is affiliated with the Indian child;

254 (g) in accordance with Subsection (2)(a), promote and enforce state and federal laws
255 enacted for the protection of abused, neglected, dependent, delinquent, ungovernable, and
256 runaway children, and status offenders, in accordance with the requirements of this chapter,
257 unless administration is expressly vested in another division or department of the state;

258 (h) cooperate with the Workforce Development Division in the Department of
259 Workforce Services in meeting the social and economic needs of an individual who is eligible
260 for public assistance;

261 (i) compile relevant information, statistics, and reports on child and family service
262 matters in the state;

263 (j) prepare and submit to the department, the governor, and the Legislature reports of
264 the operation and administration of the division in accordance with the requirements of
265 Sections [62A-4a-117](#) and [62A-4a-118](#);

266 (k) provide social studies and reports for the juvenile court in accordance with Section
267 [78A-6-605](#);

268 (l) within appropriations from the Legislature, provide or contract for a variety of
269 domestic violence services and treatment methods;

270 (m) ensure regular, periodic publication, including electronic publication, regarding the
271 number of children in the custody of the division who:

272 (i) have a permanency goal of adoption; or

273 (ii) have a final plan of termination of parental rights, pursuant to Section [78A-6-314](#),
274 and promote adoption of those children;

275 (n) subject to Subsection (2)(b), refer an individual receiving services from the division

276 to the local substance abuse authority or other private or public resource for a court-ordered
277 drug screening test; and

278 (o) perform other duties and functions required by law.

279 (2) (a) In carrying out the requirements of Subsection (1)(f), the division shall:

280 (i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and
281 with all public and private licensed child welfare agencies and institutions to develop and
282 administer a broad range of services and support;

283 (ii) take the initiative in all matters involving the protection of abused or neglected
284 children, if adequate provisions have not been made or are not likely to be made; and

285 (iii) make expenditures necessary for the care and protection of the children described
286 in this Subsection (2)(a), within the division's budget.

287 (b) When an individual is referred to a local substance abuse authority or other private
288 or public resource for court-ordered drug screening under Subsection (1)(n), the court shall
289 order the individual to pay all costs of the tests unless:

290 (i) the cost of the drug screening is specifically funded or provided for by other federal
291 or state programs;

292 (ii) the individual is a participant in a drug court; or

293 (iii) the court finds that the individual is impecunious.

294 (3) Except to the extent provided by rule, the division is not responsible for
295 investigating domestic violence in the presence of a child, as described in Section [76-5-109.1](#).

296 (4) The division may not require a parent who has a child in the custody of the division
297 to pay for some or all of the cost of any drug testing the parent is required to undergo.

298 Section 3. Section **62a-4a-201.5** is enacted to read:

299 **62a-4a-201.5. In-home services for a pregnant mother.**

300 (1) The division shall offer in-home services for a pregnant mother who has used an
301 illegal drug or has used more of a prescribed medication than is directed by the prescription.

302 (2) The pregnant mother may decline to accept in-home services for a pregnant mother.

303 (3) Services may include, as the division determines is appropriate:

304 (a) any applicable services described in Section [62A-4a-202](#);

305 (b) a referral for a substance use disorder assessment;

306 (c) a referral to a substance use disorder treatment program;

- 307 (d) a referral for prenatal care;
308 (e) education regarding the impact of a substance use disorder on the unborn child; and
309 (f) education regarding the implications if the pregnant mother's child is born with fetal
310 alcohol syndrome, fetal alcohol spectrum disorder, or fetal drug dependency.

311 Section 4. Section **62A-4a-403** is amended to read:

312 **62A-4a-403. Reporting requirements.**

313 (1) (a) Except as provided in Subsection (2), when any person including persons
314 licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 31b, Nurse
315 Practice Act, has reason to believe that a child has been subjected to abuse or neglect, or who
316 observes a child being subjected to conditions or circumstances which would reasonably result
317 in abuse or neglect, that person shall immediately notify the nearest peace officer, law
318 enforcement agency, or [~~office of~~] the division.

319 (b) Upon receipt of the notification described in Subsection (1)(a), the peace officer or
320 law enforcement agency shall immediately notify the nearest office of the division. If an initial
321 report of abuse or neglect is made to the division, the division shall immediately notify the
322 appropriate local law enforcement agency. The division shall, in addition to its own
323 investigation, comply with and lend support to investigations by law enforcement undertaken
324 pursuant to a report made under this section.

325 (c) Except as provided in Subsection (2), when any person, including persons licensed
326 under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 31b, Nurse Practice
327 Act, has reason to believe that a pregnant mother while pregnant has used an illegal drug, as
328 defined in Section 58-37e-2, or has used more of a prescribed medication than is directed by
329 the prescription, the person shall immediately notify the division.

330 (2) Subject to Subsection (3), the notification requirements of Subsection (1) do not
331 apply to a clergyman or priest, without the consent of the person making the confession, with
332 regard to any confession made to the clergyman or priest in the professional character of the
333 clergyman or priest in the course of discipline enjoined by the church to which the clergyman
334 or priest belongs, if:

335 (a) the confession was made directly to the clergyman or priest by the perpetrator; and

336 (b) the clergyman or priest is, under canon law or church doctrine or practice, bound to
337 maintain the confidentiality of that confession.

338 (3) (a) When a clergyman or priest receives information about abuse or neglect from
339 any source other than confession of the perpetrator, the clergyman or priest is required to give
340 notification on the basis of that information even though the clergyman or priest may have also
341 received a report of abuse or neglect from the confession of the perpetrator.

342 (b) Exemption of notification requirements for a clergyman or priest does not exempt a
343 clergyman or priest from any other efforts required by law to prevent further abuse or neglect
344 by the perpetrator.

Legislative Review Note
Office of Legislative Research and General Counsel