

Senator Todd Weiler proposes the following substitute bill:

**CHILD PROTECTION AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: Craig Hall

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**LONG TITLE**

**General Description:**

This bill modifies provisions of the Juvenile Court Act.

**Highlighted Provisions:**

This bill:

► expands the definition of abuse to include a child's natural parent intentionally, knowingly, or recklessly causing the death of another parent of the child; being identified by a law enforcement ~~§~~→ [officer] agency ←~~§~~ as the primary suspect in an investigation for

intentionally, knowingly, or recklessly causing the death of another parent of the child; or being prosecuted for or convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child;

► adds similar provisions for a court to order a child's removal from the child's home; continued protective custody of the Division of Child and Family Services (the division) at a shelter hearing; denial of reunification services; and continued protective custody of the division at a permanency hearing; and

► makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **78A-6-105**, as last amended by Laws of Utah 2012, Chapters 49, 303, and 316

30 **78A-6-302**, as last amended by Laws of Utah 2012, Chapter 293

31 **78A-6-306**, as last amended by Laws of Utah 2012, Chapter 293

32 **78A-6-312**, as last amended by Laws of Utah 2013, Chapters 171 and 416

33 **78A-6-314**, as last amended by Laws of Utah 2010, Chapter 322



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

36 Section 1. Section **78A-6-105** is amended to read:

37 **78A-6-105. Definitions.**

38 As used in this chapter:

39 (1) (a) "Abuse" means:

40 (i) nonaccidental harm of a child;

41 (ii) threatened harm of a child;

42 (iii) sexual exploitation; or

43 (iv) sexual abuse.

44 (v) that a child's natural parent:

45 (A) intentionally, knowingly, or recklessly causes the death of another parent of the

46 child;

47 (B) is identified by a law enforcement ~~§~~→ [officer] agency ←~~§~~ as the primary suspect in an

47a investigation

48 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

49 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or

50 recklessly causing the death of another parent of the child.

51 (b) "Abuse" does not include:

52 (i) reasonable discipline or management of a child, including withholding privileges;

53 (ii) conduct described in Section **76-2-401**; or

54 (iii) the use of reasonable and necessary physical restraint or force on a child:

55 (A) in self-defense;

56 (B) in defense of others;

- 274 (e) the child is abandoned or left without any provision for the child's support;
- 275 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged  
276 or cannot arrange for safe and appropriate care for the child;
- 277 (g) (i) a relative or other adult custodian with whom the child is left by the parent or  
278 guardian is unwilling or unable to provide care or support for the child;
- 279 (ii) the whereabouts of the parent or guardian are unknown; and
- 280 (iii) reasonable efforts to locate the parent or guardian are unsuccessful;
- 281 (h) the child is in immediate need of medical care;
- 282 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an  
283 environment that poses a threat to the child's health or safety; or
- 284 (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose  
285 a threat to the child's health or safety;
- 286 (j) the child or another child residing in the same household has been neglected;
- 287 (k) the child's natural parent:
- 288 (A) intentionally, knowingly, or recklessly causes the death of another parent of the  
289 child;
- 290 (B) is identified by a law enforcement ~~§~~→ [officer] agency ←~~§~~ as the primary suspect in an  
290a investigation
- 291 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
- 292 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or  
293 recklessly causing the death of another parent of the child;
- 294 [~~(k)~~] (l) an infant has been abandoned, as defined in Section 78A-6-316;
- 295 [~~(l)~~] (m) (i) the parent or guardian, or an adult residing in the same household as the  
296 parent or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug  
297 Lab Act; and
- 298 (ii) any clandestine laboratory operation was located in the residence or on the property  
299 where the child resided; or
- 300 [~~(m)~~] (n) the child's welfare is otherwise endangered.
- 301 (2) (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as  
302 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency  
303 occurs involving the same substantiated abuser or under similar circumstance as the previous  
304 abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the

429 (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe  
430 and appropriate care for the child;

431 (viii) (A) a relative or other adult custodian with whom the child is left by the parent is  
432 unwilling or unable to provide care or support for the child;

433 (B) the whereabouts of the parent are unknown; and

434 (C) reasonable efforts to locate the parent are unsuccessful;

435 (ix) the child is in urgent need of medical care;

436 (x) the physical environment or the fact that the child is left unattended beyond a  
437 reasonable period of time poses a threat to the child's health or safety;

438 (xi) the child or a minor residing in the same household has been neglected;

439 (xii) the parent, or an adult residing in the same household as the parent, is charged or  
440 arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine  
441 laboratory operation was located in the residence or on the property where the child resided;  
442 [or]

443 (xiii) the child's welfare is substantially endangered[-]; or

444 (xiv) the child's natural parent:

445 (A) intentionally, knowingly, or recklessly causes the death of another parent of the  
446 child;

447 (B) is identified by a law enforcement ~~§~~ → [officer] agency ← ~~§~~ as the primary suspect in an  
447a investigation

448 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

449 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or  
450 recklessly causing the death of another parent of the child.

451 (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is  
452 established if:

453 (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency  
454 involving the parent; and

455 (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

456 (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly  
457 allowed the child to be in the physical care of a person after the parent received actual notice  
458 that the person physically abused, sexually abused, or sexually exploited the child, that fact  
459 constitutes prima facie evidence that there is a substantial risk that the child will be physically

615 (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate,  
616 based on the individual circumstances; and

617 (ii) reunification services should not be provided.

618 (c) In determining "reasonable efforts" to be made with respect to a minor, and in  
619 making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount  
620 concern.

621 (20) There is a presumption that reunification services should not be provided to a  
622 parent if the court finds, by clear and convincing evidence, that any of the following  
623 circumstances exist:

624 (a) the whereabouts of the parents are unknown, based upon a verified affidavit  
625 indicating that a reasonably diligent search has failed to locate the parent;

626 (b) subject to Subsection (21)(a), the parent is suffering from a mental illness of such  
627 magnitude that it renders the parent incapable of utilizing reunification services;

628 (c) the minor was previously adjudicated as an abused child due to physical abuse,  
629 sexual abuse, or sexual exploitation, and following the adjudication the minor:

630 (i) was removed from the custody of the minor's parent;

631 (ii) was subsequently returned to the custody of the parent; and

632 (iii) is being removed due to additional physical abuse, sexual abuse, or sexual  
633 exploitation;

634 (d) the parent:

635 (i) caused the death of another minor through abuse or neglect;

636 (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

637 (A) murder or manslaughter of a child; or

638 (B) child abuse homicide;

639 (iii) committed sexual abuse against the child; ~~or~~

640 (iv) is a registered sex offender or required to register as a sex offender; or

641 (v) (A) intentionally, knowingly, or recklessly causes the death of another parent of the  
642 child;

643 (B) is identified by a law enforcement ~~S~~→ [officer] agency ←~~S~~ as the primary suspect in an  
643a investigation

644 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

645 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or

739            (B) is identified by a law enforcement §→ [officer] agency ←§ as the primary suspect in an  
739a investigation

740 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

741 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or

742 recklessly causing the death of another parent of the child.

743            (3) In making a determination under Subsection (2)(a), the court shall review and  
744 consider:

745            (a) the report prepared by the Division of Child and Family Services;

746            (b) any admissible evidence offered by the minor's guardian ad litem;

747            (c) any report submitted by the division under Subsection 78A-6-315(3)(a)(i);

748            (d) any evidence regarding the efforts or progress demonstrated by the parent; and

749            (e) the extent to which the parent cooperated and utilized the services provided.

750            (4) With regard to a case where reunification services were ordered by the court, if a

751 minor is not returned to the minor's parent or guardian at the permanency hearing, the court

752 shall, unless the time for the provision of reunification services is extended under Subsection

753 (8):

754            (a) order termination of reunification services to the parent;

755            (b) make a final determination regarding whether termination of parental rights,

756 adoption, or permanent custody and guardianship is the most appropriate final plan for the

757 minor, taking into account the minor's primary permanency goal established by the court

758 pursuant to Section 78A-6-312; and

759            (c) establish a concurrent plan that identifies the second most appropriate final plan for  
760 the minor.

761            (5) If the Division of Child and Family Services documents to the court that there is a

762 compelling reason that adoption, reunification, guardianship, and a placement described in

763 Subsection 78A-6-306(6)(e) are not in the minor's best interest, the court may order another

764 planned permanent living arrangement, in accordance with federal law.

765            (6) If the minor clearly desires contact with the parent, the court shall take the minor's  
766 desire into consideration in determining the final plan.

767            (7) Except as provided in Subsection (8), the court may not extend reunification

768 services beyond 12 months after the day on which the minor was initially removed from the

769 minor's home, in accordance with the provisions of Section 78A-6-312.