

1 **CHILD WELFARE REVISIONS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Alvin B. Jackson**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends definitions related to child welfare services.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ amends the definition of "minor."

13 **Money Appropriated in this Bill:**

14 None

15 **Other Special Clauses:**

16 None

17 **Utah Code Sections Affected:**

18 AMENDS:

19 **62A-4a-101**, as last amended by Laws of Utah 2009, Chapter 75

20 **78A-6-105**, as last amended by Laws of Utah 2015, Chapter 274

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

23 Section 1. Section **62A-4a-101** is amended to read:

24 **62A-4a-101. Definitions.**

25 As used in this chapter:

26 (1) "Abuse" is as defined in Section **78A-6-105**.

27 (2) "Adoption services" means:



- 28 (a) placing children for adoption;
- 29 (b) subsidizing adoptions under Section 62A-4a-105;
- 30 (c) supervising adoption placements until the adoption is finalized by the court;
- 31 (d) conducting adoption studies;
- 32 (e) preparing adoption reports upon request of the court; and
- 33 (f) providing postadoptive placement services, upon request of a family, for the
- 34 purpose of stabilizing a possible disruptive placement.

35 (3) "Child" means, except as provided in Part 7, Interstate Compact on Placement of
36 Children, a person under 18 years of age.

37 [~~5~~] (4) "Chronic abuse" means repeated or patterned abuse.

38 [~~6~~] (5) "Chronic neglect" means repeated or patterned neglect.

39 [~~4~~] (6) "Consumer" means a person who receives services offered by the division in
40 accordance with this chapter.

41 (7) "Custody," with regard to the division, means the custody of a minor in the division
42 as of the date of disposition.

43 (8) "Day-care services" means care of a child for a portion of the day which is less than
44 24 hours:

- 45 (a) in the child's own home by a responsible person; or
- 46 (b) outside of the child's home in a:
 - 47 (i) day-care center;
 - 48 (ii) family group home; or
 - 49 (iii) family child care home.

50 (9) "Dependent child" or "dependency" means a child, or the condition of a child, who
51 is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

52 (10) "Director" means the director of the Division of Child and Family Services.

53 (11) "Division" means the Division of Child and Family Services.

54 (12) "Domestic violence services" means:

- 55 (a) temporary shelter, treatment, and related services to:
 - 56 (i) a person who is a victim of abuse, as defined in Section 78B-7-102; and
 - 57 (ii) the dependent children of a person described in Subsection (12)(a)(i); and
- 58 (b) treatment services for a person who is alleged to have committed, has been

59 convicted of, or has pled guilty to, an act of domestic violence as defined in Section 77-36-1.

60 (13) "Harm" is as defined in Section 78A-6-105.

61 (14) "Homemaking service" means the care of individuals in their domiciles, and help
62 given to individual caretaker relatives to achieve improved household and family management
63 through the services of a trained homemaker.

64 (15) "Incest" is as defined in Section 78A-6-105.

65 (16) "Minor" means~~[, except as provided in Part 7, Interstate Compact on Placement of~~
66 ~~Children:]~~ a person under 18 years of age.

67 ~~[(a) a child; or]~~

68 ~~[(b) a person:]~~

69 ~~[(i) who is at least 18 years of age and younger than 21 years of age; and]~~

70 ~~[(ii) for whom the division has been specifically ordered by the juvenile court to~~
71 ~~provide services.]~~

72 (17) "Molestation" is as defined in Section 78A-6-105.

73 (18) "Natural parent" means a minor's biological or adoptive parent, and includes a
74 minor's noncustodial parent.

75 (19) "Neglect" is as defined in Section 78A-6-105.

76 (20) "Protective custody," with regard to the division, means the shelter of a child by
77 the division from the time the child is removed from the child's home until the earlier of:

78 (a) the shelter hearing; or

79 (b) the child's return home.

80 (21) "Protective services" means expedited services that are provided:

81 (a) in response to evidence of neglect, abuse, or dependency of a child;

82 (b) to a cohabitant who is neglecting or abusing a child, in order to:

83 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the
84 causes of neglect or abuse; and

85 (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and

86 (c) in cases where the child's welfare is endangered:

87 (i) to bring the situation to the attention of the appropriate juvenile court and law
88 enforcement agency;

89 (ii) to cause a protective order to be issued for the protection of the child, when

90 appropriate; and

91 (iii) to protect the child from the circumstances that endanger the child's welfare

92 including, when appropriate:

93 (A) removal from the child's home;

94 (B) placement in substitute care; and

95 (C) petitioning the court for termination of parental rights.

96 (22) "Severe abuse" is as defined in Section 78A-6-105.

97 (23) "Severe neglect" is as defined in Section 78A-6-105.

98 (24) "Sexual abuse" is as defined in Section 78A-6-105.

99 (25) "Sexual exploitation" is as defined in Section 78A-6-105.

100 (26) "Shelter care" means the temporary care of a minor in a nonsecure facility.

101 (27) "State" means:

102 (a) a state of the United States;

103 (b) the District of Columbia;

104 (c) the Commonwealth of Puerto Rico;

105 (d) the Virgin Islands;

106 (e) Guam;

107 (f) the Commonwealth of the Northern Mariana Islands; or

108 (g) a territory or possession administered by the United States.

109 (28) "State plan" means the written description of the programs for children, youth, and
110 family services administered by the division in accordance with federal law.

111 (29) "Status offense" means a violation of the law that would not be a violation but for
112 the age of the offender.

113 (30) "Substance abuse" is as defined in Section 78A-6-105.

114 (31) "Substantiated" or "substantiation" means a judicial finding based on a
115 preponderance of the evidence that abuse or neglect occurred. Each allegation made or
116 identified in a given case shall be considered separately in determining whether there should be
117 a finding of substantiated.

118 (32) "Substitute care" means:

119 (a) the placement of a minor in a family home, group care facility, or other placement
120 outside the minor's own home, either at the request of a parent or other responsible relative, or

121 upon court order, when it is determined that continuation of care in the minor's own home
122 would be contrary to the minor's welfare;

123 (b) services provided for a minor awaiting placement; and

124 (c) the licensing and supervision of a substitute care facility.

125 (33) "Supported" means a finding by the division based on the evidence available at the
126 completion of an investigation that there is a reasonable basis to conclude that abuse, neglect,
127 or dependency occurred. Each allegation made or identified during the course of the
128 investigation shall be considered separately in determining whether there should be a finding of
129 supported.

130 (34) "Temporary custody," with regard to the division, means the custody of a child in
131 the division from the date of the shelter hearing until disposition.

132 (35) "Transportation services" means travel assistance given to an individual with
133 escort service, if necessary, to and from community facilities and resources as part of a service
134 plan.

135 (36) "Unsubstantiated" means a judicial finding that there is insufficient evidence to
136 conclude that abuse or neglect occurred.

137 (37) "Unsupported" means a finding at the completion of an investigation that there is
138 insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a
139 finding of unsupported means also that the division worker did not conclude that the allegation
140 was without merit.

141 (38) "Without merit" means a finding at the completion of an investigation by the
142 division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or
143 that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

144 Section 2. Section **78A-6-105** is amended to read:

145 **78A-6-105. Definitions.**

146 As used in this chapter:

147 (1) (a) "Abuse" means:

148 (i) nonaccidental harm of a child;

149 (ii) threatened harm of a child;

150 (iii) sexual exploitation; or

151 (iv) sexual abuse.

- 152 (v) that a child's natural parent:
- 153 (A) intentionally, knowingly, or recklessly causes the death of another parent of the
- 154 child;
- 155 (B) is identified by a law enforcement agency as the primary suspect in an investigation
- 156 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
- 157 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
- 158 recklessly causing the death of another parent of the child.
- 159 (b) "Abuse" does not include:
- 160 (i) reasonable discipline or management of a child, including withholding privileges;
- 161 (ii) conduct described in Section 76-2-401; or
- 162 (iii) the use of reasonable and necessary physical restraint or force on a child:
- 163 (A) in self-defense;
- 164 (B) in defense of others;
- 165 (C) to protect the child; or
- 166 (D) to remove a weapon in the possession of a child for any of the reasons described in
- 167 Subsections (1)(b)(iii)(A) through (C).
- 168 (2) "Abused child" means a child who has been subjected to abuse.
- 169 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
- 170 alleged in the petition have been proved. A finding of not competent to proceed pursuant to
- 171 Section 78A-6-1302 is not an adjudication.
- 172 (4) "Adult" means a person 18 years of age or over, except that a person 18 years or
- 173 over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall
- 174 be referred to as a minor.
- 175 (5) "Board" means the Board of Juvenile Court Judges.
- 176 (6) "Child" means a person under 18 years of age.
- 177 (7) "Child placement agency" means:
- 178 (a) a private agency licensed to receive a child for placement or adoption under this
- 179 code; or
- 180 (b) a private agency that receives a child for placement or adoption in another state,
- 181 which agency is licensed or approved where such license or approval is required by law.
- 182 (8) "Clandestine laboratory operation" means the same as that term is defined in

183 Section 58-37d-3.

184 (9) "Commit" means, unless specified otherwise:

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

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

187 (10) "Court" means the juvenile court.

188 (11) "Dependent child" includes a child who is homeless or without proper care
189 through no fault of the child's parent, guardian, or custodian.

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

192 (13) "Detention" means home detention and secure detention as defined in Section
193 62A-7-101 for the temporary care of a minor who requires secure custody in a physically
194 restricting facility:

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

196 (b) while under the continuing jurisdiction of the court.

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

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

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

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

204 (a) marriage;

205 (b) enlistment in the armed forces;

206 (c) major medical, surgical, or psychiatric treatment; or

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

208 (18) "Habitual truant" means the same as that term is defined in Section 53A-11-101.

209 (19) "Harm" means:

210 (a) physical or developmental injury or damage;

211 (b) emotional damage that results in a serious impairment in the child's growth,
212 development, behavior, or psychological functioning;

213 (c) sexual abuse; or

214 (d) sexual exploitation.

215 (20) (a) "Incest" means engaging in sexual intercourse with a person whom the
216 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
217 nephew, niece, or first cousin.

218 (b) The relationships described in Subsection (20)(a) include:

219 (i) blood relationships of the whole or half blood, without regard to legitimacy;

220 (ii) relationships of parent and child by adoption; and

221 (iii) relationships of stepparent and stepchild while the marriage creating the

222 relationship of a stepparent and stepchild exists.

223 (21) "Intellectual disability" means:

224 (a) significantly subaverage intellectual functioning, an IQ of approximately 70 or
225 below on an individually administered IQ test, for infants, a clinical judgment of significantly
226 subaverage intellectual functioning;

227 (b) concurrent deficits or impairments in present adaptive functioning, the person's
228 effectiveness in meeting the standards expected for his or her age by the person's cultural
229 group, in at least two of the following areas: communication, self-care, home living,
230 social/interpersonal skills, use of community resources, self-direction, functional academic
231 skills, work, leisure, health, and safety; and

232 (c) the onset is before the person reaches the age of 18 years.

233 (22) "Legal custody" means a relationship embodying the following rights and duties:

234 (a) the right to physical custody of the minor;

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

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

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

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

240 (23) "Mental disorder" means a serious emotional and mental disturbance that severely
241 limits a minor's development and welfare over a significant period of time.

242 (24) "Minor" means[?] a person under 18 years of age.

243 [~~(a) a child; or~~]

244 [~~(b) a person who is:~~]

245 ~~[(i) at least 18 years of age and younger than 21 years of age; and]~~

246 ~~[(ii) under the jurisdiction of the juvenile court.]~~

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

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

250 (b) takes indecent liberties with a child; or

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

252 (26) "Natural parent" means a minor's biological or adoptive parent, and includes the
253 minor's noncustodial parent.

254 (27) (a) "Neglect" means action or inaction causing:

255 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
256 Relinquishment of a Newborn Child;

257 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,
258 guardian, or custodian;

259 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
260 subsistence, education, or medical care, or any other care necessary for the child's health,
261 safety, morals, or well-being; or

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

264 (b) The aspect of neglect relating to education, described in Subsection (27)(a)(iii),
265 means that, after receiving a notice of compulsory education violation under Section
266 [53A-11-101.5](#), or notice that a parent or guardian has failed to cooperate with school
267 authorities in a reasonable manner as required under Subsection [53A-11-101.7\(5\)\(a\)](#), the parent
268 or guardian fails to make a good faith effort to ensure that the child receives an appropriate
269 education.

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

272 (d) (i) Notwithstanding Subsection (27)(a), a health care decision made for a child by
273 the child's parent or guardian does not constitute neglect unless the state or other party to the
274 proceeding shows, by clear and convincing evidence, that the health care decision is not
275 reasonable and informed.

276 (ii) Nothing in Subsection (27)(d)(i) may prohibit a parent or guardian from exercising
277 the right to obtain a second health care opinion and from pursuing care and treatment pursuant
278 to the second health care opinion, as described in Section [78A-6-301.5](#).

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

280 (29) "Nonjudicial adjustment" means closure of the case by the assigned probation
281 officer without judicial determination upon the consent in writing of:

282 (a) the assigned probation officer; and

283 (b) (i) the minor; or

284 (ii) the minor and the minor's parent, legal guardian, or custodian.

285 (30) "Not competent to proceed" means that a minor, due to a mental disorder,
286 intellectual disability, or related condition as defined, lacks the ability to:

287 (a) understand the nature of the proceedings against them or of the potential disposition
288 for the offense charged; or

289 (b) consult with counsel and participate in the proceedings against them with a
290 reasonable degree of rational understanding.

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

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

297 (33) "Protective supervision" means a legal status created by court order following an
298 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
299 remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or
300 dependency is provided by the probation department or other agency designated by the court.

301 (34) "Related condition" means a condition closely related to intellectual disability in
302 accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah
303 Administrative Code.

304 (35) (a) "Residual parental rights and duties" means those rights and duties remaining
305 with the parent after legal custody or guardianship, or both, have been vested in another person
306 or agency, including:

- 307 (i) the responsibility for support;
- 308 (ii) the right to consent to adoption;
- 309 (iii) the right to determine the child's religious affiliation; and
- 310 (iv) the right to reasonable parent-time unless restricted by the court.
- 311 (b) If no guardian has been appointed, "residual parental rights and duties" also include
- 312 the right to consent to:
 - 313 (i) marriage;
 - 314 (ii) enlistment; and
 - 315 (iii) major medical, surgical, or psychiatric treatment.
- 316 (36) "Secure facility" means any facility operated by or under contract with the
- 317 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
- 318 youth offenders committed to the division for custody and rehabilitation.
- 319 (37) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
- 320 child.
- 321 (38) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
- 322 child.
- 323 (39) "Sexual abuse" means:
 - 324 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
 - 325 directed towards a child; or
 - 326 (b) engaging in any conduct with a child that would constitute an offense under any of
 - 327 the following, regardless of whether the person who engages in the conduct is actually charged
 - 328 with, or convicted of, the offense:
 - 329 (i) Title 76, Chapter 5, Part 4, Sexual Offenses;
 - 330 (ii) child bigamy, Section [76-7-101.5](#);
 - 331 (iii) incest, Section [76-7-102](#);
 - 332 (iv) lewdness, Section [76-9-702](#);
 - 333 (v) sexual battery, Section [76-9-702.1](#);
 - 334 (vi) lewdness involving a child, Section [76-9-702.5](#); or
 - 335 (vii) voyeurism, Section [76-9-702.7](#).
 - 336 (40) "Sexual exploitation" means knowingly:
 - 337 (a) employing, using, persuading, inducing, enticing, or coercing any child to:

- 338 (i) pose in the nude for the purpose of sexual arousal of any person; or
- 339 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
- 340 filming, recording, or displaying in any way the sexual or simulated sexual conduct;
- 341 (b) displaying, distributing, possessing for the purpose of distribution, or selling
- 342 material depicting a child:
 - 343 (i) in the nude, for the purpose of sexual arousal of any person; or
 - 344 (ii) engaging in sexual or simulated sexual conduct; or
 - 345 (c) engaging in any conduct that would constitute an offense under Section [76-5b-201](#),
 - 346 sexual exploitation of a minor, regardless of whether the person who engages in the conduct is
 - 347 actually charged with, or convicted of, the offense.
- 348 (41) "Shelter" means the temporary care of a child in a physically unrestricted facility
- 349 pending court disposition or transfer to another jurisdiction.
- 350 (42) "State supervision" means a disposition that provides a more intensive level of
- 351 intervention than standard probation but is less intensive or restrictive than a community
- 352 placement with the Division of Juvenile Justice Services.
- 353 (43) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or
- 354 substances.
- 355 (44) "Substantiated" means the same as that term is defined in Section [62A-4a-101](#).
- 356 (45) "Supported" means the same as that term is defined in Section [62A-4a-101](#).
- 357 (46) "Termination of parental rights" means the permanent elimination of all parental
- 358 rights and duties, including residual parental rights and duties, by court order.
- 359 (47) "Therapist" means:
 - 360 (a) a person employed by a state division or agency for the purpose of conducting
 - 361 psychological treatment and counseling of a minor in its custody; or
 - 362 (b) any other person licensed or approved by the state for the purpose of conducting
 - 363 psychological treatment and counseling.
- 364 (48) "Unsubstantiated" means the same as that term is defined in Section [62A-4a-101](#).
- 365 (49) "Without merit" means the same as that term is defined in Section [62A-4a-101](#).