

**COMPENSATORY SERVICE**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Brad King**

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

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

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

(i) this section;

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

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

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

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

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

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

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

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

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

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

(c) Alcohol concentration in the blood shall be based upon grams of alcohol per 100

milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

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

(a) class B misdemeanor; or

(b) class A misdemeanor if the person:

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

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

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

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

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

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

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

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

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

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

(c) In addition to the jail sentence or [~~community-service~~] compensatory-service work

program, the court shall:

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

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

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

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

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

(ii) third degree felony if at least:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The court shall render the same order regarding education or treatment at an alcohol or drug dependency rehabilitation facility, or both, in connection with a first, second, or subsequent conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court would render in

connection with applying respectively, the first, second, or subsequent conviction requirements of Subsections (4), (5), and (6).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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

(ii) for a second and subsequent offense within three years of a previous conviction or bail 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

(b) (i) Except as provided under Subsection (2)(a)(ii), the court may order the person to

perform [community] compensatory service in lieu of the fine or any portion of the fine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) traveling upon a divided highway;

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

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

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

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

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

(i) \$100 for a first offense;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) The division shall employ staff necessary to:

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

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

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

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

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

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

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

(14) The division may establish and operate compensatory-service work programs for youth offenders committed to the division by the juvenile court. The compensatory-service work program shall:

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

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

(c) provide counseling to youth offenders.

(15) The division shall establish minimum standards for the operation of all private

residential and nonresidential rehabilitation facilities which provide services to juveniles who have committed a delinquent act, in this state or in any other state.

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

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

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

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

(b) The surcharge shall be:

(i) 85% upon conviction of a:

(A) felony;

(B) class A misdemeanor;

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

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

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

(2) The surcharge shall not be imposed:

(a) upon nonmoving traffic violations;

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

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

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

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

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

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

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

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

As used in this part:

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

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

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

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

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

(6) "Volunteer" means any person who donates service without pay or other compensation except expenses actually and reasonably incurred as approved by the supervising agency. Volunteer does not include any person participating in human subjects research and court-ordered [community] compensatory service workers as defined in Section 67-20-2.

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

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

As used in this chapter:

(1) "Agency" means:

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

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

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

(d) any other political subdivision.

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

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

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

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

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

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

A [community] compensatory service worker is considered a government employee for purposes of receiving workers' compensation medical benefits, which shall be the exclusive remedy for all injuries and occupational diseases as provided under Title [35A] 34A, Chapter [3] (2), Workers' Compensation Act, and [3a] Title 34A, Chapter 3, Utah Occupational Disease Act.

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

**73-18-12.2. Boating under the influence of alcohol or drugs or with high blood or**

**breath alcohol content -- Criminal punishment -- Arrest without a warrant.**

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

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

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

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

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

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

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

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

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

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

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

(6) Upon a second conviction within five years after a first conviction under this section or

under a local ordinance similar to this section adopted in compliance with Section 73-18-12.1, the court shall, in addition to the penalties provided for in Subsection (4):

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

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

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

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

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

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

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

under Subsection (10), as the court would render for a first, second, or subsequent conviction of a violation of Subsection (1).

(b) For purposes of determining whether a conviction under Section 73-18-12 which qualified as a prior conviction under Subsection (10) is a first, second, or subsequent conviction under this Subsection (9), a previous conviction under either Section 73-18-12 or 73-18-12.2 is considered a prior conviction. Any alcohol rehabilitation program and any community-based or other education program provided for in this section shall be approved by the Department of Human Services.

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

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

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

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

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

**monitoring.**

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

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

(i) on probation under the supervision of the Department of Corrections except in cases of class C misdemeanors or infractions;

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

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

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

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

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

(i) the type of offense;

(ii) the demand for services;

(iii) the availability of agency resources;

(iv) the public safety; and

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

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

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

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

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

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

(5) (a) Prior to the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant.

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

(i) identify the victim of the offense;

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

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

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

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

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

(c) The presentence investigation report shall include a specific statement of pecuniary

damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the defendant in accordance with Subsection 76-3-201(4).

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

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

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

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

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

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

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

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

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

(iv) participate in available treatment programs;

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

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

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

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

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

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

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

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

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

(A) a diagnosed learning disability; or

(B) other justified cause.

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

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

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

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

(ii) If the defendant, upon expiration or termination of the probation period, owes outstanding fines, restitution, or other assessed costs, the court may retain jurisdiction of the case and continue the defendant on bench probation or place the defendant on bench probation for the

limited purpose of enforcing the payment of fines, restitution, including interest, if any, in accordance with Subsection 76-3-201(4), and other amounts outstanding.

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

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

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

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

(b) The running of the probation period is tolled upon the filing of a violation report with the court alleging a violation of the terms and conditions of probation or upon the issuance of an order to show cause or warrant by the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

court that:

- (a) the defendant is appropriate for and can benefit from treatment at the state hospital;
- (b) treatment space at the hospital is available for the defendant; and
- (c) persons described in Subsection 62A-12-209(2)(g) are receiving priority for treatment

over the defendants described in this Subsection (14).

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

- (a) ordered by the court pursuant to Subsection 63-2-202(7);
- (b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;
- (c) requested by the Board of Pardons and Parole;
- (d) requested by the subject of the presentence investigation report or the subject's authorized representative; or
- (e) requested by the victim of the crime discussed in the presentence investigation report or the victim's authorized representative, provided that the disclosure to the victim shall include only information relating to statements or materials provided by the victim, to the circumstances of the crime including statements by the defendant, or to the impact of the crime on the victim or the victim's household.

(16) (a) The court shall consider home confinement as a condition of probation under the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

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

(17) (a) If the court places the defendant on probation under this section, it may order the

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) When the Board of Pardons and Parole orders the release on parole of an inmate who has been sentenced to make restitution pursuant to Section 76-3-201 or whom the board has ordered to make restitution, and all or a portion of restitution is still owing, the board may establish a schedule, including both complete and court-ordered restitution, by which payment of the restitution shall be made, or order [community] compensatory or other service in lieu of or in combination with restitution. In fixing the schedule and supervising the paroled offender's performance, the board may consider the factors specified in Subsection 76-3-201(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 the defendant has been convicted, the victim of any other criminal conduct admitted to by the 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 Subsection 76-3-201(4) determines that restitution is inappropriate.

(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 needs or conduct.

(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 collection remedies. The Board of Pardons and Parole shall forward a restitution order to the 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.

Section 12. Section **78-3a-118** is amended to read:

**78-3a-118. 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 the provisions of Section 78-3a-104, 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 the provisions of Subsection 78-3a-104(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 and shall include the specific offenses for which the minor was adjudicated.

(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 [community] compensatory service as provided in Section 78-11-20.7.

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

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

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

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

(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 may vest legal custody of the minor in the Division of Child and Family Services, Division of Youth Corrections, or the Division of Mental Health, and may order the Department of Human Services to provide dispositional recommendations and services.

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

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

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

(e) The court may commit the minor, subject to the court retaining continuing jurisdiction over him, to the temporary custody of the Division of Youth Corrections for observation and

evaluation for a period not to exceed 90 days.

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

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

(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 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

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

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

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

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

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

work restitution or [community] compensatory service permitted by the probation officer may not affect the amount of the surcharge.

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

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

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

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

(o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint a public or private institution or agency as guardian 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 the minor's parents.

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

- (A) visitation 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.

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

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

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

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

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

compatible.

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

(w) Except as provided in Subsection (2)(y)(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 of the case by the court. A new date shall be set upon each review.

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

(y) (i) The juvenile court may enter an order of permanent custody and guardianship with a relative or individual of a minor where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency, excluding cases arising under Subsection 78-3a-105(4).

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

(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.

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

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

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

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

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

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

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

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

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

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

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

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

(c) Fines withheld under Subsection (3)(b) and any private contributions to the rehabilitative employment program are accounted for separately and are subject to audit at any time by the state auditor.

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

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

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

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

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

(2) (a) A peace officer or any public official of the state, any county, city, or town charged with the enforcement of the laws of the state or local jurisdiction shall file a formal referral with the

juvenile court within ten days of the minor's arrest. If the arrested minor is taken to a detention facility, the formal referral shall be filed with the juvenile court within 72 hours, excluding weekends and holidays. There shall be no requirement to file a formal referral with the juvenile court on an offense that would be a class B misdemeanor or less if committed by an adult.

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

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

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

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

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

(3) Except as provided in Section 78-3a-602, in the case of a minor 14 years of age or older,

the county attorney, district attorney, or attorney general may commence an action by filing a criminal information and a motion requesting the juvenile court to waive its jurisdiction and certify the minor to the district court.

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

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

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

**78-11-20.7. Compensatory service -- Graffiti penalties.**

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

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

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

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

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

(3) The offender convicted under Section 76-6-106, 76-6-206, or 76-6-107 or adjudicated

under Section 78-3a-118 or his parent or legal guardian, if applicable, shall be responsible for removal costs as determined under Section 76-6-107, unless waived by the court for good cause.

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

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

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

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

- (a) perform a minimum of [~~10~~] ten hours of [~~community~~] compensatory service; and
- (b) participate in workshops, classes, or individual counseling to educate the parent about the importance of complying with the court order and providing a child a continuing relationship with both parents.

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

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

(4) The person ordered to participate in court-ordered education is responsible for expenses of workshops, classes, and individual counseling.

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

(a) perform a minimum of [10] ten hours of [community] compensatory service; and  
(b) participate in workshops, classes, or individual counseling to educate the obligor about the importance of complying with the court order and providing the children with a regular and stable source of support.

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

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

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

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

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

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

(1) For purposes of this section:

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

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

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

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

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

(i) a first petition is a petition to enforce an original order of visitation or a petition filed after

three years from the last visitation enforcement order;

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

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

(c) "Substantial noncompliance" means conduct which:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) mediation with the requirement to report back to the court on the results of mediation within 30 days;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) the violator to post bond or security in the amount determined by the court to insure

future compliance.

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

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

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

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

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

(iii) a minimum of ten hours of [community] compensatory service as provided in Subsection 78-32-12.1(1)(a); and

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

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

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

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

(b) a finding that there has been a prima facie showing of a substantial change of circumstances which is against the best interest of the child for purposes of modification of custody and order a temporary change of custody for a duration to be determined by the court; and

(c) a finding that there has been a probable cause showing of custodial interference as provided in Section 76-5-303 and order the case to be referred to the county attorney for prosecution.

(10) The court may decline to issue an order with the alternative sanctions as provided in Subsections 78-32-12.2(2) through (9) although the petitioner has met his burden of proof if the court provides findings on the record explaining why a sanction or sanctions were not imposed.

(11) The noncustodial parent shall give the court and the custodial parent written notice of his intention to exercise the make up visitation at least seven days before the proposed visit if it is

to be on a weekday or weekend, and at least 30 days before the proposed visit if it is to be on a holiday or an extended visitation period.

(12) The court shall suspend any proceedings under Section 78-32-12.2 if substantial allegations of child abuse or child sexual abuse are under investigation or a case is pending in the courts on the allegations.

(13) The filing of any petition under this section which is found to be without merit and not asserted or defended against in good faith shall be subject to sanctions as determined by the court.

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