

Representative Carol Spackman Moss proposes the following substitute bill:

YOUTH CORRECTIONS AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Carol Spackman Moss

M. Susan Lawrence

LONG TITLE

General Description:

This bill prohibits the Division of Juvenile Justice Services, within the Department of Human Services, from placing a minor in certain division facilities located within a residential zoning district if the minor has been convicted of, or adjudicated for, a violent offense.

Highlighted Provisions:

This bill:

- defines terms;
- prohibits the Division of Juvenile Justice Services, within the Department of Human Services, from placing a minor in certain division facilities located within a single family residential zoning district of a city or county if:
 - the minor has been convicted of, or adjudicated for, a violent offense; and
 - the city or county allows certain division facilities that provide services to a minor convicted of, or adjudicated for, a violent offense to be established in an area of the city or county outside of a residential zoning district; and
- provides that the preceding prohibition does not apply if:
 - compliance with the prohibition would cause the Division of Child and Family Services to be in violation of a contract that is entered into before May 2, 2005;



or

- the division facility is in operation on May 2, 2005, unless after May 2, 2005, the division facility expands, or the use of the division facility changes or is interrupted, in a manner that would require the operation of the division facility to terminate had the division facility been considered to be a valid nonconforming use on May 2, 2005.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

62A-7-120.5, Utah Code Annotated 1953

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

Section 1. Section **62A-7-120.5** is enacted to read:

62A-7-120.5. Restriction on placement of a minor in certain division facilities.

(1) For purposes of this section:

(a) "Convicted" means that a person has received:

(i) an adjudication, as defined in Section 78-3a-103, for a delinquent act that would constitute a felony if committed by an adult; or

(ii) a conviction as defined in Section 77-18-9.

(b) "Cooperating city" means a city that:

(i) allows a level one division facility to be located in an area of the city outside of a residential zoning district; and

(ii) regulates the location of a level one division facility in a manner that provides a reasonable opportunity for a level one division facility to be located in the city.

(c) "Cooperating county" means a county that:

(i) allows a level one division facility to be located in an unincorporated area of the county that is outside of a residential zoning district; and

(ii) regulates the location of a level one division facility in a manner that provides a

reasonable opportunity for a level one division facility to be located in the unincorporated area of the county.

(d) (i) "Division facility" means:

(A) a community-based program;

(B) a day/night reporting center; or

(C) except as provided in Subsection (1)(d)(ii), a facility operated by the division, or under contract with the division, to provide residential or nonresidential services to a minor.

(ii) "Division facility" does not include:

(A) a secure facility;

(B) a detention center operated by or under contract with the division that provides secure 24-hour supervision and confinement of the minors in the detention center; or

(C) a proctor home.

(e) "Level one division facility" means a division facility that provides services to a minor who has been convicted of a violent offense.

(f) "Minor" means a person under the age of 21.

(g) "Place" or "placement" means to refer or assign a minor to receive services in or from a division facility.

(h) "Proctor home" means a temporary residential living environment that is provided under contract with the Division of Juvenile Justice Services, within the Department of Human Services that:

(i) provides family based care, supervision, and treatment in a family home setting;

(ii) is located in the primary residence of the person who provides the temporary residential living environment;

(iii) is provided on a 24 hour per day basis; and

(iv) is provided to youth who have behavioral or adjustment problems.

(i) "Residential zoning district" means a zoning district that is designated by a county or city as an area that is used primarily for single family residential purposes.

(j) "Violent offense" means any of the following offenses, or any attempt, solicitation, or conspiracy to commit any of these offenses punishable as a felony:

(A) aggravated assault under Title 76, Chapter 5, Part 1, Assault and Related Offenses;

(B) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;

88 (C) aggravated kidnapping and kidnapping under Title 76, Chapter 5, Part 3,
89 Kidnapping;
90 (D) rape, Section 76-5-402;
91 (E) rape of a child, Section 76-5-402.1;
92 (F) object rape, Section 76-5-402.2;
93 (G) object rape of a child, Section 76-5-402.3;
94 (H) forcible sodomy, Section 76-5-403;
95 (I) sodomy on a child, Section 76-5-403.1;
96 (J) forcible sexual abuse, Section 76-5-404;
97 (K) aggravated sexual abuse of a child and sexual abuse of a child, Section 76-5-404.1;
98 (L) aggravated sexual assault, Section 76-5-405;
99 (M) sexual exploitation of a minor, Section 76-5a-3;
100 (N) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,
101 Burglary and Criminal Trespass;
102 (O) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;
103 (P) theft by extortion under Subsection 76-6-406(2)(a) or (b);
104 (Q) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat
105 or by use of force theft by extortion has been committed pursuant to Subsections
106 76-6-406(2)(a), (b), and (i);
107 (R) damage or destruction of school or institution of higher education property by
108 explosives or flammable materials under Section 76-8-715;
109 (S) possession, use, or removal of explosive, chemical, or incendiary devices under
110 Subsections 76-10-306(3) through (6);
111 (T) unlawful delivery of explosive, chemical, or incendiary devices under Section
112 76-10-307;
113 (U) purchase or possession of a dangerous weapon or handgun by a restricted person
114 under Section 76-10-503;
115 (V) unlawful discharge of a firearm under Section 76-10-508;
116 (W) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);
117 (X) bus hijacking under Section 76-10-1504; and
118 (Y) discharging firearms and hurling missiles under Section 76-10-1505; or

119 (ii) any felony offense against a criminal statute of any other state, the United States, or
120 any district, possession, or territory of the United States which would constitute a violent
121 offense as defined in this Subsection (1)(j) if committed in this state.

122 (2) Except as provided in Subsection (4), the division may not place, or permit the
123 placement of, a minor in a division facility if:

124 (a) the minor has been convicted of a violent offense; and

125 (b) the division facility is located in a residential zoning district of a:

126 (i) cooperating city; or

127 (ii) cooperating county.

128 (3) The division may place, or permit the placement of, any minor, including a minor
129 that has been convicted of a violent offense, in a division facility that is located in a residential
130 zoning district of a:

131 (a) city that is not a cooperating city; or

132 (b) county that is not a cooperating county.

133 (4) Notwithstanding Subsection (2), the division may place in a division facility
134 located in a residential zoning district of any city or county a minor who has been convicted of
135 a violent offense if:

136 (a) compliance with Subsection (2) would cause the division to be in violation of a
137 contract that is entered into before May 2, 2005; or

138 (b) the division facility is in operation on May 2, 2005, unless after May 2, 2005, the
139 division facility expands, or the use of the division facility changes or is interrupted, in a
140 manner that would require the operation of the division facility to terminate had the division
141 facility been considered to be a valid nonconforming use on May 2, 2005.