

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 penalties and 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:

AMENDS:

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) Unless a greater penalty is otherwise provided by law:]~~

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

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

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

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

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

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

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

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

74 (i) inhale or ingest a controlled substance or chemical substance;

75 (ii) access:

76 (A) an unlawfully possessed controlled substance or chemical substance; or

77 (B) drug paraphernalia, if the child or vulnerable adult has the reasonable capacity to
78 access the drug paraphernalia; or

79 (iii) smell an odor produced during, or as a result of, the manufacture or production of
80 a controlled substance.

81 (b) (i) Unless a greater penalty is provided by law, an individual is guilty of a second
82 degree felony if the individual engages in the conduct described in Subsection (2)(a) and, as a
83 result of the individual's conduct described in Subsection (2)(a), the child or vulnerable adult
84 suffers bodily injury, substantial bodily injury, or serious bodily injury.

85 (ii) Unless a greater penalty is provided by law, an individual is guilty of a first degree
86 felony if the individual engages in the conduct described in Subsection (2)(a) and, as a result of
87 the individual's conduct described in Subsection (2)(a), the child or vulnerable adult dies.

88 (3) It is an affirmative defense to a violation of this section that the controlled
89 substance:

90 (a) was obtained ~~[by]~~:
 91 (i) by lawful prescription; ~~and~~ or
 92 (ii) in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act; and
 93 (b) is used or possessed by the ~~[person to whom it was lawfully prescribed:]~~ individual
 94 who obtained the controlled substance in accordance with Subsection (3)(a).

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

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

98 **78A-6-115. Hearings -- Record -- County attorney or district attorney**
 99 **responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of**
 100 **evidence -- Medical cannabis.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

136 (ii) petitions for termination of parental rights.

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

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

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

152 the ~~[person]~~ individual is reasonably available.

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

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

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

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

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

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

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

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

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

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

176 (i) pretrial hearings; and

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

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

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

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

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

185 [26-61a-102](#).

186 ~~[(ii) "Dosing parameters" means the same as that term is defined in Section~~

187 [26-61a-102](#).]

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

189 [26-61a-102](#).]

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

191 [26-61a-102](#).]

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

193 [26-61a-102](#).]

194 ~~[(b) In any child welfare proceeding in which the court makes a finding, determination,~~

195 ~~or otherwise considers an individual's possession or use of medical cannabis, a cannabis~~

196 ~~product, or a medical cannabis device, the court may not consider or treat the individual's~~

197 ~~possession or use any differently than the lawful possession or use of any prescribed controlled~~

198 ~~substance if the individual's use or possession complies with:]~~

199 ~~[(i) Title 4, Chapter 41a, Cannabis Production Establishments;]~~

200 ~~[(ii) the individual's possession or use complies with Subsection [58-37-3.7\(2\)](#) or (3);~~

201 ~~or]~~

202 ~~[(iii) (A) the individual's possession or use complies with Title 26, Chapter 61a, Utah~~

203 ~~Medical Cannabis Act; and]~~

204 ~~[(B) the individual reasonably complies with the dosing parameters determined by the~~

205 ~~individual's qualified medical provider or through a consultation described in Subsection~~

206 [26-61a-502\(4\)](#) or (5).]

207 ~~[(e)]~~ (b) 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 a

209 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) before January 1, 2021, the parent's or guardian's possession or use complies with~~
216 ~~Subsection 58-37-3.7(2) or (3); and]~~
217 ~~[(ii) (A) (i) there is no evidence showing that the child [has inhaled, ingested, or~~
218 ~~otherwise had cannabis introduced to the child's body; or] suffered harm because of the child's~~
219 ~~inhalation or ingestion of cannabis or because of cannabis being introduced to the child's body~~
220 ~~in another manner; or~~
221 ~~[(B) (ii) there is no evidence showing a nexus between the parent's or guardian's use of~~
222 ~~[medical] cannabis or a cannabis product and behavior that would separately constitute abuse~~
223 ~~or neglect of the child.~~