

Senator Alvin B. Jackson proposes the following substitute bill:

CHILD WELFARE REVISIONS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Alvin B. Jackson

House Sponsor: LaVar Christensen

LONG TITLE

General Description:

This bill amends a provision in the Juvenile Court Act.

Highlighted Provisions:

This bill:

► amends the Juvenile Court Act to provide that a minor who is 18 years old or older, but younger than 21 years old, may petition the court to express the minor's desire to be removed from the custody of the Division of Child and Family Services.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-6-117, as last amended by Laws of Utah 2015, Chapter 274

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

Section 1. Section **78A-6-117** is amended to read:

78A-6-117. Adjudication of jurisdiction of juvenile court -- Disposition of cases --



26 **Enumeration of possible court orders -- Considerations of court -- Obtaining DNA**
27 **sample.**

28 (1) (a) When a minor is found to come within the provisions of Section 78A-6-103, the
29 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
30 jurisdiction over the minor. However, in cases within the provisions of Subsection
31 78A-6-103(1), findings of fact are not necessary.

32 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
33 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided
34 to the school superintendent of the district in which the minor resides or attends school. Notice
35 shall be made to the district superintendent within three days of the adjudication and shall
36 include:

37 (i) the specific offenses for which the minor was adjudicated; and

38 (ii) if available, if the victim:

39 (A) resides in the same school district as the minor; or

40 (B) attends the same school as the minor.

41 (2) Upon adjudication the court may make the following dispositions by court order:

42 (a) (i) The court may place the minor on probation or under protective supervision in
43 the minor's own home and upon conditions determined by the court, including compensatory
44 service as provided in Subsection (2)(m)(iii).

45 (ii) The court may place the minor in state supervision with the probation department
46 of the court, under the legal custody of:

47 (A) the minor's parent or guardian;

48 (B) the Division of Juvenile Justice Services; or

49 (C) the Division of Child and Family Services.

50 (iii) If the court orders probation or state supervision, the court shall direct that notice
51 of its order be provided to designated persons in the local law enforcement agency and the
52 school or transferee school, if applicable, that the minor attends. The designated persons may
53 receive the information for purposes of the minor's supervision and student safety.

54 (iv) Any employee of the local law enforcement agency and the school that the minor
55 attends who discloses the court's order of probation is not:

56 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as

57 provided in Section 63G-7-202; and

58 (B) civilly or criminally liable except when the disclosure constitutes a knowing
59 violation of Section 63G-2-801.

60 (b) The court may place the minor in the legal custody of a relative or other suitable
61 person, with or without probation or protective supervision, but the juvenile court may not
62 assume the function of developing foster home services.

63 (c) (i) The court may:

64 (A) vest legal custody of the minor in the Division of Child and Family Services,
65 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;
66 and

67 (B) order the Department of Human Services to provide dispositional
68 recommendations and services.

69 (ii) For minors who may qualify for services from two or more divisions within the
70 Department of Human Services, the court may vest legal custody with the department.

71 (iii) (A) A minor who is committed to the custody of the Division of Child and Family
72 Services on grounds other than abuse or neglect is subject to the provisions of Title 78A,
73 Chapter 6, Part 4, Minors in Custody on Grounds Other than Abuse or Neglect, and Title 62A,
74 Chapter 4a, Part 2a, Minors in Custody on Grounds other than Abuse or Neglect.

75 (B) Before the court entering an order to place a minor in the custody of the Division of
76 Child and Family Services on grounds other than abuse or neglect, the court shall provide the
77 division with notice of the hearing no later than five days before the time specified for the
78 hearing so the division may attend the hearing.

79 (C) Before committing a child to the custody of the Division of Child and Family
80 Services, the court shall make a finding as to what reasonable efforts have been attempted to
81 prevent the child's removal from the child's home.

82 (iv) (A) A minor who is 18 years old or older, but younger than 21 years old, may
83 petition the court to express the minor's desire to be removed from the jurisdiction of the
84 juvenile court and from the custody of the Division of Child and Family Services if the minor
85 is in the division's custody on grounds of abuse, neglect, or dependency.

86 (B) If the minor's parent's rights have not been terminated in accordance with Part 5,
87 Termination of Parental Rights Act, the minor's petition shall contain a statement from the

88 minor's parent or guardian agreeing that the minor should be removed from the custody of the
89 Division of Child and Family Services.

90 (C) The minor and the minor's parent or guardian shall sign the petition.

91 (D) The court shall review the petition within 14 days.

92 (E) The court shall remove the minor from the custody of the Division of Child and
93 Family Services if the minor and the minor's parent or guardian have met the requirements
94 described in Subsections (2)(c)(iv)(B) and (C) and if the court finds, based on input from the
95 Division of Child and Family Services, the minor's guardian ad litem, and the Office of the
96 Attorney General, that the minor does not pose an imminent threat to self or others.

97 (F) A minor removed from custody under Subsection (2)(c)(iv)(E) may, within 90 days
98 of the date of removal, petition the court to re-enter custody of the Division of Child and
99 Family Services.

100 (G) Upon receiving a petition under Subsection (2)(c)(iv)(F), the court shall order the
101 Division of Child and Family Services to take custody of the minor based on the findings the
102 court entered when the court originally vested custody in the Division of Child and Family
103 Services.

104 (d) (i) The court may commit a minor to the Division of Juvenile Justice Services for
105 secure confinement.

106 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,
107 or dependency under Subsection 78A-6-103(1)(c) may not be committed to the Division of
108 Juvenile Justice Services.

109 (e) The court may commit a minor, subject to the court retaining continuing
110 jurisdiction over the minor, to the temporary custody of the Division of Juvenile Justice
111 Services for observation and evaluation for a period not to exceed 45 days, which period may
112 be extended up to 15 days at the request of the director of the Division of Juvenile Justice
113 Services.

114 (f) (i) The court may commit a minor to a place of detention or an alternative to
115 detention for a period not to exceed 30 days subject to the court retaining continuing
116 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions
117 ordered by the court.

118 (ii) This Subsection (2)(f) applies only to a minor adjudicated for:

119 (A) an act which if committed by an adult would be a criminal offense; or

120 (B) contempt of court under Section 78A-6-1101.

121 (g) The court may vest legal custody of an abused, neglected, or dependent minor in
122 the Division of Child and Family Services or any other appropriate person in accordance with
123 the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and
124 Dependency Proceedings.

125 (h) The court may place a minor on a ranch or forestry camp, or similar facility for care
126 and also for work, if possible, if the person, agency, or association operating the facility has
127 been approved or has otherwise complied with all applicable state and local laws. A minor
128 placed in a forestry camp or similar facility may be required to work on fire prevention,
129 forestation and reforestation, recreational works, forest roads, and on other works on or off the
130 grounds of the facility and may be paid wages, subject to the approval of and under conditions
131 set by the court.

132 (i) (i) The court may order a minor to repair, replace, or otherwise make restitution for
133 damage or loss caused by the minor's wrongful act, including costs of treatment as stated in
134 Section 78A-6-321 and impose fines in limited amounts.

135 (ii) The court may also require a minor to reimburse an individual, entity, or
136 governmental agency who offered and paid a reward to a person or persons for providing
137 information resulting in a court adjudication that the minor is within the jurisdiction of the
138 juvenile court due to the commission of a criminal offense.

139 (iii) If a minor is returned to this state under the Interstate Compact on Juveniles, the
140 court may order the minor to make restitution for costs expended by any governmental entity
141 for the return.

142 (j) The court may issue orders necessary for the collection of restitution and fines
143 ordered by the court, including garnishments, wage withholdings, and executions.

144 (k) (i) The court may through its probation department encourage the development of
145 employment or work programs to enable minors to fulfill their obligations under Subsection
146 (2)(i) and for other purposes considered desirable by the court.

147 (ii) Consistent with the order of the court, the probation officer may permit a minor
148 found to be within the jurisdiction of the court to participate in a program of work restitution or
149 compensatory service in lieu of paying part or all of the fine imposed by the court.

150 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in
151 addition to any other disposition authorized by this section:

152 (A) restrain the minor from driving for periods of time the court considers necessary;
153 and

154 (B) take possession of the minor's driver license.

155 (ii) The court may enter any other disposition under Subsection (2)(l)(i). However, the
156 suspension of driving privileges for an offense under Section 78A-6-606 is governed only by
157 Section 78A-6-606.

158 (m) (i) When a minor is found within the jurisdiction of the juvenile court under
159 Section 78A-6-103 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug
160 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court
161 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a
162 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory
163 completion of an approved substance abuse prevention or treatment program may be credited
164 by the court as compensatory service hours.

165 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
166 78A-6-103 because of a violation of Section 32B-4-409 or Subsection 76-9-701(1), the court
167 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order
168 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory
169 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an
170 approved substance abuse prevention or treatment program may be credited by the court as
171 compensatory service hours.

172 (iii) When a minor is found within the jurisdiction of the juvenile court under Section
173 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may
174 order the minor to clean up graffiti created by the minor or any other person at a time and place
175 within the jurisdiction of the court. Compensatory service required under this section may be
176 performed in the presence and under the direct supervision of the minor's parent or legal
177 guardian. The parent or legal guardian shall report completion of the order to the court. The
178 minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal
179 costs as determined under Section 76-6-107, unless waived by the court for good cause. The
180 court may also require the minor to perform other alternative forms of restitution or repair to

181 the damaged property pursuant to Subsection 77-18-1(8).

182 (A) For a first adjudication, the court may require the minor to clean up graffiti for not
183 less than eight hours.

184 (B) For a second adjudication, the court may require the minor to clean up graffiti for
185 not less than 16 hours.

186 (C) For a third adjudication, the court may require the minor to clean up graffiti for not
187 less than 24 hours.

188 (n) (i) Subject to Subsection (2)(n)(iii), the court may order that a minor:

189 (A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

190 (B) receive other special care.

191 (ii) For purposes of receiving the examination, treatment, or care described in
192 Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.

193 (iii) In determining whether to order the examination, treatment, or care described in
194 Subsection (2)(n)(i), the court shall consider:

195 (A) the desires of the minor;

196 (B) if the minor is under the age of 18, the desires of the parents or guardian of the
197 minor; and

198 (C) whether the potential benefits of the examination, treatment, or care outweigh the
199 potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain
200 function impairment, or emotional or physical harm resulting from the compulsory nature of
201 the examination, treatment, or care.

202 (iv) The Division of Child and Family Services shall take reasonable measures to
203 notify a parent or guardian of any non-emergency health treatment or care scheduled for a
204 child, shall include the parent or guardian as fully as possible in making health care decisions
205 for the child, and shall defer to the parent's or guardian's reasonable and informed decisions
206 regarding the child's health care to the extent that the child's health and well being are not
207 unreasonably compromised by the parent's or guardian's decision.

208 (v) The Division of Child and Family Services shall notify the parent or guardian of a
209 child within five business days after a child in the custody of the Division of Child and Family
210 Services receives emergency health care or treatment.

211 (vi) The Division of Child and Family Services shall use the least restrictive means to

212 accomplish a compelling interest in the care and treatment of a child described in this
213 Subsection (2)(n).

214 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the
215 interest of the minor, and may appoint as guardian a public or private institution or agency in
216 which legal custody of the minor is vested.

217 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
218 private agency or institution, the court shall give primary consideration to the welfare of the
219 minor. When practicable, the court may take into consideration the religious preferences of the
220 minor and of a child's parents.

221 (p) (i) In support of a decree under Section 78A-6-103, the court may order reasonable
222 conditions to be complied with by a minor's parents or guardian, a minor, a minor's custodian,
223 or any other person who has been made a party to the proceedings. Conditions may include:

224 (A) parent-time by the parents or one parent;

225 (B) restrictions on the minor's associates;

226 (C) restrictions on the minor's occupation and other activities; and

227 (D) requirements to be observed by the parents or custodian.

228 (ii) A minor whose parents or guardians successfully complete a family or other
229 counseling program may be credited by the court for detention, confinement, or probation time.

230 (q) The court may order the child to be committed to the physical custody of a local
231 mental health authority, in accordance with the procedures and requirements of Title 62A,
232 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and
233 Mental Health.

234 (r) (i) The court may make an order committing a minor within the court's jurisdiction
235 to the Utah State Developmental Center if the minor has an intellectual disability in accordance
236 with the provisions of Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility
237 for People with an Intellectual Disability.

238 (ii) The court shall follow the procedure applicable in the district courts with respect to
239 judicial commitments to the Utah State Developmental Center when ordering a commitment
240 under Subsection (2)(r)(i).

241 (s) The court may terminate all parental rights upon a finding of compliance with the
242 provisions of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

243 (t) The court may make any other reasonable orders for the best interest of the minor or
244 as required for the protection of the public, except that a child may not be committed to jail or
245 prison.

246 (u) The court may combine the dispositions listed in this section if they are compatible.

247 (v) Before depriving any parent of custody, the court shall give due consideration to the
248 rights of parents concerning their child. The court may transfer custody of a minor to another
249 person, agency, or institution in accordance with the requirements and procedures of Title 78A,
250 Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

251 (w) Except as provided in Subsection (2)(y)(i), an order under this section for
252 probation or placement of a minor with an individual or an agency shall include a date certain
253 for a review of the case by the court. A new date shall be set upon each review.

254 (x) In reviewing foster home placements, special attention shall be given to making
255 adoptable children available for adoption without delay.

256 (y) (i) The juvenile court may enter an order of permanent custody and guardianship
257 with an individual or relative of a child where the court has previously acquired jurisdiction as
258 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an
259 order for child support on behalf of the child against the natural or adoptive parents of the
260 child.

261 (ii) Orders under Subsection (2)(y)(i):

262 (A) shall remain in effect until the child reaches majority;

263 (B) are not subject to review under Section [78A-6-118](#); and

264 (C) may be modified by petition or motion as provided in Section [78A-6-1103](#).

265 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and
266 permanent orders of custody and guardianship do not expire with a termination of jurisdiction
267 of the juvenile court.

268 (3) In addition to the dispositions described in Subsection (2), when a minor comes
269 within the court's jurisdiction, the minor may be given a choice by the court to serve in the
270 National Guard in lieu of other sanctions, provided:

271 (a) the minor meets the current entrance qualifications for service in the National
272 Guard as determined by a recruiter, whose determination is final;

273 (b) the minor is not under the jurisdiction of the court for any act that:

- 274 (i) would be a felony if committed by an adult;
- 275 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or
- 276 (iii) was committed with a weapon; and
- 277 (c) the court retains jurisdiction over the minor under conditions set by the court and
- 278 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.
- 279 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction
- 280 of the court as described in Subsection [53-10-403\(3\)](#). The specimen shall be obtained by
- 281 designated employees of the court or, if the minor is in the legal custody of the Division of
- 282 Juvenile Justice Services, then by designated employees of the division under Subsection
- 283 [53-10-404\(5\)\(b\)](#).
- 284 (b) The responsible agency shall ensure that employees designated to collect the saliva
- 285 DNA specimens receive appropriate training and that the specimens are obtained in accordance
- 286 with accepted protocol.
- 287 (c) Reimbursements paid under Subsection [53-10-404\(2\)\(a\)](#) shall be placed in the DNA
- 288 Specimen Restricted Account created in Section [53-10-407](#).
- 289 (d) Payment of the reimbursement is second in priority to payments the minor is
- 290 ordered to make for restitution under this section and treatment under Section [78A-6-321](#).