

CHILD PROTECTION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Elizabeth Weight

Senate Sponsor: _____

LONG TITLE

General Description:

This bill deals with abandoned children.

Highlighted Provisions:

This bill:

- ▶ defines the term "abandoned child";
- ▶ requires a temporary homeless youth shelter to notify law enforcement within 24 hours of becoming aware that a minor is an abandoned child;

▶ states that it is not reasonable discipline or management of a child to remove the child from the child's home for an extended period of time without making arrangements for the child's subsistence, education, or medical care, or any other care necessary for the child's health, safety, or well-being;

▶ states that a parent's disapproval of a child's expressed sexual orientation or gender identity, or the parent's perception of the child's sexual orientation or gender identity, is not a defense to criminal nonsupport; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **26-10-9**, as enacted by Laws of Utah 2011, Chapter 147

30 **62A-4a-501**, as last amended by Laws of Utah 2014, Chapter 312

31 **76-5-109**, as last amended by Laws of Utah 2015, Chapter 258

32 **76-7-201**, as last amended by Laws of Utah 1999, Chapter 89

33

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

35 Section 1. Section **26-10-9** is amended to read:

36 **26-10-9. Immunizations -- Consent of minor to treatment.**

37 (1) This section:

38 (a) is not intended to interfere with the integrity of the family or to minimize the rights
39 of parents or children; and

40 (b) applies to a minor, who at the time care is sought is:

41 (i) married or has been married;

42 (ii) emancipated as provided for in Section **78A-6-805**;

43 (iii) a parent with custody of a minor child; or

44 (iv) pregnant.

45 (2) (a) A minor described in Subsections (1)(b)(i) and (ii) may consent to:

46 (i) immunizations against epidemic infections and communicable diseases as defined
47 in Section **26-6-2**; and

48 (ii) examinations and immunizations required to attend school as provided in Title
49 53A, Chapter 11, Students in Public Schools.

50 (b) A minor described in Subsections (1)(b)(iii) and (iv) may consent to the
51 immunizations described in Subsections (2)(a)(i) and (ii), and the vaccine for human
52 papillomavirus only if:

53 (i) the minor represents to the health care provider that the minor is [~~an abandoned~~
54 minor] experiencing child abandonment, as defined in Section **76-5-109**; and

55 (ii) the health care provider makes a notation in the minor's chart that the minor
56 represented to the health care provider that the minor is [~~an abandoned minor~~] experiencing
57 child abandonment under Section **76-5-109**.

58 (c) Nothing in Subsection (2)(a) or (b) requires a health care provider to immunize a

59 minor.

60 (3) The consent of the minor pursuant to this section:

61 (a) is not subject to later disaffirmance because of the minority of the person receiving
62 the medical services;

63 (b) is not voidable because of minority at the time the medical services were provided;

64 (c) has the same legal effect upon the minor and the same legal obligations with regard
65 to the giving of consent as consent given by a person of full age and capacity; and

66 (d) does not require the consent of any other person or persons to authorize the medical
67 services described in Subsections (2)(a) and (b).

68 (4) A health care provider who provides medical services to a minor in accordance
69 with the provisions of this section is not subject to civil or criminal liability for providing the
70 services described in Subsections (2)(a) and (b) without obtaining the consent of another
71 person prior to rendering the medical services.

72 (5) This section does not remove the requirement for parental consent or notice when
73 required by Section 76-7-304 or 76-7-304.5.

74 (6) The parents, parent, or legal guardian of a minor who receives medical services
75 pursuant to Subsections (2)(a) and (b) are not liable for the payment for those services unless
76 the parents, parent, or legal guardian consented to the medical services.

77 Section 2. Section 62A-4a-501 is amended to read:

78 **62A-4a-501. Harboring a runaway -- Reporting requirements -- Division to**
79 **provide assistance -- Affirmative defense -- Providing shelter after notice.**

80 (1) As used in this section:

81 (a) "Abandoned child" means a minor, other than an emancipated minor, who has been
82 forced to leave the home or lawfully prescribed residence of the parent or legal guardian of the
83 minor by the parent or legal guardian of the minor.

84 [(a)] (b) "Harbor" means to provide shelter in:

85 (i) the home of the person who is providing the shelter; or

86 (ii) any structure over which the person providing the shelter has any control.

87 [(b)] (c) "Receiving center" [is as] means the same as the term is defined in Section
88 62A-7-101.

89 [(c)] (d) "Runaway" means a minor, other than an emancipated minor, who is absent

90 from the home or lawfully prescribed residence of the parent or legal guardian of the minor
91 without the permission of the parent or legal guardian.

92 [~~(d)~~] (e) "Temporary homeless youth shelter" means a facility that:

- 93 (i) provides temporary shelter to a runaway; and
- 94 (ii) is licensed by the Office of Licensing, created in Section 62A-1-105, as a
95 residential support program.

96 [~~(e)~~] (f) "Youth services center" means a center established by, or under contract with,
97 the Division of Juvenile Justice Services, created in Section 62A-1-105, to provide youth
98 services, as defined in Section 62A-7-101.

99 (2) Except as provided in Subsection (3), a person is guilty of a class B misdemeanor if
100 the person:

- 101 (a) knowingly and intentionally harbors a minor;
- 102 (b) knows at the time of harboring the minor that the minor is a runaway;
- 103 (c) fails to notify one of the following, by telephone or other reasonable means, of the
104 location of the minor:

- 105 (i) the parent or legal guardian of the minor;
- 106 (ii) the division; or
- 107 (iii) a youth services center; and
- 108 (d) fails to notify a person described in Subsection (2)(c) within eight hours after the
109 later of:

- 110 (i) the time that the person becomes aware that the minor is a runaway; or
- 111 (ii) the time that the person begins harboring the minor.

112 (3) A person described in Subsection (2) is not guilty of a violation of Subsection (2)
113 and is not required to comply with Subsections (2)(c) and (d), if:

114 (a) a court order is issued authorizing a peace officer to take the minor into custody;
115 and

116 (b) the person notifies a peace officer or the nearest detention center, as defined in
117 Section 62A-7-101, by telephone or other reasonable means, of the location of the minor,
118 within eight hours after the later of:

- 119 (i) the time that the person becomes aware that the minor is a runaway; or
- 120 (ii) the time that the person begins harboring the minor.

121 (4) Nothing in this section limits the obligation of a person to report child abuse or
122 neglect in accordance with Section 62A-4a-403.

123 (5) Except as provided in Subsection (6), a temporary homeless youth shelter shall
124 notify:

125 (a) the parent or legal guardian of a minor within eight hours after the later of:

126 (i) the time that the temporary homeless youth shelter becomes aware that the minor is
127 a runaway; or

128 (ii) the time that the temporary homeless youth shelter begins harboring the minor;

129 [~~and~~]

130 (b) the division or a youth services center, within 48 hours after the later of:

131 (i) the time that the temporary homeless youth shelter becomes aware that a minor is a
132 runaway or abandoned child; or

133 (ii) the time that the temporary homeless youth shelter begins harboring the minor[-];

134 and

135 (c) the law enforcement agency having jurisdiction over the residence of the abandoned
136 child's parent or legal guardian within 24 hours of the time that the temporary homeless youth
137 shelter becomes aware that the minor is an abandoned child.

138 (6) A temporary homeless youth shelter is not required to comply with Subsection (5)
139 if:

140 (a) a court order is issued authorizing a peace officer to take the minor into custody;

141 and

142 (b) the temporary homeless youth shelter notifies a peace officer or the nearest
143 detention center, as defined in Section 62A-7-101, by telephone or other reasonable means, of
144 the location of the minor, within eight hours after the later of:

145 (i) the time that the person becomes aware that the minor is a runaway; or

146 (ii) the time that the person begins harboring the minor.

147 (7) It is an affirmative defense to the crime described in Subsection (2) that:

148 (a) the person failed to provide notice as described in Subsection (2) or (3) due to
149 circumstances beyond the control of the person providing the shelter; and

150 (b) the person provided the notice described in Subsection (2) or (3) as soon as it was
151 reasonably practicable to provide the notice.

152 (8) Upon receipt of a report that a runaway is being harbored by a person:
153 (a) a youth services center shall:
154 (i) notify the parent or legal guardian that a report has been made; and
155 (ii) inform the parent or legal guardian of assistance available from the youth services

156 center; or
157 (b) the division shall:
158 (i) determine whether the runaway is abused, neglected, or dependent; and
159 (ii) if appropriate, make a referral for services for the runaway.

160 (9) A parent or legal guardian of a runaway who is aware that the runaway is being
161 harbored may notify a law enforcement agency and request assistance in retrieving the
162 runaway. The local law enforcement agency may assist the parent or legal guardian in
163 retrieving the runaway.

164 (10) Nothing in this section prohibits a person or a temporary homeless youth shelter
165 from continuing to provide shelter to a runaway, after giving the notice described in
166 Subsections (2) through (6), if:

167 (a) a parent or legal guardian of the minor consents to the continued provision of
168 shelter; or
169 (b) a peace officer or a parent or legal guardian of the minor fails to retrieve the
170 runaway.

171 (11) Nothing in this section prohibits a person or a temporary homeless youth shelter
172 from providing shelter to a non-emancipated minor whose parents or legal guardians have
173 intentionally:

174 (a) ceased to maintain physical custody of the minor;
175 (b) failed to make reasonable arrangements for the safety, care, and physical custody of
176 the minor; and
177 (c) failed to provide the minor with food, shelter, or clothing.

178 (12) Nothing in this section prohibits:
179 (a) a receiving center or a youth services center from providing shelter to a runaway in
180 accordance with the requirements of Title 62A, Chapter 7, Juvenile Justice Services, and the
181 rules relating to a receiving center or a youth services center; or

182 (b) a government agency from taking custody of a minor as otherwise provided by law.

- 183 Section 3. Section **76-5-109** is amended to read:
- 184 **76-5-109. Child abuse -- Child abandonment.**
- 185 (1) As used in this section:
- 186 (a) "Child" means a human being who is under 18 years of age.
- 187 (b) (i) "Child abandonment" means that a parent or legal guardian of a child:
- 188 (A) intentionally ceases to maintain physical custody of the child;
- 189 (B) intentionally fails to make reasonable arrangements for the safety, care, and
- 190 physical custody of the child; and
- 191 (C) (I) intentionally fails to provide the child with food, shelter, or clothing;
- 192 (II) manifests an intent to permanently not resume physical custody of the child; or
- 193 (III) for a period of at least 30 days:
- 194 (Aa) intentionally fails to resume physical custody of the child; and
- 195 (Bb) fails to manifest a genuine intent to resume physical custody of the child.
- 196 (ii) "Child abandonment" does not include:
- 197 (A) safe relinquishment of a child pursuant to the provisions of Section [62A-4a-802](#); or
- 198 (B) giving legal consent to a court order for termination of parental rights:
- 199 (I) in a legal adoption proceeding; or
- 200 (II) in a case where a petition for the termination of parental rights, or the termination
- 201 of a guardianship, has been filed.
- 202 (c) "Child abuse" means any offense described in Subsection (2), (3), or (4) or in
- 203 Section [76-5-109.1](#).
- 204 (d) "Enterprise" [~~is as~~] means the same as that term is defined in Section [76-10-1602](#).
- 205 (e) "Physical injury" means an injury to or condition of a child which impairs the
- 206 physical condition of the child, including:
- 207 (i) a bruise or other contusion of the skin;
- 208 (ii) a minor laceration or abrasion;
- 209 (iii) failure to thrive or malnutrition; or
- 210 (iv) any other condition which imperils the child's health or welfare and which is not a
- 211 serious physical injury as defined in Subsection (1)(f).
- 212 (f) (i) "Serious physical injury" means any physical injury or set of injuries that:
- 213 (A) seriously impairs the child's health;

- 214 (B) involves physical torture;
- 215 (C) causes serious emotional harm to the child; or
- 216 (D) involves a substantial risk of death to the child.
- 217 (ii) "Serious physical injury" includes:
- 218 (A) fracture of any bone or bones;
- 219 (B) intracranial bleeding, swelling or contusion of the brain, whether caused by blows,
- 220 shaking, or causing the child's head to impact with an object or surface;
- 221 (C) any burn, including burns inflicted by hot water, or those caused by placing a hot
- 222 object upon the skin or body of the child;
- 223 (D) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;
- 224 (E) any combination of two or more physical injuries inflicted by the same person,
- 225 either at the same time or on different occasions;
- 226 (F) any damage to internal organs of the body;
- 227 (G) any conduct toward a child that results in severe emotional harm, severe
- 228 developmental delay or intellectual disability, or severe impairment of the child's ability to
- 229 function;
- 230 (H) any injury that creates a permanent disfigurement or protracted loss or impairment
- 231 of the function of a bodily member, limb, or organ;
- 232 (I) any conduct that causes a child to cease breathing, even if resuscitation is successful
- 233 following the conduct; or
- 234 (J) any conduct that results in starvation or failure to thrive or malnutrition that
- 235 jeopardizes the child's life.
- 236 (2) Any person who inflicts upon a child serious physical injury or, having the care or
- 237 custody of such child, causes or permits another to inflict serious physical injury upon a child is
- 238 guilty of an offense as follows:
- 239 (a) if done intentionally or knowingly, the offense is a felony of the second degree;
- 240 (b) if done recklessly, the offense is a felony of the third degree; or
- 241 (c) if done with criminal negligence, the offense is a class A misdemeanor.
- 242 (3) Any person who inflicts upon a child physical injury or, having the care or custody
- 243 of such child, causes or permits another to inflict physical injury upon a child is guilty of an
- 244 offense as follows:

- 245 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;
- 246 (b) if done recklessly, the offense is a class B misdemeanor; or
- 247 (c) if done with criminal negligence, the offense is a class C misdemeanor.
- 248 (4) A person who commits child abandonment, or encourages or causes another to
- 249 commit child abandonment, or an enterprise that encourages, commands, or causes another to
- 250 commit child abandonment, is:
- 251 (a) except as provided in Subsection (4)(b), guilty of a felony of the third degree; or
- 252 (b) guilty of a felony of the second degree, if, as a result of the child abandonment:
- 253 (i) the child suffers a serious physical injury; or
- 254 (ii) the person or enterprise receives, directly or indirectly, any benefit.
- 255 (5) (a) In addition to the penalty described in Subsection (4)(b), the court may order the
- 256 person or enterprise described in Subsection (4)(b)(ii) to pay the costs of investigating and
- 257 prosecuting the offense and the costs of securing any forfeiture provided for under Subsection
- 258 (5)(b).
- 259 (b) Any tangible or pecuniary benefit received under Subsection (4)(b)(ii) is subject to
- 260 criminal or civil forfeiture pursuant to Title 24, Forfeiture and Disposition of Property Act.
- 261 (6) A parent or legal guardian who provides a child with treatment by spiritual means
- 262 alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices
- 263 of an established church or religious denomination of which the parent or legal guardian is a
- 264 member or adherent shall not, for that reason alone, be considered to have committed an
- 265 offense under this section.
- 266 (7) A parent or guardian of a child does not violate this section by selecting a treatment
- 267 option for the medical condition of the child, if the treatment option is one that a reasonable
- 268 parent or guardian would believe to be in the best interest of the child.
- 269 (8) A person is not guilty of an offense under this section for conduct that constitutes:
- 270 (a) except as provided in Subsection (9), reasonable discipline or management of a
- 271 child, including withholding privileges;
- 272 (b) conduct described in Section [76-2-401](#); or
- 273 (c) the use of reasonable and necessary physical restraint or force on a child:
- 274 (i) in self-defense;
- 275 (ii) in defense of others;

276 (iii) to protect the child; or
 277 (iv) to remove a weapon in the possession of a child for any of the reasons described in
 278 Subsections (8)(c)(i) through (iii).

279 (9) It is not reasonable discipline or management of a child to remove the child from
 280 the child's home for an extended period of time without making arrangements for the child's
 281 subsistence, education, or medical care, or any other care necessary for the child's health,
 282 safety, or well-being.

283 Section 4. Section 76-7-201 is amended to read:

284 **76-7-201. Criminal nonsupport.**

285 (1) A person commits criminal nonsupport if, having a spouse, a child, or children
 286 under the age of 18 years, ~~he~~ the person knowingly fails to provide for the support of the
 287 spouse, child, or children when any one of them:

- 288 (a) is in needy circumstances; or
- 289 (b) would be in needy circumstances but for support received from a source other than
 290 the defendant or paid on the defendant's behalf.

291 (2) Except as provided in Subsection (3), criminal nonsupport is a class A
 292 misdemeanor.

293 (3) Criminal nonsupport is a felony of the third degree if the actor:

- 294 (a) has been convicted one or more times of nonsupport, whether in this state, any
 295 other state, or any court of the United States;
- 296 (b) committed the offense while residing outside of Utah; or
- 297 (c) commits the crime of nonsupport in each of 18 individual months within any
 298 24-month period, or the total arrearage is in excess of \$10,000.

299 (4) For purposes of this section "child" includes a child born out of wedlock whose
 300 paternity has been admitted by the actor or has been established in a civil suit.

301 (5) (a) In a prosecution for criminal nonsupport under this section, and subject to
 302 Subsection (6)(a), it is an affirmative defense that the accused is unable to provide support.
 303 ~~[Voluntary unemployment or underemployment by the defendant does not give rise to that~~
 304 ~~defense.]~~

305 (b) (i) Not less than 20 days before trial the defendant shall file and serve on the
 306 prosecuting attorney a notice, in writing, of ~~his~~ the defendant's intention to claim the

307 affirmative defense of inability to provide support.

308 (ii) The notice described in Subsection (5)(b)(i) shall specifically identify the factual
309 basis for the defense and the names and addresses of the witnesses who the defendant proposes
310 to examine in order to establish the defense.

311 (c) Not more than 10 days after receipt of the notice described in Subsection (5)(b), or
312 at such other time as the court may direct, the prosecuting attorney shall file and serve the
313 defendant with a notice containing the names and addresses of the witnesses who the state
314 proposes to examine in order to contradict or rebut the defendant's claim.

315 (d) Failure to comply with the requirements of Subsection (5)(b) or (5)(c) entitles the
316 opposing party to a continuance to allow for preparation.

317 (e) If the court finds that a party's failure to comply is the result of bad faith, it may
318 impose appropriate sanctions.

319 (6) The following are not defenses to criminal nonsupport:

320 (a) voluntary unemployment or underemployment by the defendant; or

321 (b) a parent's disapproval of a child's expressed sexual orientation or gender identity, or
322 the parent's perception of the child's sexual orientation or gender identity.

Legislative Review Note
Office of Legislative Research and General Counsel