

CHILD ABUSE AND ENDANGERMENT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies provisions relating to child abuse and neglect and endangerment of a child or vulnerable adult.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ for the offense of endangerment of a child or vulnerable adult:
 - modifies the circumstances under which an individual may be found guilty of the offense; and
 - clarifies the circumstances under which an affirmative defense is applicable;
- ▶ modifies provisions relating to a finding of abuse or neglect and determining the best interests of a child in a child welfare case based on the parent's or guardian's use of cannabis; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-112.5, as last amended by Laws of Utah 2011, Chapter 320

29 **78A-6-115**, as last amended by Laws of Utah 2019, First Special Session, Chapter 5

30

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

32 Section 1. Section **76-5-112.5** is amended to read:

33 **76-5-112.5. Endangerment of a child or vulnerable adult.**

34 (1) As used in this section:

35 (a) (i) "Chemical substance" means:

36 (A) a substance intended to be used as a precursor in the manufacture of a controlled
37 substance;

38 (B) a substance intended to be used in the manufacture of a controlled substance; or

39 (C) any fumes or by-product resulting from the manufacture of a controlled substance.

40 (ii) Intent under this Subsection (1)(a) may be demonstrated by:

41 (A) the use, quantity, or manner of storage of the substance; or

42 (B) the proximity of the substance to other precursors or to manufacturing equipment.

43 (b) "Child" means ~~[a human being]~~ an individual who is under 18 years of age.

44 (c) "Controlled substance" ~~[is as]~~ means the same as that term is defined in Section
45 **58-37-2.**

46 (d) "Drug paraphernalia" ~~[is as]~~ means the same as that term is defined in Section
47 **58-37a-3.**

48 (e) "Exposed to" means that the child or vulnerable adult:

49 (i) is able to access ~~[or view]~~ an unlawfully possessed:

50 (A) controlled substance; or

51 (B) chemical substance;

52 (ii) has the reasonable capacity to access drug paraphernalia; or

53 (iii) is able to smell an odor produced during, or as a result of, the manufacture or
54 production of a controlled substance.

55 (f) "Prescription" ~~[is as]~~ means the same as that term is defined in Section **58-37-2.**

56 (g) "Vulnerable adult" ~~[is as]~~ means the same as that term is defined in Subsection
57 76-5-111(1).

58 (2) Unless a greater penalty is otherwise provided by law:

59 (a) except as provided in ~~[Subsection]~~ Subsections (2)(b) [or], (c), [a person], and (3),
60 an individual is guilty of a felony of the third degree if the ~~[person]~~ individual knowingly or
61 intentionally causes or permits a child or a vulnerable adult to be exposed to, inhale, ingest, or
62 have contact with a controlled substance, chemical substance, or drug paraphernalia;

63 (b) except as provided in Subsection (2)(c) and (3), [a person] an individual is guilty of
64 a felony of the second degree, if:

65 (i) the ~~[person]~~ individual engages in the conduct described in Subsection (2)(a); and

66 (ii) as a result of the conduct described in Subsection (2)(a)~~[-a], the~~ child or [a] the
67 vulnerable adult suffers bodily injury, substantial bodily injury, or serious bodily injury; or

68 (c) ~~[a person]~~ an individual is guilty of a felony of the first degree, if:

69 (i) the ~~[person]~~ individual engages in the conduct described in Subsection (2)(a); and

70 (ii) as a result of the conduct described in Subsection (2)(a)~~[-a], the~~ child or [a] the
71 vulnerable adult dies.

72 (3) Notwithstanding Subsection (2), a child may not be subjected to delinquency
73 proceedings for a violation of Subsection (2) unless:

74 (a) the child is 15 years old or older; and

75 (b) the other child who is exposed to or inhales, ingests, or has contact with the
76 controlled substance, chemical substance, or drug paraphernalia, is under 12 years old.

77 ~~[(3)]~~ (4) It is an affirmative defense to a violation of this section that the controlled
78 substance:

79 (a) was obtained by lawful prescription or in accordance with Title 26, Chapter 61a,
80 Utah Medical Cannabis Act; and

81 (b) is used or possessed by the ~~[person]~~ individual to whom ~~[it]~~ the controlled
82 substance was lawfully prescribed or recommended to under Title 26, Chapter 61a, Utah

83 Medical Cannabis Act.

84 [~~(4)~~] (5) The penalties described in this section are separate from, and in addition to,
85 the penalties and enhancements described in Title 58, Occupations and Professions.

86 Section 2. Section **78A-6-115** is amended to read:

87 **78A-6-115. Hearings -- Record -- County attorney or district attorney**
88 **responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of**
89 **evidence -- Cannabis.**

90 (1) (a) A verbatim record of the proceedings shall be taken in all cases that might result
91 in deprivation of custody as defined in this chapter. In all other cases a verbatim record shall
92 also be made unless dispensed with by the court.

93 (b) (i) For purposes of this Subsection (1)(b):

94 (A) "Record of a proceeding" does not include documentary materials of any type
95 submitted to the court as part of the proceeding, including items submitted under Subsection
96 (4)(a).

97 (B) "Subjects of the record" includes the child's guardian ad litem, the child's legal
98 guardian, the Division of Child and Family Services, and any other party to the proceeding.

99 [~~(i)~~] (ii) Notwithstanding any other provision, including Title 63G, Chapter 2,
100 Government Records Access and Management Act, the court shall release a record of a
101 proceeding made under Subsection (1)(a) [~~shall be released by the court~~] to any person upon a
102 finding on the record for good cause.

103 [~~(i)~~] (iii) Following a petition for a record of a proceeding made under Subsection
104 (1)(a), the court shall:

105 (A) provide notice to all subjects of the record that a request for release of the record
106 has been made; and

107 (B) allow sufficient time for the subjects of the record to respond before making a
108 finding on the petition.

109 [~~(ii)~~] (iv) A record of a proceeding may not be released under this Subsection (1)(b) if

110 the court's jurisdiction over the subjects of the proceeding ended more than 12 months before
111 the day on which the request is made.

112 ~~[(iv) For purposes of this Subsection (1)(b):]~~

113 ~~[(A) "record of a proceeding" does not include documentary materials of any type~~
114 ~~submitted to the court as part of the proceeding, including items submitted under Subsection~~
115 ~~(4)(a); and]~~

116 ~~[(B) "subjects of the record" includes the child's guardian ad litem, the child's legal~~
117 ~~guardian, the Division of Child and Family Services, and any other party to the proceeding.]~~

118 (2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a
119 prosecution district, the district attorney shall represent the state in any proceeding in a minor's
120 case.

121 (b) Subject to the attorney general's prosecutorial discretion in civil enforcement
122 actions, the attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child and
123 Family Services, and this chapter, relating to:

- 124 (i) protection or custody of an abused, neglected, or dependent child; and
- 125 (ii) petitions for termination of parental rights.

126 (c) The attorney general shall represent the Division of Child and Family Services in
127 actions involving a minor who is not adjudicated as abused or neglected, but who is receiving
128 in-home family services under Section [78A-6-117.5](#). Nothing in this Subsection (2)(c) may be
129 construed to affect the responsibility of the county attorney or district attorney to represent the
130 state in those matters, in accordance with Subsection (2)(a).

131 (3) The board may adopt special rules of procedure to govern proceedings involving
132 violations of traffic laws or ordinances, wildlife laws, and boating laws. However, proceedings
133 involving offenses under Section [78A-6-606](#) are governed by that section regarding suspension
134 of driving privileges.

135 (4) (a) For the purposes of determining proper disposition of the minor in dispositional
136 hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and

137 in hearings upon petitions for termination of parental rights, written reports and other material
138 relating to the minor's mental, physical, and social history and condition may be received in
139 evidence and may be considered by the court along with other evidence. The court may require
140 that the [person] individual who wrote the report or prepared the material appear as a witness if
141 the [person] individual is reasonably available.

142 (b) For the purpose of determining proper disposition of a minor alleged to be or
143 adjudicated as abused, neglected, or dependent, dispositional reports prepared by the division
144 under Section 78A-6-315 may be received in evidence and may be considered by the court
145 along with other evidence. The court may require any [person] individual who participated in
146 preparing the dispositional report to appear as a witness, if the [person] individual is reasonably
147 available.

148 (5) (a) In an abuse, neglect, or dependency proceeding occurring after the
149 commencement of a shelter hearing under Section 78A-6-306 or the filing of a petition under
150 Section 78A-6-304, each party to the proceeding shall provide in writing to the other parties or
151 their counsel any information which the party:

- 152 (i) plans to report to the court at the proceeding; or
- 153 (ii) could reasonably expect would be requested of the party by the court at the
154 proceeding.

155 (b) The disclosure required under Subsection (5)(a) shall be made:

- 156 (i) for dispositional hearings under Sections 78A-6-311 and 78A-6-312, no less than
157 five days before the proceeding;
- 158 (ii) for proceedings under Chapter 6, Part 5, Termination of Parental Rights Act, in
159 accordance with Utah Rules of Civil Procedure; and
- 160 (iii) for all other proceedings, no less than five days before the proceeding.

161 (c) If a party to a proceeding obtains information after the deadline in Subsection
162 (5)(b), the information is exempt from the disclosure required under Subsection (5)(a) if the
163 party certifies to the court that the information was obtained after the deadline.

- 164 (d) Subsection (5)(a) does not apply to:
- 165 (i) pretrial hearings; and
- 166 (ii) the frequent, periodic review hearings held in a dependency drug court case to
- 167 assess and promote the parent's progress in substance use disorder treatment.
- 168 (6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court
- 169 may, in ~~[its]~~ the court's discretion, consider evidence of statements made by a child under eight
- 170 years of age to ~~[a person]~~ an individual in a trust relationship.
- 171 (7) (a) As used in this Subsection (7):
- 172 (i) "Cannabis" means the same as that term is defined in Section [26-61a-102](#).
- 173 ~~[(i)]~~ (ii) "Cannabis product" means the same as that term is defined in Section
- 174 [26-61a-102](#).
- 175 (iii) (A) "Chronic" means repeated or patterned.
- 176 (B) "Chronic" does not mean an isolated incident.
- 177 ~~[(ii)]~~ (iv) "Dosing parameters" means the same as that term is defined in Section
- 178 [26-61a-102](#).
- 179 ~~[(iii)]~~ (v) "Medical cannabis" means the same as that term is defined in Section
- 180 [26-61a-102](#).
- 181 ~~[(iv)]~~ (vi) "Medical cannabis cardholder" means the same as that term is defined in
- 182 Section [26-61a-102](#).
- 183 ~~[(v)]~~ (vii) "Qualified medical provider" means the same as that term is defined in
- 184 Section [26-61a-102](#).
- 185 (b) In any child welfare proceeding in which the court makes a finding, determination,
- 186 or otherwise considers an individual's possession or use of medical cannabis, a cannabis
- 187 product, or a medical cannabis device, the court may not consider or treat the individual's
- 188 possession or use any differently than the lawful possession or use of any prescribed controlled
- 189 substance if the individual's use or possession complies with:
- 190 (i) Title 4, Chapter 41a, Cannabis Production Establishments;

191 (ii) the individual's possession or use complies with Subsection 58-37-3.7(2) or (3); or

192 (iii) (A) the individual's possession or use complies with Title 26, Chapter 61a, Utah
193 Medical Cannabis Act; and

194 (B) the individual reasonably complies with the dosing parameters determined by the
195 individual's qualified medical provider or through a consultation described in Subsection
196 26-61a-502(4) or (5).

197 (c) In a child welfare proceeding, a parent's or guardian's use of cannabis or a cannabis
198 product is not abuse or neglect of a child under Section 78A-6-105 unless there is evidence
199 showing that:

200 (i) the child is harmed because of the child's inhalation or ingestion of cannabis, or
201 because of cannabis being introduced to the child's body in another manner; or

202 (ii) the child is at an unreasonable risk of harm because of chronic inhalation or
203 ingestion of cannabis or chronic introduction of cannabis to the child's body in another manner.

204 ~~[(e)]~~ (d) ~~[A]~~ Unless there is harm or an unreasonable risk of harm to the child as
205 described in Subsection (7)(c), in a child welfare proceeding a parent's or guardian's use of
206 medical cannabis or a cannabis product is not [abuse or neglect of a child under Section
207 78A-6-105, nor is it] contrary to the best interests of a child[;] if:

208 (i) ~~[(A)]~~ for a medical cannabis cardholder after January 1, 2021, the parent's or
209 guardian's possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act,
210 and there is no evidence that the parent's or guardian's use of medical cannabis unreasonably
211 deviates from the dosing parameters determined by the parent's or guardian's qualified medical
212 provider or through a consultation described in Subsection 26-61a-502(4) or (5); or

213 ~~[(B)]~~ (ii) before January 1, 2021, the parent's or guardian's possession or use complies
214 with Subsection 58-37-3.7(2) or (3) ~~[; and]~~.

215 ~~[(ii) (A) there is no evidence showing that the child has inhaled, ingested, or otherwise~~
216 ~~had cannabis introduced to the child's body; or]~~

217 ~~[(B) there is no evidence showing a nexus between the parent's or guardian's use of~~

218 ~~medical cannabis or a cannabis product and behavior that would separately constitute abuse or~~
219 ~~neglect of the child.]~~

220 (e) Subsection (7)(c) does not prohibit a finding of abuse or neglect of a child under
221 Section [78A-6-105](#), and Subsection (7)(d) does not prohibit a finding that a parent's or
222 guardian's use of medical cannabis or a cannabis product is contrary to the best interests of a
223 child, if there is evidence showing a nexus between the parent's or guardian's use of cannabis or
224 a cannabis product and behavior that would separately constitute abuse or neglect of the child.