

**Representative Patrice M. Arent** proposes the following substitute bill:

**JUDICIARY AMENDMENTS**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Patrice M. Arent**

**This act modifies provisions relating to the Judicial Code. It allows the state to recoup expenses from a parent or legal guardian for the extradition of a minor from another state. It also ~~h~~ [repeals the penalty provision against judges for wrongful denial of writ of habeas corpus,] ~~h~~ allows interest on trust funds that are earned in courts not of record to go to the county or municipality, and makes technical corrections.**

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

AMENDS:

**78-3a-118**, as last amended by Chapters 255 and 293, Laws of Utah 2001

**78-27-4**, as last amended by Chapter 61, Laws of Utah 1990

**78-46-7**, as last amended by Chapter 218, Laws of Utah 1994

REPEALS:

**78-35-1**, Utah Code Annotated 1953

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

Section 1. 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



26 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to  
27 the school superintendent of the district in which the minor resides or attends school. Notice shall  
28 be made to the district superintendent within three days of the adjudication and shall include the  
29 specific offenses for which the minor was adjudicated.

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

31 (a) (i) The court may place the minor on probation or under protective supervision in the  
32 minor's own home and upon conditions determined by the court, including compensatory service  
33 as provided in Section 78-11-20.7.

34 (ii) The court may place the minor in state supervision with the probation department of  
35 the court, under the legal custody of:

36 (A) his parent or guardian;

37 (B) the Division of Youth Corrections; or

38 (C) the Division of Child and Family Services.

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

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

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

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

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

52 (c) (i) The court may:

53 (A) vest legal custody of the minor in the Division of Child and Family Services, Division  
54 of Youth Corrections, or the Division of Mental Health; and

55 (B) order the Department of Human Services to provide dispositional recommendations  
56 and services.

57 (ii) For minors who may qualify for services from two or more divisions within the  
58 Department of Human Services, the court may vest legal custody with the department.

59 (iii) (A) Minors who are committed to the custody of the Division of Child and Family  
60 Services on grounds other than abuse or neglect are subject to the provisions of Title 78, Chapter  
61 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A, Chapter  
62 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

63 (B) Prior to the court entering an order to place a minor in the custody of the Division of  
64 Child and Family Services on grounds other than abuse or neglect, the court shall provide the  
65 division with notice of the hearing no later than five days before the time specified for the hearing  
66 so the division may attend the hearing.

67 (C) Prior to committing a minor to the custody of the Division of Child and Family  
68 Services, the court shall make a finding as to what reasonable efforts have been attempted to  
69 prevent the minor's removal from his home.

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

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

75 (e) The court may commit the minor, subject to the court retaining continuing jurisdiction  
76 over him, to the temporary custody of the Division of Youth Corrections for observation and  
77 evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at the  
78 request of the director of the Division of Youth Corrections.

79 (f) (i) The court may commit the minor to a place of detention or an alternative to  
80 detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction  
81 over the minor. This commitment may be stayed or suspended upon conditions ordered by the  
82 court.

83 (ii) Subsection (2)(f) applies only to those minors adjudicated for:

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

85 (B) contempt of court under Section 78-3a-901.

86 (g) The court may vest legal custody of an abused, neglected, or dependent minor in the  
87 Division of Child and Family Services or any other appropriate person in accordance with the

88 requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency  
89 Proceedings.

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

96 (i) The court may ~~[-(i)]~~ order the minor to repair, replace, or otherwise make restitution  
97 for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in  
98 Section 78-3a-318~~[-(i)]~~, and ~~[(i)]~~ impose fines in limited amounts. If a minor has been returned to  
99 this state under the Interstate Compact on Juveniles, the court may order the minor ~~h~~ ~~[or the minor's~~  
100 parent or guardian] ~~h~~ to make restitution for costs expended by any governmental entity for the  
100a return.

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

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

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

109 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in addition  
110 to any other disposition authorized by this section:

111 (A) restrain the minor from driving for periods of time the court considers necessary; and  
112 (B) take possession of the minor's driver license.

113 (ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the  
114 suspension of driving privileges for an offense under Section 78-3a-506 are governed only by  
115 Section 78-3a-506.

116 (m) (i) When a minor is found within the jurisdiction of the juvenile court under Section  
117 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia  
118 Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to

119 any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no  
120 more than 100 hours, of compensatory service. Satisfactory completion of an approved substance  
121 abuse prevention or treatment program may be credited by the court as compensatory service  
122 hours.

123 (ii) When a minor is found within the jurisdiction of the juvenile court under Section  
124 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may,  
125 upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the  
126 minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in  
127 addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance  
128 abuse prevention or treatment program may be credited by the court as compensatory service  
129 hours.

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

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

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

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

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

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

149 (q) The court may order the minor to be placed in the legal custody of the Division of

150 Mental Health or committed to the physical custody of a local mental health authority, in  
151 accordance with the procedures and requirements of Title 62A, Chapter 12, Part 2A, Commitment  
152 of Persons Under Age 18 to Division of Mental Health.

153 (r) (i) The court may make an order committing a minor within its jurisdiction to the Utah  
154 State Developmental Center if the minor has mental retardation in accordance with the provisions  
155 of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

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

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

161 (t) The court may make any other reasonable orders for the best interest of the minor or  
162 as required for the protection of the public, except that a person younger than 18 years of age may  
163 not be committed to jail or prison.

164 (u) The court may combine the dispositions listed in this section if they are compatible.

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

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

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

174 (y) (i) The juvenile court may enter an order of permanent custody and guardianship with  
175 a relative or individual of a minor where the court has previously acquired jurisdiction as a result  
176 of an adjudication of abuse, neglect, or dependency, excluding cases arising under Subsection  
177 78-3a-105(4).

178 (ii) Orders under Subsection (2)(y)(i):

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

180 (B) are not subject to review under Section 78-3a-119; and

181 (C) may be modified by petition or motion as provided in Section 78-3a-903.

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

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

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

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

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

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

193 (iii) was committed with a weapon; and

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

196 Section 2. Section **78-27-4** is amended to read:

197 **78-27-4. Money deposited in court.**

198 (1) (a) Any person depositing money in court, to be held in trust, shall pay it to the court  
199 clerk.

200 (b) The clerk shall deposit the money in a court trust fund or with the county treasurer or  
201 city recorder to be held subject to the order of the court.

202 (2) The Judicial Council shall adopt rules governing the maintenance of court trust funds  
203 and the disposition of interest earnings on those trust funds.

204 (3) (a) Any interest earned on trust funds in the courts of record that is not required to  
205 accrue to the litigants by Judicial Council rule or court order shall be deposited in a restricted  
206 account. Any interest earned on trust funds in the courts not of record that is not required to accrue  
207 to the litigants by Judicial Council rule or court order shall be deposited in the general fund of the  
208 county or municipality.

209 (b) The Legislature shall appropriate funds from [~~that~~] the restricted account of the courts  
210 of record to the Judicial Council to:

211 (i) offset costs to the courts for collection and maintenance of court trust funds; and

212 (ii) provide accounting and auditing of all court revenue and trust accounts.

213 Section 3. Section ~~78-46-7~~ is amended to read:

214 **78-46-7. Persons competent to serve as jurors -- Persons not competent to serve as**  
215 **jurors.**

216 (1) A person is competent to serve as a juror if the person is:

217 (a) a citizen of the United States;

218 (b) ~~[over the age of]~~ 18 years of age or older;

219 (c) a resident of the county; and

220 (d) able to read, speak, and understand the English language.

221 (2) A person who has been convicted of a felony that has not been expunged is not  
222 competent to serve as a juror.

223 ~~h~~ [Section 4. Repealer:

224 ~~———— This act repeals:~~

225 ~~———— Section 78-35-1, Penalty for wrongful refusal to allow writ of habeas corpus.] h~~