

## HB0271S01 compared with HB0271

~~text~~ shows text that was in HB0271 but was deleted in HB0271S01.

Inserted text shows text that was not in HB0271 but was inserted into HB0271S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Elizabeth Weight proposes the following substitute bill:

### CHILD PROTECTION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Elizabeth Weight**

Senate Sponsor: \_\_\_\_\_

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#### 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;
- ▶ requires the parent of an abandoned child who is reported to law enforcement to promptly accept the child back into the parent's home or financially provide other accommodations for the 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

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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:

AMENDS:

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

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

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

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

### ENACTS:

**62A-4a-502, Utah Code Annotated 1953**

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

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

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

(1) This section:

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

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

(i) married or has been married;

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

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

(iv) pregnant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

- (i) the home of the person who is providing the shelter; or
- (ii) any structure over which the person providing the shelter has any control.

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

~~[(c)]~~ (d) "Runaway" means a minor, other than an emancipated minor, who ~~[is absent from]~~ has voluntarily left the home or lawfully prescribed residence of the parent or legal guardian of the minor without the permission of the parent or legal guardian.

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

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

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

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

- (a) knowingly and intentionally harbors a minor;
- (b) knows at the time of harboring the minor that the minor is a runaway;
- (c) fails to notify one of the following, by telephone or other reasonable means, of the location of the minor:
  - (i) the parent or legal guardian of the minor;
  - (ii) the division; or
  - (iii) a youth services center; and

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(d) fails to notify a person described in Subsection (2)(c) within eight hours after the later of:

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

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

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

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

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

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

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

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

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

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

[and]

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

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

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

and

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

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

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if:

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

and

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

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

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

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

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

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

(8) Upon receipt of a report that a runaway is being harbored by a person:

(a) a youth services center shall:

(i) notify the parent or legal guardian that a report has been made; and

(ii) inform the parent or legal guardian of assistance available from the youth services center; or

(b) the division shall:

(i) determine whether the runaway is abused, neglected, or dependent; and

(ii) if appropriate, make a referral for services for the runaway.

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

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

(a) a parent or legal guardian of the minor consents to the continued provision of shelter; or

(b) a peace officer or a parent or legal guardian of the minor fails to retrieve the

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runaway.

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

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

(12) Nothing in this section prohibits:

- (a) a receiving center or a youth services center from providing shelter to a runaway in accordance with the requirements of Title 62A, Chapter 7, Juvenile Justice Services, and the rules relating to a receiving center or a youth services center; or
- (b) a government agency from taking custody of a minor as otherwise provided by law.

Section 3. Section ~~{76-5-109}~~62A-4a-502 is ~~{amended}~~enacted to read:

### **62A-4a-502. Parental support of an abandoned child.**

(1) A parent of an abandoned child who is reported to law enforcement, as described in Section 62A-4a-501, shall:

- (a) promptly accept the abandoned child back into the parent's home; or
- (b) financially provide reasonable accommodations for the abandoned child that take into consideration the abandoned child's subsistence, education, medical care, and any other care necessary for the child's health, safety, or well-being.

(2) If a parent refuses to perform the duties described in Subsection (1), the division shall:

- (a) take the child into custody;
- (b) report the parent to local law enforcement; and
- (c) pursue a court order for child support payments from the parent.

Section 4. Section 76-5-109 is amended to read:

### **76-5-109. Child abuse -- Child abandonment.**

(1) As used in this section:

- (a) "Child" means a human being who is under 18 years of age.
- (b) (i) "Child abandonment" means that a parent or legal guardian of a child:

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- (A) intentionally ceases to maintain physical custody of the child;
- (B) intentionally fails to make reasonable arrangements for the safety, care, and physical custody of the child; and
  - (C) (I) intentionally fails to provide the child with food, shelter, or clothing;
  - (II) manifests an intent to permanently not resume physical custody of the child; or
  - (III) for a period of at least 30 days:
    - (Aa) intentionally fails to resume physical custody of the child; and
    - (Bb) fails to manifest a genuine intent to resume physical custody of the child.
  - (ii) "Child abandonment" does not include:
    - (A) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802; or
    - (B) giving legal consent to a court order for termination of parental rights:
      - (I) in a legal adoption proceeding; or
      - (II) in a case where a petition for the termination of parental rights, or the termination of a guardianship, has been filed.
- (c) "Child abuse" means any offense described in Subsection (2), (3), or (4) or in Section 76-5-109.1.
- (d) "Enterprise" [~~is as~~] means the same as that term is defined in Section 76-10-1602.
- (e) "Physical injury" means an injury to or condition of a child which impairs the physical condition of the child, including:
  - (i) a bruise or other contusion of the skin;
  - (ii) a minor laceration or abrasion;
  - (iii) failure to thrive or malnutrition; or
  - (iv) any other condition which imperils the child's health or welfare and which is not a serious physical injury as defined in Subsection (1)(f).
- (f) (i) "Serious physical injury" means any physical injury or set of injuries that:
  - (A) seriously impairs the child's health;
  - (B) involves physical torture;
  - (C) causes serious emotional harm to the child; or
  - (D) involves a substantial risk of death to the child.
- (ii) "Serious physical injury" includes:
  - (A) fracture of any bone or bones;



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(B) intracranial bleeding, swelling or contusion of the brain, whether caused by blows, shaking, or causing the child's head to impact with an object or surface;

(C) any burn, including burns inflicted by hot water, or those caused by placing a hot object upon the skin or body of the child;

(D) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;

(E) any combination of two or more physical injuries inflicted by the same person, either at the same time or on different occasions;

(F) any damage to internal organs of the body;

(G) any conduct toward a child that results in severe emotional harm, severe developmental delay or intellectual disability, or severe impairment of the child's ability to function;

(H) any injury that creates a permanent disfigurement or protracted loss or impairment of the function of a bodily member, limb, or organ;

(I) any conduct that causes a child to cease breathing, even if resuscitation is successful following the conduct; or

(J) any conduct that results in starvation or failure to thrive or malnutrition that jeopardizes the child's life.

(2) Any person who inflicts upon a child serious physical injury or, having the care or custody of such child, causes or permits another to inflict serious physical injury upon a child is guilty of an offense as follows:

(a) if done intentionally or knowingly, the offense is a felony of the second degree;

(b) if done recklessly, the offense is a felony of the third degree; or

(c) if done with criminal negligence, the offense is a class A misdemeanor.

(3) Any person who inflicts upon a child physical injury or, having the care or custody of such child, causes or permits another to inflict physical injury upon a child is guilty of an offense as follows:

(a) if done intentionally or knowingly, the offense is a class A misdemeanor;

(b) if done recklessly, the offense is a class B misdemeanor; or

(c) if done with criminal negligence, the offense is a class C misdemeanor.

(4) A person who commits child abandonment, or encourages or causes another to commit child abandonment, or an enterprise that encourages, commands, or causes another to

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commit child abandonment, is:

- (a) except as provided in Subsection (4)(b), guilty of a felony of the third degree; or
- (b) guilty of a felony of the second degree, if, as a result of the child abandonment:
  - (i) the child suffers a serious physical injury; or
  - (ii) the person or enterprise receives, directly or indirectly, any benefit.

(5) (a) In addition to the penalty described in Subsection (4)(b), the court may order the person or enterprise described in Subsection (4)(b)(ii) to pay the costs of investigating and prosecuting the offense and the costs of securing any forfeiture provided for under Subsection (5)(b).

(b) Any tangible or pecuniary benefit received under Subsection (4)(b)(ii) is subject to criminal or civil forfeiture pursuant to Title 24, Forfeiture and Disposition of Property Act.

(6) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be considered to have committed an offense under this section.

(7) A parent or guardian of a child does not violate this section by selecting a treatment option for the medical condition of the child, if the treatment option is one that a reasonable parent or guardian would believe to be in the best interest of the child.

(8) A person is not guilty of an offense under this section for conduct that constitutes:

- (a) except as provided in Subsection (9), reasonable discipline or management of a child, including withholding privileges;
- (b) conduct described in Section 76-2-401; or
- (c) the use of reasonable and necessary physical restraint or force on a child:
  - (i) in self-defense;
  - (ii) in defense of others;
  - (iii) to protect the child; or
  - (iv) to remove a weapon in the possession of a child for any of the reasons described in Subsections (8)(c)(i) through (iii).

(9) 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

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subsistence, education, or medical care, or any other care necessary for the child's health, safety, or well-being.

Section ~~(4)~~5. Section 76-7-201 is amended to read:

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

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

(a) is in needy circumstances; or

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

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

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

(a) has been convicted one or more times of nonsupport, whether in this state, any other state, or any court of the United States;

(b) committed the offense while residing outside of Utah; or

(c) commits the crime of nonsupport in each of 18 individual months within any 24-month period, or the total arrearage is in excess of \$10,000.

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

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

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

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

(c) Not more than 10 days after receipt of the notice described in Subsection (5)(b), or

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at such other time as the court may direct, the prosecuting attorney shall file and serve the defendant with a notice containing the names and addresses of the witnesses who the state proposes to examine in order to contradict or rebut the defendant's claim.

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

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

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

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

(b) a parent's disapproval of a child's:

(i) expressed sexual orientation or gender identity, or the parent's perception of the child's sexual orientation or gender identity;

### Legislative Review Note

Office of Legislative Research and General Counsel; or

(ii) behavior, including drug or alcohol use, friend groups, or religious beliefs.