

JUVENILE JUSTICE AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill modifies provisions related to juvenile justice.

Highlighted Provisions:

This bill:

- ▶ addresses duties of prosecutors;
- ▶ modifies adjudications of minors under the Alcoholic Beverage Control Act;
- ▶ amends provisions related to sanctions and driver licenses;
- ▶ amends provisions related to powers and duties of local school boards, charter school governing boards, school districts, or public school administrators;
- ▶ addresses reporting of certain conduct;
- ▶ addresses public school discipline policies;
- ▶ modifies provisions related to rules addressing prohibited conduct;
- ▶ enacts a tiered approach to disciplinary actions related to students;
- ▶ amends provisions related to disruptive student behavior;
- ▶ addresses contracts between LEAs and law enforcement for school resource officer services;
- ▶ modifies provisions related to controlled substances and prohibited acts;
- ▶ modifies sentencing requirements for minors and drug paraphernalia and controlled substances;
- ▶ repeals language regarding programs and procedures for minors committed to the



28 custody of the Division of Child and Family Services;

- 29 ▶ amends provisions related to in-home services;
- 30 ▶ amends definition provisions;
- 31 ▶ modifies provisions related to the Division of Juvenile Justice Services;
- 32 ▶ modifies provisions related to restitution by a youth offender;
- 33 ▶ addresses location of detention facilities and services;
- 34 ▶ addresses commitment;
- 35 ▶ modifies provisions related to the Youth Parole Authority;
- 36 ▶ addresses discharge of youth offender;
- 37 ▶ addresses youth services for prevention and early intervention;
- 38 ▶ addresses community-based programs;
- 39 ▶ modifies provisions related to the Commission on Criminal and Juvenile Justice;
- 40 ▶ amends provisions related to minors and intoxication;
- 41 ▶ amends provisions related to the buying and possession of a cigar, cigarette,

42 electronic cigarette, or tobacco;

- 43 ▶ addresses the Utah Indigent Defense Commission;
- 44 ▶ addresses the jurisdiction of the juvenile court;
- 45 ▶ enacts language regarding warrants;
- 46 ▶ addresses when a minor may be taken into custody;
- 47 ▶ addresses summons;
- 48 ▶ repeals language regarding bench warrants;
- 49 ▶ modifies provisions related minors being taken into custody or detention or

50 alternatives;

- 51 ▶ addresses when the attorney general represents the Division of Child and Family

52 Services;

- 53 ▶ modifies provisions related to the adjudication in juvenile courts;
- 54 ▶ addresses a judgment, decree, or order and the rights and responsibilities of agency

55 or individual granted custody, probation, or protective supervision;

- 56 ▶ addresses fines, fees, and restitution;
- 57 ▶ enacts provisions related to case planning and appropriate responses;
- 58 ▶ enacts provisions related to detention risk assessment tool;

- 59 ▶ amends provisions related to prosecutors and review of case;
- 60 ▶ modifies the citation procedure;
- 61 ▶ addresses a minor held in detention;
- 62 ▶ modifies suspension of driver license;
- 63 ▶ modifies jurisdiction of district court;
- 64 ▶ modifies enforcement of contempt or a fine, fee, or restitution;
- 65 ▶ addresses youth court;
- 66 ▶ addresses right to counsel;
- 67 ▶ addresses the imposition of fees and expenses;
- 68 ▶ addresses jurisdiction of courts; and
- 69 ▶ makes technical and conforming amendments.

70 **Money Appropriated in this Bill:**

71 None

72 **Other Special Clauses:**

73 None

74 **Utah Code Sections Affected:**

75 AMENDS:

- 76 **17-18a-404**, as enacted by Laws of Utah 2013, Chapter 237
- 77 **32B-4-409**, as last amended by Laws of Utah 2015, Chapter 165
- 78 **32B-4-410**, as last amended by Laws of Utah 2015, Chapter 165
- 79 **32B-4-411**, as last amended by Laws of Utah 2015, Chapter 165
- 80 **53A-3-402**, as last amended by Laws of Utah 2016, Chapter 144
- 81 **53A-11-101.7**, as last amended by Laws of Utah 2014, Chapter 359
- 82 **53A-11-103**, as last amended by Laws of Utah 2012, Chapter 203
- 83 **53A-11-105**, as last amended by Laws of Utah 2008, Chapter 3
- 84 **53A-11-403**, as enacted by Laws of Utah 1988, Chapter 2
- 85 **53A-11-901**, as last amended by Laws of Utah 2015, Chapter 442
- 86 **53A-11-908**, as last amended by Laws of Utah 2010, Chapter 114
- 87 **53A-11-910**, as last amended by Laws of Utah 2008, Chapter 250
- 88 **53A-11-1302**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 89 **53A-11-1604**, as enacted by Laws of Utah 2016, Chapter 165

90 **58-37-8**, as last amended by Laws of Utah 2016, Chapters 99 and 348
91 **58-37a-7**, as enacted by Laws of Utah 2015, Chapter 165
92 **58-37b-9**, as enacted by Laws of Utah 2015, Chapter 165
93 **62A-4a-105**, as last amended by Laws of Utah 2016, Chapter 296
94 **62A-4a-201**, as last amended by Laws of Utah 2015, Chapter 274
95 **62A-4a-202**, as last amended by Laws of Utah 2014, Chapter 265
96 **62A-4a-208**, as last amended by Laws of Utah 2009, Chapter 75
97 **62A-4a-250**, as last amended by Laws of Utah 2008, Chapter 3
98 **62A-7-101**, as last amended by Laws of Utah 2008, Chapter 3
99 **62A-7-104**, as last amended by Laws of Utah 2015, Chapter 210
100 **62A-7-107.5**, as renumbered and amended by Laws of Utah 2005, Chapter 13
101 **62A-7-109.5**, as renumbered and amended by Laws of Utah 2005, Chapter 13
102 **62A-7-201**, as last amended by Laws of Utah 2015, Chapter 338
103 **62A-7-202**, as last amended by Laws of Utah 2008, Chapter 382
104 **62A-7-404**, as renumbered and amended by Laws of Utah 2005, Chapter 13
105 **62A-7-501**, as last amended by Laws of Utah 2010, Chapter 286
106 **62A-7-504**, as renumbered and amended by Laws of Utah 2005, Chapter 13
107 **62A-7-506**, as renumbered and amended by Laws of Utah 2005, Chapter 13
108 **62A-7-601**, as renumbered and amended by Laws of Utah 2005, Chapter 13
109 **62A-7-701**, as renumbered and amended by Laws of Utah 2005, Chapter 13
110 **63M-7-204**, as last amended by Laws of Utah 2015, Chapter 412
111 **63M-7-404**, as last amended by Laws of Utah 2015, Chapter 412
112 **76-5-413**, as last amended by Laws of Utah 2008, Chapter 3
113 **76-9-701**, as last amended by Laws of Utah 2015, Chapter 165
114 **76-10-105**, as last amended by Laws of Utah 2010, Chapter 114
115 **77-32-804**, as enacted by Laws of Utah 2016, Chapter 177
116 **78A-6-103**, as last amended by Laws of Utah 2012, Chapter 316
117 **78A-6-105**, as last amended by Laws of Utah 2016, Chapters 109 and 351
118 **78A-6-106**, as renumbered and amended by Laws of Utah 2008, Chapter 3
119 **78A-6-109**, as last amended by Laws of Utah 2009, Chapter 388
120 **78A-6-111**, as renumbered and amended by Laws of Utah 2008, Chapter 3

121 **78A-6-112**, as renumbered and amended by Laws of Utah 2008, Chapter 3
122 **78A-6-113**, as last amended by Laws of Utah 2010, Chapter 38
123 **78A-6-115**, as last amended by Laws of Utah 2010, Chapter 34
124 **78A-6-117**, as last amended by Laws of Utah 2016, Chapter 418
125 **78A-6-118**, as renumbered and amended by Laws of Utah 2008, Chapter 3
126 **78A-6-119**, as renumbered and amended by Laws of Utah 2008, Chapter 3
127 **78A-6-120**, as last amended by Laws of Utah 2014, Chapter 217
128 **78A-6-121**, as renumbered and amended by Laws of Utah 2008, Chapter 3
129 **78A-6-302**, as last amended by Laws of Utah 2016, Chapter 231
130 **78A-6-306**, as last amended by Laws of Utah 2015, Chapter 274
131 **78A-6-312**, as last amended by Laws of Utah 2016, Chapter 231
132 **78A-6-401**, as renumbered and amended by Laws of Utah 2008, Chapter 3
133 **78A-6-602**, as last amended by Laws of Utah 2013, Chapter 237
134 **78A-6-603**, as renumbered and amended by Laws of Utah 2008, Chapter 3
135 **78A-6-604**, as renumbered and amended by Laws of Utah 2008, Chapter 3
136 **78A-6-606**, as last amended by Laws of Utah 2015, Chapters 165 and 258
137 **78A-6-701**, as last amended by Laws of Utah 2015, Chapter 338
138 **78A-6-1101**, as renumbered and amended by Laws of Utah 2008, Chapter 3
139 **78A-6-1111**, as last amended by Laws of Utah 2016, Chapters 33 and 177
140 **78A-6-1202**, as last amended by Laws of Utah 2010, Chapter 276
141 **78A-6-1203**, as last amended by Laws of Utah 2013, Chapter 27
142 **78A-6-1207**, as last amended by Laws of Utah 2013, Chapter 27
143 **78A-6-1302**, as last amended by Laws of Utah 2013, Chapter 278
144 **78A-7-106**, as last amended by Laws of Utah 2016, Chapter 33

145 ENACTS:

146 **53A-11-911**, Utah Code Annotated 1953
147 **63M-7-208**, Utah Code Annotated 1953
148 **78A-6-123**, Utah Code Annotated 1953
149 **78A-6-124**, Utah Code Annotated 1953

150

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

Section 1. Section **17-18a-404** is amended to read:

17-18a-404. Juvenile proceedings.

For a proceeding involving a charge of juvenile delinquency, [~~a public~~] infraction, or a status offense, a prosecutor shall:

(1) review each case pursuant to Section 78A-6-602; and

(2) appear and prosecute for the state in the juvenile court of the county.

Section 2. Section **32B-4-409** is amended to read:

32B-4-409. Unlawful purchase, possession, consumption by minor -- Measurable amounts in body.

(1) Unless specifically authorized by this title, it is unlawful for a minor to:

(a) purchase an alcoholic product;

(b) attempt to purchase an alcoholic product;

(c) solicit another person to purchase an alcoholic product;

(d) possess an alcoholic product;

(e) consume an alcoholic product; or

(f) have measurable blood, breath, or urine alcohol concentration in the minor's body.

(2) It is unlawful for the purpose of purchasing or otherwise obtaining an alcoholic product for a minor for:

(a) a minor to misrepresent the minor's age; or

(b) any other person to misrepresent the age of a minor.

(3) It is unlawful for a minor to possess or consume an alcoholic product while riding in a limousine or chartered bus.

(4) (a) If a minor is found by a court to have violated this section and the violation is the minor's first violation of this section, the court may:

(i) order the minor to complete a screening as defined in Section 41-6a-501;

(ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and

(iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance [~~abuse~~] use disorder treatment as indicated by an assessment.

(b) If a minor is found by a court to have violated this section and the violation is the minor's second or subsequent violation of this section, the court shall:

183 (i) order the minor to complete a screening as defined in Section 41-6a-501;
184 (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the
185 screening indicates an assessment to be appropriate; and
186 (iii) order the minor to complete an educational series as defined in Section 41-6a-501
187 or substance [abuse] use disorder treatment as indicated by an assessment.

188 (5) (a) When a minor who is at least 18 years old, but younger than 21 years old, is
189 found by a court to have violated this section, except as provided in Section 32B-4-411, the
190 court hearing the case shall suspend the minor's driving privileges under Section 53-3-219.

191 (b) Notwithstanding the provision in Subsection (5)(a), the court may reduce the
192 suspension period required under Section 53-3-219 if:

193 (i) the violation is the minor's first violation of this section; and
194 (ii) (A) the minor completes an educational series as defined in Section 41-6a-501; or
195 (B) the minor demonstrates substantial progress in substance [abuse] use disorder
196 treatment.

197 (c) Notwithstanding the requirement in Subsection (5)(a) and in accordance with the
198 requirements of Section 53-3-219, the court may reduce the suspension period required under
199 Section 53-3-219 if:

200 (i) the violation is the minor's second or subsequent violation of this section;
201 (ii) the minor has completed an educational series as defined in Section 41-6a-501 or
202 demonstrated substantial progress in substance [abuse] use disorder treatment; and
203 (iii) (A) the person is 18 years of age or older and provides a sworn statement to the
204 court that the person has not unlawfully consumed alcohol or drugs for at least a one-year
205 consecutive period during the suspension period imposed under Subsection (5)(a); or
206 (B) the person is under 18 years of age and has the person's parent or legal guardian
207 provide an affidavit or sworn statement to the court certifying that to the parent or legal
208 guardian's knowledge the person has not unlawfully consumed alcohol or drugs for at least a
209 one-year consecutive period during the suspension period imposed under Subsection (5)(a).

210 (6) When a minor who is [at least 13 years old, but] younger than 18 years old[;] is
211 found by the court to have violated this section, Section 78A-6-606 applies to the violation.

212 (7) Notwithstanding Subsections (5)(a) and (b), if a minor is adjudicated under Section
213 78A-6-117, the court may only order substance use disorder treatment or an educational series

if the minor has an assessed need for the intervention on the basis of the results of a validated risk and needs assessment, as defined in Section [78A-6-105](#).

~~[(7)]~~ (8) When a court issues an order suspending a person's driving privileges for a violation of this section, the Driver License Division shall suspend the person's license under Section [53-3-219](#).

~~[(8)]~~ (9) When the Department of Public Safety receives the arrest or conviction record of a person for a driving offense committed while the person's license is suspended pursuant to this section, the Department of Public Safety shall extend the suspension for an additional like period of time.

~~[(9)]~~ (10) This section does not apply to a minor's consumption of an alcoholic product in accordance with this title:

(a) for medicinal purposes if:

(i) the minor is at least 18 years old; or

(ii) the alcoholic product is furnished by:

(A) the parent or guardian of the minor; or

(B) the minor's health care practitioner, if the health care practitioner is authorized by law to write a prescription; or

(b) as part of a religious organization's religious services.

Section 3. Section **32B-4-410** is amended to read:

32B-4-410. Unlawful admittance or attempt to gain admittance by minor.

(1) It is unlawful for a minor to gain admittance or attempt to gain admittance to the premises of:

(a) a tavern; or

(b) a social club licensee, except to the extent authorized by Section [32B-6-406.1](#).

(2) A minor who violates this section is guilty of a class C misdemeanor.

(3) (a) If a minor is found by a court to have violated this section and the violation is the minor's first violation of this section, the court may:

(i) order the minor to complete a screening as defined in Section [41-6a-501](#);

(ii) order the minor to complete an assessment as defined in Section [41-6a-501](#) if the screening indicates an assessment to be appropriate; and

(iii) order the minor to complete an educational series as defined in Section [41-6a-501](#)

or substance ~~[abuse]~~ use disorder treatment as indicated by an assessment.

(b) If a minor is found by a court to have violated this section and the violation is the minor's second or subsequent violation of this section, the court shall:

(i) order the minor to complete a screening as defined in Section 41-6a-501;

(ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and

(iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance ~~[abuse]~~ use disorder treatment as indicated by an assessment.

(4) (a) When a minor who is at least 18 years old, but younger than 21 years old, is found by a court to have violated this section, except as provided in Section 32B-4-411, the court hearing the case shall suspend the minor's driving privileges under Section 53-3-219.

(b) Notwithstanding ~~[the provision in]~~ Subsection (4)(a), the court may reduce the suspension period required under Section 53-3-219 if:

(i) the violation is the minor's first violation of this section; and

(ii) (A) the minor completes an educational series as defined in Section 41-6a-501; or

(B) the minor demonstrates substantial progress in substance ~~[abuse]~~ use disorder treatment.

(c) Notwithstanding ~~[the requirement in]~~ Subsection (4)(a) and in accordance with ~~[the requirements of]~~ Section 53-3-219, the court may reduce the suspension period required under Section 53-3-219 if:

(i) the violation is the minor's second or subsequent violation of this section;

(ii) the minor has completed an educational series as defined in Section 41-6a-501 or demonstrated substantial progress in substance ~~[abuse]~~ use disorder treatment; and

(iii) (A) the person is 18 years of age or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection (4)(a); or

(B) the person is under 18 years of age and has the person's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection (4)(a).

(5) When a minor who is ~~[at least 13 years old, but]~~ younger than 18 years old~~;~~ is

found by a court to have violated this section, Section 78A-6-606 applies to the violation.

(6) Notwithstanding Subsections (3)(a) and (b), if a minor is adjudicated under Section 78A-6-117, the court may only order substance use disorder treatment or an educational series if the minor has an assessed need for the intervention on the basis of the results of a validated risk and needs assessment, as defined in Section 78A-6-105.

[~~(6)~~] (7) When a court issues an order suspending a person's driving privileges for a violation of this section, the Driver License Division shall suspend the person's license under Section 53-3-219.

[~~(7)~~] (8) When the Department of Public Safety receives the arrest or conviction record of a person for a driving offense committed while the person's license is suspended pursuant to this section, the Department of Public Safety shall extend the suspension for an additional like period of time.

Section 4. Section 32B-4-411 is amended to read:

32B-4-411. Minor's unlawful use of proof of age.

(1) As used in this section, "proof of age violation" means a violation by a minor of:

(a) Chapter 1, Part 4, Proof of Age Act; or

(b) if as part of the violation the minor uses a proof of age in violation of Chapter 1, Part 4, Proof of Age Act:

(i) Section 32B-4-409; or

(ii) Section 32B-4-410.

(2) If a court finds a minor engaged in a proof of age violation, notwithstanding the penalties provided for in Subsection (1):

(a) (i) for a first violation, the minor is guilty of a class B misdemeanor;

(ii) for a second violation, the minor is guilty of a class A misdemeanor; and

(iii) for a third or subsequent violation, the minor is guilty of a class A misdemeanor, except that the court may impose:

(A) a fine of up to \$5,000;

(B) screening, assessment, or substance ~~[abuse]~~ use disorder treatment, as defined in Section 41-6a-501;

(C) an educational series, as defined in Section 41-6a-501;

(D) alcoholic product related community service or compensatory service work

program hours;

(E) fees for restitution and treatment costs;

(F) defensive driver education courses; or

(G) a combination of these penalties; and

(b) (i) for a minor who is ~~[at least 13 years old, but]~~ younger than 18 years old:

(A) the court ~~[shall]~~ may forward to the Driver License Division a record of an adjudication under Title 78A, Chapter 6, Juvenile Court Act ~~[of 1996]~~, for a violation under this section; and

(B) the provisions regarding suspension of a driver license under Section ~~78A-6-606~~ apply; and

(ii) for a minor who is at least 18 years old, but younger than 21 years old:

(A) the court shall forward to the Driver License Division a record of conviction for a violation under this section; and

(B) the Driver License Division shall suspend the person's license under Section ~~53-3-220~~.

(c) Notwithstanding Subsection (2)(a), if a minor is adjudicated under Section ~~78A-6-117~~, the court may order:

(i) substance use disorder treatment or an educational series only if the minor has an assessed need for the intervention based on the results of a validated risk and needs assessment, as defined in Section ~~78A-6-105~~; and

(ii) a fine, fee, service hours, or costs in accordance with Section ~~78A-6-117~~.

(3) (a) ~~Notwithstanding [the requirement in]~~ Subsection (2)(b), the court may reduce the suspension period under Subsection ~~53-3-220~~(1)(e) or ~~78A-6-606~~(3)(d) if:

(i) the violation is the minor's first violation of ~~[Section ~~32B-4-411~~]~~ this section; and

(ii) (A) the minor completes an educational series as defined in Section ~~41-6a-501~~; or

(B) the minor demonstrates substantial progress in substance ~~[abuse]~~ use disorder treatment.

(b) ~~Notwithstanding the requirement in Subsection (2)(b), the court may reduce the suspension period under Subsection ~~53-3-220~~(1)(e) or ~~78A-6-606~~(3)(d) if:~~

(i) the violation is the minor's second or subsequent violation of ~~[Section ~~32B-4-411~~]~~ this section;

(ii) the person has completed an educational series as defined in Section 41-6a-501 or demonstrated substantial progress in substance ~~[abuse]~~ use disorder treatment; and

(iii) (A) the person is 18 years of age or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection 53-3-220(1)(e) or 78A-6-606(3)(d); or

(B) the minor is under 18 years of age and has the minor's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the minor has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection 53-3-220(1)(e) or 78A-6-606(3)(d).

(4) When the Department of Public Safety receives the arrest or conviction record of an individual for a driving offense committed while the individual's license is suspended pursuant to this section, the Department of Public Safety shall extend the suspension for an additional like period of time.

(5) A court may not fail to enter a judgment of conviction under this section under a plea in abeyance agreement.

Section 5. Section 53A-3-402 is amended to read:

53A-3-402. Powers and duties generally.

(1) ~~[Each]~~ A local school board shall:

(a) implement the core standards for Utah public schools ~~[utilizing]~~ using instructional materials that best correlate to the core standards for Utah public schools and graduation requirements;

(b) administer tests, required by the State Board of Education, which measure the progress of each student, and coordinate with the state superintendent and State Board of Education to assess results and create plans to improve the student's progress, which shall be submitted to the State Board of Education for approval;

(c) use progress-based assessments as part of a plan to identify schools, teachers, and students that need remediation and determine the type and amount of federal, state, and local resources to implement remediation;

(d) develop early warning systems for students or classes failing to make progress;

(e) work with the State Board of Education to establish a library of documented best practices, consistent with state and federal regulations, for use by the local districts; and

(f) implement training programs for school administrators, including basic management training, best practices in instructional methods, budget training, staff management, managing for learning results and continuous improvement, and how to help every child achieve optimal learning in basic academic subjects.

(2) Local school boards shall spend minimum school program funds for programs and activities for which the State Board of Education has established minimum standards or rules under Section 53A-1-402.

(3) (a) A board may purchase, sell, and make improvements on school sites, buildings, and equipment and construct, erect, and furnish school buildings.

(b) School sites or buildings may only be conveyed or sold on board resolution affirmed by at least two-thirds of the members.

(4) (a) A board may participate in the joint construction or operation of a school attended by children residing within the district and children residing in other districts either within or outside the state.

(b) Any agreement for the joint operation or construction of a school shall:

(i) be signed by the president of the board of each participating district;

(ii) include a mutually agreed upon pro rata cost; and

(iii) be filed with the State Board of Education.

(5) A board may establish, locate, and maintain elementary, secondary, and applied technology schools.

(6) Except as provided in Section 53A-1-1001, a board may enroll children in school who are at least five years of age before September 2 of the year in which admission is sought.

(7) A board may establish and support school libraries.

(8) A board may collect damages for the loss, injury, or destruction of school property.

(9) A board may authorize guidance and counseling services for children and their parents or guardians [~~prior to~~] before, during, or following enrollment of the children in schools.

(10) (a) A board shall administer and implement federal educational programs in accordance with Title 53A, Chapter 1, Part 9, Implementing Federal or National Education

Programs Act.

(b) Federal funds are not considered funds within the school district budget under Title 53A, Chapter 19, Public School Budgets.

(11) (a) A board may organize school safety patrols and adopt rules under which the patrols promote student safety.

(b) A student appointed to a safety patrol shall be at least 10 years old and have written parental consent for the appointment.

(c) Safety patrol members may not direct vehicular traffic or be stationed in a portion of a highway intended for vehicular traffic use.

(d) Liability may not attach to a school district, its employees, officers, or agents or to a safety patrol member, a parent of a safety patrol member, or an authorized volunteer assisting the program by virtue of the organization, maintenance, or operation of a school safety patrol.

(12) (a) A board may on its own behalf, or on behalf of an educational institution for which the board is the direct governing body, accept private grants, loans, gifts, endowments, devises, or bequests that are made for educational purposes.

(b) These contributions are not subject to appropriation by the Legislature.

(13) (a) A board may appoint and fix the compensation of a compliance officer to issue citations for violations of Subsection 76-10-105(2).

(b) A person may not be appointed to serve as a compliance officer without the person's consent.

(c) A teacher or student may not be appointed as a compliance officer.

(14) A board shall adopt bylaws and rules for ~~[its]~~ the board's own procedures.

(15) (a) A board shall make and enforce rules necessary for the control and management of the district schools.

(b) ~~[All board]~~ Board rules and policies shall be in writing, filed, and referenced for public access.

(16) A board may hold school on legal holidays other than Sundays.

(17) (a) ~~[Each]~~ A board shall establish for each school year a school traffic safety committee to implement this Subsection (17).

(b) The committee shall be composed of one representative of:

(i) the schools within the district;

431 (ii) the Parent Teachers' Association of the schools within the district;

432 (iii) the municipality or county;

433 (iv) state or local law enforcement; and

434 (v) state or local traffic safety engineering.

435 (c) The committee shall:

436 (i) receive suggestions from school community councils, parents, teachers, and others
437 and recommend school traffic safety improvements, boundary changes to enhance safety, and
438 school traffic safety program measures;

439 (ii) review and submit annually to the Department of Transportation and affected
440 municipalities and counties a child access routing plan for each elementary, middle, and junior
441 high school within the district;

442 (iii) consult the Utah Safety Council and the Division of Family Health Services and
443 provide training to all school children in kindergarten through grade six, within the district, on
444 school crossing safety and use; and

445 (iv) help ensure the district's compliance with rules made by the Department of
446 Transportation under Section 41-6a-303.

447 (d) The committee may establish subcommittees as needed to assist in accomplishing
448 its duties under Subsection (17)(c).

449 (18) (a) [~~Each~~] A school board shall adopt and implement a comprehensive emergency
450 response plan to prevent and combat violence in [~~its~~] the school board's public schools, on
451 school grounds, on its school vehicles, and in connection with school-related activities or
452 events.

453 (b) The plan shall:

454 (i) include prevention, intervention, and response components;

455 (ii) be consistent with the student conduct and discipline policies required for school
456 districts under Title 53A, Chapter 11, Part 9, School Discipline and Conduct Plans;

457 (iii) require inservice training for all district and school building staff on what their
458 roles are in the emergency response plan;

459 (iv) provide for coordination with local law enforcement and other public safety
460 representatives in preventing, intervening, and responding to violence in the areas and activities
461 referred to in Subsection (18)(a); and

(v) include procedures to notify a student, to the extent practicable, who is off campus at the time of a school violence emergency because the student is:

(A) participating in a school-related activity; or

(B) excused from school for a period of time during the regular school day to participate in religious instruction at the request of the student's parent or guardian.

(c) The State Board of Education, through the state superintendent of public instruction, shall develop comprehensive emergency response plan models that local school boards may use, where appropriate, to comply with Subsection (18)(a).

(d) ~~[Each]~~ A local school board shall, by July 1 of each year, certify to the State Board of Education that its plan has been practiced at the school level and presented to and reviewed by its teachers, administrators, students, and their parents and local law enforcement and public safety representatives.

(19) (a) ~~[Each]~~ A local school board may adopt an emergency response plan for the treatment of sports-related injuries that occur during school sports practices and events.

(b) The plan may be implemented by each secondary school in the district that has a sports program for students.

(c) The plan may:

(i) include emergency personnel, emergency communication, and emergency equipment components;

(ii) require inservice training on the emergency response plan for school personnel who are involved in sports programs in the district's secondary schools; and

(iii) provide for coordination with individuals and agency representatives who:

(A) are not employees of the school district; and

(B) would be involved in providing emergency services to students injured while participating in sports events.

(d) The board, in collaboration with the schools referred to in Subsection (19)(b), may review the plan each year and make revisions when required to improve or enhance the plan.

(e) The State Board of Education, through the state superintendent of public instruction, shall provide local school boards with an emergency plan response model that local boards may use to comply with the requirements of this Subsection (19).

(20) A board shall do all other things necessary for the maintenance, prosperity, and

success of the schools and the promotion of education.

(21) (a) Before closing a school or changing the boundaries of a school, a board shall:

(i) hold a public hearing, as defined in Section 10-9a-103; and

(ii) provide public notice of the public hearing, as specified in Subsection (21)(b).

(b) The notice of a public hearing required under Subsection (21)(a) shall:

(i) indicate the:

(A) school or schools under consideration for closure or boundary change; and

(B) date, time, and location of the public hearing; and

(ii) at least 10 days ~~[prior to]~~ before the public hearing, be:

(A) published:

(I) in a newspaper of general circulation in the area; and

(II) on the Utah Public Notice Website created in Section 63F-1-701; and

(B) posted in at least three public locations within the municipality or on the district's official website.

(22) A board may implement a facility energy efficiency program established under Title 11, Chapter 44, Performance Efficiency Act.

(23) A board shall establish or partner with a certified youth court program, in accordance with Section 78A-6-1203, or establish or partner with a comparable restorative justice program, to operate within the school setting. A school shall refer a student to youth court or a comparable restorative justice program in accordance with Section 53A-11-911.

(24) (a) A board shall authorize and establish procedures to create a multidisciplinary team to respond to a student who fails to comply with the program or the agreement reached through youth court or a comparable restorative justice program in accordance with Section 53A-11-911.

(b) A multidisciplinary team shall include:

(i) the minor;

(ii) the minor's parent, guardian, or custodial relative;

(iii) a school administrator or the school administrator's designee;

(iv) a clinician who has training and experience coordinating behavioral or mental health treatment for juveniles if a clinician is available; and

(v) any other person or agency representative who is needed to assist in providing

524 recommendations for the particular needs of the minor and family.

525 Section 6. Section **53A-11-101.7** is amended to read:

526 **53A-11-101.7. Truancy -- Notice of truancy -- Failure to cooperate with school**
527 **authorities.**

528 (1) Except as provided in Section [53A-11-102](#) or [53A-11-102.5](#), a school-age minor
529 who is enrolled in a public school shall attend the public school in which the school-age minor
530 is enrolled.

531 (2) A local school board, charter school governing board, or school district may impose
532 administrative penalties on a school-age minor in accordance with Section [53A-11-911](#) who is
533 truant.

534 (3) A local school board or charter school governing board:

535 (a) may authorize a school administrator, a designee of a school administrator, a law
536 enforcement officer acting as a school resource officer, or a truancy specialist to issue notices
537 of truancy to school-age minors who are at least 12 years old; and

538 (b) shall establish a procedure for a school-age minor, or the school-age minor's
539 parents, to contest a notice of truancy.

540 (4) The notice of truancy described in Subsection (3):

541 (a) may not be issued until the school-age minor has been truant at least five times
542 during the school year;

543 (b) may not be issued to a school-age minor who is less than 12 years old;

544 (c) may not be issued to a minor exempt from school attendance as provided in Section
545 [53A-11-102](#) or [53A-11-102.5](#);

546 (d) shall direct the school-age minor and the parent of the school-age minor to:

547 (i) meet with school authorities to discuss the school-age minor's truancies; and

548 (ii) cooperate with the school board, local charter board, or school district in securing
549 regular attendance by the school-age minor; and

550 (e) shall be mailed to, or served on, the school-age minor's parent.

551 ~~[(5)(a) Except as provided in Subsection (5)(b), a habitual truant citation may be~~
552 ~~issued to a habitual truant if:]~~

553 ~~[(i) the local school board, charter school governing board, or school district has made~~
554 ~~reasonable efforts, under Section [53A-11-103](#), to resolve the school attendance problems of the~~

555 habitual truant; and]

556 [(ii) the efforts to resolve the school attendance problems, described in Subsection
557 (5)(a)(i), have not been successful.]

558 [(b) A habitual truant citation may not be issued to a habitual truant if the habitual
559 truant:]

560 [(i) has at least a 3.5 cumulative grade point average; and]

561 [(ii) is at least 16 years old.]

562 [(6) A habitual truant to whom a habitual truant citation is issued under Subsection
563 (5):]

564 [(a) shall be referred to the juvenile court for violation of Subsection (1); and]

565 [(b) is subject to the jurisdiction of the juvenile court.]

566 [(7) A notice of truancy or a habitual truant citation may only be issued by:]

567 [(a) a school administrator, or a truancy specialist, who is authorized by a local school
568 board or charter school governing board;]

569 [(b) a designee of a school administrator described in Subsection (7)(a); or]

570 [(c) a law enforcement officer acting as a school resource officer.]

571 [(8)] (5) Nothing in this part prohibits a local school board, charter school governing
572 board, or school district from taking action to resolve a truancy problem with a school-age
573 minor who has been truant less than five times, provided that the action does not conflict with
574 the requirements of this part.

575 [(9) Nothing in this part allows a local school board or charter school governing board
576 to issue a citation pursuant to this section if the minor is exempt from school attendance as
577 provided in Section 53A-11-102 or 53A-11-102.5.]

578 Section 7. Section 53A-11-103 is amended to read:

579 **53A-11-103. Duties of a school board, local charter board, or school district in**
580 **resolving attendance problems -- Parental involvement -- Liability not imposed.**

581 (1) (a) Except as provided in Subsection (1)(b), a local school board, local charter
582 board, or school district shall make efforts to resolve the school attendance problems of each
583 school-age minor who is, or should be, enrolled in the school district.

584 (b) A minor exempt from school attendance under Section 53A-11-102 or
585 53A-11-102.5 is not considered to be a minor who is or should be enrolled in a school district

or charter school under Subsection (1)(a).

(2) The efforts described in Subsection (1) shall include, as reasonably feasible:

(a) counseling of the minor by school authorities;

(b) issuing a notice of truancy to a school-age minor who is at least 12 years old, in accordance with Section [53A-11-101.7](#);

~~[(c) issuing a habitual truant citation, in accordance with Section [53A-11-101.7](#);~~

~~[(d)]~~ (c) issuing a notice of compulsory education violation to a parent of a school-age child, in accordance with Section [53A-11-101.5](#);

~~[(e)]~~ (d) making any necessary adjustment to the curriculum and schedule to meet special needs of the minor;

~~[(f)]~~ (e) considering alternatives proposed by a parent;

~~[(g)]~~ (f) monitoring school attendance of the minor;

~~[(h)]~~ (g) voluntary participation in truancy mediation, if available; and

~~[(i)]~~ (h) providing a school-age minor's parent, upon request, with a list of resources available to assist the parent in resolving the school-age minor's attendance problems.

(3) In addition to the efforts described in Subsection (2), the local school board, local charter board, or school district may enlist the assistance of community and law enforcement agencies as appropriate and reasonably feasible in accordance with Section [53A-11-911](#).

(4) This section ~~[shall]~~ does not impose ~~[any]~~ civil liability on boards of education, local school boards, local charter boards, school districts, or their employees.

(5) Proceedings initiated under this part do not obligate or preclude action by the Division of Child and Family Services under Section [78A-6-319](#).

Section 8. Section **53A-11-105** is amended to read:

**53A-11-105. Taking custody of a person believed to be a truant minor --
Disposition -- Reports -- Immunity from liability.**

(1) A peace officer or public school administrator may take a minor into temporary custody if there is reason to believe the minor is a truant minor.

(2) An individual taking a school-age minor into custody under Subsection (1) shall, without unnecessary delay, release the minor to:

(a) the principal of the minor's school;

(b) a person who has been designated by the local school board or local charter board

to receive and return the minor to school; or

(c) a ~~[receiving]~~ truancy center established under Subsection (5).

(3) If the minor refuses to return to school or go to the ~~[receiving]~~ truancy center, the officer or administrator shall, without unnecessary delay, notify the minor's parents and release the minor to their custody.

(4) If the parents cannot be reached or are unable or unwilling to accept custody and none of the options in Subsection (2) are available, the minor shall be referred to the Division of Child and Family Services.

(5) (a) A local school board or local charter board, singly or jointly with another school board, may establish or designate ~~[receiving]~~ truancy centers within existing school buildings and staff the centers with existing teachers or staff to provide educational guidance and counseling for truant minors. Upon receipt of a truant minor, the center shall, without unnecessary delay, notify and direct the minor's parents to come to the center, pick up the minor, and return the minor to the school in which the minor is enrolled.

(b) If the parents cannot be reached or are unable or unwilling to comply with the request within a reasonable time, the center shall take such steps as are reasonably necessary to insure the safety and well being of the minor, including, when appropriate, returning the minor to school or referring the minor to the Division of Child and Family Services. A minor taken into custody under this section may not be placed in a detention center or other secure confinement facility.

(6) Action taken under this section shall be reported to the appropriate school district. The district shall promptly notify the minor's parents of the action taken.

(7) The Utah Governmental Immunity Act applies to all actions taken under this section.

(8) Nothing in this section may be construed to grant authority to a public school administrator to place a minor in the custody of the Division of Child and Family Services, without complying with ~~[the provisions of]~~ Title 62A, Chapter 4a, Part 2, Child Welfare Services, ~~[and Part 2a, Minors in Custody on Grounds Other Than Abuse or Neglect,]~~ and ~~[of]~~ Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings~~[-and Part 4, Minors in Custody on Grounds Other Than Abuse or Neglect].~~

Section 9. Section **53A-11-403** is amended to read:

53A-11-403. Reporting procedure.

(1) The principal of a public school affected by this chapter shall appoint one educator as the "designated educator" to make all reports required under Sections [53A-11-401](#) through [53A-11-404](#).

(2) The designated educator, upon receiving a report of a prohibited act from an educator under Section [53A-11-402](#), shall immediately report the violation to the student's parent or legal guardian, and may report the violation to an appropriate law enforcement agency or official, in accordance with Section [53A-11-911](#).

(3) The designated educator may not disclose to the student or to the student's parent or legal guardian the identity of the educator who made the initial report.

Section 10. Section **53A-11-901** is amended to read:

53A-11-901. Public school discipline policies -- Basis of the policies -- Enforcement.

(1) The Legislature recognizes that every student in the public schools should have the opportunity to learn in an environment which is safe, conducive to the learning process, and free from unnecessary disruption.

(2) (a) To foster such an environment, each local school board or governing board of a charter school, with input from school employees, parents and guardians of students, students, and the community at large, shall adopt conduct and discipline policies for the public schools in accordance with Section [53A-11-911](#).

(b) ~~[Each]~~ A district or charter school shall base its policies on the principle that every student is expected:

(i) to follow accepted rules of conduct; and

(ii) to show respect for other people and to obey persons in authority at the school.

(c) (i) On or before September 1, 2015, the State Board of Education shall revise the conduct and discipline policy models for elementary and secondary public schools to include procedures for responding to reports received through the School Safety and Crisis Line under Subsection [53A-11-1503](#)(3).

(ii) Each district or charter school shall use the models, where appropriate, in developing its conduct and discipline policies under this chapter.

(d) The policies shall emphasize that certain behavior, most particularly behavior

which disrupts, is unacceptable and may result in disciplinary action.

(3) The local superintendent and designated employees of the district or charter school shall enforce the policies so that students demonstrating unacceptable behavior and their parents or guardians understand that such behavior will not be tolerated and will be dealt with in accordance with the district's conduct and discipline policies.

Section 11. Section **53A-11-908** is amended to read:

53A-11-908. Extracurricular activities -- Prohibited conduct -- Reporting of violations -- Limitation of liability.

(1) The Legislature recognizes that:

(a) participation in student government and extracurricular activities may confer important educational and lifetime benefits upon students, and encourages school districts and charter schools to provide a variety of opportunities for all students to participate in such activities in meaningful ways;

(b) there is no constitutional right to participate in these types of activities, and does not through this section or any other provision of law create such a right;

(c) students who participate in student government and extracurricular activities, particularly competitive athletics, and the adult coaches, advisors, and assistants who direct those activities, become role models for others in the school and community;

(d) these individuals often play major roles in establishing standards of acceptable behavior in the school and community, and establishing and maintaining the reputation of the school and the level of community confidence and support afforded the school; and

(e) it is of the utmost importance that those involved in student government, whether as officers or advisors, and those involved in competitive athletics and related activities, whether students or staff, comply with all applicable laws and rules of behavior and conduct themselves at all times in a manner befitting their positions and responsibilities.

(2) (a) The State Board of Education may, and local boards of education and governing boards of charter schools shall, adopt rules implementing this section that apply to both students and staff.

(b) ~~[Those]~~ The rules described in Subsection (2)(a) shall include prohibitions against the following types of conduct in accordance with Section [53A-11-911](#), while in the classroom, on school property, during school sponsored activities, or regardless of the location or

circumstance, affecting a person or property described in Subsections 53A-11-902(5)(a) through (d):

(i) use of foul, abusive, or profane language while engaged in school related activities;
(ii) illicit use, possession, or distribution of controlled substances or drug paraphernalia, and the use, possession, or distribution of an electronic cigarette as defined in Section 76-10-101, tobacco, or alcoholic beverages contrary to law; and

(iii) hazing, demeaning, or assaultive behavior, whether consensual or not, including behavior involving physical violence, restraint, improper touching, or inappropriate exposure of body parts not normally exposed in public settings, forced ingestion of any substance, or any act which would constitute a crime against a person or public order under Utah law.

(3) (a) School employees who reasonably believe that a violation of this section may have occurred shall immediately report that belief to the school principal, district superintendent, or chief administrative officer of a charter school.

(b) Principals who receive a report under Subsection (3)(a) shall submit a report of the alleged incident, and actions taken in response, to the district superintendent or the superintendent's designee within 10 working days after receipt of the report.

(c) Failure of a person holding a professional certificate to report as required under this Subsection (3) constitutes an unprofessional practice.

(4) Limitations of liability set forth under Section 53A-11-1004 apply to this section.
Section 12. Section 53A-11-910 is amended to read:

53A-11-910. Disruptive student behavior.

(1) As used in this section:

(a) "Disruptive student behavior" includes:

(i) the grounds for suspension or expulsion described in Section 53A-11-904; and
(ii) the conduct described in Subsection 53A-11-908(2)(b).

(b) "Parent" includes:

(i) a custodial parent of a school-age minor;
(ii) a legally appointed guardian of a school-age minor; or
(iii) any other person purporting to exercise any authority over the minor which could be exercised by a person described in Subsection (1)(b)(i) or (ii).

(c) "Qualifying minor" means a school-age minor who:

(i) is at least nine years old; or

(ii) turns nine years old at any time during the school year.

(d) "School year" means the period of time designated by a local school board or local charter board as the school year for the school where the school-age minor is enrolled.

(2) A local school board, school district, governing board of a charter school, or charter school may impose administrative penalties in accordance with Section 53A-11-911 on a school-age minor who violates this part.

~~[(3)(a) It is unlawful for a school-age minor to engage in disruptive student behavior.]~~

~~[(b) A qualifying minor is subject to the jurisdiction of the juvenile court if the qualifying minor:]~~

~~[(i) engages in disruptive student behavior, that does not result in suspension or expulsion, at least six times during the school year;]~~

~~[(ii)(A) engages in disruptive student behavior, that does not result in suspension or expulsion, at least three times during the school year; and]~~

~~[(B) engages in disruptive student behavior, that results in suspension or expulsion, at least once during the school year; or]~~

~~[(iii) engages in disruptive student behavior, that results in suspension or expulsion, at least twice during the school year.]~~

~~[(4)]~~ (3) (a) A local school board or governing board of a charter school shall:

(i) authorize a school administrator or a designee of a school administrator to issue notices of disruptive student behavior to qualifying minors; and

(ii) establish a procedure for a qualifying minor, or a qualifying minor's parent, to contest a notice of disruptive student behavior.

(b) A school representative shall provide to a parent of a school-age minor, a list of resources available to assist the parent in resolving the school-age minor's disruptive student behavior problem.

(c) A local school board or governing board of a charter school shall establish procedures for a school counselor or other designated school representative to work with a qualifying minor who engages in disruptive student behavior in order to attempt to resolve the minor's disruptive student behavior problems ~~[before the qualifying minor becomes subject to the jurisdiction of the juvenile court as provided for under this section].~~

772 ~~[(5)]~~ (4) The notice of disruptive student behavior described in Subsection ~~[(4)]~~ (3)(a):

773 (a) shall be issued to a qualifying minor who:

774 (i) engages in disruptive student behavior, that does not result in suspension or
775 expulsion, three times during the school year; or

776 (ii) engages in disruptive student behavior, that results in suspension or expulsion, once
777 during the school year;

778 (b) shall require that the qualifying minor and a parent of the qualifying minor:

779 (i) meet with school authorities to discuss the qualifying minor's disruptive student
780 behavior; and

781 (ii) cooperate with the local school board or governing board of a charter school in
782 correcting the school-age minor's disruptive student behavior; and

783 ~~[(c) shall contain a statement indicating:]~~

784 ~~[(i) the number of additional times that, if the qualifying minor engages in disruptive~~
785 ~~student behavior that does not result in suspension or expulsion, will result in the qualifying~~
786 ~~minor receiving a habitual disruptive student behavior citation; and]~~

787 ~~[(ii) that the qualifying minor will receive a habitual disruptive student behavior~~
788 ~~citation if the qualifying minor engages in disruptive student behavior that results in suspension~~
789 ~~or expulsion; and]~~

790 ~~[(d)]~~ (c) shall be mailed by certified mail to, or served on, a parent of the qualifying
791 minor.

792 ~~[(6)]~~ (5) A habitual disruptive student behavior ~~[citation]~~ notice:

793 (a) may only be issued to a qualifying minor who:

794 (i) engages in disruptive student behavior, that does not result in suspension or
795 expulsion, at least six times during the school year;

796 (ii) (A) engages in disruptive student behavior, that does not result in suspension or
797 expulsion, at least three times during the school year; and

798 (B) engages in disruptive student behavior, that results in suspension or expulsion, at
799 least once during the school year; or

800 (iii) engages in disruptive student behavior, that results in suspension or expulsion, at
801 least twice during the school year; and

802 (b) may only be issued by a school administrator, a designee of a school administrator,

or a truancy specialist, who is authorized by a local school board or governing board of a local charter school to issue a habitual disruptive student behavior ~~[citations]~~ notice.

~~[(7)]~~ (6) (a) A qualifying minor to whom a habitual disruptive student behavior ~~[citation]~~ notice is issued under Subsection ~~[(6) shall]~~ (5) may not be referred to the juvenile court ~~[for violation of Subsection (3)]~~.

(b) Within five days after the day on which a habitual disruptive student behavior ~~[citation]~~ notice is issued, a representative of the school district or charter school shall provide documentation, to a parent of the qualifying minor who receives the ~~[citation]~~ notice, of the efforts made by a school counselor or representative under Subsection ~~[(4)]~~ (3)(c).

~~[(8) Nothing in this part prohibits a local school board, school district, governing board of a charter school, or charter school from taking any lawful action not in conflict with the provisions of this section, including action described in this part and action relating to a habitually truant or ungovernable child, to address a disruptive student behavior problem of:]~~

~~[(a) a school-age minor who is not a qualifying minor; or]~~

~~[(b) a qualifying minor, regardless of the number of times that the qualifying minor has engaged in disruptive student behavior during the school year.]~~

Section 13. Section **53A-11-911** is enacted to read:

53A-11-911. Tiered responses to school-based behavior.

(1) As used in this section:

(a) "Class A misdemeanor person offense" means a class A misdemeanor that involves physical harm to a natural person.

(b) "Mobile crisis outreach team" means the same as that term is defined in Section [78A-6-105](#).

(c) "Nonperson class A misdemeanor" means a class A misdemeanor not involving physical harm to a natural person.

(d) "Restorative justice program" means a school-based program that is designed to enhance school safety, reduce school suspensions, and limit referrals to court, and is designed to help minors take responsibility for and repair the harm of behavior that occurs in school.

(2) This section applies to a minor enrolled in school who is alleged to have committed an offense either:

(a) on school grounds; or

834 (b) related to school attendance.

835 (3) If the alleged offense is a minor offense, as defined under Section [78A-6-1202](#), in
836 response to an alleged minor offense, the minor may be referred to alternative school-related
837 interventions, including:

838 (a) a mobile crisis outreach team, as defined in Section [78A-6-105](#);

839 (b) a receiving center operated by the Division of Juvenile Justice Services in
840 accordance with Section [62A-7-104](#); and

841 (c) a youth court or comparable restorative justice program.

842 (4) Except as provided in Subsection (5), if an offense alleged under Subsection (2) is a
843 class B misdemeanor or a nonperson class A misdemeanor, the following procedure applies:

844 (a) the school administrator or the school administrator's designee shall refer the minor
845 to a youth court in accordance with Section [78A-6-1203](#) or a comparable restorative justice
846 program within the school setting;

847 (b) if a minor under Subsection (3)(a) elects not to participate in the program or fails to
848 comply with the program or the agreement reached through youth court or a comparable
849 restorative justice program, the minor shall then be referred to a multi-disciplinary team
850 established by the school board, local charter board, or school in accordance with Section
851 [53A-3-402](#);

852 (c) the multi-disciplinary team shall review each case referral and establish a plan to
853 reduce the likelihood of a referral to juvenile court; and

854 (d) the minor may only be referred to law enforcement, the court, or a prosecutor in
855 accordance with Section [78A-6-602](#) if the minor does not comply with the plan established by
856 the multi-disciplinary team.

857 (5) (a) The procedure under Subsection (4) does not apply if the offense alleged under
858 Subsection (2) is a class B misdemeanor or a class A misdemeanor and the offense is an
859 offense:

860 (i) against a person committed as part of gang activity; or

861 (ii) where a dangerous weapon, as defined in Subsection [76-1-601](#)(5), is used in the
862 commission of the offense.

863 (b) In a case under this Subsection (5), or in the case of any class A misdemeanor
864 person offense or felony alleged under Subsection (2), the procedure under Subsection (4) may

be followed, or the offense may be referred directly to law enforcement, juvenile court, or a prosecutor.

Section 14. Section **53A-11-1302** is amended to read:

53A-11-1302. Reporting of prohibited acts affecting a school -- Confidentiality.

(1) A person who has reasonable cause to believe that an individual has committed a prohibited act shall, in accordance with Section [53A-11-911](#), immediately notify:

~~[(a) the nearest law enforcement agency;]~~

~~[(b)]~~ (a) the principal;

~~[(c)]~~ (b) an administrator of the affected school;

~~[(d)]~~ (c) the superintendent of the affected school district; or

~~[(e)]~~ (d) an administrator of the affected school district.

(2) If notice is given to a school official, the official may authorize an investigation into allegations involving school property, students, or school district employees.

(3) ~~[School officials]~~ A school official may only refer a complaint of an alleged prohibited act reported as occurring on school grounds or in connection with school-sponsored activities to an appropriate law enforcement agency~~[- Referrals shall be made by school officials if the complaint alleges the prohibited act occurred elsewhere]~~ in accordance with Section [53A-11-911](#).

(4) The identity of persons making reports pursuant to this section shall be kept confidential.

Section 15. Section **53A-11-1604** is amended to read:

53A-11-1604. Contracts between an LEA and law enforcement for school resource officer services -- Requirements.

(1) An LEA may contract with a law enforcement agency or an individual to provide school resource officer services at the LEA if the LEA's governing authority reviews and approves the contract.

(2) If an LEA contracts with a law enforcement agency or an individual to provide SRO services at the LEA, the LEA's governing authority shall require in the contract:

(a) an acknowledgment by the law enforcement agency or the individual that an SRO hired under the contract shall:

(i) provide for and maintain a safe, healthy, and productive learning environment in a

896 school;

897 (ii) act as a positive role model to students;

898 (iii) work to create a cooperative, proactive, and problem-solving partnership between

899 law enforcement and the LEA;

900 (iv) emphasize the use of restorative approaches to address negative behavior; and

901 (v) at the request of the LEA, teach a vocational law enforcement class;

902 (b) a description of the shared understanding of the LEA and the law enforcement

903 agency or individual regarding the roles and responsibilities of law enforcement and the LEA

904 to:

905 (i) maintain safe schools;

906 (ii) improve school climate; and

907 (iii) support educational opportunities for students;

908 (c) a designation of student offenses that the SRO shall confer with the LEA to resolve,

909 including an offense that:

910 (i) is a minor violation of the law; and

911 (ii) would not violate the law if the offense was committed by an adult;

912 (d) a designation of student offenses that are administrative issues that an SRO shall

913 refer to a school administrator for resolution in accordance with Section [53A-11-911](#);

914 (e) a detailed description of the rights of a student under state and federal law with

915 regard to:

916 (i) searches;

917 (ii) questioning; and

918 (iii) information privacy;

919 (f) a detailed description of:

920 (i) job duties;

921 (ii) training requirements; and

922 (iii) other expectations of the SRO and school administration in relation to law

923 enforcement at the LEA;

924 (g) that an SRO who is hired under the contract and the principal at the school where

925 an SRO will be working, or the principal's designee, will jointly complete the SRO training

926 described in Section [53A-11-1603](#); and

(h) if the contract is between an LEA and a law enforcement agency, that:
(i) both parties agree to jointly discuss SRO applicants; and
(ii) the law enforcement agency will accept feedback from an LEA about an SRO's performance.

Section 16. Section **58-37-8** is amended to read:

58-37-8. Prohibited acts -- Penalties.

(1) Prohibited acts A -- Penalties and reporting:

(a) Except as authorized by this chapter, it is unlawful for any person to knowingly and intentionally:

(i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;

(ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance;

(iii) possess a controlled or counterfeit substance with intent to distribute; or

(iv) engage in a continuing criminal enterprise where:

(A) the person participates, directs, or engages in conduct that results in any violation of any provision of Title 58, Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b, Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d, Clandestine Drug Lab Act, that is a felony; and

(B) the violation is a part of a continuing series of two or more violations of Title 58, Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b, Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d, Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or more persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management.

(b) Any person convicted of violating Subsection (1)(a) with respect to:

(i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony, punishable by imprisonment for not more than 15 years, and upon a second or subsequent conviction is guilty of a first degree felony;

(ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or

marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and upon a second or subsequent conviction is guilty of a second degree felony; or

(iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.

(c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on ~~his~~ the person or in ~~his~~ the person's immediate possession during the commission or in furtherance of the offense, the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently.

(d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony punishable by imprisonment for an indeterminate term of not less than seven years and which may be for life. Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(e) The Administrative Office of the Courts shall report to the Division of Occupational and Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (2)(a).

(2) Prohibited acts B -- Penalties and reporting:

(a) It is unlawful:

(i) for any person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the person's professional practice, or as otherwise authorized by this chapter;

(ii) for any owner, tenant, licensee, or person in control of any building, room, tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied by persons unlawfully possessing, using, or distributing controlled substances in any of those locations; or

(iii) for any person knowingly and intentionally to possess an altered or forged

prescription or written order for a controlled substance.

(b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

(i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;

or

(ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty of a class A misdemeanor on a first or second conviction, and on a third or subsequent conviction is guilty of a third degree felony.

(c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater penalty than provided in this Subsection (2).

(d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section 58-37-4.2, or marijuana, is guilty of a class B misdemeanor. Upon a third conviction the person is guilty of a class A misdemeanor, and upon a fourth or subsequent conviction the person is guilty of a third degree felony.

(e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or any public jail or other place of confinement shall be sentenced to a penalty one degree greater than provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as listed in:

(i) Subsection (2)(b), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and:

(A) the court shall additionally sentence the person convicted to a term of one year to run consecutively and not concurrently; and

(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and

(ii) Subsection (2)(d), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted to a term of six months to run consecutively and not concurrently.

(f) Any person convicted of violating Subsection (2)(a)(ii) or (iii) is:

(i) on a first conviction, guilty of a class B misdemeanor;

- 1020 (ii) on a second conviction, guilty of a class A misdemeanor; and
- 1021 (iii) on a third or subsequent conviction, guilty of a third degree felony.
- 1022 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not
- 1023 amounting to a violation of Section 76-5-207:
- 1024 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's
- 1025 body any measurable amount of a controlled substance; and
- 1026 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,
- 1027 causing serious bodily injury as defined in Section 76-1-601 or the death of another.
- 1028 (h) A person who violates Subsection (2)(g) by having in the person's body:
- 1029 (i) a controlled substance classified under Schedule I, other than those described in
- 1030 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second
- 1031 degree felony;
- 1032 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection
- 1033 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third
- 1034 degree felony; or
- 1035 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class
- 1036 A misdemeanor.
- 1037 (i) A person is guilty of a separate offense for each victim suffering serious bodily
- 1038 injury or death as a result of the person's negligent driving in violation of Subsection
- 1039 [58-37-8](2)(g) whether or not the injuries arise from the same episode of driving.
- 1040 (j) The Administrative Office of the Courts shall report to the Division of Occupational
- 1041 and Professional Licensing the name, case number, date of conviction, and if known, the date
- 1042 of birth of each person convicted of violating Subsection (2)(a).
- 1043 (3) Prohibited acts C -- Penalties:
- 1044 (a) It is unlawful for any person knowingly and intentionally:
- 1045 (i) to use in the course of the manufacture or distribution of a controlled substance a
- 1046 license number which is fictitious, revoked, suspended, or issued to another person or, for the
- 1047 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a
- 1048 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized
- 1049 person;
- 1050 (ii) to acquire or obtain possession of, to procure or attempt to procure the

administration of, to obtain a prescription for, to prescribe or dispense to any person known to be attempting to acquire or obtain possession of, or to procure the administration of any controlled substance by misrepresentation or failure by the person to disclose receiving any controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order for a controlled substance, or the use of a false name or address;

(iii) to make any false or forged prescription or written order for a controlled substance, or to utter the same, or to alter any prescription or written order issued or written under the terms of this chapter; or

(iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling so as to render any drug a counterfeit controlled substance.

(b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A misdemeanor.

(ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third degree felony.

(c) A violation of Subsection (3)(a)(iv) is a third degree felony.

(4) Prohibited acts D -- Penalties:

(a) Notwithstanding other provisions of this section, a person not authorized under this chapter who commits any act that is unlawful under Subsection (1)(a), Section 58-37a-5, or Section 58-37b-4 is upon conviction subject to the penalties and classifications under this Subsection (4) if the trier of fact finds the act is committed:

(i) in a public or private elementary or secondary school or on the grounds of any of those schools during the hours of 6 a.m. through 10 p.m.;

(ii) in a public or private vocational school or postsecondary institution or on the grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;

(iii) in or on the grounds of a preschool or child-care facility during the preschool's or facility's hours of operation;

(iv) in a public park, amusement park, arcade, or recreation center when the public or amusement park, arcade, or recreation center is open to the public;

(v) in or on the grounds of a house of worship as defined in Section 76-10-501;

(vi) in or on the grounds of a library when the library is open to the public;

(vii) within any area that is within 100 feet of any structure, facility, or grounds included in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);

(viii) in the presence of a person younger than 18 years of age, regardless of where the act occurs; or

(ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or distribution of a substance in violation of this section to an inmate or on the grounds of any correctional facility as defined in Section 76-8-311.3.

(b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony and shall be imprisoned for a term of not less than five years if the penalty that would otherwise have been established but for this Subsection (4) would have been a first degree felony.

(ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(c) If the classification that would otherwise have been established would have been less than a first degree felony but for this Subsection (4), a person convicted under this Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

(d) (i) If the violation is of Subsection (4)(a)(ix):

(A) the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and

(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and

(ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with the mental state required for the commission of an offense, directly or indirectly solicits, requests, commands, coerces, encourages, or intentionally aids another person to commit a violation of Subsection (4)(a)(ix).

(e) It is not a defense to a prosecution under this Subsection (4) that the actor mistakenly believed the individual to be 18 years of age or older at the time of the offense or was unaware of the individual's true age; nor that the actor mistakenly believed that the

location where the act occurred was not as described in Subsection (4)(a) or was unaware that the location where the act occurred was as described in Subsection (4)(a).

(5) Any violation of this chapter for which no penalty is specified is a class B misdemeanor.

(6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of guilty or no contest to a violation or attempted violation of this section or a plea which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a conviction that is:

(i) from a separate criminal episode than the current charge; and

(ii) from a conviction that is separate from any other conviction used to enhance the current charge.

(7) A person may be charged and sentenced for a violation of this section, notwithstanding a charge and sentence for a violation of any other section of this chapter.

(8) (a) Any penalty imposed for violation of this section is in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

(b) Where violation of this chapter violates a federal law or the law of another state, conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

(9) In any prosecution for a violation of this chapter, evidence or proof that shows a person or persons produced, manufactured, possessed, distributed, or dispensed a controlled substance or substances, is prima facie evidence that the person or persons did so with knowledge of the character of the substance or substances.

(10) This section does not prohibit a veterinarian, in good faith and in the course of the veterinarian's professional practice only and not for humans, from prescribing, dispensing, or administering controlled substances or from causing the substances to be administered by an assistant or orderly under the veterinarian's direction and supervision.

(11) Civil or criminal liability may not be imposed under this section on:

(a) any person registered under this chapter who manufactures, distributes, or possesses

an imitation controlled substance for use as a placebo or investigational new drug by a registered practitioner in the ordinary course of professional practice or research; or

(b) any law enforcement officer acting in the course and legitimate scope of the officer's employment.

(12) (a) Civil or criminal liability may not be imposed under this section on any Indian, as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion as defined in Subsection 58-37-2(1)(w).

(b) In a prosecution alleging violation of this section regarding peyote as defined in Subsection 58-37-4(2)(a)(iii)(V), it is an affirmative defense that the peyote was used, possessed, or transported by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion.

(c) (i) The defendant shall provide written notice of intent to claim an affirmative defense under this Subsection (12) as soon as practicable, but not later than 10 days ~~[prior to]~~ before trial.

(ii) The notice shall include the specific claims of the affirmative defense.

(iii) The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

(d) The defendant shall establish the affirmative defense under this Subsection (12) by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.

(13) (a) It is an affirmative defense that the person produced, possessed, or administered a controlled substance listed in Section 58-37-4.2 if the person:

(i) was engaged in medical research; and

(ii) was a holder of a valid license to possess controlled substances under Section 58-37-6.

(b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed a controlled substance listed in Section 58-37-4.2.

(14) It is an affirmative defense that the person possessed, in the person's body, a controlled substance listed in Section 58-37-4.2 if:

(a) the person was the subject of medical research conducted by a holder of a valid

license to possess controlled substances under Section 58-37-6; and

(b) the substance was administered to the person by the medical researcher.

(15) The application of any increase in penalty under this section to a violation of Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This Subsection (15) takes precedence over any conflicting provision of this section.

(16) (a) It is an affirmative defense to an allegation of the commission of an offense listed in Subsection (16)(b) that the person:

(i) reasonably believes that the person or another person is experiencing an overdose event due to the ingestion, injection, inhalation, or other introduction into the human body of a controlled substance or other substance;

(ii) reports in good faith the overdose event to a medical provider, an emergency medical service provider as defined in Section 26-8a-102, a law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the person is the subject of a report made under this Subsection (16);

(iii) provides in the report under Subsection (16)(a)(ii) a functional description of the actual location of the overdose event that facilitates responding to the person experiencing the overdose event;

(iv) remains at the location of the person experiencing the overdose event until a responding law enforcement officer or emergency medical service provider arrives, or remains at the medical care facility where the person experiencing an overdose event is located until a responding law enforcement officer arrives;

(v) cooperates with the responding medical provider, emergency medical service provider, and law enforcement officer, including providing information regarding the person experiencing the overdose event and any substances the person may have injected, inhaled, or otherwise introduced into the person's body; and

(vi) is alleged to have committed the offense in the same course of events from which the reported overdose arose.

(b) The offenses referred to in Subsection (16)(a) are:

(i) the possession or use of less than 16 ounces of marijuana;

(ii) the possession or use of a scheduled or listed controlled substance other than marijuana; and

(iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b, Imitation Controlled Substances Act.

(c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not include seeking medical assistance under this section during the course of a law enforcement agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

(17) If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application.

(18) A legislative body of a political subdivision may not enact an ordinance that is less restrictive than any provision of this chapter.

(19) ~~[(a)]~~ If a minor who is under 18 years of age is found by a court to have violated this section ~~[and the violation is the minor's first violation of this section]~~, the court may order:

~~[(i) order]~~ (a) the minor to complete a screening as defined in Section 41-6a-501;

~~[(ii) order]~~ (b) the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and

~~[(iii) order]~~ (c) the minor to complete an educational series as defined in Section 41-6a-501 or substance ~~[abuse]~~ use disorder treatment as indicated by an assessment.

~~[(b) If a minor who is under 18 years of age is found by a court to have violated this section and the violation is the minor's second or subsequent violation of this section, the court shall:]~~

~~[(i) order the minor to complete a screening as defined in Section 41-6a-501;]~~

~~[(ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and]~~

~~[(iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance abuse treatment as indicated by an assessment.]~~

Section 17. Section 58-37a-7 is amended to read:

58-37a-7. Sentencing requirements for minors.

~~[(1)]~~ If a minor who is under 18 years of age is found by a court to have violated this chapter ~~[and the violation is the minor's first violation of this chapter]~~, the court may order the minor to complete:

~~[(a) order the minor to complete]~~ (1) a screening as defined in Section 41-6a-501;

1237 ~~[(b) order the minor to complete]~~ (2) an assessment as defined in Section 41-6a-501 if
1238 the screening indicates an assessment to be appropriate; and

1239 ~~[(c) order the minor to complete]~~ (3) an educational series as defined in Section
1240 41-6a-501 or substance ~~[abuse]~~ use disorder treatment as indicated by an assessment.

1241 ~~[(2) If a minor who is under 18 years of age is found by a court to have violated this~~
1242 ~~chapter and the violation is the minor's second or subsequent violation of this chapter, the court~~
1243 ~~shall:]~~

1244 ~~[(a) order the minor to complete a screening as defined in Section 41-6a-501;]~~

1245 ~~[(b) order the minor to complete an assessment as defined in Section 41-6a-501 if the~~
1246 ~~screening indicates an assessment to be appropriate; and]~~

1247 ~~[(c) order the minor to complete an educational series as defined in Section 41-6a-501~~
1248 ~~or substance abuse treatment as indicated by an assessment.]~~

1249 Section 18. Section 58-37b-9 is amended to read:

1250 **58-37b-9. Sentencing requirements for minors.**

1251 ~~[(+)]~~ If a minor who is under 18 years of age is found by a court to have violated this
1252 chapter ~~[and the violation is the minor's first violation of this chapter]~~, the court may order the
1253 minor to complete:

1254 ~~[(a) order the minor to complete]~~ (1) a screening as defined in Section 41-6a-501;

1255 ~~[(b) order the minor to complete]~~ (2) an assessment as defined in Section 41-6a-501 if
1256 the screening indicates an assessment to be appropriate; and

1257 ~~[(c) order the minor to complete]~~ (3) an educational series as defined in Section
1258 41-6a-501 or substance ~~[abuse]~~ use disorder treatment as indicated by an assessment.

1259 ~~[(2) If a minor is found by a court to have violated this chapter and the violation is the~~
1260 ~~minor's second or subsequent violation of this chapter, the court shall:]~~

1261 ~~[(a) order the minor to complete a screening as defined in Section 41-6a-501;]~~

1262 ~~[(b) order the minor to complete an assessment as defined in Section 41-6a-501 if the~~
1263 ~~screening indicates an assessment to be appropriate; and]~~

1264 ~~[(c) order the minor to complete an educational series as defined in Section 41-6a-501~~
1265 ~~or substance abuse treatment as indicated by an assessment.]~~

1266 Section 19. Section 62A-4a-105 is amended to read:

1267 **62A-4a-105. Division responsibilities.**

1268 (1) The division shall:
1269 (a) administer services to minors and families, including:
1270 (i) child welfare services;
1271 (ii) domestic violence services; and
1272 (iii) all other responsibilities that the Legislature or the executive director may assign
1273 to the division;
1274 (b) provide the following services:
1275 (i) financial and other assistance to an individual adopting a child with special needs
1276 under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the
1277 child as a legal ward of the state;
1278 (ii) non-custodial and in-home services, including:
1279 (A) services designed to prevent family break-up; and
1280 (B) family preservation services;
1281 (iii) reunification services to families whose children are in substitute care in
1282 accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act;
1283 (iv) protective supervision of a family, upon court order, in an effort to eliminate abuse
1284 or neglect of a child in that family;
1285 (v) shelter care in accordance with the requirements of this chapter and Title 78A,
1286 Chapter 6, Juvenile Court Act;
1287 (vi) domestic violence services, in accordance with the requirements of federal law;
1288 (vii) protective services to victims of domestic violence, as defined in Section 77-36-1,
1289 and their children, in accordance with the provisions of this chapter and Title 78A, Chapter 6,
1290 Part 3, Abuse, Neglect, and Dependency Proceedings;
1291 (viii) substitute care for dependent, abused, neglected, and delinquent children;
1292 [~~(ix) programs and services for minors who have been placed in the custody of the~~
1293 ~~division for reasons other than abuse or neglect, under Section 62A-4a-250;~~]
1294 [~~(x)~~] (ix) services for minors who are victims of human trafficking or human
1295 smuggling as described in Sections 76-5-308 through 76-5-310 or who have engaged in
1296 prostitution or sexual solicitation as defined in Section 76-10-1302; and
1297 [~~(xi)~~] (x) training for staff and providers involved in the administration and delivery of
1298 services offered by the division in accordance with this chapter;

- 1299 (c) establish standards for all:
- 1300 (i) contract providers of out-of-home care for minors and families;
- 1301 (ii) facilities that provide substitute care for dependent, abused, neglected, and
- 1302 delinquent children placed in the custody of the division; and
- 1303 (iii) direct or contract providers of domestic violence services described in Subsection
- 1304 (1)(b)(vi);
- 1305 (d) have authority to:
- 1306 (i) contract with a private, nonprofit organization to recruit and train foster care
- 1307 families and child welfare volunteers in accordance with Section [62A-4a-107.5](#); and
- 1308 (ii) approve facilities that meet the standards established under Subsection (1)(c) to
- 1309 provide substitute care for dependent, abused, neglected, and delinquent children placed in the
- 1310 custody of the division;
- 1311 (e) cooperate with the federal government in the administration of child welfare and
- 1312 domestic violence programs and other human service activities assigned by the department;
- 1313 (f) in accordance with Subsection (2)(a), promote and enforce state and federal laws
- 1314 enacted for the protection of abused, neglected, dependent, delinquent, ungovernable, and
- 1315 runaway children, and status offenders, in accordance with the requirements of this chapter,
- 1316 unless administration is expressly vested in another division or department of the state;
- 1317 (g) cooperate with the Workforce Development Division in the Department of
- 1318 Workforce Services in meeting the social and economic needs of an individual who is eligible
- 1319 for public assistance;
- 1320 (h) compile relevant information, statistics, and reports on child and family service
- 1321 matters in the state;
- 1322 (i) prepare and submit to the department, the governor, and the Legislature reports of
- 1323 the operation and administration of the division in accordance with the requirements of
- 1324 Sections [62A-4a-117](#) and [62A-4a-118](#);
- 1325 (j) provide social studies and reports for the juvenile court in accordance with Section
- 1326 [78A-6-605](#);
- 1327 (k) within appropriations from the Legislature, provide or contract for a variety of
- 1328 domestic violence services and treatment methods;
- 1329 (l) ensure regular, periodic publication, including electronic publication, regarding the

1330 number of children in the custody of the division who:

1331 (i) have a permanency goal of adoption; or

1332 (ii) have a final plan of termination of parental rights, pursuant to Section 78A-6-314,

1333 and promote adoption of those children;

1334 (m) subject to Subsection (2)(b), refer an individual receiving services from the

1335 division to the local substance abuse authority or other private or public resource for a

1336 court-ordered drug screening test; and

1337 (n) perform other duties and functions required by law.

1338 (2) (a) In carrying out the requirements of Subsection (1)(f), the division shall:

1339 (i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and

1340 with all public and private licensed child welfare agencies and institutions, to develop and

1341 administer a broad range of services and support;

1342 (ii) take the initiative in all matters involving the protection of abused or neglected

1343 children, if adequate provisions have not been made or are not likely to be made; and

1344 (iii) make expenditures necessary for the care and protection of the children described

1345 in this Subsection (2)(a), within the division's budget.

1346 (b) When an individual is referred to a local substance abuse authority or other private

1347 or public resource for court-ordered drug screening under Subsection (1)(n), the court shall

1348 order the individual to pay all costs of the tests unless:

1349 (i) the cost of the drug screening is specifically funded or provided for by other federal

1350 or state programs;

1351 (ii) the individual is a participant in a drug court; or

1352 (iii) the court finds that the individual is impecunious.

1353 (3) Except to the extent provided by rule, the division is not responsible for

1354 investigating domestic violence in the presence of a child, as described in Section 76-5-109.1.

1355 (4) The division may not require a parent who has a child in the custody of the division

1356 to pay for some or all of the cost of any drug testing the parent is required to undergo.

1357 Section 20. Section 62A-4a-201 is amended to read:

1358 **62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of**
1359 **state.**

1360 (1) (a) Under both the United States Constitution and the constitution of this state, a

parent possesses a fundamental liberty interest in the care, custody, and management of the parent's children. A fundamentally fair process must be provided to parents if the state moves to challenge or interfere with parental rights. A governmental entity must support any actions or allegations made in opposition to the rights and desires of a parent regarding the parent's children by sufficient evidence to satisfy a parent's constitutional entitlement to heightened protection against government interference with the parent's fundamental rights and liberty interests and, concomitantly, the right of the child to be reared by the child's natural parent.

(b) The fundamental liberty interest of a parent concerning the care, custody, and management of the parent's children is recognized, protected, and does not cease to exist simply because a parent may fail to be a model parent or because the parent's child is placed in the temporary custody of the state. At all times, a parent retains a vital interest in preventing the irretrievable destruction of family life. Prior to an adjudication of unfitness, government action in relation to parents and their children may not exceed the least restrictive means or alternatives available to accomplish a compelling state interest. Until the state proves parental unfitness, and the child suffers, or is substantially likely to suffer, serious detriment as a result, the child and the child's parents share a vital interest in preventing erroneous termination of their natural relationship and the state cannot presume that a child and the child's parents are adversaries.

(c) It is in the best interest and welfare of a child to be raised under the care and supervision of the child's natural parents. A child's need for a normal family life in a permanent home, and for positive, nurturing family relationships is usually best met by the child's natural parents. Additionally, the integrity of the family unit and the right of parents to conceive and raise their children are constitutionally protected. The right of a fit, competent parent to raise the parent's child without undue government interference is a fundamental liberty interest that has long been protected by the laws and Constitution and is a fundamental public policy of this state.

(d) The state recognizes that:

(i) a parent has the right, obligation, responsibility, and authority to raise, manage, train, educate, provide and care for, and reasonably discipline the parent's children; and

(ii) the state's role is secondary and supportive to the primary role of a parent.

(e) It is the public policy of this state that parents retain the fundamental right and duty

to exercise primary control over the care, supervision, upbringing, and education of their children.

(f) Subsections (2) through (7) shall be interpreted and applied consistent with this Subsection (1).

(2) It is also the public policy of this state that children have the right to protection from abuse and neglect, and that the state retains a compelling interest in investigating, prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78A, Chapter 6, Juvenile Court Act ~~[of 1996]~~. Therefore, the state, as *parens patriae*, has an interest in and responsibility to protect children whose parents abuse them or do not adequately provide for their welfare. There may be circumstances where a parent's conduct or condition is a substantial departure from the norm and the parent is unable or unwilling to render safe and proper parental care and protection. Under those circumstances, the state may take action for the welfare and protection of the parent's children.

(3) When the division intervenes on behalf of an abused, neglected, or dependent child, it shall take into account the child's need for protection from immediate harm and the extent to which the child's extended family may provide needed protection. Throughout its involvement, the division shall utilize the least intrusive and least restrictive means available to protect a child, in an effort to ensure that children are brought up in stable, permanent families, rather than in temporary foster placements under the supervision of the state.

(4) When circumstances within the family pose a threat to the child's immediate safety or welfare, the division may seek custody of the child for a planned, temporary period and place the child in a safe environment, subject to the requirements of this section and in accordance with the requirements of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and:

(a) when safe and appropriate, return the child to the child's parent; or

(b) as a last resort, pursue another permanency plan.

(5) In determining and making "reasonable efforts" with regard to a child, pursuant to the provisions of Section [62A-4a-203](#), both the division's and the court's paramount concern shall be the child's health, safety, and welfare. The desires of a parent for the parent's child, and the constitutionally protected rights of a parent, as described in this section, shall be given full and serious consideration by the division and the court.

(6) In cases where actual sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are established, the state has no duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, provide reunification services, or to attempt to rehabilitate the offending parent or parents. This Subsection (6) does not exempt the division from providing court-ordered services.

(7) (a) In accordance with Subsection (1), the division shall strive to achieve appropriate permanency for children who are abused, neglected, or dependent. The division shall provide in-home services, where appropriate and safe, in an effort to help a parent to correct the behavior that resulted in abuse, neglect, or dependency of the parent's child. The division may pursue a foster placement only if in-home services fail or are otherwise insufficient or inappropriate, kinship placement is not safe or appropriate, or in-home services and kinship placement fail and cannot be corrected. The division shall also seek qualified extended family support or a kinship placement to maintain a sense of security and stability for the child.

(b) If the use or continuation of "reasonable efforts," as described in Subsections (5) and (6), is determined to be inconsistent with the permanency plan for a child, then measures shall be taken, in a timely manner, to place the child in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(c) Subject to the parental rights recognized and protected under this section, if, because of a parent's conduct or condition, the parent is determined to be unfit or incompetent based on the grounds for termination of parental rights described in Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, the continuing welfare and best interest of the child is of paramount importance, and shall be protected in determining whether that parent's rights should be terminated.

(8) The state's right to direct or intervene in the provision of medical or mental health care for a child is subject to Subsections 78A-6-105[(27)](35)(d) and 78A-6-117(2)(n) and Section 78A-6-301.5.

Section 21. Section 62A-4a-202 is amended to read:

62A-4a-202. In-home services for the preservation of families.

(1) (a) Within appropriations from the Legislature and money obtained under Subsection (5), the division shall provide in-home services for the purpose of family

1454 preservation to any family with a child whose health and safety is not immediately endangered,
1455 when:

1456 (i) (A) the child is at risk of being removed from the home; or

1457 (B) the family is in crisis; and

1458 (ii) the division determines that it is reasonable and appropriate.

1459 (b) In determining whether in-home services are reasonable and appropriate, in keeping
1460 with ~~[the provisions of]~~ Subsection 62A-4a-201(1), the child's health, safety, and welfare shall
1461 be the paramount concern.

1462 (c) The division shall consider whether the services described in Subsection (1)(b):

1463 (i) will be effective within a six-month period; and

1464 (ii) are likely to prevent continued abuse or neglect of the child.

1465 (2) (a) The division shall maintain a statewide inventory of in-home services available
1466 through public and private agencies or individuals for use by caseworkers.

1467 (b) The inventory described in Subsection (2)(a) shall include:

1468 (i) the method of accessing each service;

1469 (ii) eligibility requirements for each service;

1470 (iii) the geographic areas and the number of families that can be served by each
1471 service; and

1472 (iv) information regarding waiting lists for each service.

1473 (3) (a) As part of its in-home services for the preservation of families, the division shall
1474 provide in-home services in varying degrees of intensity and contact that are specific to the
1475 needs of each individual family.

1476 (b) As part of its in-home services, the division shall:

1477 (i) provide customized assistance;

1478 (ii) provide support or interventions that are tailored to the needs of the family;

1479 (iii) discuss the family's needs with the parent;

1480 (iv) discuss an assistance plan for the family with the parent; and

1481 (v) address:

1482 (A) the safety of children;

1483 (B) the needs of the family; and

1484 (C) services necessary to aid in the preservation of the family and a child's ability to

1485 remain in the home.

1486 (c) In-home services shall be, as practicable, provided within the region that the family
1487 resides, using existing division staff.

1488 (4) (a) The division may use specially trained caseworkers, private providers, or other
1489 persons to provide the in-home services described in Subsection (3).

1490 (b) The division shall allow a caseworker to be flexible in responding to the needs of
1491 each individual family, including:

1492 (i) limiting the number of families assigned; and

1493 (ii) being available to respond to assigned families within 24 hours.

1494 (5) To provide, expand, and improve the delivery of in-home services to prevent the
1495 removal of children from their homes and promote the preservation of families, the division
1496 shall make substantial effort to obtain funding, including:

1497 (a) federal grants;

1498 (b) federal waivers; and

1499 (c) private money.

1500 (6) The division shall provide in-home family services pursuant to an order under

1501 Section [78A-6-117](#).

1502 Section 22. Section **62A-4a-208** is amended to read:

1503 **62A-4a-208. Child protection ombudsman -- Responsibility -- Authority.**

1504 (1) As used in this section:

1505 (a) "Complainant" means a person who initiates a complaint with the ombudsman.

1506 (b) "Ombudsman" means the child protection ombudsman appointed pursuant to this
1507 section.

1508 (2) (a) There is created within the department the position of child protection
1509 ombudsman. The ombudsman shall be appointed by and serve at the pleasure of the executive
1510 director.

1511 (b) The ombudsman shall be:

1512 (i) an individual of recognized executive and administrative capacity;

1513 (ii) selected solely with regard to qualifications and fitness to discharge the duties of
1514 ombudsman; and

1515 (iii) have experience in child welfare, and in state laws and policies governing abused,

1516 neglected, and dependent children.

1517 (c) The ombudsman shall devote full time to the duties of office.

1518 (3) (a) Except as provided in Subsection (3)(b), the ombudsman shall, upon receipt of a
1519 complaint from any person, investigate whether an act or omission of the division with respect
1520 to a particular child:

1521 (i) is contrary to statute, rule, or policy;

1522 (ii) places a child's health or safety at risk;

1523 (iii) is made without an adequate statement of reason; or

1524 (iv) is based on irrelevant, immaterial, or erroneous grounds.

1525 (b) The ombudsman may decline to investigate any complaint. If the ombudsman
1526 declines to investigate a complaint or continue an investigation, the ombudsman shall notify
1527 the complainant and the division of the decision and of the reasons for that decision.

1528 (c) The ombudsman may conduct an investigation on the ombudsman's own initiative.

1529 (4) The ombudsman shall:

1530 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1531 make rules that govern the following:

1532 (i) receiving and processing complaints;

1533 (ii) notifying complainants and the division regarding a decision to investigate or to
1534 decline to investigate a complaint;

1535 (iii) prioritizing workload;

1536 (iv) maximum time within which investigations shall be completed;

1537 (v) conducting investigations;

1538 (vi) notifying complainants and the division regarding the results of investigations; and

1539 (vii) making recommendations based on the findings and results of recommendations;

1540 (b) report findings and recommendations in writing to the complainant and the
1541 division, in accordance with the provisions of this section;

1542 (c) within appropriations from the Legislature, employ staff as may be necessary to
1543 carry out the ombudsman's duties under this part;

1544 (d) provide information regarding the role, duties, and functions of the ombudsman to
1545 public agencies, private entities, and individuals;

1546 (e) annually report to the:

(i) Child Welfare Legislative Oversight Panel;
(ii) governor;
(iii) Division of Child and Family Services;
(iv) executive director of the department; and
(v) director of the division; and
(f) as appropriate, make recommendations to the division regarding individual cases, and the rules, policies, and operations of the division.

(5) (a) Upon rendering a decision to investigate a complaint, the ombudsman shall notify the complainant and the division of that decision.

(b) The ombudsman may advise a complainant to pursue all administrative remedies or channels of complaint before pursuing a complaint with the ombudsman. Subsequent to processing a complaint, the ombudsman may conduct further investigations upon the request of the complainant or upon the ombudsman's own initiative. Nothing in this subsection precludes a complainant from making a complaint directly to the ombudsman before pursuing an administrative remedy.

(c) If the ombudsman finds that an individual's act or omission violates state or federal criminal law, the ombudsman shall immediately report that finding to the appropriate county or district attorney or to the attorney general.

(d) The ombudsman shall immediately notify the division if the ombudsman finds that a child needs protective custody~~[, as that term is defined in Section 78A-6-105]~~.

(e) The ombudsman shall immediately comply with Part 4, Child Abuse or Neglect Reporting Requirements.

(6) (a) All records of the ombudsman regarding individual cases shall be classified in accordance with federal law and the provisions of Title 63G, Chapter 2, Government Records Access and Management Act. The ombudsman may make public a report prepared pursuant to this section in accordance with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.

(b) The ombudsman shall have access to all of the department's written and electronic records and databases, including those regarding individual cases. In accordance with Title 63G, Chapter 2, Government Records Access and Management Act, all documents and information received by the ombudsman shall maintain the same classification that was

1578 designated by the department.

1579 (7) (a) The ombudsman shall prepare a written report of the findings and
1580 recommendations, if any, of each investigation.

1581 (b) The ombudsman shall make recommendations to the division if the ombudsman
1582 finds that:

1583 (i) a matter should be further considered by the division;

1584 (ii) an administrative act should be addressed, modified, or canceled;

1585 (iii) action should be taken by the division with regard to one of its employees; or

1586 (iv) any other action should be taken by the division.

1587 Section 23. Section **62A-4a-250** is amended to read:

1588 **62A-4a-250. Attorney general responsibility.**

1589 ~~[(1) On or before July 1, 1998, the division shall have established programs designed~~
1590 ~~to meet the needs of minors who have not been adjudicated as abused or neglected, but who are~~
1591 ~~otherwise committed to the custody of the division by the juvenile court pursuant to Section~~
1592 ~~78A-6-117, and who are classified in the division's management information system as having~~
1593 ~~been placed in custody primarily on the basis of delinquent behavior or a status offense.]~~

1594 ~~[(2) (a) The processes and procedures designed to meet the needs of children who are~~
1595 ~~abused or neglected, described in Part 2, Child Welfare Services, and in Title 78A, Chapter 6,~~
1596 ~~Part 3, Abuse, Neglect, and Dependency Proceedings, are not applicable to the minors~~
1597 ~~described in Subsection (1).]~~

1598 ~~[(b) The procedures described in Subsection 78A-6-118(2)(a) are applicable to the~~
1599 ~~minors described in Subsection (1).]~~

1600 ~~[(3) As of July 1, 1998, the]~~

1601 The attorney general's office has the responsibility to represent the division with regard
1602 to actions involving minors [described in Subsection (1)] ordered to complete in-home family
1603 services under Section 78A-6-117. Nothing in this section may be construed to affect the
1604 responsibility of the county attorney or district attorney to represent the state in those matters,
1605 in accordance with Section 78A-6-115.

1606 Section 24. Section **62A-7-101** is amended to read:

1607 **62A-7-101. Definitions.**

1608 As used in this chapter:

(1) "Authority" means the Youth Parole Authority, established in accordance with Section 62A-7-501.

(2) "Board" means the Board of Juvenile Justice Services established in accordance with Section 62A-1-105.

(3) "Community-based program" means a nonsecure residential or nonresidential program designated to supervise and rehabilitate youth offenders in accordance with Subsection 78A-6-117(2)(c) that prioritizes the least restrictive nonresidential setting, consistent with public safety, and designated or operated by or under contract with the division.

(4) "Control" means the authority to detain, restrict, and supervise a youth in a manner consistent with public safety and the well being of the youth and division employees.

(5) "Court" means the juvenile court.

(6) "Delinquent act" is an act which would constitute a felony or a misdemeanor if committed by an adult.

(7) "Detention" means secure detention or home detention.

(8) "Detention center" means a facility established in accordance with Title 62A, Chapter 7, Part 2, Detention Facilities.

(9) "Director" means the director of the Division of Juvenile Justice Services.

(10) "Discharge" means a written order of the Youth Parole Authority that removes a youth offender from its jurisdiction.

(11) "Division" means the Division of Juvenile Justice Services.

(12) "Home detention" means predispositional placement of a child in the child's home or a surrogate home with the consent of the child's parent, guardian, or custodian for conduct by a child who is alleged to have committed a delinquent act or postdispositional placement pursuant to Subsection 78A-6-117(2)(f) or 78A-6-1101(3).

(13) "Observation and assessment program" means a nonresidential service program operated or purchased by the division[;] that is responsible [for temporary custody of youth offenders for observation] only for diagnostic assessment of minors, including for substance use disorder, mental health, psychological, and sexual behavior risk assessments.

(14) "Parole" means a conditional release of a youth offender from residency in a secure facility to live outside that facility under the supervision of the Division of Juvenile Justice Services or other person designated by the division.

1640 (15) "Performance-based contracting" means a system of contracting with service
1641 providers for the provision of residential or nonresidential services that:

1642 (a) provides incentives for the implementation of evidence-based juvenile justice
1643 programs or programs rated as effective for reducing recidivism by a standardized tool pursuant
1644 to Section 63M-7-208; and

1645 (b) provides a premium rate allocation for a minor who receives the evidence-based
1646 dosage of treatment and successfully completes the program within three months.

1647 ~~[(15)]~~ (16) "Receiving center" means a nonsecure, nonresidential program established
1648 by the division or under contract with the division that is responsible for juveniles taken into
1649 custody by a law enforcement officer for status offenses, infractions, or delinquent acts~~[but~~
1650 ~~who do not meet the criteria for admission to secure detention or shelter].~~

1651 ~~[(16)]~~ (17) "Rescission" means a written order of the Youth Parole Authority that
1652 rescinds a parole date.

1653 ~~[(17)]~~ (18) "Revocation of parole" means a written order of the Youth Parole Authority
1654 that terminates parole supervision of a youth offender and directs return of the youth offender
1655 to the custody of a secure facility ~~[because of a violation of the conditions of parole]~~ after a
1656 hearing and a determination that there has been a violation of law or of a condition of parole
1657 that warrants a return to a secure facility in accordance with Section 62A-7-504.

1658 ~~[(18)]~~ (19) "Runaway" means a youth who willfully leaves the residence of a parent or
1659 guardian without the permission of the parent or guardian.

1660 ~~[(19)]~~ (20) "Secure detention" means predisposition placement in a facility operated by
1661 or under contract with the division, for conduct by a child who is alleged to have committed a
1662 delinquent act.

1663 ~~[(20)]~~ (21) "Secure facility" means any facility operated by or under contract with the
1664 division, that provides 24-hour supervision and confinement for youth offenders committed to
1665 the division for custody and rehabilitation.

1666 ~~[(21)]~~ (22) "Shelter" means the temporary care of children in physically unrestricted
1667 facilities pending court disposition or transfer to another jurisdiction.

1668 ~~[(22)]~~ (23) (a) "Temporary custody" means control and responsibility of
1669 nonadjudicated youth until the youth can be released to the parent, guardian, a responsible
1670 adult, or to an appropriate agency.

(b) "Temporary custody" does not include a placement in a secure facility, including secure detention, or a residential community-based program operated or contracted by the division, except pursuant to Subsection 78A-6-117(2)(f)(iv)(B).

~~[(23)]~~ (24) "Termination" means a written order of the Youth Parole Authority that terminates a youth offender from parole.

~~[(24)]~~ (25) "Ungovernable" means a youth in conflict with a parent or guardian, and the conflict:

(a) results in behavior that is beyond the control or ability of the youth, or the parent or guardian, to manage effectively;

(b) poses a threat to the safety or well-being of the youth, the family, or others; or

(c) results in the situations in both Subsections ~~[(24)]~~ (25)(a) and (b).

~~[(25)]~~ (26) "Work program" means a nonresidential public or private service work project established and administered by the division for youth offenders for the purpose of rehabilitation, education, and restitution to victims.

~~[(26)]~~ (27) "Youth offender" means a person 12 years of age or older, and who has not reached 21 years of age, committed or admitted by the juvenile court to the custody, care, and jurisdiction of the division, for confinement in a secure facility or supervision in the community, following adjudication for a delinquent act which would constitute a felony or misdemeanor if committed by an adult in accordance with Section 78A-6-117.

~~[(27)]~~ (28) (a) "Youth services" means services provided in an effort to resolve family conflict:

(i) for families in crisis when a minor is ungovernable or runaway; or

(ii) involving a minor and the minor's parent or guardian.

(b) These services include efforts to:

(i) resolve family conflict;

(ii) maintain or reunite minors with their families; and

(iii) divert minors from entering or escalating in the juvenile justice system[;].

(c) The services may provide:

(i) crisis intervention;

(ii) short-term shelter;

(iii) time out placement; and

(iv) family counseling.

Section 25. Section **62A-7-104** is amended to read:

62A-7-104. Division responsibilities.

(1) The division is responsible for all youth offenders committed to [it] the division by juvenile courts for secure confinement or supervision and treatment in the community in accordance with Section 78A-6-117.

(2) The division shall:

(a) establish and administer a continuum of community, secure, and nonsecure programs for all youth offenders committed to the division;

(b) establish and maintain all detention and secure facilities and set minimum standards for those facilities;

(c) establish and operate prevention and early intervention youth services programs for nonadjudicated youth placed with the division; and

(d) establish observation and assessment programs necessary to serve youth offenders ~~[committed by the juvenile court for short-term observation under Subsection 78A-6-117(2)(c), and whenever possible, conduct the programs in settings separate and distinct from secure facilities for youth offenders]~~ in a nonresidential setting under Subsection 78A-6-117(2)(e).

(3) The division shall place youth offenders committed to it in the most appropriate program for supervision and treatment.

(4) In any order committing a youth offender to the division, the juvenile court shall ~~[specify]~~ find whether the youth offender is being committed for secure confinement under Subsection 78A-6-117(2)(c), or placement in a community-based program[. The] under Subsection 78A-6-117(2)(c), and specify the criteria under Subsection 78A-6-117(2)(c) or (d) underlying the commitment. If the criteria under Subsection 78A-6-117(2)(c) or (d) have been met, the division shall place the youth offender in the most appropriate program within the category specified by the court.

(5) The division shall employ staff necessary to:

(a) supervise and control youth offenders in secure facilities or in the community;

(b) supervise and coordinate treatment of youth offenders committed to the division for placement in community-based programs; and

(c) control and supervise adjudicated and nonadjudicated youth placed with the

division for temporary services in receiving centers, youth services, and other programs established by the division.

(6) (a) Youth in the custody or temporary custody of the division are controlled or detained in a manner consistent with public safety and rules ~~[promulgated]~~ made by the division. In the event of an unauthorized leave from a secure facility, detention center, community-based program, receiving center, home, or any other designated placement, division employees have the authority and duty to locate and apprehend the youth, or to initiate action with local law enforcement agencies for assistance.

(b) A rule made by the division under this Subsection (6) may not permit secure detention based on the existence of multiple status or nonstatus offenses alleged in the same criminal episode.

(7) The division shall establish and operate compensatory-service work programs for youth offenders committed to the division by the juvenile court. The compensatory-service work program may not be residential and shall:

(a) provide labor to help in the operation, repair, and maintenance of public facilities, parks, highways, and other programs designated by the division;

(b) provide educational and prevocational programs in cooperation with the State Board of Education for youth offenders placed in the program; and

(c) provide counseling to youth offenders.

(8) The division shall establish minimum standards for the operation of all private residential and nonresidential rehabilitation facilities ~~[which]~~ that provide services to juveniles who have committed a delinquent act~~[-]~~ or infraction in this state or in any other state.

(9) In accordance with policies established by the board, the division shall provide regular training for staff of secure facilities, detention staff, case management staff, and staff of the community-based programs.

(10) (a) The division is authorized to employ special function officers, as defined in Section [53-13-105](#), to locate and apprehend minors who have absconded from division custody, transport minors taken into custody pursuant to division policy, investigate cases, and carry out other duties as assigned by the division.

(b) Special function officers may be employed through contract with the Department of Public Safety, any P.O.S.T. certified law enforcement agency, or directly hired by the division.

(11) The division shall designate employees to obtain the saliva DNA specimens required under Section [53-10-403](#). The division shall ensure that the designated employees receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(12) The division shall register with the Department of Corrections any person who:

(a) has been adjudicated delinquent based on an offense listed in Subsection [77-41-102](#)(17)(a);

(b) has been committed to the division for secure confinement; and

(c) remains in the division's custody 30 days [~~prior to~~] before the person's 21st birthday.

(13) The division shall ensure that a program delivered to a youth offender under this section is evidence based in accordance with Section [63M-7-208](#).

Section 26. Section **62A-7-107.5** is amended to read:

62A-7-107.5. Contracts with private providers.

(1) This chapter does not prohibit the division from contracting with private providers or other agencies for the construction, operation, and maintenance of juvenile facilities or the provision of care, treatment, and supervision of youth offenders who have been committed to the care of the division.

(2) All programs for the care, treatment, and supervision of youth offenders committed to the division shall be licensed in compliance with division standards within six months after commencing operation.

(3) A contract for the care, treatment, and supervision of a youth offender committed to the division shall be executed in accordance with the performance-based contracting system developed under Section [63M-7-208](#).

Section 27. Section **62A-7-109.5** is amended to read:

62A-7-109.5. Restitution by youth offender.

(1) The division shall make reasonable efforts to ensure that restitution is made to the victim of a youth offender. Restitution shall be made through the employment of youth offenders in work programs. However, reimbursement to the victim of a youth offender is conditional upon that youth offender's involvement in the work program.

(2) Restitution ordered by the court may be made a condition of release, placement, or

1795 parole by the division. [~~In the event of parole revocation or, where there is no court order~~
1796 ~~requiring restitution to the victim and the loss to the victim has been determined, the division~~
1797 ~~shall evaluate whether restitution is appropriate and, if so, the amount or type of restitution to~~
1798 ~~which the victim is entitled.~~]

1799 (3) The division shall notify the juvenile court of all restitution paid to victims through
1800 the employment of youth offenders in work programs.

1801 Section 28. Section **62A-7-201** is amended to read:

1802 **62A-7-201. Confinement -- Facilities -- Restrictions.**

1803 (1) Children under 18 years of age, who are apprehended by any officer or brought
1804 before any court for examination under any provision of state law, may not be confined in jails,
1805 lockups, or cells used for persons 18 years of age or older who are charged with crime, or in
1806 secure postadjudication correctional facilities operated by the division, except as provided in
1807 Subsection (2), other specific statute, or in conformance with standards approved by the board.

1808 (2) (a) Children charged with crimes under Section 78A-6-701, as a serious youth
1809 offender under Section 78A-6-702 and bound over to the jurisdiction of the district court, or
1810 certified to stand trial as an adult pursuant to Section 78A-6-703, if detained, shall be detained
1811 as provided in these sections.

1812 (b) Children detained in adult facilities under Section 78A-6-702 or 78A-6-703 [~~prior~~
1813 ~~to~~] before a hearing before a magistrate, or under Subsection 78A-6-113(3), may only be held
1814 in certified juvenile detention accommodations in accordance with rules promulgated by the
1815 division. Those rules shall include standards for acceptable sight and sound separation from
1816 adult inmates. The division certifies facilities that are in compliance with the division's
1817 standards. [~~The provisions of this~~] This Subsection (2)(b) [~~do~~] does not apply to juveniles held
1818 in an adult detention facility in accordance with Subsection (2)(a).

1819 (3) In areas of low density population, the division may, by rule, approve juvenile
1820 holding accommodations within adult facilities that have acceptable sight and sound
1821 separation. Those facilities shall be used only for short-term holding purposes, with a
1822 maximum confinement of six hours, for children alleged to have committed an act which
1823 would be a criminal offense if committed by an adult. Acceptable short-term holding purposes
1824 are: identification, notification of juvenile court officials, processing, and allowance of
1825 adequate time for evaluation of needs and circumstances regarding release or transfer to a

shelter or detention facility. ~~[The provisions of this]~~ This Subsection (3) ~~[do]~~ does not apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

(4) Children who are alleged to have committed an act ~~[which]~~ that would be a criminal offense if committed by an adult, may be detained in holding rooms in local law enforcement agency facilities for a maximum of two hours, for identification or interrogation, or while awaiting release to a parent or other responsible adult. Those rooms shall be certified by the division, according to the division's rules. Those rules shall include provisions for constant supervision and for sight and sound separation from adult inmates.

(5) Willful failure to comply with ~~[any of the provisions of]~~ this section is a class B misdemeanor.

(6) (a) The division is responsible for the custody and detention of children under 18 years of age who require detention care ~~[prior to]~~ before trial or examination, or while awaiting assignment to a home or facility, as a dispositional placement under Subsection ~~78A-6-117(2)(f)(i) [or 78A-6-1101(3)(a)]~~, and of youth offenders under Subsection ~~62A-7-504(8). The provisions of this]~~ (9). This Subsection (6)(a) ~~[do]~~ does not apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

(b) The division shall provide standards for custody or detention under Subsections (2)(b), (3), and (4), and shall determine and set standards for conditions of care and confinement of children in detention facilities.

(c) All other custody or detention shall be provided by the division, or by contract with a public or private agency willing to undertake temporary custody or detention upon agreed terms, or in suitable premises distinct and separate from the general jails, lockups, or cells used in law enforcement and corrections systems. ~~[The provisions of this]~~ This Subsection (6)(c) ~~[do]~~ does not apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

Section 29. Section **62A-7-202** is amended to read:

62A-7-202. Location of detention facilities and services.

(1) The division shall provide detention facilities and services in each county, or group of counties, as the population demands, in accordance with ~~[the provisions of]~~ this chapter.

(2) The division~~[, through its detention centers,]~~ is responsible for development, implementation, and administration of home detention services available to every judicial

1857 district, and shall establish criteria for placement on home detention.

1858 (3) (a) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
1859 Administrative Rulemaking Act, establishing standards for admission to secure detention and
1860 home detention programs.

1861 (b) The rules made under this Subsection (3) shall prioritize use of home detention for
1862 a minor who might otherwise be held in secure detention.

1863 (4) The division shall provide training regarding implementation of the rules to law
1864 enforcement agencies, division employees, juvenile court employees, and other affected
1865 agencies and individuals upon their request.

1866 Section 30. Section **62A-7-404** is amended to read:

1867 **62A-7-404. Commitment -- Termination and review.**

1868 (1) A youth offender who has been committed to a secure facility shall remain until the
1869 offender reaches the age of 21, is paroled, or is discharged.

1870 (2) A youth offender who has been committed to a secure facility shall appear before
1871 the authority within ~~[90]~~ 45 days after commitment~~[-]~~ for review of treatment plans and
1872 establishment of parole release guidelines.

1873 (3) (a) For a youth offender committed to a secure facility, except a youth offender
1874 excluded under Subsection (5), the authority shall set a presumptive term of commitment that
1875 does not exceed three to six months.

1876 (b) The authority shall release the minor onto parole at the end of the presumptive term
1877 of commitment unless at least one the following circumstances exists:

1878 (i) termination would interrupt the completion of a necessary treatment program; or

1879 (ii) the youth commits a new misdemeanor or felony offense.

1880 (c) Completion of a program under Subsection (3)(b)(i) shall be determined by a
1881 minor's consistent attendance.

1882 (d) The authority may extend the length of commitment and delay parole release for the
1883 time needed to address the specific circumstance only if one of the circumstances under
1884 Subsection (3)(b) exists.

1885 (e) The length of the extension and the grounds for the extension shall be recorded and
1886 reported annually to the Commission on Criminal and Juvenile Justice.

1887 (4) (a) For a youth offender committed to a secure facility, except a youth offender

excluded under Subsection (5), the authority shall set a presumptive term of parole supervision that does not exceed three to four months.

(b) A minor whom the authority determines is unable to return home immediately upon release may serve the term of parole in the home of a qualifying relative or guardian, or at an independent living program contracted or operated by the division.

(c) The authority shall release the minor from parole and terminate jurisdiction at the end of the presumptive term of parole unless at least one the following circumstances exists:

(i) termination would interrupt the completion of a necessary treatment program;

(ii) the youth commits a new misdemeanor or felony offense; or

(iii) service hours have not been completed.

(d) Completion of a program under Subsection (4)(c) shall be determined by a minor's consistent attendance.

(e) If one of the circumstances under Subsection (4)(c) exists, the authority may delay parole release only for the time needed to address the specific circumstance.

(f) Grounds for extension of the presumptive length of parole and the length of the extension shall be recorded and reported annually to the Commission on Criminal and Juvenile Justice.

(g) In the event of an unauthorized leave lasting more than 24 hours, the term of parole shall toll until the minor returns.

(5) Subsections (3) and (4) do not apply to a youth offender committed to a secure facility for:

(a) Section 76-5-202, attempted aggravated murder;

(b) Section 76-5-203, murder or attempted murder;

(c) Section 76-5-405, aggravated sexual assault;

(d) a felony violation of:

(i) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

(ii) Section 76-5-302, aggravated kidnapping; or

(iii) Section 76-6-103, aggravated arson;

(e) Section 76-6-203, aggravated burglary;

(f) Section 76-6-302, aggravated robbery;

(g) Section 76-10-508.1, felony discharge of a firearm; or

(h) an offense other than those listed in Subsections (5)(a) through (g) involving the use of a dangerous weapon that would be a felony if committed by an adult, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon that also would have been a felony if committed by an adult.

(6) (a) The division may continue to have responsibility for any minor discharged under this section from parole until 21 years of age for the purposes of specific educational or rehabilitative programs, under conditions agreed upon by both the division and the minor and terminable by either.

(b) The division shall offer the educational or rehabilitative program before the minor's discharge date as provided in this section.

(c) Notwithstanding Subsection (6)(b), a minor may request and the division shall consider any such request for the services described in this section, for up to 90 days after the minor's effective date of discharge, even when the minor has previously declined services or services were terminated for noncompliance, and may reach an agreement with the minor, terminable by either, to provide the services described in this section until the minor attains the age of 21.

Section 31. Section **62A-7-501** is amended to read:

62A-7-501. Youth Parole Authority -- Expenses -- Responsibilities -- Procedures.

(1) There is created within the division a Youth Parole Authority.

(2) (a) The authority is composed of 10 part-time members and five pro tempore members who are residents of this state. No more than three pro tempore members may serve on the authority at any one time.

(b) Throughout this section, the term "member" refers to both part-time and pro tempore members of the Youth Parole Authority.

(3) (a) Except as required by Subsection (3)(b), members shall be appointed to four-year terms by the governor with the consent of the Senate.

(b) The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of authority members are staggered so that approximately half of the authority is appointed every two years.

(4) Each member shall have training or experience in social work, law, juvenile or criminal justice, or related behavioral sciences.

(5) When a vacancy occurs in the membership for any reason, the replacement member shall be appointed for the unexpired term.

(6) During the tenure of ~~[his]~~ the member's appointment, a member may not:

(a) be an employee of the department, other than in ~~[his]~~ the member's capacity as a member of the authority;

(b) hold any public office;

(c) hold any position in the state's juvenile justice system; or

(d) be an employee, officer, advisor, policy board member, or subcontractor of any juvenile justice agency or its contractor.

(7) In extraordinary circumstances or when a regular member is absent or otherwise unavailable, the chair may assign a pro tempore member to act in the absent member's place.

(8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section [63A-3-106](#);

(b) Section [63A-3-107](#); and

(c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and [63A-3-107](#).

(9) The authority shall determine appropriate parole dates for youth offenders, based on guidelines established by the board and in accordance with Section [62A-7-404](#). The board shall review and update policy guidelines annually.

(10) Youth offenders may be paroled to their own homes, ~~[to a residential community-based program, to a nonresidential community-based treatment program]~~ to an independent living program contracted or operated by the division, to an approved independent living setting, or to other appropriate residences of qualifying relatives or guardians, but shall remain on parole until parole is terminated by the authority in accordance with Section [62A-7-404](#).

(11) The division's case management staff shall implement parole release plans and shall supervise youth offenders while on parole.

(12) The division shall permit the authority to have reasonable access to youth offenders in secure facilities and shall furnish all pertinent data requested by the authority in matters of parole, revocation, and termination.

Section 32. Section **62A-7-504** is amended to read:

62A-7-504. Parole revocation -- Hearing -- Procedures.

(1) The authority may revoke the parole of a youth offender only after a hearing and upon determination that there has been a violation of law or of a condition of parole by the youth offender [~~which~~] that warrants [his] the youth offender's return to a secure facility. The parole revocation hearing shall be held at a secure facility.

(2) Before returning a youth offender to a secure facility for a parole revocation or rescission hearing, the division shall provide a prerevocation or prerescission hearing within the vicinity of the alleged violation, to determine whether there is probable cause to believe that the youth offender violated the conditions of [~~his~~] the youth offender's parole. Upon a finding of probable cause, the youth offender may be remanded to a secure facility, pending a revocation hearing.

(3) The authority shall only proceed with the parole revocation or rescission process in accordance with the system of appropriate responses developed pursuant to Section [78A-6-123](#).

[~~(3)~~] (4) A paroled youth offender is entitled to legal representation at the parole revocation hearing, and if the youth offender or [~~his~~] the youth offender's family has requested but cannot afford legal representation, the authority shall appoint legal counsel.

[~~(4)~~] (5) The authority and the administrative officer have power to issue subpoenas, compel attendance of witnesses, compel production of books, papers and other documents, administer oaths, and take testimony under oath for the purposes of conducting the hearings.

[~~(5)~~] (6) (a) A youth offender shall receive timely advance notice of the date, time, place, and reason for the hearing, and has the right to appear at the hearing.

(b) The authority shall provide the youth offender an opportunity to be heard, to present witnesses and evidence, and to confront and cross-examine adverse witnesses, unless there is good cause for disallowing that confrontation.

[~~(6)~~] (7) Decisions in parole revocation or rescission hearings shall be reached by a majority vote of the present members of the authority.

[~~(7)~~] (8) The administrative officer shall maintain summary records of all hearings and provide written notice to the youth offender of the decision and reason for the decision.

[~~(8)~~] (9) (a) The authority may issue a warrant to order any peace officer or division employee to take into custody a youth offender alleged to be in violation of parole conditions in

2012 accordance with Section [78A-6-123](#).

2013 (b) The division may issue a warrant to any peace officer or division employee to
2014 retake a youth offender who has escaped from a secure facility.

2015 (c) Based upon the warrant issued under this Subsection [~~(8)~~] (9), a youth offender may
2016 be held in a local detention facility for no longer than 48 hours, excluding weekends and legal
2017 holidays, to allow time for a prerevocation or prerecision hearing of the alleged parole
2018 violation, or in the case of an escapee, arrangement for transportation to the secure facility.

2019 Section 33. Section **62A-7-506** is amended to read:

2020 **62A-7-506. Discharge of youth offender.**

2021 (1) A youth offender may be discharged from the jurisdiction of the division at any
2022 time, by written order of the Youth Parole Authority, upon a finding that no further purpose
2023 would be served by secure confinement or supervision in a community setting.

2024 (2) Discharge of a youth offender shall be in accordance with policies approved by the
2025 board and Section [62A-7-404](#).

2026 (3) Discharge of a youth offender is a complete release of all penalties incurred by
2027 adjudication of the offense for which the youth offender was committed.

2028 Section 34. Section **62A-7-601** is amended to read:

2029 **62A-7-601. Youth services for prevention and early intervention -- Program**
2030 **standards -- Program services.**

2031 (1) The division shall establish and operate prevention and early intervention youth
2032 services programs.

2033 (2) The division shall adopt with the approval of the board statewide policies and
2034 procedures, including minimum standards for the organization and operation of youth services
2035 programs.

2036 (3) The division shall establish housing, programs, and procedures to ensure that youth
2037 who are receiving services under this section and who are not in the custody of the division are
2038 served separately from youth who are in custody of the division.

2039 (4) The division may enter into contracts with state and local governmental entities and
2040 private providers to provide the youth services.

2041 (5) The division shall establish and administer juvenile receiving centers and other
2042 programs to provide temporary custody, care, risk-needs assessments, evaluations, and control

for nonadjudicated and adjudicated youth placed with the division.

(6) The division shall prioritize use of evidence-based juvenile justice programs.

Section 35. Section **62A-7-701** is amended to read:

62A-7-701. Community-based programs.

(1) (a) The division shall operate residential and nonresidential community-based programs to provide care, treatment, and supervision ~~[for paroled youth offenders and]~~ for youth offenders committed to the division by juvenile courts.

(b) The division shall operate or contract for nonresidential community-based programs and independent living programs to provide care, treatment, and supervision of paroled youth offenders.

(2) The division shall adopt, with the approval of the board, minimum standards for the organization and operation of community-based corrections programs for youth offenders.

(3) The division shall place youth offenders committed to it for community-based programs in the most appropriate program based upon the division's evaluation of the youth offender's needs and the division's available resources in accordance with Sections [62A-7-404](#) and [78A-6-117](#).

Section 36. Section **63M-7-204** is amended to read:

63M-7-204. Duties of commission.

(1) The State Commission on Criminal and Juvenile Justice administration shall:

~~[(1)]~~ (a) promote the commission's purposes as enumerated in Section [63M-7-201](#);

~~[(2)]~~ (b) promote the communication and coordination of all criminal and juvenile justice agencies;

~~[(3)]~~ (c) study, evaluate, and report on the status of crime in the state and on the effectiveness of criminal justice policies, procedures, and programs that are directed toward the reduction of crime in the state;

~~[(4)]~~ (d) study, evaluate, and report on programs initiated by state and local agencies to address reducing recidivism, including changes in penalties and sentencing guidelines intended to reduce recidivism, costs savings associated with the reduction in the number of inmates, and evaluation of expenses and resources needed to meet goals regarding the use of treatment as an alternative to incarceration, as resources allow;

~~[(5)]~~ (e) study, evaluate, and report on policies, procedures, and programs of other

2074 jurisdictions which have effectively reduced crime;

2075 ~~[(6)]~~ (f) identify and promote the implementation of specific policies and programs the

2076 commission determines will significantly reduce crime in Utah;

2077 ~~[(7)]~~ (g) provide analysis and recommendations on all criminal and juvenile justice

2078 legislation, state budget, and facility requests, including program and fiscal impact on all

2079 components of the criminal and juvenile justice system;

2080 ~~[(8)]~~ (h) provide analysis, accountability, recommendations, and supervision for state

2081 and federal criminal justice grant money;

2082 ~~[(9)]~~ (i) provide public information on the criminal and juvenile justice system and

2083 give technical assistance to agencies or local units of government on methods to promote

2084 public awareness;

2085 ~~[(10)]~~ (j) promote research and program evaluation as an integral part of the criminal

2086 and juvenile justice system;

2087 ~~[(11)]~~ (k) provide a comprehensive criminal justice plan annually;

2088 ~~[(12)]~~ (l) review agency forecasts regarding future demands on the criminal and

2089 juvenile justice systems, including specific projections for secure bed space;

2090 ~~[(13)]~~ (m) promote the development of criminal and juvenile justice information

2091 systems that are consistent with common standards for data storage and are capable of

2092 appropriately sharing information with other criminal justice information systems by:

2093 ~~[(a)]~~ (i) developing and maintaining common data standards for use by all state

2094 criminal justice agencies;

2095 ~~[(b)]~~ (ii) annually performing audits of criminal history record information maintained

2096 by state criminal justice agencies to assess their accuracy, completeness, and adherence to

2097 standards;

2098 ~~[(c)]~~ (iii) defining and developing state and local programs and projects associated with

2099 the improvement of information management for law enforcement and the administration of

2100 justice; and

2101 ~~[(d)]~~ (iv) establishing general policies concerning criminal and juvenile justice

2102 information systems and making rules as necessary to carry out the duties under ~~[this]~~

2103 Subsection ~~[(13)]~~ (1)(k) and this Subsection ~~[(11)]~~ (1)(m);

2104 ~~[(14)]~~ (n) allocate and administer grants, from money made available, for approved

2105 education programs to help prevent the sexual exploitation of children;
2106 ~~[(+5)]~~ (o) allocate and administer grants funded from money from the Law
2107 Enforcement Operations Account created in Section 51-9-411 for law enforcement operations
2108 and programs related to reducing illegal drug activity and related criminal activity;
2109 ~~[(+6)]~~ (p) request, receive, and evaluate data and recommendations collected and
2110 reported by agencies and contractors related to policies recommended by the commission
2111 regarding recidivism reduction; ~~[and]~~
2112 ~~[(+7)]~~ (q) establish and administer a performance incentive grant program that allocates
2113 funds appropriated by the Legislature to programs and practices implemented by counties that
2114 reduce recidivism and reduce the number of offenders per capita who are incarcerated~~[-]~~; and
2115 (r) oversee or designate an entity to oversee the implementation of juvenile justice
2116 reforms.
2117 (2) If the commission designates an entity under Subsection (1)(r), the commission
2118 shall ensure that the membership of the entity include representation from the three branches of
2119 government and, as determined by the commission, representation from relevant stakeholder
2120 groups across all parts of the juvenile justice system.
2121 Section 37. Section **63M-7-208** is enacted to read:
2122 **63M-7-208. Juvenile justice oversight -- Delegation.**
2123 (1) The Commission on Criminal and Juvenile Justice shall:
2124 (a) support implementation of the expansion of evidence-based juvenile justice
2125 programs, including assistance regarding implementation fidelity, quality assurance, and
2126 ongoing evaluation;
2127 (b) examine and make recommendations on the use of third-party entities or an
2128 intermediary organization to assist with implementation and to support the performance-based
2129 contracting system authorized in Subsection (1)(m);
2130 (c) oversee the development of performance measures to track juvenile justice reforms,
2131 and ensure early and ongoing stakeholder engagement in identifying the relevant performance
2132 measures;
2133 (d) evaluate currently collected data elements throughout the juvenile justice system
2134 and contract reporting requirements to streamline reporting, reduce redundancies, eliminate
2135 inefficiencies, and ensure a focus on recidivism reduction;

(e) review averted costs from reductions in out-of-home placements for juvenile justice youth placed with the Division of Juvenile Justice Services and the Division of Child and Family Services of the Department of Human Services, and make recommendations to prioritize the reinvestment and realignment of resources into community-based programs for youth living at home, including the following:

- (i) statewide expansion of:
 - (A) receiving centers;
 - (B) mobile crisis outreach teams, as defined in Section [78A-6-105](#);
 - (C) youth courts; and
 - (D) victim-offender mediation;
- (ii) statewide implementation of nonresidential diagnostic assessment;
- (iii) statewide availability of evidence-based cognitive behavioral and family therapy programs for minors assessed by a validated risk and needs assessment as moderate or high risk;
- (iv) other evidence-based juvenile justice programs designed to reduce recidivism;
- (v) implementation and infrastructure to support the sustainability and fidelity of evidence-based juvenile justice programs, including resources for staffing, transportation, and flexible funds; and
- (vi) early intervention programs such as family strengthening programs, family wraparound services, and proven truancy interventions;

(f) assist the court in the court's development of a statewide sliding scale for the assessment of fines, fees, and restitution, based on the ability of the minor's family to pay;

(g) analyze the alignment of resources and the roles and responsibilities of agencies, such as the operation of early intervention services, receiving centers, and diversion, and make recommendations to reallocate functions as appropriate, in accordance with Section [62A-7-601](#);

(h) ensure that data reporting is expanded and routinely review data in additional areas, including:

- (i) referral and disposition data by judicial district;
- (ii) data on the length of time minors spend in the juvenile justice system, including the total time spent under court jurisdiction, on community supervision, and in each out-of-home

2167 placement;

2168 (iii) recidivism data for diversion types pursuant to Section 78A-6-602 and disposition
2169 types pursuant to Section 78A-6-117, including tracking minors into the adult corrections
2170 system;

2171 (iv) change in aggregate risk levels from the time minors receive services, are under
2172 supervision, and are in out-of-home placement; and

2173 (v) dosage of programming;

2174 (i) develop a reasonable time period within which all programming delivered to minors
2175 in the juvenile justice system must be evidence-based or rated as effective for reducing
2176 recidivism by a standardized program evaluation tool;

2177 (j) provide guidelines to be considered by courts in developing tools selected by the
2178 Administrative Office of the Courts and the Division of Juvenile Justice Services within the
2179 Department of Human Services, for the evaluation of juvenile justice programs;

2180 (k) develop a timeline to support improvements to juvenile justice programs to achieve
2181 reductions in recidivism and review reports from relevant state agencies on progress toward
2182 reaching that timeline;

2183 (l) subject to Subsection (2), assist in the development of training for juvenile justice
2184 stakeholders, including educators, law enforcement officers, probation staff, judges, Division
2185 of Juvenile Justice Services staff, Division of Child and Family Services staff, and program
2186 providers;

2187 (m) subject to Subsection (3), assist in the development of a performance-based
2188 contracting system, which shall be developed by the Administrative Office of the Courts and
2189 the Division of Juvenile Justice Services of the Department of Human Services for contracted
2190 services in the community and contracted out-of-home placement providers;

2191 (n) assist in the development of a validated detention risk assessment tool that shall be
2192 developed or adopted and validated by the Administrative Office of the Courts and the
2193 Division of Juvenile Justice Services as provided in Section 78A-6-124; and

2194 (o) annually issue and make public a report to the governor, president of the Senate,
2195 speaker of the House of Representatives, and chief justice of the Utah Supreme Court on the
2196 progress of the reforms and any additional areas in need of review.

2197 (2) Training described in Subsection (1)(l) should be focused on evidence-based

2198 principles of juvenile justice, such as risk, needs, responsivity, and fidelity, and shall be
2199 supplemented by the following topics:

- 2200 (a) adolescent development;
2201 (b) identifying and using local behavioral health resources;
2202 (c) implicit bias;
2203 (d) cultural competency;
2204 (e) graduated responses;
2205 (f) Utah juvenile justice system data and outcomes; and
2206 (g) gangs.
2207 (3) The system described in Subsection (1)(m) shall provide incentives for:
2208 (a) the use of evidence-based juvenile justice programs and programs rated as effective
2209 by the tools selected in accordance with Subsection (1)(j);
2210 (b) the use of three-month timelines for program completion; and
2211 (c) evidence-based services for minors living at home in rural areas.
2212 (4) The Commission on Criminal and Juvenile Justice may delegate the duties imposed
2213 under this section to a subcommittee or board established by the Commission on Criminal and
2214 Juvenile Justice in accordance with Subsection [63M-7-204\(2\)](#).

2215 Section 38. Section **63M-7-404** is amended to read:

2216 **63M-7-404. Purpose -- Duties.**

- 2217 (1) The purpose of the commission shall be to develop guidelines and propose
2218 recommendations to the Legislature, the governor, and the Judicial Council about the
2219 sentencing and release of juvenile and adult offenders in order to:
- 2220 (a) respond to public comment;
2221 (b) relate sentencing practices and correctional resources;
2222 (c) increase equity in criminal sentencing;
2223 (d) better define responsibility in criminal sentencing; and
2224 (e) enhance the discretion of sentencing judges while preserving the role of the Board
2225 of Pardons and Parole and the Youth Parole Authority.
- 2226 (2) (a) The commission shall modify the sentencing guidelines for adult offenders to
2227 implement the recommendations of the Commission on Criminal and Juvenile Justice for
2228 reducing recidivism.

2229 (b) The modifications under Subsection (2)(a) shall be for the purposes of protecting
2230 the public and ensuring efficient use of state funds.

2231 (3) (a) The commission shall modify the criminal history score in the sentencing
2232 guidelines for adult offenders to implement the recommendations of the Commission on
2233 Criminal and Juvenile Justice for reducing recidivism.

2234 (b) The modifications to the criminal history score under Subsection (3)(a) shall
2235 include factors in an offender's criminal history that are relevant to the accurate determination
2236 of an individual's risk of offending again.

2237 (4) (a) The commission shall establish sentencing guidelines for periods of
2238 incarceration for individuals who are on probation and:

- 2239 (i) who have violated one or more conditions of probation; and
- 2240 (ii) whose probation has been revoked by the court.

2241 (b) The guidelines shall consider the seriousness of the violation of the conditions of
2242 probation, the probationer's conduct while on probation, and the probationer's criminal history.

2243 (5) (a) The commission shall establish sentencing guidelines for periods of
2244 incarceration for individuals who are on parole and:

- 2245 (i) who have violated a condition of parole; and
- 2246 (ii) whose parole has been revoked by the Board of Pardons and Parole.

2247 (b) The guidelines shall consider the seriousness of the violation of the conditions of
2248 parole, the individual's conduct while on parole, and the individual's criminal history.

2249 (6) The commission shall establish graduated sanctions to facilitate the prompt and
2250 effective response to an individual's violation of the terms of probation or parole by the adult
2251 probation and parole section of the Department of Corrections in order to implement the
2252 recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism,
2253 including:

- 2254 (a) sanctions to be used in response to a violation of the terms of probation or parole;
- 2255 (b) when violations should be reported to the court or the Board of Pardons and Parole;
- 2256 and

2257 (c) a range of sanctions that may not exceed a period of incarceration of more than:

- 2258 (i) three consecutive days; and
- 2259 (ii) a total of five days in a period of 30 days.

2260 (7) The commission shall establish graduated incentives to facilitate a prompt and
2261 effective response by the adult probation and parole section of the Department of Corrections
2262 to an offender's:

2263 (a) compliance with the terms of probation or parole; and

2264 (b) positive conduct that exceeds those terms.

2265 (8) The commission shall advise the Administrative Office of the Courts' system of
2266 appropriate responses to the behavior of minors:

2267 (a) completing nonjudicial adjustments;

2268 (b) under the jurisdiction of the juvenile court; and

2269 (c) in the custody of the Division of Juvenile Justice Services in accordance with
2270 Section 76A-6-123.

2271 Section 39. Section **76-5-413** is amended to read:

2272 **76-5-413. Custodial sexual relations or misconduct with youth receiving state**
2273 **services -- Definitions -- Penalties -- Defenses.**

2274 (1) As used in this section:

2275 (a) "Actor" means:

2276 (i) a person employed by the Department of Human Services, as created in Section
2277 **62A-1-102**, or an employee of a private provider or contractor; or

2278 (ii) a person employed by the juvenile court of the state, or an employee of a private
2279 provider or contractor.

2280 (b) "Department" means the Department of Human Services created in Section
2281 **62A-1-102**.

2282 (c) "Juvenile court" means the juvenile court of the state created in Section **78A-6-102**.

2283 (d) "Private provider or contractor" means any person or entity that contracts with the:

2284 (i) department to provide services or functions that are part of the operation of the
2285 department; or

2286 (ii) juvenile court to provide services or functions that are part of the operation of the
2287 juvenile court.

2288 (e) "Youth receiving state services" means a person:

2289 (i) younger than 18 years of age, except as provided under Subsection (1)(e)(ii), who is:

2290 (A) in the custody of the department under Subsection **78A-6-117(2)(c)[(ii)]**; or

2291 (B) receiving services from any division of the department if any portion of the costs of
2292 these services is covered by public money as defined in Section 76-8-401; or

2293 (ii) younger than 21 years of age who is:

2294 (A) in the custody of the Division of Juvenile Justice Services, or the Division of Child
2295 and Family Services; or

2296 (B) under the jurisdiction of the juvenile court.

2297 (2) (a) An actor commits custodial sexual relations with a youth receiving state
2298 services if the actor commits any of the acts under Subsection (3):

2299 (i) under circumstances not amounting to commission of, or an attempt to commit, an
2300 offense under Subsection (6); and

2301 (ii) (A) the actor knows that the individual is a youth receiving state services; or

2302 (B) a reasonable person in the actor's position should have known under the
2303 circumstances that the individual was a youth receiving state services.

2304 (b) A violation of Subsection (2)(a) is a third degree felony, but if the youth receiving
2305 state services is younger than 18 years of age, a violation of Subsection (2)(a) is a second
2306 degree felony.

2307 (c) If the act committed under this Subsection (2) amounts to an offense subject to a
2308 greater penalty under another provision of state law than is provided under this Subsection (2),
2309 this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

2310 (3) Acts referred to in Subsection (2)(a) are:

2311 (a) having sexual intercourse with a youth receiving state services;

2312 (b) engaging in any sexual act with a youth receiving state services involving the
2313 genitals of one person and the mouth or anus of another person, regardless of the sex of either
2314 participant; or

2315 (c) causing the penetration, however slight, of the genital or anal opening of a youth
2316 receiving state services by any foreign object, substance, instrument, or device, including a part
2317 of the human body, with the intent to cause substantial emotional or bodily pain to any person,
2318 regardless of the sex of any participant or with the intent to arouse or gratify the sexual desire
2319 of any person, regardless of the sex of any participant.

2320 (4) (a) An actor commits custodial sexual misconduct with a youth receiving state
2321 services if the actor commits any of the acts under Subsection (5):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a youth receiving state services; or
(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a youth receiving state services.

(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the youth receiving state services is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony.

(c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

(5) Acts referred to in Subsection (4)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant:

(a) touching the anus, buttocks, or any part of the genitals of a youth receiving state services;

(b) touching the breast of a female youth receiving state services;

(c) otherwise taking indecent liberties with a youth receiving state services; or

(d) causing a youth receiving state services to take indecent liberties with the actor or another person.

(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

(a) Section 76-5-401, unlawful sexual activity with a minor;

(b) Section 76-5-402, rape;

(c) Section 76-5-402.1, rape of a child;

(d) Section 76-5-402.2, object rape;

(e) Section 76-5-402.3, object rape of a child;

(f) Section 76-5-403, forcible sodomy;

(g) Section 76-5-403.1, sodomy on a child;

(h) Section 76-5-404, forcible sexual abuse;

(i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or

(j) Section 76-5-405, aggravated sexual assault.

(7) (a) It is not a defense to the commission of the offense of custodial sexual relations with a youth receiving state services under Subsection (2) or custodial sexual misconduct with a youth receiving state services under Subsection (4), or an attempt to commit either of these offenses, if the youth receiving state services is younger than 18 years of age, that the actor:

(i) mistakenly believed the youth receiving state services to be 18 years of age or older at the time of the alleged offense; or

(ii) was unaware of the true age of the youth receiving state services.

(b) Consent of the youth receiving state services is not a defense to any violation or attempted violation of Subsection (2) or (4).

(8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Section 40. Section 76-9-701 is amended to read:

76-9-701. Intoxication -- Release of arrested person or placement in detoxification center.

(1) A person is guilty of intoxication if the person is under the influence of alcohol, a controlled substance, or any substance having the property of releasing toxic vapors, to a degree that the person may endanger the person or another, in a public place or in a private place where the person unreasonably disturbs other persons.

(2) (a) A peace officer or a magistrate may release from custody a person arrested under this section if the peace officer or magistrate believes imprisonment is unnecessary for the protection of the person or another.

(b) A peace officer may take the arrested person to a detoxification center or other special facility as an alternative to incarceration or release from custody.

(3) (a) If a minor is found by a court to have violated this section and the violation is the minor's first violation of this section, the court may:

(i) order the minor to complete a screening as defined in Section 41-6a-501;

(ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and

(iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance [abuse] use disorder treatment as indicated by an assessment.

(b) If a minor is found by a court to have violated this section and the violation is the

2384 minor's second or subsequent violation of this section, the court shall:

2385 (i) order the minor to complete a screening as defined in Section 41-6a-501;

2386 (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the
2387 screening indicates an assessment to be appropriate; and

2388 (iii) order the minor to complete an educational series as defined in Section 41-6a-501
2389 or substance [abuse] use disorder treatment as indicated by an assessment.

2390 (4) (a) When a minor who is at least 18 years old, but younger than 21 years old, is
2391 found by a court to have violated this section, the court hearing the case shall suspend the
2392 minor's driving privileges under Section 53-3-219.

2393 (b) Notwithstanding the requirement in Subsection (4)(a), the court may reduce the
2394 suspension period required under Section 53-3-219 if:

2395 (i) the violation is the minor's first violation of this section; and

2396 (ii) (A) the minor completes an educational series as defined in Section 41-6a-501; or

2397 (B) the minor demonstrates substantial progress in substance [abuse] use disorder
2398 treatment.

2399 (c) Notwithstanding the requirement in Subsection (4)(a) and in accordance with the
2400 requirements of Section 53-3-219, the court may reduce the suspension period required under
2401 Section 53-3-219 if:

2402 (i) the violation is the minor's second or subsequent violation of this section;

2403 (ii) the minor has completed an educational series as defined in Section 41-6a-501 or
2404 demonstrated substantial progress in substance [abuse] use disorder treatment; and

2405 (iii) (A) the person is 18 years of age or older and provides a sworn statement to the
2406 court that the person has not unlawfully consumed alcohol or drugs for at least a one-year
2407 consecutive period during the suspension period imposed under Subsection (4)(a); or

2408 (B) the person is under 18 years of age and has the person's parent or legal guardian
2409 provide an affidavit or sworn statement to the court certifying that to the parent or legal
2410 guardian's knowledge the person has not unlawfully consumed alcohol or drugs for at least a
2411 one-year consecutive period during the suspension period imposed under Subsection (4)(a).

2412 (5) When a person who is [~~at least 13 years old, but~~] younger than 18 years old[;] is
2413 found by a court to have violated this section, the provisions regarding suspension of the
2414 driver's license under Section 78A-6-606 apply to the violation.

(6) Notwithstanding Subsections (3)(a) and (b), if a minor is adjudicated under Section 78A-6-117, the court may only order substance use disorder treatment or an educational series if the minor has an assessed need for the intervention based on the results of a validated risk and needs assessment, as defined in Section 78A-6-105.

~~[(6)]~~ (7) When the court issues an order suspending a person's driving privileges for a violation of this section, the person's driver license shall be suspended under Section 53-3-219.

~~[(7)]~~ (8) An offense under this section is a class C misdemeanor.

Section 41. Section 76-10-105 is amended to read:

76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.

(1) Any 18 year old person who buys or attempts to buy, accepts, or has in the person's possession any cigar, cigarette, electronic cigarette, or tobacco in any form is guilty of a class C misdemeanor and subject to:

(a) a minimum fine or penalty of \$60; and

(b) participation in a court-approved tobacco education program, which may include a participation fee.

(2) Any person under the age of 18 who buys or attempts to buy, accepts, or has in the person's possession any cigar, cigarette, electronic cigarette, or tobacco in any form is subject to the jurisdiction of the juvenile court and subject to Section 78A-6-602, unless the violation is committed on school property. If a violation under this section is adjudicated under Section 78A-6-117, the minor may be subject to the following:

(a) a ~~[minimum]~~ fine or penalty ~~[of \$60]~~ in accordance with Section 78A-6-117; and

(b) participation in a court-approved tobacco education program, which may include a participation fee.

(3) A compliance officer appointed by a board of education under Section 53A-3-402 may not issue ~~[citations]~~ a citation for ~~[violations]~~ a violation of this section committed on school property. ~~[Cited violations shall be reported to the appropriate juvenile court.]~~ A cited violation committed on school property shall be addressed in accordance with Section 53A-11-911.

Section 42. Section 77-32-804 is amended to read:

77-32-804. Duties of the commission -- Annual report.

2446 (1) The commission shall:

2447 (a) develop and adopt guiding principles for the assessment and oversight of criminal

2448 defense systems with the state that, at a minimum, address the following:

2449 (i) indigent defense service providers shall have independent judgment without fear of

2450 retaliation[.];

2451 (ii) service providers shall provide conflict-free representation, including the need for a

2452 separate contract for conflict counsel[.];

2453 (iii) the state may not interfere with the service provider's access to clients and the

2454 service provider is free to defend the client based on the service provider's own independent

2455 judgment[.];

2456 (iv) accused persons shall be provided counsel at all critical stages of the criminal

2457 process[.];

2458 (v) counsel shall be free to provide meaningful, adversarial testing of the evidence,

2459 including:

2460 (A) adequate access to defense resources; and

2461 (B) workloads that allow for time to meet with clients, investigate cases, and file

2462 appropriate motions[.];

2463 (vi) service providers shall be fairly compensated and incentivized to represent clients

2464 fully through:

2465 (A) compensation, that shall be independent from prosecutors' compensation;

2466 (B) incentives that are structured to represent criminal defendants well; and

2467 (C) separate contracts that are offered to ensure the right to appeal[.]; and

2468 (vii) the commission may maintain oversight to collect data, audit attorney

2469 performance, establish standards, and enforce the principles listed ~~[above]~~ in this Subsection

2470 (1)(a);

2471 (b) identify and collect data necessary for the commission to:

2472 (i) review compliance by criminal defense systems of minimum principles for effective

2473 representation;

2474 (ii) establish procedures for the collection and analysis of the data; and

2475 (iii) provide reports regarding the operation of the commission and the provision of

2476 indigent criminal defense services by each indigent criminal defense system;

(c) develop and oversee the establishment of advisory caseload principles and guidelines to aid indigent criminal defense systems in delivering effective representation in the state consistent with the safeguards of the United States Constitution, the Utah Constitution, and this chapter;

(d) review all contracts and interlocal agreements in the state for the provision of indigent criminal defense services and provide assistance and recommendations regarding compliance with minimum principles for effective representation;

(e) investigate, audit, and review the provision of indigent criminal defense services for compliance with minimum principles;

(f) establish procedures for the receipt, acceptance, and resolution of complaints regarding the provision of indigent criminal defense services;

(g) establish procedures that enable indigent criminal defense systems to apply for state funding as provided under Section 77-32-805;

(h) establish procedures for annually reporting to the governor, Legislature, Judicial Council, and indigent criminal defense systems throughout the state that include reporting the following:

(i) the operations of the commission;

(ii) the operations of each indigent criminal defense system; and

(iii) each indigent criminal defense system's compliance with minimum standards for the provision of indigent criminal defense services for effective representation;

(i) award grants to indigent criminal defense systems consistent with metrics established by the commission under this part and appropriations by the state;

(j) encourage and aid in the regionalization of indigent criminal defense services within the state for effective representation and for efficiency and cost savings to local systems;

(k) submit to legislative, executive, and judicial leadership, from time to time, proposed recommendations for improvement in the provision of indigent criminal defense services to ensure effective representation in the state, consistent with the safeguards of the United States Constitution and the Utah Constitution; and

(l) identify and encourage best practices for effective representation to indigent defendants charged with crimes.

(2) The commission shall emphasize the importance of indigent criminal defense

2508 services provided to defendants, whether charged with a misdemeanor or felony.

2509 (3) The commission shall establish procedures for the conduct of the commission's
2510 affairs and internal policies necessary to carry out the commission's duties and responsibilities
2511 under this part.

2512 (4) Commission policies shall be placed in an appropriate manual, made publicly
2513 available on a website, and made available to all attorneys and professionals providing indigent
2514 criminal defense services, the Judicial Council, the governor, and the Legislature.

2515 (5) The delivery of indigent criminal defense services shall be independent of the
2516 judiciary, but the commission shall ensure that judges are permitted and encouraged to
2517 contribute information and advice concerning the delivery of indigent criminal defense
2518 services.

2519 (6) An indigent criminal defense system that is in compliance with minimum principles
2520 and procedures may not be required to provide indigent criminal defense services in excess of
2521 those principles and procedures.

2522 (7) The commission shall submit a report annually to the Judiciary Interim Committee
2523 on the commission's efforts to improve the provision of indigent criminal defense services
2524 statewide.

2525 (8) The commission shall oversee or create a statewide entity to oversee matters related
2526 to juvenile defense representation in any action initiated by the state or a political subdivision
2527 of the state under Part 6, Delinquency and Criminal Actions, or Part 7, Transfer of Jurisdiction,
2528 or against a minor under Section [78A-6-1101](#), including:

2529 (a) contract standardization for juvenile defense;

2530 (b) training and certification of juvenile defense attorneys;

2531 (c) technical assistance to counties on juvenile defense; and

2532 (d) the development of a cost-sharing partnership between the state and counties for
2533 costs related to juvenile defense.

2534 Section 43. Section **78A-6-103** is amended to read:

2535 **78A-6-103. Jurisdiction of juvenile court -- Original -- Exclusive.**

2536 (1) Except as otherwise provided by law, the juvenile court has exclusive original
2537 jurisdiction in proceedings concerning:

2538 (a) a child who has violated any federal, state, or local law or municipal ordinance or a

person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding offenses in Section 53A-11-911 and Subsection 78A-7-106(2);

~~[(b) a person 21 years of age or older who has failed or refused to comply with an order of the juvenile court to pay a fine or restitution, if the order was imposed before the person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing orders;]~~

~~[(e)]~~ (b) a child who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78A-6-105;

~~[(d)]~~ (c) a protective order for a child pursuant to ~~[the provisions of]~~ Title 78B, Chapter 7, Part 2, Child Protective Orders, which the juvenile court may transfer to the district court if the juvenile court has entered an ex parte protective order and finds that:

(i) the petitioner and the respondent are the natural parent, adoptive parent, or step parent of the child who is the object of the petition;

(ii) the district court has a petition pending or an order related to custody or parent-time entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the petitioner and the respondent are parties; and

(iii) the best interests of the child will be better served in the district court;

~~[(e)]~~ (d) appointment of a guardian of the person or other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

~~[(f)]~~ (e) the emancipation of a minor in accordance with Part 8, Emancipation;

~~[(g)]~~ (f) the termination of the legal parent-child relationship in accordance with Part 5, Termination of Parental Rights Act, including termination of residual parental rights and duties;

~~[(h)]~~ (g) the treatment or commitment of a minor who has an intellectual disability;

~~[(i) a minor who is a habitual truant from school;]~~

~~[(j)]~~ (h) the judicial consent to the marriage of a child under age 16 upon a determination of voluntariness or where otherwise required by law, employment, or enlistment of a child when consent is required by law;

~~[(k)]~~ (i) any parent or parents of a child committed to a secure youth ~~[corrections]~~

facility, to order, at the discretion of the court and on the recommendation of a secure facility, the parent or parents of a child committed to a secure facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure facility therapist, who has supervision of that parent's or parents' child, or any other therapist the court may direct, for a period directed by the court as recommended by a secure facility;

[~~(f)~~] (j) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;

[~~(m)~~] (k) subject to Subsection (8), the treatment or commitment of a child with a mental illness[~~-. The court may commit a child to the physical custody of a local mental health authority in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, but not directly to the Utah State Hospital~~];

[~~(n)~~] (l) the commitment of a child to a secure drug or alcohol facility in accordance with Section [62A-15-301](#);

[~~(o)~~] (m) a minor found not competent to proceed pursuant to Section [78A-6-1301](#);

[~~(p)~~] (n) de novo review of final agency actions resulting from an informal adjudicative proceeding as provided in Section [63G-4-402](#); and

[~~(q)~~] (o) adoptions conducted in accordance with the procedures described in Title 78B, Chapter 6, Part 1, Utah Adoption Act, when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the child.

(2) (a) Notwithstanding Section [78A-7-106](#) and Subsection [78A-5-102](#)(9), the juvenile court has exclusive jurisdiction over the following offenses committed by a child:

[~~(a)~~] (i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

[~~(b)~~] (ii) Section [73-18-12](#), reckless operation; and

[~~(c)~~] (iii) class B and C misdemeanors, infractions, or violations of ordinances that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

(b) A juvenile court may only order substance use disorder treatment or an educational series if the minor has an assessed need for the intervention on the basis of the results of a validated risk and needs assessment.

2601 (3) The juvenile court has jurisdiction over an ungovernable or runaway child who is
 2602 referred to it by the Division of Child and Family Services or by public or private agencies that
 2603 contract with the division to provide services to that child ~~[where]~~ in accordance with Section
 2604 78A-6-602, ~~when~~, despite earnest and persistent efforts by the division or agency, the child has
 2605 demonstrated that the child:

2606 (a) is beyond the control of the child's parent, guardian, or lawful custodian~~[-or school~~
 2607 ~~authorities]~~ to the extent that the child's behavior or condition endangers the child's own
 2608 welfare or the welfare of others; or

2609 (b) has run away from home.

2610 (4) This section does not restrict the right of access to the juvenile court by private
 2611 agencies or other persons.

2612 (5) The juvenile court has jurisdiction of all magistrate functions relative to cases
 2613 arising under Section 78A-6-702.

2614 (6) The juvenile court has jurisdiction to make a finding of substantiated,
 2615 unsubstantiated, or without merit, in accordance with Section 78A-6-323.

2616 (7) The juvenile court has jurisdiction of matters transferred to it by another trial court
 2617 pursuant to Subsection 78A-7-106~~[(7):]~~(5) and subject to Section 53A-11-911.

2618 (8) The court may commit a child to the physical custody of a local mental health
 2619 authority in accordance with Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age
 2620 18 to Division of Substance Abuse and Mental Health, but not directly to the Utah State
 2621 Hospital.

2622 Section 44. Section **78A-6-105** is amended to read:

2623 **78A-6-105. Definitions.**

2624 As used in this chapter:

2625 (1) (a) "Abuse" means:

2626 (i) (A) nonaccidental harm of a child;

2627 ~~[(ii)]~~ (B) threatened harm of a child;

2628 ~~[(iii)]~~ (C) sexual exploitation;

2629 ~~[(iv)]~~ (D) sexual abuse; or

2630 ~~[(v)]~~ (E) human trafficking of a child in violation of Section 76-5-308.5~~[-:]~~; or

2631 ~~[(b)]~~ (ii) that a child's natural parent:

2632 ~~[(i)]~~ (A) intentionally, knowingly, or recklessly causes the death of another parent of
2633 the child;

2634 ~~[(ii)]~~ (B) is identified by a law enforcement agency as the primary suspect in an
2635 investigation for intentionally, knowingly, or recklessly causing the death of another parent of
2636 the child; or

2637 ~~[(iii)]~~ (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
2638 recklessly causing the death of another parent of the child.

2639 ~~[(e)]~~ (b) "Abuse" does not include:

2640 (i) reasonable discipline or management of a child, including withholding privileges;

2641 (ii) conduct described in Section 76-2-401; or

2642 (iii) the use of reasonable and necessary physical restraint or force on a child:

2643 (A) in self-defense;

2644 (B) in defense of others;

2645 (C) to protect the child; or

2646 (D) to remove a weapon in the possession of a child for any of the reasons described in
2647 Subsections (1)(b)(iii)(A) through (C).

2648 (2) "Abused child" means a child who has been subjected to abuse.

2649 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
2650 alleged in the petition have been proved. A finding of not competent to proceed pursuant to
2651 Section 78A-6-1302 is not an adjudication.

2652 (4) "Adult" means a person 18 years of age or over, except that a person 18 years or
2653 over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall
2654 be referred to as a minor.

2655 (5) "Board" means the Board of Juvenile Court Judges.

2656 (6) "Child" means a person under 18 years of age.

2657 (7) "Child placement agency" means:

2658 (a) a private agency licensed to receive a child for placement or adoption under this
2659 code; or

2660 (b) a private agency that receives a child for placement or adoption in another state,
2661 which agency is licensed or approved where such license or approval is required by law.

2662 (8) "Clandestine laboratory operation" means the same as that term is defined in

Section [58-37d-3](#).

(9) "Commit" means, unless specified otherwise:

(a) with respect to a child, to transfer legal custody; and

(b) with respect to a minor who is at least 18 years of age, to transfer custody.

(10) "Court" means the juvenile court.

(11) "Criminogenic risk factors" means factors that are statistically proven to increase a minor's likelihood of reoffending.

(12) "Delinquent act" means an act that would constitute a felony or misdemeanor if committed by an adult.

~~[(11)]~~ (13) "Dependent child" includes a child who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

~~[(12)]~~ (14) "Deprivation of custody" means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.

~~[(13)]~~ (15) "Detention" means home detention and secure detention as defined in Section [62A-7-101](#) for the temporary care of a minor who requires secure custody in a physically restricting facility:

(a) pending court disposition or transfer to another jurisdiction; or

(b) while under the continuing jurisdiction of the court.

(16) "Detention risk assessment tool" means an actuarial tool established under Section [78A-6-124](#) that is scientifically proven to identify factors shown to be statistically related to a minor's risk of failing to appear in court or reoffending pre-adjudication and designed to assist in making detention determinations.

~~[(14)]~~ (17) "Division" means the Division of Child and Family Services.

(18) "Evidence-based juvenile justice program" means a program demonstrated by research to produce reduction in the likelihood of reoffending.

(19) "Formal probation" means a minor is under field supervision by the probation department or other agency designated by the court and subject to return to the court in accordance with Section [78A-6-123](#).

~~[(15)]~~ (20) "Formal referral" means a written report from a peace officer or other person informing the court and the prosecutor that a minor is or appears to be within the court's jurisdiction and that a ~~petition may be filed~~ case must be reviewed.

2694 ~~[(16)]~~ (21) "Group rehabilitation therapy" means psychological and social counseling
2695 of one or more persons in the group, depending upon the recommendation of the therapist.

2696 ~~[(17)]~~ (22) "Guardianship of the person" includes the authority to consent to:

2697 (a) marriage;

2698 (b) enlistment in the armed forces;

2699 (c) major medical, surgical, or psychiatric treatment; or

2700 (d) legal custody, if legal custody is not vested in another person, agency, or institution.

2701 ~~[(18)]~~ (23) "Habitual truant" means the same as that term is defined in Section
2702 [53A-11-101](#).

2703 ~~[(19)]~~ (24) "Harm" means:

2704 (a) physical or developmental injury or damage;

2705 (b) emotional damage that results in a serious impairment in the child's growth,
2706 development, behavior, or psychological functioning;

2707 (c) sexual abuse; or

2708 (d) sexual exploitation.

2709 ~~[(20)]~~ (25) (a) "Incest" means engaging in sexual intercourse with a person whom the
2710 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
2711 nephew, niece, or first cousin.

2712 (b) The relationships described in Subsection ~~[(20)]~~ (25)(a) include:

2713 (i) blood relationships of the whole or half blood, without regard to legitimacy;

2714 (ii) relationships of parent and child by adoption; and

2715 (iii) relationships of stepparent and stepchild while the marriage creating the
2716 relationship of a stepparent and stepchild exists.

2717 (26) "Intake probation" means a period of court monitoring that does not include field
2718 supervision, but is overseen by a juvenile probation officer, during which a minor is subject to
2719 return to the court in accordance with Section [78A-6-123](#).

2720 ~~[(21)]~~ (27) "Intellectual disability" means:

2721 (a) significantly subaverage intellectual functioning, an IQ of approximately 70 or
2722 below on an individually administered IQ test, for infants, a clinical judgment of significantly
2723 subaverage intellectual functioning;

2724 (b) concurrent deficits or impairments in present adaptive functioning, the person's

2725 effectiveness in meeting the standards expected for ~~[his or her]~~ the person's age by the person's
2726 cultural group, in at least two of the following areas: communication, self-care, home living,
2727 social/interpersonal skills, use of community resources, self-direction, functional academic
2728 skills, work, leisure, health, and safety; and

2729 (c) the onset is before the person reaches the age of 18 years.

2730 ~~[(22)]~~ (28) "Legal custody" means a relationship embodying the following rights and
2731 duties:

2732 (a) the right to physical custody of the minor;

2733 (b) the right and duty to protect, train, and discipline the minor;

2734 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
2735 medical care;

2736 (d) the right to determine where and with whom the minor shall live; and

2737 (e) the right, in an emergency, to authorize surgery or other extraordinary care.

2738 (29) "Material loss" means an uninsured:

2739 (a) property loss;

2740 (b) out-of-pocket monetary loss;

2741 (c) lost wages; or

2742 (d) medical expenses.

2743 ~~[(23)]~~ (30) "Mental disorder" means a serious emotional and mental disturbance that
2744 severely limits a minor's development and welfare over a significant period of time.

2745 ~~[(24)]~~ (31) "Minor" means:

2746 (a) a child; or

2747 (b) a person who is:

2748 (i) at least 18 years of age and younger than 21 years of age; and

2749 (ii) under the jurisdiction of the juvenile court.

2750 (32) "Mobile crisis outreach team" means a crisis intervention service for minors or
2751 families of minors experiencing behavioral health or psychiatric emergencies.

2752 ~~[(25)]~~ (33) "Molestation" means that a person, with the intent to arouse or gratify the
2753 sexual desire of any person:

2754 (a) touches the anus or any part of the genitals of a child;

2755 (b) takes indecent liberties with a child; or

2756 (c) causes a child to take indecent liberties with the perpetrator or another.
2757 ~~[(26)]~~ (34) "Natural parent" means a minor's biological or adoptive parent, and
2758 includes the minor's noncustodial parent.
2759 ~~[(27)]~~ (35) (a) "Neglect" means action or inaction causing:
2760 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
2761 Relinquishment of a Newborn Child;
2762 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,
2763 guardian, or custodian;
2764 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
2765 subsistence, education, or medical care, or any other care necessary for the child's health,
2766 safety, morals, or well-being; or
2767 (iv) a child to be at risk of being neglected or abused because another child in the same
2768 home is neglected or abused.
2769 (b) The aspect of neglect relating to education, described in Subsection ~~[(27)]~~
2770 (35)(a)(iii), means that, after receiving a notice of compulsory education violation under
2771 Section 53A-11-101.5, ~~[or notice that a parent or guardian has failed to cooperate with school~~
2772 ~~authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a);]~~ the
2773 parent or guardian fails to make a good faith effort to ensure that the child receives an
2774 appropriate education.
2775 (c) A parent or guardian legitimately practicing religious beliefs and who, for that
2776 reason, does not provide specified medical treatment for a child, is not guilty of neglect.
2777 (d) (i) Notwithstanding Subsection ~~[(27)]~~ (35)(a), a health care decision made for a
2778 child by the child's parent or guardian does not constitute neglect unless the state or other party
2779 to the proceeding shows, by clear and convincing evidence, that the health care decision is not
2780 reasonable and informed.
2781 (ii) Nothing in Subsection ~~[(27)]~~ (35)(d)(i) may prohibit a parent or guardian from
2782 exercising the right to obtain a second health care opinion and from pursuing care and
2783 treatment pursuant to the second health care opinion, as described in Section 78A-6-301.5.
2784 ~~[(28)]~~ (36) "Neglected child" means a child who has been subjected to neglect.
2785 ~~[(29)]~~ (37) "Nonjudicial adjustment" means closure of the case by the assigned
2786 probation officer without judicial determination upon the consent in writing of:

2787 (a) the assigned probation officer; and

2788 (b) (i) the minor; or

2789 (ii) the minor and the minor's parent, legal guardian, or custodian.

2790 ~~[(30)]~~ (38) "Not competent to proceed" means that a minor, due to a mental disorder,

2791 intellectual disability, or related condition as defined, lacks the ability to:

2792 (a) understand the nature of the proceedings against them or of the potential disposition

2793 for the offense charged; or

2794 (b) consult with counsel and participate in the proceedings against them with a

2795 reasonable degree of rational understanding.

2796 ~~[(31)]~~ (39) "Physical abuse" means abuse that results in physical injury or damage to a

2797 child.

2798 ~~[(32)]~~ (40) "Probation" means a legal status created by court order following an

2799 adjudication on the ground of a violation of law or under Section 78A-6-103, whereby the

2800 minor is permitted to remain in the minor's home under prescribed conditions ~~[and under~~

2801 ~~supervision by the probation department or other agency designated by the court, subject to~~

2802 ~~return to the court for violation of any of the conditions prescribed].~~

2803 ~~[(33)]~~ (41) "Protective supervision" means a legal status created by court order

2804 following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor

2805 is permitted to remain in the minor's home, and supervision and assistance to correct the abuse,

2806 neglect, or dependency is provided by the probation department or other agency designated by

2807 the court.

2808 ~~[(34)]~~ (42) "Related condition" means a condition closely related to intellectual

2809 disability in accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3,

2810 Utah Administrative Code.

2811 ~~[(35)]~~ (43) (a) "Residual parental rights and duties" means those rights and duties

2812 remaining with the parent after legal custody or guardianship, or both, have been vested in

2813 another person or agency, including:

2814 (i) the responsibility for support;

2815 (ii) the right to consent to adoption;

2816 (iii) the right to determine the child's religious affiliation; and

2817 (iv) the right to reasonable parent-time unless restricted by the court.

(b) If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to:

- (i) marriage;
- (ii) enlistment; and
- (iii) major medical, surgical, or psychiatric treatment.

~~[(36)]~~ (44) "Secure facility" means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation pursuant to Subsection [78A-6-117\(2\)\(d\)](#).

~~[(37)]~~ (45) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.

~~[(38)]~~ (46) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.

~~[(39)]~~ (47) "Sexual abuse" means:

(a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an adult directed towards a child;

(b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation committed by a child towards another child if:

- (i) there is an indication of force or coercion;
- (ii) the children are related, as defined in Subsections ~~[(20)]~~ (25)(a) and ~~[(20)]~~ (b);
- (iii) there have been repeated incidents of sexual contact between the two children, unless the children are 14 years of age or older; or
- (iv) there is a disparity in chronological age of four or more years between the two children; or

(c) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense:

- (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section [76-5-401](#), if the alleged perpetrator of an offense described in Section [76-5-401](#) is a minor;
- (ii) child bigamy, Section [76-7-101.5](#);
- (iii) incest, Section [76-7-102](#);

2849 (iv) lewdness, Section 76-9-702;
2850 (v) sexual battery, Section 76-9-702.1;
2851 (vi) lewdness involving a child, Section 76-9-702.5; or
2852 (vii) voyeurism, Section 76-9-702.7.
2853 ~~[(40)]~~ (48) "Sexual exploitation" means knowingly:
2854 (a) employing, using, persuading, inducing, enticing, or coercing any child to:
2855 (i) pose in the nude for the purpose of sexual arousal of any person; or
2856 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
2857 filming, recording, or displaying in any way the sexual or simulated sexual conduct;
2858 (b) displaying, distributing, possessing for the purpose of distribution, or selling
2859 material depicting a child:
2860 (i) in the nude, for the purpose of sexual arousal of any person; or
2861 (ii) engaging in sexual or simulated sexual conduct; or
2862 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,
2863 sexual exploitation of a minor, regardless of whether the person who engages in the conduct is
2864 actually charged with, or convicted of, the offense.
2865 ~~[(41)]~~ (49) "Shelter" means the temporary care of a child in a physically unrestricted
2866 facility pending court disposition or transfer to another jurisdiction.
2867 ~~[(42)] "State supervision" means a disposition that provides a more intensive level of~~
2868 ~~intervention than standard probation but is less intensive or restrictive than a community~~
2869 ~~placement with the Division of Juvenile Justice Services.]~~
2870 (50) "Status offense" means a violation of the law that would not be a violation but for
2871 the age of the offender.
2872 ~~[(43)]~~ (51) "Substance abuse" means the misuse or excessive use of alcohol or other
2873 drugs or substances.
2874 ~~[(44)]~~ (52) "Substantiated" means the same as that term is defined in Section
2875 62A-4a-101.
2876 ~~[(45)]~~ (53) "Supported" means the same as that term is defined in Section 62A-4a-101.
2877 ~~[(46)]~~ (54) "Termination of parental rights" means the permanent elimination of all
2878 parental rights and duties, including residual parental rights and duties, by court order.
2879 ~~[(47)]~~ (55) "Therapist" means:

(a) a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody; or

(b) any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

~~[(48)]~~ (56) "Unsubstantiated" means the same as that term is defined in Section 62A-4a-101.

(57) "Validated risk and needs assessment" means an actuarial tool scientifically proven to identify specific risk factors shown to be statistically related to a juvenile's risk of reoffending, which, when properly addressed, can reduce a juvenile's risk of reoffending.

~~[(49)]~~ (58) "Without merit" means the same as that term is defined in Section 62A-4a-101.

Section 45. Section 78A-6-106 is amended to read:

78A-6-106. Search warrants and subpoenas -- Authority to issue -- Protective custody -- Expedited hearing -- Exception -- Pick up order.

(1) ~~[The]~~ (a) Except as provided in Subsection (1)(b), a court ~~[has authority to]~~ may issue search warrants, subpoenas, or investigative subpoenas in criminal cases, delinquency, and abuse, neglect, and dependency proceedings for the same purposes, in the same manner and pursuant to the same procedures set forth in the code of criminal procedure for the issuance of search warrants, subpoenas, or investigative subpoenas in other trial courts in the state.

(b) A court may not issue a warrant for:

(i) a status offense;

(ii) an infraction;

(iii) a violation of a court order;

(iv) contempt except to the extent permitted by Section 78A-6-1101; or

(v) an order to show cause.

(2) A peace officer or child welfare worker may not enter the home of a child who is not under the jurisdiction of the court, remove a child from the child's home or school, or take a child into protective custody unless:

(a) there exist exigent circumstances sufficient to relieve the peace officer or child welfare worker of the requirement to obtain a warrant;

(b) the peace officer or child welfare worker obtains a search warrant under Subsection

2911 (3);

2912 (c) the peace officer or child welfare worker obtains a court order after the parent or
2913 guardian of the child is given notice and an opportunity to be heard; or

2914 (d) the peace officer or child welfare worker obtains the consent of the child's parent or
2915 guardian.

2916 (3) (a) The court may issue a warrant authorizing a child protective services worker or
2917 peace officer to search for a child and take the child into protective custody if it appears to the
2918 court upon a verified petition, recorded sworn testimony or an affidavit sworn to by a peace
2919 officer or any other person, and upon the examination of other witnesses, if required by the
2920 judge, that there is probable cause to believe that:

2921 (i) there is a threat of substantial harm to the child's health or safety;

2922 (ii) it is necessary to take the child into protective custody to avoid the harm described
2923 in Subsection (3)(a)(i); and

2924 (iii) it is likely that the child will suffer substantial harm if the parent or guardian of the
2925 child is given notice and an opportunity to be heard before the child is taken into protective
2926 custody.

2927 (b) Pursuant to Section 77-23-210, a peace officer making the search may enter a house
2928 or premises by force, if necessary, in order to remove the child.

2929 (c) The person executing the warrant shall then take the child to the place of shelter
2930 designated by the court or the division.

2931 (4) (a) Consistent with Subsection (5), the court shall hold an expedited hearing to
2932 determine whether a child should be placed in protective custody if:

2933 (i) a person files a petition under Section 78A-6-304;

2934 (ii) a party to the proceeding files a "Motion for Expedited Placement in Temporary
2935 Custody"; and

2936 (iii) notice of the hearing described in this Subsection (4)(a) is served consistent with
2937 the requirements for notice of a shelter hearing under Section 78A-6-306.

2938 (b) The hearing described in Subsection (4)(a):

2939 (i) shall be held within 72 hours, excluding weekends and holidays, of the filing of the
2940 motion described in Subsection (4)(a)(ii); and

2941 (ii) shall be considered a shelter hearing under Section 78A-6-306 and Utah Rules of

2942 Juvenile Procedure, Rule 13.

2943 (5) (a) The hearing and notice described in Subsection (4) are subject to:

2944 (i) Section 78A-6-306;

2945 (ii) Section 78A-6-307; and

2946 (iii) the Utah Rules of Juvenile Procedure.

2947 (b) After the hearing described in Subsection (4), a court may order a child placed in
2948 the temporary custody of the division.

2949 (6) When notice to a parent or guardian is required by this section:

2950 (a) the parent or guardian to be notified must be:

2951 (i) the child's primary caregiver; or

2952 (ii) the parent or guardian who has custody of the child, when the order is sought; and

2953 (b) the person required to provide notice shall make a good faith effort to provide
2954 notice to a parent or guardian who:

2955 (i) is not required to be notified under Subsection (6)(a); and

2956 (ii) has the right to parent-time with the child.

2957 (7) Subsections (1)(b)(i) through (iv) do not apply to a minor who is under Title 55,

2958 Chapter 12, Interstate Compact for Juveniles.

2959 (8) A court may issue a pick up order for a minor not eligible for a warrant under
2960 Subsections (1)(b)(i) through (v) that directs the minor to be returned home, to court, or to a
2961 shelter or other nonsecure facility. The pick up order may not direct placement in a secure
2962 facility, including secure detention.

2963 Section 46. Section 78A-6-109 is amended to read:

2964 **78A-6-109. Summons -- Service and process -- Issuance and contents -- Notice to**
2965 **absent parent or guardian -- Emergency medical or surgical treatment -- Compulsory**
2966 **process for attendance of witnesses when authorized.**

2967 (1) After a petition is filed the court shall promptly issue a summons, unless the judge
2968 directs that a further investigation is needed. No summons is required as to any person who
2969 appears voluntarily or who files a written waiver of service with the clerk of the court at or
2970 [prior to] before the hearing.

2971 (2) The summons shall contain:

2972 (a) the name of the court;

2973 (b) the title of the proceedings; and
2974 (c) except for a published summons, a brief statement of the substance of the
2975 allegations in the petition.

2976 (3) A published summons shall state:
2977 (a) that a proceeding concerning the minor is pending in the court; and
2978 (b) an adjudication will be made.

2979 (4) The summons shall require the person or persons who have physical custody of the
2980 minor to appear personally and bring the minor before the court at a time and place stated. If
2981 the person or persons summoned are not the parent, parents, or guardian of the minor, the
2982 summons shall also be issued to the parent, parents, or guardian, as the case may be, notifying
2983 them of the pendency of the case and of the time and place set for the hearing.

2984 (5) Summons may be issued requiring the appearance of any other person whose
2985 presence the court finds necessary.

2986 (6) If it appears to the court that the welfare of the minor or of the public requires that
2987 the minor be taken into custody, and it does not conflict with Section 78A-6-106, the court may
2988 by endorsement upon the summons direct that the person serving the summons take the minor
2989 into custody at once.

2990 (7) Subject to Subsection 78A-6-117(2)(n)(iii), upon the sworn testimony of one or
2991 more reputable physicians, the court may order emergency medical or surgical treatment that is
2992 immediately necessary for a minor concerning whom a petition has been filed pending the
2993 service of summons upon the minor's parents, guardian, or custodian.

2994 (8) A parent or guardian is entitled to the issuance of compulsory process for the
2995 attendance of witnesses on the parent's or guardian's own behalf or on behalf of the minor. A
2996 guardian ad litem or a probation officer is entitled to compulsory process for the attendance of
2997 witnesses on behalf of the minor.

2998 (9) Service of summons and process and proof of service shall be made in the manner
2999 provided in the Utah Rules of Civil Procedure.

3000 (10) (a) Service of summons or process shall be made by the sheriff of the county
3001 where the service is to be made, or by [his] the sheriff's deputy[~~;~~but].
3002 (b) Notwithstanding Subsection (10)(a), upon request of the court, service shall be
3003 made by any other peace officer, or by another suitable person selected by the court.

(11) Service of summons in the state shall be made personally, by delivering a copy to the person summoned; provided, however, that parents of a minor living together at their usual place of abode may both be served by personal delivery to either parent of copies of the summons, one copy for each parent.

(12) If the judge makes a written finding that ~~he~~ the judge has reason to believe that personal service of the summons will be unsuccessful, or will not accomplish notification within a reasonable time after issuance of the summons, ~~he~~ the judge may order service by registered mail, with a return receipt to be signed by the addressee only, to be addressed to the last-known address of the person to be served in the state. Service shall be complete upon return to the court of the signed receipt.

(13) If the parents, parent, or guardian required to be summoned under Subsection (4) cannot be found within the state, the fact of their minor's presence within the state shall confer jurisdiction on the court in proceedings in a minor's case under this chapter as to any absent parent or guardian, provided that due notice has been given in the following manner:

(a) If the address of the parent or guardian is known, due notice is given by sending ~~him~~ the parent or guardian a copy of the summons by registered mail with a return receipt to be signed by the addressee only, or by personal service outside the state, as provided in the Utah Rules of Civil Procedure. Service by registered mail shall be complete upon return to the court of the signed receipt.

(b) (i) If the address or whereabouts of the parent or guardian outside the state cannot after diligent inquiry be ascertained, due notice is given by publishing a summons:

(A) in a newspaper having general circulation in the county in which the proceeding is pending once a week for four successive weeks; and

(B) in accordance with Section [45-1-101](#) for four weeks.

(ii) Service shall be complete on the day of the last publication.

(c) Service of summons as provided in this subsection shall vest the court with jurisdiction over the parent or guardian served in the same manner and to the same extent as if the person served was served personally within the state.

(14) In the case of service in the state, service completed not less than 48 hours before the time set in the summons for the appearance of the person served, shall be sufficient to confer jurisdiction. In the case of service outside the state, service completed not less than five

days before the time set in the summons for appearance of the person served, shall be sufficient to confer jurisdiction.

(15) Computation of periods of time under this chapter shall be made in accordance with the Utah Rules of Civil Procedure.

Section 47. Section 78A-6-111 is amended to read:

78A-6-111. Appearances -- Parents, guardian, or legal custodian to appear with minor or child -- Failure to appear -- Contempt -- Warrant of arrest, when authorized -- Parent's employer to grant time off -- Appointment of guardian ad litem.

(1) Any person required to appear who, without reasonable cause, fails to appear may be proceeded against for contempt of court, and the court may cause a bench warrant to be issued to produce the person in court.

(2) In ~~[all cases]~~ a case when a minor is required to appear in court, the parents, guardian, or other person with legal custody of the minor shall appear with the minor unless excused by the judge.

(a) An employee may request permission to leave the workplace for the purpose of attending court if the employee has been notified by the juvenile court that ~~[his]~~ the employee's minor is required to appear before the court.

(b) An employer must grant permission to leave the workplace with or without pay if the employee has requested permission at least seven days in advance or within 24 hours of the employee receiving notice of the hearing.

(3) If a parent or other person who signed a written promise to appear and bring the child to court under Section 78A-6-112 or 78A-6-113 fails to appear and bring the child to court on the date set in the promise, or, if the date was to be set, after notification by the court, a warrant may be issued for the apprehension of that person ~~[or the child, or both]~~.

(4) Willful failure to perform the promise is a misdemeanor if, at the time of the execution of the promise, the promisor is given a copy of the promise which clearly states that failure to appear and have the child appear as promised is a misdemeanor. The juvenile court shall have jurisdiction to proceed against the promisor in adult proceedings pursuant to Part 10, Adult Offenses.

(5) The court shall endeavor, through use of the warrant of arrest if necessary, as provided in Subsection (6), or by other means, to ensure the presence at all hearings of one or

both parents or of the guardian of a child. If neither a parent nor guardian is present at the court proceedings, the court may appoint a guardian ad litem to protect the interest of a minor. A guardian ad litem may also be appointed whenever necessary for the welfare of a minor, whether or not a parent or guardian is present.

(6) A warrant may be issued for a parent, a guardian, a custodian, or a minor if:

(a) a summons is issued but cannot be served;

(b) it is made to appear to the court that the person to be served will not obey the summons; or

(c) serving the summons will be ineffectual[~~;~~~~or~~].

~~[(d) the welfare of the minor requires that he be brought immediately into the custody of the court.]~~

Section 48. Section **78A-6-112** is amended to read:

78A-6-112. Minor taken into custody by peace officer, private citizen, or probation officer -- Grounds -- Notice requirements -- Release or detention -- Grounds for peace officer to take adult into custody.

(1) A minor may be taken into custody by a peace officer without order of the court if:

(a) in the presence of the officer the minor has violated a state law, federal law, local law, or municipal ordinance;

(b) there are reasonable grounds to believe the minor has committed an act which if committed by an adult would be a felony;

(c) the minor:

(i) (A) is seriously endangered in the minor's surroundings; or

(B) seriously endangers others; and

(ii) immediate removal appears to be necessary for the minor's protection or the protection of others;

(d) there are reasonable grounds to believe the minor has run away or escaped from the minor's parents, guardian, or custodian; or

(e) there is reason to believe that the minor is:

(i) subject to the state's compulsory education law; and

(ii) absent from school without legitimate or valid excuse, subject to Section [53A-11-105](#).

3097 (2) (a) A private citizen or a probation officer may take a minor into custody if under
3098 the circumstances ~~[he]~~ the private citizen or probation officer could make a citizen's arrest if
3099 the minor was an adult.

3100 (b) A probation officer may also take a minor into custody under Subsection (1) or if
3101 the minor has violated the conditions of probation, if the minor is under the continuing
3102 jurisdiction of the juvenile court or in emergency situations in which a peace officer is not
3103 immediately available.

3104 (3) (a) (i) If an officer or other person takes a minor into temporary custody~~[-he]~~ under
3105 Subsection (1) or (2), the officer or person shall without unnecessary delay notify the parents,
3106 guardian, or custodian.

3107 (ii) The minor shall then be released to the care of the minor's parent or other
3108 responsible adult, unless the minor's immediate welfare or the protection of the community
3109 requires the minor's detention.

3110 (b) If the minor is taken into custody under Subsection (1) or (2) or placed in detention
3111 under Subsection (4) for a violent felony, as defined in Section 76-3-203.5, or an offense in
3112 violation of Title 76, Chapter 10, Part 5, Weapons, the officer or other law enforcement agent
3113 taking the minor into custody shall, as soon as practicable or as established under Subsection
3114 53A-11-1001(2), notify the school superintendent of the district in which the minor resides or
3115 attends school for the purposes of the minor's supervision and student safety.

3116 (i) The notice shall disclose only:

3117 (A) the name of the minor;

3118 (B) the offense for which the minor was taken into custody or detention; and

3119 (C) if available, the name of the victim, if the victim:

3120 (I) resides in the same school district as the minor; or

3121 (II) attends the same school as the minor.

3122 (ii) The notice shall be classified as a protected record under Section 63G-2-305.

3123 (iii) All other records disclosures are governed by Title 63G, Chapter 2, Government
3124 Records Access and Management Act, and the federal Family Educational Rights and Privacy
3125 Act.

3126 (c) Employees of a governmental agency are immune from any criminal liability for
3127 providing or failing to provide the information required by this section unless the person acts or

fails to act due to malice, gross negligence, or deliberate indifference to the consequences.

(d) Before the minor is released, the parent or other person to whom the minor is released shall be required to sign a written promise on forms supplied by the court to bring the minor to the court at a time set or to be set by the court.

(4) (a) A child may not be held in temporary custody by law enforcement any longer than is reasonably necessary to obtain the child's name, age, residence, and other necessary information and to contact the child's parents, guardian, or custodian.

(b) If the minor is not released under Subsection (3), the minor shall be taken to a place of detention or shelter without unnecessary delay.

(5) (a) The person who takes a minor to a detention or shelter facility shall promptly file with the detention or shelter facility a written report on a form provided by the division stating:

(i) the details of the presently alleged offense[;];

(ii) the facts ~~[which]~~ that bring the minor within the jurisdiction of the juvenile court[; and];

(iii) the reason the minor was not released by law enforcement[;];

(iv) the eligibility of the minor under the division guidelines for detention admissions established by the Division of Juvenile Justice Services under Section 62A-7-202 if the minor is under consideration for detention; and

(v) the results of a detention risk assessment if the minor is under consideration for detention.

(b) (i) The designated ~~[youth corrections]~~ facility staff person shall immediately review the form and determine, based on the guidelines for detention admissions established by the Division of Juvenile Justice Services under Section 62A-7-202, the results of the detention risk assessment, and the criteria for detention eligibility under Section 78A-6-113, whether to:

(A) admit the minor to secure detention[;];

(B) admit the minor to home detention[;];

(C) place the minor in ~~[a placement other than detention,]~~ another alternative to detention; or

(D) return the minor home upon written promise to bring the minor to the court at a time set, or without restriction.

(ii) If the designated [~~youth corrections~~] facility staff person determines to admit the minor to home detention, that staff person shall notify the juvenile court of that determination. The court shall order that notice be provided to the designated persons in the local law enforcement agency and the school or transferee school, if applicable, which the minor attends of the home detention. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iii) Any employee of the local law enforcement agency and the school which the minor attends who discloses the notification of home detention is not:

(A) civilly liable except when disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202; and

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

(iv) The person who takes a minor to a detention facility or the designated facility staff person may release a minor to a less restrictive alternative even if the minor is eligible for secure detention under Subsection (4).

(c) A minor may not be admitted to detention unless the minor is detainable based on the guidelines or the minor has been brought to detention pursuant to a judicial order or division warrant pursuant to Section 62A-7-504.

(d) If a minor taken to detention does not qualify for admission under the guidelines established by the division under Section 62A-7-104 or the eligibility criteria under Subsection (4) and this Subsection (5), detention staff shall arrange an appropriate [placement] alternative.

(e) If a minor is taken into custody and admitted to a secure detention or shelter facility, facility staff shall:

(i) immediately notify the minor's parents, guardian, or custodian; and

(ii) promptly notify the court of the placement.

(f) If the minor is admitted to a secure detention or shelter facility outside the county of the minor's residence and it is determined in the hearing held under Subsection 78A-6-113(3) that detention shall continue, the judge or commissioner shall direct the sheriff of the county of the minor's residence to transport the minor to a detention or shelter facility as provided in this section.

(6) A person may be taken into custody by a peace officer without a court order if the

person is in apparent violation of a protective order or if there is reason to believe that a child is being abused by the person and any of the situations outlined in Section 77-7-2 exist.

Section 49. Section 78A-6-113 is amended to read:

78A-6-113. Placement of minor in detention or shelter facility -- Grounds -- Detention hearings -- Period of detention -- Notice -- Confinement for criminal proceedings -- Bail laws inapplicable -- Exception.

(1) (a) A minor may not be placed or kept in a secure detention facility pending court proceedings ~~[unless it is unsafe for the public to leave the minor with the minor's parents, guardian, or custodian and the minor is detainable based on guidelines promulgated by the Division of Juvenile Justice Services]~~ except in accordance with Section 78A-6-112.

~~[(b) A child who must be taken from the child's home but who does not require physical restriction shall be given temporary care in a shelter facility and may not be placed in a detention facility.]~~

~~[(c)]~~ (b) A child may not be placed or kept in a shelter facility pending court proceedings unless it is unsafe to leave the child with the child's parents, guardian, or custodian.

(2) After admission of a child to a detention facility pursuant to ~~[the guidelines established by the Division of Juvenile Justice Services]~~ Section 78A-6-112 and immediate investigation by an authorized officer of the court, the judge or the officer shall order the release of the child to the child's parents, guardian, or custodian if it is found the child can be safely returned to their care, either upon written promise to bring the child to the court at a time set or without restriction.

(a) If a child's parent, guardian, or custodian fails to retrieve the child from a facility within 24 hours after notification of release, the parent, guardian, or custodian is responsible for the cost of care for the time the child remains in the facility.

(b) The facility shall determine the cost of care.

(c) Any money collected under this Subsection (2) shall be retained by the Division of Juvenile Justice Services to recover the cost of care for the time the child remains in the facility.

(d) Every effort should be made to release the child from secure detention to the child's parent, guardian, or custodian, and if that is not possible, to a less restrictive alternative.

(3) (a) When a child is detained in a detention or shelter facility, the parents or guardian shall be informed by the person in charge of the facility that ~~[they have]~~ the parent's or guardian's child has the right to a prompt hearing in court, with defense representation, to determine whether the child is to be further detained or released.

(b) When a minor is detained in a detention facility, the minor shall be informed by the person in charge of the facility that the minor has the right to a prompt hearing in court, with defense representation, to determine whether the minor is to be further detained or released.

(c) Detention hearings shall be held by the judge or by a commissioner.

(d) The court may, at any time, order the release of the minor, whether a detention hearing is held or not.

(e) If a child is released, and the child remains in the facility, because the parents, guardian, or custodian fails to retrieve the child, the parents, guardian, or custodian shall be responsible for the cost of care as provided in Subsections (2)(a), (b), and (c).

(4) (a) A minor may not be held in a detention facility longer than 48 hours ~~[prior to]~~ before a detention hearing, excluding weekends and holidays, unless the court has entered an order for continued detention.

(b) A child may not be held in a shelter facility longer than 48 hours ~~[prior to]~~ before a shelter hearing, excluding weekends and holidays, unless a court order for extended shelter has been entered by the court after notice to all parties described in Section ~~78A-6-306~~.

(c) A hearing for detention or shelter may not be waived. Detention staff shall provide the court with all information received from the person who brought the minor to the detention facility.

(d) ~~[If the court finds at a detention hearing that it is not safe to release the minor, the]~~ The judge or commissioner may only order [the] a minor to be held in the facility or be placed in another appropriate facility, subject to further order of the court, if the court finds and makes a record at a detention hearing that:

(i) releasing the minor to the minor's parent, guardian, or custodian presents an unreasonable risk to public safety;

(ii) less restrictive nonresidential alternatives to detention have been considered and, where appropriate, attempted; and

(iii) the minor is eligible for detention under the division guidelines for detention

admissions established by the Division of Juvenile Justice Services, under Section [62A-7-202](#) and under Section [78A-6-112](#).

(e) (i) After a detention hearing has been held, only the court may release a minor from detention. If a minor remains in a detention facility, periodic reviews shall be held pursuant to the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued detention is necessary.

(ii) After a detention hearing for a violent felony, as defined in Section [76-3-203.5](#), or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the court shall direct that notice of its decision, including any disposition, order, or no contact orders, be provided to designated persons in the appropriate local law enforcement agency and district superintendent or the school or transferee school, if applicable, that the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

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

(A) civilly liable except when the disclosure constitutes fraud or willful misconduct as provided in Section [63G-7-202](#); and

(B) civilly or criminally liable except when disclosure constitutes a knowing violation of Section [63G-2-801](#).

(5) A minor may not be held in a detention facility, following a dispositional order of the court for nonsecure substitute care as defined in Section [62A-4a-101](#), or for community-based placement under Section [62A-7-101](#).

(6) A minor may not be held in a detention facility following a disposition order of the court for longer than 72 hours, excluding weekends and holidays. The period of detention may be extended by the court for [one period] a cumulative total of seven calendar days if:

(a) the Division of Juvenile Justice Services or another agency responsible for placement files a written petition with the court requesting the extension and setting forth good cause; and

(b) the court enters a written finding that it is in the best interests of both the minor and the community to extend the period of detention.

~~[(6)]~~ (7) The agency requesting an extension shall promptly notify the detention facility that a written petition has been filed.

[~~(7)~~] (8) The court shall promptly notify the detention facility regarding its initial disposition and any ruling on a petition for an extension, whether granted or denied.

[~~(8)~~] (9) (a) A child under 16 years of age may not be held in a jail, lockup, or other place for adult detention except as provided by Section 62A-7-201 or unless certified as an adult pursuant to Section 78A-6-703. [~~The provisions of~~] Section 62A-7-201 regarding confinement facilities [~~apply~~] applies to this Subsection [~~(8)~~] (9).

(b) A child 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the detention facility for children may, by court order that specifies the reasons, be detained in another place of confinement considered appropriate by the court, including a jail or other place of confinement for adults. However, a secure [~~youth corrections~~] facility is not an appropriate place of confinement for detention purposes under this section.

[~~(9)~~] (10) A sheriff, warden, or other official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall immediately notify the juvenile court when a person who is or appears to be under 18 years of age is received at the facility and shall make arrangements for the transfer of the person to a detention facility, unless otherwise ordered by the juvenile court.

[~~(10)~~] (11) This section does not apply to a minor who is brought to the adult facility under charges pursuant to Section 78A-6-701 or by order of the juvenile court to be held for criminal proceedings in the district court under Section 78A-6-702 or 78A-6-703.

[~~(11)~~] (12) A minor held for criminal proceedings under Section 78A-6-701, 78A-6-702, or 78A-6-703 may be detained in a jail or other place of detention used for adults charged with crime.

[~~(12)~~] (13) Provisions of law regarding bail are not applicable to minors detained or taken into custody under this chapter, except that bail may be allowed:

(a) if a minor who need not be detained lives outside this state; or

(b) when a minor who need not be detained comes within one of the classes in Subsection 78A-6-603(11).

[~~(13)~~] (14) Section 76-8-418 is applicable to a child who willfully and intentionally commits an act against a jail or other place of confinement, including a Division of Juvenile Justice Services detention, shelter, or secure confinement facility which would be a third degree felony if committed by an adult.

3314 Section 50. Section **78A-6-115** is amended to read:

3315 **78A-6-115. Hearings -- Record -- County attorney or district attorney**
3316 **responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of**
3317 **evidence.**

3318 (1) (a) A verbatim record of the proceedings shall be taken in all cases that might result
3319 in deprivation of custody as defined in this chapter. In all other cases a verbatim record shall
3320 also be made unless dispensed with by the court.

3321 (b) (i) Notwithstanding any other provision, including Title 63G, Chapter 2,
3322 Government Records Access and Management Act, a record of a proceeding made under
3323 Subsection (1)(a) shall be released by the court to any person upon a finding on the record for
3324 good cause.

3325 (ii) Following a petition for a record of a proceeding made under Subsection (1)(a), the
3326 court shall:

3327 (A) provide notice to all subjects of the record that a request for release of the record
3328 has been made; and

3329 (B) allow sufficient time for the subjects of the record to respond before making a
3330 finding on the petition.

3331 (iii) A record of a proceeding may not be released under this Subsection (1)(b) if the
3332 court's jurisdiction over the subjects of the proceeding ended more than 12 months [~~prior to~~]
3333 before the request.

3334 (iv) For purposes of this Subsection (1)(b):

3335 (A) "record of a proceeding" does not include documentary materials of any type
3336 submitted to the court as part of the proceeding, including items submitted under Subsection
3337 (4)(a); and

3338 (B) "subjects of the record" includes the child's guardian ad litem, the child's legal
3339 guardian, the Division of Child and Family Services, and any other party to the proceeding.

3340 (2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a
3341 prosecution district, the district attorney shall represent the state in any proceeding in a minor's
3342 case.

3343 (b) The attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child
3344 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 ~~[otherwise committed to the custody of that division by the juvenile court, and who is classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense]~~ receiving in-home family services under Section 78A-6-117. 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 ~~[the provisions of]~~ 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 who wrote the report or prepared the material appear as a witness if the person is reasonably available.

(b) For the purpose of determining proper disposition of a minor alleged to be or 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 who participated in preparing the dispositional report to appear as a witness, if the person 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 ~~[Title 78A,]~~ 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 ~~[abuse]~~ use disorder treatment.

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

Section 51. Section 78A-6-117 is amended to read:

78A-6-117. Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court.

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

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

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

3407 (ii) if available, if the victim:

3408 (A) resides in the same school district as the minor; or

3409 (B) attends the same school as the minor.

3410 (c) An adjudicated minor shall undergo a validated risk and needs assessment. Results
3411 of the assessment shall be used to inform disposition decisions and case planning. Assessment
3412 results, if available, may not be shared with the court before adjudication.

3413 (2) Upon adjudication the court may make the following dispositions by court order:

3414 (a) (i) The court may place the minor on probation or under protective supervision in
3415 the minor's own home and upon conditions determined by the court, including compensatory
3416 service ~~[as provided in Subsection (2)(m)(iii)].~~

3417 ~~[(ii) The court may place the minor in state supervision with the probation department~~
3418 ~~of the court, under the legal custody of:]~~

3419 ~~[(A) the minor's parent or guardian;]~~

3420 ~~[(B) the Division of Juvenile Justice Services; or]~~

3421 ~~[(C) the Division of Child and Family Services.]~~

3422 (ii) Any condition ordered by the court under Subsection (2)(a)(i), including treatment,
3423 shall be individualized and shall address a specifically assessed risk or need based on the
3424 results of the validated risk and needs assessment conducted under Subsection (1)(c). A court
3425 may not issue standard orders that are control-oriented conditions, but a court may issue special
3426 orders for conditions if they are based on the results of a validated risk and needs assessment.

3427 (iii) Prohibitions on weapon possession, where appropriate, shall be specific to the
3428 minor and not the minor's family.

3429 ~~[(iii)]~~ (iv) If the court orders probation ~~[or state supervision]~~, the court ~~[shall]~~ may
3430 direct that notice of ~~[its]~~ the court's order be provided to designated persons in the local law
3431 enforcement agency and the school or transferee school, if applicable, that the minor attends.
3432 The designated persons may receive the information for purposes of the minor's supervision
3433 and student safety.

3434 ~~[(iv) Any]~~ (v) An employee of the local law enforcement agency and the school that
3435 the minor attends who discloses the court's order of probation is not:

3436 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as
3437 provided in Section 63G-7-202; and

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

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

(c) (i) The court ~~[may: (A)]~~ shall only vest legal custody of the minor in the ~~[Division of Child and Family Services,]~~ Division of Juvenile Justice Services~~[, or the Division of Substance Abuse and Mental Health; and (B) order the Department of Human Services]~~ and order the Division of Juvenile Justice Services to provide dispositional recommendations and services~~[-]~~ if:

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

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

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

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

(A) a validated risk and needs assessment indicates that the minor needs residential treatment and nonresidential treatment options have been exhausted; and

(B) the minor is adjudicated under this section for a felony offense, a misdemeanor when the minor has five prior misdemeanors or felony adjudications arising from separate criminal episodes, or a misdemeanor involving the use of a dangerous weapon.

(ii) The court may not vest legal custody of a minor in the Division of Juvenile Justice Services for:

(A) contempt of court except to the extent permitted under Section [78A-6-1101](#);

3469 (B) a violation of probation;

3470 (C) failure to pay a fine, fee, restitution, or other financial obligation;

3471 (D) unfinished compensatory or community service hours;

3472 (E) an infraction; or

3473 (F) a status offense.

3474 ~~[(iv)]~~ (iii) (A) A minor who is 18 years old or older, but younger than 21 years old,
3475 may petition the court to express the minor's desire to be removed from the jurisdiction of the
3476 juvenile court and from the custody of the Division of Child and Family Services if the minor
3477 is in the division's custody on grounds of abuse, neglect, or dependency.

3478 (B) If the minor's parent's rights have not been terminated in accordance with Part 5,
3479 Termination of Parental Rights Act, the minor's petition shall contain a statement from the
3480 minor's parent or guardian agreeing that the minor should be removed from the custody of the
3481 Division of Child and Family Services.

3482 (C) The minor and the minor's parent or guardian shall sign the petition.

3483 (D) The court shall review the petition within 14 days.

3484 (E) The court shall remove the minor from the custody of the Division of Child and
3485 Family Services if the minor and the minor's parent or guardian have met the requirements
3486 described in Subsections (2)(c)(iv)(B) and (C) and if the court finds, based on input from the
3487 Division of Child and Family Services, the minor's guardian ad litem, and the Office of the
3488 Attorney General, that the minor does not pose an imminent threat to self or others.

3489 (F) A minor removed from custody under Subsection (2)(c)(iv)(E) may, within 90 days
3490 of the date of removal, petition the court to re-enter custody of the Division of Child and
3491 Family Services.

3492 (G) Upon receiving a petition under Subsection (2)(c)(iv)(F), the court shall order the
3493 Division of Child and Family Services to take custody of the minor based on the findings the
3494 court entered when the court originally vested custody in the Division of Child and Family
3495 Services.

3496 (d) (i) The court ~~[may]~~ shall only commit a minor to the Division of Juvenile Justice
3497 Services for secure confinement~~[-]~~ if the court finds that the minor poses a risk of harm to
3498 others and is adjudicated under this section for:

3499 (A) a felony offense;

3500 (B) a misdemeanor if the minor has five prior misdemeanor or felony adjudications
3501 arising from separate criminal episodes; or
3502 (C) a misdemeanor involving use of a firearm.
3503 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,
3504 or dependency under Subsection 78A-6-103(1)(e)(b) may not be committed to the Division of
3505 Juvenile Justice Services.
3506 (iii) The court may not commit a minor to the Division of Juvenile Justice Services for
3507 secure confinement for:
3508 (A) contempt of court;
3509 (B) a violation of probation;
3510 (C) failure to pay a fine, fee, restitution, or other financial obligation;
3511 (D) unfinished compensatory or community service hours;
3512 (E) an infraction; or
3513 (F) a status offense.
3514 (e) The court may ~~commit a minor, subject to the court retaining continuing~~
3515 ~~jurisdiction over the minor, to the temporary custody of the Division of Juvenile Justice~~
3516 ~~Services for observation and evaluation for a period not to exceed 45 days, which period may~~
3517 ~~be extended up to 15 days at the request of the director of the Division of Juvenile Justice~~
3518 ~~Services]~~ order nonresidential, diagnostic assessment, including substance use disorder, mental
3519 health, psychological, or sexual behavior risk assessment.
3520 (f) (i) The court may commit a minor to a place of detention or an alternative to
3521 detention for a period not to exceed 30 cumulative days per adjudication subject to the court
3522 retaining continuing jurisdiction over the minor. This commitment may not be ~~stayed or~~
3523 suspended upon conditions ordered by the court.
3524 (ii) This Subsection (2)(f) applies only to a minor adjudicated for:
3525 (A) an act which if committed by an adult would be a criminal offense; or
3526 (B) contempt of court under Section 78A-6-1101.
3527 (iii) The court may not commit a minor to a place of detention for:
3528 (A) contempt of court except to the extent allowed under Section 78A-6-1101;
3529 (B) a violation of probation;
3530 (C) failure to pay a fine, fee, restitution, or other financial obligation;

3531 (D) unfinished compensatory or community service hours;

3532 (E) an infraction; or

3533 (F) a status offense.

3534 (iv) (A) Time spent in detention pre-adjudication shall be credited toward the 30
3535 cumulative days eligible as a disposition under Subsection (2)(f)(i). If the minor spent more
3536 than 30 days in a place of detention before disposition, the court may not commit a minor to
3537 detention under this section.

3538 (B) Notwithstanding Subsection (2)(f)(iv)(A), the court may commit a minor for a
3539 maximum of seven days while a minor is awaiting placement under Subsection (2)(c)(i). Only
3540 the seven days under this Subsection (2)(f)(iv)(B) may be combined with a nonsecure
3541 placement.

3542 (v) Notwithstanding Subsection (2)(u), no more than seven days of detention may be
3543 ordered in combination with an order under Subsection (2)(c)(i).

3544 (g) The court may vest legal custody of an abused, neglected, or dependent minor in
3545 the Division of Child and Family Services or any other appropriate person in accordance with
3546 the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and
3547 Dependency Proceedings.

3548 ~~[(h) The court may place a minor on a ranch or forestry camp, or similar facility for~~
3549 ~~care and also for work, if possible, if the person, agency, or association operating the facility~~
3550 ~~has been approved or has otherwise complied with all applicable state and local laws. A minor~~
3551 ~~placed in a forestry camp or similar facility may be required to work on fire prevention,~~
3552 ~~forestation and reforestation, recreational works, forest roads, and on other works on or off the~~
3553 ~~grounds of the facility and may be paid wages, subject to the approval of and under conditions~~
3554 ~~set by the court.]~~

3555 (h) (i) If the court has reasonable suspicion of abuse, neglect, as defined in Section
3556 78A-6-105, or dependency, the court may order the Division of Child and Family Services to
3557 conduct an assessment to determine if provision of in-home family preservation services, under
3558 Section 62A-4a-202, is appropriate.

3559 (ii) The court shall make and record findings of fact related to the court's reasonable
3560 suspicion.

3561 (iii) If the assessment indicates a need for in-home family preservation services under

Section [62A-4a-202](#), the court, without filing a petition under Section [78A-6-304](#), may order:

(A) provision of in-home family services for children adjudicated under Section [78A-6-117](#) by the Division of Child and Family Services; and

(B) participation of the child's parent or guardian in the in-home family services.

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

(ii) A victim has the meaning defined under Subsection [77-38a-102](#)(14). A victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the minor's delinquency conduct in the course of the scheme, conspiracy, or pattern.

(iii) If the victim and the minor agree to participate, the court may refer the case to a restorative justice program such as victim offender mediation to address how loss resulting from the adjudicated act may be addressed.

(iv) For the purpose of determining whether and how much restitution is appropriate, the court shall consider the following:

(A) restitution shall only be ordered for the victim's material loss;

(B) restitution may not be ordered if there is evidence of the minor's inability to pay or acquire the means to pay; and

(C) any amount paid by the minor to the victim in civil penalty shall be credited against restitution owed.

(v) Any amount paid to the victim in restitution shall be credited against liability in a civil suit.

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

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

(viii) The prosecutor shall submit a request for restitution to the court at the time of disposition, if feasible, otherwise within three months after sentencing.

(ix) A financial disposition ordered shall prioritize the payment of restitution.

(j) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions, except for an order that changes the custody of the minor, including detention or other secure or nonsecure residential placements.

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

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

(iii) The court may order the minor to:

(A) pay a fine, fee, restitution, or other cost; or

(B) complete service hours.

(iv) If the court orders a minor to pay a fine, fee, restitution, or other cost, or to complete service hours, those dispositions shall be considered collectively to ensure that the order is reasonable and prioritizes restitution.

(v) If the court orders a minor to pay a fine, fee, or other cost, or complete service hours, the cumulative order shall be limited per criminal episode as follows:

(A) for children under age 16 at adjudication, the court may impose up to \$180 or up to 24 hours of service; and

(B) for minors 16 and older at adjudication, the court may impose up to \$270 or up to 36 hours of service.

(vi) The cumulative order under Subsection (2)(k)(v) does not include restitution.

(vii) If the court converts a fine, fee, or restitution amount to service hours, the rate of conversion shall be no less than the minimum wage.

(l) (i) In violations of traffic laws within the court's jurisdiction, when the court finds that as part of the commission of the violation the minor was in actual control of a motor

3624 vehicle, the court may, in addition to any other disposition authorized by this section:

3625 (A) restrain the minor from driving for periods of time the court considers necessary;
3626 and

3627 (B) take possession of the minor's driver license.

3628 (ii) The court may enter any other eligible disposition under Subsection (2)(l)(i) except
3629 for a disposition under Subsection (2)(c), (d), or (f). However, the suspension of driving
3630 privileges for an offense under Section 78A-6-606 is governed only by Section 78A-6-606.

3631 ~~[(m)(i) When a minor is found within the jurisdiction of the juvenile court under~~
3632 ~~Section 78A-6-103 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug~~
3633 ~~Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court~~
3634 ~~shall, in addition to any fines or fees otherwise imposed, order that the minor perform a~~
3635 ~~minimum of 20 hours, but no more than 100 hours, of compensatory service.]~~

3636 (m)(i) The court may order a minor to complete community or compensatory service
3637 hours in accordance with Subsections (2)(k)(iv) and (v).

3638 (ii) When community service is ordered, the presumptive service order shall include
3639 between five and 10 hours of service.

3640 (iii) Satisfactory completion of an approved substance [abuse] use disorder prevention
3641 or treatment program or other court-approved condition may be credited by the court as
3642 compensatory service hours.

3643 ~~[(ii) When a minor is found within the jurisdiction of the juvenile court under Section~~
3644 ~~78A-6-103 because of a violation of Section 32B-4-409 or Subsection 76-9-701(1), the court~~
3645 ~~may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order~~
3646 ~~that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory~~
3647 ~~service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an~~
3648 ~~approved substance abuse prevention or treatment program may be credited by the court as~~
3649 ~~compensatory service hours.]~~

3650 [(iii)] (iv) When a minor is found within the jurisdiction of the juvenile court under
3651 Section 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the
3652 court may order the minor to clean up graffiti created by the minor or any other person at a time
3653 and place within the jurisdiction of the court. Compensatory service [required] ordered under
3654 this section may be performed in the presence and under the direct supervision of the minor's

parent or legal guardian. The parent or legal guardian shall report completion of the order to the court. ~~[The minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal costs as determined under Section 76-6-107, unless waived by the court for good cause.]~~ The court may also require the minor to perform other alternative forms of restitution or repair to the damaged property pursuant to ~~[Subsection 77-18-1(8)]~~ Subsection (2)(i).

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

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

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

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

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

(B) receive other special care.

(ii) For purposes of receiving the examination, treatment, or care described in Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility that is not a secure facility or secure detention.

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

(A) the desires of the minor;

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

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

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

unreasonably compromised by the parent's or guardian's decision.

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

(vi) The Division of Child and Family Services shall use the least restrictive means to accomplish a compelling interest in the care and treatment of a child described in this Subsection (2)(n).

(o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint as guardian a public or private institution or agency, but not a nonsecure residential placement provider, in which legal custody of the minor is vested.

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

(p) (i) In support of a decree under Section 78A-6-103, the court may order reasonable conditions to be complied with by a minor's parents or guardian, ~~[a minor,]~~ a minor's custodian, or any other person who has been made a party to the proceedings. Conditions may include the following if the conditions are based on the results of a validated risk and needs assessment:

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

(B) restrictions on the minor's associates;

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

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

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

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

(r) (i) The court may make an order committing a minor within the court's jurisdiction to the Utah State Developmental Center if the minor has an intellectual disability in accordance with ~~[the provisions of]~~ Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care

3717 Facility for People with an Intellectual Disability.

3718 (ii) The court shall follow the procedure applicable in the district courts with respect to
3719 judicial commitments to the Utah State Developmental Center when ordering a commitment
3720 under Subsection (2)(r)(i).

3721 (s) The court may terminate all parental rights upon a finding of compliance with ~~[the~~
3722 ~~provisions of]~~ Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

3723 (t) The court may make ~~[any]~~ other reasonable orders targeted toward reducing
3724 reoffending that are for the best interest of the minor [or] and as required for the protection of
3725 the public, except that a child may not be committed to jail [or], prison, secure detention, or the
3726 custody of the Division of Juvenile Justice Services under Subsections (2)(c) and (d). An order
3727 that is inconsistent with the remaining provisions of this section is void.

3728 (u) The court may combine the dispositions listed in this section if it is permissible and
3729 they are compatible.

3730 (v) Before depriving any parent of custody, the court shall give due consideration to the
3731 rights of parents concerning their child. The court may transfer custody of a minor to another
3732 person, agency, or institution in accordance with the requirements and procedures of Title 78A,
3733 Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

3734 (w) Except as provided in Subsection (2)(y)(i), an order under this section for
3735 probation or placement of a minor with an individual or an agency shall include a date certain
3736 for a review and presumptive termination of the case by the court in accordance with
3737 Subsection (7) and Section 62A-7-404. A new date shall be set upon each review.

3738 (x) In reviewing foster home placements, special attention shall be given to making
3739 adoptable children available for adoption without delay.

3740 (y) (i) The juvenile court may enter an order of permanent custody and guardianship
3741 with an individual or relative of a child where the court has previously acquired jurisdiction as
3742 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an
3743 order for child support on behalf of the child against the natural or adoptive parents of the
3744 child.

3745 (ii) Orders under Subsection (2)(y)(i):

3746 (A) shall remain in effect until the child reaches majority; and

3747 ~~[(B) are not subject to review under Section 78A-6-118; and]~~

3748 [(C)] (B) may be modified by petition or motion as provided in Section 78A-6-1103.

3749 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and
3750 permanent orders of custody and guardianship do not expire with a termination of jurisdiction
3751 of the juvenile court.

3752 (3) In addition to the dispositions described in Subsection (2), when a minor comes
3753 within the court's jurisdiction, the minor may be given a choice by the court to serve in the
3754 National Guard in lieu of other sanctions, provided:

3755 (a) the minor meets the current entrance qualifications for service in the National
3756 Guard as determined by a recruiter, whose determination is final;

3757 (b) the minor is not under the jurisdiction of the court for any act that:

3758 (i) would be a felony if committed by an adult;

3759 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

3760 (iii) was committed with a weapon; and

3761 (c) the court retains jurisdiction over the minor under conditions set by the court and
3762 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

3763 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction
3764 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by
3765 designated employees of the court or, if the minor is in the legal custody of the Division of
3766 Juvenile Justice Services, then by designated employees of the division under Subsection
3767 53-10-404(5)(b).

3768 (b) The responsible agency shall ensure that employees designated to collect the saliva
3769 DNA specimens receive appropriate training and that the specimens are obtained in accordance
3770 with accepted protocol.

3771 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA
3772 Specimen Restricted Account created in Section 53-10-407.

3773 (d) Payment of the reimbursement is second in priority to payments the minor is
3774 ordered to make for restitution under this section and treatment under Section 78A-6-321.

3775 (5) A disposition hearing shall be held expediently upon adjudication. A disposition
3776 hearing may only be delayed for the time needed to complete crucial assessments.

3777 (6) (a) A disposition made by the court pursuant to this section may not be suspended,
3778 except for the following:

(i) If a minor qualifies for commitment to the Division of Juvenile Justice Services under Subsection (2)(c) or (d), the court may suspend a custody order pursuant to Subsection (2)(c) or (d) in lieu of immediate commitment, upon the condition that the minor commit no new misdemeanor or felony offense during the three months following the day of disposition.

(ii) The duration of a suspended custody order made under Subsection (6)(a)(i) may not exceed three months post-disposition and may not be extended under any circumstance.

(iii) The court may only impose a custody order suspended under Subsection (6)(a)(i) following adjudication of a new misdemeanor or felony offense committed by the minor during the period of suspension set out under Subsection (6)(a)(ii).

(b) The court pursuant to Subsection (6)(a) shall terminate jurisdiction over the minor at the end of the presumptive time frame unless at least one the following circumstances exists:

(i) termination pursuant to Subsection (7)(a)(ii) would interrupt the completion of a program determined to be necessary by the results of a validated risk and needs assessment with completion determined by a licensed service provider on the basis of the minor completing the goals of the necessary treatment program;

(ii) the minor commits a new misdemeanor or felony offense;

(iii) service hours have not been completed; or

(iv) there is an outstanding fine.

(7) When the court places a minor on probation under Subsection (2)(a) or vests legal custody of the minor in the Division of Juvenile Justice Services under Subsection (2)(c), the court shall do so for a defined period of time pursuant to this section.

(a) For the purposes of placing a minor on probation under Subsection (2)(a), the court shall establish a presumptive term of probation as specified in this Subsection (7):

(i) the presumptive maximum length of intake probation may not exceed three months; and

(ii) the presumptive maximum length of formal probation may not exceed four to six months.

(b) For the purposes of vesting legal custody of the minor in the Division of Juvenile Justice Services under Subsection (2)(c), the court shall establish a maximum term of custody and a maximum term of aftercare as specified in this Subsection (7):

(i) the presumptive maximum length of out-of-home placement may not exceed three

to six months; and

(ii) the presumptive maximum length of aftercare supervision, for those previously placed out-of-home, may not exceed three to four months, and minors may serve the term of aftercare in the home of a qualifying relative or guardian.

(c) The court pursuant to Subsections (7)(a) and (b), and the Youth Parole Authority pursuant to Subsection (7)(b), shall terminate jurisdiction over the minor at the end of the presumptive time frame unless at least one of the following circumstances exists:

(i) termination pursuant to Subsection (7)(a)(ii) would interrupt the completion of a program determined to be necessary by the results of a validated risk and needs assessment, with completion determined by a licensed service provider on the basis of the minor completing the goals of the necessary treatment program;

(ii) termination pursuant to Subsection (7)(a)(i) or (7)(b) would interrupt the completion of a program determined to be necessary by the results of a validated risk and needs assessment, with completion determined on the basis of whether the minor has regularly and consistently attended the treatment program;

(iii) the minor commits a new misdemeanor or felony offense;

(iv) service hours have not been completed; or

(v) there is an outstanding fine.

(d) (i) Subject to Subsection (7)(g), if one of the circumstances under Subsection (7)(c)(i), (ii), (iii), or (iv) exists, the court may extend jurisdiction for the time needed to address the specific circumstance.

(ii) Subject to Subsection (7)(g), if one of the circumstances under Subsection (7)(c)(i), (ii), (iii), or (iv) exists, and the Youth Parole Authority has jurisdiction, the Youth Parole Authority may extend jurisdiction for the time needed to address the specific circumstance.

(e) If the circumstance under Subsection (7)(c)(iv) exists, the court, or the Youth Parole Authority if it has jurisdiction, may extend jurisdiction one time for up to three months.

(f) Grounds for extension of the presumptive length of supervision or placement and the length of any extension shall be recorded in the court record and tracked in the data system used by the Administrative Office of the Courts and the Division of Juvenile Justice Services.

(g) (i) For a minor who is under the supervision of the juvenile court and whose supervision is extended to complete service hours under Subsection (7)(c)(iv), jurisdiction may

only be continued under the supervision of intake probation.

(ii) For a minor who is under the jurisdiction of the Youth Parole Authority whose supervision is extended to complete service hours under Subsection (7)(c)(iv), jurisdiction may only be continued on parole and not in secure confinement.

(h) In the event of an unauthorized leave lasting more than 24 hours, the supervision period shall toll until the minor returns.

(8) Subsection (7) does not apply to any minor disposed under this section for:

(a) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

(b) Section 76-5-202, attempted aggravated murder;

(c) Section 76-5-203, murder or attempted murder;

(d) Section 76-5-302, aggravated kidnapping;

(e) Section 76-5-405, aggravated sexual assault;

(f) a felony violation of Section 76-6-103, aggravated arson;

(g) Section 76-6-203, aggravated burglary;

(h) Section 76-6-302, aggravated robbery;

(i) Section 76-10-508.1, felony discharge of a firearm; or

(j) an offense other than those listed in Subsections (8)(a) through (i) involving the use of a dangerous weapon, that would be a felony if committed by an adult, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon, which also would have been a felony if committed by an adult.

Section 52. Section 78A-6-118 is amended to read:

78A-6-118. Period of operation of judgment, decree, or order.

[+] A judgment, order, or decree of the juvenile court does not operate after the minor becomes 21 years of age, except for:

[a] (1) orders of commitment to the Utah State Developmental Center or to the custody of the Division of Substance Abuse and Mental Health;

[b] (2) adoption orders under Subsection 78A-6-103(1); and

[c] (3) orders permanently terminating the rights of a parent, guardian, or custodian, and permanent orders of custody and guardianships[; and].

[d] unless terminated by the court, orders to pay any fine or restitution.]

[(2) (a) Except as provided in Part 3, Abuse, Neglect, and Dependency Proceedings, an

order vesting legal custody or guardianship of a minor in an individual, agency, or institution may be for an indeterminate period. A review hearing shall be held, however, upon the expiration of 12 months, and, with regard to petitions filed by the Division of Child and Family Services, no less than once every six months thereafter. The individual, agency, or institution involved shall file the petition for that review hearing. The court may terminate the order, or after notice and hearing, continue the order if it finds continuation of the order necessary to safeguard the welfare of the minor or the public interest. The findings of the court and its reasons shall be entered with the continuation order or with the order denying continuation.]

[~~(b)~~ Subsection (2)(a) does not apply to minors who are in the custody of the Division of Child and Family Services, and who are placed in foster care, a secure youth corrections facility, the Division of Substance Abuse and Mental Health, the Utah State Developmental Center, or any agency licensed for child placements and adoptions, in cases where all parental rights of the natural parents have been terminated by the court under Part 5, Termination of Parental Rights Act, and custody of the minor has been granted to the agency for adoption or other permanent placement.]

[~~(3)~~ (a) An agency granted legal custody may determine where and with whom the minor will live, provided that placement of the minor does not remove him from the state without court approval.]

[~~(b)~~ An individual granted legal custody shall personally exercise the rights and responsibilities involved in legal custody, unless otherwise authorized by the court.]

Section 53. Section **78A-6-119** is amended to read:

78A-6-119. Modification of order or decree -- Requirements for changing or terminating custody, probation, or protective supervision.

(1) The court may modify or set aside any order or decree made by [it] the court in accordance with Sections [78A-6-117](#) and [78A-6-123](#), however a modification of an order placing a minor on probation may not [~~be made upon an alleged violation of the terms of probation unless there has been a hearing in accordance with the procedures in Section [78A-6-1103](#)~~] include an order:

(a) under Subsection [78A-6-117](#)(2)(c), (d), or (f); or

(b) extending supervision, except pursuant to Subsection [78A-6-117](#)(7).

(2) Notice of the hearing shall be required in any case in which the effect of modifying

or setting aside an order or decree may be to make any change in the minor's legal custody under Section [78A-6-1103](#) and pursuant to Section [78A-6-117](#).

(3) (a) Notice of an order terminating probation or protective supervision of a child shall be given to the child's:

(i) parents;

(ii) guardian;

(iii) custodian; and

(iv) where appropriate, to the child.

(b) Notice of an order terminating probation or protective supervision of a minor who is at least 18 years of age shall be given to the minor.

Section 54. Section **78A-6-120** is amended to read:

78A-6-120. Continuing jurisdiction of juvenile court -- Period of and termination of jurisdiction -- Notice of discharge from custody of local mental health authority or Utah State Developmental Center -- Transfer of continuing jurisdiction to other district.

(1) Jurisdiction of a minor obtained by the court through adjudication under Section [78A-6-117](#) continues for purposes of this chapter until ~~[he]~~ the minor becomes 21 years of age, unless terminated earlier~~[- However, the court, subject to Section [78A-6-121](#), retains jurisdiction beyond the age of 21 of a person who has refused or failed to pay any fine or victim restitution ordered by the court, but only for the purpose of causing compliance with existing orders]~~ in accordance with Sections [62A-7-404](#) and [78A-6-117](#).

(2) (a) The continuing jurisdiction of the court terminates:

(i) upon order of the court;

(ii) upon commitment to a secure ~~[youth corrections]~~ facility; ~~[or]~~

(iii) upon commencement of proceedings in adult cases under Section [78A-6-1001](#)~~[-];~~

or

(iv) in accordance with Sections [62A-7-404](#) and [78A-6-117](#).

(b) The continuing jurisdiction of the court is not terminated by marriage.

(c) Notwithstanding Subsection (2)(a)(ii), the court retains jurisdiction to make and enforce orders related to restitution until the youth parole authority discharges the youth offender.

(3) When a minor has been committed by the court to the physical custody of a local

mental health authority or its designee or to the Utah State Developmental Center, the local mental health authority or its designee or the superintendent of the Utah State Developmental Center shall give the court written notice of its intention to discharge, release, or parole the minor not fewer than five days ~~[prior to]~~ before the discharge, release, or parole.

(4) Jurisdiction over a minor on probation or under protective supervision, or of a minor who is otherwise under the continuing jurisdiction of the court, may be transferred by the court to the court of another district, if the receiving court consents, or upon direction of the chair of the Board of Juvenile Court Judges. The receiving court has the same powers with respect to the minor that it would have if the proceedings originated in that court.

(5) A minor adjudicated under Section 78A-6-117 shall undergo a validated risk and needs assessment within seven days of case closure.

Section 55. Section **78A-6-121** is amended to read:

78A-6-121. Entry of judgment for fine, fee, surcharge, or restitution.

(1) If, ~~[prior to]~~ before the entry of any order terminating jurisdiction of a juvenile, there remains any unpaid balance for any fine, fee, or restitution ordered by the court, the court shall record all pertinent information in the juvenile's file ~~[and]~~.

(2) The court may not transfer responsibility to collect [all] unpaid fines, fees, surcharges, and restitution to the Office of State Debt Collection.

~~[(2) Before transferring the responsibility to collect any past due fines, the court shall reduce the order to a judgment listing the Office of State Debt Collection as the judgment creditor.]~~

~~[(3) Before transferring the responsibility to collect any past due accounts receivable for restitution to a victim, the court shall reduce the restitution order to a judgment listing the victim, or the estate of the victim, as the judgment creditor.]~~

Section 56. Section **78A-6-123** is enacted to read:

78A-6-123. Case planning and appropriate responses.

(1) For a minor adjudicated and placed on probation or into the custody of the Division of Juvenile Justice Services under Section 78A-6-117, a case plan shall be created and shall be:

(a) developed in collaboration with the minor and the minor's family;

(b) individualized to the minor;

(c) informed by the results of a validated risk and needs assessment; and

(d) tailored to the minor's offense and history.

(2) (a) The Administrative Office of the Courts and the Division of Juvenile Justice Services of the Department of Human Services shall develop a statewide system of appropriate responses to guide responses to the behaviors of minors:

(i) undergoing nonjudicial adjustments;

(ii) under the jurisdiction of the juvenile court; and

(iii) in the custody of the Division of Juvenile Justice Services.

(b) The system of responses shall include both sanctions and incentives that:

(i) are swift and certain;

(ii) include a continuum of community based responses for minors living at home;

(iii) target a minor's criminogenic risks and needs, as determined by the results of a validated risk and needs assessment, and the severity of the violation; and

(iv) authorize earned discharge credits as one incentive for compliance.

(c) The system of appropriate responses developed under Subsections (2)(a) and (b) shall be developed after receiving input from the Sentencing Commission, pursuant to Section 63M-7-404.

(3) A response to a compliant or noncompliant behavior under Subsection (2) shall be documented in the minor's case plan. Documentation shall include:

(a) positive behaviors and incentives offered;

(b) violations and corresponding sanctions; and

(c) whether the minor has a subsequent violation after a sanction.

(4) Before referring a minor to court for judicial review or to the Youth Parole Authority if the minor is under the custody of the Youth Parole Authority in response to a violation, either through a contempt filing under Section 78A-6-1101 or an order to show cause, a pattern of technical violations and sanction attempts must be documented in the minor's case plan.

(5) Notwithstanding Subsection (4), violations of no-contact orders with victims and violations that constitute new delinquency offenses may be filed directly with the court.

Section 57. Section **78A-6-124** is enacted to read:

78A-6-124. Detention risk assessment tool.

(1) The Division of Juvenile Justice Services, in conjunction with the Administrative

3996 Office of the Courts, shall develop or adopt, and validate on the Utah juvenile population, a
3997 statewide detention risk assessment tool.

3998 (2) The detention risk assessment tool shall be administered for each youth under
3999 consideration for detention and may only be conducted by a designated individual who has
4000 completed training to conduct the detention risk assessment tool.

4001 (3) The Division of Juvenile Justice Services and the Administrative Office of the
4002 Courts shall establish cutoff scores for determining eligibility for placement in a juvenile
4003 detention facility or for referral to an alternative to detention.

4004 Section 58. Section **78A-6-302** is amended to read:

4005 **78A-6-302. Court-ordered protective custody of a child following petition filing --**
4006 **Grounds.**

4007 (1) After a petition has been filed under Section **78A-6-304**, if the child who is the
4008 subject of the petition is not in the protective custody of the division, a court may order that the
4009 child be removed from the child's home or otherwise taken into protective custody if the court
4010 finds, by a preponderance of the evidence, that any one or more of the following circumstances
4011 exist:

4012 (a) (i) there is an imminent danger to the physical health or safety of the child; and

4013 (ii) the child's physical health or safety may not be protected without removing the
4014 child from the custody of the child's parent or guardian;

4015 (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct
4016 that causes the child to suffer harm; and

4017 (ii) there are no less restrictive means available by which the child's emotional health
4018 may be protected without removing the child from the custody of the child's parent or guardian;

4019 (c) the child or another child residing in the same household has been, or is considered
4020 to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a
4021 parent or guardian, a member of the parent's or guardian's household, or other person known to
4022 the parent or guardian;

4023 (d) the parent or guardian is unwilling to have physical custody of the child;

4024 (e) the child is abandoned or left without any provision for the child's support;

4025 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged
4026 or cannot arrange for safe and appropriate care for the child;

(g) (i) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;

(ii) the whereabouts of the parent or guardian are unknown; and

(iii) reasonable efforts to locate the parent or guardian are unsuccessful;

(h) subject to the provisions of Subsections 78A-6-105[(27)](35)(d) and 78A-6-117(2)(n) and Section 78A-6-301.5, the child is in immediate need of medical care;

(i) (i) a parent's or guardian's actions, omissions, or habitual action create an environment that poses a serious risk to the child's health or safety for which immediate remedial or preventive action is necessary; or

(ii) a parent's or guardian's action in leaving a child unattended would reasonably pose a threat to the child's health or safety;

(j) the child or another child residing in the same household has been neglected;

(k) the child's natural parent:

(i) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(ii) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(iii) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child;

(l) an infant has been abandoned, as defined in Section 78A-6-316;

(m) (i) the parent or guardian, or an adult residing in the same household as the parent or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act; and

(ii) any clandestine laboratory operation was located in the residence or on the property where the child resided; or

(n) the child's welfare is otherwise endangered.

(2) (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency occurs involving the same substantiated abuser or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of the child's parent.

(b) For purposes of Subsection (1)(c):

(i) another child residing in the same household may not be removed from the home unless that child is considered to be at substantial risk of being physically abused, sexually abused, or sexually exploited as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

(ii) if a parent or guardian has received actual notice that physical abuse, sexual abuse, or sexual exploitation by a person known to the parent has occurred, and there is evidence that the parent or guardian failed to protect the child, after having received the notice, by allowing the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically abused, sexually abused, or sexually exploited.

(3) (a) For purposes of Subsection (1), if the division files a petition under Section 78A-6-304, the court shall consider the division's safety and risk assessments described in Section 62A-4a-203.1 to determine whether a child should be removed from the custody of the child's parent or guardian or should otherwise be taken into protective custody.

(b) The division shall make a diligent effort to provide the safety and risk assessments described in Section 62A-4a-203.1 to the court, guardian ad litem, and counsel for the parent or guardian, as soon as practicable before the shelter hearing described in Section 78A-6-306.

(4) In the absence of one of the factors described in Subsection (1), a court may not remove a child from the parent's or guardian's custody on the basis of:

(a) educational neglect, truancy, or failure to comply with a court order to attend school;

(b) mental illness or poverty of the parent or guardian; or

(c) disability of the parent or guardian, as defined in Section 57-21-2.

(5) A child removed from the custody of the child's parent or guardian under this section may not be placed or kept in a secure detention facility pending further court proceedings unless the child is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

(6) This section does not preclude removal of a child from the child's home without a warrant or court order under Section 62A-4a-202.1.

(7) (a) Except as provided in Subsection (7)(b), a court or the Division of Child and Family Services may not remove a child from the custody of the child's parent or guardian on

4089 the sole or primary basis that the parent or guardian refuses to consent to:

- 4090 (i) the administration of a psychotropic medication to a child;
4091 (ii) a psychiatric, psychological, or behavioral treatment for a child; or
4092 (iii) a psychiatric or behavioral health evaluation of a child.

4093 (b) Notwithstanding Subsection (7)(a), a court or the Division of Child and Family
4094 Services may remove a child under conditions that would otherwise be prohibited under
4095 Subsection (7)(a) if failure to take an action described under Subsection (7)(a) would present a
4096 serious, imminent risk to the child's physical safety or the physical safety of others.

4097 Section 59. Section **78A-6-306** is amended to read:

4098 **78A-6-306. Shelter hearing.**

4099 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays
4100 after any one or all of the following occur:

- 4101 (a) removal of the child from the child's home by the division;
4102 (b) placement of the child in the protective custody of the division;
4103 (c) emergency placement under Subsection [62A-4a-202.1](#)(4);
4104 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter
4105 at the request of the division; or
4106 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under
4107 Subsection [78A-6-106](#)(4).

4108 (2) If one of the circumstances described in Subsections (1)(a) through (e) occurs, the
4109 division shall issue a notice that contains all of the following:

- 4110 (a) the name and address of the person to whom the notice is directed;
4111 (b) the date, time, and place of the shelter hearing;
4112 (c) the name of the child on whose behalf a petition is being brought;
4113 (d) a concise statement regarding:
4114 (i) the reasons for removal or other action of the division under Subsection (1); and
4115 (ii) the allegations and code sections under which the proceeding has been instituted;
4116 (e) a statement that the parent or guardian to whom notice is given, and the child, are
4117 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
4118 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
4119 provided in accordance with the provisions of Section [78A-6-1111](#); and

4120 (f) a statement that the parent or guardian is liable for the cost of support of the child in
4121 the protective custody, temporary custody, and custody of the division, and the cost for legal
4122 counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial
4123 ability of the parent or guardian.

4124 (3) The notice described in Subsection (2) shall be personally served as soon as
4125 possible, but no later than one business day after removal of the child from the child's home, or
4126 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection
4127 78A-6-106(4), on:

4128 (a) the appropriate guardian ad litem; and

4129 (b) both parents and any guardian of the child, unless the parents or guardians cannot
4130 be located.

4131 (4) The following persons shall be present at the shelter hearing:

4132 (a) the child, unless it would be detrimental for the child;

4133 (b) the child's parents or guardian, unless the parents or guardian cannot be located, or
4134 fail to appear in response to the notice;

4135 (c) counsel for the parents, if one is requested;

4136 (d) the child's guardian ad litem;

4137 (e) the caseworker from the division who is assigned to the case; and

4138 (f) the attorney from the attorney general's office who is representing the division.

4139 (5) (a) At the shelter hearing, the court shall:

4140 (i) provide an opportunity to provide relevant testimony to:

4141 (A) the child's parent or guardian, if present; and

4142 (B) any other person having relevant knowledge; and

4143 (ii) subject to Section 78A-6-305, provide an opportunity for the child to testify.

4144 (b) The court:

4145 (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile
4146 Procedure;

4147 (ii) shall hear relevant evidence presented by the child, the child's parent or guardian,
4148 the requesting party, or their counsel; and

4149 (iii) may in its discretion limit testimony and evidence to only that which goes to the
4150 issues of removal and the child's need for continued protection.

4151 (6) If the child is in the protective custody of the division, the division shall report to
4152 the court:

4153 (a) the reason why the child was removed from the parent's or guardian's custody;

4154 (b) any services provided to the child and the child's family in an effort to prevent
4155 removal;

4156 (c) the need, if any, for continued shelter;

4157 (d) the available services that could facilitate the return of the child to the custody of
4158 the child's parent or guardian; and

4159 (e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the
4160 child or friends of the child's parents may be able and willing to accept temporary placement of
4161 the child.

4162 (7) The court shall consider all relevant evidence provided by persons or entities
4163 authorized to present relevant evidence pursuant to this section.

4164 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good
4165 cause shown, the court may grant no more than one continuance, not to exceed five judicial
4166 days.

4167 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for
4168 a continuance under Subsection (8)(a).

4169 (c) Notwithstanding Subsection (8)(a), if the division fails to provide the notice
4170 described in Subsection (2) within the time described in Subsection (3), the court may grant the
4171 request of a parent or guardian for a continuance, not to exceed five judicial days.

4172 (9) (a) If the child is in the protective custody of the division, the court shall order that
4173 the child be returned to the custody of the parent or guardian unless it finds, by a
4174 preponderance of the evidence, consistent with the protections and requirements provided in
4175 Subsection 62A-4a-201(1), that any one of the following exists:

4176 (i) subject to Subsection (9)(b)(i), there is a serious danger to the physical health or
4177 safety of the child and the child's physical health or safety may not be protected without
4178 removing the child from the custody of the child's parent;

4179 (ii) (A) the child is suffering emotional damage that results in a serious impairment in
4180 the child's growth, development, behavior, or psychological functioning;

4181 (B) the parent or guardian is unwilling or unable to make reasonable changes that

would sufficiently prevent future damage; and

(C) there are no reasonable means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;

(iii) there is a substantial risk that the child will suffer abuse or neglect if the child is not removed from the custody of the child's parent or guardian;

(iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited by a:

(A) parent or guardian;

(B) member of the parent's household or the guardian's household; or

(C) person known to the parent or guardian;

(v) the parent or guardian is unwilling to have physical custody of the child;

(vi) the child is without any provision for the child's support;

(vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the child;

(viii) (A) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;

(B) the whereabouts of the parent or guardian are unknown; and

(C) reasonable efforts to locate the parent or guardian are unsuccessful;

(ix) subject to Subsections 78A-6-105[(27)](35)(d) and 78A-6-117(2)(n) and Section 78A-6-301.5, the child is in immediate need of medical care;

(x) (A) the physical environment or the fact that the child is left unattended beyond a reasonable period of time poses a threat to the child's health or safety; and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would remove the threat;

(xi) (A) the child or a minor residing in the same household has been neglected; and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would prevent the neglect;

(xii) the parent, guardian, or an adult residing in the same household as the parent or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation was located in the residence or on the property where

4213 the child resided;

4214 (xiii) (A) the child's welfare is substantially endangered; and

4215 (B) the parent or guardian is unwilling or unable to make reasonable changes that

4216 would remove the danger; or

4217 (xiv) the child's natural parent:

4218 (A) intentionally, knowingly, or recklessly causes the death of another parent of the

4219 child;

4220 (B) is identified by a law enforcement agency as the primary suspect in an investigation

4221 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

4222 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or

4223 recklessly causing the death of another parent of the child.

4224 (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is

4225 established if:

4226 (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency

4227 involving the parent; and

4228 (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

4229 (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly

4230 allowed the child to be in the physical care of a person after the parent received actual notice

4231 that the person physically abused, sexually abused, or sexually exploited the child, that fact

4232 constitutes prima facie evidence that there is a substantial risk that the child will be physically

4233 abused, sexually abused, or sexually exploited.

4234 (10) (a) (i) The court shall also make a determination on the record as to whether

4235 reasonable efforts were made to prevent or eliminate the need for removal of the child from the

4236 child's home and whether there are available services that would prevent the need for continued

4237 removal.

4238 (ii) If the court finds that the child can be safely returned to the custody of the child's

4239 parent or guardian through the provision of those services, the court shall place the child with

4240 the child's parent or guardian and order that those services be provided by the division.

4241 (b) In making the determination described in Subsection (10)(a), and in ordering and

4242 providing services, the child's health, safety, and welfare shall be the paramount concern, in

4243 accordance with federal law.

(11) Where the division's first contact with the family occurred during an emergency situation in which the child could not safely remain at home, the court shall make a finding that any lack of preplacement preventive efforts was appropriate.

(12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, return a child to the child's home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

(13) The court may not order continued removal of a child solely on the basis of educational neglect as described in Subsection 78A-6-105[(27)](35)(b), truancy, or failure to comply with a court order to attend school.

(14) (a) Whenever a court orders continued removal of a child under this section, the court shall state the facts on which that decision is based.

(b) If no continued removal is ordered and the child is returned home, the court shall state the facts on which that decision is based.

(15) If the court finds that continued removal and temporary custody are necessary for the protection of a child pursuant to Subsection (9)(a), the court shall order continued removal regardless of:

- (a) any error in the initial removal of the child;
- (b) the failure of a party to comply with notice provisions; or
- (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

Section 60. Section 78A-6-312 is amended to read:

78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.

(1) The court may:

- (a) make any of the dispositions described in Section 78A-6-117;
- (b) place the minor in the custody or guardianship of any:
 - (i) individual; or
 - (ii) public or private entity or agency; or
- (c) order:
 - (i) protective supervision;

4275 (ii) family preservation;
4276 (iii) subject to Subsections (12)(b), 78A-6-105[(27)](35)(d), and 78A-6-117(2)(n) and
4277 Section 78A-6-301.5, medical or mental health treatment; or
4278 (iv) other services.

4279 (2) Whenever the court orders continued removal at the dispositional hearing, and that
4280 the minor remain in the custody of the division, the court shall first:

4281 (a) establish a primary permanency plan for the minor; and
4282 (b) determine whether, in view of the primary permanency plan, reunification services
4283 are appropriate for the minor and the minor's family, pursuant to Subsections (20) through (22).

4284 (3) Subject to Subsections (6) and (7), if the court determines that reunification
4285 services are appropriate for the minor and the minor's family, the court shall provide for
4286 reasonable parent-time with the parent or parents from whose custody the minor was removed,
4287 unless parent-time is not in the best interest of the minor.

4288 (4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe
4289 abuse, or severe neglect are involved, neither the division nor the court has any duty to make
4290 "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to
4291 attempt to rehabilitate the offending parent or parents.

4292 (5) In all cases, the minor's health, safety, and welfare shall be the court's paramount
4293 concern in determining whether reasonable efforts to reunify should be made.

4294 (6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless
4295 the court makes a finding that it is necessary to deny parent-time in order to:

4296 (a) protect the physical safety of the minor;
4297 (b) protect the life of the minor; or
4298 (c) prevent the minor from being traumatized by contact with the parent due to the
4299 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

4300 (7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a
4301 parent's failure to:

4302 (a) prove that the parent has not used legal or illegal substances; or
4303 (b) comply with an aspect of the child and family plan that is ordered by the court.

4304 (8) (a) In addition to the primary permanency plan, the court shall establish a
4305 concurrent permanency plan that shall include:

4306 (i) a representative list of the conditions under which the primary permanency plan will
4307 be abandoned in favor of the concurrent permanency plan; and

4308 (ii) an explanation of the effect of abandoning or modifying the primary permanency
4309 plan.

4310 (b) In determining the primary permanency plan and concurrent permanency plan, the
4311 court shall consider:

4312 (i) the preference for kinship placement over nonkinship placement;

4313 (ii) the potential for a guardianship placement if the parent-child relationship is legally
4314 terminated and no appropriate adoption placement is available; and

4315 (iii) the use of an individualized permanency plan, only as a last resort.

4316 (9) A permanency hearing shall be conducted in accordance with Subsection
4317 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if
4318 something other than reunification is initially established as a minor's primary permanency
4319 plan.

4320 (10) (a) The court may amend a minor's primary permanency plan before the
4321 establishment of a final permanency plan under Section 78A-6-314.

4322 (b) The court is not limited to the terms of the concurrent permanency plan in the event
4323 that the primary permanency plan is abandoned.

4324 (c) If, at any time, the court determines that reunification is no longer a minor's primary
4325 permanency plan, the court shall conduct a permanency hearing in accordance with Section
4326 78A-6-314 on or before the earlier of:

4327 (i) 30 days after the day on which the court makes the determination described in this
4328 Subsection (10)(c); or

4329 (ii) the day on which the provision of reunification services, described in Section
4330 78A-6-314, ends.

4331 (11) (a) If the court determines that reunification services are appropriate, ~~[it]~~ the court
4332 shall order that the division make reasonable efforts to provide services to the minor and the
4333 minor's parent for the purpose of facilitating reunification of the family, for a specified period
4334 of time.

4335 (b) In providing the services described in Subsection (11)(a), the minor's health, safety,
4336 and welfare shall be the division's paramount concern, and the court shall so order.

4337 (12) (a) The court shall:

4338 (i) determine whether the services offered or provided by the division under the child
4339 and family plan constitute "reasonable efforts" on the part of the division;

4340 (ii) determine and define the responsibilities of the parent under the child and family
4341 plan in accordance with Subsection 62A-4a-205(6)(e); and

4342 (iii) identify verbally on the record, or in a written document provided to the parties,
4343 the responsibilities described in Subsection (12)(a)(ii), for the purpose of assisting in any future
4344 determination regarding the provision of reasonable efforts, in accordance with state and
4345 federal law.

4346 (b) If the parent is in a substance [~~abuse~~] use disorder treatment program, other than a
4347 certified drug court program:

4348 (i) the court may order the parent to submit to supplementary drug or alcohol testing in
4349 addition to the testing recommended by the parent's substance [~~abuse~~] use disorder program
4350 based on a finding of reasonable suspicion that the parent is abusing drugs or alcohol; and

4351 (ii) the court may order the parent to provide the results of drug or alcohol testing
4352 recommended by the substance [~~abuse~~] use disorder program to the court or division.

4353 (13) (a) The time period for reunification services may not exceed 12 months from the
4354 date that the minor was initially removed from the minor's home, unless the time period is
4355 extended under Subsection 78A-6-314(7).

4356 (b) Nothing in this section may be construed to entitle any parent to an entire 12
4357 months of reunification services.

4358 (14) (a) If reunification services are ordered, the court may terminate those services at
4359 any time.

4360 (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined
4361 to be inconsistent with the final permanency plan for the minor established pursuant to Section
4362 78A-6-314, then measures shall be taken, in a timely manner, to:

4363 (i) place the minor in accordance with the permanency plan; and

4364 (ii) complete whatever steps are necessary to finalize the permanent placement of the
4365 minor.

4366 (15) Any physical custody of the minor by the parent or a relative during the period
4367 described in Subsections (11) through (14) does not interrupt the running of the period.

4368 (16) (a) If reunification services are ordered, a permanency hearing shall be conducted
4369 by the court in accordance with Section 78A-6-314 at the expiration of the time period for
4370 reunification services.

4371 (b) The permanency hearing shall be held no later than 12 months after the original
4372 removal of the minor.

4373 (c) If reunification services are not ordered, a permanency hearing shall be conducted
4374 within 30 days, in accordance with Section 78A-6-314.

4375 (17) With regard to a minor in the custody of the division whose parent or parents are
4376 ordered to receive reunification services but who have abandoned that minor for a period of six
4377 months from the date that reunification services were ordered:

4378 (a) the court shall terminate reunification services; and

4379 (b) the division shall petition the court for termination of parental rights.

4380 (18) When a court conducts a permanency hearing for a minor under Section
4381 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the
4382 sibling group together is:

4383 (a) practicable; and

4384 (b) in accordance with the best interest of the minor.

4385 (19) (a) Because of the state's interest in and responsibility to protect and provide
4386 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a
4387 parent's interest in receiving reunification services is limited.

4388 (b) The court may determine that:

4389 (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate,
4390 based on the individual circumstances; and

4391 (ii) reunification services should not be provided.

4392 (c) In determining "reasonable efforts" to be made with respect to a minor, and in
4393 making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount
4394 concern.

4395 (20) There is a presumption that reunification services should not be provided to a
4396 parent if the court finds, by clear and convincing evidence, that any of the following
4397 circumstances exist:

4398 (a) the whereabouts of the parents are unknown, based upon a verified affidavit

4399 indicating that a reasonably diligent search has failed to locate the parent;

4400 (b) subject to Subsection (21)(a), the parent is suffering from a mental illness of such

4401 magnitude that it renders the parent incapable of utilizing reunification services;

4402 (c) the minor was previously adjudicated as an abused child due to physical abuse,

4403 sexual abuse, or sexual exploitation, and following the adjudication the minor:

4404 (i) was removed from the custody of the minor's parent;

4405 (ii) was subsequently returned to the custody of the parent; and

4406 (iii) is being removed due to additional physical abuse, sexual abuse, or sexual

4407 exploitation;

4408 (d) the parent:

4409 (i) caused the death of another minor through abuse or neglect;

4410 (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

4411 (A) murder or manslaughter of a child; or

4412 (B) child abuse homicide;

4413 (iii) committed sexual abuse against the child;

4414 (iv) is a registered sex offender or required to register as a sex offender; or

4415 (v) (A) intentionally, knowingly, or recklessly causes the death of another parent of the

4416 child;

4417 (B) is identified by a law enforcement agency as the primary suspect in an investigation

4418 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

4419 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or

4420 recklessly causing the death of another parent of the child;

4421 (e) the minor suffered severe abuse by the parent or by any person known by the

4422 parent, if the parent knew or reasonably should have known that the person was abusing the

4423 minor;

4424 (f) the minor is adjudicated an abused child as a result of severe abuse by the parent,

4425 and the court finds that it would not benefit the minor to pursue reunification services with the

4426 offending parent;

4427 (g) the parent's rights are terminated with regard to any other minor;

4428 (h) the minor was removed from the minor's home on at least two previous occasions

4429 and reunification services were offered or provided to the family at those times;

- 4430 (i) the parent has abandoned the minor for a period of six months or longer;
- 4431 (j) the parent permitted the child to reside, on a permanent or temporary basis, at a
4432 location where the parent knew or should have known that a clandestine laboratory operation
4433 was located;
- 4434 (k) except as provided in Subsection (21)(b), with respect to a parent who is the child's
4435 birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was
4436 exposed to an illegal or prescription drug that was abused by the child's mother while the child
4437 was in utero, if the child was taken into division custody for that reason, unless the mother
4438 agrees to enroll in, is currently enrolled in, or has recently and successfully completed a
4439 substance [~~abuse~~] use disorder treatment program approved by the department; or
- 4440 (l) any other circumstance that the court determines should preclude reunification
4441 efforts or services.
- 4442 (21) (a) The finding under Subsection (20)(b) shall be based on competent evidence
4443 from at least two medical or mental health professionals, who are not associates, establishing
4444 that, even with the provision of services, the parent is not likely to be capable of adequately
4445 caring for the minor within 12 months after the day on which the court finding is made.
- 4446 (b) A judge may disregard the provisions of Subsection (20)(k) if the court finds, under
4447 the circumstances of the case, that the substance [~~abuse~~] use disorder treatment described in
4448 Subsection (20)(k) is not warranted.
- 4449 (22) In determining whether reunification services are appropriate, the court shall take
4450 into consideration:
- 4451 (a) failure of the parent to respond to previous services or comply with a previous child
4452 and family plan;
- 4453 (b) the fact that the minor was abused while the parent was under the influence of
4454 drugs or alcohol;
- 4455 (c) any history of violent behavior directed at the child or an immediate family
4456 member;
- 4457 (d) whether a parent continues to live with an individual who abused the minor;
- 4458 (e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;
- 4459 (f) testimony by a competent professional that the parent's behavior is unlikely to be
4460 successful; and

4461 (g) whether the parent has expressed an interest in reunification with the minor.

4462 (23) (a) If reunification services are not ordered pursuant to Subsections (19) through
4463 (21), and the whereabouts of a parent become known within six months after the day on which
4464 the out-of-home placement of the minor is made, the court may order the division to provide
4465 reunification services.

4466 (b) The time limits described in Subsections (2) through (18) are not tolled by the
4467 parent's absence.

4468 (24) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable
4469 services unless [it] the court determines that those services would be detrimental to the minor.

4470 (b) In making the determination described in Subsection (24)(a), the court shall
4471 consider:

4472 (i) the age of the minor;

4473 (ii) the degree of parent-child bonding;

4474 (iii) the length of the sentence;

4475 (iv) the nature of the treatment;

4476 (v) the nature of the crime or illness;

4477 (vi) the degree of detriment to the minor if services are not offered;

4478 (vii) for a minor 10 years old or older, the minor's attitude toward the implementation
4479 of family reunification services; and

4480 (viii) any other appropriate factors.

4481 (c) Reunification services for an incarcerated parent are subject to the time limitations
4482 imposed in Subsections (2) through (18).

4483 (d) Reunification services for an institutionalized parent are subject to the time
4484 limitations imposed in Subsections (2) through (18), unless the court determines that continued
4485 reunification services would be in the minor's best interest.

4486 (25) If, pursuant to Subsections (20)(b) through (l), the court does not order
4487 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
4488 with Section 78A-6-314.

4489 Section 61. Section 78A-6-401 is amended to read:

4490 **78A-6-401. Attorney general responsibility.**

4491 ~~[(1) The processes and procedures described in Part 3, Abuse, Neglect, and~~

Dependency Proceedings, designed to meet the needs of minors who are abused or neglected, are not applicable to a minor who is committed to the custody of the Division of Child and Family Services on a basis other than abuse or neglect and who are classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense.]

[(2) The procedures described in Subsection 78A-6-118(2)(a) are applicable to a minor described in Subsection (1).]

[(3) The court may appoint a guardian ad litem to represent the interests of a minor described in Subsection (1), upon request of the minor or the minor's parent or guardian.]

[(4) As of July 1, 1998, the]

The attorney general's office shall represent the Division of Child and Family Services with regard to actions involving a minor who has not been adjudicated as abused or neglected, but who is [otherwise committed to the custody of the division by the juvenile court, and who is classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense. Nothing in Subsection (3) may be construed to affect the responsibility of the county attorney or district attorney to represent the state in those matters, in accordance with the provisions of Section 78A-6-115] ordered to complete in-home family services under Section 78A-6-117.

Section 62. Section 78A-6-602 is amended to read:

78A-6-602. Petition -- Preliminary inquiry -- Nonjudicial adjustments -- Formal referral -- Citation -- Failure to appear.

(1) A proceeding in a minor's case is commenced by petition, except as provided in Sections 78A-6-701, 78A-6-702, and 78A-6-703.

(2) (a) A peace officer or [any] a public official of the state, [any] a county, city, or town charged with the enforcement of the laws of the state or local jurisdiction shall file a formal referral with the prosecutor and the juvenile court within 10 days of a minor's arrest. If the arrested minor is taken to a detention facility, the formal referral shall be filed with the prosecutor and the juvenile court within 72 hours, excluding weekends and holidays. [There shall be no requirement to file a] A formal referral under Section 53A-11-911 may not be filed with the prosecutor or with the juvenile court on an offense [that would be a class B misdemeanor or less if committed by an adult] unless the offense is subject to referral under

Section [53A-11-911](#).

(b) Upon receipt of the formal referral, the prosecutor shall without unnecessary delay review the case and determine whether further action is to be taken. Further action may only be taken upon reasonable belief that:

(i) the charges are supported by probable cause;

(ii) admissible evidence will be sufficient to support conviction beyond a reasonable doubt; and

(iii) the decision to charge is in the interests of justice.

~~[(b)] (c) (i) When the court is informed by [a peace officer or other person] the prosecutor that a minor is or appears to be within the court's jurisdiction, the probation department shall [make a preliminary inquiry to] determine whether [the interests of the public or of the minor require that further action be taken. (c) (i) Based on the preliminary inquiry, the court may authorize the filing of or request that the county attorney or district attorney as provided under Section [17-18a-202](#) or [17-18a-203](#) file a petition. (ii) In its discretion, the court may, through its probation department,] to enter into a written consent agreement with the minor and, if the minor is a child, the minor's parent, guardian, or custodian for the nonjudicial adjustment of the case [if the facts are admitted and establish prima facie jurisdiction]. The court, through the court's probation department, shall offer a nonjudicial adjustment if the minor:~~

~~(A) is charged with a misdemeanor, infraction, or status offense;~~

~~(B) has fewer than three prior adjudications; and~~

~~(C) has no more than three prior unsuccessful nonjudicial adjustment attempts.~~

~~(ii) The court may, through the court's probation department, offer a nonjudicial adjustment to any other minor who does not meet the criteria provided in Subsection (2)(c)(i).~~

~~(iii) Acceptance of an offer of nonjudicial adjustment may not be predicated on an admission of guilt.~~

~~(iv) A minor shall be offered the opportunity to seek the advice of counsel after receiving but before accepting an offer of nonjudicial adjustment.~~

~~(v) A minor may not be denied an offer of nonjudicial adjustment due to an inability to pay a financial penalty under Subsection (2)(d).~~

~~[(iii)] (vi) Efforts to effect a nonjudicial adjustment may not extend for a period of~~

4554 more than 90 days without leave of a judge of the court, who may extend the period for an
4555 additional 90 days.

4556 (d) The nonjudicial adjustment of a case may include conditions agreed upon as part of
4557 the nonjudicial closure:

4558 (i) payment of a financial penalty of not more than \$250 to the juvenile court subject to
4559 the terms established under Subsection (2)(e);

4560 (ii) payment of victim restitution;

4561 (iii) satisfactory completion of compensatory service;

4562 (iv) referral to an appropriate provider for counseling or treatment;

4563 (v) attendance at substance ~~[abuse]~~ use disorder programs or counseling programs;

4564 (vi) compliance with specified restrictions on activities and associations; and

4565 (vii) other reasonable actions that are in the interest of the child or minor and the
4566 community.

4567 ~~[(e) Proceedings involving offenses under Section 78A-6-606 are governed by that~~
4568 ~~section regarding suspension of driving privileges.]~~

4569 (e) A fee, fine, or restitution included in a nonjudicial closure in accordance with
4570 Subsection (2)(d) shall be based upon the ability of the minor's family to pay as determined by
4571 a statewide sliding scale developed as provided in Section 63M-7-208.

4572 (f) If a minor fails to substantially comply with the conditions agreed upon as part of
4573 the nonjudicial closure, the prosecutor shall review the case in accordance with Subsection
4574 (2)(b) and take one of the following actions:

4575 (i) dismiss the case;

4576 (ii) refer the case back to the probation department for a new attempt at nonjudicial
4577 adjustment; or

4578 (iii) in accordance with Subsections (2)(b) and (g), file a petition with the court.

4579 (g) Failure to pay a fine or fee may not serve as a basis for filing of a petition under
4580 Subsection (2)(f)(iii) if the minor has substantially complied with the other conditions agreed
4581 upon in accordance with Subsection (2)(d) or those imposed through any other court diversion
4582 program.

4583 ~~[(f)]~~ (h) A violation of Section 76-10-105 that is subject to the jurisdiction of the
4584 juvenile court ~~[shall]~~ may include a ~~[minimum]~~ fine or penalty ~~[of \$60]~~ and participation in a

4585 court-approved tobacco education program, which may include a participation fee.

4586 (i) If the prosecutor files a petition in court, the court may refer the case to the
4587 probation department for another offer of nonjudicial adjustment.

4588 (3) Except as provided in Sections 78A-6-701 and 78A-6-702, in the case of a minor
4589 14 years of age or older, the county attorney, district attorney, or attorney general may
4590 commence an action by filing a criminal information and a motion requesting the juvenile court
4591 to waive its jurisdiction and certify the minor to the district court.

4592 (4) (a) In cases of violations of wildlife laws, boating laws, class B and class C
4593 misdemeanors, other infractions or misdemeanors as designated by general order of the Board
4594 of Juvenile Court Judges, and violations of Section 76-10-105 subject to the jurisdiction of the
4595 juvenile court, a petition is not required and the issuance of a citation as provided in Section
4596 78A-6-603 is sufficient to invoke the jurisdiction of the court. A preliminary inquiry is [not]
4597 required [~~unless requested by the court~~].

4598 (b) Any failure to comply with the time deadline on a formal referral may not be the
4599 basis of dismissing the formal referral.

4600 Section 63. Section 78A-6-603 is amended to read:

4601 **78A-6-603. Citation procedure -- Citation -- Offenses -- Time limits -- Failure to**
4602 **appear.**

4603 (1) As used in this section, "citation" means an abbreviated referral and is sufficient to
4604 invoke the jurisdiction of the court in lieu of a petition.

4605 (2) A citation shall be submitted to the prosecutor and the court within five days of its
4606 issuance.

4607 (3) [~~Each~~] A copy of the citation shall contain:

4608 (a) the name and address of the juvenile court before which the minor [is] may be
4609 required to appear;

4610 (b) the name of the minor cited;

4611 (c) the statute or local ordinance that is alleged to have been violated;

4612 (d) a brief description of the offense charged;

4613 (e) the date, time, and location at which the offense is alleged to have occurred;

4614 (f) the date the citation was issued;

4615 (g) the name and badge or identification number of the peace officer or public official

4616 who issued the citation;

4617 (h) the name of the arresting person if an arrest was made by a private party and the
4618 citation was issued in lieu of taking the arrested minor into custody as provided in Section
4619 78A-6-112;

4620 (i) ~~[the date and time when the minor is to appear, or]~~ a statement that the minor and
4621 parent or legal guardian are to appear when notified by the prosecutor or the juvenile court; and

4622 (j) the signature of the minor and the parent or legal guardian, if present, agreeing to
4623 appear at the juvenile court as designated on the citation.

4624 (4) ~~[Each]~~ A copy of the citation shall contain space for the following information to
4625 be entered if known:

4626 (a) the minor's address;

4627 (b) the minor's date of birth;

4628 (c) the name and address of the child's custodial parent or legal guardian, if different
4629 from the child; and

4630 (d) if there is a victim, the victim's name, address, and an estimate of loss, except that
4631 this information shall be removed from the documents the minor receives.

4632 (5) A citation received by the prosecutor and the court beyond the time designated in
4633 Subsection (2) shall include a written explanation for the delay.

4634 (6) ~~[The]~~ In accordance with Section 53A-11-911, the following offenses may be sent
4635 to the prosecutor and the juvenile court as a citation:

4636 (a) violations of wildlife laws;

4637 (b) violations of boating laws;

4638 (c) violations of curfew laws;

4639 (d) any class B misdemeanor or less traffic violations where the person is under the age
4640 of 16;

4641 (e) any class B or class C misdemeanor or infraction;

4642 (f) any other infraction or misdemeanor as designated by general order of the Board of
4643 Juvenile Court Judges; and

4644 (g) violations of Section 76-10-105 subject to the jurisdiction of the juvenile court.

4645 ~~[(7) A preliminary inquiry is not required unless requested by the court.]~~

4646 ~~[(8) The provisions of Subsection (5) may not apply to a runaway, ungovernable, or~~

4647 ~~habitually truant child.]~~

4648 ~~[(9) In the case of Section 76-10-105 violations committed on school property when a~~
4649 ~~citation is issued under this section, the peace officer, public official, or compliance officer~~
4650 ~~shall issue one copy to the minor cited, provide the parent or legal guardian with a copy, and~~
4651 ~~file a duplicate with the juvenile court specified in the citation within five days.]~~

4652 (7) A minor offense defined under Section 78A-6-1202, alleged to have been
4653 committed by an enrolled child on school grounds or related to school attendance, may be sent
4654 to the prosecutor or the juvenile court in accordance with Section 53A-11-911.

4655 (8) A preliminary inquiry by the prosecutor, and if appropriate, the court, under Section
4656 78A-6-117 is required.

4657 (9) Subsection (5) may not apply to a runaway child.

4658 (10) (a) A minor receiving a citation described in this section shall appear at the
4659 juvenile court designated in the citation on the time and date specified in the citation or when
4660 notified by the juvenile court.

4661 (b) A citation may not require a minor to appear sooner than five days following its
4662 issuance.

4663 (11) A minor who receives a citation and willfully fails to appear before the juvenile
4664 court pursuant to a citation ~~[is subject to arrest and]~~ may be found in contempt of court. The
4665 court may proceed against the minor as provided in Section 78A-6-1101 ~~[regardless of the~~
4666 ~~disposition of the offense upon which the minor was originally cited]~~.

4667 (12) When a citation is issued under this section, bail may be posted and forfeited
4668 under Subsection 78A-6-113~~[(12)]~~(13) with the consent of:

4669 (a) the court; and

4670 (b) if the minor is a child, the parent or legal guardian of the child cited.

4671 Section 64. Section 78A-6-604 is amended to read:

4672 **78A-6-604. Minor held in detention -- Credit for good behavior.**

4673 (1) ~~[The judge may order whether a]~~ A minor held in detention under Subsection
4674 78A-6-117(2)(f) [or 78A-6-1101(3)] is eligible to receive credit for good behavior against the
4675 period of detention. The rate of credit is one day for every three days served. The Division of
4676 Juvenile Justice Services shall, in accordance with Title 63G, Chapter 3, Utah Administrative
4677 Rulemaking Act, establish rules describing good behavior for which credit may be earned.

(2) Any disposition including detention under Subsection ~~78A-6-117~~(2)(f) [~~or 78A-6-1101(3)~~] shall be concurrent with any other order of detention.

Section 65. Section ~~78A-6-606~~ is amended to read:

78A-6-606. Suspension of license for certain offenses.

(1) This section applies to a minor who is at least [~~13 years of age~~] the age eligible for a driver license under Section 53-3-204 when found by the court to be within its jurisdiction by the commission of an offense under:

(a) Section ~~32B-4-409~~;

(b) Section ~~32B-4-410~~;

(c) Section ~~32B-4-411~~;

(d) Section ~~58-37-8~~;

(e) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(f) Title 58, Chapter 37b, Imitation Controlled Substances Act; or

(g) Subsection ~~76-9-701~~(1).

(2) This section only applies when the minor is found by the court to be in actual control of a motor vehicle during the commission of one of the offenses under Subsection (1).

~~[(2)]~~ (3) If the court hearing the case determines that the minor committed an offense under Section ~~58-37-8~~ or Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b, Imitation Controlled Substances Act, the court [~~shall~~] may prepare and send to the Driver License Division of the Department of Public Safety an order to suspend that minor's driving privileges.

~~[(3)]~~ (4) (a) The court hearing the case [~~shall~~] may suspend the minor's driving privileges if the minor violated Section ~~32B-4-409~~, Section ~~32B-4-410~~, or Subsection ~~76-9-701~~(1).

(b) [~~Notwithstanding the requirement in Subsection (2) or (3)(a), the~~] The court may reduce [~~the~~] a suspension period [~~required~~] imposed under Section ~~53-3-219~~ if:

(i) the violation is the minor's first violation of:

(A) Section ~~32B-4-409~~;

(B) Section ~~32B-4-410~~;

(C) Section ~~58-37-8~~;

(D) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

4709 (E) Title 58, Chapter 37b, Imitation Controlled Substances Act; or
4710 (F) Subsection 76-9-701(1); and
4711 (ii) (A) the minor completes an educational series as defined in Section 41-6a-501; or
4712 (B) the minor demonstrates substantial progress in substance ~~[abuse]~~ use disorder
4713 treatment.
4714 (c) ~~[Notwithstanding the requirement in Subsection (2) or (3)(a) and in accordance~~
4715 ~~with the requirements of Section 53-3-219, the]~~ The court may reduce the suspension period
4716 required under Section 53-3-219 if:
4717 (i) the violation is the minor's second or subsequent violation of:
4718 (A) Section 32B-4-409;
4719 (B) Section 32B-4-410;
4720 (C) Section 58-37-8;
4721 (D) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
4722 (E) Title 58, Chapter 37b, Imitation Controlled Substances Act; or
4723 (F) Subsection 76-9-701(1);
4724 (ii) the minor has completed an educational series as defined in Section 41-6a-501 or
4725 demonstrated substantial progress in substance ~~[abuse]~~ use disorder treatment; and
4726 (iii) (A) the person is 18 years of age or older and provides a sworn statement to the
4727 court that the person has not unlawfully consumed alcohol or drugs for at least a one-year
4728 consecutive period during the suspension period imposed under Subsection ~~[(3)]~~ (4)(a); or
4729 (B) the person is under 18 years of age and has the person's parent or legal guardian
4730 provide an affidavit or sworn statement to the court certifying that to the parent or legal
4731 guardian's knowledge the person has not unlawfully consumed alcohol or drugs for at least a
4732 one-year consecutive period during the suspension period imposed under Subsection ~~[(3)]~~
4733 (4)(a).
4734 (d) If a minor commits a proof of age violation, as defined in Section 32B-4-411:
4735 (i) the court ~~[shall]~~ may forward a record of adjudication to the Department of Public
4736 Safety for a first or subsequent violation; and
4737 (ii) the minor's driving privileges will be suspended:
4738 (A) for a period of at least one year under Section 53-3-220 for a first conviction for a
4739 violation of Section 32B-4-411; or

4740 (B) for a period of two years for a second or subsequent conviction for a violation of
4741 Section 32B-4-411.

4742 (e) [~~Notwithstanding the requirement in Subsection (3)(d), the~~] The court may reduce
4743 the suspension period imposed under Subsection [~~(3)~~] (4)(d)(ii)(A) if:

4744 (i) the violation is the minor's first violation of Section 32B-4-411; and

4745 (ii) (A) the minor completes an educational series as defined in Section 41-6a-501; or

4746 (B) the minor demonstrates substantial progress in substance [~~abuse~~] use disorder
4747 treatment.

4748 (f) [~~Notwithstanding the requirement in Subsection (3)(d), the~~] The court may reduce
4749 the suspension period imposed under Subsection [~~(3)~~] (4)(d)(ii)(B) if:

4750 (i) the violation is the minor's second or subsequent violation of Section 32B-4-411;

4751 (ii) the minor has completed an educational series as defined in Section 41-6a-501 or
4752 demonstrated substantial progress in substance [~~abuse~~] use disorder treatment; and

4753 (iii) (A) the person is 18 years of age or older and provides a sworn statement to the
4754 court that the person has not unlawfully consumed alcohol or drugs for at least a one-year
4755 consecutive period during the suspension period imposed under Subsection [~~(3)~~] (4)(d)(ii)(B);
4756 or

4757 (B) the person is under 18 years of age and has the person's parent or legal guardian
4758 provide an affidavit or sworn statement to the court certifying that to the parent or legal
4759 guardian's knowledge the person has not unlawfully consumed alcohol or drugs for at least a
4760 one-year consecutive period during the suspension period imposed under Subsection [~~(3)~~]
4761 (4)(d)(ii)(B).

4762 [~~(4)~~] (5) A minor's license shall be suspended under Section 53-3-219 when a court
4763 issues an order suspending the minor's driving privileges in accordance with Subsection (2) for
4764 a violation of:

4765 (a) Section 32B-4-409;

4766 (b) Section 32B-4-410;

4767 (c) Section 58-37-8;

4768 (d) Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 37b, Imitation
4769 Controlled Substances Act; or

4770 (e) Subsection 76-9-701(1).

[~~(5)~~] (6) When the Department of Public Safety receives the arrest or conviction record of a person for a driving offense committed while the person's license is suspended under this section, the Department of Public Safety shall extend the suspension for a like period of time.

Section 66. Section **78A-6-701** is amended to read:

78A-6-701. Jurisdiction of district court.

(1) The district court has exclusive original jurisdiction over all persons 16 years of age or older charged with~~[(a)]~~ an offense ~~[which]~~ that would be murder or aggravated murder if committed by an adult~~;~~.

~~[(b) if the minor has been previously committed to a secure facility as defined in Section 62A-7-101, a felony violation of:]~~

~~[(i) Section 76-6-103, aggravated arson;]~~

~~[(ii) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;]~~

~~[(iii) Section 76-5-302, aggravated kidnapping;]~~

~~[(iv) Section 76-6-203, aggravated burglary;]~~

~~[(v) Section 76-6-302, aggravated robbery;]~~

~~[(vi) Section 76-5-405, aggravated sexual assault;]~~

~~[(vii) Section 76-10-508.1, felony discharge of a firearm;]~~

~~[(viii) Section 76-5-202, attempted aggravated murder; or]~~

~~[(ix) Section 76-5-203, attempted murder; or]~~

~~[(c) an offense other than those listed in Subsection (1)(b) involving the use of a dangerous weapon, which would be a felony if committed by an adult, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon, which also would have been a felony if committed by an adult.]~~

(2) When the district court has exclusive original jurisdiction over a minor under this section, it also has exclusive original jurisdiction over the minor regarding all offenses joined with the qualifying offense, and any other offenses, including misdemeanors, arising from the same criminal episode. The district court is not divested of jurisdiction by virtue of the fact that the minor is allowed to enter a plea to, or is found guilty of, a lesser or joined offense.

(3) (a) ~~[Any]~~ A felony, misdemeanor, or infraction committed after the offense over which the district court takes jurisdiction under Subsection (1) or (2) shall be tried against the defendant as an adult in the district court or justice court having jurisdiction.

(b) If the qualifying charge under Subsection (1) results in an acquittal, a finding of not guilty, or a dismissal of the charge in the district court, the juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain any jurisdiction and authority previously exercised over the minor.

(4) A minor arrested under this section shall be held in a juvenile detention facility until the district court determines where the minor shall be held until the time of trial, except for defendants who are otherwise subject to the authority of the Board of Pardons and Parole.

(5) The district court shall consider the following when determining where the minor will be held until the time of trial:

- (a) the age of the minor;
- (b) the nature, seriousness, and circumstances of the alleged offense;
- (c) the minor's history of prior criminal acts;
- (d) whether detention in a juvenile detention facility will adequately serve the need for community protection pending the outcome of any criminal proceedings;
- (e) whether the minor's placement in a juvenile detention facility will negatively impact the functioning of the facility by compromising the goals of the facility to maintain a safe, positive, and secure environment for all minors within the facility;
- (f) the relative ability of the facility to meet the needs of the minor and protect the public;
- (g) whether the minor presents an imminent risk of harm to the minor or others within the facility;
- (h) the physical maturity of the minor;
- (i) the current mental state of the minor as evidenced by relevant mental health or psychological assessments or screenings that are made available to the court; and
- (j) any other factors the court considers relevant.

(6) A minor ordered to a juvenile detention facility under Subsection (5) shall remain in the facility until released by a district court judge, or if convicted, until sentencing.

(7) A minor held in a juvenile detention facility under this section shall have the same right to bail as any other criminal defendant.

(8) If the minor ordered to a juvenile detention facility under Subsection (5) attains the age of 18 years, the minor shall be transferred within 30 days to an adult jail until released by

the district court judge, or if convicted, until sentencing.

(9) A minor 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the juvenile detention facility may, by court order that specifies the reasons, be detained in another place of confinement considered appropriate by the court, including jail or other place of pretrial confinement for adults.

Section 67. Section **78A-6-1101** is amended to read:

78A-6-1101. Violation of order of court -- Contempt -- Penalty -- Enforcement of fine, fee, or restitution.

(1) ~~[Any]~~ A person who willfully violates or refuses to obey any order of the court may be proceeded against for contempt of court.

(2) ~~[Any]~~ A person 18 years of age or older found in contempt of court may be punished in accordance with Section **78B-6-310**.

(3) (a) ~~[Any]~~ A person younger than 18 years of age found in contempt of court may be punished by ~~[any]~~ disposition permitted under Section **78A-6-117**, except ~~[for commitment to a secure facility]~~ the court may only order a disposition that changes the custody of the minor, including community placement or commitment to a secure facility, if the disposition is commitment to a secure detention pursuant to Subsection **78A-6-117**(2)(f) for no longer than 72 hours, excluding weekends and legal holidays.

(b) ~~[The]~~ A court may ~~[stay or]~~ not suspend all or part of the punishment upon compliance with conditions imposed by the court.

(4) ~~[The]~~ In accordance with Section **78A-6-117**, the court may enforce [orders of fines, fees, or restitution through garnishments, wage withholdings, supplementary proceedings, or executions] an order of a fine, fee, restitution through garnishment, wage withholding, supplementary proceeding, or execution. An order described in this Subsection (4) may not be enforced through an order of detention, community placement, or commitment to a secure facility.

Section 68. Section **78A-6-1111** is amended to read:

78A-6-1111. Right to counsel -- Appointment of counsel -- Costs.

(1) (a) In ~~[any]~~ an action in juvenile court initiated by the state, a political subdivision of the state, or a private party, the parents, legal guardian, and the minor, ~~[where]~~ when applicable, shall be informed that ~~[they]~~ the parents, the legal guardian, and the minor may be

4864 represented by counsel at every stage of the proceedings.

4865 (b) In any action initiated by a private party, the parents or legal guardian shall have the
4866 right to employ counsel of their own choice at ~~[their]~~ the parent's or legal guardian's own
4867 expense.

4868 (c) If, in any action initiated by the state or a political subdivision of the state under
4869 Part 3, Abuse, Neglect, and Dependency Proceedings~~;~~₂ Part 5, Termination of Parental Rights
4870 Act~~;~~₂ or Part 10, Adult Offenses, ~~[of this chapter]~~ or under Section 78A-6-1101, a parent or
4871 legal guardian requests an attorney and is found by the court to be indigent, counsel shall be
4872 appointed by the court to represent the parent or legal guardian in all proceedings directly
4873 related to the petition or motion filed by the state, or a political subdivision of the state, subject
4874 to the provisions of this section.

4875 (d) In any action initiated by the state, a political subdivision of the state, or a private
4876 party under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of
4877 Parental Rights Act, ~~[of this chapter,]~~ the child shall be represented by a guardian ad litem in
4878 accordance with Sections 78A-6-317 and 78A-6-902. The child shall also be represented by an
4879 attorney guardian ad litem in other actions initiated under this chapter when appointed by the
4880 court under Section 78A-6-902 or as otherwise provided by law.

4881 (e) In any action initiated by the state or a political subdivision of the state under Part
4882 6, Delinquency and Criminal Actions, or Part 7, Transfer of Jurisdiction, of this chapter, or
4883 against a minor under Section 78A-6-1101, the parents or legal guardian and the minor shall be
4884 informed that the minor has the right to be represented by counsel at every stage of the
4885 proceedings.

4886 (i) ~~[In cases where a petition or information alleging a felony-level offense is filed, the]~~
4887 The court shall appoint counsel, who shall appear until counsel is retained on the minor's
4888 behalf. The minor may not waive counsel unless the minor has had a meaningful opportunity
4889 to consult with a defense attorney. The court shall make findings on the record, taking into
4890 consideration the minor's unique circumstances and attributes, that the waiver is knowing and
4891 voluntary and the minor understands the consequences of waiving the right to counsel.

4892 (ii) ~~[In all other cases in which a petition is filed the]~~ The right to counsel may not be
4893 waived by a minor unless there has been a finding on the record, taking into consideration the
4894 minor's unique circumstances and attributes, that the waiver is knowing and voluntary, and the

minor understands the consequences of waiving the right to counsel.

(iii) ~~[If the minor is found to be indigent, counsel]~~ A determination of indigence may not be required for a minor to qualify for appointed counsel. Counsel shall be appointed by the court to represent the minor in all proceedings directly related to [the] a petition or a motion filed by the state or a political subdivision of the state, including restitution, subject to the provisions of this section. Appointment of counsel shall extend through the closure of the case and appellate proceedings.

(iv) For an offer of nonjudicial adjustment, a minor shall be given an opportunity to consult counsel in accordance with Subsection 78A-6-602(2).

(f) Indigency of a parent, legal guardian, or minor shall be determined in accordance with the process and procedure defined in Section 77-32-202 for the purposes of reimbursement only. The court shall take into account the income and financial ability of the parent or legal guardian to retain counsel in determining the indigency of the minor.

(g) The cost of appointed counsel for a party found to be indigent, including the cost of counsel and expense of the first appeal, shall be paid by the county in which the trial court proceedings are held pursuant to Section 77-32-804. Counties may levy and collect taxes for these purposes.

(2) Counsel appointed by the court may not provide representation as court-appointed counsel for a parent or legal guardian in any action initiated by, or in any proceeding to modify court orders in a proceeding initiated by, a private party, except that in a private action to terminate parental rights the court may appoint counsel to represent an indigent parent if it finds that the failure to appoint counsel will result in a deprivation of due process.

(3) If the county responsible to provide legal counsel for an indigent under Subsection (1)(g) has arranged by contract to provide services, the court shall appoint the contracting attorney as legal counsel to represent that indigent.

(4) The court may order a parent or legal guardian for whom counsel is appointed and for whom a determination of indigence under Subsection (1)(g) has not been made, and the parents or legal guardian of any minor for whom counsel is appointed, to reimburse the county for the cost of appointed counsel.

(5) The state, or an agency of the state, may not be ordered to reimburse the county for expenses incurred under Subsection (1)(g), except pursuant to Section 77-32-804.

Section 69. Section **78A-6-1202** is amended to read:

78A-6-1202. Definitions.

(1) "Adult" means a person 18 years of age or older.

(2) (a) "Gang activity" means any criminal activity that is conducted as part of an organized youth gang. It includes any criminal activity that is done in concert with other gang members, or done alone if it is to fulfill gang purposes.

(b) "Gang activity" does not include graffiti.

(3) (a) "Minor offense" means any unlawful act that is a status offense or would be a [class B or C] misdemeanor, infraction, or violation of a municipal or county ordinance if the youth were an adult.

(b) "Minor offense" does not include:

~~[(a)] (i) a class A [misdemeanors] misdemeanor; or~~

~~[(b)] (ii) [felonies] a felony of any degree[;].~~

~~[(c) any offenses that are committed as part of gang activity;]~~

~~[(d) any of the following offenses which would carry mandatory dispositions if referred to the juvenile court under Section 78A-6-606:]~~

~~[(i) a second violation of Section 32B-4-409, Unlawful Purchase, Possession or Consumption by Minors -- Measurable Amounts in Body;]~~

~~[(ii) a violation of Section 41-6a-502, Driving Under the Influence;]~~

~~[(iii) a violation of Section 58-37-8, Controlled Substances Act;]~~

~~[(iv) a violation of Title 58, Chapter 37a, Utah Drug Paraphernalia Act;]~~

~~[(v) a violation of Title 58, Chapter 37b, Imitation Controlled Substances Act; or]~~

~~[(vi) a violation of Section 76-9-701, Intoxication; or]~~

~~[(e) any offense where a dangerous weapon, as defined in Subsection 76-1-601(5), is used in the commission of the offense.]~~

(4) "Sponsoring entity" means any political subdivision of the state, including a school or school district, juvenile court, law enforcement agency, prosecutor's office, county, city, or town.

(5) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

(6) "Youth" means a person under the age of 18 years or who is 18 but still attending

4957 high school.

4958 Section 70. Section **78A-6-1203** is amended to read:

4959 **78A-6-1203. Youth court -- Authorization -- Referral.**

4960 (1) Youth court is a diversion program ~~[which]~~ that provides an alternative disposition
4961 for cases involving juvenile offenders in which youth participants, under the supervision of an
4962 adult coordinator, may serve in various capacities within the courtroom, acting in the role of
4963 jurors, lawyers, bailiffs, clerks, and judges.

4964 (a) Youth who appear before youth courts have been identified by law enforcement
4965 personnel, school officials, a prosecuting attorney, or the juvenile court as having committed
4966 acts which indicate a need for intervention to prevent further development toward juvenile
4967 delinquency, but which appear to be acts that can be appropriately addressed outside the
4968 juvenile court process.

4969 (b) Youth courts may only hear cases as provided for in this part.

4970 (c) Youth court is a diversion program and not a court established under the Utah
4971 Constitution, Article VIII.

4972 (2) A youth court may not accept referrals from law enforcement, schools, prosecuting
4973 attorneys, or a juvenile court unless the youth court is certified by the Utah Youth Court Board.

4974 (3) Any person may refer youth to a youth court for minor offenses or for any other
4975 eligible offense under Section 53A-11-911. Once a referral is made, the case shall be screened
4976 by an adult coordinator to determine whether it qualifies as a youth court case.

4977 (4) Youth courts have authority over youth:

4978 (a) referred for ~~[a]~~ one or more minor ~~[offense or]~~ offenses or who are referred for
4979 other eligible offenses under Section 53A-11-911, or who are granted permission for referral
4980 under this part;

4981 (b) who, along with a parent, guardian, or legal custodian, voluntarily and in writing,
4982 request youth court involvement; and

4983 ~~[(c) who admit having committed the referred offense;]~~

4984 ~~[(d) who, along with a parent, guardian, or legal custodian, waive any privilege against~~
4985 ~~self-incrimination and right to a speedy trial; and]~~

4986 ~~[(e)]~~ (c) who, along with ~~[their]~~ a parent, guardian, or legal custodian, agree to follow
4987 the youth court disposition of the case.

(5) Except with permission granted under Subsection (6), or pursuant to Section 53A-11-911, youth courts may not exercise authority over youth who are under the continuing jurisdiction of the juvenile court for law violations, including any youth who may have a matter pending which has not yet been adjudicated. Youth courts may, however, exercise authority over youth who are under the continuing jurisdiction of the juvenile court as set forth in this Subsection (5) if the offense before the youth court is not a law violation, and the referring agency has notified the juvenile court of the referral.

(6) Youth courts may exercise authority over youth described in Subsection (5), and over any other offense with the permission of the juvenile court and the prosecuting attorney in the county or district that would have jurisdiction if the matter were referred to juvenile court.

(7) Permission of the juvenile court may be granted by a probation officer of the court in the district that would have jurisdiction over the offense being referred to youth court.

~~[(8) Youth courts may decline to accept a youth for youth court disposition for any reason and may terminate a youth from youth court participation at any time.]~~

~~[(9)]~~ (8) A youth or the youth's parent, guardian, or legal custodian may withdraw from the youth court process at any time. The youth court shall immediately notify the referring source of the withdrawal.

~~[(10)]~~ (9) The youth court may transfer a case back to the referring source for alternative handling at any time.

~~[(11)]~~ (10) Referral of a case to youth court may not, if otherwise eligible, prohibit the subsequent referral of the case to any court.

~~[(12)]~~ (11) Proceedings and dispositions of a youth court may only be shared with the referring agency, juvenile court, and victim.

~~[(13)]~~ (12) When a person does not complete the terms ordered by a youth court, and if the case is referred to a juvenile court, the youth court shall provide the case file to the juvenile court.

Section 71. Section **78A-6-1207** is amended to read:

78A-6-1207. Fees and expenses.

(1) Youth courts may require that the youth pay a reasonable fee, not to exceed \$50, to participate in youth court. This fee may be reduced or waived by the youth court in exigent circumstances and shall be based on the ability of the minor's family to pay as determined by a

statewide sliding scale developed by the Commission on Criminal and Juvenile Justice as provided in Section [63M-7-208](#). This fee shall be paid to and accounted for by the sponsoring entity. The fees collected shall be used for supplies and any training requirements.

(2) Youth court participants are responsible for the all expenses of any classes, counseling, treatment, or other educational programs that are the disposition of the youth court.

(3) Youth court participants may not be terminated unsuccessfully from youth court due to failure to pay related fees or expenses.

Section 72. Section **78A-6-1302** is amended to read:

78A-6-1302. Procedure -- Standard.

(1) When a motion is filed pursuant to Section [78A-6-1301](#) raising the issue of a minor's competency to proceed, or when the court raises the issue of a minor's competency to proceed, the juvenile court in which proceedings are pending shall stay all delinquency proceedings.

(2) If a motion for inquiry is opposed by either party, the court shall, prior to granting or denying the motion, hold a limited hearing solely for the purpose of determining the sufficiency of the motion. If the court finds that the allegations of incompetency raise a bona fide doubt as to the minor's competency to proceed, it shall enter an order for an evaluation of the minor's competency to proceed, and shall set a date for a hearing on the issue of the minor's competency.

(3) After the granting of a motion, and prior to a full competency hearing, the court may order the Department of Human Services to evaluate the minor and to report to the court concerning the minor's mental condition.

(4) The minor shall be evaluated by a mental health examiner with experience in juvenile forensic evaluations and juvenile brain development, who is not involved in the current treatment of the minor. If it becomes apparent that the minor may be not competent due to an intellectual disability or related condition, the examiner shall be experienced in intellectual disability or related condition evaluations of minors.

(5) The petitioner or other party, as directed by the court, shall provide all information and materials to the examiners relevant to a determination of the minor's competency including:

(a) the motion;

- (b) the arrest or incident reports pertaining to the charged offense;
- (c) the minor's known delinquency history information;
- (d) known prior mental health evaluations and treatments; and
- (e) consistent with 20 U.S.C. Sec. 1232g (b)(1)(E)(ii)(I), records pertaining to the minor's education.
- (6) The minor's parents or guardian, the prosecutor, defense attorney, and guardian ad litem, shall cooperate in providing the relevant information and materials to the examiners.
- (7) In conducting the evaluation and in the report determining if a minor is competent to proceed as defined in Subsection ~~78A-6-105(30)~~(38), the examiner shall consider the impact of a mental disorder, intellectual disability, or related condition on a minor's present capacity to:
- (a) comprehend and appreciate the charges or allegations;
- (b) disclose to counsel pertinent facts, events, or states of mind;
- (c) comprehend and appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the minor;
- (d) engage in reasoned choice of legal strategies and options;
- (e) understand the adversarial nature of the proceedings;
- (f) manifest appropriate courtroom behavior; and
- (g) testify relevantly, if applicable.
- (8) In addition to the requirements of Subsection (7), the examiner's written report shall:
- (a) identify the specific matters referred for evaluation;
- (b) describe the procedures, techniques, and tests used in the evaluation and the purpose or purposes for each;
- (c) state the examiner's clinical observations, findings, and opinions on each issue referred for evaluation by the court, and indicate specifically those issues, if any, on which the examiner could not give an opinion;
- (d) state the likelihood that the minor will attain competency and the amount of time estimated to achieve it; and
- (e) identify the sources of information used by the examiner and present the basis for the examiner's clinical findings and opinions.

(9) The examiner shall provide an initial report to the court, the prosecuting and defense attorneys, and the guardian ad litem, if applicable, within 30 days of the receipt of the court's order. If the examiner informs the court that additional time is needed, the court may grant, taking into consideration the custody status of the minor, up to an additional 30 days to provide the report to the court and counsel. The examiner must provide the report within 60 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the evaluation and provide the report. The report shall inform the court of the examiner's opinion concerning the competency and the likelihood of the minor to attain competency within a year. In the alternative, the examiner may inform the court in writing that additional time is needed to complete the report.

(10) Any statement made by the minor in the course of any competency evaluation, whether the evaluation is with or without the consent of the minor, any testimony by the examiner based upon any statement, and any other fruits of the statement may not be admitted in evidence against the minor in any delinquency or criminal proceeding except on an issue respecting the mental condition on which the minor has introduced evidence. The evidence may be admitted, however, where relevant to a determination of the minor's competency.

(11) ~~Prior to~~ Before evaluating the minor, examiners shall specifically advise the minor and the parents or guardian of the limits of confidentiality as provided under Subsection (10).

(12) When the report is received the court shall set a date for a competency hearing ~~[which]~~ that shall be held in not less than five and not more than 15 days, unless the court enlarges the time for good cause.

(13) A minor shall be presumed competent unless the court, by a preponderance of the evidence, finds the minor not competent to proceed. The burden of proof is upon the proponent of incompetency to proceed.

(14) (a) Following the hearing, the court shall determine by a preponderance of evidence whether the minor is:

- (i) competent to proceed;
- (ii) not competent to proceed with a substantial probability that the minor may attain competency in the foreseeable future; or
- (iii) not competent to proceed without a substantial probability that the minor may

5112 attain competency in the foreseeable future.

5113 (b) If the court enters a finding pursuant to Subsection (14)(a)(i), the court shall
5114 proceed with the delinquency proceedings.

5115 (c) If the court enters a finding pursuant to Subsection (14)(a)(ii), the court shall
5116 proceed consistent with Section 78A-6-1303.

5117 (d) If the court enters a finding pursuant to Subsection (14)(a)(iii), the court shall
5118 terminate the competency proceeding, dismiss the delinquency charges without prejudice, and
5119 release the minor from any custody order related to the pending delinquency proceeding, unless
5120 the prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter
5121 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental
5122 Health Act, will be initiated. These commitment proceedings shall be initiated within seven
5123 days after the court's order, unless the court enlarges the time for good cause shown. The
5124 minor may be ordered to remain in custody until the commitment proceedings have been
5125 concluded.

5126 (15) If the court finds the minor not competent to proceed, its order shall contain
5127 findings addressing each of the factors in Subsection (7).

5128 Section 73. Section 78A-7-106 is amended to read:

5129 **78A-7-106. Jurisdiction.**

5130 (1) Justice courts have jurisdiction over class B and C misdemeanors, violation of
5131 ordinances, and infractions committed within their territorial jurisdiction by a person 18 years
5132 of age or older.

5133 (2) Except those offenses over which the juvenile court has exclusive jurisdiction,
5134 justice courts have jurisdiction over the following offenses committed within their territorial
5135 jurisdiction by a person who is 16 or 17 years of age:

5136 (a) class C misdemeanor and infraction violations of Title 53, Chapter 3, Part 2, Driver
5137 Licensing Act; and

5138 (b) class B and C misdemeanor and infraction violations of:

5139 (i) Title 23, Wildlife Resources Code of Utah;

5140 (ii) Title 41, Chapter 1a, Motor Vehicle Act;

5141 (iii) Title 41, Chapter 6a, Traffic Code;

5142 (iv) Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and

5143 Operators Act;

5144 (v) Title 41, Chapter 22, Off-Highway Vehicles;

5145 (vi) Title 73, Chapter 18, State Boating Act;

5146 (vii) Title 73, Chapter 18a, Boating - Litter and Pollution Control;

5147 (viii) Title 73, Chapter 18b, Water Safety; and

5148 (ix) Title 73, Chapter 18c, Financial Responsibility of Motorboat Owners and

5149 Operators Act.

5150 (3) As used in this section, "the court's jurisdiction" means the territorial jurisdiction of
5151 a justice court.

5152 (4) An offense is committed within the territorial jurisdiction of a justice court if:

5153 (a) conduct constituting an element of the offense or a result constituting an element of
5154 the offense occurs within the court's jurisdiction, regardless of whether the conduct or result is
5155 itself unlawful;

5156 (b) either a person committing an offense or a victim of an offense is located within the
5157 court's jurisdiction at the time the offense is committed;

5158 (c) either a cause of injury occurs within the court's jurisdiction or the injury occurs
5159 within the court's jurisdiction;

5160 (d) a person commits any act constituting an element of an inchoate offense within the
5161 court's jurisdiction, including an agreement in a conspiracy;

5162 (e) a person solicits, aids, or abets, or attempts to solicit, aid, or abet another person in
5163 the planning or commission of an offense within the court's jurisdiction;

5164 (f) the investigation of the offense does not readily indicate in which court's
5165 jurisdiction the offense occurred, and:

5166 (i) the offense is committed upon or in any railroad car, vehicle, watercraft, or aircraft
5167 passing within the court's jurisdiction;

5168 (ii) (A) the offense is committed on or in any body of water bordering on or within this
5169 state if the territorial limits of the justice court are adjacent to the body of water; and

5170 (B) as used in Subsection (5)(f)(ii)(A), "body of water" includes any stream, river, lake,
5171 or reservoir, whether natural or man-made;

5172 (iii) a person who commits theft exercises control over the affected property within the
5173 court's jurisdiction; or

5174 (iv) the offense is committed on or near the boundary of the court's jurisdiction;
5175 (g) the offense consists of an unlawful communication that was initiated or received
5176 within the court's jurisdiction; or
5177 (h) jurisdiction is otherwise specifically provided by law.
5178 (5) A justice court judge may transfer a criminal matter in which the defendant is a
5179 child to the juvenile court for further proceedings if the justice court judge determines and the
5180 juvenile court concurs that the best interests of the minor would be served by the continuing
5181 jurisdiction of the juvenile court, subject to Section [78A-6-602](#).
5182 (6) Justice courts have jurisdiction of small claims cases under Title 78A, Chapter 8,
5183 Small Claims Courts, if a defendant resides in or the debt arose within the territorial
5184 jurisdiction of the justice court.

Legislative Review Note
Office of Legislative Research and General Counsel