

HB0365S03 compared with HB0365S02

~~text~~ shows text that was in HB0365S02 but was deleted in HB0365S03.

text shows text that was not in HB0365S02 but was inserted into HB0365S03.

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~~Representative Christine F.~~Senator Wayne A. Watkins~~Harper~~ proposes the following substitute bill:

CHILD ABUSE AND ENDANGERMENT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: ~~Christine F. Watkins~~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

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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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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- (A) controlled substance; or
 - (B) chemical substance;
 - (ii) has the reasonable capacity to access drug paraphernalia; or
 - (iii) is able to smell an odor produced during, or as a result of, the manufacture or production of a controlled substance.
- (f) "Prescription" [~~is as~~] means the same as that term is defined in Section 58-37-2.
- (g) "Vulnerable adult" [~~is as~~] means the same as that term is defined in Subsection 76-5-111(1).
- (2) Unless a greater penalty is otherwise provided by law:
- (a) except as provided in [Subsection] Subsections (2)(b) [~~or~~], (c), [a person], and (3), an individual is guilty of a felony of the third degree if the [person] individual knowingly or intentionally causes or permits a child or a vulnerable adult to be exposed to, inhale, ingest, or have contact with a controlled substance, chemical substance, or drug paraphernalia;
 - (b) except as provided in Subsection (2)(c) and (3), [a person] an individual is guilty of a felony of the second degree, if:
 - (i) the [person] individual engages in the conduct described in Subsection (2)(a); and
 - (ii) as a result of the conduct described in Subsection (2)(a)[~~, a~~], the child or [a] the vulnerable adult suffers bodily injury, substantial bodily injury, or serious bodily injury; or
 - (c) [a person] an individual is guilty of a felony of the first degree, if:
 - (i) the [person] individual engages in the conduct described in Subsection (2)(a); and
 - (ii) as a result of the conduct described in Subsection (2)(a)[~~, a~~], the child or [a] the vulnerable adult dies.
- (3) Notwithstanding Subsection (2), a child may not be subjected to delinquency proceedings for a violation of Subsection (2) unless:
- (a) the child is 15 years old or older; and
 - (b) the other child who is exposed to or inhales, ingests, or has contact with the controlled substance, chemical substance, or drug paraphernalia, is under 12 years old.
- ~~(3)~~ (4) It is an affirmative defense to a violation of this section that the controlled substance:
- (a) was obtained by lawful prescription or in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) For the purpose of determining proper disposition of a minor alleged to be or

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adjudicated as abused, neglected, or dependent, dispositional reports prepared by the division under Section 78A-6-315 may be received in evidence and may be considered by the court along with other evidence. The court may require any [~~person~~] individual who participated in preparing the dispositional report to appear as a witness, if the [~~person~~] individual is reasonably available.

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

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

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

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

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

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

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

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

(i) pretrial hearings; and

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

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

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

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

[~~(†)~~] (ii) "Cannabis product" means the same as that term is defined in Section

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26-61a-102.

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

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

~~(iii)~~ (iv) "Dosing parameters" means the same as that term is defined in Section

26-61a-102.

~~(iii)~~ (v) "Medical cannabis" means the same as that term is defined in Section

26-61a-102.

~~(iv)~~ (vi) "Medical cannabis cardholder" means the same as that term is defined in

Section 26-61a-102.

~~(v)~~ (vii) "Qualified medical provider" means the same as that term is defined in

Section 26-61a-102.

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

(i) Title 4, Chapter 41a, Cannabis Production Establishments;

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

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

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

(c) ~~(A)~~ In a child welfare proceeding, a parent's or guardian's use of cannabis or a cannabis product is not abuse or neglect of a child under Section 78A-6-105 ~~if~~

~~(i)~~ unless there is ~~no~~ evidence showing that:

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

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

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

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

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

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

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

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

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