

**MINIMUM FINE FOR POSSESSION OF TOBACCO
PRODUCTS BY UNDERAGED PERSONS**

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Richard M. Siddoway

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AN ACT RELATING TO THE CRIMINAL CODE; IMPOSING A MINIMUM FINE OR PENALTY OF \$50 OR PARTICIPATION IN A TOBACCO EDUCATION PROGRAM ON AN UNDERAGED PERSON WHO BUYS, ATTEMPTS TO BUY, ACCEPTS, OR HAS POSSESSION OF A TOBACCO PRODUCT; PERMITTING VIOLATIONS TO BE FILED AS CITATIONS IN JUVENILE COURT; AND MAKING CONFORMING AMENDMENTS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

76-10-105, as last amended by Chapter 194, Laws of Utah 1989

78-3a-502, as last amended by Chapter 365, Laws of Utah 1997

78-3a-503, as last amended by Chapter 365, Laws of Utah 1997

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

Section 1. Section **76-10-105** is amended to read:

76-10-105. Buying or possessing cigars, cigarettes, or tobacco by minors -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.

(1) Any 18 year old person [~~under the age of 19 years~~] who buys or attempts to buy, accepts, or has in his possession any cigar, cigarette, or tobacco in any form is guilty of a class C misdemeanor[~~,-or may be~~] and subject to [~~the jurisdiction of the juvenile court.~~]:

(a) a minimum fine or penalty of \$50; or

(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 his possession any cigar, cigarette, or tobacco in any form is subject to the jurisdiction of the Juvenile Court and:

(a) a minimum fine or penalty of \$50; or

(b) participation in a court-approved tobacco education program, which may include a participation fee.

[(2)] (3) A compliance officer appointed by a board of education under Section 53A-3-402 may issue citations for violations of this section committed on school property. Cited violations shall be reported to the appropriate juvenile court.

Section 2. Section **78-3a-502** is amended to read:

78-3a-502. Petition -- Preliminary inquiry -- Nonjudicial adjustments -- Formal referral -- Citation -- Failure to appear.

(1) Proceedings in minor's cases are commenced by petition.

(2) (a) A peace officer or any public official of the state, any county, city, or town charged with the enforcement of the laws of the state or local jurisdiction shall file a formal referral with the juvenile court within ten days of the minor's arrest. If the arrested minor is taken to a detention facility, the formal referral shall be filed with the juvenile court within 72 hours, excluding weekends and holidays. There shall be no requirement to file a formal referral with the juvenile court on an offense that would be a class B misdemeanor or less if committed by an adult.

(b) When the court is informed by a peace officer or other person 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) Based on the preliminary inquiry, the court may authorize the filing of or request that the county attorney or district attorney as provided under Sections 17-18-1 and 17-18-1.7 file a petition. In its discretion, the court may, through its probation department, enter into a written consent agreement with the minor and the minor's parent, guardian, or custodian for the nonjudicial adjustment of the case if the facts are admitted and establish prima facie jurisdiction. Efforts to effect a nonjudicial adjustment may not extend for a period of more than two months without leave of a judge of the court, who may extend the period for an additional two months. The probation department may not in connection with any nonjudicial adjustment compel any person to appear at any conference, produce any papers, or visit any place.

(d) The nonjudicial adjustment of a case may include conditions agreed upon as part of the nonjudicial closure:

- (i) payment of a financial penalty of not more than \$100 to the Juvenile Court;
- (ii) payment of victim restitution;
- (iii) satisfactory completion of community service;
- (iv) referral to an appropriate provider for counseling or treatment;
- (v) attendance at substance abuse programs or counseling programs;
- (vi) compliance with specified restrictions on activities and associations; and
- (vii) other reasonable actions that are in the interest of the minor and the community.

(e) Proceedings involving offenses under Section 78-3a-506 are governed by that section regarding suspension of driving privileges.

(f) A violation of Section 76-10-105 that is subject to the jurisdiction of the Juvenile Court shall include a minimum fine or penalty of \$50 or participation in a court-approved tobacco education program, which may include a participation fee.

(3) Except as provided in Section 78-3a-602, in the case of a minor 14 years of age or older, the county attorney, district attorney, or attorney general may commence an action by filing a criminal information and a motion requesting the juvenile court to waive its jurisdiction and certify the minor to the district court.

(4) (a) In cases of violations of fish and game laws, boating laws, class B and class C misdemeanors, other infractions or misdemeanors as designated by general order of the Board of Juvenile Court Judges, and violations of Section 76-10-105 [~~on school property~~] subject to the jurisdiction of the Juvenile Court, a petition is not required and the issuance of a citation as provided in Section 78-3a-503 is sufficient to invoke the jurisdiction of the court. A preliminary inquiry is not required unless requested by the court.

(b) Any failure to comply with the time deadline on a formal referral may not be the basis of dismissing the formal referral.

Section 3. Section **78-3a-503** is amended to read:

78-3a-503. Citation procedure -- Citation -- Offenses -- Time limits -- Failure to

appear.

(1) As used in this section, "citation" means an abbreviated referral and is sufficient to invoke the jurisdiction of the court in lieu of a petition.

(2) A citation shall be submitted to the court within five days of its issuance.

(3) Each copy of the citation shall contain:

(a) the name and address of the juvenile court before which the minor is to appear;

(b) the name of the minor cited;

(c) the statute or local ordinance that is alleged to have been violated;

(d) a brief description of the offense charged;

(e) the date, time, and location at which the offense is alleged to have occurred;

(f) the date the citation was issued;

(g) the name and badge or identification number of the peace officer or public official who issued the citation;

(h) the name of the arresting person if an arrest was made by a private party and the citation was issued in lieu of taking the arrested minor into custody as provided in Section 78-3a-113;

(I) the date and time when the minor is to appear, or a statement that the minor and parent or legal guardian are to appear when notified by the juvenile court; and

(j) the signature of the minor and the parent or legal guardian, if present, agreeing to appear at the juvenile court as designated on the citation.

(4) Each copy of the citation shall contain space for the following information to be entered if known:

(a) the minor's address;

(b) the minor's date of birth;

(c) the name and address of the minor's custodial parent or legal guardian, if different from the minor; and

(d) if there is a victim, the victim's name, address, and an estimate of loss, except that this information shall be removed from the documents the minor receives.

(5) A citation received by the court beyond the time designated in Subsection (2) shall

include a written explanation for the delay.

(6) The following offenses may be sent to the juvenile court as a citation:

(a) violations of fish and game laws;

(b) violations of boating laws;

(c) violations of curfew laws;

(d) any class B misdemeanor or less traffic violations where the person is under the age of 16;

(e) any class B or class C misdemeanor or infraction;

(f) any other infraction or misdemeanor as designated by general order of the Board of Juvenile Court Judges; and

(g) violations of Section 76-10-105 [~~on school property~~] subject to the jurisdiction of the Juvenile Court.

(7) A preliminary inquiry is not required unless requested by the court.

(8) The provisions of Subsection (5) may not apply to a runaway, ungovernable, or habitually truant minor.

(9) In the case of Section 76-10-105 violations committed on school property when a citation is issued under this section, the peace officer, public official, or compliance officer shall issue one copy to the minor cited, provide the parent or legal guardian with a copy, and file a duplicate with the juvenile court specified in the citation within five days.

(10) (a) A minor receiving a citation described in this section shall appear at the juvenile court designated in the citation on the time and date specified in the citation or when notified by the juvenile court.

(b) A citation may not require a minor to appear sooner than five days following its issuance.

(11) A minor who receives a citation and willfully fails to appear before the juvenile court pursuant to a citation is subject to arrest and may be found in contempt of court. The court may proceed against the minor as provided in Section 78-3a-901 regardless of the disposition of the offense upon which the minor was originally cited.

(12) When a citation is issued under this section, bail may be posted and forfeited under

Subsection 78-3a-114(10) with the consent of the court and parent or legal guardian of the minor cited.