

1 **YOUTH AND CHILD WELFARE AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Walt Brooks**

5 Senate Sponsor: David G. Buxton

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions relating to the welfare of children and minors.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ amends the definition of sexual abuse;
- 14 ▶ amends provisions related to runaway children;
- 15 ▶ allows a court to grant temporary emancipation pending an emancipation
- 16 adjudication; and
- 17 ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 This bill provides a special effective date.

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **62A-4a-501**, as last amended by Laws of Utah 2014, Chapter 312

25 **78A-6-103 (Superseded 07/01/18)**, as last amended by Laws of Utah 2012, Chapter
26 316

27 **78A-6-103 (Effective 07/01/18)**, as last amended by Laws of Utah 2017, Chapter 330



- 28 [78A-6-105](#), as last amended by Laws of Utah 2017, Chapters 181, 330, and 401
- 29 [78A-6-801](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
- 30 [78A-6-802](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
- 31 [78A-6-803](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
- 32 [78A-6-804](#), as last amended by Laws of Utah 2010, Chapter 259

33 ENACTS:

34 [78A-6-804.5](#), Utah Code Annotated 1953

35

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

37 Section 1. Section **62A-4a-501** is amended to read:

38 **62A-4a-501. Harboring a runaway -- Reporting requirements -- Division to**
39 **provide assistance -- Affirmative defense -- Providing shelter after notice.**

40 (1) As used in this section:

41 (a) "Harbor" means to provide shelter in:

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

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

44 (b) "Receiving center" is as defined in Section [62A-7-101](#).

45 (c) "Runaway" means a minor, other than an emancipated minor, who is absent from
46 the home or lawfully prescribed residence of the parent or legal guardian of the minor without
47 the permission of the parent or legal guardian.

48 (d) "Temporary homeless youth shelter" means a facility that:

49 (i) provides temporary shelter to a runaway; and

50 (ii) is licensed by the Office of Licensing, created in Section [62A-1-105](#), as a
51 residential support program.

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

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

57 (a) knowingly and intentionally harbors a minor;

58 (b) knows at the time of harboring the minor that the minor is a runaway;

59 (c) fails to notify one of the following, by telephone or other reasonable means, of the
60 location of the minor:

61 (i) the parent or legal guardian of the minor;

62 (ii) the division; ~~or~~

63 (iii) a youth services center; ~~and~~ or

64 (iv) a peace officer or the nearest detention center, as defined in Section 62A-7-101, if
65 a court order is issued authorizing a peace officer to take the minor into custody; and

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

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

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

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

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

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

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

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

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

81 ~~[(5) Except as provided in Subsection (6), a temporary homeless youth shelter shall~~
82 ~~notify:]~~

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

84 ~~[(i) the time that the temporary homeless youth shelter becomes aware that the minor is~~
85 ~~a runaway; or]~~

86 ~~[(ii) the time that the temporary homeless youth shelter begins harboring the minor;~~
87 ~~and]~~

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

89 ~~[(i) the time that the temporary homeless youth shelter becomes aware that a minor is a~~

90 runaway; or]

91 [~~(ii) the time that the temporary homeless youth shelter begins harboring the minor.~~]

92 [~~(6) A temporary homeless youth shelter is not required to comply with Subsection (5)~~
93 if:]

94 [~~(a) a court order is issued authorizing a peace officer to take the minor into custody;~~
95 and]

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

99 [~~(i) the time that the person becomes aware that the minor is a runaway; or]~~

100 [~~(ii) the time that the person begins harboring the minor.~~]

101 [~~(7)~~ (5) It is an affirmative defense to the crime described in Subsection (2) that:

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

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

106 [~~(8)~~ (6) Upon receipt of a report that a runaway is being harbored by a person:

107 (a) a youth services center shall:

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

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

111 (b) the division shall:

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

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

114 [~~(9)~~ (7) A parent or legal guardian of a runaway who is aware that the runaway is
115 being harbored may notify a law enforcement agency and request assistance in retrieving the
116 runaway. The local law enforcement agency may assist the parent or legal guardian in
117 retrieving the runaway.

118 [~~(10)~~ (8) Nothing in this section prohibits a person or a temporary homeless youth
119 shelter from continuing to provide shelter to a runaway, after giving the notice described in
120 Subsections (2) through [~~(6)~~ (4), if:

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

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

125 ~~[(H)]~~ (9) Nothing in this section prohibits a person or a temporary homeless youth
126 shelter from providing shelter to a non-emancipated minor whose parents or legal guardians
127 have intentionally:

128 (a) ceased to maintain physical custody of the minor;

129 (b) failed to make reasonable arrangements for the safety, care, and physical custody of
130 the minor; and

131 (c) failed to provide the minor with food, shelter, or clothing.

132 ~~[(H2)]~~ (10) Nothing in this section prohibits:

133 (a) a receiving center or a youth services center from providing shelter to a runaway in
134 accordance with the requirements of Title 62A, Chapter 7, Juvenile Justice Services, and the
135 rules relating to a receiving center or a youth services center; or

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

137 Section 2. Section 78A-6-103 (Superseded 07/01/18) is amended to read:

138 **78A-6-103 (Superseded 07/01/18). Jurisdiction of juvenile court -- Original --**

139 **Exclusive.**

140 (1) Except as otherwise provided by law, the juvenile court has exclusive original
141 jurisdiction in proceedings concerning:

142 (a) a child who has violated any federal, state, or local law or municipal ordinance or [a
143 person] an individual younger than 21 years of age who has violated any law or ordinance
144 before becoming 18 years of age, regardless of where the violation occurred, excluding
145 offenses in Subsection 78A-7-106(2);

146 (b) a person 21 years of age or older who has failed or refused to comply with an order
147 of the juvenile court to pay a fine or restitution, if the order was imposed before the person's
148 21st birthday; however, the continuing jurisdiction is limited to causing compliance with
149 existing orders;

150 (c) a child who is an abused child, neglected child, or dependent child, as those terms
151 are defined in Section 78A-6-105;

152 (d) a protective order for a child pursuant to the provisions of Title 78B, Chapter 7,
153 Part 2, Child Protective Orders, which the juvenile court may transfer to the district court if the
154 juvenile court has entered an ex parte protective order and finds that:

155 (i) the petitioner and the respondent are the natural parent, adoptive parent, or step
156 parent of the child who is the object of the petition;

157 (ii) the district court has a petition pending or an order related to custody or parent-time
158 entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act,
159 or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the petitioner and the
160 respondent are parties; and

161 (iii) the best interests of the child will be better served in the district court;

162 (e) appointment of a guardian of the person or other guardian of a minor who comes
163 within the court's jurisdiction under other provisions of this section;

164 (f) the emancipation or temporary emancipation of a minor in accordance with Part 8,
165 Emancipation;

166 (g) the termination of the legal parent-child relationship in accordance with Part 5,
167 Termination of Parental Rights Act, including termination of residual parental rights and
168 duties;

169 (h) the treatment or commitment of a minor who has an intellectual disability;

170 (i) a minor who is a habitual truant from school;

171 (j) the judicial consent to the marriage of a child under age 16 upon a determination of
172 voluntariness or where otherwise required by law, employment, or enlistment of a child when
173 consent is required by law;

174 (k) any parent or parents of a child committed to a secure youth corrections facility, to
175 order, at the discretion of the court and on the recommendation of a secure facility, the parent
176 or parents of a child committed to a secure facility for a custodial term, to undergo group
177 rehabilitation therapy under the direction of a secure facility therapist, who has supervision of
178 that parent's or parents' child, or any other therapist the court may direct, for a period directed
179 by the court as recommended by a secure facility;

180 (l) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;

181 (m) the treatment or commitment of a child with a mental illness. The court may
182 commit a child to the physical custody of a local mental health authority in accordance with the

183 procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under
184 Age 18 to Division of Substance Abuse and Mental Health, but not directly to the Utah State
185 Hospital;

186 (n) the commitment of a child to a secure drug or alcohol facility in accordance with
187 Section 62A-15-301;

188 (o) a minor found not competent to proceed pursuant to Section 78A-6-1301;

189 (p) de novo review of final agency actions resulting from an informal adjudicative
190 proceeding as provided in Section 63G-4-402; and

191 (q) adoptions conducted in accordance with the procedures described in Title 78B,
192 Chapter 6, Part 1, Utah Adoption Act, when the juvenile court has previously entered an order
193 terminating the rights of a parent and finds that adoption is in the best interest of the child.

194 (2) Notwithstanding Section 78A-7-106 and Subsection 78A-5-102(9), the juvenile
195 court has exclusive jurisdiction over the following offenses committed by a child:

196 (a) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

197 (b) Section 73-18-12, reckless operation; and

198 (c) class B and C misdemeanors, infractions, or violations of ordinances that are part of
199 a single criminal episode filed in a petition that contains an offense over which the court has
200 jurisdiction.

201 (3) The juvenile court has jurisdiction over an ungovernable or runaway child who is
202 referred to it by the Division of Child and Family Services or by public or private agencies that
203 contract with the division to provide services to that child where, despite earnest and persistent
204 efforts by the division or agency, the child has demonstrated that the child:

205 (a) is beyond the control of the child's parent, guardian, lawful custodian, or school
206 authorities to the extent that the child's behavior or condition endangers the child's own welfare
207 or the welfare of others; or

208 (b) has run away from home.

209 (4) This section does not restrict the right of access to the juvenile court by private
210 agencies or other persons.

211 (5) The juvenile court has jurisdiction of all magistrate functions relative to cases
212 arising under Section 78A-6-702.

213 (6) The juvenile court has jurisdiction to make a finding of substantiated,

214 unsubstantiated, or without merit, in accordance with Section 78A-6-323.

215 (7) The juvenile court has jurisdiction of matters transferred to it by another trial court
216 pursuant to Subsection 78A-7-106(7).

217 Section 3. Section 78A-6-103 (Effective 07/01/18) is amended to read:

218 **78A-6-103 (Effective 07/01/18). Jurisdiction of juvenile court -- Original --**
219 **Exclusive.**

220 (1) Except as otherwise provided by law, the juvenile court has exclusive original
221 jurisdiction in proceedings concerning:

222 (a) a child who has violated any federal, state, or local law or municipal ordinance or [a
223 person] an individual younger than 21 years of age who has violated any law or ordinance
224 before becoming 18 years of age, regardless of where the violation occurred, excluding
225 offenses:

226 (i) in Section 53A-11-911 until such time that the child is referred to the courts under
227 Section 53A-11-911; and

228 (ii) in Subsection 78A-7-106(2);

229 (b) a child who is an abused child, neglected child, or dependent child, as those terms
230 are defined in Section 78A-6-105;

231 (c) a protective order for a child pursuant to Title 78B, Chapter 7, Part 2, Child
232 Protective Orders, which the juvenile court may transfer to the district court if the juvenile
233 court has entered an ex parte protective order and finds that:

234 (i) the petitioner and the respondent are the natural parent, adoptive parent, or step
235 parent of the child who is the object of the petition;

236 (ii) the district court has a petition pending or an order related to custody or parent-time
237 entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act,
238 or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the petitioner and the
239 respondent are parties; and

240 (iii) the best interests of the child will be better served in the district court;

241 (d) appointment of a guardian of the person or other guardian of a minor who comes
242 within the court's jurisdiction under other provisions of this section;

243 (e) the emancipation or temporary emancipation of a minor in accordance with Part 8,
244 Emancipation;

245 (f) the termination of the legal parent-child relationship in accordance with Part 5,
246 Termination of Parental Rights Act, including termination of residual parental rights and
247 duties;

248 (g) the treatment or commitment of a minor who has an intellectual disability;

249 (h) the judicial consent to the marriage of a child under age 16 upon a determination of
250 voluntariness or where otherwise required by law, employment, or enlistment of a child when
251 consent is required by law;

252 (i) any parent or parents of a child committed to a secure youth facility, to order, at the
253 discretion of the court and on the recommendation of a secure facility, the parent or parents of a
254 child committed to a secure facility for a custodial term, to undergo group rehabilitation
255 therapy under the direction of a secure facility therapist, who has supervision of that parent's or
256 parents' child, or any other therapist the court may direct, for a period directed by the court as
257 recommended by a secure facility;

258 (j) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;

259 (k) subject to Subsection (8), the treatment or commitment of a child with a mental
260 illness;

261 (l) the commitment of a child to a secure drug or alcohol facility in accordance with
262 Section [62A-15-301](#);

263 (m) a minor found not competent to proceed pursuant to Section [78A-6-1301](#);

264 (n) de novo review of final agency actions resulting from an informal adjudicative
265 proceeding as provided in Section [63G-4-402](#); and

266 (o) adoptions conducted in accordance with the procedures described in Title 78B,
267 Chapter 6, Part 1, Utah Adoption Act, when the juvenile court has previously entered an order
268 terminating the rights of a parent and finds that adoption is in the best interest of the child.

269 (2) (a) Notwithstanding Section [78A-7-106](#) and Subsection [78A-5-102\(9\)](#), the juvenile
270 court has exclusive jurisdiction over the following offenses committed by a child:

271 (i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

272 (ii) Section [73-18-12](#), reckless operation; and

273 (iii) class B and C misdemeanors, infractions, or violations of ordinances that are part
274 of a single criminal episode filed in a petition that contains an offense over which the court has
275 jurisdiction.

276 (b) A juvenile court may only order substance use disorder treatment or an educational
277 series if the minor has an assessed need for the intervention on the basis of the results of a
278 validated assessment.

279 (3) The juvenile court has jurisdiction over an ungovernable or runaway child who is
280 referred to it by the Division of Child and Family Services or by public or private agencies that
281 contract with the division to provide services to that child when, despite earnest and persistent
282 efforts by the division or agency, the child has demonstrated that the child:

283 (a) is beyond the control of the child's parent, guardian, or lawful custodian to the
284 extent that the child's behavior or condition endangers the child's own welfare or the welfare of
285 others; or

286 (b) has run away from home.

287 (4) This section does not restrict the right of access to the juvenile court by private
288 agencies or other persons.

289 (5) The juvenile court has jurisdiction of all magistrate functions relative to cases
290 arising under Section [78A-6-702](#).

291 (6) The juvenile court has jurisdiction to make a finding of substantiated,
292 unsubstantiated, or without merit, in accordance with Section [78A-6-323](#).

293 (7) The juvenile court has jurisdiction of matters transferred to it by another trial court
294 pursuant to Subsection [78A-7-106\(5\)](#) and subject to Section [53A-11-911](#).

295 (8) The court may commit a child to the physical custody of a local mental health
296 authority in accordance with Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age
297 18 to Division of Substance Abuse and Mental Health, but not directly to the Utah State
298 Hospital.

299 Section 4. Section **78A-6-105** is amended to read:

300 **78A-6-105. Definitions.**

301 As used in this chapter:

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

303 (i) (A) nonaccidental harm of a child;

304 (B) threatened harm of a child;

305 (C) sexual exploitation;

306 (D) sexual abuse; or

- 307 (E) human trafficking of a child in violation of Section 76-5-308.5; or
308 (ii) that a child's natural parent:
309 (A) intentionally, knowingly, or recklessly causes the death of another parent of the
310 child;
311 (B) is identified by a law enforcement agency as the primary suspect in an investigation
312 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
313 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
314 recklessly causing the death of another parent of the child.
- 315 (b) "Abuse" does not include:
316 (i) reasonable discipline or management of a child, including withholding privileges;
317 (ii) conduct described in Section 76-2-401; or
318 (iii) the use of reasonable and necessary physical restraint or force on a child:
319 (A) in self-defense;
320 (B) in defense of others;
321 (C) to protect the child; or
322 (D) to remove a weapon in the possession of a child for any of the reasons described in
323 Subsections (1)(b)(iii)(A) through (C).
- 324 (2) "Abused child" means a child who has been subjected to abuse.
325 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
326 alleged in the petition have been proved. A finding of not competent to proceed pursuant to
327 Section 78A-6-1302 is not an adjudication.
- 328 (4) "Adult" means a person 18 years of age or over, except that a person 18 years or
329 over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall
330 be referred to as a minor.
- 331 (5) "Board" means the Board of Juvenile Court Judges.
332 (6) "Child" means a person under 18 years of age.
333 (7) "Child placement agency" means:
334 (a) a private agency licensed to receive a child for placement or adoption under this
335 code; or
336 (b) a private agency that receives a child for placement or adoption in another state,
337 which agency is licensed or approved where such license or approval is required by law.

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

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

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

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

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

344 (11) "Criminogenic risk factors" means evidence-based factors that are associated with
345 a minor's likelihood of reoffending.

346 (12) "Delinquent act" means an act that would constitute a felony or misdemeanor if
347 committed by an adult.

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

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

352 (15) "Detention" means home detention and secure detention as defined in Section
353 62A-7-101 for the temporary care of a minor who requires secure custody in a physically
354 restricting facility:

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

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

357 (16) "Detention risk assessment tool" means an evidence-based tool established under
358 Section 78A-6-124, on and after July 1, 2018, that assesses a minor's risk of failing to appear in
359 court or reoffending pre-adjudication and designed to assist in making detention
360 determinations.

361 (17) "Division" means the Division of Child and Family Services.

362 (18) "Evidence-based" means a program or practice that has had multiple randomized
363 control studies or a meta-analysis demonstrating that the program or practice is effective for a
364 specific population or has been rated as effective by a standardized program evaluation tool.

365 (19) "Formal probation" means a minor is under field supervision by the probation
366 department or other agency designated by the court and subject to return to the court in
367 accordance with Section 78A-6-123 on and after July 1, 2018.

368 (20) "Formal referral" means a written report from a peace officer or other person

369 informing the court that a minor is or appears to be within the court's jurisdiction and that a
370 case must be reviewed.

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

373 (22) "Guardianship of the person" includes the authority to consent to:

374 (a) marriage;

375 (b) enlistment in the armed forces;

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

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

378 (23) "Habitual truant" means the same as that term is defined in Section [53A-11-101](#).

379 (24) "Harm" means:

380 (a) physical or developmental injury or damage;

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

383 (c) sexual abuse; or

384 (d) sexual exploitation.

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

388 (b) The relationships described in Subsection (25)(a) include:

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

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

391 (iii) relationships of stepparent and stepchild while the marriage creating the
392 relationship of a stepparent and stepchild exists.

393 (26) "Intake probation" means a period of court monitoring that does not include field
394 supervision, but is overseen by a juvenile probation officer, during which a minor is subject to
395 return to the court in accordance with Section [78A-6-123](#) on and after July 1, 2018.

396 (27) "Intellectual disability" means:

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

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

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

406 (28) "Legal custody" means a relationship embodying the following rights and duties:

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

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

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

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

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

413 (29) "Material loss" means an uninsured:

414 (a) property loss;

415 (b) out-of-pocket monetary loss;

416 (c) lost wages; or

417 (d) medical expenses.

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

420 (31) "Minor" means:

421 (a) a child; or

422 (b) a person who is:

423 (i) at least 18 years of age and younger than 21 years of age; and

424 (ii) under the jurisdiction of the juvenile court.

425 (32) "Mobile crisis outreach team" means a crisis intervention service for minors or
426 families of minors experiencing behavioral health or psychiatric emergencies.

427 (33) "Molestation" means that a person, with the intent to arouse or gratify the sexual
428 desire of any person:

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

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

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

432 (34) "Natural parent" means a minor's biological or adoptive parent, and includes the
433 minor's noncustodial parent.

434 (35) (a) "Neglect" means action or inaction causing:

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

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

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

442 (iv) a child to be at risk of being neglected or abused because another child in the same
443 home is neglected or abused; or

444 (v) abandonment of a child through an unregulated custody transfer.

445 (b) The aspect of neglect relating to education, described in Subsection (35)(a)(iii),
446 means that, after receiving a notice of compulsory education violation under Section
447 [53A-11-101.5](#), the parent or guardian fails to make a good faith effort to ensure that the child
448 receives an appropriate education.

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

451 (d) (i) Notwithstanding Subsection (35)(a), a health care decision made for a child by
452 the child's parent or guardian does not constitute neglect unless the state or other party to the
453 proceeding shows, by clear and convincing evidence, that the health care decision is not
454 reasonable and informed.

455 (ii) Nothing in Subsection (35)(d)(i) may prohibit a parent or guardian from exercising
456 the right to obtain a second health care opinion and from pursuing care and treatment pursuant
457 to the second health care opinion, as described in Section [78A-6-301.5](#).

458 (36) "Neglected child" means a child who has been subjected to neglect.

459 (37) "Nonjudicial adjustment" means closure of the case by the assigned probation
460 officer without judicial determination upon the consent in writing of:

461 (a) the assigned probation officer; and

462 (b) (i) the minor; or

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

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

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

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

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

471 (40) "Probation" means a legal status created by court order following an adjudication
472 on the ground of a violation of law or under Section 78A-6-103, whereby the minor is
473 permitted to remain in the minor's home under prescribed conditions.

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

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

481 (43) (a) "Residual parental rights and duties" means those rights and duties remaining
482 with the parent after legal custody or guardianship, or both, have been vested in another person
483 or agency, including:

484 (i) the responsibility for support;

485 (ii) the right to consent to adoption;

486 (iii) the right to determine the child's religious affiliation; and

487 (iv) the right to reasonable parent-time unless restricted by the court.

488 (b) If no guardian has been appointed, "residual parental rights and duties" also include
489 the right to consent to:

490 (i) marriage;

491 (ii) enlistment; and

492 (iii) major medical, surgical, or psychiatric treatment.

493 (44) "Secure facility" means any facility operated by or under contract with the
494 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
495 youth offenders committed to the division for custody and rehabilitation pursuant to Subsection
496 [78A-6-117\(2\)\(d\)](#).

497 (45) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
498 child.

499 (46) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
500 child.

501 (47) "Sexual abuse" means:

502 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an
503 adult directed towards a child;

504 (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
505 committed by a child towards another child if:

506 (i) there is an indication of force or coercion;

507 (ii) the children are related, as described in Subsection (25);

508 (iii) there have been repeated incidents of sexual contact between the two children,
509 unless the children are 14 years of age or older; or

510 (iv) there is a disparity in chronological age of four or more years between the two
511 children; [or]

512 (c) engaging in any conduct with a child that would constitute an offense under any of
513 the following, regardless of whether the person who engages in the conduct is actually charged
514 with, or convicted of, the offense:

515 (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section [76-5-401](#), if the
516 alleged perpetrator of an offense described in Section [76-5-401](#) is a minor;

517 (ii) child bigamy, Section [76-7-101.5](#);

518 (iii) incest, Section [76-7-102](#);

519 (iv) lewdness, Section [76-9-702](#);

520 (v) sexual battery, Section [76-9-702.1](#);

521 (vi) lewdness involving a child, Section [76-9-702.5](#); or

522 (vii) voyeurism, Section [76-9-702.7](#)[~~7~~]; or

523 (d) a parent or legal guardian subjecting a minor to a sexual relationship against the

524 minor's will, regardless of whether that sexual relationship is part of a legal or cultural
525 marriage.

526 (48) "Sexual exploitation" means knowingly:

527 (a) employing, using, persuading, inducing, enticing, or coercing any child to:

528 (i) pose in the nude for the purpose of sexual arousal of any person; or

529 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
530 filming, recording, or displaying in any way the sexual or simulated sexual conduct;

531 (b) displaying, distributing, possessing for the purpose of distribution, or selling
532 material depicting a child:

533 (i) in the nude, for the purpose of sexual arousal of any person; or

534 (ii) engaging in sexual or simulated sexual conduct; or

535 (c) engaging in any conduct that would constitute an offense under Section [76-5b-201](#),
536 sexual exploitation of a minor, regardless of whether the person who engages in the conduct is
537 actually charged with, or convicted of, the offense.

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

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

542 (51) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or
543 substances.

544 (52) "Substantiated" means the same as that term is defined in Section [62A-4a-101](#).

545 (53) "Supported" means the same as that term is defined in Section [62A-4a-101](#).

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

548 (55) "Therapist" means:

549 (a) a person employed by a state division or agency for the purpose of conducting
550 psychological treatment and counseling of a minor in its custody; or

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

553 (56) "Unregulated custody transfer" means the placement of a child:

554 (a) with a person who is not the child's parent, step-parent, grandparent, adult sibling,

555 adult uncle or aunt, or legal guardian, or a friend of the family who is an adult and with whom
556 the child is familiar, or a member of the child's federally recognized tribe;

557 (b) with the intent of severing the child's existing parent-child or guardian-child
558 relationship; and

559 (c) without taking:

560 (i) reasonable steps to ensure the safety of the child and permanency of the placement;
561 and

562 (ii) the necessary steps to transfer the legal rights and responsibilities of parenthood or
563 guardianship to the person taking custody of the child.

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

565 (58) "Validated risk and needs assessment" means an evidence-based tool that assesses
566 a minor's risk of reoffending and a minor's criminogenic needs.

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

568 Section 5. Section 78A-6-801 is amended to read:

569 **78A-6-801. Purpose of emancipation.**

570 (1) The purpose of this part is to provide a means by which a minor who has
571 demonstrated the ability and capacity to manage ~~[his or her]~~ the minor's own affairs and to live
572 independent of ~~[his or her]~~ the minor's parents or guardian, may obtain the legal status of an
573 emancipated ~~[person]~~ individual with the power to enter into valid legal contracts.

574 (2) This part is not intended to interfere with the integrity of the family or to minimize
575 the rights of parents or children. As provided in Section 62A-4a-201, a parent possesses a
576 fundamental liberty interest in the care, custody, and management of their children.

577 Section 6. Section 78A-6-802 is amended to read:

578 **78A-6-802. Definitions.**

579 As used in this part:

580 (1) "Guardian" has the same meaning as in Section 75-1-201.

581 (2) "Minor" means a person 16 years of age or older.

582 (3) "Parent" means a natural parent as defined in Section 78A-6-105.

583 (4) "Suspension of parental rights" means that a parent:

584 (a) temporarily loses physical and legal custody; and

585 (b) retains residual parental rights.

- 586 (5) "Temporary emancipation" means that a minor:
587 (a) is not in the custody of a person;
588 (b) has the rights described in Subsections 78A-6-805(1)(d) and (f); and
589 (c) does not have the rights described in Subsection 78A-6-805(1)(a), (b), (c), or (e).

590 Section 7. Section **78A-6-803** is amended to read:

591 **78A-6-803. Petition for emancipation.**

592 (1) A minor may petition the juvenile court on [~~his or her~~] the minor's own behalf in
593 the district in which [~~he or she~~] the minor resides for a declaration of emancipation. The
594 petition shall be on a form provided by the clerk of the court, and state that the minor is:

- 595 (a) 16 years of age or older;
596 (b) capable of living independently of [~~his or her~~] the minor's parents or guardian; and
597 (c) capable of managing [~~his or her~~] the minor's own financial affairs.

598 (2) Notice of the petition shall be served on the minor's parents, guardian, any other
599 person [~~or agency~~] with custody of the minor, and the Child and Family Support Division of
600 the Office of the Attorney General, unless the court determines that service is impractical.

601 Section 8. Section **78A-6-804** is amended to read:

602 **78A-6-804. Court procedure.**

603 (1) Upon the filing of a petition in accordance with Section **78A-6-803**, the court shall
604 review the petition for completeness and whether the petitioner meets the age requirement for
605 filing the petition.

606 (a) If the petition is incomplete or the petitioner does not meet the age requirement, the
607 court may dismiss the action immediately.

608 (b) If the petition is complete and the petitioner meets the age requirement, the court
609 shall:

- 610 (i) schedule a pretrial hearing on the matter within 30 days[?]; and
611 (ii) determine whether temporary emancipation, described in Section 78A-6-804.5, is
612 appropriate, pending the court's final determination of the emancipation petition.

613 (2) The court may appoint a guardian ad litem in accordance with Section **78A-6-902**
614 to represent the minor.

615 (3) At the hearing, the court shall consider the best interests of the minor according to
616 the following:

- 617 (a) whether the minor is capable of assuming adult responsibilities;
- 618 (b) whether the minor is capable of living independently of his or her parents, guardian,
619 or custodian;
- 620 (c) opinions and recommendations from the guardian ad litem, parents, guardian, or
621 custodian, and any other evidence; and
- 622 (d) whether emancipation will create a risk of harm to the minor.
- 623 (4) If the court determines by clear and convincing evidence that emancipation is in the
624 best interests of the minor, it shall issue a declaration of emancipation.

625 Section 9. Section **78A-6-804.5** is enacted to read:

626 **78A-6-804.5. Temporary emancipation.**

627 (1) A court may grant temporary emancipation, if:

628 (a) a minor files a complete emancipation petition;

629 (b) the petitioner meets the age requirement;

630 (c) the petition describes extraordinary circumstances that warrant the suspension of
631 parental rights pending the court's final determination of the emancipation petition; and

632 (d) the petition describes a place of residence where the petitioner may reside:

633 (i) during the pendency of the emancipation petition; and

634 (ii) at a location different from the petitioner's parents or guardian.

635 (2) Extraordinary circumstances include specific allegations of abuse, neglect, or
636 threatened abuse or neglect.

637 (3) A court may grant temporary emancipation ex parte.

638 (4) Temporary emancipation ends the earlier of when:

639 (a) a court makes a final determination on an emancipation petition; or

640 (b) a court finds that a child's best interests warrant an end to temporary emancipation.

641 (5) An order of temporary emancipation prospectively terminates parental
642 responsibilities, including parental tort liability for the acts of the minor, that accrue:

643 (a) while the order is in place; and

644 (b) based on the minor's status as a minor under the custody and control of a parent,
645 guardian, or custodian.

646 Section 10. **Effective date.**

647 This bill takes effect on May 8, 2018, except that the amendments to Section

648 [78A-6-103](#) (Effective 07/01/18) take effect on July 1, 2018.

Legislative Review Note
Office of Legislative Research and General Counsel