

## SB0079S01 compared with SB0079

~~{deleted text}~~ shows text that was in SB0079 but was deleted in SB0079S01.

inserted text shows text that was not in SB0079 but was inserted into SB0079S01.

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Senator Alvin B. Jackson proposes the following substitute bill:

### CHILD WELFARE REVISIONS

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Alvin B. Jackson**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill amends ~~{definitions related to child welfare services}~~ a provision in the Juvenile Court Act.

##### Highlighted Provisions:

This bill:

- ▶ amends the ~~{definition of "minor."}~~ 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 exempt from the custody of the Division of Child and Family Services on grounds of abuse, neglect, or dependency.

##### Money Appropriated in this Bill:

None

##### Other Special Clauses:

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None

### Utah Code Sections Affected:

AMENDS:

~~{62A-4a-101}~~78A-6-117, as last amended by Laws of Utah ~~{2009}~~2015, Chapter ~~{75~~  
~~78A-6-105~~, as last amended by Laws of Utah 2015, Chapter 274 }274

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

Section 1. Section ~~{62A-4a-101}~~78A-6-117 is amended to read:

~~{62A-4a-101. Definitions. As used in this chapter: (1) "Abuse" is as defined~~  
~~in}~~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-6-105.~~

~~— (2) "Adoption services" means: (a) placing children for adoption; (b)~~  
~~subsidizing adoptions under Section 62A-4a-105; (c) supervising adoption placements until~~  
~~the adoption is finalized by the court; (d) conducting adoption studies; (e)~~  
~~preparing adoption reports upon request of the court; and (f) providing postadoptive~~  
~~placement services, upon request of a family, for the purpose of stabilizing a possible~~  
~~disruptive placement.~~

~~— (3) "Child" means, except}~~78A-6-103, the court shall so adjudicate. The court shall  
make a finding of the facts upon which it bases its jurisdiction over the minor. However, in  
cases within the provisions of Subsection 78A-6-103(1), findings of fact are not necessary.

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

(i) the specific offenses for which the minor was adjudicated; and

(ii) if available, if the victim:

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

(B) attends the same school as the minor.

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

(a) (i) The court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including compensatory service as provided in {Part 7, Interstate Compact on Placement of Children, a person under 18 years of age:

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

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

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

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

~~—— (8) "Day-care services" means care of a child for a portion of the day which is less than 24 hours: —— (a) in the child's own home by a responsible person; or —— (b) outside of the child's home in a: —— (i) day-care center; —— (ii) family group home; or —— (iii) family child care home.~~

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

~~—— (10) "Director" means the director of; Subsection (2)(m)(iii).~~

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

(A) the minor's parent or guardian;

(B) the Division of Juvenile Justice Services; or

(C) the Division of Child and Family Services.

(~~{11}~~) "Division" means} iii) If the court orders probation or state supervision, the court shall direct that notice of its order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, that the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

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

(A) civilly liable except when the disclosure constitutes fraud or willful misconduct as

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provided in Section 63G-7-202; and

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

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

(c) (i) The court may:

(A) vest legal custody of the minor in the Division of Child and Family Services†

~~— (12) "Domestic violence services" means: (a) temporary shelter, treatment, and related services to: (i) a person who is a victim of abuse, as defined in Section 78B-7-102; and (ii) the dependent children of a person described in Subsection (12)(a)(i); and (b) treatment services for a person who is alleged to have committed, has been convicted of, or has pled guilty to, an act of domestic violence as defined in Section 77-36-1.~~

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

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

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

~~— (16) "Minor" means, except as provided in Part 7, Interstate Compact on Placement of Children:] a person under 18 years of age. [(a) a child; or] [(b) a person:] [(i) who is at least 18 years of age and younger than 21 years of age; and] [(ii) for whom the division has been specifically ordered by the juvenile court to provide services.] (17)~~

~~"Molestation" is as defined in Section 78A-6-105.~~

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

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

~~— (20) "Protective custody," with regard to the division, means the shelter of a child by the division from the time the child is removed}; Division of Juvenile Justice Services, or the~~

Division of Substance Abuse and Mental Health; and

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

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

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

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

(C) Before committing a child to the custody of the Division of Child and Family Services, the court shall make a finding as to what reasonable efforts have been attempted to prevent the child's removal from the child's home ~~{ until the earlier of: — (a) the shelter hearing; or — (b) the child's return home }.~~

~~{(21) "Protective services" means expedited services that are provided: — (a) in response to evidence of neglect, abuse, or dependency of a child; — (b) to a cohabitant who is neglecting or abusing a child, in order to: — (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse; and — (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and — (c) in cases where the child's welfare is endangered: — (i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency; — (ii) to cause a protective order to be issued for the protection of the child, when appropriate; and — (iii) to protect the child from the circumstances that endanger the child's welfare including, when appropriate: — (A) removal from the child's home; — (B) placement in substitute care; and — (C) petitioning the court for termination of parental rights.~~

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

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

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

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

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

~~— (27) "State" means: — (a) a state of the United States; — (b) the District of~~

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~~Columbia; (c) the Commonwealth of Puerto Rico; (d) the Virgin Islands; (e) Guam; (f) the Commonwealth of the Northern Mariana Islands; or (g) a territory or possession administered by the United States.~~

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

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

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

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

~~(32) "Substitute care" means: (a) the placement of a minor in a family home, group care facility, or other placement outside the minor's own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the minor's own home would be contrary to the minor's welfare; (b) services provided for a minor awaiting placement; and (c) the licensing and supervision of a substitute care facility.~~

~~(33) "Supported" means a finding by the division based on the evidence available at the completion of an investigation that there is a reasonable basis to conclude that~~ (iv) (A) 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 exempt from the custody of the Division of Child and Family Services on grounds of abuse, neglect, or dependency.

(B) The minor's petition shall contain a statement from the minor's parent or guardian, agreeing that the minor should be exempt from the custody of the Division of Child and Family Services.

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

(D) The court shall review the petition within 14 days and shall exempt the minor from the custody of the Division of Child Family Services if the minor and the minor's parent or guardian have met the requirements described in this Subsection (1)(c)(iv).

(d) (i) The court may commit a minor to the Division of Juvenile Justice Services for

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### secure confinement.

(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency  ~~occurred. Each allegation made or identified during the course of the investigation shall be considered separately in determining whether there should be a finding of supported.~~

~~(34) "Temporary" under Subsection 78A-6-103(1)(c) may not be committed to the Division of Juvenile Justice Services.~~

(e) The court may commit a minor, subject to the court retaining continuing jurisdiction over the minor, to the temporary custody  ~~{, " with regard to the division, means the custody of a child in the division from the date of the shelter hearing until disposition.~~

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

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

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

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

~~Section 2. Section 78A-6-105 is amended to read: 78A-6-105. Definitions. As used in this chapter: (1) (a) "Abuse" means: (i) nonaccidental harm of a child; (ii) threatened harm of a child; (iii) sexual exploitation; or (iv) sexual abuse.~~

~~(v) that a child's natural parent: (A) intentionally, knowingly, or recklessly causes the death of another parent of the child; (B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or (C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.~~

~~(b) "Abuse" does not include: (i) reasonable discipline or management of a~~

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~~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~~ of the Division of Juvenile Justice Services for observation and  
evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at  
the request of the director of the Division of Juvenile Justice Services.

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

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

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

(B) contempt of court under Section 78A-6-1101.

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

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

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

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



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

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

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

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

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

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

(B) take 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.~~

~~———— (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved. A finding of not competent to proceed pursuant to Section 78A-6-1302 is not an adjudication.~~

~~———— (4) "Adult" means a person 18 years of age or over, except that a person 18 years or over under the continuing}~~ the minor's driver license.

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

(m) (i) When a minor is found within the jurisdiction of the juvenile court ~~{pursuant to}~~ under Section ~~{78A-6-120 shall be referred to as a minor.~~

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

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

~~———— (7) "Child placement agency" means: ——— (a) a private agency licensed to receive a~~

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~~child for placement or adoption under this code; or (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.~~

~~—— (8) "Clandestine laboratory operation" means the same as that term is defined in Section 58-37d-3.~~

~~—— (9) "Commit" means, unless specified otherwise: (a) with respect to a child, to transfer legal custody; and (b) with respect to a minor who is at least 18 years of age, to transfer custody.~~

~~—— (10) "Court" means} 78A-6-103 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.~~

(ii) When a minor is found within the jurisdiction of the juvenile court{.

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

~~—— (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.~~

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

~~—— (b) while under the continuing} under Section 78A-6-103 because of a violation of Section 32B-4-409 or Subsection 76-9-701(1), the court may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.~~

(iii) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may order the minor to clean up graffiti created by the minor or any other person at a time and place

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within the jurisdiction of the court.~~†~~

~~———— (14) "Division" means the~~ Compensatory service required under this section may be performed in the presence and under the direct supervision of the minor's parent or legal guardian. The parent or legal guardian shall report completion of the order to the court. The minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal costs as determined under Section 76-6-107, unless waived by the court for good cause. The court may also require the minor to perform other alternative forms of restitution or repair to the damaged property pursuant to Subsection 77-18-1(8).

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

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

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

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

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

(B) receive other special care.

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

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

(A) the desires of the minor;

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

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

(iv) The Division of Child and Family Services~~†~~

~~———— (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~~

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~~petition may be filed:~~

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

~~—— (17) "Guardianship of the person" includes the authority to consent to: (a) marriage; (b) enlistment in the armed forces; (c) major medical, surgical, or psychiatric treatment; or (d) legal custody, if legal custody is not vested in another person, agency, or institution.~~

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

~~—— (19) "Harm" means: (a) physical or developmental injury or damage; (b) emotional damage that results in a serious impairment in the child's growth, development, behavior, or psychological functioning; (c) sexual abuse; or (d) 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.~~

~~—— (21) "Intellectual disability" means: (a) significantly subaverage intellectual functioning, an IQ of approximately 70 or below on an individually administered IQ test, for infants, a clinical judgment of significantly subaverage intellectual functioning; (b) concurrent deficits or impairments in present adaptive functioning, the person's effectiveness in meeting the standards expected for his or her age by the person's cultural group, in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety; and (c) the onset is before the person reaches the age of 18 years.~~

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

~~—— (a) the right to physical custody of the minor; (b) the right and duty to protect, train, and discipline the minor; (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care; (d) the right to determine where and with whom the minor shall live; and (e) the right, in an emergency, to authorize surgery or~~

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~~other extraordinary care.~~

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

~~—— (24) "Minor" means [.] a person under 18 years of age. —— [(a) a child; or] —— [(b) a person who is:] —— [(i) at least 18 years of age and younger than 21 years of age; and] —— [(ii) under the jurisdiction of the juvenile court.] —— (25) "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.~~

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

~~—— (27) (a) "Neglect" means action or inaction causing: —— (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 to be 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 (27)(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),} shall take reasonable measures to notify a parent or guardian of any non-emergency health treatment or care scheduled for a child, shall include the parent or guardian as fully as possible in making health care decisions for the child, and shall defer to the parent's or guardian's reasonable and informed decisions regarding the child's health care to the extent that the child's health and well being are not unreasonably compromised by the parent's or guardian's decision.~~

~~—— (v) The Division of Child and Family Services shall notify 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.~~

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~~(d) (i) Notwithstanding Subsection (27)(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~~ of a child within five business days after a child in the custody of the Division of Child and Family Services receives emergency health care or treatment.

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

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

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

(p) (i) In support of a decree under Section 78A-6-103, the court may order reasonable conditions to be complied with by a minor's parents or guardian, a minor, a minor's custodian, or any other person who has been made a party to the ~~{proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.~~

~~(ii) Nothing~~ proceedings. Conditions may include:

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

(B) restrictions on the minor's associates;

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

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

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

(q) The court may order the child to be committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(r) (i) The court may make an order committing a minor within the court's jurisdiction to the Utah State Developmental Center if the minor has an intellectual disability in accordance

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with the provisions of Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability.

(ii) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center when ordering a commitment under Subsection (2)(r)(i).

(s) The court may terminate all parental rights upon a finding of compliance with the provisions of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

(t) The court may make any other reasonable orders for the best interest of the minor or as required for the protection of the public, except that a child may not be committed to jail or prison.

(u) The court may combine the dispositions listed in this section if they are compatible.

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their child. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

(w) Except as provided in Subsection (27)(d)(i) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion and from pursuing care and treatment pursuant to the second health care opinion, as described in Section 78A-6-301.5.

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

~~—— (29) "Nonjudicial adjustment" means closure}~~2)(y)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review of the case by the {assigned probation officer without judicial determination upon the consent in writing of: (a) the assigned probation officer; and (b) (i) the minor; or (ii) the minor and the minor's parent, legal}court. A new date shall be set upon each review.

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

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

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child.

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

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

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

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

(iii) Orders permanently terminating the rights of a parent, guardian, or custodian

~~—— (30) "Not competent to proceed" means that a minor, due to a mental disorder, intellectual disability, or related condition as defined, lacks the ability to: (a) understand the nature of the proceedings against them or of the potential disposition for the offense charged; or (b) consult with counsel and participate in the proceedings against them with a reasonable degree of rational understanding.~~

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

~~—— (32) "Probation" means a legal status created by court order following an adjudication on the ground of~~ and permanent orders of custody and guardianship do not expire with a termination of jurisdiction of the juvenile court.

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

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

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

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

(ii) is a violation of ~~{law or under Section 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:~~

~~—— (33) "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.~~

~~—— (34) "Related condition" means a condition closely related to intellectual disability in~~



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accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah Administrative Code:

~~\_\_\_\_\_ (35) (a) "Residual parental rights and duties" means those rights and duties remaining with the parent after~~ Title 58, Chapter 37, Utah Controlled Substances Act; or

(iii) was committed with a weapon; and

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

(4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by designated employees of the court or, if the minor is in the legal custody ~~{or guardianship, or both, have been vested in another person or agency, including: \_\_\_\_\_ (i) the responsibility for support; \_\_\_\_\_ (ii) the right to consent to adoption; (iii) the right to determine the child's religious affiliation; and \_\_\_\_\_ (iv) the right to reasonable parent-time unless restricted by the court.~~

~~\_\_\_\_\_ (b) If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to: \_\_\_\_\_ (i) marriage; (ii) enlistment; and \_\_\_\_\_ (iii) major medical, surgical, or psychiatric treatment.~~

~~\_\_\_\_\_ (36) "Secure facility" means any facility operated by or under contract with~~ of the Division of Juvenile Justice Services, ~~{that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.~~

~~\_\_\_\_\_ (37) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.~~

~~\_\_\_\_\_ (38) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.~~

~~\_\_\_\_\_ (39) "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, Section 76-9-702; \_\_\_\_\_ (v) sexual battery, Section 76-9-702.1; \_\_\_\_\_ (vi) lewdness involving a child, Section 76-9-702.5; or \_\_\_\_\_ (vii)~~

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~~voyeurism, Section 76-9-702.7.~~

~~(40) "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;~~ then by designated employees of the division under Subsection 53-10-404(5)(b).

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

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

(d) Payment of the reimbursement is second in priority to payments the minor is ordered to make for restitution under this section and treatment under Section ~~{76-5b-201,~~ sexual exploitation of a minor, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense.

~~(41) "Shelter" means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.~~

~~(42) "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.~~

~~(43) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.~~

~~(44) "Substantiated" means the same as that term is defined in Section 62A-4a-101.~~

~~(45) "Supported" means the same as that term is defined in Section 62A-4a-101.~~

~~(46) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.~~

~~(47) "Therapist" means: (a) a person employed by a state division or agency for~~

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~~the purpose of conducting psychological treatment and counseling of a minor in its custody, or~~

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

~~— (48) "Unsubstantiated" means the same as that term is defined in Section 62A-4a-101.~~

~~— (49) "Without merit" means the same as that term is defined in Section 62A-4a-101.~~

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~~Legislative Review Note Office of Legislative Research and General Counsel; [78A-6-321](#).~~