

1 STATE SUPERVISION OF JUVENILE

2 1998 GENERAL SESSION

3 STATE OF UTAH

4 Sponsor: Greg J. Curtis

5 AN ACT RELATING TO THE JUDICIAL CODE; DEFINING STATE SUPERVISION; AND
6 PROVIDING FOR THE JUVENILE COURT TO PLACE A MINOR ON STATE
7 SUPERVISION.

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

9 AMENDS:

10 78-3a-103, as last amended by Chapters 329 and 365, Laws of Utah 1997

11 78-3a-118, as last amended by Chapters 329, 357, 358 and renumbered and amended by
12 Chapter 365, Laws of Utah 1997

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

14 Section 1. Section 78-3a-103 is amended to read:

15 78-3a-103. Definitions.

16 (1) As used in this chapter:

17 (a) "Abused child" includes a minor less than 18 years of age who has suffered or been
18 threatened with nonaccidental physical or mental harm, negligent treatment, sexual exploitation,
19 or who has been the victim of any sexual abuse.

20 (b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
21 alleged in the petition have been proved.

22 (c) "Adult" means a person 18 years of age or over, except that persons 18 years or over
23 under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall be
24 referred to as minors.

25 (d) "Board" means the Board of Juvenile Court Judges.

26 (e) "Child placement agency" means:

27 (i) a private agency licensed to receive minors for placement or adoption under this code;

1 or

2 (ii) a private agency receiving minors for placement or adoption in another state, which
3 agency is licensed or approved where such license or approval is required by law.

4 (f) "Commit" means to transfer legal custody.

5 (g) "Court" means the juvenile court.

6 (h) "Dependent child" includes a minor who is homeless or without proper care through
7 no fault of his parent, guardian, or custodian.

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

10 (j) "Detention" means home detention and secure detention as defined in Section
11 62A-7-101 for the temporary care of minors who require secure custody in physically restricting
12 facilities:

13 (i) pending court disposition or transfer to another jurisdiction; or

14 (ii) while under the continuing jurisdiction of the court.

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

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

20 (m) "Guardianship of the person" includes the authority to consent to marriage, to
21 enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal
22 custody, if legal custody is not vested in another person, agency, or institution.

23 (n) "Legal custody" means a relationship embodying the following rights and duties:

24 (i) the right to physical custody of the minor;

25 (ii) the right and duty to protect, train, and discipline the minor;

26 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary
27 medical care;

28 (iv) the right to determine where and with whom the minor shall live; and

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

30 (o) "Minor" means a person under the age of 18 years. It includes the term "child" as used
31 in other parts of this chapter.

1 (p) "Natural parent" means a minor's biological or adoptive parent, and includes the
2 minor's noncustodial parent.

3 (q) (i) "Neglected child" means a minor:

4 (A) whose parent, guardian, or custodian has abandoned or subjected the minor to
5 mistreatment or abuse;

6 (B) who lacks proper parental care by reason of the fault or habits of the parent, guardian,
7 or custodian;

8 (C) whose parent, guardian, or custodian fails or refuses to provide proper or necessary
9 subsistence, education, or medical care, including surgery or psychiatric services when required,
10 or any other care necessary for health, safety, morals, or well-being; or

11 (D) who is at risk of being a neglected or abused child as defined in this chapter because
12 another minor in the same home is a neglected or abused child as defined in this chapter.

13 (ii) The aspect of neglect related to education, described in Subsection (1)(q)(i)(C), means
14 that, after receiving notice that a minor has been frequently absent from school without good
15 cause, or that the minor has failed to cooperate with school authorities in a reasonable manner, a
16 parent or guardian fails to make a good faith effort to ensure that the minor receives an appropriate
17 education.

18 (iii) A parent or guardian legitimately practicing religious beliefs and who, for that reason,
19 does not provide specified medical treatment for a minor, is not guilty of neglect.

20 (r) "Nonjudicial adjustment" means closure of the case by the assigned probation officer
21 without judicial determination upon the consent in writing of the minor, the parent, legal guardian
22 or custodian, and the assigned probation officer.

23 (s) "Probation" means a legal status created by court order following an adjudication on
24 the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted to
25 remain in his home under prescribed conditions and under supervision by the probation department
26 or other agency designated by the court, subject to return to the court for violation of any of the
27 conditions prescribed.

28 (t) "Protective supervision" means a legal status created by court order following an
29 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
30 remain in his home, and supervision and assistance to correct the abuse, neglect, or dependency
31 is provided by the probation department or other agency designated by the court.

1 (u) "Residual parental rights and duties" means those rights and duties remaining with the
2 parent after legal custody or guardianship, or both, have been vested in another person or agency,
3 including the responsibility for support, the right to consent to adoption, the right to determine the
4 child's religious affiliation, and the right to reasonable visitation unless restricted by the court. If
5 no guardian has been appointed, "residual parental rights and duties" also include the right to
6 consent to marriage, to enlistment, and to major medical, surgical, or psychiatric treatment.

7 (v) "Secure facility" means any facility operated by or under contract with the Division
8 of Youth Corrections, that provides 24-hour supervision and confinement for youth offenders
9 committed to the division for custody and rehabilitation.

10 (w) "Shelter" means the temporary care of minors in physically unrestricted facilities
11 pending court disposition or transfer to another jurisdiction.

12 (x) "State supervision" means a disposition which provides a more intensive level of
13 intervention than standard probation but is less intensive or restrictive than a community placement
14 with the Division of Youth Corrections.

15 [~~(x)~~] (y) "Termination of parental rights" means the permanent elimination of all parental
16 rights and duties, including residual parental rights and duties, by court order.

17 [~~(y)~~] (z) "Therapist" means a person employed by a state division or agency for the
18 purpose of conducting psychological treatment and counseling of a minor in its custody, or any
19 other person licensed or approved by the state for the purpose of conducting psychological
20 treatment and counseling.

21 (2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the
22 Division of Child and Family Services:

23 (a) "Custody" means the custody of a minor in the Division of Child and Family Services
24 as of the date of disposition.

25 (b) "Protective custody" means the shelter of a minor by the Division of Child and Family
26 Services from the time the minor is removed from home until the shelter hearing, or the minor's
27 return home, whichever occurs earlier.

28 (c) "Temporary custody" means the custody of a minor in the Division of Child and
29 Family Services from the date of the shelter hearing until disposition.

30 (3) In determining whether a minor is neglected or abused, as defined in this section, it
31 may be presumed that the person having the minor under his direct and exclusive care and control

1 at the time of the abuse is responsible for the neglect or abuse.

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

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

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

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

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

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

18 (ii) The court may place the minor in state supervision with the probation department of
19 the court, under the legal custody of his parent or guardian, the Division of Youth Corrections, or
20 the Division of Child and Family Services.

21 [(ii)] (iii) If the court orders probation or state supervision, the court shall direct that notice
22 of its order be provided to designated persons in the local law enforcement agency and the school
23 or transferee school, if applicable, which the minor attends. The designated persons may receive
24 the information for purposes of the minor's supervision and student safety.

25 [(iii)] (iv) Any employee of the local law enforcement agency and the school which the
26 minor attends who discloses the court's order of probation is not:

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

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

31 (b) The court may place the minor in the legal custody of a relative or other suitable

1 person, with or without probation or protective supervision, but the juvenile court may not assume
2 the function of developing foster home services.

3 (c) (i) The court may vest legal custody of the minor in the Division of Child and Family
4 Services, Division of Youth Corrections, or the Division of Mental Health, and may order the
5 Department of Human Services to provide dispositional recommendations and services.

6 (ii) Minors who are committed to the custody of the Division of Child and Family Services
7 on grounds other than abuse or neglect are subject to the provisions of Part 3A and Title 62A,
8 Chapter 4a, Part 2A.

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

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

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

17 (f) (i) The court may commit the minor to a place of detention or an alternative to
18 detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction
19 over the minor.

20 (ii) Subsection (2)(f) applies only to those minors adjudicated for an act which if
21 committed by an adult would be a criminal offense or for contempt of court under Section
22 78-3a-901. This commitment may be stayed or suspended upon conditions ordered by the court.

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

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

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

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

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

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

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

19 (m) (i) When a minor is found within the jurisdiction of the juvenile court under Section
20 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia
21 Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to
22 any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no
23 more than 100 hours, of community service. Satisfactory completion of an approved substance
24 abuse prevention or treatment program may be credited by the court as community service hours.

25 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
26 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may,
27 upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the
28 minor perform a minimum of 20 hours, but no more than 100 hours of community service, in
29 addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance
30 abuse prevention or treatment program may be credited by the court as community service hours.

31 (n) The court may order that the minor be examined or treated by a physician, surgeon,

1 psychiatrist, or psychologist or that he receive other special care. For these purposes the court may
2 place the minor in a hospital or other suitable facility.

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

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

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

- 13 (A) visitation by the parents or one parent;
- 14 (B) restrictions on the minor's associates;
- 15 (C) restrictions on the minor's occupation and other activities; and
- 16 (D) requirements to be observed by the parents or custodian.

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

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

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

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

30 (t) The court may make any other reasonable orders for the best interest of the minor or
31 as required for the protection of the public, except that a person younger than 18 years of age may

1 not be committed to jail or prison, and offenses under Section 78-3a-506 are governed by that
2 section regarding suspension of driving privileges.

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

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

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

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

14 (y) (i) The juvenile court may enter an order of permanent custody and guardianship with
15 a relative or individual of a minor where the court has previously acquired jurisdiction as a result
16 of an adjudication of abuse, neglect, or dependency, excluding cases arising under Subsection
17 78-3a-105(4).

18 (ii) Such orders remain in effect until the minor reaches majority and are not subject to
19 review under Section 78-3a-119, but may be modified by petition or motion as provided in Section
20 78-3a-903.

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

Legislative Review Note
as of 2-6-98 10:16 AM

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

Office of Legislative Research and General Counsel