

1 **COMPULSORY SERVICE**

2 1998 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Brad King**

5 AN ACT RELATING TO THE CRIMINAL CODE AND CRIMINAL PROCEDURE;  
6 AMENDING THE TERM COMMUNITY SERVICE, WHEN REQUIRED BY A COURT, TO  
7 THE TERM COMPULSORY SERVICE.

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

9 AMENDS:

10 **41-6-44**, as last amended by Chapter 68, Laws of Utah 1997

11 **41-6-48.5**, as last amended by Chapter 281, Laws of Utah 1995

12 **41-6-100.10**, as last amended by Chapter 63, Laws of Utah 1997

13 **62A-7-104**, as last amended by Chapters 200 and 365, Laws of Utah 1997

14 **63-63a-1**, as last amended by Chapter 1, Laws of Utah 1996

15 **67-5b-101**, as last amended by Chapter 318, Laws of Utah 1996

16 **67-20-2**, as last amended by Chapter 218, Laws of Utah 1994

17 **67-20-6**, as last amended by Chapter 240, Laws of Utah 1996

18 **73-18-12.2**, as last amended by Chapter 183, Laws of Utah 1990

19 **77-18-1**, as last amended by Chapter 392, Laws of Utah 1997

20 **77-27-6**, as last amended by Chapters 111 and 301, Laws of Utah 1995

21 **78-3a-118**, as last amended by Chapters 329, 357, 358 and renumbered and amended by  
22 Chapter 365, Laws of Utah 1997

23 **78-3a-207**, as enacted by Chapter 1, Laws of Utah 1996

24 **78-3a-502**, as last amended by Chapter 365, Laws of Utah 1997

25 **78-11-20.7**, as last amended by Chapter 365, Laws of Utah 1997

26 **78-32-12.1**, as last amended by Chapter 152, Laws of Utah 1993

27 **78-32-12.2**, as enacted by Chapter 152, Laws of Utah 1993

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

2 Section 1. Section **41-6-44** is amended to read:

3 **41-6-44. Driving under the influence of alcohol, drugs, or with specified or unsafe**  
4 **blood alcohol concentration -- Measurement of blood or breath alcohol -- Criminal**  
5 **punishment -- Arrest without warrant -- Penalties -- Suspension or revocation of license.**

6 (1) As used in this section:

7 (a) "prior conviction" means any conviction for a violation of:

8 (i) this section;

9 (ii) alcohol-related reckless driving under Subsections (9) and (10);

10 (iii) local ordinances similar to this section or alcohol-related reckless driving adopted in  
11 compliance with Section 41-6-43;

12 (iv) automobile homicide under Section 76-5-207; or

13 (v) statutes or ordinances in effect in any other state, the United States, or any district,  
14 possession, or territory of the United States which would constitute a violation of this section or  
15 alcohol-related reckless driving if committed in this state, including punishments administered  
16 under 10 U.S.C. 815;

17 (b) a violation of this section includes a violation under a local ordinance similar to this  
18 section adopted in compliance with Section 41-6-43; and

19 (c) the standard of negligence is that of simple negligence, the failure to exercise that  
20 degree of care that an ordinarily reasonable and prudent person exercises under like or similar  
21 circumstances.

22 (2) (a) A person may not operate or be in actual physical control of a vehicle within this  
23 state if the person:

24 (i) has a blood or breath alcohol concentration of .08 grams or greater as shown by a  
25 chemical test given within two hours after the alleged operation or physical control; or

26 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and  
27 any drug to a degree that renders the person incapable of safely operating a vehicle.

28 (b) The fact that a person charged with violating this section is or has been legally entitled  
29 to use alcohol or a drug is not a defense against any charge of violating this section.

30 (c) Alcohol concentration in the blood shall be based upon grams of alcohol per 100  
31 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol

1 per 210 liters of breath.

2 (3) A person convicted the first or second time of a violation of Subsection (2) is guilty  
3 of a:

4 (a) class B misdemeanor; or

5 (b) class A misdemeanor if the person:

6 (i) has also inflicted bodily injury upon another as a proximate result of having operated  
7 the vehicle in a negligent manner; or

8 (ii) had a passenger under 16 years of age in the vehicle at the time of the offense.

9 (4) (a) As part of any sentence imposed the court shall, upon a first conviction, impose a  
10 mandatory jail sentence of not less than 48 consecutive hours.

11 (b) The court may, as an alternative to all or part of a jail sentence, require the person to  
12 work in a [~~community-service~~] compulsory-service work program for not less than 24 hours.

13 (c) In addition to the jail sentence or [~~community-service~~] compulsory-service work  
14 program, the court shall:

15 (i) order the person to participate in an assessment and educational series at a licensed  
16 alcohol or drug dependency rehabilitation facility, as appropriate; and

17 (ii) impose a fine of not less than \$700.

18 (d) For a violation committed after July 1, 1993, the court may order the person to obtain  
19 treatment at an alcohol or drug dependency rehabilitation facility if the licensed alcohol or drug  
20 dependency rehabilitation facility determines that the person has a problem condition involving  
21 alcohol or drugs.

22 (5) (a) If a person is convicted under Subsection (2) within six years of a prior conviction  
23 under this section, the court shall as part of any sentence impose a mandatory jail sentence of not  
24 less than 240 consecutive hours.

25 (b) The court may, as an alternative to all or part of a jail sentence, require the person to  
26 work in a [~~community-service~~] compulsory-service work program for not less than 80 hours.

27 (c) In addition to the jail sentence or [~~community-service~~] compulsory-service work  
28 program, the court shall:

29 (i) order the person to participate in an assessment and educational series at a licensed  
30 alcohol or drug dependency rehabilitation facility, as appropriate; and

31 (ii) impose a fine of not less than \$800.

1 (d) The court may order the person to obtain treatment at an alcohol or drug dependency  
2 rehabilitation facility.

3 (6) (a) A third or subsequent conviction for a violation committed within six years of two  
4 or more prior convictions under this section is a:

5 (i) class A misdemeanor except as provided in Subsection (ii); and

6 (ii) third degree felony if at least:

7 (A) three prior convictions are for violations committed after April 23, 1990; or

8 (B) two prior convictions are for violations committed after July 1, 1996.

9 (b) (i) Under Subsection (6)(a)(i) the court shall as part of any sentence impose a fine of  
10 not less than \$2,000 and impose a mandatory jail sentence of not less than 720 hours.

11 (ii) The court may, as an alternative to all or part of a jail sentence, require the person to  
12 work in a [~~community-service~~] compulsory-service work program for not less than 240 hours, but  
13 only if the court enters in writing on the record the reason it finds the defendant should not serve  
14 the jail sentence. Enrollment in and completion of an alcohol or drug dependency rehabilitation  
15 program approved by the court may be a sentencing alternative to incarceration or [~~community~~]  
16 compulsory service if the program provides intensive care or inpatient treatment and long-term  
17 closely supervised follow-through after the treatment.

18 (iii) In addition to the jail sentence or [~~community-service~~] compulsory-service work  
19 program, the court shall order the person to obtain treatment at an alcohol or drug dependency  
20 rehabilitation facility.

21 (c) Under Subsection (6)(a)(ii) if the court suspends the execution of a prison sentence and  
22 places the defendant on probation the court shall impose:

23 (i) a fine of not less than \$1,500;

24 (ii) a mandatory jail sentence of not less than 1,000 hours; and

25 (iii) an order requiring the person to obtain treatment at an alcohol or drug dependency  
26 rehabilitation program providing intensive care or inpatient treatment and long-term closely  
27 supervised follow-through after treatment.

28 (7) (a) The mandatory portion of any sentence required under this section may not be  
29 suspended and the convicted person is not eligible for parole or probation until any sentence  
30 imposed under this section has been served. Probation or parole resulting from a conviction for  
31 a violation under this section may not be terminated.

1 (b) The department may not reinstate any license suspended or revoked as a result of the  
2 conviction under this section, until the convicted person has furnished evidence satisfactory to the  
3 department that:

4 (i) all required alcohol or drug dependency assessment, education, treatment, and  
5 rehabilitation ordered for a violation committed after July 1, 1993, have been completed;

6 (ii) all fines and fees including fees for restitution and rehabilitation costs assessed against  
7 the person have been paid, if the conviction is a second or subsequent conviction for a violation  
8 committed within six years of a prior violation; and

9 (iii) the person does not use drugs in any abusive or illegal manner as certified by a  
10 licensed alcohol or drug dependency rehabilitation facility, if the conviction is for a third or  
11 subsequent conviction for a violation committed within six years of two prior violations committed  
12 after July 1, 1993.

13 (8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court  
14 to order a convicted person to: participate in an assessment and educational series at a licensed  
15 alcohol or drug dependency rehabilitation facility; obtain, in the discretion of the court, treatment  
16 at an alcohol or drug dependency rehabilitation facility; obtain, mandatorily, treatment at an  
17 alcohol or drug dependency rehabilitation facility; or do a combination of those things, apply to  
18 a conviction for a violation of Section 41-6-44.6 or 41-6-45 under Subsection (9).

19 (ii) The court shall render the same order regarding education or treatment at an alcohol  
20 or drug dependency rehabilitation facility, or both, in connection with a first, second, or  
21 subsequent conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court  
22 would render in connection with applying respectively, the first, second, or subsequent conviction  
23 requirements of Subsections (4), (5), and (6).

24 (b) Any alcohol or drug dependency rehabilitation program and any community-based or  
25 other education program provided for in this section shall be approved by the Department of  
26 Human Services.

27 (9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a  
28 violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of 41-6-44.6 in  
29 satisfaction of, or as a substitute for, an original charge of a violation of this section, the  
30 prosecution shall state for the record a factual basis for the plea, including whether or not there had  
31 been consumption of alcohol, drugs, or a combination of both, by the defendant in connection with

1 the violation.

2 (ii) The statement is an offer of proof of the facts that shows whether there was  
3 consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with the  
4 violation.

5 (b) The court shall advise the defendant before accepting the plea offered under this  
6 subsection of the consequences of a violation of Section 41-6-44.6 or of 41-6-45.

7 (c) The court shall notify the department of each conviction of Section 41-6-44.6 or  
8 41-6-45 entered under this subsection.

9 (10) A peace officer may, without a warrant, arrest a person for a violation of this section  
10 when the officer has probable cause to believe the violation has occurred, although not in his  
11 presence, and if the officer has probable cause to believe that the violation was committed by the  
12 person.

13 (11) (a) The Department of Public Safety shall:

14 (i) suspend for 90 days the operator's license of a person convicted for the first time under  
15 Subsection (2);

16 (ii) revoke for one year the license of a person convicted of any subsequent offense under  
17 Subsection (2) if the violation is committed within a period of six years from the date of the prior  
18 violation; and

19 (iii) suspend or revoke the license of a person as ordered by the court under Subsection  
20 (12).

21 (b) The department shall subtract from any suspension or revocation period the number  
22 of days for which a license was previously suspended under Section 53-3-223, if the previous  
23 suspension was based on the same occurrence upon which the record of conviction is based.

24 (12) (a) In addition to any other penalties provided in this section, a court may order the  
25 operator's license of a person who is convicted of a violation of Subsection (2) to be suspended  
26 or revoked for an additional period of 90 days, 180 days, or one year to remove from the highways  
27 those persons who have shown they are safety hazards.

28 (b) If the court suspends or revokes the person's license under this subsection, the court  
29 shall prepare and send to the Driver License Division of the Department of Public Safety an order  
30 to suspend or revoke that person's driving privileges for a specified period of time.

31 Section 2. Section **41-6-48.5** is amended to read:

1           **41-6-48.5. Maximum speed in a school zone -- Penalty -- Minimum fines --**  
2 **Compulsory service -- Waiver -- Recordkeeping.**

3           (1) A person may not operate a vehicle at a speed greater than 20 miles per hour in a  
4 reduced speed school zone as defined in Section 41-6-20.1.

5           (2) (a) A violation of this section is a class C misdemeanor and the minimum fine:

6           (i) for a first offense shall be calculated according to the following schedule:

Vehicle Speed	Minimum Fine
21 - 29 MPH	\$ 50
30 - 39 MPH	\$ 125
40 MPH and greater	\$ 275

7  
8  
9  
10  
11           (ii) for a second and subsequent offense within three years of a previous conviction or bail  
12 forfeiture shall be calculated according to the following schedule:

Vehicle Speed	Minimum Fine
21 - 29 MPH	\$ 50
30 - 39 MPH	\$ 225
40 MPH and greater	\$ 525

13  
14  
15  
16  
17           (b) (i) Except as provided under Subsection (2)(a)(ii), the court may order the person to  
18 perform [community] compulsory service in lieu of the fine or any portion of the fine.

19           (ii) The court shall order the person to perform [community] compulsory service observing  
20 a crossing guard if the conviction is for a:

21           (A) first offense with a vehicle speed of 30 miles per hour or more; or

22           (B) second and subsequent offense within three years of a previous conviction or bail  
23 forfeiture.

24           (iii) The court may waive the [community] compulsory service required under Subsection  
25 (2)(b)(ii) if the court makes the reasons for the waiver part of the record.

26           (3) The Driver License Division shall develop and implement a record system to  
27 distinguish:

28           (a) a conviction or bail forfeiture under this section from other convictions; and

29           (b) between a first and subsequent conviction or bail forfeiture under this section.

30           (4) The provisions of this section take precedence over the provisions of Sections 41-6-46,  
31 41-6-47, 41-6-48, and 76-3-301.

1 Section 3. Section **41-6-100.10** is amended to read:

2 **41-6-100.10. School bus -- Signs and light signals -- Flashing amber lights -- Flashing**  
3 **red lights -- Passing school bus -- Duty to stop -- Travel in opposite direction.**

4 (1) (a) Every school bus, when operated for the transportation of school children, shall  
5 bear upon the front and rear of the bus a plainly visible sign containing the words "school bus" in  
6 letters not less than eight inches in height, which shall be removed or covered when the vehicle  
7 is not in use for the transportation of school children.

8 (b) Every school bus, when operated for the transportation of school children, shall be  
9 equipped with alternating flashing amber and red light signals visible from the front and rear, of  
10 a type approved and mounted as prescribed by the department.

11 (2) The operator of any vehicle upon a highway, upon meeting or overtaking any school  
12 bus equipped with signals required under this section which is displaying alternating flashing  
13 amber warning light signals, shall slow his vehicle, but may proceed past the school bus using due  
14 care and caution at a speed not greater than specified in Subsection 41-6-46(2) for school zones  
15 for the safety of the school children that may be in the vicinity.

16 (3) If a school bus is displaying alternating flashing red light signals visible from the front  
17 or rear, all approaching or overtaking vehicles on the same roadway shall stop immediately before  
18 reaching the bus and may not proceed until the flashing red light signals cease operation. The  
19 operator of a vehicle need not stop upon meeting or passing a school bus traveling in the opposite  
20 direction when:

21 (a) traveling upon a divided highway;

22 (b) the bus is stopped at an intersection or other place controlled by an official  
23 traffic-control device or peace officer; or

24 (c) upon a highway of five or more lanes, which may include a left-turn lane or two-way  
25 left turn lane.

26 (4) (a) The operator of a school bus shall operate alternating flashing red light signals at  
27 all times when children are unloading from a school bus to cross a highway, or when a school bus  
28 is stopped for the purpose of loading children who must cross a highway to board the bus, or at  
29 any other time when it would be hazardous for vehicles to proceed past the stopped school bus.

30 (b) The alternating flashing red light signals may not be operated except when the school  
31 bus is stopped for loading or unloading school children or for any emergency purpose.

1 (5) (a) A violation of Subsection (2) or (3) is a class C misdemeanor and the minimum fine  
2 shall be:

3 (i) \$100 for a first offense;

4 (ii) \$200 for a second offense within three years of a previous conviction or bail forfeiture;

5 and

6 (iii) \$500 for a third and subsequent offense within three years of a previous conviction  
7 or bail forfeiture.

8 (b) The court may order the person to perform [~~community~~] compulsory service in lieu  
9 of the fine or any portion of the fine if the court makes the reasons for the waiver part of the  
10 record.

11 (6) The Driver License Division shall develop and implement a record system to  
12 distinguish:

13 (a) a conviction or bail forfeiture under this section from other convictions; and

14 (b) between a first and subsequent conviction or bail forfeiture under this section.

15 Section 4. Section **62A-7-104** is amended to read:

16 **62A-7-104. Division responsibilities.**

17 (1) The division is responsible for all youth offenders committed to it by juvenile courts  
18 for secure confinement or supervision and treatment in the community.

19 (2) The division shall establish and maintain all detention and secure facilities and set  
20 minimum standards for those facilities.

21 (3) (a) The division shall, in accordance with Title 63, Chapter 46a, Utah Administrative  
22 Rulemaking Act, promulgate written statewide rules as guidelines for admission to secure  
23 detention and home detention.

24 (b) The division shall implement those rules as guidelines and provide training regarding  
25 the implementation of those guidelines to law enforcement agencies, division employees, juvenile  
26 court employees, and to other affected agencies and individuals upon their request.

27 (4) The division shall establish and administer a continuum of community, secure, and  
28 nonsecure programs for all youth offenders committed to the division.

29 (5) The division shall establish and administer Juvenile Receiving Centers and other  
30 programs to provide temporary custody, care, and control for nonadjudicated youth placed with  
31 the division.

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

3           (7) The division shall establish and maintain all secure residential facilities.

4           (8) In any order committing a youth offender to the division, the juvenile court shall  
5 specify whether the youth offender is being committed for secure confinement or placement in a  
6 community-based program. The division shall place the youth offender in the most appropriate  
7 program within the category specified by the court.

8           (9) The division shall employ staff necessary to:

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

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

12           (c) control and supervise nonadjudicated youth placed with the division for temporary  
13 services in receiving centers and other programs established by the division.

14           (10) The division shall establish observation and assessment programs necessary to serve  
15 youth offenders committed by the juvenile court for short-term observation under Subsection  
16 78-3a-118(2)(e). Whenever possible, those programs shall be conducted in settings separate and  
17 distinct from secure facilities for youth offenders.

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

24           (12) The director of the division shall appoint regional directors within the various juvenile  
25 court districts. Regional directors shall administer community-based programs, secure facilities,  
26 other division programs, and shall have experience in corrections, behavioral sciences, law,  
27 criminology, or related fields, and in administration.

28           (13) The division shall establish and operate compulsory-service work programs designed  
29 to place youth offenders in public or private service work projects for the purpose of rehabilitation,  
30 education, and restitution to victims.

31           (14) The division may establish and operate compulsory-service work programs for youth

1 offenders committed to the division by the juvenile court. The compulsory-service work program  
2 shall:

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

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

7 (c) provide counseling to youth offenders.

8 (15) The division shall establish minimum standards for the operation of all private  
9 residential and nonresidential rehabilitation facilities which provide services to juveniles who have  
10 committed a delinquent act, in this state or in any other state.

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

14 Section 5. Section **63-63a-1** is amended to read:

15 **63-63a-1. Surcharge -- Application and exemptions.**

16 (1) (a) A surcharge shall be paid on all criminal fines, penalties, and forfeitures imposed  
17 by the courts.

18 (b) The surcharge shall be:

19 (i) 85% upon conviction of a:

20 (A) felony;

21 (B) class A misdemeanor;

22 (C) violation of Title 41, Chapter 6, Article 5, Driving While Intoxicated and Reckless  
23 Driving; or

24 (D) class B misdemeanor not classified within Title 41, Motor Vehicles, including  
25 violation of comparable county or municipal ordinances; or

26 (ii) 35% upon conviction of any other offense, including violation of county or municipal  
27 ordinances not subject to the 85% surcharge.

28 (2) The surcharge shall not be imposed:

29 (a) upon nonmoving traffic violations;

30 (b) upon court orders when the offender is ordered to perform [community] compulsory  
31 service work in lieu of paying a fine; and

1 (c) upon penalties assessed by the juvenile court as part of the nonjudicial adjustment of  
2 a case under Section 78-3a-502.

3 (3) (a) The surcharge and the exceptions under Subsections (1) and (2) also apply to all  
4 fines, penalties, and forfeitures imposed on juveniles for conduct that would be criminal if  
5 committed by an adult.

6 (b) However, the surcharge does not include amounts assessed or collected separately by  
7 juvenile courts for the Juvenile Restitution Account, which is independent of this chapter and does  
8 not affect the imposition or collection of the surcharge.

9 (4) The surcharge under this section shall be imposed in addition to the fine charged for  
10 a criminal offense, and no reduction may be made in the fine charged due to the surcharge  
11 imposition.

12 (5) Fees, assessments, and surcharges related to criminal or traffic offenses shall be  
13 authorized and managed by this chapter rather than attached to particular offenses.

14 Section 6. Section **67-5b-101** is amended to read:

15 **67-5b-101. Definitions.**

16 As used in this part:

17 (1) "Abused child" means a child who is a victim of sexual abuse or serious physical abuse  
18 and who is 17 years of age or younger.

19 (2) "Agreement" means a written contract between two or more public agencies and other  
20 persons to provide for multidisciplinary intergovernmental operation of a center established in  
21 accordance with Section 67-5b-104.

22 (3) "Center" means a Children's Justice Center established in accordance with Section  
23 67-5b-102.

24 (4) "Officers and employees" means any person performing services for two or more  
25 public agencies as agreed in intergovernmental contracts in accordance with Section 67-5b-104.

26 (5) "Public agency" means a municipality, a county, the attorney general, the Division of  
27 Child and Family Services, the Division of Youth Corrections, the Department of Corrections, the  
28 juvenile court, and the Administrative Office of the Courts.

29 (6) "Volunteer" means any person who donates service without pay or other compensation  
30 except expenses actually and reasonably incurred as approved by the supervising agency.

31 Volunteer does not include any person participating in human subjects research and court-ordered

1 [community] compulsory service workers as defined in Section 67-20-2.

2 Section 7. Section **67-20-2** is amended to read:

3 **67-20-2. Definitions.**

4 As used in this chapter:

5 (1) "Agency" means:

6 (a) any department, institution, office, college, university, authority, division, board,  
7 bureau, commission, council, or other agency of the state;

8 (b) any county, city, town, school district, or special improvement or taxing district;

9 (c) any Olympic Winter Games organizing committee, as approved by the Utah Sports  
10 Authority; or

11 (d) any other political subdivision.

12 (2) "[Community] Compulsory service worker" means any person who has been convicted  
13 of a criminal offense, any youth who has been adjudged delinquent, or any person or youth who  
14 has been diverted from the criminal or juvenile justice system and who performs a public service  
15 for an agency as a condition of his sentence, diversion, probation, or parole.

16 (3) (a) "Volunteer" means any person who donates service without pay or other  
17 compensation except expenses actually and reasonably incurred as approved by the supervising  
18 agency.

19 (b) "Volunteer" does not include any person participating in human subjects research to  
20 the extent that the participation is governed by federal law or regulation inconsistent with this  
21 chapter, nor does it include [community] compulsory service workers.

22 (c) "Volunteer" includes a juror or potential juror appearing in response to a summons for  
23 a trial jury or grand jury.

24 Section 8. Section **67-20-6** is amended to read:

25 **67-20-6. Workers' compensation medical benefits.**

26 A [community] compulsory service worker is considered a government employee for  
27 purposes of receiving workers' compensation medical benefits, which shall be the exclusive  
28 remedy for all injuries and occupational diseases as provided under Title 35A, Chapter 3,  
29 [~~Workers' Compensation Act~~] Employment Support Act, and [3a] Title 34A, Chapter 3, Utah  
30 Occupational Disease Act.

31 Section 9. Section **73-18-12.2** is amended to read:

1           **73-18-12.2. Boating under the influence of alcohol or drugs or with high blood or**  
2 **breath alcohol content -- Criminal punishment -- Arrest without a warrant.**

3           (1) (a) It is unlawful and punishable as provided in this section for any person to operate  
4 a vessel on the waters of this state if:

5           (i) the person has a blood or breath alcohol concentration of .08 grams or greater, as shown  
6 by any chemical test given within two hours after the alleged operation; or

7           (ii) the person is under the influence of alcohol or any drug or the combined influence of  
8 alcohol and any drug to a degree which renders the person incapable of safely operating a vessel.

9           (b) The fact that a person charged with violating this section is or has been legally entitled  
10 to use alcohol or a drug is not a defense against any charge of violating this section.

11           (2) Alcohol concentration in the blood shall be based upon grams of alcohol per 100  
12 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol  
13 per 210 liters of breath.

14           (3) For the purposes of this section, the standard of negligence is that of simple negligence,  
15 the failure to exercise that degree of care which an ordinarily reasonable and prudent person  
16 exercises under like or similar circumstances.

17           (4) (a) Every person who is convicted of a violation of Subsection (1) is guilty of a class  
18 B misdemeanor, however, if the person has inflicted a bodily injury upon another as a proximate  
19 result of having operated the vessel in a negligent manner, he is guilty of a class A misdemeanor.

20           (b) No portion of any sentence imposed under Subsection (4)(a) may be suspended.

21           (5) In addition to the penalties provided for in Subsection (4), the court shall, upon a first  
22 conviction of a violation of this section:

23           (a) impose a mandatory jail sentence of not less than 48 consecutive hours nor more than  
24 240 hours, with emphasis on serving in the drunk tank of the jail, or require the person to work in  
25 a [~~community-service~~] compulsory-service work program for not less than 24 nor more than 50  
26 hours; and

27           (b) order the person to participate in an assessment and educational series at a licensed  
28 alcohol rehabilitation facility.

29           (6) Upon a second conviction within five years after a first conviction under this section  
30 or under a local ordinance similar to this section adopted in compliance with Section 73-18-12.1,  
31 the court shall, in addition to the penalties provided for in Subsection (4):

1 (a) impose a mandatory jail sentence of not less than 240 consecutive hours nor more than  
2 720 hours, with emphasis on serving in the drunk tank of the jail, or require the person to work in  
3 a [community-service] compulsory-service work program for not less than 80 nor more than 240  
4 hours; and

5 (b) order the person to participate in an assessment and educational series at a licensed  
6 alcohol rehabilitation facility. The court may, in its discretion, order the person to obtain treatment  
7 at an alcohol rehabilitation facility.

8 (7) Upon a subsequent conviction within five years after a second conviction under this  
9 section or under a local ordinance similar to this section adopted in compliance with Section  
10 73-18-12.1, the court shall, in addition to the penalties provided for in Subsection (4):

11 (a) impose a mandatory jail sentence of not less than 720 consecutive hours nor more than  
12 2,160 hours with emphasis on serving in the drunk tank of the jail, or require the person to work  
13 in a [community-service] compulsory-service work program for not less than 240 nor more than  
14 720 hours; and

15 (b) order the person to obtain treatment at an alcohol rehabilitation facility.

16 (8) A person convicted of a violation of this section is not eligible for parole or probation  
17 until any sentence imposed under this section has been served. Probation or parole resulting from  
18 a conviction for a violation of this section or a local ordinance similar to this section adopted in  
19 compliance with Section 73-18-12.1 may not be terminated until all fines and fees, including fees  
20 for restitution and rehabilitation costs, assessed against the convicted person, have been paid.

21 (9) (a) The provisions in Subsections (5), (6), and (7) requiring a sentencing court to order  
22 a convicted person to participate in an assessment and educational series at a licensed alcohol  
23 rehabilitation facility or to obtain treatment at an alcohol rehabilitation facility apply to a  
24 conviction for a violation of Section 73-18-12 that qualifies as a prior offense under Subsection  
25 (10). A court shall render the same order regarding education or treatment at an alcohol  
26 rehabilitation facility for a first, second, or subsequent conviction under Section 73-18-12 that  
27 qualifies as a prior offense under Subsection (10), as the court would render for a first, second, or  
28 subsequent conviction of a violation of Subsection (1).

29 (b) For purposes of determining whether a conviction under Section 73-18-12 which  
30 qualified as a prior conviction under Subsection (10) is a first, second, or subsequent conviction  
31 under this Subsection (9), a previous conviction under either Section 73-18-12 or 73-18-12.2 is

1 considered a prior conviction. Any alcohol rehabilitation program and any community-based or  
2 other education program provided for in this section shall be approved by the Department of  
3 Human Services.

4 (10) (a) When the prosecution agrees to a plea of guilty or no contest to a charge of a  
5 violation of Section 73-18-12 or of a local ordinance similar to that section adopted in compliance  
6 with Section 73-18-12.1, the prosecution shall state for the record a factual basis for the plea,  
7 including whether there had been consumption of alcohol or drugs by the defendant in connection  
8 with the offense. The statement shall be an offer of proof of the facts which shows whether there  
9 was consumption of alcohol or drugs in connection with the offense.

10 (b) The court shall advise the defendant before accepting the plea offered under this  
11 subsection of the consequences of a violation of Section 73-18-12 as follows. If the court accepts  
12 the defendant's plea of guilty or no contest to a charge of violating Section 73-18-12, and the  
13 prosecutor states for the record that there was consumption of alcohol or drugs by the defendant  
14 in connection with the offense, the resulting conviction is a prior offense for the purposes of  
15 Subsection (9).

16 (11) A peace officer may, without a warrant, arrest a person for a violation of this section  
17 when the peace officer has probable cause to believe the violation has occurred, although not in  
18 his presence, and if the peace officer has probable cause to believe that the violation was  
19 committed by the person.

20 Section 10. Section **77-18-1** is amended to read:

21 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision**  
22 **-- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions --**  
23 **Restitution -- Termination, revocation, modification, or extension -- Hearings -- Electronic**  
24 **monitoring.**

25 (1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in  
26 abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter 2a,  
27 Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

28 (2) (a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any crime  
29 or offense, the court may suspend the imposition or execution of sentence and place the defendant  
30 on probation. The court may place the defendant:

31 (i) on probation under the supervision of the Department of Corrections except in cases

1 of class C misdemeanors or infractions;

2 (ii) on probation with an agency of local government or with a private organization; or

3 (iii) on bench probation under the jurisdiction of the sentencing court.

4 (b) (i) The legal custody of all probationers under the supervision of the department is with  
5 the department.

6 (ii) The legal custody of all probationers under the jurisdiction of the sentencing court is  
7 vested as ordered by the court. The court has continuing jurisdiction over all probationers.

8 (3) (a) The department shall establish supervision and presentence investigation standards  
9 for all individuals referred to the department. These standards shall be based on:

10 (i) the type of offense;

11 (ii) the demand for services;

12 (iii) the availability of agency resources;

13 (iv) the public safety; and

14 (v) other criteria established by the department to determine what level of services shall  
15 be provided.

16 (b) Proposed supervision and investigation standards shall be submitted to the Judicial  
17 Council and the Board of Pardons and Parole on an annual basis for review and comment prior to  
18 adoption by the department.

19 (c) The Judicial Council and the department shall establish procedures to implement the  
20 supervision and investigation standards.

21 (d) The Judicial Council and the department shall annually consider modifications to the  
22 standards based upon criteria in Subsection (3)(a) and other criteria as they consider appropriate.

23 (e) The Judicial Council and the department shall annually prepare an impact report and  
24 submit it to the appropriate legislative appropriations subcommittee.

25 (4) Notwithstanding other provisions of law, the department is not required to supervise  
26 the probation of persons convicted of class B or C misdemeanors or infractions or to conduct  
27 presentence investigation reports on class C misdemeanors or infractions. However, the  
28 department may supervise the probation of class B misdemeanants in accordance with department  
29 standards.

30 (5) (a) Prior to the imposition of any sentence, the court may, with the concurrence of the  
31 defendant, continue the date for the imposition of sentence for a reasonable period of time for the

1 purpose of obtaining a presentence investigation report from the department or information from  
2 other sources about the defendant.

3 (b) The presentence investigation report shall include a victim impact statement describing  
4 the effect of the crime on the victim and the victim's family. The victim impact statement shall:

5 (i) identify the victim of the offense;

6 (ii) include a specific statement of the recommended amount of complete restitution as  
7 defined in Subsection 76-3-201(4), accompanied by a recommendation from the department  
8 regarding the payment of court-ordered restitution as defined in Subsection 76-3-201(4) by the  
9 defendant;

10 (iii) identify any physical injury suffered by the victim as a result of the offense along with  
11 its seriousness and permanence;

12 (iv) describe any change in the victim's personal welfare or familial relationships as a  
13 result of the offense;

14 (v) identify any request for psychological services initiated by the victim or the victim's  
15 family as a result of the offense; and

16 (vi) contain any other information related to the impact of the offense upon the victim or  
17 the victim's family that is relevant to the trial court's sentencing determination.

18 (c) The presentence investigation report shall include a specific statement of pecuniary  
19 damages, accompanied by a recommendation from the department regarding the payment of  
20 restitution with interest by the defendant in accordance with Subsection 76-3-201(4).

21 (d) The contents of the presentence investigation report, including any diagnostic  
22 evaluation report ordered by the court under Section 76-3-404, are protected and are not available  
23 except by court order for purposes of sentencing as provided by rule of the Judicial Council or for  
24 use by the department.

25 (6) (a) The department shall provide the presentence investigation report to the defendant's  
26 attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review,  
27 three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation  
28 report, which have not been resolved by the parties and the department prior to sentencing, shall  
29 be brought to the attention of the sentencing judge, and the judge may grant an additional ten  
30 working days to resolve the alleged inaccuracies of the report with the department. If after ten  
31 working days the inaccuracies cannot be resolved, the court shall make a determination of

1 relevance and accuracy on the record.

2 (b) If a party fails to challenge the accuracy of the presentence investigation report at the  
3 time of sentencing, that matter shall be considered to be waived.

4 (7) At the time of sentence, the court shall receive any testimony, evidence, or information  
5 the defendant or the prosecuting attorney desires to present concerning the appropriate sentence.  
6 This testimony, evidence, or information shall be presented in open court on record and in the  
7 presence of the defendant.

8 (8) While on probation, and as a condition of probation, the defendant:

9 (a) may be required to perform any or all of the following:

10 (i) pay, in one or several sums, any fine imposed at the time of being placed on probation;

11 (ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;

12 (iii) provide for the support of others for whose support he is legally liable;

13 (iv) participate in available treatment programs;

14 (v) serve a period of time in the county jail not to exceed one year;

15 (vi) serve a term of home confinement, which may include the use of electronic  
16 monitoring;

17 (vii) participate in [community] compulsory service restitution programs, including the  
18 [community] compulsory service program provided in Section 78-11-20.7;

19 (viii) pay for the costs of investigation, probation, and treatment services;

20 (ix) make restitution or reparation to the victim or victims with interest in accordance with  
21 Subsection 76-3-201(4); and

22 (x) comply with other terms and conditions the court considers appropriate; and

23 (b) if convicted on or after May 5, 1997, shall be required to:

24 (i) complete high school classwork and obtain a high school graduation diploma, a GED  
25 certificate, or a vocational certificate at the defendant's own expense if the defendant has not  
26 received the diploma, GED certificate, or vocational certificate prior to being placed on probation;  
27 or

28 (ii) provide documentation of the inability to obtain one of the items listed in Subsection  
29 (8)(b)(i) because of:

30 (A) a diagnosed learning disability; or

31 (B) other justified cause.

1 (9) The department, upon order of the court, shall collect and disburse fines, restitution  
2 with interest in accordance with Subsection 76-3-201(4), and any other costs assessed under  
3 Section 64-13-21 during:

4 (a) the parole period and any extension of that period in accordance with Subsection  
5 77-27-6(4); and

6 (b) the probation period in cases for which the court orders supervised probation and any  
7 extension of that period by the department in accordance with Subsection 77-18-1(10).

8 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon  
9 completion without violation of 36 months probation in felony or class A misdemeanor cases, or  
10 12 months in cases of class B or C misdemeanors or infractions.

11 (ii) If the defendant, upon expiration or termination of the probation period, owes  
12 outstanding fines, restitution, or other assessed costs, the court may retain jurisdiction of the case  
13 and continue the defendant on bench probation or place the defendant on bench probation for the  
14 limited purpose of enforcing the payment of fines, restitution, including interest, if any, in  
15 accordance with Subsection 76-3-201(4), and other amounts outstanding.

16 (iii) Upon motion of the prosecutor or victim, or upon its own motion, the court may  
17 require the defendant to show cause why his failure to pay should not be treated as contempt of  
18 court or why the suspended jail or prison term should not be imposed.

19 (b) The department shall notify the sentencing court and prosecuting attorney in writing  
20 in advance in all cases when termination of supervised probation will occur by law. The  
21 notification shall include a probation progress report and complete report of details on outstanding  
22 fines, restitution, and other amounts outstanding.

23 (11) (a) (i) Any time served by a probationer outside of confinement after having been  
24 charged with a probation violation and prior to a hearing to revoke probation does not constitute  
25 service of time toward the total probation term unless the probationer is exonerated at a hearing  
26 to revoke the probation.

27 (ii) Any time served in confinement awaiting a hearing or decision concerning revocation  
28 of probation does not constitute service of time toward the total probation term unless the  
29 probationer is exonerated at the hearing.

30 (b) The running of the probation period is tolled upon the filing of a violation report with  
31 the court alleging a violation of the terms and conditions of probation or upon the issuance of an

1 order to show cause or warrant by the court.

2 (12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing  
3 by the probationer or upon a hearing and a finding in court that the probationer has violated the  
4 conditions of probation.

5 (ii) Probation may not be revoked except upon a hearing in court and a finding that the  
6 conditions of probation have been violated.

7 (b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute  
8 violation of the conditions of probation, the court that authorized probation shall determine if the  
9 affidavit establishes probable cause to believe that revocation, modification, or extension of  
10 probation is justified.

11 (ii) If the court determines there is probable cause, it shall cause to be served on the  
12 defendant a warrant for his arrest or a copy of the affidavit and an order to show cause why his  
13 probation should not be revoked, modified, or extended.

14 (c) (i) The order to show cause shall specify a time and place for the hearing and shall be  
15 served upon the defendant at least five days prior to the hearing.

16 (ii) The defendant shall show good cause for a continuance.

17 (iii) The order to show cause shall inform the defendant of a right to be represented by  
18 counsel at the hearing and to have counsel appointed for him if he is indigent.

19 (iv) The order shall also inform the defendant of a right to present evidence.

20 (d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

21 (ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall  
22 present evidence on the allegations.

23 (iii) The persons who have given adverse information on which the allegations are based  
24 shall be presented as witnesses subject to questioning by the defendant unless the court for good  
25 cause otherwise orders.

26 (iv) The defendant may call witnesses, appear and speak in his own behalf, and present  
27 evidence.

28 (e) (i) After the hearing the court shall make findings of fact.

29 (ii) Upon a finding that the defendant violated the conditions of probation, the court may  
30 order the probation revoked, modified, continued, or that the entire probation term commence  
31 anew.

1 (iii) If probation is revoked, the defendant shall be sentenced or the sentence previously  
2 imposed shall be executed.

3 (13) Restitution imposed under this chapter and interest accruing in accordance with  
4 Subsection 76-3-201(4) is considered a debt for willful and malicious injury for purposes of  
5 exceptions listed to discharge in bankruptcy as provided in Title 11 U.S.C.A. Sec. 523, 1985.

6 (14) The court may order the defendant to commit himself to the custody of the Division  
7 of Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of  
8 sentence, only after the superintendent of the Utah State Hospital or his designee has certified to  
9 the court that:

10 (a) the defendant is appropriate for and can benefit from treatment at the state hospital;

11 (b) treatment space at the hospital is available for the defendant; and

12 (c) persons described in Subsection 62A-12-209(2)(g) are receiving priority for treatment  
13 over the defendants described in this Subsection (14).

14 (15) Presentence investigation reports, including presentence diagnostic evaluations, are  
15 classified protected in accordance with Title 63, Chapter 2, Government Records Access and  
16 Management Act. Notwithstanding Sections 63-2-403 and 63-2-404, the State Records Committee  
17 may not order the disclosure of a presentence investigation report. Except for disclosure at the  
18 time of sentencing pursuant to this section, the department may disclose the presentence  
19 investigation only when:

20 (a) ordered by the court pursuant to Subsection 63-2-202(7);

21 (b) requested by a law enforcement agency or other agency approved by the department  
22 for purposes of supervision, confinement, and treatment of the offender;

23 (c) requested by the Board of Pardons and Parole;

24 (d) requested by the subject of the presentence investigation report or the subject's  
25 authorized representative; or

26 (e) requested by the victim of the crime discussed in the presentence investigation report  
27 or the victim's authorized representative, provided that the disclosure to the victim shall include  
28 only information relating to statements or materials provided by the victim, to the circumstances  
29 of the crime including statements by the defendant, or to the impact of the crime on the victim or  
30 the victim's household.

31 (16) (a) The court shall consider home confinement as a condition of probation under the

1 supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

2 (b) The department shall establish procedures and standards for home confinement,  
3 including electronic monitoring, for all individuals referred to the department in accordance with  
4 Subsection (17).

5  
6 defendant to participate in home confinement through the use of electronic monitoring as described  
in this section until further order of the court.

8 (b) The electronic monitoring shall alert the department and the appropriate law  
9 enforcement unit of the defendant's whereabouts.

10 (c) The electronic monitoring device shall be used under conditions which require:

11 (i) the defendant to wear an electronic monitoring device at all times; and

12 (ii) that a device be placed in the home of the defendant, so that the defendant's compliance  
13 with the court's order may be monitored.

14 (d) If a court orders a defendant to participate in home confinement through electronic  
15 monitoring as a condition of probation under this section, it shall:

16 (i) place the defendant on probation under the supervision of the Department of  
17 Corrections;

18 (ii) order the department to place an electronic monitoring device on the defendant and  
19 install electronic monitoring equipment in the residence of the defendant; and

20 (iii) order the defendant to pay the costs associated with home confinement to the  
21 department or the program provider.

22 (e) The department shall pay the costs of home confinement through electronic monitoring  
23 only for those persons who have been determined to be indigent by the court.

24 (f) The department may provide the electronic monitoring described in this section either  
25 directly or by contract with a private provider.

26 Section 11. Section **77-27-6** is amended to read:

27 **77-27-6. Payment of restitution.**

28 (1) When the Board of Pardons and Parole orders the release on parole of an inmate who  
29 has been sentenced to make restitution pursuant to Section 76-3-201 or whom the board has  
30 ordered to make restitution, and all or a portion of restitution is still owing, the board may establish  
31 a schedule, including both complete and court-ordered restitution, by which payment of the

restitution shall be made, or order [community compulsory or other service in lieu of or in combination with restitution. In fixing the schedule and supervising the paroled offender's

3

4 (2) The board may impose any court order for restitution and order that a defendant make restitution in an amount not to exceed the pecuniary damages to the victim of the offense of which

6

7 defendant to the sentencing court, or for conduct for which the defendant has agreed to make restitution as part of a plea agreement, unless the board applying the criteria as set forth in

9

10 (3) The board may also make orders of restitution for recovery of any or all costs incurred by the Department of Corrections or the state or any other agency arising out of the defendant's

12

13 (4) If the defendant, upon termination of the parole period owes outstanding fines, restitution, or other assessed costs, the matter shall be referred to the district court for civil

15

16 sentencing court to be entered on the judgment docket. The entry shall constitute a lien and is subject to the same rules as a judgment for money in a civil judgment.

18

**78-3a-118** is amended to read:

**78-3a-118.**

**Enumeration of possible court orders -- Considerations of court.**

(1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the

22

23 jurisdiction over the minor. However, in cases within the provisions of Subsection 78-3a-104(1), findings of fact are not necessary.

25

26 Title 76, Chapter 10, Part 5, Weapons, it shall 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

28

29 which the minor was adjudicated.

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

31

1 minor's own home and upon conditions determined by the court, including [community]  
2 compulsory service as provided in Section 78-11-20.7.

3 (ii) If the court orders probation, the court shall direct that notice of its order be provided  
4 to designated persons in the local law enforcement agency and the school or transferee school, if  
5 applicable, which the minor attends. The designated persons may receive the information for  
6 purposes of the minor's supervision and student safety.

7 (iii) Any employee of the local law enforcement agency and the school which the minor  
8 attends who discloses the court's order of probation is not:

9 (A) civilly liable except when the disclosure constitutes fraud or malice as provided in  
10 Section 63-30-4; and

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

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

16 (c) (i) The court may vest legal custody of the minor in the Division of Child and Family  
17 Services, Division of Youth Corrections, or the Division of Mental Health, and may order the  
18 Department of Human Services to provide dispositional recommendations and services.

19 (ii) Minors who are committed to the custody of the Division of Child and Family Services  
20 on grounds other than abuse or neglect are subject to the provisions of Title 78, Chapter 3a, Part  
21 3A and Title 62A, Chapter 4a, Part 2A.

22 (d) (i) The court may commit the minor to the Division of Youth Corrections for secure  
23 confinement.

24 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or  
25 dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of Youth  
26 Corrections.

27 (e) The court may commit the minor, subject to the court retaining continuing jurisdiction  
28 over him, to the temporary custody of the Division of Youth Corrections for observation and  
29 evaluation for a period not to exceed 90 days.

30 (f) (i) The court may commit the minor to a place of detention or an alternative to  
31 detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction

1 over the minor.

2 (ii) Subsection (2)(f) applies only to those minors adjudicated for an act which if  
3 committed by an adult would be a criminal offense or for contempt of court under Section  
4 78-3a-901. This commitment may be stayed or suspended upon conditions ordered by the court.

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

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

15 (i) The court may order that the minor be required to repair, replace, or otherwise make  
16 restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as  
17 stated in Section 78-3a-318, and may impose fines in limited amounts.

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

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

23 (ii) Consistent with the order of the court, the probation officer may permit the minor  
24 found to be within the jurisdiction of the court to participate in a program of work restitution or  
25 [community] compulsory service in lieu of paying part or all of the fine imposed by the court. The  
26 work restitution or [community] compulsory service permitted by the probation officer may not  
27 affect the amount of the surcharge.

28 (l) In violations of traffic laws within the court's jurisdiction, the court may, in addition  
29 to any other disposition, restrain the minor from driving for periods of time the court considers  
30 necessary and take possession of the minor's driver license. However, proceedings involving an  
31 offense under Section 78-3a-506 are governed by that section regarding suspension of driving

1 privileges.

2 (m) (i) When a minor is found within the jurisdiction of the juvenile court under Section  
3 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia  
4 Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to  
5 any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no  
6 more than 100 hours, of [community] compulsory service. Satisfactory completion of an approved  
7 substance abuse prevention or treatment program may be credited by the court as [community]  
8 compulsory service hours.

9 (ii) When a minor is found within the jurisdiction of the juvenile court under Section  
10 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may,  
11 upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the  
12 minor perform a minimum of 20 hours, but no more than 100 hours of [community] compulsory  
13 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an  
14 approved substance abuse prevention or treatment program may be credited by the court as  
15 [community] compulsory service hours.

16 (n) The court may order that the minor be examined or treated by a physician, surgeon,  
17 psychiatrist, or psychologist or that he receive other special care. For these purposes the court may  
18 place the minor in a hospital or other suitable facility.

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

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

26 (p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable  
27 conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or any  
28 other person who has been made a party to the proceedings. Conditions may include:

29 (A) visitation by the parents or one parent;

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

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

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

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

4 (q) The court may order the minor to be placed in the legal custody of the Division of  
5 Mental Health or committed to the physical custody of a local mental health authority, in  
6 accordance with the procedures and requirements of Title 62A, Chapter 12, Part 2A, Commitment  
7 of Persons Under Age 18 to Division of Mental Health.

8 (r) The court may make an order committing a minor within its jurisdiction to the Utah  
9 State Developmental Center if the minor has been found mentally retarded in accordance with the  
10 provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility. The  
11 procedure applicable in the district courts with respect to judicial commitments to the Utah State  
12 Developmental Center shall be followed by the juvenile court in these cases.

13 (s) The court may terminate all parental rights upon a finding of compliance with the  
14 provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

15 (t) The court may make any other reasonable orders for the best interest of the minor or  
16 as required for the protection of the public, except that a person younger than 18 years of age may  
17 not be committed to jail or prison, and offenses under Section 78-3a-506 are governed by that  
18 section regarding suspension of driving privileges.

19 (u) The court may combine several of the above-listed modes of disposition if they are  
20 compatible.

21 (v) Before depriving any parent of custody, the court shall give due consideration to the  
22 rights of parents concerning their minors. The court may transfer custody to another person,  
23 agency, or institution in accordance with the requirements and procedures of Title 78, Chapter 3a,  
24 Part 3, Abuse, Neglect, and Dependency Proceedings.

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

28 (x) In reviewing foster home placements, special attention shall be given to making  
29 adoptable minors available for adoption without delay.

30 (y) (i) The juvenile court may enter an order of permanent custody and guardianship with  
31 a relative or individual of a minor where the court has previously acquired jurisdiction as a result

1 of an adjudication of abuse, neglect, or dependency, excluding cases arising under Subsection  
2 78-3a-105(4).

3 (ii) Such orders remain in effect until the minor reaches majority and are not subject to  
4 review under Section 78-3a-119, but may be modified by petition or motion as provided in Section  
5 78-3a-903.

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

9 Section 13. Section **78-3a-207** is amended to read:

10 **78-3a-207. Fines -- Fees -- Deposit with state treasurer -- Restricted account.**

11 (1) There is created within the General Fund a restricted account known as the  
12 "Nonjudicial Adjustment Account."

13 (2) (a) The account shall be funded from the financial penalty established under Subsection  
14 78-3a-502(2)(d)(i).

15 (b) The court shall deposit all monies collected as a result of penalties assessed as part of  
16 the nonjudicial adjustment of a case in the account.

17 (c) The account shall be used to pay the expenses of juvenile [~~community~~] compulsory  
18 service, victim restitution, and diversion programs.

19 (3) (a) Except under Subsection (3)(b) and as otherwise provided by law, all fines, fees,  
20 penalties, and forfeitures imposed and collected by the juvenile court shall be paid to the state  
21 treasurer for deposit in the General Fund.

22 (b) Not more than 50% of any fine or forfeiture collected may be paid to a state  
23 rehabilitative employment program for delinquent minors that provides for employment of the  
24 minor in the county of the minor's residence if:

25 (i) reimbursement for the minor's labor is paid to the victim of the minor's delinquent  
26 behavior;

27 (ii) the amount earned and paid is set by court order;

28 (iii) the minor is not paid more than the hourly minimum wage; and

29 (iv) no payments to victims are made without the minor's involvement in a rehabilitative  
30 work program.

31 (c) Fines withheld under Subsection (3)(b) and any private contributions to the

1 rehabilitative employment program are accounted for separately and are subject to audit at any  
2 time by the state auditor.

3 (d) Funds withheld under Subsection (3)(b) and private contributions are nonlapsing. The  
4 Board of Juvenile Court Judges shall establish policies for the use of the funds described in this  
5 subsection.

6 (4) No fee may be charged by any state or local public officer for the service of process  
7 in any proceedings initiated by a public agency.

8 Section 14. Section **78-3a-502** is amended to read:

9 **78-3a-502. Petition -- Preliminary inquiry -- Nonjudicial adjustments -- Formal**  
10 **referral -- Citation -- Failure to appear.**

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

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

18 (b) When the court is informed by a peace officer or other person that a minor is or appears  
19 to be within the court's jurisdiction, the probation department shall make a preliminary inquiry to  
20 determine whether the interests of the public or of the minor require that further action be taken.

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

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

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

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

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

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

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

21 Section 15. Section **78-11-20.7** is amended to read:

22 **78-11-20.7. Compulsory service -- Graffiti penalties.**

23 (1) If an offender uses graffiti and is convicted under Section 76-6-106 or 76-6-206 for its  
24 use, or adjudicated in the juvenile court under Section 78-3a-118, the court may, as a condition of  
25 probation under Subsection 77-18-1(8), in addition to the compensatory or general damage award  
26 imposed pursuant to Section 78-11-20, order the offender to clean up graffiti of his own and any  
27 other at a time and place within the jurisdiction of the court.

28 (a) For a first conviction or adjudication, the court may require the offender to clean up  
29 graffiti for not less than eight hours.

30 (b) For a second conviction or adjudication, the court may require the offender to clean  
31 up graffiti for not less than 16 hours.

1 (c) For a third conviction or adjudication, the court may require the offender to clean up  
2 graffiti for not less than 24 hours.

3 (2) Any [community] compulsory service of a person under the age of 18 years which is  
4 required, under this section, may be performed in the presence, and under the direct supervision,  
5 of the person's parent or legal guardian. The person's parent or legal guardian shall report  
6 completion of the order to the court.

7 (3) The offender convicted under Section 76-6-106, 76-6-206, or 76-6-107 or adjudicated  
8 under Section 78-3a-118 or his parent or legal guardian, if applicable, shall be responsible for  
9 removal costs as determined under Section 76-6-107, unless waived by the court for good cause.

10 (4) The court may also require the offender to perform other alternative forms of  
11 restitution or repair to the damaged property pursuant to Subsection 77-18-1(8).

12 Section 16. Section **78-32-12.1** is amended to read:

13 **78-32-12.1. Compulsory service for violation of visitation order or failure to pay**  
14 **child support.**

15 (1) If a court finds by a preponderance of the evidence that a parent has refused to comply  
16 with the minimum amount of visitation ordered in a decree of divorce, the court shall order the  
17 parent to:

18 (a) perform a minimum of 10 hours of [community] compulsory service; and

19 (b) participate in workshops, classes, or individual counseling to educate the parent about  
20 the importance of complying with the court order and providing a child a continuing relationship  
21 with both parents.

22 (2) If a custodial parent is ordered to perform [community] compulsory service or undergo  
23 court-ordered education, there is a rebuttable presumption that the noncustodial parent be granted  
24 visitation by the court to provide child care during the time the custodial parent is complying with  
25 [community] compulsory service or education in order to recompense him for visitation time  
26 wrongfully denied by the custodial parent under the divorce decree.

27 (3) If a noncustodial parent is ordered to perform [community] compulsory service or  
28 undergo court-ordered education, the court shall attempt to schedule the [community] compulsory  
29 service or education at times that will not interfere with the noncustodial parent's visitation with  
30 the child.

31 (4) The person ordered to participate in court-ordered education is responsible for expenses

1 of workshops, classes, and individual counseling.

2 (5) If a court finds by a preponderance of the evidence that an obligor, as defined in  
3 Section 78-45-2, has refused to pay child support as ordered by a court in accordance with Title  
4 78, Chapter 45, Uniform Civil Liability for Support Act, the court shall order the obligor to:

5 (a) perform a minimum of [10] ten hours of [community] compulsory service; and

6 (b) participate in workshops, classes, or individual counseling to educate the obligor about  
7 the importance of complying with the court order and providing the children with a regular and  
8 stable source of support.

9 (6) The obligor is responsible for the expenses of workshops, classes, and individual  
10 counseling ordered by the court.

11 (7) If a court orders an obligor to perform [community] compulsory service or undergo  
12 court-ordered education, the court shall attempt to schedule the [community] compulsory service  
13 or education at times that will not interfere with the obligor's visitation with the child.

14 (8) The sanctions that the court shall impose under this section do not prevent the court  
15 from imposing other sanctions as provided in Section 78-32-12.2 or other provisions in this  
16 chapter, or prevent any person from bringing a cause of action allowed under state or federal law.

17 (9) The Legislature shall allocate the money from the Children's Legal Defense Account  
18 to the judiciary to defray the cost of enforcing and administering this section.

19 Section 17. Section **78-32-12.2** is amended to read:

20 **78-32-12.2. Definitions -- Sanctions.**

21 (1) For purposes of this section:

22 (a) "Make up visitation" means visitation which is:

23 (i) of the same type and duration of visitation as that which was denied, including  
24 visitation during weekdays, weekends, holidays, and during extended visitation periods;

25 (ii) to be made up within one year after the court has entered its order of make up  
26 visitation; and

27 (iii) in the manner chosen by the aggrieved parent if it is in the best interest of the child.

28 (b) "Petition" means a petition brought by a parent, a grandparent as provided in Section  
29 30-5-2, by other immediate family members, or upon the court's own motion alleging that a parent  
30 is not complying with a visitation order in a decree of divorce or a subsequent visitation  
31 enforcement order which may be brought at different stages in the alleged pattern of

1 noncompliance:

2 (i) a first petition is a petition to enforce an original order of visitation or a petition filed  
3 after three years from the last visitation enforcement order;

4 (ii) a second petition is a petition filed within three years following entry of the first  
5 visitation enforcement order; and

6 (iii) a third petition is a petition filed within three years following entry of the second  
7 visitation enforcement order.

8 (c) "Substantial noncompliance" means conduct which:

9 (i) substantially interferes with a court ordered visitation schedule; or

10 (ii) interferes with parent's right to frequent, meaningful, and continuing access with his  
11 child and which substantially impairs that parent-child relationship.

12 (d) "Visitation enforcement order" means an order to enforce compliance with an original  
13 visitation order through the use of sanctions.

14 (2) Upon a first petition, the court shall order:

15 (a) if the first petition is uncontested, by default:

16 (i) a permanent injunction enjoining the noncompliance with the court's visitation order;

17 (ii) make up visitation for the aggrieved parent and child; and

18 (iii) participation in workshops, classes, or individual counseling to educate the parent  
19 about the importance of complying with the court order and providing the child with a continuing  
20 relationship with both parents as provided in Subsection 78-32-12.1 (1)(b); or

21 (b) if the first petition is contested, the court shall hold a hearing to determine by a  
22 preponderance of the evidence whether there has been a substantial noncompliance with the  
23 visitation order.

24 (3) Upon a finding of substantial noncompliance, the court shall order:

25 (a) actual costs including actual attorney fees and court costs to the prevailing party;

26 (b) make up visitation for the aggrieved parent and child;

27 (c) a minimum of [10] ten hours of [community] compulsory service as provided in  
28 Subsection 78-32-12.1 (1) (a); and

29 (d) a permanent injunction enjoining the noncompliance with the court's visitation order.

30 (4) Upon a finding of substantial noncompliance, the court may order:

31 (a) mediation with the requirement to report back to the court on the results of mediation

1 within 30 days;

2 (b) participation in workshops, classes, or individual counseling to educate the parent  
3 about the importance of complying with the court order and providing the child with a continuing  
4 relationship with both parents as provided in Subsection 78-32-12.1 (1)(b); or

5 (c) a fine or jail sentence or other appropriate sanctions as provided under contempt of  
6 court in Section 78-32-10.

7 (5) Upon a second petition, the court shall order:

8 (a) if the second petition is uncontested, by default:

9 (i) actual costs including actual attorney fees and court costs;

10 (ii) make up visitation to be provided for the aggrieved parent and child;

11 (iii) a minimum of [~~10~~] ten hours of [~~community~~] compulsory service as provided in  
12 Subsection 78-32-12.1(1)(a); and

13 (iv) impose a fine or jail sentence or other appropriate sanctions as provided under  
14 contempt of court in Section 78-32-10; or

15 (b) if the second petition is contested, the court shall hold a hearing to determine by a  
16 preponderance of the evidence whether there has been a substantial noncompliance with the  
17 visitation orders.

18 (6) Upon a finding of a substantial noncompliance, the court shall order:

19 (a) actual costs including actual attorney fees and court costs to the prevailing party;

20 (b) make up visitation to be provided for the aggrieved party and child at twice the amount  
21 of time previously wrongfully denied and under the same conditions as provided in Subsections  
22 78-32-12.2(3)(a) through (c);

23 (c) a minimum of 20 hours of [~~community~~] compulsory service as provided in Subsection  
24 78-32-12.1(1)(a);

25 (d) a contempt order which imposes a fine or jail sentence as provided in Section  
26 78-32-10; and

27 (e) the violator to post bond or security in the amount determined by the court to insure  
28 future compliance.

29 (7) The court may impose additional sanctions which may include any additional  
30 remedies, terms, or conditions which are consistent with the court's previous order.

31 (8) Upon a third petition, the court shall order:

- 1 (a) if the third petition is uncontested, by default:
- 2 (i) actual costs including actual attorney fees and court costs;
- 3 (ii) make up visitation to be provided for the aggrieved party and child at twice the amount
- 4 of time previously denied and under the same conditions as provided in Subsections
- 5 78-32-12.2(3)(a) through (c);
- 6 (iii) a minimum of ten hours of [~~community~~] compulsory service as provided in
- 7 Subsection 78-32-12.1(1)(a); and
- 8 (iv) impose a fine or jail sentence or other appropriate sanctions as provided under
- 9 contempt of court in Section 78-32-10; or
- 10 (b) if the third petition is contested, the court shall hold a hearing to determine by a
- 11 preponderance of the evidence whether there has been a substantial noncompliance with the
- 12 visitation orders.
- 13 (9) Upon a finding of substantial noncompliance, the court shall order:
- 14 (a) actual costs including actual attorney fees and court costs to the prevailing party;
- 15 (b) a finding that there has been a prima facie showing of a substantial change of
- 16 circumstances which is against the best interest of the child for purposes of modification of
- 17 custody and order a temporary change of custody for a duration to be determined by the court; and
- 18 (c) a finding that there has been a probable cause showing of custodial interference as
- 19 provided in Section 76-5-303 and order the case to be referred to the county attorney for
- 20 prosecution.
- 21 (10) The court may decline to issue an order with the alternative sanctions as provided in
- 22 Subsections 78-32-12.2(2) through (9) although the petitioner has met his burden of proof if the
- 23 court provides findings on the record explaining why a sanction or sanctions were not imposed.
- 24 (11) The noncustodial parent shall give the court and the custodial parent written notice
- 25 of his intention to exercise the make up visitation at least seven days before the proposed visit if
- 26 it is to be on a weekday or weekend, and at least 30 days before the proposed visit if it is to be on
- 27 a holiday or an extended visitation period.
- 28 (12) The court shall suspend any proceedings under Section 78-32-12.2 if substantial
- 29 allegations of child abuse or child sexual abuse are under investigation or a case is pending in the
- 30 courts on the allegations.
- 31 (13) The filing of any petition under this section which is found to be without merit and

1 not asserted or defended against in good faith shall be subject to sanctions as determined by the  
2 court.

3 (14) This section shall be implemented only as a pilot program in the first judicial district  
4 as provided in Section 78-32-12.3.

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**Legislative Review Note**  
**as of 12-22-97 7:53 AM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**