

1 **Nonjudicial Adjustment Amendments**

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

House Sponsor: Ryan D. Wilcox

2
3 **LONG TITLE**

4 **General Description:**

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

7 **Highlighted Provisions:**

8 This bill:

9 ▶ prohibits a minor from declining to enter into a nonjudicial adjustment agreement unless
10 the minor has received advice from legal counsel, with exceptions;

11 ▶ modifies the duties of the Indigent Defense Commission to include encouraging the
12 provision of resources for minors to receive access to legal advice when considering a
13 nonjudicial adjustment;

14 ▶ modifies the duties of the Office of Indigent Defense Services to require the office to
15 provide no-cost legal advice for minors considering a nonjudicial adjustment;

16 ▶ permits the Office of Indigent Defense Services to employ or contract with an attorney to
17 provide legal advice to minors considering a nonjudicial adjustment;

18 ▶ creates procedures for giving notice of requirements before declining a nonjudicial
19 adjustment agreement; and

20 ▶ makes clarifying amendments.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **78B-22-204**, as last amended by Laws of Utah 2021, Chapter 124

28 **78B-22-404**, as last amended by Laws of Utah 2024, Chapter 193

29 **78B-22-452**, as last amended by Laws of Utah 2024, Chapter 193

30 **80-6-304**, as last amended by Laws of Utah 2023, Chapter 161

31 **80-6-602**, as enacted by Laws of Utah 2021, Chapter 261

32

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

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

35 **78B-22-204 . Waiver by a minor.**

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

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

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

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

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

43 (2) A minor may not decline to enter into a nonjudicial adjustment without first consulting
44 with counsel, consistent with the requirements of Section 80-6-304.

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

46 **78B-22-404 . Powers and duties of the commission.**

47 (1) The commission shall:

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

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

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

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

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

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

59 (B) adequate access to indigent defense resources;

60 (C) the ability to provide representation to accused individuals in criminal cases at
61 the critical stages of proceedings, and at all stages to indigent individuals in
62 juvenile delinquency and child welfare proceedings;

63 (D) a workload that allows for sufficient time to meet with clients, investigate
64 cases, file appropriate documents with the courts, and otherwise provide

- 65 effective assistance of counsel to each client;
- 66 (E) adequate compensation without financial disincentives;
- 67 (F) appropriate experience or training in the area for which the indigent defense
- 68 service provider is representing indigent individuals;
- 69 (G) compensation for legal training and education in the areas of the law relevant
- 70 to the types of cases for which the indigent defense service provider is
- 71 representing indigent individuals; and
- 72 (H) the ability to meet the obligations of the Utah Rules of Professional Conduct,
- 73 including expectations on client communications and managing conflicts of
- 74 interest;
- 75 (b) encourage and aid indigent defense systems in the state in the regionalization of
- 76 indigent defense services to provide for effective and efficient representation to the
- 77 indigent individuals;
- 78 (c) emphasize the importance of ensuring constitutionally effective indigent defense
- 79 services;
- 80 (d) encourage members of the judiciary to provide input regarding the delivery of
- 81 indigent defense services;
- 82 (e) oversee individuals and entities involved in providing indigent defense services;[~~and~~]
- 83 (f) manage county participation in the Indigent Aggravated Murder Defense Fund
- 84 created in Section 78B-22-701[~~;~~] ; and
- 85 (g) develop and oversee the provision of resources for minors to access legal advice
- 86 when considering a nonjudicial adjustment.
- 87 (2) The commission may:
- 88 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
- 89 Rulemaking Act, to carry out the commission's duties under this part;
- 90 (b) assign duties related to indigent defense services to the office to assist the
- 91 commission with the commission's statutory duties;
- 92 (c) request supplemental appropriations from the Legislature to address a deficit in the
- 93 Indigent Inmate Fund created in Section 78B-22-455; and
- 94 (d) request supplemental appropriations from the Legislature to address a deficit in the
- 95 Child Welfare Parental Representation Fund created in Section 78B-22-804.
- 96 Section 3. Section **78B-22-452** is amended to read:
- 97 **78B-22-452 . Duties of the office.**
- 98 (1) The office shall:

- 99 (a) establish an annual budget for the office for the Indigent Defense Resources
100 Restricted Account created in Section 78B-22-405;
- 101 (b) assist the commission in performing the commission's statutory duties described in
102 this chapter;
- 103 (c) identify and collect data that is necessary for the commission to:
- 104 (i) aid, oversee, and review compliance by indigent defense systems with the
105 commission's core principles for the effective representation of indigent
106 individuals; and
- 107 (ii) provide reports regarding the operation of the commission and the provision of
108 indigent defense services by indigent defense systems in the state;
- 109 (d) assist indigent defense systems by reviewing contracts and other agreements, to
110 ensure compliance with the commission's core principles for effective representation
111 of indigent individuals;
- 112 (e) establish procedures for the receipt and acceptance of complaints regarding the
113 provision of indigent defense services in the state;
- 114 (f) establish procedures to award grants to indigent defense systems under Section
115 78B-22-406 that are consistent with the commission's core principles;
- 116 (g) create and enter into contracts consistent with Section 78B-22-454 to provide
117 indigent defense services for an indigent defense inmate who:
- 118 (i) is incarcerated in a state prison located in a county of the third, fourth, fifth, or
119 sixth class as classified in Section 17-50-501;
- 120 (ii) is charged with having committed a crime within that state prison; and
- 121 (iii) has been appointed counsel in accordance with Section 78B-22-203;
- 122 (h) assist the commission in developing and reviewing advisory caseload guidelines and
123 procedures;
- 124 (i) investigate, audit, and review the provision of indigent defense services to ensure
125 compliance with the commission's core principles for the effective representation of
126 indigent individuals;
- 127 (j) administer the Child Welfare Parental Representation Program in accordance with
128 Part 8, Child Welfare Parental Representation Program;
- 129 (k) administer the Indigent Aggravated Murder Defense Fund in accordance with Part 7,
130 Indigent Aggravated Murder Defense Fund;
- 131 (l) assign an indigent defense service provider to represent an individual prosecuted for
132 aggravated murder in accordance with Part 7, Indigent Aggravated Murder Defense

- 133 Fund;
- 134 (m) provide access for a minor to receive legal advice, at no cost, in connection with
- 135 considering a nonjudicial adjustment;
- 136 ~~[(m)]~~ (n) annually report to the governor, Legislature, Judiciary Interim Committee, and
- 137 Judicial Council, regarding:
- 138 (i) the operations of the commission;
- 139 (ii) the operations of the indigent defense systems in the state; and
- 140 (iii) compliance with the commission's core principles by indigent defense systems
- 141 receiving grants from the commission;
- 142 ~~[(n)]~~ (o) submit recommendations to the commission for improving indigent defense
- 143 services in the state;
- 144 ~~[(o)]~~ (p) publish an annual report on the commission's website; and
- 145 ~~[(p)]~~ (q) perform all other duties assigned by the commission related to indigent defense
- 146 services.
- 147 (2) The office may:
- 148 (a) enter into contracts and accept, allocate, and administer funds and grants from any
- 149 public or private person to accomplish the duties of the office[-] ; and
- 150 (b) employ or contract with an attorney to provide counsel, at no cost, to any minor
- 151 considering a nonjudicial adjustment.
- 152 (3) Any contract entered into under this part shall require that indigent defense services are
- 153 provided in a manner consistent with the commission's core principles implemented
- 154 under Section 78B-22-404.
- 155 Section 4. Section **80-6-304** is amended to read:
- 156 **80-6-304 . Nonjudicial adjustments -- Requirement to seek legal counsel before**
- 157 **declination.**
- 158 (1) For a nonjudicial adjustment, the juvenile probation officer may require a minor to:
- 159 (a) pay a financial penalty of no more than \$250 to the juvenile court, subject to the
- 160 terms established under Subsection ~~[(4)]~~ (5);
- 161 (b) pay restitution to any victim;
- 162 (c) complete community or compensatory service;
- 163 (d) attend counseling or treatment with an appropriate provider;
- 164 (e) attend substance abuse treatment or counseling;
- 165 (f) comply with specified restrictions on activities or associations;
- 166 (g) attend victim-offender mediation if requested by the victim; and

- 167 (h) comply with any other reasonable action that is in the interest of the minor, the
168 community, or the victim.
- 169 (2)(a) Within seven days of receiving a referral that appears to be eligible for a
170 nonjudicial adjustment in accordance with Section 80-6-303.5, the juvenile probation
171 officer shall provide an initial notice to reasonably identifiable and locatable victims
172 of the offense contained in the referral.
- 173 (b) The victim shall be responsible to provide to the juvenile probation officer upon
174 request:
- 175 (i) invoices, bills, receipts, and any other evidence of injury, loss of earnings, and
176 out-of-pocket loss;
- 177 (ii) documentation and evidence of compensation or reimbursement from an
178 insurance company or an agency of the state, any other state, or the federal
179 government received as a direct result of the crime for injury, loss of earnings, or
180 out-of-pocket loss; and
- 181 (iii) proof of identification, including home and work address and telephone numbers.
- 182 (c) The inability, failure, or refusal of the victim to provide all or part of the requested
183 information shall result in the juvenile probation officer determining restitution based
184 on the best information available.
- 185 (3) The juvenile probation officer may not predicate acceptance of an offer of a nonjudicial
186 adjustment on an admission of guilt.
- 187 (4)(a) A minor may not decline to enter into a nonjudicial adjustment without first
188 consulting with counsel, subject to the requirements of this section.
- 189 (b) If a minor seeks to decline a nonjudicial adjustment, the juvenile probation officer
190 shall inform the minor of:
- 191 (i) the minor's right to consult with counsel; and
- 192 (ii) the availability of resources for the minor to receive legal advice provided by the
193 Office of Indigent Defense Services created in Section 78B-22-451.
- 194 (c) If a minor seeks to decline a nonjudicial adjustment, and also declines to seek the
195 advice of counsel after being informed as required under Subsection (4)(b), the
196 juvenile probation officer shall:
- 197 (i) sign an acknowledgment that the juvenile probation officer provided the minor
198 with the information required by Subsection (4)(b);
- 199 (ii) have the minor sign an acknowledgment that the minor received the information
200 required by Subsection (4)(b) and knowingly and voluntarily declined to seek the

- 201 advice of counsel; and
- 202 (iii) permit the minor to decline the nonjudicial adjustment.
- 203 (d) No provision of this section affects a court's obligation to ensure a minor's right to
- 204 counsel in the event a petition is filed.
- 205 [(4)] (5)(a) The juvenile probation officer may not deny a minor an offer of a nonjudicial
- 206 adjustment due to a minor's inability to pay a financial penalty under Subsection (1).
- 207 (b) The juvenile probation officer shall base a fee, fine, or the restitution for a
- 208 nonjudicial adjustment under Subsection (1) upon the ability of the minor's family to
- 209 pay as determined by a statewide sliding scale developed in accordance with Section
- 210 63M-7-208.
- 211 [(5)] (6)(a) A nonjudicial adjustment may not extend for more than 90 days, unless a
- 212 juvenile court judge extends the nonjudicial adjustment for an additional 90 days.
- 213 (b) A juvenile court judge may extend a nonjudicial adjustment beyond the 180 days
- 214 permitted under Subsection [(5)(a)] (6)(a):
- 215 (i) for a minor who is:
- 216 (A) offered a nonjudicial adjustment for a sexual offense under Title 76, Chapter
- 217 5, Part 4, Sexual Offenses, that the minor committed before the minor was 12
- 218 years old; or
- 219 (B) referred to a prosecuting attorney for a sexual offense under Title 76, Chapter
- 220 5, Part 4, Sexual Offenses, that the minor committed before the minor was 12
- 221 years old; and
- 222 (ii) the judge determines that:
- 223 (A) the nonjudicial adjustment requires specific treatment for the sexual offense;
- 224 (B) the treatment cannot be completed within 180 days after the day on which the
- 225 minor entered into the nonjudicial adjustment; and
- 226 (C) the treatment is necessary based on a clinical assessment that is
- 227 developmentally appropriate for the minor.
- 228 (c) If a juvenile court judge extends a minor's nonjudicial adjustment under Subsection [
- 229 (5)(b)] (6)(b), the judge may extend the nonjudicial adjustment until the minor
- 230 completes the specific treatment, but the judge may only grant each extension for 90
- 231 days at a time.
- 232 [(6)] (7) If a minor violates Section 76-10-105, the minor may be required to pay a fine or
- 233 penalty and participate in a court-approved tobacco education program with a
- 234 participation fee.

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

236 **80-6-602 . Hearings or proceedings for minors -- Prosecuting attorney -- Order**
 237 **for indigent defense -- Custody in the Division of Child and Family Services.**

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

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

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

241 and

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

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

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

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

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

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

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

257 (a) appoint an indigent defense service provider for the minor in accordance with Title
 258 78B, Chapter 22, Part 2, Appointment of Counsel; and

259 (b) order indigent defense services for the minor in accordance with Title 78B, Chapter
 260 22, Part 2, Appointment of Counsel.

261 (6) If a minor is facing a proceeding under this chapter, a minor may not decline to enter
 262 into a nonjudicial adjustment without first consulting with counsel, subject to the
 263 requirements of Subsection 80-6-304(4).

264 ~~[(6)]~~ (7) A juvenile court may appoint an attorney guardian ad litem under Section
 265 78A-2-803, or as otherwise provided by law, to represent a child under this chapter.

266 ~~[(7)]~~ (8) A juvenile court may not vest custody of a minor facing a delinquency proceeding
 267 under this chapter in the Division of Child and Family Services, except as provided in
 268 Chapter 3, Abuse, Neglect, and Dependency Proceedings.

269 Section 6. **Effective Date.**

270 This bill takes effect on May 7, 2025.