

STATE SUPERVISION OF JUVENILE

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Greg J. Curtis

AN ACT RELATING TO THE JUDICIAL CODE; DEFINING STATE SUPERVISION; AND PROVIDING FOR THE JUVENILE COURT TO PLACE A MINOR ON STATE SUPERVISION.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

78-3a-103, as last amended by Chapters 329 and 365, Laws of Utah 1997

78-3a-118, as last amended by Chapters 329, 357, 358 and renumbered and amended by Chapter 365, Laws of Utah 1997

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

Section 1. Section **78-3a-103** is amended to read:

78-3a-103. Definitions.

(1) As used in this chapter:

(a) "Abused child" includes a minor less than 18 years of age who has suffered or been threatened with nonaccidental physical or mental harm, negligent treatment, sexual exploitation, or who has been the victim of any sexual abuse.

(b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved.

(c) "Adult" means a person 18 years of age or over, except that persons 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall be referred to as minors.

(d) "Board" means the Board of Juvenile Court Judges.

(e) "Child placement agency" means:

(i) a private agency licensed to receive minors for placement or adoption under this code;

or

(ii) a private agency receiving minors for placement or adoption in another state, which

agency is licensed or approved where such license or approval is required by law.

(f) "Commit" means to transfer legal custody.

(g) "Court" means the juvenile court.

(h) "Dependent child" includes a minor who is homeless or without proper care through no fault of his parent, guardian, or custodian.

(i) "Deprivation of custody" means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.

(j) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of minors who require secure custody in physically restricting facilities:

(i) pending court disposition or transfer to another jurisdiction; or

(ii) while under the continuing jurisdiction of the court.

(k) "Formal referral" means a written report from a peace officer or other person informing the court that a minor is or appears to be within the court's jurisdiction and that a petition may be filed.

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

(m) "Guardianship of the person" includes the authority to consent to marriage, to enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal custody, if legal custody is not vested in another person, agency, or institution.

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

(i) the right to physical custody of the minor;

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

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

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

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

(o) "Minor" means a person under the age of 18 years. It includes the term "child" as used in other parts of this chapter.

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

(q) (i) "Neglected child" means a minor:

(A) whose parent, guardian, or custodian has abandoned or subjected the minor to mistreatment or abuse;

(B) who lacks proper parental care by reason of the fault or habits of the parent, guardian, or custodian;

(C) whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, education, or medical care, including surgery or psychiatric services when required, or any other care necessary for health, safety, morals, or well-being; or

(D) who is at risk of being a neglected or abused child as defined in this chapter because another minor in the same home is a neglected or abused child as defined in this chapter.

(ii) The aspect of neglect related to education, described in Subsection (1)(q)(i)(C), means that, after receiving notice that a minor has been frequently absent from school without good cause, or that the minor has failed to cooperate with school authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives an appropriate education.

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

(r) "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of the minor, the parent, legal guardian or custodian, and the assigned probation officer.

(s) "Probation" means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted to remain in his home under prescribed conditions and under supervision by the probation department or other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed.

(t) "Protective supervision" means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to

remain in his home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

(u) "Residual parental rights and duties" means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including the responsibility for support, the right to consent to adoption, the right to determine the child's religious affiliation, and the right to reasonable visitation unless restricted by the court. If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to marriage, to enlistment, and to major medical, surgical, or psychiatric treatment.

(v) "Secure facility" means any facility operated by or under contract with the Division of Youth Corrections, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.

(w) "Shelter" means the temporary care of minors in physically unrestricted facilities pending court disposition or transfer to another jurisdiction.

(x) "State supervision" means a disposition which provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Youth Corrections.

~~[(x)]~~ (y) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

~~[(y)]~~ (z) "Therapist" means a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody, or any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the Division of Child and Family Services:

(a) "Custody" means the custody of a minor in the Division of Child and Family Services as of the date of disposition.

(b) "Protective custody" means the shelter of a minor by the Division of Child and Family Services from the time the minor is removed from home until the shelter hearing, or the minor's

return home, whichever occurs earlier.

(c) "Temporary custody" means the custody of a minor in the Division of Child and Family Services from the date of the shelter hearing until disposition.

(3) In determining whether a minor is neglected or abused, as defined in this section, it may be presumed that the person having the minor under his direct and exclusive care and control at the time of the abuse is responsible for the neglect or abuse.

Section 2. Section **78-3a-118** is amended to read:

78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court.

(1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over the minor. However, in cases within the provisions of Subsection 78-3a-104(1), findings of fact are not necessary.

(b) If the court adjudicates a minor for a crime of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days and shall include the specific offenses for which the minor was adjudicated.

(2) Upon adjudication the court may make the following dispositions by court order:

(a) (i) The court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including community service as provided in Section 78-11-20.7.

(ii) The court may place the minor in state supervision with the probation department of the court, under the legal custody of his parent or guardian, the Division of Youth Corrections, or the Division of Child and Family Services.

~~(ii)~~ (iii) If the court orders probation or state supervision, the court shall direct that notice of its order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, which the minor attends. The designated persons may receive the

information for purposes of the minor's supervision and student safety.

[~~(iii)~~] (iv) Any employee of the local law enforcement agency and the school which the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or malice as provided in Section 63-30-4; and

(B) civilly or criminally liable except when the disclosure constitutes a knowing violation of Section 63-2-801.

(b) The court may place the minor in the legal custody of a relative or other suitable person, with or without probation or protective supervision, but the juvenile court may not assume the function of developing foster home services.

(c) (i) The court may vest legal custody of the minor in the Division of Child and Family Services, Division of Youth Corrections, or the Division of Mental Health, and may order the Department of Human Services to provide dispositional recommendations and services.

(ii) Minors who are committed to the custody of the Division of Child and Family Services on grounds other than abuse or neglect are subject to the provisions of Part 3A and Title 62A, Chapter 4a, Part 2A.

(d) (i) The court may commit the minor to the Division of Youth Corrections for secure confinement.

(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of Youth Corrections.

(e) The court may commit the minor, subject to the court retaining continuing jurisdiction over him, to the temporary custody of the Division of Youth Corrections for observation and evaluation for a period not to exceed 90 days.

(f) (i) The court may commit the minor to a place of detention or an alternative to detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction over the minor.

(ii) Subsection (2)(f) applies only to those minors adjudicated for an act which if committed

by an adult would be a criminal offense or for contempt of court under Section 78-3a-901. This commitment may be stayed or suspended upon conditions ordered by the court.

(g) The court may vest legal custody of an abused, neglected, or dependent minor in the Division of Child and Family Services or any other appropriate person in accordance with the requirements and procedures of Part 3, Abuse, Neglect, and Dependency Proceedings.

(h) The court may place the minor on a ranch or forestry camp, or similar facility for care and also for work, if possible, if the person, agency, or association operating the facility has been approved or has otherwise complied with all applicable state and local laws. A minor placed in a forestry camp or similar facility may be required to work on fire prevention, forestation and reforestation, recreational works, forest roads, and on other works on or off the grounds of the facility and may be paid wages, subject to the approval of and under conditions set by the court.

(i) The court may order that the minor be required to repair, replace, or otherwise make restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section 78-3a-318, and may impose fines in limited amounts.

(j) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions.

(k) (i) The court may through its probation department encourage the development of employment or work programs to enable minors to fulfill their obligations under Subsection (2)(i) and for other purposes considered desirable by the court.

(ii) Consistent with the order of the court, the probation officer may permit the minor found to be within the jurisdiction of the court to participate in a program of work restitution or community service in lieu of paying part or all of the fine imposed by the court. The work restitution or community service permitted by the probation officer may not affect the amount of the surcharge.

(l) In violations of traffic laws within the court's jurisdiction, the court may, in addition to any other disposition, restrain the minor from driving for periods of time the court considers necessary and take possession of the minor's driver license. However, proceedings involving an offense under Section 78-3a-506 are governed by that section regarding suspension of driving privileges.

(m) (i) When a minor is found within the jurisdiction of the juvenile court under Section 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no more than 100 hours, of community service. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as community service hours.

(ii) When a minor is found within the jurisdiction of the juvenile court under Section 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the minor perform a minimum of 20 hours, but no more than 100 hours of community service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as community service hours.

(n) The court may order that the minor be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive other special care. For these purposes the court may place the minor in a hospital or other suitable facility.

(o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint a public or private institution or agency as guardian in which legal custody of the minor is vested.

(ii) In placing a minor under the guardianship or legal custody of an individual or of a private agency or institution, the court shall give primary consideration to the welfare of the minor. When practicable, the court may take into consideration the religious preferences of the minor and of the minor's parents.

(p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or any other person who has been made a party to the proceedings. Conditions may include:

- (A) visitation by the parents or one parent;
- (B) restrictions on the minor's associates;
- (C) restrictions on the minor's occupation and other activities; and

(D) requirements to be observed by the parents or custodian.

(ii) A minor whose parents or guardians successfully complete a family or other counseling program may be credited by the court for detention, confinement, or probation time.

(q) The court may order the minor to be placed in the legal custody of the Division of Mental Health or committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 12, Part 2A, Commitment of Persons Under Age 18 to Division of Mental Health.

(r) The court may make an order committing a minor within its jurisdiction to the Utah State Developmental Center if the minor has been found mentally retarded in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility. The procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center shall be followed by the juvenile court in these cases.

(s) The court may terminate all parental rights upon a finding of compliance with the provisions of Part 4, Termination of Parental Rights Act.

(t) The court may make any other reasonable orders for the best interest of the minor or as required for the protection of the public, except that a person younger than 18 years of age may not be committed to jail or prison, and offenses under Section 78-3a-506 are governed by that section regarding suspension of driving privileges.

(u) The court may combine several of the above-listed modes of disposition if they are compatible.

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their minors. The court may transfer custody to another person, agency, or institution in accordance with the requirements and procedures of Part 3, Abuse, Neglect, and Dependency Proceedings.

(w) Except as provided in Subsection (2)(y)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review of the case by the court. A new date shall be set upon each review.

(x) In reviewing foster home placements, special attention shall be given to making

adoptable minors available for adoption without delay.

(y) (i) The juvenile court may enter an order of permanent custody and guardianship with a relative or individual of a minor where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency, excluding cases arising under Subsection 78-3a-105(4).

(ii) Such orders remain in effect until the minor reaches majority and are not subject to review under Section 78-3a-119, but may be modified by petition or motion as provided in Section 78-3a-903.

(iii) Orders permanently terminating the rights of a parent, guardian, or custodian and permanent orders of custody and guardianship do not expire with a termination of jurisdiction of the juvenile court.