

1 **PARENTAL RESPONSIBILITY FOR**
2 **WRONGFUL CONDUCT OF A CHILD**

3 1998 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Pete Suazo**

6 AN ACT RELATING TO JUDICIAL CODE; PERMITTING THE COURT TO ORDER THE
7 PARENT OR LEGAL GUARDIAN OF A MINOR TO MAKE RESTITUTION FOR
8 DAMAGE OR LOSS CAUSED BY THE WRONGFUL CONDUCT OF THE MINOR; AND
9 MAKING TECHNICAL CHANGES.

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

11 AMENDS:

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

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

15 Section 1. Section **78-3a-118** is amended to read:

16 **78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases --**
17 **Enumeration of possible court orders -- Considerations of court.**

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

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

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

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

4 (ii) If the court orders probation, the court shall direct that notice of its order be provided
5 to designated persons in the local law enforcement agency and the school or transferee school, if
6 applicable, which the minor attends. The designated persons may receive the information for
7 purposes of the minor's supervision and student safety.

8 (iii) Any employee of the local law enforcement agency and the school which the minor
9 attends who discloses the court's order of probation is not:

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

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

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

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

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

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

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

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

31 (f) (i) The court may commit the minor to a place of detention or an alternative to

1 detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction
2 over the minor.

3 (ii) Subsection (2)(f) applies only to those minors adjudicated for an act which if
4 committed by an adult would be a criminal offense or for contempt of court under Section
5 78-3a-901. This commitment may be stayed or suspended upon conditions ordered by the court.

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

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

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

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

20 (ii) The court may order the parent or legal guardian of the minor to make restitution for
21 damage or loss caused by the wrongful conduct of the minor not to exceed \$2,000 if the court finds
22 the parent or legal guardian failed to make a reasonable effort to restrain the wrongful conduct of
23 the minor.

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

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

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

6 (m) (i) When a minor is found within the jurisdiction of the juvenile court under Section
7 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia
8 Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to
9 any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no
10 more than 100 hours, of community service. Satisfactory completion of an approved substance
11 abuse prevention or treatment program may be credited by the court as community service hours.

12 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
13 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may,
14 upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the
15 minor perform a minimum of 20 hours, but no more than 100 hours of community service, in
16 addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance
17 abuse prevention or treatment program may be credited by the court as community service hours.

18 (n) The court may order that the minor be examined or treated by a physician, surgeon,
19 psychiatrist, or psychologist or that he receive other special care. For these purposes the court may
20 place the minor in a hospital or other suitable facility.

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

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

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

31 (A) visitation by the parents or one parent;

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

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

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

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

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

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

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

17 (t) The court may make any other reasonable orders for the best interest of the minor or
18 as required for the protection of the public, except that a person younger than 18 years of age may
19 not be committed to jail or prison, and offenses under Section 78-3a-506 are governed by that
20 section regarding suspension of driving privileges.

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

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

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

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

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

5 (ii) Such orders remain in effect until the minor reaches majority and are not subject to
6 review under Section 78-3a-119, but may be modified by petition or motion as provided in Section
7 78-3a-903.

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

Legislative Review Note
as of 12-3-97 1:55 PM

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

Office of Legislative Research and General Counsel