

**Effective 5/28/2021**

**Renumbered 9/1/2021**

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

As used in this chapter:

- (1)
  - (a) "Abuse" means:
    - (i)
      - (A) nonaccidental harm of a child;
      - (B) threatened harm of a child;
      - (C) sexual exploitation;
      - (D) sexual abuse; or
      - (E) human trafficking of a child in violation of Section 76-5-308.5; or
    - (ii) that a child's natural parent:
      - (A) intentionally, knowingly, or recklessly causes the death of another parent of the child;
      - (B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
      - (C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.
  - (b) "Abuse" does not include:
    - (i) reasonable discipline or management of a child, including withholding privileges;
    - (ii) conduct described in Section 76-2-401; or
    - (iii) the use of reasonable and necessary physical restraint or force on a child:
      - (A) in self-defense;
      - (B) in defense of others;
      - (C) to protect the child; or
      - (D) to remove a weapon in the possession of a child for any of the reasons described in Subsections (1)(b)(iii)(A) through (C).
- (2) "Abused child" means a child who has been subjected to abuse.
- (3)
  - (a) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved.
  - (b) "Adjudication" does not mean a finding of not competent to proceed in accordance with Section 78A-6-1302.
- (4)
  - (a) "Adult" means an individual who is 18 years old or older.
  - (b) "Adult" does not include an individual:
    - (i) who is 18 years old or older; and
    - (ii) whose case is under the continuing jurisdiction of the juvenile court in accordance with Section 78A-6-120.
- (5) "Board" means the Board of Juvenile Court Judges.
- (6) "Child" means an individual who is under 18 years old.
- (7) "Child placement agency" means:
  - (a) a private agency licensed to receive a child for placement or adoption under this code; or
  - (b) a private agency that receives a child for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.
- (8) "Clandestine laboratory operation" means the same as that term is defined in Section 58-37d-3.
- (9) "Commit" means, unless specified otherwise:
  - (a) with respect to a child, to transfer legal custody; and

- (b) with respect to a minor who is at least 18 years old, to transfer custody.
- (10) "Court" means the juvenile court.
- (11) "Criminogenic risk factors" means evidence-based factors that are associated with a minor's likelihood of reoffending.
- (12) "Delinquent act" means an act that would constitute a felony or misdemeanor if committed by an adult.
- (13) "Department" means the Department of Human Services created in Section 62A-1-102.
- (14) "Dependent child" includes a child who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.
- (15) "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.
- (16) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of a minor who requires secure custody in a physically restricting facility:
  - (a) pending court disposition or transfer to another jurisdiction; or
  - (b) while the minor's case is under the continuing jurisdiction of the court.
- (17) "Detention risk assessment tool" means an evidence-based tool established under Section 78A-6-124, on and after July 1, 2018, that assesses a minor's risk of failing to appear in court or reoffending pre-adjudication and designed to assist in making detention determinations.
- (18) "Developmental immaturity" means incomplete development in one or more domains which manifests as a functional limitation in the minor's present ability to consult with counsel with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings.
- (19) "Division" means the Division of Child and Family Services.
- (20) "Educational neglect" means that, after receiving a notice of compulsory education violation under Section 53G-6-202, the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.
- (21) "Educational series" means an evidence-based instructional series:
  - (a) obtained at a substance abuse program that is approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105; and
  - (b) designed to prevent substance use or the onset of a mental health disorder.
- (22) "Evidence-based" means a program or practice that has had multiple randomized control studies or a meta-analysis demonstrating that the program or practice is effective for a specific population or has been rated as effective by a standardized program evaluation tool.
- (23) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.
- (24) "Formal probation" means a minor is under field supervision by the probation department or other agency designated by the court and subject to return to the court in accordance with Section 78A-6-123 on and after July 1, 2018.
- (25) "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 the minor's case must be reviewed by the court's probation department or a prosecuting attorney.
- (26) "Group rehabilitation therapy" means psychological and social counseling of one or more individuals in the group, depending upon the recommendation of the therapist.
- (27) "Guardianship of the person" includes the authority to consent to:
  - (a) marriage;
  - (b) enlistment in the armed forces;
  - (c) major medical, surgical, or psychiatric treatment; or
  - (d) legal custody, if legal custody is not vested in another individual, agency, or institution.
- (28) "Habitual truant" means the same as that term is defined in Section 53G-6-201.

- (29) "Harm" means:
- (a) physical or developmental injury or damage;
  - (b) emotional damage that results in a serious impairment in the child's growth, development, behavior, or psychological functioning;
  - (c) sexual abuse; or
  - (d) sexual exploitation.
- (30)
- (a) "Incest" means engaging in sexual intercourse with an individual whom the perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.
  - (b) The relationships described in Subsection (30)(a) include:
    - (i) blood relationships of the whole or half blood, without regard to legitimacy;
    - (ii) relationships of parent and child by adoption; and
    - (iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.
- (31) "Intake probation" means a period of court monitoring that does not include field supervision, but is overseen by a juvenile probation officer, during which a minor is subject to return to the court in accordance with Section 78A-6-123 on and after July 1, 2018.
- (32) "Intellectual disability" means a significant subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior that constitutes a substantial limitation to the individual's ability to function in society.
- (33) "Legal custody" means a relationship embodying the following rights and duties:
- (a) the right to physical custody of the minor;
  - (b) the right and duty to protect, train, and discipline the minor;
  - (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;
  - (d) the right to determine where and with whom the minor shall live; and
  - (e) the right, in an emergency, to authorize surgery or other extraordinary care.
- (34) "Material loss" means an uninsured:
- (a) property loss;
  - (b) out-of-pocket monetary loss for property that is stolen, damaged, or destroyed;
  - (c) lost wages because of an injury, time spent as a witness, or time spent assisting the police or prosecution; or
  - (d) medical expense.
- (35) "Mental illness" means:
- (a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or related functioning; or
  - (b) the same as that term is defined in:
    - (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or
    - (ii) the current edition of the International Statistical Classification of Diseases and Related Health Problems.
- (36) "Minor" means, except as provided in Section 78A-6-703.1:
- (a) for the purpose of juvenile delinquency:
    - (i) a child; or
    - (ii) an individual:
      - (A) who is at least 18 years old and younger than 25 years old; and
      - (B) whose case is under the jurisdiction of the juvenile court; and

- (b) for all other purposes in this chapter:
  - (i) a child; or
  - (ii) an individual:
    - (A) who is at least 18 years old and younger than 21 years old; and
    - (B) whose case is under the jurisdiction of the juvenile court.
- (37) "Mobile crisis outreach team" means a crisis intervention service for a minor or the family of a minor experiencing a behavioral health or psychiatric emergency.
- (38) "Molestation" means that an individual, with the intent to arouse or gratify the sexual desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child, or the breast of a female child, or takes indecent liberties with a child as defined in Section 76-5-416.
- (39)
  - (a) "Natural parent" means a minor's biological or adoptive parent.
  - (b) "Natural parent" includes the minor's noncustodial parent.
- (40)
  - (a) "Neglect" means action or inaction causing:
    - (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;
    - (ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;
    - (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence or medical care, or any other care necessary for the child's health, safety, morals, or well-being;
    - (iv) a child to be at risk of being neglected or abused because another child in the same home is neglected or abused;
    - (v) abandonment of a child through an unregulated custody transfer; or
    - (vi) educational neglect.
  - (b) "Neglect" does not include:
    - (i) a parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child;
    - (ii) a health care decision made for a child by the child's parent or guardian, unless the state or other party to a proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed;
    - (iii) a parent or guardian exercising the right described in Section 78A-6-301.5; or
    - (iv) permitting a child, whose basic needs are met and who is of sufficient age and maturity to avoid harm or unreasonable risk of harm, to engage in independent activities, including:
      - (A) traveling to and from school, including by walking, running, or bicycling;
      - (B) traveling to and from nearby commercial or recreational facilities;
      - (C) engaging in outdoor play;
      - (D) remaining in a vehicle unattended, except under the conditions described in Subsection 76-10-2202(2);
      - (E) remaining at home unattended; or
      - (F) engaging in a similar independent activity.
- (41) "Neglected child" means a child who has been subjected to neglect.
- (42) "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of:
  - (a) the assigned probation officer; and
  - (b)
    - (i) the minor; or

- (ii) the minor and the minor's parent, legal guardian, or custodian.
- (43) "Not competent to proceed" means that a minor, due to a mental illness, intellectual disability or related condition, or developmental immaturity, lacks the ability to:
  - (a) understand the nature of the proceedings against the minor or of the potential disposition for the offense charged; or
  - (b) consult with counsel and participate in the proceedings against the minor with a reasonable degree of rational understanding.
- (44) "Physical abuse" means abuse that results in physical injury or damage to a child.
- (45) "Probation" means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78A-6-103, whereby the minor is permitted to remain in the minor's home under prescribed conditions.
- (46) "Prosecuting attorney" means:
  - (a) the attorney general and any assistant attorney general;
  - (b) any district attorney or deputy district attorney;
  - (c) any county attorney or assistant county attorney; and
  - (d) any other attorney authorized to commence an action on behalf of the state.
- (47) "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 the minor's 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.
- (48)
  - (a) "Related condition" means a condition that:
    - (i) is found to be closely related to intellectual disability;
    - (ii) results in impairment of general intellectual functioning or adaptive behavior similar to that of an intellectually disabled individual;
    - (iii) is likely to continue indefinitely; and
    - (iv) constitutes a substantial limitation to the individual's ability to function in society.
  - (b) "Related condition" does not include mental illness, psychiatric impairment, or serious emotional or behavioral disturbance.
- (49)
  - (a) "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:
    - (i) the responsibility for support;
    - (ii) the right to consent to adoption;
    - (iii) the right to determine the child's religious affiliation; and
    - (iv) the right to reasonable parent-time unless restricted by the court.
  - (b) If no guardian has been appointed, "residual parental rights and duties" includes the right to consent to:
    - (i) marriage;
    - (ii) enlistment; and
    - (iii) major medical, surgical, or psychiatric treatment.
- (50) "Secure facility" means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation in accordance with Subsection 78A-6-117(2)(d).
- (51) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.
- (52) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.

- (53) "Sexual abuse" means:
- (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an adult directed towards a child;
  - (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation committed by a child towards another child if:
    - (i) there is an indication of force or coercion;
    - (ii) the children are related, as described in Subsection (30), including siblings by marriage while the marriage exists or by adoption;
    - (iii) there have been repeated incidents of sexual contact between the two children, unless the children are 14 years old or older; or
    - (iv) there is a disparity in chronological age of four or more years between the two children;
  - (c) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the individual who engages in the conduct is actually charged with, or convicted of, the offense:
    - (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the alleged perpetrator of an offense described in Section 76-5-401 is a minor;
    - (ii) child bigamy, Section 76-7-101.5;
    - (iii) incest, Section 76-7-102;
    - (iv) lewdness, Section 76-9-702;
    - (v) sexual battery, Section 76-9-702.1;
    - (vi) lewdness involving a child, Section 76-9-702.5; or
    - (vii) voyeurism, Section 76-9-702.7; or
  - (d) subjecting a child to participate in or threatening to subject a child to participate in a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural marriage.
- (54) "Sexual exploitation" means knowingly:
- (a) employing, using, persuading, inducing, enticing, or coercing any child to:
    - (i) pose in the nude for the purpose of sexual arousal of any individual; or
    - (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;
  - (b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:
    - (i) in the nude, for the purpose of sexual arousal of any individual; or
    - (ii) engaging in sexual or simulated sexual conduct; or
  - (c) engaging in any conduct that would constitute an offense under Section 76-5b-201, sexual exploitation of a minor, regardless of whether the individual who engages in the conduct is actually charged with, or convicted of, the offense.
- (55) "Shelter" means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.
- (56) "Single criminal episode" means the same as that term is defined in Section 76-1-401.
- (57) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.
- (58) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.
- (59) "Substantiated" means the same as that term is defined in Section 62A-4a-101.
- (60) "Supported" means the same as that term is defined in Section 62A-4a-101.
- (61) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

- (62) "Therapist" means:
  - (a) an individual employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody; or
  - (b) any other individual licensed or approved by the state for the purpose of conducting psychological treatment and counseling.
- (63) "Threatened harm" means actions, inactions, or credible verbal threats, indicating that the child is at an unreasonable risk of harm or neglect.
- (64) "Unregulated custody transfer" means the placement of a child:
  - (a) with an individual who is not the child's parent, step-parent, grandparent, adult sibling, adult uncle or aunt, or legal guardian, or a friend of the family who is an adult and with whom the child is familiar, or a member of the child's federally recognized tribe;
  - (b) with the intent of severing the child's existing parent-child or guardian-child relationship; and
  - (c) without taking:
    - (i) reasonable steps to ensure the safety of the child and permanency of the placement; and
    - (ii) the necessary steps to transfer the legal rights and responsibilities of parenthood or guardianship to the individual taking custody of the child.
- (65) "Unsupported" means the same as that term is defined in Section 62A-4a-101.
- (66) "Unsubstantiated" means the same as that term is defined in Section 62A-4a-101.
- (67) "Validated risk and needs assessment" means an evidence-based tool that assesses a minor's risk of reoffending and a minor's criminogenic needs.
- (68)
  - (a) "Victim" means a person that the court determines has suffered a material loss as a result of a minor's wrongful act or conduct.
  - (b) "Victim" includes the Utah Office for Victims of Crime.
- (69) "Without merit" means the same as that term is defined in Section 62A-4a-101.