

**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: Wayne A. Harper

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**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

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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:

49 (A) controlled substance; or

50 (B) chemical substance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

76 ~~[(3)]~~ (4) It is an affirmative defense to a violation of this section that the controlled  
77 substance:

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

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

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

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

86 **78A-6-115. Hearings -- Record -- County attorney or district attorney**  
87 **responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of**

88 **evidence -- Medical cannabis.**

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

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

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

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

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

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

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

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

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

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

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

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

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

119 case.

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

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

124 (ii) petitions for termination of parental rights.

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

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

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

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

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

150 their counsel any information which the party:

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

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

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

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

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

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

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

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

164 (i) pretrial hearings; and

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

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

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

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

172 [(i)] (ii) "Cannabis product" means the same as that term is defined in Section  
173 26-61a-102.

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

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

176 [(i)] (iv) "Dosing parameters" means the same as that term is defined in Section  
177 26-61a-102.

178 [(i)] (v) "Medical cannabis" means the same as that term is defined in Section  
179 26-61a-102.

180 [(i)] (vi) "Medical cannabis cardholder" means the same as that term is defined in

181 Section 26-61a-102.

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

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

- 189 (i) Title 4, Chapter 41a, Cannabis Production Establishments;
- 190 (ii) the individual's possession or use complies with Subsection 58-37-3.7(2) or (3); or
- 191 (iii) (A) the individual's possession or use complies with Title 26, Chapter 61a, Utah  
192 Medical Cannabis Act; and

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

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

- 198 (i) there is no evidence showing that:
- 199 (A) the child is harmed because of the child's inhalation or ingestion of cannabis, or  
200 because of cannabis being introduced to the child's body in another manner; or
- 201 (B) the child is at an unreasonable risk of harm because of chronic inhalation or  
202 ingestion of cannabis or chronic introduction of cannabis to the child's body in another manner;

203 or

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

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

210 (i) ~~[(A)]~~ for a medical cannabis cardholder after January 1, 2021, the parent's or  
211 guardian's possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act,

212 and there is no evidence that the parent's or guardian's use of medical cannabis unreasonably  
213 deviates from the dosing parameters determined by the parent's or guardian's qualified medical  
214 provider or through a consultation described in Subsection 26-61a-502(4) or (5); or

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

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

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