

## DRAFT FOR DISCUSSION - 9/8/04

To: Child Welfare Legislative Oversight Committee  
From: Sub-committee studying "mature minor" as a public policy issue  
Date: September 23, 2004  
Re: Possibility of creating a "mature minor" status in Utah law

**Background:** House Bill 140, sponsored by Representative Christensen, proposed the creation of a "mature minor" which would be defined in the Human Services Code and the Juvenile Court Act. A "mature minor" was defined in the bill as "a person less than 18 years of age whom the Court determines is of an age and maturity and who reasonably demonstrates the capacity to make reasonable health care decisions on the minor's own behalf." Along with the creation of this new category of youth, House Bill 140 also proposed an exception to the finding of civil neglect. The proposed language was: "a parent may not be found guilty of neglect for the medical decisions made by a mature minor." Governor Walker vetoed the bill on March 23, 2004, but suggested additional study of this issue. The Standing Committee on Child and Family Law authorized the formation of a sub-committee of its members to focus this study and debate.

### **Preliminary question: WOULD HB 140 LANGUAGE CREATE A NEW STATUS?**

Proponents of the HB 140 language might argue that the bill does not create additional rights for mature minors. On its face, this argument makes sense. A "mature minor" is defined in the bill, and then the only other mention of the "mature minor" is the portion of the bill that states, "a parent may not be found guilty of neglect for the medical decisions made by a mature minor." In that regard, it does not create a "right" for minors, but an "exception" for parents of "mature minors." But legislators should recognize that the right to direct medical care and make medical choices is *implicit* in the creation of a "mature minor status." If the "mature minor" did not have the ability to make his own medical decisions and/or direct his own medical care, the proposed statute would not be necessary. In other words, if a minor did not have the right to accept or reject treatment, then there would be no

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reason to create a statute to protect parents from liability for decisions made by those children.

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## Limitations of this Report:

The sub-committee has limited its analysis to issues raised by the proposed language in HB 140. If the legislature changes the definition of "mature minor" to include the ability to make decisions in areas other than health care, then new or different concerns would need to be addressed.

Based on these premises, the sub-committee respectfully submits the following issue brief for consideration.

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## BRIEF: WHAT ISSUES WOULD BE RAISED BY THE CREATION OF A "MATURE MINOR" STATUS IN UTAH?

### I. WHAT GENERAL ISSUES SHOULD GUIDE THE DEBATE?

#### A. BALANCING "RIGHTS"

Traditionally, in cases involving children, Courts (including the United States Supreme Court) have found that there are three competing interests: the interests of the child, the interests of the parents, and the interest of the state, acting as "parens patriae" to protect its citizens, including its minors. *See, e.g., Troxel v. Granville*, 120 S.Ct. 2054 (2000). In making statutory changes to the Juvenile Court Act, the legislature must examine:

1. How the proposed legislation affects the rights of each interest; and
2. Which interests the legislature wish to protect.

#### B. CONSTITUTIONAL/FEDERAL ISSUES:

The sub-committee presumes that the legislature wants to pass legislation that would survive judicial scrutiny and that would not violate any other laws or the Utah or United States Constitution. The sub-committee did not consider federal or constitutional issues in depth, nor did it consider how federal or state funding might be affected by the creation of the "mature minor" status. The legislature is urged to consider:

1. Whether the proposed legislation conflicts with other state or federal statute;
2. Whether the proposed legislation conflicts with state or federal case law; and
3. Whether the proposed legislation would or could affect federal or state funding.

### II. ISSUES AND QUESTIONS RAISED REGARDING THE MINOR CHILD

#### A. PRELIMINARY ISSUES

##### 1. Balancing Issues:

The proposed language of HB 140 would create rights for certain children (the mature minors) and would diminish rights for the parents or guardians of those minors. Once a child is deemed

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a "mature minor," the child would gain the right to make his or her own medical decisions and the parent would lose that right.

### B. CONTRACEPTION

Approximately 25 states have laws or policies that give minors explicit authority to consent to contraceptive services. See, Boonstra and Nash, Minors and the Right to Consent to Health Care, The Guttmacher Report on Public Policy, August 2000 (hereinafter Guttmacher). Utah law does not provide such authority. It is a crime in Utah to spend state funds on contraceptive services that would be given to a minor without written parental consent. Utah Code Ann. §76-7-322(2004), Utah Code Ann. §76-7-323(2004). However, if a youth seeks and receives a designation as a "mature minor," presumably, under the definition in HB 140, that minor could make decisions about contraception and receive contraceptive care without parental consent. The legislature should consider:

1. Whether it supports the right of a mature minor to seek and receive contraceptive services;
2. Who should be responsible for paying for these services;
3. Would HB 140 conflict with Utah law, or create confusion? (Example: if a mature minor seeks contraceptive services without parental consent, and a state funded agency gives such services, does that violate Utah Code Ann. §76-7-322 and 76-7-323?);
4. If the child is insured through a parent's insurance company, is that insurance company liable to pay, even if the parent did not authorize the treatment?
5. If there is no insurance, is the parent liable to pay?

### C. ABORTION

Utah requires parental notification prior to a minor child receiving an abortion. Utah Code Ann. §76-7-304. Additionally, Utah does not allow state funds to be used to support or provide abortion services to a minor without express written consent of a parent. Utah Code Ann. §76-7-322, Utah Code Ann. §76-7-323. Utah also is the only state in the nation that does not currently allow a "judicial bypass" under certain circumstances (Guttmacher). If the legislature creates a "mature minor" status, it is

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essentially creating a "judicial bypass" for "mature minors," and there is little doubt that a youth would seek this status in order to prevent parental notification or parental involvement in abortion services or decisions. The legislature should consider:

1. Whether the creation of the "mature minor" would create conflict or confusion with the current abortion laws;
2. Whether the legislature intends to create a "judicial bypass" or exception so that "mature minors" could make their own health care decisions regarding abortion;
3. Who should pay for the decisions of the "mature minor" in this regard;

### **D. SUBSTANCE ABUSE TREATMENT**

Approximately 45 states have laws or policies that authorize a minor to receive confidential counseling and medical care for substance abuse without parental consent. (Guttmacher). Utah law does not give a minor the right to choose his own substance abuse treatment. A parent can submit a child into a substance abuse facility without the child's consent under certain circumstances. Utah Code Ann. §62a-15-301(2003). However, if a youth seeks and receives a designation as a "mature minor," presumably that minor could make medical decisions and receive substance abuse counseling or treatment without notifying his parent, or against his parent wishes. Or, conversely, that mature minor could refuse substance abuse treatment or refuse to go to the treatment facility chosen by the parent. The legislature needs to consider:

1. Whether it supports the right of a mature minor to refuse or accept treatment for substance abuse, without or against parental consent?
2. Would the law conflict with other statutes, such as the one that gives parents the authority to place children in residential treatment programs;
3. Who should be responsible for payment for such services;

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### **E. MENTAL HEALTH TREATMENT**

As Utah law stands, parents must consent to mental health treatment for their children. The creation of a "mature minor" status could create a situation where a child is seeking mental health treatment that the parent does not support. Or it could create a situation where the child seeks to avoid treatment that the parent supports, such as medication, controversial therapies, or electroconvulsive treatment (ECT). The legislature needs to consider:

1. Whether it supports a mature minor's right to seek or oppose mental health treatment without parental consent or against parental wishes?
2. Whether and to what extent a mature minor should be able to seek or oppose psychotropic medication, non-traditional therapies, or medical treatment?
3. Who should be responsible for payment if the parent is opposed to the treatment, but the "mature minor" obtains the right to get treatment?
4. To what extent is the treatment provider responsible or liable if s/he follows the direction of the "mature minor"? (For instance, if the "mature minor" refuses medication and then commits suicide, is the treatment provider liable to the parents, who wanted the treatment)?
5. What the fiscal impact would be on the local mental health authorities.
6. Whether the statute would affect the current civil commitment statutes that affect youth?

### **F. END OF LIFE DECISIONS**

Utah law does not allow a child under the age of 18 to make health care directives related to "end of life" issues. Utah Code Ann §75-2-1101, et. seq. (2003). If the legislature creates a "mature minor" status, a minor could seek the status in order to make end of life decisions that might contradict a parent's wishes. The legislature should consider:

1. Whether it supports the right of mature minors to make their own end of life decisions;
2. Whether and to what extent such status would create confusion for physicians

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and end of life caregivers (such as doctors, hospitals or hospice care givers);

3. Whether and to what extent such status would create liability for physicians and end of life caregivers (who, for example, honor the end of life decisions of a mature minor when those decisions result in a child's death against his or her parent's wishes).

### **G. SEEKING OTHER GENERAL MEDICAL TREATMENT THAT IS OPPOSED BY PARENTS**

As illustrated above, the creation of a "mature minor" status is likely to create innumerable possible scenarios where the parent and child disagree on the best course of medical treatment. Other possible areas of tension are: immunizations (should a child need one later in life, or should new immunizations be developed and recommended), treatment for life threatening diseases, treatment for mild, chronic, illnesses, blood transfusions, psychotropic medication, etc. The legislature should consider:

1. Whether it wants to open the door for mature minors to seek this status in order to make any number of medical decisions;
2. Who should be responsible for payment for the "mature minor's" medical decisions;
3. What liability is created for medical professionals when parents and minors disagree about the best course of medical action.

### **H. COMPETENCY TO SUE OR BE SUED**

Once a minor is deemed "mature" and can make his or her own medical decisions, the legislature should consider:

1. Does the minor have the right to initiate a legal action that relates to the health care (such as a malpractice action)?
2. If not, does the child have to wait until he or she turns 18 to do so, and would that affect statutes of limitations? (If so, should amendments be made so that minors can initiate claims after they turn 18)?
3. If not, can the parents bring medical malpractice or other legal actions on behalf of the mature minor?

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4. Can a health care provider sue the child if the child does not pay for the treatment? Or, is the parent still liable for payment?
5. Does the state incur any liability or potential for suit if it does not provide a service for the "Mature minor" if the minor cannot pay for the service?

### **I. SEXUALLY TRANSMITTED/VENERAL DISEASE TREATMENT**

In Utah, a minor can consent to medical care or services for the treatment of a sexually transmitted disease. Utah Code Ann. §26-6-18(2003). "Sexually transmitted disease" is defined as "those diseases transmitted through sexual intercourse or other sexual contact." Utah Code Ann. §26-6-2(14)(2003). This is the only current statute where a minor can consent to medical treatment on his or her own behalf, and is obviously rooted in the strong public policy to treat and prevent the spread of sexually transmitted diseases. As it stands, a minor does NOT have to obtain a judicial determination of "maturity" prior to seeking treatment for a suspected sexually transmitted disease. As a result, the proposed legislation would not affect a minor's right to seek treatment or services for sexually transmitted diseases.

### **III. ISSUES AND QUESTIONS REGARDING THE PARENT OR GUARDIAN OF THE MATURE MINOR**

#### **A. PRELIMINARY ISSUES**

##### **1. Balancing Rights**

The proposed language of HB 140 would remove a parent's right to make medical decisions for their "mature minors." As the proposed law stands, however, the parent would still be responsible for the minor in all other respects. This creates a potentially confusing situation for the parent: the parent may completely disagree with the child's health care decision (in fact, that is the most likely scenario) but would still be responsible for the child in every other respect. The legislature must decide if this is what it wants.

##### **2. Note about terminology:**

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This brief refers to parents for brevity, but the same issues and questions would also concern legal guardians and custodians, including the Department of Human Services.

### B. PAYMENT FOR CARE

The proposed creation of a "mature minor" status would deprive parents of the right to make medical decisions for children who are determined to be "mature minors." However, since the minors are not completely emancipated, the question of payment remains. Parents could be in a position where they oppose the treatment that the child receives, but are still be responsible for providing the treatment and paying for it. The legislature needs to consider:

1. Whether they intend this result.
  - a. If so, can the parent refuse to pay?
  - b. If the parent refuses to pay, does the state have any obligation to step in to ensure that the mature minor's decision is honored?
  - c. If the parent can "veto" the minor's decision by failing to provide the treatment or pay for it, does the legislation still have meaning?
  - d. Does the Court that makes the finding of maturity have any obligation to make sure that the parents honor the mature minor's decisions?
  - e. If the parent is obligated but cannot afford to pay for the treatment, does the state have an obligation to assist?
  - f. If the state is obligated to assist, can parents or children use the law to obtain medical care that they could not otherwise afford or medical benefits to which they would not otherwise be qualified?
2. If this is not the intended result, does the legislature foresee that the child would be responsible for payment?
  - a. If so, would the state be obligated to assist in the payment?
  - b. If the state were obligated, would there be conflict between other state

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- laws? (For example, the abortion scenario above)
- c. If the "mature minor" is solely obligated to pay for his or her health care decisions, does that conflict with other state laws (such as child labor laws, the ability of a minor to enter into a contract, etc?)
  - d. If the practical effect of the law is that the minor can make decisions but could never effectuate them (because he is unable to secure his own insurance or pay for the treatment), does the legislation still have meaning?
3. If the legislature does not want the parent or child to bear the responsibility for payment would the state be responsible?
4. Does the statute create the possibility/likelihood of state intervention (in order to ensure the mature minor can act on his or her decisions, or for payment?) and if so, is that what the legislature wants?

### C. STANDING

The following issues are not resolved by the language of proposed HB 140, and would certainly be questioned in the Courts (see discussion, below):

- 1. Does the parent have standing to petition for their child to be declared a "mature minor"?
- 2. If the child petitions for "mature minor" status, what is the parent's role? Can the parent come in and present evidence to rebut the child's petition?
- 3. Is the parent entitled to notice that a petition for "mature minor" status is pending? Does that requirement include non-custodial parents?

### D. POTENTIAL FOR MISUSE OR ABUSE

If the legislature finds that parents should not be held financially responsible for the medical decisions made

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by the "mature minor," parents might abuse the system and seek this status in order to avoid responsibility for expensive medical procedures. Example: a parent would refuse to pay for a treatment or petition for a "mature minor" finding and then claim that the minor is choosing an expensive procedure that the parent does not support. Or, on the other hand, a parent could use the law in order to secure services for their child that the parent cannot afford. For example, if the parent's insurance does not cover mental health treatment, the child and parent could petition for mature minor status, and then either apply for Medicaid on behalf of the "mature minor" or ask the state to pay for the services. Either way, the law is ripe for misuse. The legislature should consider:

1. Whether additional legislation should be considered to protect against abuses.
2. How the system would identify and deal with such abuses.

#### **IV. ISSUES AND QUESTIONS REGARDING THE "STATE" OR THE DEPARTMENT OF HUMAN SERVICES**

##### **A. PRELIMINARY ISSUES**

###### **1. Balancing Rights**

The impact of HB 140 on the "State" is not entirely clear. On one hand, the "mature minor" status would hamper the state's ability to provide for children in their care. For example, if a 15 year old child sought and received "mature minor" status, and later became a ward of the state either through delinquency or dependency, the state would not be able to make medical decisions for that child. On the other hand, the state could use the statute to create a cause of action on behalf of a child. For example, the state or a guardian ad litem could seek the "mature minor" status on behalf of a child who wants medical care that the parents are refusing. The legislature should consider whether it intends such results.

##### **B. HOW WOULD THE "MATURE MINOR" STATUS AFFECT THE DEPARTMENT'S OTHER RESPONSIBILITIES UNDER LAW?**

The Human Services Code and the Juvenile Court Act required the Department of Human Services to provide numerous services to parents and children. The creation of

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a "mature minor" status would create questions and confusion about the Department's role. For Example:

1. Would the Department have some responsibility to a "mature minor" to make sure that his medical decisions are honored by the parents?
2. If the parents did not honor the "mature minor's" wishes, would that create a "cause of action" (like abuse, neglect or dependency) whereby the state could file a petition and intervene on the child's behalf?
3. If a petition were filed, or if the "mature minor" came under court jurisdiction some other way (such as for a subsequent delinquency, or if there was a previous dependency matter), what duty would the state owe to the parents? For example, would the state be required to inform the parents of the "mature minor's" medical decisions?
4. Would the department have any say in the medical decisions of a "mature minor" that is in the custody of the department?
5. If the department cannot dictate a "mature minor's" medical care, would the department be immune from suit if that medical care resulted in some injury to the child?
6. If the state/department had some involvement with the child that is not directly related to the inquiry into his ability to make reasonable medical decisions, would the state be able to raise concerns at the "mature minor" hearing?
7. Once the "mature minor" status is invoked, can ORS continue to seek support from the parents?
8. Once the "mature minor" status is invoked, can the child receive Medicaid?
9. Does the "mature minor" statute violate CAPTA or other federal laws that would affect funding?

### **C. HOW WOULD POPULATIONS SERVED BY THE DEPARTMENT BE AFFECTED?**

1. **Children in custody or receiving services due to petitions alleging abuse, neglect, or dependency or for delinquency**

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Children in DCFS or DJJS custody would likely petition for "mature minor" status in order to reject treatment or medication that is suggested by the Divisions, or to avoid performing on a service plan (for example, if the service plan required the child to go to counseling). Once a child has a permanency goal of "independent living," the child may seek "mature minor" status as part of their desire to achieve independence. A parent could also use a petition to have their child declared a "mature minor" to subvert the Division's treatment goals for a child in DCFS/DJJS care. The legislature should consider:

- a. Whether parents retain the right to petition for mature minor status on behalf of a minor in DCFS/DJJS custody;
- b. Whether DHS would have standing to petition for mature minor status for a child in DCFS/DJJS custody;
- c. Whether the minor would have standing to petition for mature minor status while in DCFS/DJJS custody;
- d. Whether dependent and/or delinquent children should be treated differently (and whether different treatment is constitutional);
- e. Whether additional legislation is necessary to prevent confusion when a child is in DCFS or DHS custody;
- f. To clarify issues of payment.

### **2. "At risk populations" such as homeless youth**

There is little doubt that homeless youth would seek "mature minor" status in order to consent to their own medical care, but to be in all other respects considered a minor. For example, a homeless youth who achieves the "mature minor" status in Utah is still considered a juvenile if he commits a crime, and is not financially accountable. The ability to consent for health care but remain a minor might attract homeless youth from other areas (who do not want to be completely emancipated and treated like an adult in other respects). The legislature should consider:

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- a. Whether it intends this result;
- b. Whether additional legislation should be considered to require residency or a waiting period;
- c. To what extent parental notification would be required prior to a finding of "mature minor," particularly for out of state minors;
- d. Whether Utah would give "full faith and credit" to "mature minor" findings from other states;
- e. Whether youth who receive the "mature minor" status here could go back to their home state and insist that the Utah finding be upheld (creating a risk of youth coming to Utah to seek the status and then leaving).

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## V. ISSUES AND QUESTIONS REGARDING THE COURT SYSTEM

### A. PRELIMINARY ISSUES

#### 1. Balancing Rights

The proposed language of HB 140 gives the Court considerable additional responsibility and diminishes parents' rights. The Court would have to determine whether the minor meets the definition of a "mature minor." If the Court makes this determination, the parent is then divested of his ability to make medical decisions for the child. The legislature should consider whether this is what they intend.

### B. PREADJUDICATION ISSUES

#### 1. Who has standing to petition for the "mature minor" status?

As it was conceived, HB 140 allows a parent to use the "mature minor" status to shield himself from later liability. However, it is more likely that minors who wanted to assert their rights would use the status to defy their parents' wishes. In other words, parents might use the status to ask for "forgiveness" to avoid civil liability after a decision is made, while minors might use the status to ask for "permission" to make a medical decision that the parent does not support. Courts would need to know who would have standing to bring a "Mature minor" petition and when a petition could be advanced.

Possibilities:

- a. the minor;
- b. the parent or guardian;
- c. the state/DCFS/DJJS;
- d. a physician, seeking clarification regarding whose instructions to follow;
- e. a guardian ad litem;
- f. an insurance agency, seeking to avoid liability for a charge that the parent did not support
- g. "any interested party"

#### 2. Who is entitled to notice of the hearing?

If a minor petitions for the status on his own, is the minor required to notify the custodial parent of his petition? What about the non-custodial parent? What proof should be required, if any, before this requirement is waived?

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### **3. What is the burden of proof?**

Once a party brings a petition to the Court, the courts would need to know who has the burden to prove that the minor is mature, and under what standard of proof (preponderance of the evidence, clear and convincing evidence, etc).

### **4. Who can present evidence?**

Once the burden is established, the Courts would need to know who could participate in the inquiry? For example: if a child petitions on his own for "mature minor" status, can the parent come in and present evidence to rebut the child's evidence that he is mature? Can anyone else participate?

### **5. Is the minor entitled to representation?**

As the statute stands, guardians ad litem must be appointed for children when the child is the subject of a petition alleging abuse, neglect or dependency. Utah Code Ann. §78-32-912(2) (2004). The Courts have discretion to appoint a GAL in any other case, if it is in the child's best interest. Utah Code Ann. §78-3a-902 (2004). The Legislature should consider whether they want a GAL appointed on all of these cases, and/or whether appointment of a GAL is likely, therefore creating more responsibilities and duties for that office. Alternatively, if the parent seeks mature minor status, and the minor does not want to be considered a mature minor, would a GAL or other court-appointed attorney be necessary (since the minor could not pay for his or her own attorney)?

### **6. What criteria should/must the Court consider before making its determination?**

HB 140 proposed the following definition of a "Mature Minor:" "a person less than 18 years of age whom the Court determines is of an age and maturity and who reasonably demonstrates the capacity to make reasonable health care decisions on the minor's own behalf." This definition is very broad. "Maturity" is not defined. Since emancipation is not recognized in Utah except at common law, there is very little local case law to direct the Courts. As it is written, the Courts would have considerable discretion to determine a minor's status, and the parents would have very little power to overturn or appeal the court's decision (since it would likely be judged by an "abuse of discretion" standard). The legislature should consider

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whether they want to establish any threshold criteria that must be established before the Court makes this finding.

### C. POST ADJUDICATION ISSUES

#### 1. Does the legislature want the "mature minor" to make all of his own medical decisions, or just the ones before the Court?

Once the minor is found to be "mature," the proposed statute seems to contemplate that the minor can make all of his future medical decisions on his own, without his parent's consent. The legislature needs to assess whether this is the result that they intended, or whether they intended something else (such as, the Court would give the status for the current medical decision, but reserve future medical decisions for the parents, unless a new petition was filed). The legislature also needs to decide whether it considers "maturity" to be a permanent or a fluid condition. For example, "maturity" could be considered like competence: the child might be "mature" enough to make some health care decisions, but not others. The legislature should consider:

- a. Whether the "mature minor" status is restricted to a specific health care decision, or all subsequent health care decisions;
- b. Whether the condition of "maturity" can be revisited by a parent or other interested party at any point in time;
- c. Whether future legislation should clarify these issues.

#### 2. Does the Court have a duty to enforce the "mature minor" finding?

Once the Court finds that a minor is mature, proposed HB 140 makes it clear that a parent is no longer civilly responsible for the child's decisions. But the question remains whether the parent is still responsible to make sure that the mature minor's medical wishes are fulfilled and paid for. It also does not clarify what, if any, role the Courts would have in making sure that the mature minor's medical decisions are honored. Would the Court have on-going jurisdiction to make sure that the parents or other outside influences do not stymie the mature minor's medical plans? The legislature should consider how this might play out in the Court system, and whether additional legislation is needed to address this issue.

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### **3. Will the "mature minor" finding lead to other inquiries into the minors emancipation?**

Arguably, once a child is deemed sufficiently mature to make his own medical decisions, the minor might seek judicial authority to make other, non-medical decisions. While there is no statutory authority (as HB 140 is written) for such a premise, emancipation has been recognized in common law (see emancipation discussion, below). Also, a parent might be so frustrated by the child's health care decisions and the parents continuing liability, that the parent might petition to emancipate the "mature minor."

The legislature should consider whether the creation of a mature minor status would lead to an increase in petitions for emancipation, and what the effect would be on the "system."

### **4. Will the "mature minor" finding lead to other consequences or potential liability for the minor?**

Once a minor has been deemed a "mature minor," that status might create issues for the youth in other contexts. For example: the proposed legislation would preclude a parent from being found liable for the "mature minor's" decision, but would or could the youth himself be held liable? Another example: If the "mature minor" committed a delinquent act, could the state use that finding to assert that the minor should be held accountable as an adult? Or that the minor's maturity exacerbates the delinquency in some way? Could civil plaintiffs seek to use the finding to assert that the minor can be sued civilly as an adult (for instance, in a suit over unpaid medical bills?) The legislature should consider and address these issues.

## **V. ISSUES AND QUESTIONS REGARDING COLLATERAL GROUPS THAT MAY HAVE A STAKE IN THE DEBATE**

### **A. THE MEDICAL PROFESSION**

The mature minor statute would create a great deal of confusion for members of the medical profession, particularly those faced with a young adult who wants to reject the parent's chosen course of treatment. In addressing or pre-empting the medical professions' concerns, the legislators should consider:

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1. Whether the medical malpractice statutes need to be amended to protect medical professionals who honor the wishes of a "mature minor"
2. Whether the creation of the mature minor status would give rise to an additional cause of action against the medical profession (could the parents and the mature minor both sue separately?)
3. What proof would be necessary for a doctor to treat a "mature minor"
4. If a mature minor is incapacitated (such as after an accident), would the right to make health care decisions revert to the parents? If not, what would happen?
5. Whether other statutes (such as those dealing with abortion, contraception, end of life decisions, and licensing) need to be amended to protect medical professionals who treat mature minors.

### **B. INSURANCE PROVIDERS**

The mature minor statute could create a great deal of confusion for insurance providers, particularly those faced with a claim made by a minor for treatment that the parent did not authorize (and most likely did not want!) In addressing or pre-empting the insurance professions' concerns, legislators should consider:

1. Whether or to what extent the parents (and their insurance carriers) remain liable for the mature minor's medical expenses;
2. Whether other statutes related to the administration of insurance policies and insurance in general need to be amended.
3. The legislature should also consider the potential for abuse of the mature minor statute by insurance companies—who might seek to have this status imposed upon a youth in order to avoid liability for payment.

## **VI. OTHER GENERAL CONCEPTS OR ISSUES THAT THE LEGISLATURE SHOULD CONSIDER**

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### A. THE EXISTING PROTECTIONS FOR PARENTS WHO REFUSE MEDICAL TREATMENT BASED ON RELIGIOUS BELIEFS:

Utah law already protects parents from civil liability for medical decisions that the parents make which are based on their religion. Utah Code Ann. §78-3a-103(1)(s)(I)(iii)(2003) states: "a parent or guardian legitimately practicing religious beliefs who, for that reason, does not provide medical treatment for a minor, is not guilty of neglect." However, the committee should note that this statute does not prevent the state from intervening, or from the court exercising jurisdiction. The court can still intervene under the "dependency" portion of the statute, and find that the child "lacks proper parental care due to no fault of the parent." Utah Code Ann. §78-3a-103(1)(h)(2003). Additionally, new legislation passed last session requires the division of child and family services to "establish procedures to accommodate the moral and religious beliefs and culture of the children and families it serves." Utah Code Ann. 62a-4a-120(2004). The legislation proposed in HB 140 would extend the protections that already exist to include decisions made by "mature minors." In other words, parents are already protected from a finding of civil neglect when they make decisions based on their own religious beliefs. The current statute would also protect them from civil neglect when they abide by decisions made by the "mature minor" based on the "mature minor's" religious beliefs. The legislature should consider:

1. To what extent this additional protection is necessary (because if the parent and child share the same religious beliefs, and those beliefs dictate the medical decisions, the parents are already protected);
2. Whether additional legislation should be considered to protect the minor from civil or other liability for the minor's religious based medical decisions.

### B. EMANCIPATION

The concept of a "mature minor" is rooted in the common law concept of emancipation. Emancipation has been defined in Utah as the "...termination of certain rights of the parent-child relationship during the child's minority." State ex. rel. R.R., 797 P.2d 459 (Utah Ct. App. 1990). In

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effect, the proposed legislation would "emancipate" the child for the purpose of making medical decisions, but would leave the child dependent on his parents in all other areas.

The Utah legislature has only recognized the emancipation of a minor in one circumstance: marriage. Utah Stat. Ann §15-2-1 (2003). Additionally, there are two situations where the legislature has given minors the authority to make decisions on their own behalf: in consenting to the adoption of their children, and in receiving services for sexually transmitted diseases. However, Courts have found that emancipation exists in "common law," leaving the "door open" for a finding of emancipation in some circumstances. State ex. rel. R.R., 797 P.2d 459 (Utah Ct. App. 1990). The exact "circumstances" have never reached the Utah appellate courts.

Approximately 25 states have specific statutes relating to emancipation. Cornell University Website, "Legal Information Institute," located at [www.law.cornell.edu/topics/Table\\_emancipation.htm](http://www.law.cornell.edu/topics/Table_emancipation.htm) (hereinafter, Cornell Website). For example, Alaska, Colorado, Kansas, Nevada, New Mexico, and Wyoming all have statutes that outline how a minor can petition for and be deemed emancipated. Most jurisdictions require that a minor be at least 16 years of age, and that the minor live independently from the parents (Alaska: 16, New Mexico: 16, Nevada: 16, Wyoming: 17). (Cornell Website).

The creation of a "mature minor" status could be seen as a step by the legislature towards embracing and allowing emancipation, and may result in more youth seeking emancipation under common law. In theory, if a minor is deemed sufficiently mature to make his or her own decisions regarding something as significant as medical treatment, the minor could argue, under existing common law, that they are sufficiently mature to make other, less significant decisions, such as financial decisions. Parents could also view the "mature minor" status as the first step towards avoiding child support. Parents could file petitions for emancipation and argue that they do not want to be financially responsible for a "mature minor" who is making medical decisions that the parents vehemently oppose. In determining whether to adopt a "mature minor" status, the legislature should consider:

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1. Whether the legislature wants to give the Courts additional guidance via statute, or whether the legislature wants emancipation to continue to exist at common law only
2. Whether the legislature wants to take this step towards the codification of emancipation or wants to open the door to more requests for emancipation under common law;
3. To what extent the legislature wants to consider what other states have done to define and codify emancipation.

### C. CASE LAW IN OTHER STATES REGARDING CIVIL NEGLECT AND MATURE MINORS

Only one state, Illinois, has decided a case directly related to the proposed legislation in HB 140. In the case of In re E.G., 549 N.E. 2d 322 (Ill. 1989), a 17 year old child refused a blood transfusion. The mother supported E.G.'s wishes and was found guilty of neglect. The Supreme Court of Illinois found that it was not proper to find a parent guilty of neglect for abiding by decisions made by a "mature minor." It should be noted that Illinois has a specific emancipation statute. Illinois also has a statute that allows a child over the age of twelve to seek medical treatment without parental consent for venereal disease, alcoholism, or drug addiction. A mature minor in Illinois can consent to abortion without parental consent. All of these statutes contributed to the Court's analysis in In re E.G.

One case that has been cited frequently in the discussion of the mature minor is the 1990 Delaware Supreme Court case of Newmark vs. Williams. In this case, parents refused to treat a 3 year old child with lymphoma. Their refusal was based on their religious beliefs. Delaware DCFS filed a neglect petition and the family court allowed DCFS to take the child into custody. The Supreme Court reversed. The issue of the mature minor was discussed in a footnote and was not decided due to the child's tender age. As discussed above, existing Utah law would prevent a neglect finding under facts similar to Newmark vs. Williams.

No other state has considered the specific issue of a parent's civil liability for medical decisions made by a

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mature minor. In 2000, the Pennsylvania Supreme Court declined to follow In re E.G., and allowed a criminal prosecution to proceed when parents failed to treat their 16 year old daughter for diabetes. Commonwealth vs. Nixon, 761 A.2d 1151 (Pa. 2000). Texas has also refused to recognize the right of a mature minor to refuse medical treatment. O.G. vs. Baum.

The legislature should consider the fact that the states that recognize "mature minors" and confer rights upon them typically recognize emancipation in statute. As stated above, the legislature should consider whether the creation of the mature minor status "opens the door" for youth to seek emancipation in Utah.