

Representative Christine F. Watkins proposes the following substitute bill:

CHILD ABUSE AND ENDANGERMENT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: _____

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 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:



26 AMENDS:

27 **76-5-112.5**, as last amended by Laws of Utah 2011, Chapter 320

28 **78A-6-115**, as last amended by Laws of Utah 2019, First Special Session, Chapter 5

29

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

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

32 **76-5-112.5. Endangerment of a child or vulnerable adult.**

33 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

47 ~~[(e) "Exposed to" means that the child or vulnerable adult:]~~

48 ~~[(i) is able to access or view an unlawfully possessed: (A) controlled substance; or (B)~~
49 ~~chemical substance;]~~

50 ~~[(ii) has the reasonable capacity to access drug paraphernalia; or]~~

51 ~~[(iii) is able to smell an odor produced during, or as a result of, the manufacture or~~
52 ~~production of a controlled substance.]~~

53 (e) "Manufacture" means the same as that term is defined in Section 58-37-2.

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

55 (g) "Production" means the same as that term is defined in Section 58-37-2.

56 ~~[(g)]~~ (h) "Vulnerable adult" ~~[is as]~~ means the same as that term is defined in Subsection

57 76-5-111(1).

58 (2) An individual may not knowingly or intentionally cause or permit a child or
59 vulnerable adult to:

60 (a) inhale or ingest a controlled substance or chemical substance;

61 (b) access or be able to reasonably access:

62 (i) an unlawfully possessed controlled substance or chemical substance; or

63 (ii) drug paraphernalia, the use of which could result in bodily injury; or

64 (c) smell an odor produced during, or as a result of, the manufacture or production of a
65 controlled substance.

66 ~~[(2)]~~ (3) Unless a greater penalty is otherwise provided by law:

67 (a) except as provided in ~~[Subsection]~~ Subsections ~~[(2)]~~ (3)(b) [or] and (c), ~~[a person]~~
68 an individual who is older than 16 years old is guilty of a felony of the third degree if the
69 ~~[person knowingly or intentionally causes or permits a child or a vulnerable adult to be exposed~~
70 ~~to, inhale, ingest, or have contact with a controlled substance, chemical substance, or drug~~
71 ~~paraphernalia]~~ individual engages in the conduct described in Subsection (2);

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

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

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

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

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

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

81 ~~[(3)]~~ (4) It is an affirmative defense to a violation of this section that the controlled
82 substance:

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

85 (b) is used or possessed by the ~~[person]~~ individual to whom ~~[it]~~ the controlled
86 substance was lawfully prescribed or recommended to under Title 26, Chapter 61a, Utah
87 Medical Cannabis Act.

88 (4) The penalties described in this section are separate from, and in addition to, the
89 penalties and enhancements described in Title 58, Occupations and Professions.

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

91 **78A-6-115. Hearings -- Record -- County attorney or district attorney**
92 **responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of**
93 **evidence -- Medical cannabis.**

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

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

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

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

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

107 [(ii)] (iii) Following a petition for a record of a proceeding made under Subsection
108 (1)(a), the court shall:

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

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

113 [(iii)] (iv) A record of a proceeding may not be released under this Subsection (1)(b) if
114 the court's jurisdiction over the subjects of the proceeding ended more than 12 months before
115 the day on which the request is made.

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

117 ~~[(A) "record of a proceeding" does not include documentary materials of any type~~
118 ~~submitted to the court as part of the proceeding, including items submitted under Subsection~~

119 ~~(4)(a); and]~~

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

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

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

128 (i) protection or custody of an abused, neglected, or dependent child; and

129 (ii) petitions for termination of parental rights.

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

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

139 (4) (a) For the purposes of determining proper disposition of the minor in dispositional
140 hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and
141 in hearings upon petitions for termination of parental rights, written reports and other material
142 relating to the minor's mental, physical, and social history and condition may be received in
143 evidence and may be considered by the court along with other evidence. The court may require
144 that the [person] individual who wrote the report or prepared the material appear as a witness if
145 the [person] individual is reasonably available.

146 (b) For the purpose of determining proper disposition of a minor alleged to be or
147 adjudicated as abused, neglected, or dependent, dispositional reports prepared by the division
148 under Section [78A-6-315](#) may be received in evidence and may be considered by the court
149 along with other evidence. The court may require any [person] individual who participated in

150 preparing the dispositional report to appear as a witness, if the ~~[person]~~ individual is reasonably
151 available.

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

156 (i) plans to report to the court at the proceeding; or

157 (ii) could reasonably expect would be requested of the party by the court at the
158 proceeding.

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

160 (i) for dispositional hearings under Sections 78A-6-311 and 78A-6-312, no less than
161 five days before the proceeding;

162 (ii) for proceedings under Chapter 6, Part 5, Termination of Parental Rights Act, in
163 accordance with Utah Rules of Civil Procedure; and

164 (iii) for all other proceedings, no less than five days before the proceeding.

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

168 (d) Subsection (5)(a) does not apply to:

169 (i) pretrial hearings; and

170 (ii) the frequent, periodic review hearings held in a dependency drug court case to
171 assess and promote the parent's progress in substance use disorder treatment.

172 (6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court
173 may, in ~~[its]~~ the court's discretion, consider evidence of statements made by a child under eight
174 years of age to ~~[a person]~~ an individual in a trust relationship.

175 (7) (a) As used in this Subsection (7):

176 (i) "Cannabis" means the same as that term is defined in Section 26-61a-102.

177 ~~[(†)]~~ (ii) "Cannabis product" means the same as that term is defined in Section
178 26-61a-102.

179 (iii) (A) "Chronic" means repeated or patterned.

180 (B) "Chronic" does not mean an isolated incident.

181 ~~[(iv)]~~ (iv) "Dosing parameters" means the same as that term is defined in Section
182 26-61a-102.

183 ~~[(iii)]~~ (v) "Medical cannabis" means the same as that term is defined in Section
184 26-61a-102.

185 ~~[(iv)]~~ (vi) "Medical cannabis cardholder" means the same as that term is defined in
186 Section 26-61a-102.

187 ~~[(v)]~~ (vii) "Qualified medical provider" means the same as that term is defined in
188 Section 26-61a-102.

189 (b) In any child welfare proceeding in which the court makes a finding, determination,
190 or otherwise considers an individual's possession or use of medical cannabis, a cannabis
191 product, or a medical cannabis device, the court may not consider or treat the individual's
192 possession or use any differently than the lawful possession or use of any prescribed controlled
193 substance if the individual's use or possession complies with:

- 194 (i) Title 4, Chapter 41a, Cannabis Production Establishments;
- 195 (ii) the individual's possession or use complies with Subsection 58-37-3.7(2) or (3); or
- 196 (iii) (A) the individual's possession or use complies with Title 26, Chapter 61a, Utah
197 Medical Cannabis Act; and
- 198 (B) the individual reasonably complies with the dosing parameters determined by the
199 individual's qualified medical provider or through a consultation described in Subsection
200 26-61a-502(4) or (5).

201 (c) A parent's or guardian's use of cannabis or a cannabis product is not abuse or
202 neglect of a child under Section 78A-6-105 if:

- 203 (i) there is no evidence showing that:
 - 204 (A) the child is harmed because of the child's inhalation or ingestion of cannabis, or
205 because of cannabis being introduced to the child's body in another manner; or
 - 206 (B) the child is at an unreasonable risk of harm because of chronic inhalation or
207 ingestion of cannabis or chronic introduction of cannabis to the child's body in another manner;
208 or

209 (ii) there is no evidence showing a nexus between the parent's or guardian's use of
210 cannabis or a cannabis product and behavior that would separately constitute abuse or neglect
211 of the child.

212 ~~[(e)]~~ (d) A parent's or guardian's use of medical cannabis or a cannabis product is not
213 [~~abuse or neglect of a child under Section 78A-6-105, nor is it~~] contrary to the best interests of
214 a child~~;~~ if:

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

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

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

224 ~~[(B) there is no evidence showing a nexus between the parent's or guardian's use of~~
225 ~~medical cannabis or a cannabis product and behavior that would separately constitute abuse or~~
226 ~~neglect of the child.]~~