

# H.B. 31

## CHILD WELFARE DEFINITIONS

Senator **Margaret Dayton** proposes the following amendments:

1. *Page 2, Line 29:*

Bracket "None" and insert:

"This bill coordinates with H.B. 78 by providing technical amendments."

2. *Page 76, Line 2331:*

After line 2331 insert:

**Section 45. Coordinating H.B. 31 with H.B. 78 -- Technical Amendments.**

If this H.B. 31 and H.B. 78, Title 78 Recodification and Revision, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication as follows:

(1) in Section 62A-4a-101 of H.B. 31, change all references from "78-3a-103" to "78A-6-105";

(2) amend Subsection 62A-4a-802(1)(b) to read as follows:

"(b) Safe relinquishment of a newborn child who has not otherwise been subject to abuse or neglect shall not, in and of itself, constitute neglect as defined in Section [~~62A-4a-101~~] 78A-6-105, and the child shall not be considered a neglected child, as defined in Section [~~78-3a-103~~] 78A-6-105, so long as the relinquishment is carried out in substantial compliance with the provisions of this part.";

(3) change the reference in Subsection 76-7-304(1)(a) from "62A-4a-101" to "78A-6-105";

(4) not make the changes to Section 78-3a-103 in H.B. 31, and amend Section 78A-6-105 in H.B. 78, to read as follows:

"~~(1)~~ As used in this chapter:

~~[(a) "Abused child" includes a child who:]~~

~~[(i) has suffered or been threatened with nonaccidental physical or mental harm, negligent treatment, or sexual exploitation; or]~~

~~[(ii) has been the victim of any sexual abuse.]~~

(1) (a) "Abuse" means:

(i) nonaccidental harm of a child;

(ii) threatened harm of a child;

(iii) sexual exploitation; or

(iv) sexual abuse.

(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.

~~(b)~~(3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved.

~~(c)~~(4) "Adult" means a person 18 years of age or over, except that a person 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section ~~[78-3a-121]~~ 78A-6-120 shall be referred to as a minor.

~~(d)~~(5) "Board" means the Board of Juvenile Court Judges.

~~(e)~~(6) "Child" means a person under 18 years of age.

~~(f)~~(7) "Child placement agency" means:

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

~~(ii)~~(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.

~~(g)~~(8) "Clandestine laboratory operation" is as defined in Section 58-37d-3.

~~(h)~~(9) "Commit" means, unless specified otherwise:

~~(i)~~(a) with respect to a child, to transfer legal custody; and

~~(ii)~~(b) with respect to a minor who is at least 18 years of age, to transfer custody.

~~(j)~~(10) "Court" means the juvenile court.

~~(k)~~(11) "Dependent child" includes a child who is homeless or without proper care through no fault of the child's parent,

guardian, or custodian.

~~(k)~~(12) "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.

~~(h)~~(13) "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:

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

~~(i)~~(b) while under the continuing jurisdiction of the court.

~~(m)~~(14) "Division" means the Division of Child and Family Services.

~~(n)~~(15) "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 a petition may be filed.

~~(o)~~(16) "Group rehabilitation therapy" means psychological and social counseling of one or more persons in the group, depending upon the recommendation of the therapist.

~~(p)~~(17) "Guardianship of the person" includes the authority to consent to:

~~(i)~~(a) marriage;

~~(i)~~(b) enlistment in the armed forces;

~~(iii)~~(c) major medical, surgical, or psychiatric treatment; or

~~(iv)~~(d) legal custody, if legal custody is not vested in another person, agency, or institution.

~~(q)~~(18) "Habitual truant" is as defined in Section 53A-11-101.

(19) "Harm" means:

(a) physical, emotional, or developmental injury or damage;

(b) sexual abuse; or

(c) sexual exploitation.

(20) (a) "Incest" means engaging in sexual intercourse with a person 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 (20)(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.

~~(r)~~(21) "Legal custody" means a relationship embodying the following rights and duties:

~~(i)~~(a) the right to physical custody of the minor;

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

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

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

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

~~(s)~~(22) "Minor" means:

~~(i)~~(a) a child; or

~~(ii)~~(b) a person who is:

~~(A)~~(i) at least 18 years of age and younger than 21 years of age; and

~~(B)~~(ii) under the jurisdiction of the juvenile court.

(23) "Molestation" means that a person, with the intent to arouse or gratify the sexual desire of any person:

(a) touches the anus or any part of the genitals of a child;

(b) takes indecent liberties with a child; or

(c) causes a child to take indecent liberties with the perpetrator or another.

~~(t)~~(24) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

~~(u)(i)"Neglected child" means a child:]~~

~~(A) whose parent, guardian, or custodian has abandoned the child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;]~~

~~(B) whose parent, guardian, or custodian has subjected the child to mistreatment or abuse;]~~

~~(C) who lacks proper parental care by reason of the fault or habits of the parent, guardian, or custodian;]~~

~~(D) whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, education, or medical care, including surgery or psychiatric services when required, or~~

~~any other care necessary for health, safety, morals, or well-being;]  
[(E) who is at risk of being a neglected or abused child as defined  
in this chapter because another child in the same home is a  
neglected or abused child as defined in this chapter; or]~~

~~[(F) whose parent permits the minor to reside, on a permanent or  
temporary basis, at the location of a clandestine laboratory  
operation.]~~

~~[(ii) The aspect of neglect related to education, described in  
Subsection (1)(u)(i)(D), means that, after receiving notice that a  
child has been frequently absent from school without good cause,  
or that the child has failed to cooperate with school authorities in a  
reasonable manner, a parent or guardian fails to make a good faith  
effort to ensure that the child receives an appropriate education.]~~

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

~~[(iv) Notwithstanding Subsection (1)(u)(i), a health care decision  
made for a child by the child's parent or guardian does not  
constitute neglect unless the state or other party to the proceeding  
shows, by clear and convincing evidence, that the health care  
decision is not reasonable and informed.]~~

~~[(v) Nothing in Subsection (1)(u)(iv) may prohibit a parent or  
guardian from exercising the right to obtain a second health care  
opinion.]~~

(25)(a) "Neglect" means:

(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, education, or medical  
care, or any other care necessary for the child's health, safety,  
morals, or well-being; or

(iv) a child at risk of being neglected or abused because another  
child in the same home is neglected or abused.

(b) The aspect of neglect relating to education, described in  
Subsection (25)(a)(iii), means that, after receiving a notice of  
compulsory education violation under Section 53A-11-101.5, or  
notice that a parent or guardian has failed to cooperate with school

authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a), the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

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

(d)(i) Notwithstanding Subsection (25)(a), a health care decision made for a child by the child's parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(ii) Nothing in Subsection (25)(d)(i) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

(26) "Neglected child" means a child who has been subjected to neglect.

[(v)](27) "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

[(†)(A)](b)(i) the minor; or

[(†)](ii) the minor and the minor's parent, legal guardian, or custodian.

(28) "Physical abuse" means abuse that results in physical injury or damage to a child.

[(w)](29) "Probation" means a legal status created by court order following an adjudication on the ground of a violation of law or under Section ~~[78-3a-104]~~ 78A-6-103, whereby the minor is permitted to remain in the minor's home under prescribed conditions and under supervision by the probation department or other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed.

[(x)](30) "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.

~~[(y)(i)]~~(31)(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:

~~[(A)]~~(i) the responsibility for support;

~~[(B)]~~(ii) the right to consent to adoption;

~~[(C)]~~(iii) the right to determine the child's religious affiliation; and

~~[(D)]~~(iv) the right to reasonable parent-time unless restricted by the court.

~~[(i)]~~(b) If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to:

~~[(A)]~~(i) marriage;

~~[(B)]~~(ii) enlistment; and

~~[(C)]~~(iii) major medical, surgical, or psychiatric treatment.

~~[(z)]~~(32) "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.

(33) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.

(34) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.

(35) "Sexual abuse" means:

(a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation directed towards a child; or

(b) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense:

(i) Title 76, Chapter 5, Part 4, Sexual Offenses;

(ii) child bigamy, Section 76-7-101.5;

(iii) incest, Section 76-7-102;

(iv) lewdness or sexual battery, Section 76-9-702;

(v) lewdness involving a child, Section 76-9-702.5; or

(vi) voyeurism, Section 76-9-702.7.

(36) "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 person; 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 person; or
  - (ii) engaging in sexual or simulated sexual conduct; or
- (c) engaging in any conduct that would constitute an offense under Title 76, Chapter 5a, Sexual Exploitation of Children, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense.

~~[(aa)]~~(37) "Shelter" means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.

~~[(bb)]~~(38) "State supervision" means a disposition that provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Juvenile Justice Services.

(39) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.

~~[(cc)]~~(40) "Substantiated" is as defined in Section 62A-4a-101.

~~[(dd)]~~(41) "Supported" is as defined in Section 62A-4a-101.

~~[(ee)]~~(42) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

~~[(ff)]~~(43) "Therapist" means:

~~[(i)]~~(a) a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody; or

~~[(ii)]~~(b) any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

~~[(gg)]~~(44) "Unsubstantiated" is as defined in Section 62A-4a-101.

~~[(hh)]~~(45) "Without merit" is as defined in Section 62A-4a-101.

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

~~[(a) "Custody" means the custody of a minor in the Division of~~



~~Child and Family Services as of the date of disposition.]~~

~~[(b) "Protective custody" means the shelter of a child by the Division of Child and Family Services from the time the child is removed from home until the earlier of:]~~

~~[(i) the shelter hearing; or]~~

~~[(ii) the child's return home.]~~

~~[(c) "Temporary custody" means the custody of a child in the Division of Child and Family Services from the date of the shelter hearing until disposition.];~~

(5) amend Subsection 78A-6-306(13) in H.B. 78 to read as follows:

"(13) The court may not order continued removal of a child solely on the basis of educational neglect as described in Subsection ~~[78-3a-103(1)(u)(ii)]~~ 78A-6-105(25)(a)(iii).";

(6) amend Subsection 78-3a-306(13) in H.B. 31 to read as follows:

"(13) The court may not order continued removal of a child solely on the basis of educational neglect as described in Subsection ~~[78-3a-103(1)(u)(ii)]~~ 78A-6-105(25)(a)(iii).";

(7) merge the changes in Subsections 78-3a-301(1)(c) and (2)(b) of H.B. 31 into Subsections 78A-6-302(1)(c) and (2)(b) of H.B. 78;

(8) merge the changes in Subsections 78-3a-306(9)(a)(iv), (9)(b)(ii), and (12) of H.B. 31 into Subsections 78A-6-306(9)(a)(iv), (9)(b)(ii), and (12) of H.B. 78;

(9) merge the changes in Subsections 78-3a-307.1(3)(b) and (3)(c) of H.B. 31 into Subsections 78A-6-308(3)(b) and (3)(c) of H.B. 78;

(10) merge the changes in Subsections 78-3a-311(2)(a)(iii)(A) and (3)(d)(i)(C) of H.B. 31 into Subsections 78A-6-312(2)(a)(iii)(A) and (3)(d)(i)(C) of H.B. 78;

(11) merge the changes in Subsection 78-3a-314(5) of H.B. 31 into Subsection 78A-6-317(5) of H.B. 78;

(12) merge the changes in Subsection 78-3a-318(1) of H.B. 31 into Subsection 78A-6-321(1) of H.B. 78;

(13) merge the changes in Subsection 78-3a-403(3) of H.B. 31 into Subsection 78A-6-502(3) of H.B. 78;

(14) merge the changes in Subsection 78-3a-407(1)(f)(iii) of H.B. 31 into Subsection 78A-6-507(1)(f)(iii) of H.B. 78;

(15) merge the changes in Subsection 78-3a-408(6)(a) of H.B. 31 into Subsection 78A-6-508(6)(a) of H.B. 78; and  
(16) merge the changes in Subsection 78-3a-801(1)(b) of H.B. 31 into Subsection 78A-6-1001(1)(b) of H.B. 78."