

JUVENILE COURT AND CHILD ABUSE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill amends a definition in the Juvenile Court Act.

Highlighted Provisions:

This bill:

- ▶ amends the definition of "sexual abuse" in the Juvenile Court Act.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-6-105, as last amended by Laws of Utah 2015, Chapter 274

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

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

78A-6-105. Definitions.

As used in this chapter:

(1) (a) "Abuse" means:

- (i) nonaccidental harm of a child;
- (ii) threatened harm of a child;



- 28 (iii) sexual exploitation; or
- 29 (iv) sexual abuse.
- 30 (v) that a child's natural parent:
 - 31 (A) intentionally, knowingly, or recklessly causes the death of another parent of the
 - 32 child;
 - 33 (B) is identified by a law enforcement agency as the primary suspect in an investigation
 - 34 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
 - 35 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
 - 36 recklessly causing the death of another parent of the child.
- 37 (b) "Abuse" does not include:
 - 38 (i) reasonable discipline or management of a child, including withholding privileges;
 - 39 (ii) conduct described in Section 76-2-401; or
 - 40 (iii) the use of reasonable and necessary physical restraint or force on a child:
 - 41 (A) in self-defense;
 - 42 (B) in defense of others;
 - 43 (C) to protect the child; or
 - 44 (D) to remove a weapon in the possession of a child for any of the reasons described in
 - 45 Subsections (1)(b)(iii)(A) through (C).
- 46 (2) "Abused child" means a child who has been subjected to abuse.
- 47 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
- 48 alleged in the petition have been proved. A finding of not competent to proceed pursuant to
- 49 Section 78A-6-1302 is not an adjudication.
- 50 (4) "Adult" means a person 18 years of age or over, except that a person 18 years or
- 51 over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall
- 52 be referred to as a minor.
- 53 (5) "Board" means the Board of Juvenile Court Judges.
- 54 (6) "Child" means a person under 18 years of age.
- 55 (7) "Child placement agency" means:
 - 56 (a) a private agency licensed to receive a child for placement or adoption under this
 - 57 code; or
 - 58 (b) a private agency that receives a child for placement or adoption in another state,

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

60 (8) "Clandestine laboratory operation" means the same as that term is defined in
61 Section [58-37d-3](#).

62 (9) "Commit" means, unless specified otherwise:

63 (a) with respect to a child, to transfer legal custody; and

64 (b) with respect to a minor who is at least 18 years of age, to transfer custody.

65 (10) "Court" means the juvenile court.

66 (11) "Dependent child" includes a child who is homeless or without proper care
67 through no fault of the child's parent, guardian, or custodian.

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

70 (13) "Detention" means home detention and secure detention as defined in Section
71 [62A-7-101](#) for the temporary care of a minor who requires secure custody in a physically
72 restricting facility:

73 (a) pending court disposition or transfer to another jurisdiction; or

74 (b) while under the continuing jurisdiction of the court.

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

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

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

81 (17) "Guardianship of the person" includes the authority to consent to:

82 (a) marriage;

83 (b) enlistment in the armed forces;

84 (c) major medical, surgical, or psychiatric treatment; or

85 (d) legal custody, if legal custody is not vested in another person, agency, or institution.

86 (18) "Habitual truant" means the same as that term is defined in Section [53A-11-101](#).

87 (19) "Harm" means:

88 (a) physical or developmental injury or damage;

89 (b) emotional damage that results in a serious impairment in the child's growth,

90 development, behavior, or psychological functioning;

91 (c) sexual abuse; or

92 (d) sexual exploitation.

93 (20) (a) "Incest" means engaging in sexual intercourse with a person whom the
94 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
95 nephew, niece, or first cousin.

96 (b) The relationships described in Subsection (20)(a) include:

97 (i) blood relationships of the whole or half blood, without regard to legitimacy;

98 (ii) relationships of parent and child by adoption; and

99 (iii) relationships of stepparent and stepchild while the marriage creating the

100 relationship of a stepparent and stepchild exists.

101 (21) "Intellectual disability" means:

102 (a) significantly subaverage intellectual functioning, an IQ of approximately 70 or
103 below on an individually administered IQ test, for infants, a clinical judgment of significantly
104 subaverage intellectual functioning;

105 (b) concurrent deficits or impairments in present adaptive functioning, the person's
106 effectiveness in meeting the standards expected for his or her age by the person's cultural
107 group, in at least two of the following areas: communication, self-care, home living,
108 social/interpersonal skills, use of community resources, self-direction, functional academic
109 skills, work, leisure, health, and safety; and

110 (c) the onset is before the person reaches the age of 18 years.

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

112 (a) the right to physical custody of the minor;

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

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

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

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

118 (23) "Mental disorder" means a serious emotional and mental disturbance that severely
119 limits a minor's development and welfare over a significant period of time.

120 (24) "Minor" means:

- 121 (a) a child; or
- 122 (b) a person who is:
 - 123 (i) at least 18 years of age and younger than 21 years of age; and
 - 124 (ii) under the jurisdiction of the juvenile court.

125 (25) "Molestation" means that a person, with the intent to arouse or gratify the sexual
126 desire of any person:

- 127 (a) touches the anus or any part of the genitals of a child;
- 128 (b) takes indecent liberties with a child; or
- 129 (c) causes a child to take indecent liberties with the perpetrator or another.

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

132 (27) (a) "Neglect" means action or inaction causing:

133 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
134 Relinquishment of a Newborn Child;

135 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,
136 guardian, or custodian;

137 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
138 subsistence, education, or medical care, or any other care necessary for the child's health,
139 safety, morals, or well-being; or

140 (iv) a child to be at risk of being neglected or abused because another child in the same
141 home is neglected or abused.

142 (b) The aspect of neglect relating to education, described in Subsection (27)(a)(iii),
143 means that, after receiving a notice of compulsory education violation under Section
144 [53A-11-101.5](#), or notice that a parent or guardian has failed to cooperate with school
145 authorities in a reasonable manner as required under Subsection [53A-11-101.7\(5\)\(a\)](#), the parent
146 or guardian fails to make a good faith effort to ensure that the child receives an appropriate
147 education.

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

150 (d) (i) Notwithstanding Subsection (27)(a), a health care decision made for a child by
151 the child's parent or guardian does not constitute neglect unless the state or other party to the

152 proceeding shows, by clear and convincing evidence, that the health care decision is not
153 reasonable and informed.

154 (ii) Nothing in Subsection (27)(d)(i) may prohibit a parent or guardian from exercising
155 the right to obtain a second health care opinion and from pursuing care and treatment pursuant
156 to the second health care opinion, as described in Section [78A-6-301.5](#).

157 (28) "Neglected child" means a child who has been subjected to neglect.

158 (29) "Nonjudicial adjustment" means closure of the case by the assigned probation
159 officer without judicial determination upon the consent in writing of:

160 (a) the assigned probation officer; and

161 (b) (i) the minor; or

162 (ii) the minor and the minor's parent, legal guardian, or custodian.

163 (30) "Not competent to proceed" means that a minor, due to a mental disorder,
164 intellectual disability, or related condition as defined, lacks the ability to:

165 (a) understand the nature of the proceedings against them or of the potential disposition
166 for the offense charged; or

167 (b) consult with counsel and participate in the proceedings against them with a
168 reasonable degree of rational understanding.

169 (31) "Physical abuse" means abuse that results in physical injury or damage to a child.

170 (32) "Probation" means a legal status created by court order following an adjudication
171 on the ground of a violation of law or under Section [78A-6-103](#), whereby the minor is
172 permitted to remain in the minor's home under prescribed conditions and under supervision by
173 the probation department or other agency designated by the court, subject to return to the court
174 for violation of any of the conditions prescribed.

175 (33) "Protective supervision" means a legal status created by court order following an
176 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
177 remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or
178 dependency is provided by the probation department or other agency designated by the court.

179 (34) "Related condition" means a condition closely related to intellectual disability in
180 accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah
181 Administrative Code.

182 (35) (a) "Residual parental rights and duties" means those rights and duties remaining

183 with the parent after legal custody or guardianship, or both, have been vested in another person
184 or agency, including:

- 185 (i) the responsibility for support;
- 186 (ii) the right to consent to adoption;
- 187 (iii) the right to determine the child's religious affiliation; and
- 188 (iv) the right to reasonable parent-time unless restricted by the court.

189 (b) If no guardian has been appointed, "residual parental rights and duties" also include
190 the right to consent to:

- 191 (i) marriage;
- 192 (ii) enlistment; and
- 193 (iii) major medical, surgical, or psychiatric treatment.

194 (36) "Secure facility" means any facility operated by or under contract with the
195 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
196 youth offenders committed to the division for custody and rehabilitation.

197 (37) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
198 child.

199 (38) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
200 child.

201 (39) "Sexual abuse" means:

202 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an
203 adult directed towards a child; [~~or~~]

204 (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
205 committed by a child towards another child if:

206 (i) there is an indication of force or coercion;

207 (ii) the children are related ~~H~~→ , as defined in Subsection (20)(a) and (20)(b) ←~~H~~ ;

208 (iii) there have been repeated incidents of sexual contact between the two children

208a ~~H~~→ ,unless the children are 14 years of age or older ←~~H~~ ; or

209 (iv) there is a disparity in chronological ~~S~~→ [~~or developmental~~] ←~~S~~ age of four or more

209a years

210 between the two children; or

211 [~~(b)~~] (c) engaging in any conduct with a child that would constitute an offense under
212 any of the following, regardless of whether the person who engages in the conduct is actually
213 charged with, or convicted of, the offense:

- 214 (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the
- 215 alleged perpetrator of an offense described in Section 76-5-401 is a minor;
- 216 (ii) child bigamy, Section 76-7-101.5;
- 217 (iii) incest, Section 76-7-102;
- 218 (iv) lewdness, Section 76-9-702;
- 219 (v) sexual battery, Section 76-9-702.1;
- 220 (vi) lewdness involving a child, Section 76-9-702.5; or
- 221 (vii) voyeurism, Section 76-9-702.7.
- 222 (40) "Sexual exploitation" means knowingly:
- 223 (a) employing, using, persuading, inducing, enticing, or coercing any child to:
- 224 (i) pose in the nude for the purpose of sexual arousal of any person; or
- 225 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
- 226 filming, recording, or displaying in any way the sexual or simulated sexual conduct;
- 227 (b) displaying, distributing, possessing for the purpose of distribution, or selling
- 228 material depicting a child:
- 229 (i) in the nude, for the purpose of sexual arousal of any person; or
- 230 (ii) engaging in sexual or simulated sexual conduct; or
- 231 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,
- 232 sexual exploitation of a minor, regardless of whether the person who engages in the conduct is
- 233 actually charged with, or convicted of, the offense.
- 234 (41) "Shelter" means the temporary care of a child in a physically unrestricted facility
- 235 pending court disposition or transfer to another jurisdiction.
- 236 (42) "State supervision" means a disposition that provides a more intensive level of
- 237 intervention than standard probation but is less intensive or restrictive than a community
- 238 placement with the Division of Juvenile Justice Services.
- 239 (43) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or
- 240 substances.
- 241 (44) "Substantiated" means the same as that term is defined in Section 62A-4a-101.
- 242 (45) "Supported" means the same as that term is defined in Section 62A-4a-101.
- 243 (46) "Termination of parental rights" means the permanent elimination of all parental
- 244 rights and duties, including residual parental rights and duties, by court order.

245 (47) "Therapist" means:

246 (a) a person employed by a state division or agency for the purpose of conducting
247 psychological treatment and counseling of a minor in its custody; or

248 (b) any other person licensed or approved by the state for the purpose of conducting
249 psychological treatment and counseling.

250 (48) "Unsubstantiated" means the same as that term is defined in Section [62A-4a-101](#).

251 (49) "Without merit" means the same as that term is defined in Section [62A-4a-101](#).

Legislative Review Note
Office of Legislative Research and General Counsel