

Stephanie Pitcher proposes the following substitute bill:

Nonjudicial Adjustment Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

House Sponsor: Ryan D. Wilcox

LONG TITLE

General Description:

This bill modifies the provisions of the Indigent Defense Act in relation to nonjudicial adjustments and access to legal counsel.

Highlighted Provisions:

This bill:

- prohibits a minor from declining to enter into a nonjudicial adjustment agreement unless the minor has received advice from legal counsel, with exceptions;
- modifies the duties of the Indigent Defense Commission to include encouraging the provision of resources for minors to receive access to legal advice when considering a nonjudicial adjustment;
- modifies the duties of the Office of Indigent Defense Services to require the office to provide no-cost legal advice for minors considering a nonjudicial adjustment;
- permits the Office of Indigent Defense Services to employ or contract with an attorney to provide legal advice to minors considering a nonjudicial adjustment;
- creates procedures for giving notice of requirements before declining a nonjudicial adjustment agreement; and
- makes clarifying amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-22-204, as last amended by Laws of Utah 2021, Chapter 124

78B-22-404, as last amended by Laws of Utah 2024, Chapter 193

78B-22-452, as last amended by Laws of Utah 2024, Chapter 193

80-6-304, as last amended by Laws of Utah 2023, Chapter 161

80-6-602, as enacted by Laws of Utah 2021, Chapter 261

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

Section 1. Section 78B-22-204 is amended to read:

78B-22-204 . Waiver by a minor.

(1) A minor may not waive the right to be represented by counsel at all stages of court proceedings unless:

~~[(1)]~~ (a) the minor has consulted with counsel; and

~~[(2)]~~ (b) the court is satisfied that in light of the minor's unique circumstances and attributes:

~~[(a)]~~ (i) the minor's waiver is knowing and voluntary; and

~~[(b)]~~ (ii) the minor understands the consequences of the waiver.

(2) A minor may not decline to enter into a nonjudicial adjustment without first being advised of their right to consult with counsel, consistent with the requirements of Section 80-6-304.

Section 2. Section 78B-22-404 is amended to read:

78B-22-404 . Powers and duties of the commission.

(1) The commission shall:

(a) adopt core principles for an indigent defense system to ensure the effective representation of indigent individuals consistent with the requirements of the United States Constitution, the Utah Constitution, and the Utah Code, which principles at a minimum shall address the following:

(i) an indigent defense system shall ensure that in providing indigent defense services:

(A) an indigent individual receives conflict-free indigent defense services; and

(B) there is a separate contract for each type of indigent defense service; and

(ii) an indigent defense system shall ensure an indigent defense service provider has:

(A) the ability to exercise independent judgment without fear of retaliation and is free to represent an indigent individual based on the indigent defense service provider's own independent judgment;

(B) adequate access to indigent defense resources;

(C) the ability to provide representation to accused individuals in criminal cases at the critical stages of proceedings, and at all stages to indigent individuals in

- juvenile delinquency and child welfare proceedings;
- (D) a workload that allows for sufficient time to meet with clients, investigate cases, file appropriate documents with the courts, and otherwise provide effective assistance of counsel to each client;
- (E) adequate compensation without financial disincentives;
- (F) appropriate experience or training in the area for which the indigent defense service provider is representing indigent individuals;
- (G) compensation for legal training and education in the areas of the law relevant to the types of cases for which the indigent defense service provider is representing indigent individuals; and
- (H) the ability to meet the obligations of the Utah Rules of Professional Conduct, including expectations on client communications and managing conflicts of interest;
- (b) encourage and aid indigent defense systems in the state in the regionalization of indigent defense services to provide for effective and efficient representation to the indigent individuals;
- (c) emphasize the importance of ensuring constitutionally effective indigent defense services;
- (d) encourage members of the judiciary to provide input regarding the delivery of indigent defense services;
- (e) oversee individuals and entities involved in providing indigent defense services;~~and~~
- (f) manage county participation in the Indigent Aggravated Murder Defense Fund created in Section 78B-22-701[-] ; and
- (g) develop and oversee the provision of resources for minors to access legal advice when considering a nonjudicial adjustment.
- (2) The commission may:
- (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the commission's duties under this part;
- (b) assign duties related to indigent defense services to the office to assist the commission with the commission's statutory duties;
- (c) request supplemental appropriations from the Legislature to address a deficit in the Indigent Inmate Fund created in Section 78B-22-455; and
- (d) request supplemental appropriations from the Legislature to address a deficit in the Child Welfare Parental Representation Fund created in Section 78B-22-804.

Section 3. Section **78B-22-452** is amended to read:

78B-22-452 . Duties of the office.

(1) The office shall:

- (a) establish an annual budget for the office for the Indigent Defense Resources Restricted Account created in Section 78B-22-405;
- (b) assist the commission in performing the commission's statutory duties described in this chapter;
- (c) identify and collect data that is necessary for the commission to:
 - (i) aid, oversee, and review compliance by indigent defense systems with the commission's core principles for the effective representation of indigent individuals; and
 - (ii) provide reports regarding the operation of the commission and the provision of indigent defense services by indigent defense systems in the state;
- (d) assist indigent defense systems by reviewing contracts and other agreements, to ensure compliance with the commission's core principles for effective representation of indigent individuals;
- (e) establish procedures for the receipt and acceptance of complaints regarding the provision of indigent defense services in the state;
- (f) establish procedures to award grants to indigent defense systems under Section 78B-22-406 that are consistent with the commission's core principles;
- (g) create and enter into contracts consistent with Section 78B-22-454 to provide indigent defense services for an indigent defense inmate who:
 - (i) is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth class as classified in Section 17-50-501;
 - (ii) is charged with having committed a crime within that state prison; and
 - (iii) has been appointed counsel in accordance with Section 78B-22-203;
- (h) assist the commission in developing and reviewing advisory caseload guidelines and procedures;
- (i) investigate, audit, and review the provision of indigent defense services to ensure compliance with the commission's core principles for the effective representation of indigent individuals;
- (j) administer the Child Welfare Parental Representation Program in accordance with Part 8, Child Welfare Parental Representation Program;
- (k) administer the Indigent Aggravated Murder Defense Fund in accordance with Part 7,

Indigent Aggravated Murder Defense Fund;

(l) assign an indigent defense service provider to represent an individual prosecuted for aggravated murder in accordance with Part 7, Indigent Aggravated Murder Defense Fund;

(m) provide access for a minor to receive legal advice, at no cost, in connection with considering a nonjudicial adjustment;

~~[(m)]~~ (n) annually report to the governor, Legislature, Judiciary Interim Committee, and Judicial Council, regarding:

(i) the operations of the commission;

(ii) the operations of the indigent defense systems in the state; and

(iii) compliance with the commission's core principles by indigent defense systems receiving grants from the commission;

~~[(n)]~~ (o) submit recommendations to the commission for improving indigent defense services in the state;

~~[(o)]~~ (p) publish an annual report on the commission's website; and

~~[(p)]~~ (q) perform all other duties assigned by the commission related to indigent defense services.

(2) The office may:

(a) enter into contracts and accept, allocate, and administer funds and grants from any public or private person to accomplish the duties of the office[-] ; and

(b) employ or contract with an attorney to provide counsel, at no cost, to any minor considering a nonjudicial adjustment.

(3) Any contract entered into under this part shall require that indigent defense services are provided in a manner consistent with the commission's core principles implemented under Section 78B-22-404.

Section 4. Section **80-6-304** is amended to read:

80-6-304 . Nonjudicial adjustments -- Requirement to seek legal counsel before declination.

(1) For a nonjudicial adjustment, the juvenile probation officer may require a minor to:

(a) pay a financial penalty of no more than \$250 to the juvenile court, subject to the terms established under Subsection ~~[(4)]~~ (5);

(b) pay restitution to any victim;

(c) complete community or compensatory service;

(d) attend counseling or treatment with an appropriate provider;

- (e) attend substance abuse treatment or counseling;
- (f) comply with specified restrictions on activities or associations;
- (g) attend victim-offender mediation if requested by the victim; and
- (h) comply with any other reasonable action that is in the interest of the minor, the community, or the victim.

(2)(a) Within seven days of receiving a referral that appears to be eligible for a nonjudicial adjustment in accordance with Section 80-6-303.5, the juvenile probation officer shall provide an initial notice to reasonably identifiable and locatable victims of the offense contained in the referral.

(b) The victim shall be responsible to provide to the juvenile probation officer upon request:

- (i) invoices, bills, receipts, and any other evidence of injury, loss of earnings, and out-of-pocket loss;
- (ii) documentation and evidence of compensation or reimbursement from an insurance company or an agency of the state, any other state, or the federal government received as a direct result of the crime for injury, loss of earnings, or out-of-pocket loss; and
- (iii) proof of identification, including home and work address and telephone numbers.

(c) The inability, failure, or refusal of the victim to provide all or part of the requested information shall result in the juvenile probation officer determining restitution based on the best information available.

(3) The juvenile probation officer may not predicate acceptance of an offer of a nonjudicial adjustment on an admission of guilt.

(4)(a) A minor may not decline to enter into a nonjudicial adjustment without first being advised of their right to consult with counsel, subject to the requirements of this section.

(b) If a minor seeks to decline a nonjudicial adjustment, the juvenile probation officer shall inform the minor of:

- (i) the minor's right to consult with counsel; and
- (ii) the availability of resources for the minor to receive legal advice provided by the Office of Indigent Defense Services created in Section 78B-22-451.

(c) If a minor seeks to decline a nonjudicial adjustment, and also declines to seek the advice of counsel after being informed as required under Subsection (4)(b), the juvenile probation officer shall:

(i) sign an acknowledgment that the juvenile probation officer provided the minor with the information required by Subsection (4)(b);

(ii) have the minor sign an acknowledgment that the minor received the information required by Subsection (4)(b) and knowingly and voluntarily declined to seek the advice of counsel; and

(iii) permit the minor to decline the nonjudicial adjustment.

(d) No provision of this section affects a court's obligation to ensure a minor's right to counsel in the event a petition is filed.

[(4)] (5)(a) The juvenile probation officer may not deny a minor an offer of a nonjudicial adjustment due to a minor's inability to pay a financial penalty under Subsection (1).

(b) The juvenile probation officer shall base a fee, fine, or the restitution for a nonjudicial adjustment under Subsection (1) upon the ability of the minor's family to pay as determined by a statewide sliding scale developed in accordance with Section 63M-7-208.

[(5)] (6)(a) A nonjudicial adjustment may not extend for more than 90 days, unless a juvenile court judge extends the nonjudicial adjustment for an additional 90 days.

(b) A juvenile court judge may extend a nonjudicial adjustment beyond the 180 days permitted under Subsection [(5)(a)] (6)(a):

(i) for a minor who is:

(A) offered a nonjudicial adjustment for a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, that the minor committed before the minor was 12 years old; or

(B) referred to a prosecuting attorney for a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, that the minor committed before the minor was 12 years old; and

(ii) the judge determines that:

(A) the nonjudicial adjustment requires specific treatment for the sexual offense;

(B) the treatment cannot be completed within 180 days after the day on which the minor entered into the nonjudicial adjustment; and

(C) the treatment is necessary based on a clinical assessment that is developmentally appropriate for the minor.

(c) If a juvenile court judge extends a minor's nonjudicial adjustment under Subsection [(5)(b)] (6)(b), the judge may extend the nonjudicial adjustment until the minor completes the specific treatment, but the judge may only grant each extension for 90

days at a time.

[(6)] (7) If a minor violates Section 76-10-105, the minor may be required to pay a fine or penalty and participate in a court-approved tobacco education program with a participation fee.

Section 5. Section **80-6-602** is amended to read:

80-6-602 . Hearings or proceedings for minors -- Prosecuting attorney -- Order for indigent defense -- Custody in the Division of Child and Family Services.

(1) In a hearing or proceeding under this chapter, the juvenile court:

(a) shall admit any person who has a direct interest in the case;

(b) may admit any person whose presence is requested by the minor's parent or guardian; and

(c) shall exclude any other person except as provided in Subsection (2).

(2) In a hearing or proceeding under this chapter for a minor who is 14 years old or older, the juvenile court shall admit any person, unless the hearing or proceeding is closed by the juvenile court upon findings, on the record, for good cause if:

(a) the minor has been charged with an offense that would be a felony if committed by an adult; or

(b) the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult and the minor has been previously charged with an offense that would be a misdemeanor or felony if committed by an adult.

(3) If more than one minor is alleged to be involved in a violation of a law or ordinance, the proceedings for the violation may be consolidated, except a separate hearing may be held with respect to a disposition for a minor.

(4) The county attorney, or the district attorney if within a prosecution district, shall represent the state in a proceeding under this chapter.

(5) If a minor is facing a proceeding under this chapter, a juvenile court shall:

(a) appoint an indigent defense service provider for the minor in accordance with Title 78B, Chapter 22, Part 2, Appointment of Counsel; and

(b) order indigent defense services for the minor in accordance with Title 78B, Chapter 22, Part 2, Appointment of Counsel.

(6) If a minor is facing a proceeding under this chapter, a minor may not decline to enter into a nonjudicial adjustment without first being advised of their right to consult with counsel, subject to the requirements of Subsection 80-6-304(4).

[(6)] (7) A juvenile court may appoint an attorney guardian ad litem under Section

267 78A-2-803, or as otherwise provided by law, to represent a child under this chapter.
268 [(7)] (8) A juvenile court may not vest custody of a minor facing a delinquency proceeding
269 under this chapter in the Division of Child and Family Services, except as provided in
270 Chapter 3, Abuse, Neglect, and Dependency Proceedings.
271 Section 6. **Effective Date.**
272 This bill takes effect on May 7, 2025.