

JUDICIARY AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Patrice M. Arent

This act modifies provisions relating to the Commission on Criminal and Juvenile Justice and the Judicial Code. It adds the requirement to administer funds for extraditions to the duties of the commission and allows the state to recoup expenses from a parent or legal guardian for the extradition of a minor from another state. It also repeals the penalty provision against judges for wrongful denial of writ of habeas corpus, 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:

63-25a-104, as last amended by Chapter 220, Laws of Utah 2001

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 **63-25a-104** is amended to read:

63-25a-104. Duties of commission.

The state commission on criminal and juvenile justice administration shall:

- (1) promote the commission's purposes as enumerated in Section 63-25a-101;
- (2) promote the communication and coordination of all criminal and juvenile justice agencies;
- (3) study, evaluate, and report on the status of crime in the state and on the effectiveness



28 of criminal justice policies, procedures, and programs that are directed toward the reduction of
29 crime in the state;

30 (4) study, evaluate, and report on policies, procedures, and programs of other jurisdictions
31 which have effectively reduced crime;

32 (5) identify and promote the implementation of specific policies and programs the
33 commission determines will significantly reduce crime in Utah;

34 (6) provide analysis and recommendations on all criminal and juvenile justice legislation,
35 state budget, and facility requests, including program and fiscal impact on all components of the
36 criminal and juvenile justice system;

37 (7) provide analysis, accountability, recommendations, and supervision for state and
38 federal criminal justice grant monies;

39 (8) provide public information on the criminal and juvenile justice system and give
40 technical assistance to agencies or local units of government on methods to promote public
41 awareness;

42 (9) promote research and program evaluation as an integral part of the criminal and
43 juvenile justice system;

44 (10) provide a comprehensive criminal justice plan annually;

45 (11) review agency forecasts regarding future demands on the criminal and juvenile justice
46 systems, including specific projections for secure bed space; [~~and~~]

47 (12) promote the development of criminal and juvenile justice information systems that
48 are consistent with common standards for data storage and are capable of appropriately sharing
49 information with other criminal justice information systems by:

50 (a) developing and maintaining common data standards for use by all state criminal justice
51 agencies;

52 (b) annually performing audits of criminal history record information maintained by state
53 criminal justice agencies to assess their accuracy, completeness, and adherence to standards;

54 (c) defining and developing state and local programs and projects associated with the
55 improvement of information management for law enforcement and the administration of justice;
56 and

57 (d) establishing general policies concerning criminal and juvenile justice information
58 systems and making rules as necessary to carry out the duties under this Subsection (12) and

59 Subsection (10)[-]: and

60 (13) administer funds appropriated for extraditions under Title 77, Chapter 30 and for
61 enforcement of the Interstate Compact on Juveniles, Title 55, Chapter 12.

62 Section 2. Section **78-3a-118** is amended to read:

63 **78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases --**
64 **Enumeration of possible court orders -- Considerations of court.**

65 (1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the
66 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
67 jurisdiction over the minor. However, in cases within the provisions of Subsection 78-3a-104(1),
68 findings of fact are not necessary.

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

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

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

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

80 (A) his parent or guardian;

81 (B) the Division of Youth Corrections; or

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

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

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

89 (A) civilly liable except when the disclosure constitutes fraud or malice as provided in

90 Section 63-30-4; and

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

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

96 (c) (i) The court may:

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

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

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

103 (iii) (A) Minors who are committed to the custody of the Division of Child and Family
104 Services on grounds other than abuse or neglect are subject to the provisions of Title 78, Chapter
105 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A, Chapter
106 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

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

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

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

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

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

121 evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at the
122 request of the director of the Division of Youth Corrections.

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

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

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

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

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

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

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

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

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

150 (ii) Consistent with the order of the court, the probation officer may permit the minor
151 found to be within the jurisdiction of the court to participate in a program of work restitution or

152 compensatory service in lieu of paying part or all of the fine imposed by the court.

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

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

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

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

160 (m) (i) When a minor is found within the jurisdiction of the juvenile court under Section
161 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia
162 Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to
163 any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no
164 more than 100 hours, of compensatory service. Satisfactory completion of an approved substance
165 abuse prevention or treatment program may be credited by the court as compensatory service
166 hours.

167 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
168 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may,
169 upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the
170 minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in
171 addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance
172 abuse prevention or treatment program may be credited by the court as compensatory service
173 hours.

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

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

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

183 of the minor's parents.

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

187 (A) parent-time by the parents or one parent;

188 (B) restrictions on the minor's associates;

189 (C) restrictions on the minor's occupation and other activities; and

190 (D) requirements to be observed by the parents or custodian.

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

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

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

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

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

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

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

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

213 (w) Except as provided in Subsection (2)(y)(i), an order under this section for probation

214 or placement of a minor with an individual or an agency shall include a date certain for a review
215 of the case by the court. A new date shall be set upon each review.

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

218 (y) (i) The juvenile court may enter an order of permanent custody and guardianship with
219 a relative or individual of a minor where the court has previously acquired jurisdiction as a result
220 of an adjudication of abuse, neglect, or dependency, excluding cases arising under Subsection
221 78-3a-105(4).

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

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

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

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

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

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

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

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

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

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

237 (iii) was committed with a weapon; and

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

240 Section 3. Section **78-27-4** is amended to read:

241 **78-27-4. Money deposited in court.**

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

244 (b) The clerk shall deposit the money in a court trust fund or with the county treasurer or

245 city recorder to be held subject to the order of the court.

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

248 (3) (a) Any interest earned on trust funds in the courts of record that is not required to
249 accrue to the litigants by Judicial Council rule or court order shall be deposited in a restricted
250 account. Any interest earned on trust funds in the courts not of record that is not required to accrue
251 to the litigants by Judicial Council rule or court order shall be deposited in the general fund of the
252 county or municipality.

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

- 255 (i) offset costs to the courts for collection and maintenance of court trust funds; and
- 256 (ii) provide accounting and auditing of all court revenue and trust accounts.

257 Section 4. Section **78-46-7** is amended to read:

258 **78-46-7. Persons competent to serve as jurors -- Persons not competent to serve as**
259 **jurors.**

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

- 261 (a) a citizen of the United States;
- 262 (b) [~~over the age of~~] 18 years of age or older;
- 263 (c) a resident of the county; and
- 264 (d) able to read, speak, and understand the English language.

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

267 Section 5. **Repealer.**

268 This act repeals:

269 Section **78-35-1, Penalty for wrongful refusal to allow writ of habeas corpus.**

Legislative Review Note as of 11-7-01 7:25 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel