

**MINUTES OF THE
SENATE JUDICIARY, LAW ENFORCEMENT, AND CRIMINAL JUSTICE STANDING COMMITTEE**
Thursday , March 1, 2018 • 4:00 p.m. • 250 State Capitol

Members Present:

Sen. Todd Weiler, Chair
Sen. Gene Davis
Sen. Lyle W. Hillyard
Sen. Daniel W. Thatcher

Sen. Luz Escamilla
President Wayne L. Niederhauser
Sen. Ralph Okerlund

Staff Present:

Mr. John Feinauer, Policy Analyst
Ms. Nancy Skidmore, Committee Secretary

Members Absent:

Note: A copy of related materials and an audio recording of the meeting can be found at www.le.utah.gov.

Chair Weiler called the meeting to order at 4:19 p.m.

MOTION: Sen. Thatcher moved to approve the minutes of the February 28, 2018 meeting. The motion passed with a vote of 3 - 0 - 4 .

Yeas-3

Sen. L. Hillyard
Sen. D. Thatcher
Sen. T. Weiler

Nays-0

Absent-4

Sen. G. Davis
Sen. L. Escamilla
Sen. W. Niederhauser
Sen. R. Okerlund

1 . H.J.R. 12 Joint Resolution Calling Upon the Attorney General to Sue Prescription Opioid Manufacturers (McKell, M.)

Rep. McKell explained the bill.

MOTION: Sen. Thatcher moved to amend H.J.R. 12 with Amendment #1. The motion passed with a vote of 3 - 0 - 4 .

Amendment 1
H.J.R. 12

1 Page 2, Line 43

43 {~~grew~~} grew to a value of \$12.4 billion in 2015 with an expected annual growth rate of 4.6%;

2 Page 2, Line 47

47 according to the Centers for Disease Control and Prevention ;

3 Page 3, Line 78

78 {~~manufactures~~} manufacturers ; and

Yeas-3

Sen. L. Hillyard
Sen. D. Thatcher
Sen. T. Weiler

Nays-0

Absent-4

Sen. G. Davis
Sen. L. Escamilla
Sen. W. Niederhauser
Sen. R. Okerlund

MOTION: Sen. Hillyard moved to pass H.J.R. 12, as amended, out favorably. The motion passed with a vote of 3 - 0 - 4 .

Yeas-3

Sen. L. Hillyard
Sen. D. Thatcher
Sen. T. Weiler

Nays-0

Absent-4

Sen. G. Davis
Sen. L. Escamilla
Sen. W. Niederhauser
Sen. R. Okerlund

2 . 2nd Sub. H.B. 115 Abuse of Process and Demands Concerning Americans with Disabilities Act (Thurston, N.)

Rep. Thurston explained the bill.

MOTION: Sen. Thatcher moved to amend 2nd Substitute H.B. 115 with Amendment #1. The motion passed with a vote of 3 - 0 - 4 .

Amendment 1
2nd Sub. H.B. 115

1 Page 5, Lines 122 through 128

122 The following are exempt from this part:

123 (1) a protection and advocacy agency;

124 (2) a disability advocate agency ~~{-}~~ ; **or**

125 (3) an individual or professional who:

126 (a) acts in good faith and with civility; and

127 (b) does not have a pattern or practice of vexatious or frivolous claims or abusive

128 compensation demands.

Yeas-3

Sen. L. Hillyard
Sen. D. Thatcher
Sen. T. Weiler

Nays-0

Absent-4

Sen. G. Davis
Sen. L. Escamilla
Sen. W. Niederhauser
Sen. R. Okerlund

Mr. Dale Bown, Attorney, National Association of the Deaf (NAD), spoke in opposition to the bill.

Mr. Melva Sine, Utah Restaurant Association, spoke in favor of the bill.

Mr. Dave Davis, President, Utah Retail Merchants Association, spoke in favor of the bill.

Mr. Andy Curry, Executive Director, Roads to Independence, spoke to the bill.

Ms. Jacey Skinner, Deputy Court Administrator, Administrative Office of the Courts. spoke to the bill.

MOTION: Sen. Hillyard moved to pass 2nd Substitute H.B. 115, as amended, out favorably. The motion passed with a vote of 4 - 0 - 3 .

Yeas-4

Sen. G. Davis
Sen. L. Hillyard
Sen. D. Thatcher
Sen. T. Weiler

Nays-0

Absent-3

Sen. L. Escamilla
Sen. W. Niederhauser
Sen. R. Okerlund

3 . H.B. 84 Felony Fleeing Amendments (*Ray, P*)

Rep. Ray explained the bill with the assistance of William Carlson, Deputy District Attorney, Salt Lake County.

MOTION: Sen. Thatcher moved to replace H.B. 84 with 1st Substitute H.B. 84. The motion passed with a vote of 3 - 0 - 4 .

Yeas-3

Sen. G. Davis
Sen. D. Thatcher
Sen. T. Weiler

Nays-0

Absent-4

Sen. L. Escamilla
Sen. L. Hillyard
Sen. W. Niederhauser
Sen. R. Okerlund

MOTION: Sen. Thatcher moved to pass 1st Substitute H.B. 84 out favorably. The motion passed with a vote of 3 - 0 - 4 .

Yeas-3

Sen. G. Davis
Sen. D. Thatcher
Sen. T. Weiler

Nays-0

Absent-4

Sen. L. Escamilla
Sen. L. Hillyard
Sen. W. Niederhauser
Sen. R. Okerlund

4 . 3rd Sub. H.B. 132 Juvenile Justice Modifications (*Snow, V. L.*)

MOTION: Sen. Davis moved to amend 3rd Substitute H.B. 132 with Amendment #1. The motion passed with a vote of 3 - 0 - 4 .

Amendment 1
3rd Sub. H.B. 132

1 Page 1, Lines 11 through 12

11 This bill:

► **addresses sheriff's duties related to juvenile courts;**

12 ► expands the uses of appropriations for the Enhancement for At-Risk Students

2 Page 1, Lines 15 through 16

15 ► clarifies when a prosecutor may file a petition or review a referral;

► **addresses adjudication of jurisdiction by juvenile court;**

16 ► addresses the inquiry a prosecutor shall conduct before filing a petition;

3 Page 1, Line 25 through Page 2, Line 26

25 AMENDS:

17-22-2, as last amended by Laws of Utah 2017, Chapter 459

4 Page 2, Line 29

29 63I-1-253, as last amended by Laws of Utah 2017, Chapters 166 and 181

78A-6-117 (Effective 07/01/18), as last amended by Laws of Utah 2017, Chapter 330

5 Page 2, Line 34

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

Section 1. Section 17-22-2 is amended to read:

17-22-2. Sheriff -- General duties.

(1) The sheriff shall:

(a) preserve the peace;

(b) make all lawful arrests;

(c) attend in person or by deputy the Supreme Court and the Court of Appeals when required or when the court is held within his county, all courts of record, and court commissioner and referee sessions held within his county, obey their lawful orders and directions, and comply with the court security rule, Rule 3-414, of the Utah Code of Judicial Administration;

(d) upon request of the juvenile court, aid the court in maintaining order during hearings and transport a minor to and from a youth corrections { ~~facilities, other institutions, or other designated places~~ } **facility or other place designated by a state agency that is responsible for the care, custody, or supervision of the minor** ;

(e) attend county justice courts if the judge finds that the matter before the court requires the sheriff's attendance for security, transportation, and escort of jail prisoners in his custody, or for the custody of jurors;

(f) command the aid of as many inhabitants of his county as he considers necessary in the execution of these duties;

(g) take charge of and keep the county jail and the jail prisoners;

(h) receive and safely keep all persons committed to his custody, file and preserve the commitments of those persons, and record the name, age, place of birth, and description of each person committed;

- (i) release on the record all attachments of real property when the attachment he receives has been released or discharged;
 - (j) endorse on all process and notices the year, month, day, hour, and minute of reception, and, upon payment of fees, issue a certificate to the person delivering process or notice showing the names of the parties, title of paper, and the time of receipt;
 - (k) serve all process and notices as prescribed by law;
 - (l) if he makes service of process or notice, certify on the process or notices the manner, time, and place of service, or, if he fails to make service, certify the reason upon the process or notice, and return them without delay;
 - (m) extinguish fires occurring in the undergrowth, trees, or wooded areas on the public land within his county;
 - (n) perform as required by any contracts between the county and private contractors for management, maintenance, operation, and construction of county jails entered into under the authority of Section 17-53-311;
 - (o) for the sheriff of a county that enters into an interlocal agreement for law enforcement service under Title 11, Chapter 13, Interlocal Cooperation Act, provide law enforcement service as provided in the interlocal agreement;
 - (p) manage search and rescue services in his county;
 - (q) obtain saliva DNA specimens as required under Section 53-10-404;
 - (r) on or before January 1, 2003, adopt a written policy that prohibits the stopping, detention, or search of any person when the action is solely motivated by considerations of race, color, ethnicity, age, or gender;
 - (s) create a child protection unit, as defined in Section 62A-4a-101, if the sheriff determines that creation of a child protection unit is warranted; and
 - (t) perform any other duties that are required by law.
- (2) Violation of Subsection (1)(j) is a class C misdemeanor. Violation of any other subsection under Subsection (1) is a class A misdemeanor.
- (3) (a) As used in this Subsection (3):
- (i) "Police interlocal entity" has the same meaning as defined in Sections 17-30-3 and 17-30a-102.
 - (ii) "Police local district" has the same meaning as defined in Section 17-30-3.
- (b) A sheriff in a county which includes within its boundary a police local district or police interlocal entity, or both:
- (i) serves as the chief executive officer of each police local district and police interlocal entity within the county with respect to the provision of law enforcement service within the boundary of the police local district or police interlocal entity, respectively; and
 - (ii) is subject to the direction of the police local district board of trustees or police interlocal entity governing body, as the case may be, as and to the extent provided by agreement between the police local district or police interlocal entity, respectively, and the sheriff.
- (c) If a police interlocal entity or police local district enters an interlocal agreement with a public agency, as defined in Section 11-13-103, for the provision of law enforcement service, the sheriff:
- (i) does not serve as the chief executive officer of any interlocal entity created under that interlocal agreement, unless the agreement provides for the sheriff to serve as the chief executive officer; and
 - (ii) shall provide law enforcement service under that interlocal agreement as provided in the agreement.

RENUMBER REMAINING SECTIONS ACCORDINGLY

6 Page 7, Line 195

195 (10) Subsection 53G-8-211(4) is repealed July 1, 2020.

Section 8. Section 78A-6-117 (Effective 07/01/18) is amended to read:

78A-6-117 (Effective 07/01/18). Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court.

(1) (a) When a minor is found to come within Section 78A-6-103, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over the minor. However, in cases within Subsection 78A-6-103(1), findings of fact are not necessary.

(b) If the court adjudicates a minor for a crime of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days of the adjudication and shall include:

(i) the specific offenses for which the minor was adjudicated; and

(ii) if available, if the victim:

(A) resides in the same school district as the minor; or

(B) attends the same school as the minor.

(c) An adjudicated minor shall undergo a risk screening or, if indicated, a validated risk and needs assessment. Results of the screening or assessment shall be used to inform disposition decisions and case planning. Assessment results, if available, may not be shared with the court before adjudication.

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

(a) (i) the court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including compensatory service;

(ii) a condition ordered by the court under Subsection (2)(a)(i):

(A) shall be individualized and address a specific risk or need;

(B) shall be based on information provided to the court, including the results of a validated risk and needs assessment conducted under Subsection (1)(c); and

(C) if the court orders treatment, be based on a validated risk and needs assessment conducted under Subsection (1)(c);

(iii) a court may not issue a standard order that contains control-oriented conditions;

(iv) prohibitions on weapon possession, where appropriate, shall be specific to the minor and not the minor's family;

(v) if the court orders probation, the court may direct that notice of the court's order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, that the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety; and

(vi) an employee of the local law enforcement agency and the school that the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202; and

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

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

(c) (i) The court shall only vest legal custody of the minor in the Division of Juvenile Justice Services and order the Division of Juvenile Justice Services to provide dispositional recommendations and services if:

(A) nonresidential treatment options have been exhausted or nonresidential treatment options are not appropriate; and

(B) the minor is adjudicated under this section for a felony offense, a misdemeanor when the minor has five prior misdemeanors or felony adjudications arising from separate criminal episodes, or a misdemeanor involving the use of a dangerous weapon as defined in Section 76-1-601.

(ii) The court may not vest legal custody of a minor in the Division of Juvenile Justice Services for:

(A) contempt of court except to the extent permitted under Section 78A-6-1101;

(B) a violation of probation;

(C) failure to pay a fine, fee, restitution, or other financial obligation;

(D) unfinished compensatory or community service hours;

(E) an infraction; or

(F) a status offense.

(iii) (A) A minor who is 18 years old or older, but younger than 21 years old, may petition the court to express the minor's desire to be removed from the jurisdiction of the juvenile court and from the custody of the Division of Child and Family Services if the minor is in the division's custody on grounds of abuse, neglect, or dependency.

(B) If the minor's parent's rights have not been terminated in accordance with Part 5, Termination of Parental Rights Act, the minor's petition shall contain a statement from the minor's parent or guardian agreeing that the minor should be removed from the custody of the Division of Child and Family Services.

(C) The minor and the minor's parent or guardian shall sign the petition.

(D) The court shall review the petition within 14 days.

(E) The court shall remove the minor from the custody of the Division of Child and Family Services if the minor and the minor's parent or guardian have met the requirements described in Subsections (2)(c)(iv)(B) and (C) and if the court finds, based on input from the Division of Child and Family Services, the minor's guardian ad litem, and the Office of the Attorney General, that the minor does not pose an imminent threat to self or others.

(F) A minor removed from custody under Subsection (2)(c)(iv)(E) may, within 90 days of the date of removal, petition the court to re-enter custody of the Division of Child and Family Services.

(G) Upon receiving a petition under Subsection (2)(c)(iv)(F), the court shall order the Division of Child and Family Services to take custody of the minor based on the findings the court entered when the court originally vested custody in the Division of Child and Family Services.

(d) (i) The court shall only commit a minor to the Division of Juvenile Justice Services for secure confinement if the court finds that the minor poses a risk of harm to others and is adjudicated under this section for:

(A) a felony offense;

(B) a misdemeanor if the minor has five prior misdemeanor or felony adjudications arising from separate criminal episodes; or

(C) a misdemeanor involving use of a dangerous weapon as defined in Section 76-1-601.

(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection 78A-6-103(1)(b) may not be committed to the Division of Juvenile Justice Services.

(iii) The court may not commit a minor to the Division of Juvenile Justice Services for secure confinement for:

(A) contempt of court;

(B) a violation of probation;

(C) failure to pay a fine, fee, restitution, or other financial obligation;

(D) unfinished compensatory or community service hours;

(E) an infraction; or

(F) a status offense.

(e) The court may order nonresidential, diagnostic assessment, including substance use disorder, mental health, psychological, or sexual behavior risk assessment.

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

This commitment may not be suspended upon conditions ordered by the court.

(ii) This Subsection (2)(f) applies only to a minor adjudicated for:

(A) an act which if committed by an adult would be a criminal offense; or

(B) contempt of court under Section 78A-6-1101.

(iii) The court may not commit a minor to a place of detention for:

(A) contempt of court except to the extent allowed under Section 78A-6-1101;

(B) a violation of probation;

(C) failure to pay a fine, fee, restitution, or other financial obligation;

(D) unfinished compensatory or community service hours;

(E) an infraction; or

(F) a status offense.

(iv) (A) Time spent in detention pre-adjudication shall be credited toward the 30 cumulative days eligible as a disposition under Subsection (2)(f)(i). If the minor spent more than 30 days in a place of detention before disposition, the court may not commit a minor to detention under this section.

(B) Notwithstanding Subsection (2)(f)(iv)(A), the court may commit a minor for a maximum of seven days while a minor is awaiting placement under Subsection (2)(c)(i). Only the seven days under this Subsection (2)(f)(iv)(B) may be combined with a nonsecure placement.

(v) Notwithstanding Subsection (2)(t), no more than seven days of detention may be ordered in combination with an order under Subsection (2)(c)(i).

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

(h) (i) The court may order a minor to repair, replace, or otherwise make restitution for material loss caused by the minor's wrongful act or for conduct for which the minor agrees to make restitution.

(ii) A victim has the meaning defined under Subsection 77-38a-102(14). A victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the minor's delinquency conduct in the course of the scheme, conspiracy, or pattern.

(iii) If the victim and the minor agree to participate, the court may refer the case to a restorative justice program such as victim offender mediation to address how loss resulting from the adjudicated act may be addressed.

(iv) For the purpose of determining whether and how much restitution is appropriate, the court shall consider the following:

(A) restitution shall only be ordered for the victim's material loss;

(B) restitution may not be ordered if the court finds that the minor is unable to pay or acquire the means to pay; and

(C) any amount paid by the minor to the victim in civil penalty shall be credited against restitution owed.

(v) Any amount paid to the victim in restitution shall be credited against liability in a civil suit.

(vi) The court may also require a minor to reimburse an individual, entity, or governmental agency who offered and paid a reward to a person or persons for providing information resulting in a court adjudication that the minor is within the jurisdiction of the juvenile court due to the commission of a criminal offense.

(vii) If a minor is returned to this state under the Interstate Compact on Juveniles, the court may order the minor to make restitution for costs expended by any governmental entity for the return.

(viii) The prosecutor shall submit a request for restitution to the court at the time of disposition, if feasible, otherwise within three months after disposition.

(ix) A financial disposition ordered shall prioritize the payment of restitution.

(i) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions, except for an order that changes the custody of the minor, including detention or other secure or nonsecure residential placements.

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

(ii) Consistent with the order of the court, the probation officer may permit a minor found to be within the jurisdiction of the court to participate in a program of work restitution or compensatory service in lieu of paying part or all of the fine imposed by the court.

(iii) The court may order the minor to:

(A) pay a fine, fee, restitution, or other cost; or

(B) complete service hours.

(iv) If the court orders a minor to pay a fine, fee, restitution, or other cost, or to complete service hours, those dispositions shall be considered collectively to ensure that the order is reasonable and prioritizes restitution.

(v) If the court orders a minor to pay a fine, fee, or other cost, or complete service hours, the cumulative order shall be limited per criminal episode as follows:

(A) for children under age 16 at adjudication, the court may impose up to \$180 or up to 24 hours of service; and

(B) for minors 16 and older at adjudication, the court may impose up to \$270 or up to 36 hours of service.

(vi) The cumulative order under Subsection (2)(j)(v) does not include restitution.

(vii) If the court converts a fine, fee, or restitution amount to service hours, the rate of conversion shall be no less than the minimum wage.

(k) (i) In violations of traffic laws within the court's jurisdiction, when the court finds that as part of the commission of the violation the minor was in actual physical control of a motor vehicle, the court may, in addition to any other disposition authorized by this section:

(A) restrain the minor from driving for periods of time the court considers necessary; and

(B) take possession of the minor's driver license.

(ii) The court may enter any other eligible disposition under Subsection (2)(k)(i) except for a disposition under Subsection (2)(c), (d), or (f). However, the suspension of driving privileges for an offense under Section 78A-6-606 is governed only by Section 78A-6-606.

(l) (i) The court may order a minor to complete community or compensatory service hours in accordance with Subsections (2)(j)(iv) and (v).

(ii) When community service is ordered, the presumptive service order shall include between five and 10 hours of service.

(iii) Satisfactory completion of an approved substance use disorder prevention or treatment program or other court-ordered condition may be credited by the court as compensatory service hours.

(iv) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may order the minor to clean up graffiti created by the minor or any other person at a time and place within the jurisdiction of the court. Compensatory service ordered under this section may be performed in the presence and under the direct supervision of the minor's parent or legal guardian. The parent or legal guardian shall report completion of the order to the court. The court may also require the minor to perform other alternative forms of restitution or repair to the damaged property pursuant to Subsection (2)(h).

(m) (i) Subject to Subsection (2)(m)(iii), the court may order that a minor:

(A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

(B) receive other special care.

(ii) For purposes of receiving the examination, treatment, or care described in Subsection (2)(m)(i), the court may place the minor in a hospital or other suitable facility that is not a secure facility or secure detention.

(iii) In determining whether to order the examination, treatment, or care described in Subsection (2)(m)(i), the court shall consider:

(A) the desires of the minor;

(B) if the minor is under the age of 18, the desires of the parents or guardian of the minor; and

(C) whether the potential benefits of the examination, treatment, or care outweigh the potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain function impairment, or emotional or physical harm resulting from the compulsory nature of the examination, treatment, or care.

(iv) The Division of Child and Family Services shall take reasonable measures to notify a parent or guardian of any non-emergency health treatment or care scheduled for a child, shall include the parent or guardian as fully as possible in making health care decisions for the child, and shall defer to the parent's or guardian's reasonable and informed decisions regarding the child's health care to the extent that the child's health and well being are not unreasonably compromised by the parent's or guardian's decision.

(v) The Division of Child and Family Services shall notify the parent or guardian of a child within five business days after a child in the custody of the Division of Child and Family Services receives emergency health care or treatment.

(vi) The Division of Child and Family Services shall use the least restrictive means to accomplish a compelling interest in the care and treatment of a child described in this Subsection (2)(m).

(n) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint as guardian a public or private institution or agency, but not a nonsecure residential placement provider, in which legal custody of the minor is vested.

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

(o) (i) In support of a decree under Section 78A-6-103, the court may order reasonable conditions to be complied with by a minor's parents or guardian, a minor's custodian, or any other person who has been made a party to the proceedings. Conditions may include:

- (A) parent-time by the parents or one parent;
- (B) restrictions on the minor's associates;
- (C) restrictions on the minor's occupation and other activities; and
- (D) requirements to be observed by the parents or custodian.

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

(p) The court may order the child to be committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(q) (i) The court may make an order committing a minor within the court's jurisdiction to the Utah State Developmental Center if the minor has an intellectual disability in accordance with Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability.

(ii) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center when ordering a commitment under Subsection (2)(q)(i).

(r) The court may terminate all parental rights upon a finding of compliance with Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

(s) The court may make other reasonable orders for the best interest of the minor and as required for the protection of the public, except that a child may not be committed to jail, prison, secure detention, or the custody of the Division of Juvenile Justice Services under Subsections (2)(c) and (d).

(t) The court may combine the dispositions listed in this section if it is permissible and they are compatible.

(u) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their child. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

(v) Except as provided in Subsection (2)(x)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review and presumptive termination of the case by the court in accordance with Subsection (6) and Section 62A-7-404. A new date shall be set upon each review.

(w) In reviewing foster home placements, special attention shall be given to making adoptable children available for adoption without delay.

(x) (i) The juvenile court may enter an order of permanent custody and guardianship with an individual or relative of a child where the court has previously acquired jurisdiction as a result of an adjudication of abuse,

neglect, or dependency. The juvenile court may enter an order for child support on behalf of the child against the natural or adoptive parents of the child.

(ii) Orders under Subsection (2)(x)(i):

(A) shall remain in effect until the child reaches majority;

(B) are not subject to review under Section 78A-6-118; and

(C) may be modified by petition or motion as provided in Section 78A-6-1103.

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

(3) In addition to the dispositions described in Subsection (2), when a minor comes within the court's jurisdiction, the minor may be given a choice by the court to serve in the National Guard in lieu of other sanctions, provided:

(a) the minor meets the current entrance qualifications for service in the National Guard as determined by a recruiter, whose determination is final;

(b) the minor is not under the jurisdiction of the court for any act that:

(i) would be a felony if committed by an adult;

(ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

(iii) was committed with a weapon; and

(c) the court retains jurisdiction over the minor under conditions set by the court and agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

(4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by designated employees of the court or, if the minor is in the legal custody of the Division of Juvenile Justice Services, then by designated employees of the division under Subsection 53-10-404(5)(b).

(b) The responsible agency shall ensure that employees designated to collect the saliva DNA specimens receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA Specimen Restricted Account created in Section 53-10-407.

(d) Payment of the reimbursement is second in priority to payments the minor is ordered to make for restitution under this section and treatment under Section 78A-6-321.

(5) (a) A disposition made by the court pursuant to this section may not be suspended, except for the following:

(i) If a minor qualifies for commitment to the Division of Juvenile Justice Services under Subsection (2)(c) or (d), the court may suspend a custody order pursuant to Subsection (2)(c) or (d) in lieu of immediate commitment, upon the condition that the minor commit no new misdemeanor or felony offense during the three months following the day of disposition.

(ii) The duration of a suspended custody order made under Subsection (5)(a)(i) may not exceed three months post-disposition and may not be extended under any circumstance.

(iii) The court may only impose a custody order suspended under Subsection (5)(a)(i) following adjudication of a new misdemeanor or felony offense committed by the minor during the period of suspension set out under Subsection (5)(a)(ii).

(b) The court pursuant to Subsection (5)(a) shall terminate jurisdiction over the minor at the end of the presumptive time frame unless at least one the following circumstances exists:

(i) termination pursuant to Subsection (6)(a)(ii) would interrupt the completion of a program determined to be necessary by the results of a validated risk and needs assessment with completion found by the court after considering the recommendation of a licensed service provider on the basis of the minor completing the goals of the necessary treatment program;

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

(iii) service hours have not been completed; or

(iv) there is an outstanding fine.

(6) When the court places a minor on probation under Subsection (2)(a) or vests legal custody of the minor in the Division of Juvenile Justice Services under Subsection (2)(c), the court shall do so for a defined period of time pursuant to this section.

(a) For the purposes of placing a minor on probation under Subsection (2)(a), the court shall establish a presumptive term of probation as specified in this Subsection (6):

(i) the presumptive maximum length of intake probation may not exceed three months; and

(ii) the presumptive maximum length of formal probation may not exceed four to six months.

(b) For the purposes of vesting legal custody of the minor in the Division of Juvenile Justice Services under Subsection (2)(c), the court shall establish a maximum term of custody and a maximum term of aftercare as specified in this Subsection (6):

(i) the presumptive maximum length of out-of-home placement may not exceed three to six months; and

(ii) the presumptive maximum length of aftercare supervision, for those previously placed out-of-home, may not exceed three to four months, and minors may serve the term of aftercare in the home of a qualifying relative or guardian or at an independent living program contracted or operated by the Division of Juvenile Justice Services.

(c) The court pursuant to Subsections (6)(a) and (b), and the Youth Parole Authority pursuant to Subsection (6)(b), shall terminate jurisdiction over the minor at the end of the presumptive time frame unless at least one of the following circumstances exists:

(i) termination pursuant to Subsection (6)(a)(ii) would interrupt the completion of a court ordered program determined to be necessary by the results of a validated assessment, with completion found by the court after considering the recommendations of a licensed service provider **or facilitator of court ordered treatment or intervention program** on the basis of the minor completing the goals of the necessary treatment program;

(ii) termination pursuant to Subsection (6)(a)(i) or (6)(b) would interrupt the completion of a program determined to be necessary by the results of a validated assessment, with completion determined on the basis of whether the minor has regularly and consistently attended the treatment program and completed the goals of the necessary treatment program as determined by the **court or** Youth Parole Authority after considering the recommendation of a licensed service provider **or facilitator of court ordered treatment or intervention program**;

(iii) the minor commits a new misdemeanor or felony offense;

(iv) service hours have not been completed; or

(v) there is an outstanding fine.

(d) (i) Subject to Subsection (6)(g), if one of the circumstances under Subsection (6)(c)(i), (ii), (iii), or (iv) exists, the court may extend jurisdiction for the time needed to address the specific circumstance.

(ii) Subject to Subsection (6)(g), if one of the circumstances under Subsection (6)(c)(i), (ii), (iii), or (iv) exists, and the Youth Parole Authority has jurisdiction, the Youth Parole Authority may extend jurisdiction for the time needed to address the specific circumstance.

(e) If the circumstance under Subsection (6)(c)(iv) exists, the court, or the Youth Parole Authority if the Youth Parole Authority has jurisdiction, may extend jurisdiction one time for up to three months.

(f) Grounds for extension of the presumptive length of supervision or placement and the length of any extension shall be recorded in the court record or records of the Youth Parole Authority if the Youth Parole Authority has jurisdiction, and tracked in the data system used by the Administrative Office of the Courts and the Division of Juvenile Justice Services.

(g) (i) For a minor who is under the supervision of the juvenile court and whose supervision is extended to complete service hours under Subsection (6)(c)(iv), jurisdiction may only be continued under the supervision of intake probation.

(ii) For a minor who is under the jurisdiction of the Youth Parole Authority whose supervision is extended to complete service hours under Subsection (6)(c)(iv), jurisdiction may only be continued on parole and not in secure confinement.

(h) In the event of an unauthorized leave lasting more than 24 hours, the supervision period shall toll until the minor returns.

(7) Subsection (6) does not apply to any minor adjudicated under this section for:

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

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

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

(d) Section 76-5-302, aggravated kidnapping;

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

(f) a felony violation of Section 76-6-103, aggravated arson;

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

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

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

(j) an offense other than those listed in Subsections (7)(a) through (i) involving the use of a dangerous weapon, as defined in Section 76-1-601, that is a felony, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon.

RENUMBER REMAINING SECTIONS ACCORDINGLY

7 Page 12, Lines 337 through 348

337 (k) Notwithstanding the other provisions of this section, the probation department shall

338 request that a prosecutor review a referral in accordance with Subsection (2)(g) if :

(i) the referral

339 involves a violation of:

340 {~~(i)~~} (A) Section 76-5-206, negligent homicide;

341 {~~(ii)~~} (B) Section 76-5-112, reckless endangerment creating a substantial risk of death or

342 serious bodily injury;

343 {~~(iii)~~} (C) Section 76-10-505.5, possession of a dangerous weapon, firearm, or short barreled

344 shotgun on or about school premises;

345 {~~(iv)~~} (D) Section 76-10-509, possession of dangerous weapon by minor, but only if the

346 dangerous weapon is a firearm;

347 ~~{(v)}~~ (E) Section 76-9-702.1, sexual battery; or

348 ~~{(vi)}~~ (F) Section 41-6a-502, driving under the influence ~~{-}~~ ; or

(ii) the minor has a current suspended order for custody under Subsection 78A-6-117(5)(a).

8 Page 15, Lines 436 through 440

436 Section 8. Effective date.

437 ~~{(f)}~~ **(1) Except as provided in Subsection (2), if** approved by two-thirds of all the members elected to each house, this bill takes effect

438 upon approval by the governor, or the day following the constitutional time limit of Utah

439 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,

440 the date of veto override.

(2) The amendments to Section 78A-6-117 (Effective 07/01/18) take effect on July 1, 2018.

Yeas-3

Sen. G. Davis

Sen. D. Thatcher

Sen. T. Weiler

Nays-0

Absent-4

Sen. L. Escamilla

Sen. L. Hillyard

Sen. W. Niederhauser

Sen. R. Okerlund

Rep. Snow explained the bill.

Sen. Thatcher assumed the chair.

Ms. Rachel Peterson, Safety Commissioner, Parent Teacher Association (PTA), spoke in favor of the bill.

Mr. William Carlson, Deputy District Attorney, Salt Lake County, spoke in favor of the bill.

Ms. Anna Thomas, Senior Policy Analyst, Voices for Utah Kids, spoke to the bill.

Mr. Art Brown, President, Mother's Against Drunk Driving, spoke in favor of the bill.

Ms. Susan Edwards, Administrator, Canyons School District, spoke in favor of the bill.

Erin Jemison, Director of Public Policy, Young Women's Association (YMCA), spoke in favor of the bill.

Sen. Weiler resumed the chair.

MOTION: Sen. Davis moved to pass 3rd Substitute H.B. 132, as amended, out favorably. The motion passed with a vote of 3 - 0 - 4 .

Yeas-3

Sen. G. Davis
Sen. D. Thatcher
Sen. T. Weiler

Nays-0

Absent-4

Sen. L. Escamilla
Sen. L. Hillyard
Sen. W. Niederhauser
Sen. R. Okerlund

5 . 3rd Sub. H.B. 287 Aggravated Kidnapping Amendments (*Snow, V. L.*)

Rep. Snow explained the bill with the assistance of Ralph Dellapiana, Assistant Director, Salt Lake Legal Defenders Association Attorneys

Mr. William Carlson, Deputy District Attorney, Salt Lake County spoke in favor of the bill.

MOTION: Sen. Thatcher moved to pass 3rd Substitute H.B. 287 out favorably. The motion passed with a vote of 3 - 0 - 4 .

Yeas-3

Sen. G. Davis
Sen. D. Thatcher
Sen. T. Weiler

Nays-0

Absent-4

Sen. L. Escamilla
Sen. L. Hillyard
Sen. W. Niederhauser
Sen. R. Okerlund

6 . 1st Sub. H.B. 273 Criminal Judgment Account Receivable Amendments (*Weight, E.*)

Rep. Weight explained the bill.

MOTION: Sen. Davis moved to pass 1st Substitute H.B. 273 out favorably. The motion passed with a vote of 3 - 0 - 4 .

Yeas-3

Sen. G. Davis
Sen. D. Thatcher
Sen. T. Weiler

Nays-0

Absent-4

Sen. L. Escamilla
Sen. L. Hillyard
Sen. W. Niederhauser
Sen. R. Okerlund

Sen. Thatcher assumed the chair.

7 . H.B. 444 Martha Hughes Cannon Statue Oversight Committee (Edwards, R.)

Sen. Weiler explained the bill.

MOTION: Sen. Weiler moved to pass H.B. 444 out favorably. The motion passed with a vote of 3 - 0 - 4 .

Yeas-3

Sen. G. Davis
Sen. D. Thatcher
Sen. T. Weiler

Nays-0

Absent-4

Sen. L. Escamilla
Sen. L. Hillyard
Sen. W. Niederhauser
Sen. R. Okerlund

MOTION: Sen. Weiler moved to place H.B. 444 on the Consent Calendar. The motion passed with a vote of 3 - 0 - 4 .

Yeas-3

Sen. G. Davis
Sen. D. Thatcher
Sen. T. Weiler

Nays-0

Absent-4

Sen. L. Escamilla
Sen. L. Hillyard
Sen. W. Niederhauser
Sen. R. Okerlund

Sen. Weiler resumed the chair.

8 . 1st Sub. H.B. 291 Sentencing Commission Length of Supervision Guidelines (Hutchings, E.)

MOTION: Sen. Thatcher moved to amend 1st Substitute H.B. 291 with Amendment #3. The motion passed with a vote of 3 - 0 - 4 .

Amendment 3
1st Sub. H.B. 291

1 Page 3, Lines 79 through 84

79 (b) the court may:

80 (i) order the [~~person~~] individual to obtain substance abuse treatment if the substance
81 abuse treatment program determines that substance abuse treatment is appropriate;

82 (ii) order probation for the {~~person~~} individual in accordance with Section 41-6a-507;

83 (iii) order the [~~person~~] individual to participate in a 24-7 sobriety program as defined in

84 Section 41-6a-515.5 if the {~~person~~} individual is 21 years of age or older; or

2 Page 15, Lines 444 through 447

444 (4) [~~Any person~~] An individual who violates the terms of parole, while serving parole,

445 for any offense under Subsection (1){+},{+}{-or} (2), {+}or (3),{+} shall at the discretion of the Board
of
446 Pardons and Parole be recommitted to prison to serve the portion of the balance of the term as
447 determined by the Board of Pardons and Parole, but not to exceed the maximum term.

Yeas-3

Sen. G. Davis
Sen. D. Thatcher
Sen. T. Weiler

Nays-0

Absent-4

Sen. L. Escamilla
Sen. L. Hillyard
Sen. W. Niederhauser
Sen. R. Okerlund

Sen. Thatcher explained the bill.

Mr. Marshall Thompson, Director, Utah Sentencing Commission, spoke to the bill.

MOTION: Sen. Thatcher moved to pass 1st Substitute H.B. 291, as amended, out favorably. The motion passed with a vote of 3 - 0 - 4 .

Yeas-3

Sen. G. Davis
Sen. D. Thatcher
Sen. T. Weiler

Nays-0

Absent-4

Sen. L. Escamilla
Sen. L. Hillyard
Sen. W. Niederhauser
Sen. R. Okerlund

MOTION: Sen. Thatcher moved to place 1st Substitute H.B. 291 on the Consent Calendar. The motion passed with a vote of 3 - 0 - 4 .

Yeas-3

Sen. G. Davis
Sen. D. Thatcher
Sen. T. Weiler

Nays-0

Absent-4

Sen. L. Escamilla
Sen. L. Hillyard
Sen. W. Niederhauser
Sen. R. Okerlund

MOTION: Sen. Davis moved to adjourn. The motion passed with a vote of 3 - 0 - 4 .

Yeas-3

Sen. G. Davis
Sen. D. Thatcher
Sen. T. Weiler

Nays-0

Absent-4

Sen. L. Escamilla
Sen. L. Hillyard
Sen. W. Niederhauser

Sen. R. Okerlund

Chair Weiler adjourned the meeting at 5:32 p.m.