

**Senator Alvin B. Jackson** proposes the following substitute bill:

**CHILD WELFARE REVISIONS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Alvin B. Jackson**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends a provision in the Juvenile Court Act.

**Highlighted Provisions:**

This bill:

- ▶ amends the Juvenile Court Act to provide that a minor who is 18 years old or older, but younger than 21 years old, may petition the court to express the minor's desire to be exempt from the custody of the Division of Child and Family Services on grounds of abuse, neglect, or dependency.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78A-6-117**, as last amended by Laws of Utah 2015, Chapter 274

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

Section 1. Section **78A-6-117** is amended to read:



26           **78A-6-117. Adjudication of jurisdiction of juvenile court -- Disposition of cases --**  
27 **Enumeration of possible court orders -- Considerations of court -- Obtaining DNA**  
28 **sample.**

29           (1) (a) When a minor is found to come within the provisions of Section 78A-6-103, the  
30 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its  
31 jurisdiction over the minor. However, in cases within the provisions of Subsection  
32 78A-6-103(1), findings of fact are not necessary.

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

38           (i) the specific offenses for which the minor was adjudicated; and

39           (ii) if available, if the victim:

40           (A) resides in the same school district as the minor; or

41           (B) attends the same school as the minor.

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

43           (a) (i) The court may place the minor on probation or under protective supervision in  
44 the minor's own home and upon conditions determined by the court, including compensatory  
45 service as provided in Subsection (2)(m)(iii).

46           (ii) The court may place the minor in state supervision with the probation department  
47 of the court, under the legal custody of:

48           (A) the minor's parent or guardian;

49           (B) the Division of Juvenile Justice Services; or

50           (C) the Division of Child and Family Services.

51           (iii) If the court orders probation or state supervision, the court shall direct that notice  
52 of its order be provided to designated persons in the local law enforcement agency and the  
53 school or transferee school, if applicable, that the minor attends. The designated persons may  
54 receive the information for purposes of the minor's supervision and student safety.

55           (iv) Any employee of the local law enforcement agency and the school that the minor  
56 attends who discloses the court's order of probation is not:

57 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as  
58 provided in Section 63G-7-202; and

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

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

64 (c) (i) The court may:

65 (A) vest legal custody of the minor in the Division of Child and Family Services,  
66 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;  
67 and

68 (B) order the Department of Human Services to provide dispositional  
69 recommendations and services.

70 (ii) For minors who may qualify for services from two or more divisions within the  
71 Department of Human Services, the court may vest legal custody with the department.

72 (iii) (A) A minor who is committed to the custody of the Division of Child and Family  
73 Services on grounds other than abuse or neglect is subject to the provisions of Title 78A,  
74 Chapter 6, Part 4, Minors in Custody on Grounds Other than Abuse or Neglect, and Title 62A,  
75 Chapter 4a, Part 2a, Minors in Custody on Grounds other than Abuse or Neglect.

76 (B) Before the court entering an order to place a minor in the custody of the Division of  
77 Child and Family Services on grounds other than abuse or neglect, the court shall provide the  
78 division with notice of the hearing no later than five days before the time specified for the  
79 hearing so the division may attend the hearing.

80 (C) Before committing a child to the custody of the Division of Child and Family  
81 Services, the court shall make a finding as to what reasonable efforts have been attempted to  
82 prevent the child's removal from the child's home.

83 (iv) (A) A minor who is 18 years old or older, but younger than 21 years old, may  
84 petition the court to express the minor's desire to be exempt from the custody of the Division of  
85 Child and Family Services on grounds of abuse, neglect, or dependency.

86 (B) The minor's petition shall contain a statement from the minor's parent or guardian,  
87 agreeing that the minor should be exempt from the custody of the Division of Child and Family

88 Services.

89 (C) The minor and the minor's parent or guardian shall sign the petition.

90 (D) The court shall review the petition within 14 days and shall exempt the minor from  
91 the custody of the Division of Child Family Services if the minor and the minor's parent or  
92 guardian have met the requirements described in this Subsection (1)(c)(iv).

93 (d) (i) The court may commit a minor to the Division of Juvenile Justice Services for  
94 secure confinement.

95 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,  
96 or dependency under Subsection 78A-6-103(1)(c) may not be committed to the Division of  
97 Juvenile Justice Services.

98 (e) The court may commit a minor, subject to the court retaining continuing  
99 jurisdiction over the minor, to the temporary custody of the Division of Juvenile Justice  
100 Services for observation and evaluation for a period not to exceed 45 days, which period may  
101 be extended up to 15 days at the request of the director of the Division of Juvenile Justice  
102 Services.

103 (f) (i) The court may commit a minor to a place of detention or an alternative to  
104 detention for a period not to exceed 30 days subject to the court retaining continuing  
105 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions  
106 ordered by the court.

107 (ii) This Subsection (2)(f) applies only to a minor adjudicated for:

108 (A) an act which if committed by an adult would be a criminal offense; or

109 (B) contempt of court under Section 78A-6-1101.

110 (g) The court may vest legal custody of an abused, neglected, or dependent minor in  
111 the Division of Child and Family Services or any other appropriate person in accordance with  
112 the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and  
113 Dependency Proceedings.

114 (h) The court may place a minor on a ranch or forestry camp, or similar facility for care  
115 and also for work, if possible, if the person, agency, or association operating the facility has  
116 been approved or has otherwise complied with all applicable state and local laws. A minor  
117 placed in a forestry camp or similar facility may be required to work on fire prevention,  
118 forestation and reforestation, recreational works, forest roads, and on other works on or off the

119 grounds of the facility and may be paid wages, subject to the approval of and under conditions  
120 set by the court.

121 (i) (i) The court may order a minor to repair, replace, or otherwise make restitution for  
122 damage or loss caused by the minor's wrongful act, including costs of treatment as stated in  
123 Section 78A-6-321 and impose fines in limited amounts.

124 (ii) The court may also require a minor to reimburse an individual, entity, or  
125 governmental agency who offered and paid a reward to a person or persons for providing  
126 information resulting in a court adjudication that the minor is within the jurisdiction of the  
127 juvenile court due to the commission of a criminal offense.

128 (iii) If a minor is returned to this state under the Interstate Compact on Juveniles, the  
129 court may order the minor to make restitution for costs expended by any governmental entity  
130 for the return.

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

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

136 (ii) Consistent with the order of the court, the probation officer may permit a minor  
137 found to be within the jurisdiction of the court to participate in a program of work restitution or  
138 compensatory service in lieu of paying part or all of the fine imposed by the court.

139 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in  
140 addition to any other disposition authorized by this section:

141 (A) restrain the minor from driving for periods of time the court considers necessary;  
142 and

143 (B) take possession of the minor's driver license.

144 (ii) The court may enter any other disposition under Subsection (2)(l)(i). However, the  
145 suspension of driving privileges for an offense under Section 78A-6-606 is governed only by  
146 Section 78A-6-606.

147 (m) (i) When a minor is found within the jurisdiction of the juvenile court under  
148 Section 78A-6-103 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug  
149 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court

150 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a  
151 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory  
152 completion of an approved substance abuse prevention or treatment program may be credited  
153 by the court as compensatory service hours.

154 (ii) When a minor is found within the jurisdiction of the juvenile court under Section  
155 78A-6-103 because of a violation of Section 32B-4-409 or Subsection 76-9-701(1), the court  
156 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order  
157 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory  
158 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an  
159 approved substance abuse prevention or treatment program may be credited by the court as  
160 compensatory service hours.

161 (iii) When a minor is found within the jurisdiction of the juvenile court under Section  
162 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may  
163 order the minor to clean up graffiti created by the minor or any other person at a time and place  
164 within the jurisdiction of the court. Compensatory service required under this section may be  
165 performed in the presence and under the direct supervision of the minor's parent or legal  
166 guardian. The parent or legal guardian shall report completion of the order to the court. The  
167 minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal  
168 costs as determined under Section 76-6-107, unless waived by the court for good cause. The  
169 court may also require the minor to perform other alternative forms of restitution or repair to  
170 the damaged property pursuant to Subsection 77-18-1(8).

171 (A) For a first adjudication, the court may require the minor to clean up graffiti for not  
172 less than eight hours.

173 (B) For a second adjudication, the court may require the minor to clean up graffiti for  
174 not less than 16 hours.

175 (C) For a third adjudication, the court may require the minor to clean up graffiti for not  
176 less than 24 hours.

177 (n) (i) Subject to Subsection (2)(n)(iii), the court may order that a minor:

178 (A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

179 (B) receive other special care.

180 (ii) For purposes of receiving the examination, treatment, or care described in

181 Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.

182 (iii) In determining whether to order the examination, treatment, or care described in

183 Subsection (2)(n)(i), the court shall consider:

184 (A) the desires of the minor;

185 (B) if the minor is under the age of 18, the desires of the parents or guardian of the  
186 minor; and

187 (C) whether the potential benefits of the examination, treatment, or care outweigh the  
188 potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain  
189 function impairment, or emotional or physical harm resulting from the compulsory nature of  
190 the examination, treatment, or care.

191 (iv) The Division of Child and Family Services shall take reasonable measures to  
192 notify a parent or guardian of any non-emergency health treatment or care scheduled for a  
193 child, shall include the parent or guardian as fully as possible in making health care decisions  
194 for the child, and shall defer to the parent's or guardian's reasonable and informed decisions  
195 regarding the child's health care to the extent that the child's health and well being are not  
196 unreasonably compromised by the parent's or guardian's decision.

197 (v) The Division of Child and Family Services shall notify the parent or guardian of a  
198 child within five business days after a child in the custody of the Division of Child and Family  
199 Services receives emergency health care or treatment.

200 (vi) The Division of Child and Family Services shall use the least restrictive means to  
201 accomplish a compelling interest in the care and treatment of a child described in this  
202 Subsection (2)(n).

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

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

210 (p) (i) In support of a decree under Section 78A-6-103, the court may order reasonable  
211 conditions to be complied with by a minor's parents or guardian, a minor, a minor's custodian,

212 or any other person who has been made a party to the proceedings. Conditions may include:

213 (A) parent-time by the parents or one parent;

214 (B) restrictions on the minor's associates;

215 (C) restrictions on the minor's occupation and other activities; and

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

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

219 (q) The court may order the child to be committed to the physical custody of a local  
220 mental health authority, in accordance with the procedures and requirements of Title 62A,  
221 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and  
222 Mental Health.

223 (r) (i) The court may make an order committing a minor within the court's jurisdiction  
224 to the Utah State Developmental Center if the minor has an intellectual disability in accordance  
225 with the provisions of Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility  
226 for People with an Intellectual Disability.

227 (ii) The court shall follow the procedure applicable in the district courts with respect to  
228 judicial commitments to the Utah State Developmental Center when ordering a commitment  
229 under Subsection (2)(r)(i).

230 (s) The court may terminate all parental rights upon a finding of compliance with the  
231 provisions of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

232 (t) The court may make any other reasonable orders for the best interest of the minor or  
233 as required for the protection of the public, except that a child may not be committed to jail or  
234 prison.

235 (u) The court may combine the dispositions listed in this section if they are compatible.

236 (v) Before depriving any parent of custody, the court shall give due consideration to the  
237 rights of parents concerning their child. The court may transfer custody of a minor to another  
238 person, agency, or institution in accordance with the requirements and procedures of Title 78A,  
239 Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

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

243 (x) In reviewing foster home placements, special attention shall be given to making  
244 adoptable children available for adoption without delay.

245 (y) (i) The juvenile court may enter an order of permanent custody and guardianship  
246 with an individual or relative of a child where the court has previously acquired jurisdiction as  
247 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an  
248 order for child support on behalf of the child against the natural or adoptive parents of the  
249 child.

250 (ii) Orders under Subsection (2)(y)(i):

251 (A) shall remain in effect until the child reaches majority;

252 (B) are not subject to review under Section 78A-6-118; and

253 (C) may be modified by petition or motion as provided in Section 78A-6-1103.

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

257 (3) In addition to the dispositions described in Subsection (2), when a minor comes  
258 within the court's jurisdiction, the minor may be given a choice by the court to serve in the  
259 National Guard in lieu of other sanctions, provided:

260 (a) the minor meets the current entrance qualifications for service in the National  
261 Guard as determined by a recruiter, whose determination is final;

262 (b) the minor is not under the jurisdiction of the court for any act that:

263 (i) would be a felony if committed by an adult;

264 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

265 (iii) was committed with a weapon; and

266 (c) the court retains jurisdiction over the minor under conditions set by the court and  
267 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

268 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction  
269 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by  
270 designated employees of the court or, if the minor is in the legal custody of the Division of  
271 Juvenile Justice Services, then by designated employees of the division under Subsection  
272 53-10-404(5)(b).

273 (b) The responsible agency shall ensure that employees designated to collect the saliva

274 DNA specimens receive appropriate training and that the specimens are obtained in accordance  
275 with accepted protocol.

276 (c) Reimbursements paid under Subsection [53-10-404\(2\)\(a\)](#) shall be placed in the DNA  
277 Specimen Restricted Account created in Section [53-10-407](#).

278 (d) Payment of the reimbursement is second in priority to payments the minor is  
279 ordered to make for restitution under this section and treatment under Section [78A-6-321](#).