

1 **JUDICIAL CUSTODY OF YOUTH TO HUMAN SERVICES**

2 1998 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Nathan C. Tanner**

5 AN ACT RELATING TO HUMAN SERVICES AND THE JUVENILE COURT; PROVIDING
6 THE JUVENILE COURT WITH AUTHORITY TO GIVE CUSTODY OF A MINOR TO THE
7 DEPARTMENT OF HUMAN SERVICES; DELINEATING SOME PROCEDURES; AND
8 MAKING TECHNICAL AMENDMENTS.

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

10 AMENDS:

11 **62A-1-111**, as last amended by Chapter 240, Laws of Utah 1996

12 **78-3a-118**, as last amended by Chapters 329, 357, 358 and renumbered and amended by
13 Chapter 365, Laws of Utah 1997

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

15 Section 1. Section **62A-1-111** is amended to read:

16 **62A-1-111. Department authority.**

17 The department has authority, in addition to all other authority and responsibility granted
18 to it by law, to:

19 (1) adopt rules, not inconsistent with law, as the department may deem necessary or
20 desirable for providing social services to the people of this state;

21 (2) establish and manage client trust accounts in the department's institutions and
22 community programs, at the request of the client or his legal guardian or representative, or in
23 accordance with federal law;

24 (3) purchase, as authorized or required by law, services that the department is responsible
25 to provide for legally eligible persons;

26 (4) conduct adjudicative proceedings for clients and providers in accordance with the
27 procedures of Title 63, Chapter 46b, Administrative Procedures Act;

1 (5) establish eligibility standards for its programs, not inconsistent with state or federal law
2 or regulations;

3 (6) take necessary steps, including legal action, to recover money or the monetary value
4 of services provided to a recipient who was not eligible;

5 (7) set and collect fees for its services;

6 (8) license agencies, facilities, and programs, except as otherwise allowed, prohibited, or
7 limited by law;

8 (9) acquire, manage, and dispose of any real or personal property needed or owned by the
9 department, not inconsistent with state law;

10 (10) receive gifts, grants, devises, and donations; gifts, grants, devises, donations, or the
11 proceeds thereof, may be credited to the program designated by the donor, and may be used for
12 the purposes requested by the donor, as long as the request conforms to state and federal policy;
13 all donated funds shall be considered private, nonlapsing funds and may be invested under
14 guidelines established by the state treasurer;

15 (11) accept and employ volunteer labor or services; the department is authorized to
16 reimburse volunteers for necessary expenses, when the department considers that reimbursement
17 to be appropriate;

18 (12) carry out the responsibility assigned in the Workforce Services Plan by the State
19 Council on Workforce Services;

20 (13) carry out the responsibility assigned by Section 9-4-802 with respect to coordination
21 of services for the homeless;

22 (14) carry out the responsibility assigned by Section 62A-5a-105 with respect to
23 coordination of services for handicapped students;

24 (15) provide training and educational opportunities for its staff;

25 (16) collect child support payments and any other monies due to the department;

26 (17) examine and audit the expenditures of any public funds provided to local substance
27 abuse authorities, local mental health authorities, local area agencies on aging, and any agency or
28 organization that contracts with or receives funds from those authorities or agencies. Those local
29 authorities, area agencies, and any person or entity that contracts with or receives funds from those
30 authorities or area agencies, shall provide the department with any information it deems necessary
31 to complete its audit;

1 (18) apply the provisions of Title 78, Chapter 45, Uniform Civil Liability for Support Act,
2 to parents whose child lives out of the home in a department licensed or certified setting; [and]

3 (19) establish policy and procedures in cases where the department is given custody of a
4 minor by the juvenile court pursuant to Section 78-3a-118; any policy and procedures shall
5 include:

6 (a) designation of interagency teams for each juvenile court district in the state;

7 (b) delineation of § [screening] ASSESSMENT § criteria and procedures;

8 (c) minimum requirements, and timeframes, for the development an implementation of
9 a collaborative service plan for each minor placed in department custody; and

10 (d) provisions for submittal of the plan and periodic progress reports to the court; and

11 [(19)] (20) carry out the responsibilities assigned to it by statute.

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

13 **78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases --**
14 **Enumeration of possible court orders -- Considerations of court.**

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

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

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

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

28 (ii) If the court orders probation, the court shall direct that notice of its order be provided
29 to designated persons in the local law enforcement agency and the school or transferee school, if
30 applicable, which the minor attends. The designated persons may receive the information for
31 purposes of the minor's supervision and student safety.

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

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

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

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

10 (c) (i) The court may vest legal custody of the minor in the Division of Child and Family
11 Services, Division of Youth Corrections, [or] the Division of Mental Health, § [f] § and may order
11a § [for,]

12 [upon the assessment and recommendation of an interagency team meeting the requirements of]
13 [Section 63-75-5.7,] § the Department of Human Services § [f] § to provide dispositional
13a recommendations
14 and services § [f] § .

14a **§ (ii) FOR MINORS WHO MAY QUALIFY FOR SERVICES FROM TWO OR MORE DIVISIONS WITHIN THE**
14b **DEPARTMENT OF HUMAN SERVICES, THE COURT MAY VEST LEGAL CUSTODY WITH THE**
14c **DEPARTMENT. §**

15 § [(ii)] (iii) § Minors who are committed to the custody of the Division of Child and Family
15a Services
16 on grounds other than abuse or neglect are subject to the provisions of Part 3A and Title 62A,
17 Chapter 4a, Part 2A.

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

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

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

26 (f) (i) The court may commit the minor to a place of detention or an alternative to

27 detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction
28 over the minor.

29 (ii) Subsection (f) applies only to those minors adjudicated for an act which if committed
30 by an adult would be a criminal offense or for contempt of court under Section 78-3a-901. This
31 commitment may be stayed or suspended upon conditions ordered by the court.

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

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

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

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

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

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

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

28 (m) (i) When a minor is found within the jurisdiction of the juvenile court under Section
29 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia
30 Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to
31 any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no

1 more than 100 hours, of community service. Satisfactory completion of an approved substance
2 abuse prevention or treatment program may be credited by the court as community service hours.

3 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
4 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may,
5 upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the
6 minor perform a minimum of 20 hours, but no more than 100 hours of community service, in
7 addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance
8 abuse prevention or treatment program may be credited by the court as community service hours.

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

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

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

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

- 22 (A) visitation by the parents or one parent;
- 23 (B) restrictions on the minor's associates;
- 24 (C) restrictions on the minor's occupation and other activities; and
- 25 (D) requirements to be observed by the parents or custodian.

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

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

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

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

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

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

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

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

21 (x) In reviewing foster home placements, special attention shall be given to making
22 adoptable minors available for adoption without delay.

23 (y) (i) The juvenile court may enter an order of permanent custody and guardianship with
24 a relative or individual of a minor where the court has previously acquired jurisdiction as a result
25 of an adjudication of abuse, neglect, or dependency, excluding cases arising under Subsection
26 78-3a-105(4).

27 (ii) Such orders remain in effect until the minor reaches majority and are not subject to
28 review under Section 78-3a-119, but may be modified by petition or motion as provided in Section
29 78-3a-903.

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

1 the juvenile court.

Legislative Review Note
as of 11-25-97 7:32 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Judiciary Interim Committee recommended this bill.