

**CHILD WELFARE REVISIONS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Alvin B. Jackson**

House Sponsor: LaVar Christensen

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**LONG TITLE**

**General Description:**

This bill amends a provision in the Juvenile Court Act.

**Highlighted Provisions:**

This bill:

► amends the Juvenile Court Act to provide that a minor who is 18 years old or older, but younger than 21 years old, may petition the court to express the minor's desire to be removed from the custody of the Division of Child and Family Services.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78A-6-117**, as last amended by Laws of Utah 2015, Chapter 274

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

Section 1. Section **78A-6-117** is amended to read:

**78A-6-117. Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court -- Obtaining DNA sample.**

(1) (a) When a minor is found to come within the provisions of Section **78A-6-103**, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its

30 jurisdiction over the minor. However, in cases within the provisions of Subsection  
31 [78A-6-103](#)(1), findings of fact are not necessary.

32 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of  
33 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided  
34 to the school superintendent of the district in which the minor resides or attends school. Notice  
35 shall be made to the district superintendent within three days of the adjudication and shall  
36 include:

37 (i) the specific offenses for which the minor was adjudicated; and  
38 (ii) if available, if the victim:

39 (A) resides in the same school district as the minor; or

40 (B) attends the same school as the minor.

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

42 (a) (i) The court may place the minor on probation or under protective supervision in  
43 the minor's own home and upon conditions determined by the court, including compensatory  
44 service as provided in Subsection (2)(m)(iii).

45 (ii) The court may place the minor in state supervision with the probation department  
46 of the court, under the legal custody of:

47 (A) the minor's parent or guardian;

48 (B) the Division of Juvenile Justice Services; or

49 (C) the Division of Child and Family Services.

50 (iii) If the court orders probation or state supervision, the court shall direct that notice  
51 of its order be provided to designated persons in the local law enforcement agency and the  
52 school or transferee school, if applicable, that the minor attends. The designated persons may  
53 receive the information for purposes of the minor's supervision and student safety.

54 (iv) Any employee of the local law enforcement agency and the school that the minor  
55 attends who discloses the court's order of probation is not:

56 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as  
57 provided in Section [63G-7-202](#); and

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

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

63 (c) (i) The court may:

64 (A) vest legal custody of the minor in the Division of Child and Family Services,  
65 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;  
66 and

67 (B) order the Department of Human Services to provide dispositional  
68 recommendations and services.

69 (ii) For minors who may qualify for services from two or more divisions within the  
70 Department of Human Services, the court may vest legal custody with the department.

71 (iii) (A) A minor who is committed to the custody of the Division of Child and Family  
72 Services on grounds other than abuse or neglect is subject to the provisions of Title 78A,  
73 Chapter 6, Part 4, Minors in Custody on Grounds Other than Abuse or Neglect, and Title 62A,  
74 Chapter 4a, Part 2a, Minors in Custody on Grounds other than Abuse or Neglect.

75 (B) Before the court entering an order to place a minor in the custody of the Division of  
76 Child and Family Services on grounds other than abuse or neglect, the court shall provide the  
77 division with notice of the hearing no later than five days before the time specified for the  
78 hearing so the division may attend the hearing.

79 (C) Before committing a child to the custody of the Division of Child and Family  
80 Services, the court shall make a finding as to what reasonable efforts have been attempted to  
81 prevent the child's removal from the child's home.

82 (iv) (A) A minor who is 18 years old or older, but younger than 21 years old, may  
83 petition the court to express the minor's desire to be removed from the jurisdiction of the  
84 juvenile court and from the custody of the Division of Child and Family Services if the minor  
85 is in the division's custody on grounds of abuse, neglect, or dependency.

86 (B) If the minor's parent's rights have not been terminated in accordance with Part 5,  
87 Termination of Parental Rights Act, the minor's petition shall contain a statement from the  
88 minor's parent or guardian agreeing that the minor should be removed from the custody of the  
89 Division of Child and Family Services.

90 (C) The minor and the minor's parent or guardian shall sign the petition.

91 (D) The court shall review the petition within 14 days.

92 (E) The court shall remove the minor from the custody of the Division of Child and  
93 Family Services if the minor and the minor's parent or guardian have met the requirements  
94 described in Subsections (2)(c)(iv)(B) and (C) and if the court finds, based on input from the  
95 Division of Child and Family Services, the minor's guardian ad litem, and the Office of the  
96 Attorney General, that the minor does not pose an imminent threat to self or others.

97 (F) A minor removed from custody under Subsection (2)(c)(iv)(E) may, within 90 days  
98 of the date of removal, petition the court to re-enter custody of the Division of Child and  
99 Family Services.

100 (G) Upon receiving a petition under Subsection (2)(c)(iv)(F), the court shall order the  
101 Division of Child and Family Services to take custody of the minor based on the findings the  
102 court entered when the court originally vested custody in the Division of Child and Family  
103 Services.

104 (d) (i) The court may commit a minor to the Division of Juvenile Justice Services for  
105 secure confinement.

106 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,  
107 or dependency under Subsection 78A-6-103(1)(c) may not be committed to the Division of  
108 Juvenile Justice Services.

109 (e) The court may commit a minor, subject to the court retaining continuing  
110 jurisdiction over the minor, to the temporary custody of the Division of Juvenile Justice  
111 Services for observation and evaluation for a period not to exceed 45 days, which period may  
112 be extended up to 15 days at the request of the director of the Division of Juvenile Justice  
113 Services.

114 (f) (i) The court may commit a minor to a place of detention or an alternative to  
115 detention for a period not to exceed 30 days subject to the court retaining continuing  
116 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions  
117 ordered by the court.

118 (ii) This Subsection (2)(f) applies only to a minor adjudicated for:

119 (A) an act which if committed by an adult would be a criminal offense; or

120 (B) contempt of court under Section [78A-6-1101](#).

121 (g) The court may vest legal custody of an abused, neglected, or dependent minor in  
122 the Division of Child and Family Services or any other appropriate person in accordance with  
123 the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and  
124 Dependency Proceedings.

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

132 (i) (i) The court may order a minor to repair, replace, or otherwise make restitution for  
133 damage or loss caused by the minor's wrongful act, including costs of treatment as stated in  
134 Section [78A-6-321](#) and impose fines in limited amounts.

135 (ii) The court may also require a minor to reimburse an individual, entity, or  
136 governmental agency who offered and paid a reward to a person or persons for providing  
137 information resulting in a court adjudication that the minor is within the jurisdiction of the  
138 juvenile court due to the commission of a criminal offense.

139 (iii) If a minor is returned to this state under the Interstate Compact on Juveniles, the  
140 court may order the minor to make restitution for costs expended by any governmental entity  
141 for the return.

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

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

147 (ii) Consistent with the order of the court, the probation officer may permit a minor  
148 found to be within the jurisdiction of the court to participate in a program of work restitution or  
149 compensatory service in lieu of paying part or all of the fine imposed by the court.

150 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in  
151 addition to any other disposition authorized by this section:

152 (A) restrain the minor from driving for periods of time the court considers necessary;  
153 and

154 (B) take possession of the minor's driver license.

155 (ii) The court may enter any other disposition under Subsection (2)(l)(i). However, the  
156 suspension of driving privileges for an offense under Section 78A-6-606 is governed only by  
157 Section 78A-6-606.

158 (m) (i) When a minor is found within the jurisdiction of the juvenile court under  
159 Section 78A-6-103 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug  
160 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court  
161 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a  
162 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory  
163 completion of an approved substance abuse prevention or treatment program may be credited  
164 by the court as compensatory service hours.

165 (ii) When a minor is found within the jurisdiction of the juvenile court under Section  
166 78A-6-103 because of a violation of Section 32B-4-409 or Subsection 76-9-701(1), the court  
167 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order  
168 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory  
169 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an

170 approved substance abuse prevention or treatment program may be credited by the court as  
171 compensatory service hours.

172 (iii) When a minor is found within the jurisdiction of the juvenile court under Section  
173 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may  
174 order the minor to clean up graffiti created by the minor or any other person at a time and place  
175 within the jurisdiction of the court. Compensatory service required under this section may be  
176 performed in the presence and under the direct supervision of the minor's parent or legal  
177 guardian. The parent or legal guardian shall report completion of the order to the court. The  
178 minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal  
179 costs as determined under Section 76-6-107, unless waived by the court for good cause. The  
180 court may also require the minor to perform other alternative forms of restitution or repair to  
181 the damaged property pursuant to Subsection 77-18-1(8).

182 (A) For a first adjudication, the court may require the minor to clean up graffiti for not  
183 less than eight hours.

184 (B) For a second adjudication, the court may require the minor to clean up graffiti for  
185 not less than 16 hours.

186 (C) For a third adjudication, the court may require the minor to clean up graffiti for not  
187 less than 24 hours.

188 (n) (i) Subject to Subsection (2)(n)(iii), the court may order that a minor:

189 (A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

190 (B) receive other special care.

191 (ii) For purposes of receiving the examination, treatment, or care described in  
192 Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.

193 (iii) In determining whether to order the examination, treatment, or care described in  
194 Subsection (2)(n)(i), the court shall consider:

195 (A) the desires of the minor;

196 (B) if the minor is under the age of 18, the desires of the parents or guardian of the  
197 minor; and

198 (C) whether the potential benefits of the examination, treatment, or care outweigh the  
199 potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain  
200 function impairment, or emotional or physical harm resulting from the compulsory nature of  
201 the examination, treatment, or care.

202 (iv) The Division of Child and Family Services shall take reasonable measures to  
203 notify a parent or guardian of any non-emergency health treatment or care scheduled for a  
204 child, shall include the parent or guardian as fully as possible in making health care decisions  
205 for the child, and shall defer to the parent's or guardian's reasonable and informed decisions  
206 regarding the child's health care to the extent that the child's health and well being are not  
207 unreasonably compromised by the parent's or guardian's decision.

208 (v) The Division of Child and Family Services shall notify the parent or guardian of a  
209 child within five business days after a child in the custody of the Division of Child and Family  
210 Services receives emergency health care or treatment.

211 (vi) The Division of Child and Family Services shall use the least restrictive means to  
212 accomplish a compelling interest in the care and treatment of a child described in this  
213 Subsection (2)(n).

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

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

221 (p) (i) In support of a decree under Section [78A-6-103](#), the court may order reasonable  
222 conditions to be complied with by a minor's parents or guardian, a minor, a minor's custodian,  
223 or any other person who has been made a party to the proceedings. Conditions may include:

224 (A) parent-time by the parents or one parent;

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



226 (C) restrictions on the minor's occupation and other activities; and  
227 (D) requirements to be observed by the parents or custodian.  
228 (ii) A minor whose parents or guardians successfully complete a family or other  
229 counseling program may be credited by the court for detention, confinement, or probation time.  
230 (q) The court may order the child to be committed to the physical custody of a local  
231 mental health authority, in accordance with the procedures and requirements of Title 62A,  
232 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and  
233 Mental Health.  
234 (r) (i) The court may make an order committing a minor within the court's jurisdiction  
235 to the Utah State Developmental Center if the minor has an intellectual disability in accordance  
236 with the provisions of Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility  
237 for People with an Intellectual Disability.  
238 (ii) The court shall follow the procedure applicable in the district courts with respect to  
239 judicial commitments to the Utah State Developmental Center when ordering a commitment  
240 under Subsection (2)(r)(i).  
241 (s) The court may terminate all parental rights upon a finding of compliance with the  
242 provisions of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.  
243 (t) The court may make any other reasonable orders for the best interest of the minor or  
244 as required for the protection of the public, except that a child may not be committed to jail or  
245 prison.  
246 (u) The court may combine the dispositions listed in this section if they are compatible.  
247 (v) Before depriving any parent of custody, the court shall give due consideration to the  
248 rights of parents concerning their child. The court may transfer custody of a minor to another  
249 person, agency, or institution in accordance with the requirements and procedures of Title 78A,  
250 Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.  
251 (w) Except as provided in Subsection (2)(y)(i), an order under this section for  
252 probation or placement of a minor with an individual or an agency shall include a date certain  
253 for a review of the case by the court. A new date shall be set upon each review.

254 (x) In reviewing foster home placements, special attention shall be given to making  
255 adoptable children available for adoption without delay.

256 (y) (i) The juvenile court may enter an order of permanent custody and guardianship  
257 with an individual or relative of a child where the court has previously acquired jurisdiction as  
258 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an  
259 order for child support on behalf of the child against the natural or adoptive parents of the  
260 child.

261 (ii) Orders under Subsection (2)(y)(i):

262 (A) shall remain in effect until the child reaches majority;

263 (B) are not subject to review under Section 78A-6-118; and

264 (C) may be modified by petition or motion as provided in Section 78A-6-1103.

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

268 (3) In addition to the dispositions described in Subsection (2), when a minor comes  
269 within the court's jurisdiction, the minor may be given a choice by the court to serve in the  
270 National Guard in lieu of other sanctions, provided:

271 (a) the minor meets the current entrance qualifications for service in the National  
272 Guard as determined by a recruiter, whose determination is final;

273 (b) the minor is not under the jurisdiction of the court for any act that:

274 (i) would be a felony if committed by an adult;

275 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

276 (iii) was committed with a weapon; and

277 (c) the court retains jurisdiction over the minor under conditions set by the court and  
278 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

279 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction  
280 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by  
281 designated employees of the court or, if the minor is in the legal custody of the Division of

282 Juvenile Justice Services, then by designated employees of the division under Subsection  
283 [53-10-404\(5\)\(b\)](#).

284 (b) The responsible agency shall ensure that employees designated to collect the saliva  
285 DNA specimens receive appropriate training and that the specimens are obtained in accordance  
286 with accepted protocol.

287 (c) Reimbursements paid under Subsection [53-10-404\(2\)\(a\)](#) shall be placed in the DNA  
288 Specimen Restricted Account created in Section [53-10-407](#).

289 (d) Payment of the reimbursement is second in priority to payments the minor is  
290 ordered to make for restitution under this section and treatment under Section [78A-6-321](#).