

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: LaVar Christensen

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 on grounds of abuse, neglect, or dependency.

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

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

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



26 **78A-6-117. Adjudication of jurisdiction of juvenile court -- Disposition of cases --**
27 **Enumeration of possible court orders -- Considerations of court -- Obtaining DNA**
28 **sample.**

29 (1) (a) When a minor is found to come within the provisions of Section 78A-6-103, the
30 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
31 jurisdiction over the minor. However, in cases within the provisions of Subsection
32 78A-6-103(1), findings of fact are not necessary.

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

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

39 (ii) if available, if the victim:

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

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

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

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

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

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

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

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

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

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

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

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

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

64 (c) (i) The court may:

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

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

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

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

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

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

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

87 (B) If the minor's parent's rights have not been terminated in accordance with Part 5,

88 Termination of Parental Rights Act, the minor's petition shall contain a statement from the
89 minor's parent or guardian agreeing that the minor should be exempt from the custody of the
90 Division of Child and Family Services.

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

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

93 (E) The court shall exempt the minor from the custody of the Division of Child and
94 Family Services if the minor and the minor's parent or guardian have met the requirements
95 described in Subsections (2)(c)(iv)(B) and (C) and if the court finds, based on input from the
96 Division of Child and Family Services, the minor's guardian ad litem, or the Office of the
97 Attorney General, that the minor has not abused a controlled substance in the preceding six
98 months and that the minor does not have a mental disorder.

99 (F) A minor removed from custody under Subsection (2)(c)(iv)(E) may, within 30 days
100 of the date of removal, petition the court to re-enter custody of the Division of Child Family
101 Services.

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

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

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

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

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

119 ordered by the court.

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

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

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

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

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

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

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

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

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

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

149 (ii) Consistent with the order of the court, the probation officer may permit a minor

150 found to be within the jurisdiction of the court to participate in a program of work restitution or
151 compensatory service in lieu of paying part or all of the fine imposed by the court.

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

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

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

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

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

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

174 (iii) When a minor is found within the jurisdiction of the juvenile court under Section
175 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may
176 order the minor to clean up graffiti created by the minor or any other person at a time and place
177 within the jurisdiction of the court. Compensatory service required under this section may be
178 performed in the presence and under the direct supervision of the minor's parent or legal
179 guardian. The parent or legal guardian shall report completion of the order to the court. The
180 minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal

181 costs as determined under Section 76-6-107, unless waived by the court for good cause. The
182 court may also require the minor to perform other alternative forms of restitution or repair to
183 the damaged property pursuant to Subsection 77-18-1(8).

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

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

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

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

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

192 (B) receive other special care.

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

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

197 (A) the desires of the minor;

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

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

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

210 (v) The Division of Child and Family Services shall notify the parent or guardian of a
211 child within five business days after a child in the custody of the Division of Child and Family

212 Services receives emergency health care or treatment.

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

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

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

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

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

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

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

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

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

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

236 (r) (i) The court may make an order committing a minor within the court's jurisdiction
237 to the Utah State Developmental Center if the minor has an intellectual disability in accordance
238 with the provisions of Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility
239 for People with an Intellectual Disability.

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

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

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

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

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

253 (w) Except as provided in Subsection (2)(y)(i), an order under this section for
254 probation or placement of a minor with an individual or an agency shall include a date certain
255 for a review of the case by the court. A new date shall be set upon each review.

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

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

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

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

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

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

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

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

273 (a) the minor meets the current entrance qualifications for service in the National

274 Guard as determined by a recruiter, whose determination is final;

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

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

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

278 (iii) was committed with a weapon; and

279 (c) the court retains jurisdiction over the minor under conditions set by the court and

280 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

281 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction

282 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by

283 designated employees of the court or, if the minor is in the legal custody of the Division of

284 Juvenile Justice Services, then by designated employees of the division under Subsection

285 53-10-404(5)(b).

286 (b) The responsible agency shall ensure that employees designated to collect the saliva

287 DNA specimens receive appropriate training and that the specimens are obtained in accordance

288 with accepted protocol.

289 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA

290 Specimen Restricted Account created in Section 53-10-407.

291 (d) Payment of the reimbursement is second in priority to payments the minor is

292 ordered to make for restitution under this section and treatment under Section 78A-6-321.