

**AMENDMENTS TO CONCURRENT
JURISDICTION IN ADOPTION CASES**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Matt Throckmorton

This act modifies the Juvenile Courts Act to give the juvenile court exclusive original jurisdiction in adoption proceedings.

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

AMENDS:

78-3a-104, as last amended by Chapter 149, Laws of Utah 2000

78-3a-105, as last amended by Chapter 149, Laws of Utah 2000

78-3a-119, as last amended by Chapter 329 and renumbered and amended by Chapter 365, Laws of Utah 1997

78-30-7, as last amended by Chapter 10, Laws of Utah 1997

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

Section 1. Section **78-3a-104** is amended to read:

78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a minor who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding traffic laws and ordinances;

(b) a person 21 years of age or older who has failed or refused to comply with an order of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing orders;

(c) a minor who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78-3a-103;

(d) a protective order for a minor who is alleged to be an abused child or neglected child,

except as provided in Section 78-3a-105, and unless the petition is filed by a natural parent or stepparent of the minor against a natural parent or stepparent of the minor;

(e) the determination of the custody of a minor or to appoint a guardian of the person or other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

(f) the termination of the legal parent-child relationship in accordance with Part 4, Termination of Parental Rights Act, including termination of residual parental rights and duties;

(g) the treatment or commitment of a mentally retarded minor;

(h) a minor who is a habitual truant from school;

(i) the judicial consent to the marriage of a minor under age 16 upon a determination of voluntariness or where otherwise required by law, employment, or enlistment of a minor when consent is required by law;

(j) any parent or parents of a minor committed to a secure youth corrections facility, to order, at the discretion of the court and on the recommendation of a secure youth corrections facility, the parent or parents of a minor committed to a secure youth corrections facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure youth corrections facility therapist, who has supervision of that parent's or parents' minor, or any other therapist the court may direct, for a period directed by the court as recommended by a secure youth corrections facility;

(k) a minor under Title 55, Chapter 12, Interstate Compact on Juveniles;

(l) the treatment or commitment of a mentally ill child. The court may commit a child to the physical custody of a local mental health authority or to the legal custody of the Division of Mental Health in accordance with the procedures and requirements of Title 62A, Chapter 12, Part 2A, Commitment of Persons Under Age 18 to Division of Mental Health. The court may not commit a child directly to the Utah State Hospital;

(m) the commitment of a minor in accordance with Section 62A-8-501; ~~and~~

(n) de novo review of final agency actions resulting from an informal adjudicative proceeding as provided in Section 63-46b-15[-]; and

(o) adoptions conducted in accordance with the procedures described in Title 78, Chapter

30. Adoption, when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the minor.

(2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive jurisdiction over any traffic offense committed by a minor under 16 years of age and concurrent jurisdiction over all other traffic offenses committed by a minor 16 years of age or older, except that the court shall have exclusive jurisdiction over the following traffic offenses committed by a minor under 18 years of age:

(a) Section 76-5-207, automobile homicide;

(b) Section 41-6-44, operating a vehicle while under the influence of alcohol or drugs;

(c) Section 41-6-45, reckless driving;

(d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or semitrailer for an extended period of time; and

(e) Section 41-6-13.5, fleeing a peace officer.

(3) The court also has jurisdiction over traffic offenses that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

(4) The juvenile court has jurisdiction over questions of custody, support, and visitation certified to it by the district court pursuant to Section 78-3a-105.

(5) The juvenile court has jurisdiction over an ungovernable or runaway minor who is referred to it by the Division of Child and Family Services or by public or private agencies that contract with the division to provide services to that minor where, despite earnest and persistent efforts by the division or agency, the minor has demonstrated that he:

(a) is beyond the control of his parent, guardian, lawful custodian, or school authorities to the extent that his behavior or condition endangers his own welfare or the welfare of others; or

(b) has run away from home.

(6) This section does not restrict the right of access to the juvenile court by private agencies or other persons.

(7) The juvenile court has jurisdiction of all magistrate functions relative to cases arising under Section 78-3a-602.

Section 2. Section **78-3a-105** is amended to read:

78-3a-105. Concurrent jurisdiction -- District court and juvenile court.

(1) The district court or other court has concurrent jurisdiction with the juvenile court as follows:

(a) when a person who is 18 years of age or older and who is under the continuing jurisdiction of the juvenile court under Section 78-3a-118 violates any federal, state, or local law or municipal ordinance;

~~[(b) in adoption proceedings, when the juvenile court has previously entered an order terminating the rights of a parent, and finds that adoption is in the best interest of the minor, adoption proceedings under this section shall be conducted in accordance with the procedures described in Title 78, Chapter 30, Adoption;]~~

~~[(c)]~~ (b) in establishing paternity and ordering testing for the purposes of establishing paternity, in accordance with Title 78, Chapter 45a, Uniform Act on Paternity, with regard to proceedings initiated under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 4, Termination of Parental Rights Act; and

~~[(d)]~~ (c) in proceedings brought on behalf of a minor pursuant to Title 30, Chapter 6, Cohabitant Abuse Act, unless the petition is filed by a natural parent or stepparent of the minor against a natural parent or stepparent of the minor.

(2) The juvenile court has jurisdiction over petitions to modify a minor's birth certificate if the court otherwise has jurisdiction over the minor.

(3) (a) This section does not deprive the district court of jurisdiction to appoint a guardian for a minor, or to determine the support, custody, and visitation of a minor upon writ of habeas corpus or when the question of support, custody, and visitation is incidental to the determination of a cause in the district court.

(b) However, if a petition involving the same minor is pending in the juvenile court or the juvenile court has previously acquired continuing jurisdiction over the same minor, the district court shall certify the question of support, custody, and visitation to the juvenile court for determination.

(4) When a question is certified to the juvenile court under Subsection (3), the findings and

order of the juvenile court judge are the order of the district court.

(5) (a) Where a support, custody, or visitation award has been made by a district court in a divorce action or other proceeding, and the jurisdiction of the district court in the case is continuing, the juvenile court may acquire jurisdiction in a case involving the same minor if the minor is dependent, abused, neglected, or otherwise comes within the jurisdiction of the juvenile court under Section 78-3a-104.

(b) The juvenile court may, by order, change the custody, support, and visitation rights previously ordered in the district court as necessary to implement the order of the juvenile court for the safety and welfare of the minor. The juvenile court order remains in effect so long as the jurisdiction of the juvenile court continues.

(6) When a copy of the findings and order of the juvenile court has been filed with the district court, the findings and order of the juvenile court are binding on the parties to the divorce action as though entered in the district court.

Section 3. Section **78-3a-119** is amended to read:

78-3a-119. Period of operation of judgment, decree, or order -- Rights and responsibilities of agency or individual granted legal custody.

(1) A judgment, order, or decree of the juvenile court does not operate after the minor becomes 21 years of age, except for:

(a) orders of commitment to the Utah State Developmental Center or to the custody of the Division of Mental Health;

(b) adoption orders under [~~Section 78-3a-105~~] Subsection 78-3a-104(1)(o);

(c) orders permanently terminating the rights of a parent, guardian, or custodian, and permanent orders of custody and guardianships; and

(d) unless terminated by the court, orders to pay any fine or restitution.

(2) (a) Except as provided in Part 3, Abuse, Neglect, and Dependency Proceedings, an order vesting legal custody or guardianship of a minor in an individual, agency, or institution may be for an indeterminate period. A review hearing shall be held, however, upon the expiration of 12 months, and, with regard to petitions filed by the Division of Child and Family Services, no less than once

every six months thereafter. The individual, agency, or institution involved shall file the petition for that review hearing. The court may terminate the order, or after notice and hearing, continue the order if it finds continuation of the order necessary to safeguard the welfare of the minor or the public interest. The findings of the court and its reasons shall be entered with the continuation order or with the order denying continuation.

(b) Subsection (2)(a) does not apply to minors who are in the custody of the Division of Child and Family Services, and who are placed in foster care, a secure youth corrections facility, the Division of Mental Health, the Utah State Developmental Center, or any agency licensed for child placements and adoptions, in cases where all parental rights of the natural parents have been terminated by the court under Part 4, Termination of Parental Rights Act, and custody of the minor has been granted to the agency for adoption or other permanent placement.

(3) (a) An agency granted legal custody may determine where and with whom the minor will live, provided that placement of the minor does not remove him from the state without court approval.

(b) An individual granted legal custody shall personally exercise the rights and responsibilities involved in legal custody, unless otherwise authorized by the court.

Section 4. Section **78-30-7** is amended to read:

78-30-7. Jurisdiction of district and juvenile court -- Time for filing.

(1) Adoption proceedings shall be commenced by filing a petition with the clerk of the district court in the district where the person adopting resides, or with the juvenile court as provided in [~~Section 78-3a-105~~] Subsection 78-3a-104(1)(o). All orders, decrees, agreements, and notices in the proceedings shall be filed with the clerk of that court.

(2) A petition for adoption shall be filed within 30 days of the date the adoptee is placed in the home of the petitioners for the purpose of adoption, unless the time for filing has been extended by the court, or unless the adoption is arranged by a licensed child placing agency in which case the agency may extend the filing time.