

**Effective 5/4/2022**

**Superseded 5/3/2023**

**80-6-304 Nonjudicial adjustments.**

- (1) If the juvenile court receives a referral for an offense committed by a minor that is, or appears to be, within the juvenile court's jurisdiction, a juvenile probation officer shall make a preliminary inquiry in accordance with Subsections (3), (4), and (5) to determine whether the minor is eligible to enter into a nonjudicial adjustment.
- (2) If a minor is referred to the juvenile court for multiple offenses arising from a single criminal episode, and the minor is eligible under this section for a nonjudicial adjustment, the juvenile probation officer shall offer the minor one nonjudicial adjustment for all offenses arising from the single criminal episode.
- (3)
  - (a) The juvenile probation officer may:
    - (i) conduct a validated risk and needs assessment; and
    - (ii) request that a prosecuting attorney review a referral in accordance with Subsection (9) if:
      - (A) the results of the validated risk and needs assessment indicate the minor is high risk; or
      - (B) the results of the validated risk and needs assessment indicate the minor is moderate risk and the referral is for a class A misdemeanor violation under Title 76, Chapter 5, Offenses Against the Individual, or Title 76, Chapter 9, Part 7, Miscellaneous Provisions.
  - (b) If a minor violates Section 41-6a-502, the minor shall:
    - (i) undergo a drug and alcohol screening;
    - (ii) if found appropriate by the screening, participate in an assessment; and
    - (iii) if warranted by the screening and assessment, follow the recommendations of the assessment.
- (4) Except as provided in Subsection (5)(b), the juvenile probation officer shall request that a prosecuting attorney review a referral in accordance with Subsection (9) if:
  - (a) the referral involves:
    - (i) a felony offense; or
    - (ii) a violation of:
      - (A) Section 41-6a-502, driving under the influence;
      - (B) Section 76-5-112, reckless endangerment creating a substantial risk of death or serious bodily injury;
      - (C) Section 76-5-206, negligent homicide;
      - (D) Section 76-9-702.1, sexual battery;
      - (E) Section 76-10-505.5, possession of a dangerous weapon, firearm, or short barreled shotgun on or about school premises; or
      - (F) Section 76-10-509, possession of a dangerous weapon by minor, but only if the dangerous weapon is a firearm;
  - (b) the minor has a current suspended order for custody under Section 80-6-711; or
  - (c) the referral involves an offense alleged to have occurred before an individual was 12 years old and the offense is a felony violation of:
    - (i) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;
    - (ii) Section 76-5-202, aggravated murder or attempted aggravated murder;
    - (iii) Section 76-5-203, murder or attempted murder;
    - (iv) Section 76-5-302, aggravated kidnapping;
    - (v) Section 76-5-405, aggravated sexual assault;
    - (vi) Section 76-6-103, aggravated arson;
    - (vii) Section 76-6-203, aggravated burglary;

- (viii) Section 76-6-302, aggravated robbery; or
- (ix) Section 76-10-508.1, felony discharge of a firearm.

- (5)
  - (a) Except as provided in Subsections (3) and (4), the juvenile probation officer shall offer a nonjudicial adjustment to a minor if the minor:
    - (i) is referred for an offense that is a misdemeanor, infraction, or status offense;
    - (ii) has no more than two prior adjudications; and
    - (iii) has no more than three prior unsuccessful nonjudicial adjustment attempts.
  - (b) If the juvenile court receives a referral for an offense that is alleged to have occurred before an individual was 12 years old, the juvenile probation officer shall offer a nonjudicial adjustment to the individual, unless the referral includes an offense described in Subsection (4)(c).
  - (c)
    - (i) For purposes of determining a minor's eligibility for a nonjudicial adjustment under this Subsection (5), the juvenile probation officer shall treat all offenses arising out of a single criminal episode that resulted in a nonjudicial adjustment as one prior nonjudicial adjustment.
    - (ii) For purposes of determining a minor's eligibility for a nonjudicial adjustment under this Subsection (5), the juvenile probation officer shall treat all offenses arising out of a single criminal episode that resulted in one or more prior adjudications as a single adjudication.
  - (d) Except as provided in Subsection (4), the juvenile probation officer may offer a nonjudicial adjustment to a minor who does not meet the criteria provided in Subsection (5)(a).
- (6) For a nonjudicial adjustment, the juvenile probation officer may require a minor to:
  - (a) pay a financial penalty of no more than \$250 to the juvenile court, subject to the terms established under Subsection (8)(c);
  - (b) pay restitution to any victim;
  - (c) complete community or compensatory service;
  - (d) attend counseling or treatment with an appropriate provider;
  - (e) attend substance abuse treatment or counseling;
  - (f) comply with specified restrictions on activities or associations;
  - (g) attend victim-offender mediation if requested by the victim; and
  - (h) comply with any other reasonable action that is in the interest of the minor, the community, or the victim.
- (7)
  - (a) Within seven days of receiving a referral that appears to be eligible for a nonjudicial adjustment in accordance with Subsection (5), the juvenile probation officer shall provide an initial notice to reasonably identifiable and locatable victims of the offense contained in the referral.
  - (b) The victim shall be responsible to provide to the juvenile probation officer upon request:
    - (i) invoices, bills, receipts, and any other evidence of injury, loss of earnings, and out-of-pocket loss;
    - (ii) documentation and evidence of compensation or reimbursement from an insurance company or an agency of the state, any other state, or the federal government received as a direct result of the crime for injury, loss of earnings, or out-of-pocket loss; and
    - (iii) proof of identification, including home and work address and telephone numbers.
  - (c) The inability, failure, or refusal of the victim to provide all or part of the requested information shall result in the juvenile probation officer determining restitution based on the best information available.

(8)

- (a) The juvenile probation officer may not predicate acceptance of an offer of a nonjudicial adjustment on an admission of guilt.
- (b) The juvenile probation officer may not deny a minor an offer of a nonjudicial adjustment due to a minor's inability to pay a financial penalty under Subsection (6).
- (c) The juvenile probation officer shall base a fee, fine, or the restitution for a nonjudicial adjustment under Subsection (6) upon the ability of the minor's family to pay as determined by a statewide sliding scale developed in accordance with Section 63M-7-208.
- (d) A nonjudicial adjustment may not extend for more than 90 days, unless a juvenile court judge extends the nonjudicial adjustment for an additional 90 days.
- (e)
  - (i) Notwithstanding Subsection (8)(d), a juvenile court judge may extend a nonjudicial adjustment beyond the 180 days permitted under Subsection (8)(d) for a minor who is offered a nonjudicial adjustment under Subsection (5)(b) for a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, or is referred under Subsection (9)(b)(ii) for a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, that the minor committed before the minor was 12 years old, if the judge determines that:
    - (A) the nonjudicial adjustment requires specific treatment for the sexual offense;
    - (B) the treatment cannot be completed within 180 days after the day on which the minor entered into the nonjudicial adjustment; and
    - (C) the treatment is necessary based on a clinical assessment that is developmentally appropriate for the minor.
  - (ii) If a juvenile court judge extends a minor's nonjudicial adjustment under Subsection (8)(e)(i), the judge may extend the nonjudicial adjustment until the minor completes the treatment under this Subsection (8)(e), but the judge may only grant each extension for 90 days at a time.
- (f) If a minor violates Section 76-10-105, the minor may be required to pay a fine or penalty and participate in a court-approved tobacco education program with a participation fee.

(9) If a prosecuting attorney is requested to review a referral in accordance with Subsection (3) or (4), a minor fails to substantially comply with a condition agreed upon as part of the nonjudicial adjustment, or a minor is not offered or declines a nonjudicial adjustment in accordance with Subsection (5), the prosecuting attorney shall:

- (a) review the case; and
- (b)
  - (i) dismiss the case;
  - (ii) refer the case back to the juvenile probation officer for a new attempt at nonjudicial adjustment; or
  - (iii) except as provided in Subsections (10)(b), (11), and 80-6-305(2), file a petition with the juvenile court.

(10)

- (a) A prosecuting attorney may file a petition only upon reasonable belief that:
  - (i) the charges are supported by probable cause;
  - (ii) admissible evidence will be sufficient to support adjudication beyond a reasonable doubt; and
  - (iii) the decision to charge is in the interests of justice.
- (b) Failure to pay a fine or fee may not serve as a basis for filing of a petition under Subsection (9)(b)(iii) if the minor has substantially complied with the other conditions agreed upon in

accordance with Subsection (6) or conditions imposed through any other court diversion program.

(11) A prosecuting attorney may not file a petition against a minor unless:

- (a) the prosecuting attorney has statutory authority to file the petition under Section 80-6-305; and
- (b)
  - (i) the minor does not qualify for a nonjudicial adjustment under Subsection (5);
  - (ii) the minor declines a nonjudicial adjustment;
  - (iii) the minor fails to substantially comply with the conditions agreed upon as part of the nonjudicial adjustment;
  - (iv) the minor fails to respond to the juvenile probation officer's inquiry regarding eligibility for or an offer of a nonjudicial adjustment after being provided with notice for preliminary inquiry; or
  - (v) the prosecuting attorney is acting under Subsection (9).

(12) If the prosecuting attorney files a petition in a juvenile court, or a proceeding is commenced against a minor under Section 80-6-302, the juvenile court may refer the case to the juvenile probation officer for another offer of nonjudicial adjustment.