

JUVENILE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Utah Human Services Code and the Juvenile Court Act of 1996 in relation to juveniles.

Highlighted Provisions:

This bill:

- ▶ makes an exception to the requirement that consent to interview a child who is in the custody of the Division of Child and Family Services be obtained from the child's guardian ad litem if:
 - the child is interviewed solely in relation to a matter in which the child is not a suspect; and
 - the interview is recorded, unless exigent circumstances exist that make recording impracticable;
- ▶ provides that a court may commit a minor to a place of detention for a period not to exceed 30 days, or an alternative to detention for a period not to exceed 60 days, subject to the court retaining continuing jurisdiction over the minor;
- ▶ gives the court the option to identify in writing, rather than on the record, the responsibilities of a parent under a child and family plan;
- ▶ gives the court the discretion to determine whether a disposition, including detention, will run concurrent with any other order of detention; and
- ▶ makes technical changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **62A-4a-415**, as enacted by Laws of Utah 2010, Chapter 322

35 **78A-6-117 (Superseded 07/01/11)**, as renumbered and amended by Laws of Utah
36 2008, Chapter 3

37 **78A-6-117 (Effective 07/01/11)**, as last amended by Laws of Utah 2010, Chapter 276

38 **78A-6-312**, as last amended by Laws of Utah 2010, Chapter 322

39 **78A-6-604**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

42 Section 1. Section **62A-4a-415** is amended to read:

43 **62A-4a-415. Law enforcement interviews of children in state custody.**

44 (1) Except as provided in Subsection (2), the division may not consent to the interview
45 of a child in the division's custody by a law enforcement officer, unless consent for the
46 interview is obtained from the child's guardian ad litem.

47 (2) Subsection (1) does not apply if:

48 (a) a guardian ad litem is not appointed for the child[-]; or

49 (b) (i) the child is interviewed solely in relation to a matter in which the child is not a
50 suspect; and

51 (ii) the interview is recorded, unless exigent circumstances exist that make recording
52 impracticable.

53 Section 2. Section **78A-6-117 (Superseded 07/01/11)** is amended to read:

54 **78A-6-117 (Superseded 07/01/11). Adjudication of jurisdiction of juvenile court --**
55 **Disposition of cases -- Enumeration of possible court orders -- Considerations of court --**
56 **Obtaining DNA sample.**

57 (1) (a) When a minor is found to come within the provisions of Section 78A-6-103, the
58 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its

59 jurisdiction over the minor. However, in cases within the provisions of Subsection
60 78A-6-103(1), findings of fact are not necessary.

61 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
62 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided
63 to the school superintendent of the district in which the minor resides or attends school. Notice
64 shall be made to the district superintendent within three days of the adjudication and shall
65 include:

66 (i) the specific offenses for which the minor was adjudicated; and

67 (ii) if available, if the victim:

68 (A) resides in the same school district as the minor; or

69 (B) attends the same school as the minor.

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

71 (a) (i) The court may place the minor on probation or under protective supervision in
72 the minor's own home and upon conditions determined by the court, including compensatory
73 service as provided in Subsection (2)(m)(iii).

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

76 (A) the minor's parent or guardian;

77 (B) the Division of Juvenile Justice Services; or

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

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

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

85 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as
86 provided in Section 63G-7-202; and

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

89 (b) The court may place the minor in the legal custody of a relative or other suitable

90 person, with or without probation or protective supervision, but the juvenile court may not
91 assume the function of developing foster home services.

92 (c) (i) The court may:

93 (A) vest legal custody of the minor in the Division of Child and Family Services,
94 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;
95 and

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

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

100 (iii) (A) A minor who is committed to the custody of the Division of Child and Family
101 Services on grounds other than abuse or neglect is subject to the provisions of Title 78A,
102 Chapter 6, Part 4, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A,
103 Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

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

108 (C) Prior to committing a child to the custody of the Division of Child and Family
109 Services, the court shall make a finding as to what reasonable efforts have been attempted to
110 prevent the child's removal from the child's home.

111 (d) (i) The court may commit a minor to the Division of Juvenile Justice Services for
112 secure confinement.

113 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,
114 or dependency under Subsection 78A-6-103(1)(c) may not be committed to the Division of
115 Juvenile Justice Services.

116 (e) The court may commit a minor, subject to the court retaining continuing
117 jurisdiction over the minor, to the temporary custody of the Division of Juvenile Justice
118 Services for observation and evaluation for a period not to exceed 45 days, which period may
119 be extended up to 15 days at the request of the director of the Division of Juvenile Justice
120 Services.

121 (f) (i) The court may commit a minor to a place of detention for a period not to exceed
122 30 days, or an alternative to detention for a period not to exceed [~~30~~] 60 days, subject to the
123 court retaining continuing jurisdiction over the minor. This commitment may be stayed or
124 suspended upon conditions ordered by the court.

125 (ii) This Subsection (2)(f) applies only to a minor adjudicated for:

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

127 (B) contempt of court under Section 78A-6-1101.

128 (g) The court may vest legal custody of an abused, neglected, or dependent minor in
129 the Division of Child and Family Services or any other appropriate person in accordance with
130 the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and
131 Dependency Proceedings.

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

139 (i) (i) The court may order a minor to repair, replace, or otherwise make restitution for
140 damage or loss caused by the minor's wrongful act, including costs of treatment as stated in
141 Section 78A-6-321 and impose fines in limited amounts.

142 (ii) The court may also require a minor to reimburse an individual, entity, or
143 governmental agency who offered and paid a reward to a person or persons for providing
144 information resulting in a court adjudication that the minor is within the jurisdiction of the
145 juvenile court due to the commission of a criminal offense.

146 (iii) If a minor is returned to this state under the Interstate Compact on Juveniles, the
147 court may order the minor to make restitution for costs expended by any governmental entity
148 for the return.

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

151 (k) (i) The court may through its probation department encourage the development of

152 employment or work programs to enable minors to fulfill their obligations under Subsection
153 (2)(i) and for other purposes considered desirable by the court.

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

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

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

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

162 (ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the
163 suspension of driving privileges for an offense under Section 78A-6-606 are governed only by
164 Section 78A-6-606.

165 (m) (i) When a minor is found within the jurisdiction of the juvenile court under
166 Section 78A-6-103 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug
167 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court
168 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a
169 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory
170 completion of an approved substance abuse prevention or treatment program may be credited
171 by the court as compensatory service hours.

172 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
173 78A-6-103 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court
174 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order
175 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory
176 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an
177 approved substance abuse prevention or treatment program may be credited by the court as
178 compensatory service hours.

179 (iii) When a minor is found within the jurisdiction of the juvenile court under Section
180 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may
181 order the minor to clean up graffiti created by the minor or any other person at a time and place
182 within the jurisdiction of the court. Compensatory service required under this section may be

183 performed in the presence and under the direct supervision of the minor's parent or legal
184 guardian. The parent or legal guardian shall report completion of the order to the court. The
185 minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal
186 costs as determined under Section 76-6-107, unless waived by the court for good cause. The
187 court may also require the minor to perform other alternative forms of restitution or repair to
188 the damaged property pursuant to Subsection 77-18-1(8).

189 (A) For a first adjudication, the court may require the minor to clean up graffiti for not
190 less than eight hours.

191 (B) For a second adjudication, the court may require the minor to clean up graffiti for
192 not less than 16 hours.

193 (C) For a third adjudication, the court may require the minor to clean up graffiti for not
194 less than 24 hours.

195 (n) (i) Subject to Subsection (2)(n)(iii), the court may order that a minor:

196 (A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

197 (B) receive other special care.

198 (ii) For purposes of receiving the examination, treatment, or care described in
199 Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.

200 (iii) In determining whether to order the examination, treatment, or care described in
201 Subsection (2)(n)(i), the court shall consider:

202 (A) the desires of the minor;

203 (B) if the minor is under the age of 18, the desires of the parents or guardian of the
204 minor; and

205 (C) whether the potential benefits of the examination, treatment, or care outweigh the
206 potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain
207 function impairment, or emotional or physical harm resulting from the compulsory nature of
208 the examination, treatment, or care.

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

212 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
213 private agency or institution, the court shall give primary consideration to the welfare of the

214 minor. When practicable, the court may take into consideration the religious preferences of the
215 minor and of a child's parents.

216 (p) (i) In support of a decree under Section 78A-6-103, the court may order reasonable
217 conditions to be complied with by a minor's parents or guardian, a minor, a minor's custodian,
218 or any other person who has been made a party to the proceedings. Conditions may include:

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

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

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

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

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

225 (q) The court may order the child to be committed to the physical custody of a local
226 mental health authority, in accordance with the procedures and requirements of Title 62A,
227 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and
228 Mental Health.

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

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

235 (s) The court may terminate all parental rights upon a finding of compliance with the
236 provisions of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

237 (t) The court may make any other reasonable orders for the best interest of the minor or
238 as required for the protection of the public, except that a child may not be committed to jail or
239 prison.

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

241 (v) Before depriving any parent of custody, the court shall give due consideration to the
242 rights of parents concerning their child. The court may transfer custody of a minor to another
243 person, agency, or institution in accordance with the requirements and procedures of Title 78A,
244 Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

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

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

250 (y) (i) The juvenile court may enter an order of permanent custody and guardianship
251 with an individual or relative of a child where the court has previously acquired jurisdiction as
252 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an
253 order for child support on behalf of the child against the natural or adoptive parents of the
254 child.

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

256 (A) shall remain in effect until the child reaches majority;

257 (B) are not subject to review under Section 78A-6-118; and

258 (C) may be modified by petition or motion as provided in Section 78A-6-1103.

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

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

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

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

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

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

270 (iii) was committed with a weapon; and

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

273 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction
274 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by
275 designated employees of the court or, if the minor is in the legal custody of the Division of

276 Juvenile Justice Services, then by designated employees of the division under Subsection
277 53-10-404(5)(b).

278 (b) The responsible agency shall ensure that employees designated to collect the saliva
279 DNA specimens receive appropriate training and that the specimens are obtained in accordance
280 with accepted protocol.

281 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA
282 Specimen Restricted Account created in Section 53-10-407.

283 (d) Payment of the reimbursement is second in priority to payments the minor is
284 ordered to make for restitution under this section and treatment under Section 78A-6-321.

285 Section 3. Section **78A-6-117 (Effective 07/01/11)** is amended to read:

286 **78A-6-117 (Effective 07/01/11). Adjudication of jurisdiction of juvenile court --**
287 **Disposition of cases -- Enumeration of possible court orders -- Considerations of court --**
288 **Obtaining DNA sample.**

289 (1) (a) When a minor is found to come within the provisions of Section 78A-6-103, the
290 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
291 jurisdiction over the minor. However, in cases within the provisions of Subsection
292 78A-6-103(1), findings of fact are not necessary.

293 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
294 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided
295 to the school superintendent of the district in which the minor resides or attends school. Notice
296 shall be made to the district superintendent within three days of the adjudication and shall
297 include:

298 (i) the specific offenses for which the minor was adjudicated; and

299 (ii) if available, if the victim:

300 (A) resides in the same school district as the minor; or

301 (B) attends the same school as the minor.

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

303 (a) (i) The court may place the minor on probation or under protective supervision in
304 the minor's own home and upon conditions determined by the court, including compensatory
305 service as provided in Subsection (2)(m)(iii).

306 (ii) The court may place the minor in state supervision with the probation department

307 of the court, under the legal custody of:

- 308 (A) the minor's parent or guardian;
- 309 (B) the Division of Juvenile Justice Services; or
- 310 (C) the Division of Child and Family Services.

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

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

- 317 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as
318 provided in Section 63G-7-202; and
- 319 (B) civilly or criminally liable except when the disclosure constitutes a knowing
320 violation of Section 63G-2-801.

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

324 (c) (i) The court may:

325 (A) vest legal custody of the minor in the Division of Child and Family Services,
326 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;
327 and

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

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

332 (iii) (A) A minor who is committed to the custody of the Division of Child and Family
333 Services on grounds other than abuse or neglect is subject to the provisions of Title 78A,
334 Chapter 6, Part 4, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A,
335 Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

336 (B) Prior to the court entering an order to place a minor in the custody of the Division
337 of Child and Family Services on grounds other than abuse or neglect, the court shall provide

338 the division with notice of the hearing no later than five days before the time specified for the
339 hearing so the division may attend the hearing.

340 (C) Prior to committing a child to the custody of the Division of Child and Family
341 Services, the court shall make a finding as to what reasonable efforts have been attempted to
342 prevent the child's removal from the child's home.

343 (d) (i) The court may commit a minor to the Division of Juvenile Justice Services for
344 secure confinement.

345 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,
346 or dependency under Subsection 78A-6-103(1)(c) may not be committed to the Division of
347 Juvenile Justice Services.

348 (e) The court may commit a minor, subject to the court retaining continuing
349 jurisdiction over the minor, to the temporary custody of the Division of Juvenile Justice
350 Services for observation and evaluation for a period not to exceed 45 days, which period may
351 be extended up to 15 days at the request of the director of the Division of Juvenile Justice
352 Services.

353 (f) (i) The court may commit a minor to a place of detention for a period not to exceed
354 30 days, or an alternative to detention for a period not to exceed [~~30~~] 60 days, subject to the
355 court retaining continuing jurisdiction over the minor. This commitment may be stayed or
356 suspended upon conditions ordered by the court.

357 (ii) This Subsection (2)(f) applies only to a minor adjudicated for:

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

359 (B) contempt of court under Section 78A-6-1101.

360 (g) The court may vest legal custody of an abused, neglected, or dependent minor in
361 the Division of Child and Family Services or any other appropriate person in accordance with
362 the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and
363 Dependency Proceedings.

364 (h) The court may place a minor on a ranch or forestry camp, or similar facility for care
365 and also for work, if possible, if the person, agency, or association operating the facility has
366 been approved or has otherwise complied with all applicable state and local laws. A minor
367 placed in a forestry camp or similar facility may be required to work on fire prevention,
368 forestation and reforestation, recreational works, forest roads, and on other works on or off the

369 grounds of the facility and may be paid wages, subject to the approval of and under conditions
370 set by the court.

371 (i) (i) The court may order a minor to repair, replace, or otherwise make restitution for
372 damage or loss caused by the minor's wrongful act, including costs of treatment as stated in
373 Section 78A-6-321 and impose fines in limited amounts.

374 (ii) The court may also require a minor to reimburse an individual, entity, or
375 governmental agency who offered and paid a reward to a person or persons for providing
376 information resulting in a court adjudication that the minor is within the jurisdiction of the
377 juvenile court due to the commission of a criminal offense.

378 (iii) If a minor is returned to this state under the Interstate Compact on Juveniles, the
379 court may order the minor to make restitution for costs expended by any governmental entity
380 for the return.

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

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

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

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

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

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

394 (ii) The court may enter any other disposition under Subsection (2)(l)(i). However, the
395 suspension of driving privileges for an offense under Section 78A-6-606 is governed only by
396 Section 78A-6-606.

397 (m) (i) When a minor is found within the jurisdiction of the juvenile court under
398 Section 78A-6-103 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug
399 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court

400 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a
401 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory
402 completion of an approved substance abuse prevention or treatment program may be credited
403 by the court as compensatory service hours.

404 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
405 78A-6-103 because of a violation of Section 32B-4-409 or Subsection 76-9-701(1), the court
406 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order
407 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory
408 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an
409 approved substance abuse prevention or treatment program may be credited by the court as
410 compensatory service hours.

411 (iii) When a minor is found within the jurisdiction of the juvenile court under Section
412 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may
413 order the minor to clean up graffiti created by the minor or any other person at a time and place
414 within the jurisdiction of the court. Compensatory service required under this section may be
415 performed in the presence and under the direct supervision of the minor's parent or legal
416 guardian. The parent or legal guardian shall report completion of the order to the court. The
417 minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal
418 costs as determined under Section 76-6-107, unless waived by the court for good cause. The
419 court may also require the minor to perform other alternative forms of restitution or repair to
420 the damaged property pursuant to Subsection 77-18-1(8).

421 (A) For a first adjudication, the court may require the minor to clean up graffiti for not
422 less than eight hours.

423 (B) For a second adjudication, the court may require the minor to clean up graffiti for
424 not less than 16 hours.

425 (C) For a third adjudication, the court may require the minor to clean up graffiti for not
426 less than 24 hours.

427 (n) (i) Subject to Subsection (2)(n)(iii), the court may order that a minor:

428 (A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

429 (B) receive other special care.

430 (ii) For purposes of receiving the examination, treatment, or care described in

431 Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.

432 (iii) In determining whether to order the examination, treatment, or care described in

433 Subsection (2)(n)(i), the court shall consider:

434 (A) the desires of the minor;

435 (B) if the minor is under the age of 18, the desires of the parents or guardian of the
436 minor; and

437 (C) whether the potential benefits of the examination, treatment, or care outweigh the
438 potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain
439 function impairment, or emotional or physical harm resulting from the compulsory nature of
440 the examination, treatment, or care.

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

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

448 (p) (i) In support of a decree under Section 78A-6-103, the court may order reasonable
449 conditions to be complied with by a minor's parents or guardian, a minor, a minor's custodian,
450 or any other person who has been made a party to the proceedings. Conditions may include:

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

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

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

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

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

457 (q) The court may order the child to be committed to the physical custody of a local
458 mental health authority, in accordance with the procedures and requirements of Title 62A,
459 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and
460 Mental Health.

461 (r) (i) The court may make an order committing a minor within the court's jurisdiction

462 to the Utah State Developmental Center if the minor has mental retardation in accordance with
463 the provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

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

467 (s) The court may terminate all parental rights upon a finding of compliance with the
468 provisions of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

469 (t) The court may make any other reasonable orders for the best interest of the minor or
470 as required for the protection of the public, except that a child may not be committed to jail or
471 prison.

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

473 (v) Before depriving any parent of custody, the court shall give due consideration to the
474 rights of parents concerning their child. The court may transfer custody of a minor to another
475 person, agency, or institution in accordance with the requirements and procedures of Title 78A,
476 Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

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

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

482 (y) (i) The juvenile court may enter an order of permanent custody and guardianship
483 with an individual or relative of a child where the court has previously acquired jurisdiction as
484 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an
485 order for child support on behalf of the child against the natural or adoptive parents of the
486 child.

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

488 (A) shall remain in effect until the child reaches majority;

489 (B) are not subject to review under Section 78A-6-118; and

490 (C) may be modified by petition or motion as provided in Section 78A-6-1103.

491 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and
492 permanent orders of custody and guardianship do not expire with a termination of jurisdiction

493 of the juvenile court.

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

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

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

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

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

502 (iii) was committed with a weapon; and

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

505 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction
506 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by
507 designated employees of the court or, if the minor is in the legal custody of the Division of
508 Juvenile Justice Services, then by designated employees of the division under Subsection
509 53-10-404(5)(b).

510 (b) The responsible agency shall ensure that employees designated to collect the saliva
511 DNA specimens receive appropriate training and that the specimens are obtained in accordance
512 with accepted protocol.

513 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA
514 Specimen Restricted Account created in Section 53-10-407.

515 (d) Payment of the reimbursement is second in priority to payments the minor is
516 ordered to make for restitution under this section and treatment under Section 78A-6-321.

517 Section 4. Section **78A-6-312** is amended to read:

518 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

519 (1) The court may:

520 (a) make any of the dispositions described in Section 78A-6-117;

521 (b) place the minor in the custody or guardianship of any:

522 (i) individual; or

523 (ii) public or private entity or agency; or

524 (c) order:

525 (i) protective supervision;

526 (ii) family preservation;

527 (iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or

528 (iv) other services.

529 (2) (a) (i) Whenever the court orders continued removal at the dispositional hearing,

530 and that the minor remain in the custody of the division, the court shall first:

531 (A) establish a primary permanency goal for the minor; and

532 (B) determine whether, in view of the primary permanency goal, reunification services

533 are appropriate for the minor and the minor's family, pursuant to Subsection (3).

534 (ii) Subject to Subsection (2)(b), if the court determines that reunification services are

535 appropriate for the minor and the minor's family, the court shall provide for reasonable

536 parent-time with the parent or parents from whose custody the minor was removed, unless

537 parent-time is not in the best interest of the minor.

538 (iii) (A) In cases where obvious sexual abuse, sexual exploitation, abandonment,

539 severe abuse, or severe neglect are involved, neither the division nor the court has any duty to

540 make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or

541 to attempt to rehabilitate the offending parent or parents.

542 (B) In all cases, the minor's health, safety, and welfare shall be the court's paramount

543 concern in determining whether reasonable efforts to reunify should be made.

544 (b) (i) For purposes of Subsection (2)(a)(ii), parent-time is in the best interests of a

545 minor unless the court makes a finding that it is necessary to deny parent-time in order to:

546 (A) protect the physical safety of the minor;

547 (B) protect the life of the minor; or

548 (C) prevent the minor from being traumatized by contact with the parent due to the

549 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

550 (ii) Notwithstanding Subsection (2)(a)(ii), a court may not deny parent-time based

551 solely on a parent's failure to:

552 (A) prove that the parent has not used legal or illegal substances; or

553 (B) comply with an aspect of the child and family plan that is ordered by the court.

554 (c) (i) In addition to the primary permanency goal, the court shall establish a concurrent

555 permanency goal that shall include:

556 (A) a representative list of the conditions under which the primary permanency goal
557 will be abandoned in favor of the concurrent permanency goal; and

558 (B) an explanation of the effect of abandoning or modifying the primary permanency
559 goal.

560 (ii) A permanency hearing shall be conducted in accordance with Subsection
561 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if
562 something other than reunification is initially established as a minor's primary permanency
563 goal.

564 (iii) (A) The court may amend a minor's primary permanency goal before the
565 establishment of a final permanency plan under Section 78A-6-314.

566 (B) The court is not limited to the terms of the concurrent permanency goal in the event
567 that the primary permanency goal is abandoned.

568 (C) If, at any time, the court determines that reunification is no longer a minor's
569 primary permanency goal, the court shall conduct a permanency hearing in accordance with
570 Section 78A-6-314 on or before the earlier of:

571 (I) 30 days after the day on which the court makes the determination described in this
572 Subsection (2)(c)(iii)(C); or

573 (II) the day on which the provision of reunification services, described in Section
574 78A-6-314, ends.

575 (d) (i) (A) If the court determines that reunification services are appropriate, it shall
576 order that the division make reasonable efforts to provide services to the minor and the minor's
577 parent for the purpose of facilitating reunification of the family, for a specified period of time.

578 (B) In providing the services described in Subsection (2)(d)(i)(A), the minor's health,
579 safety, and welfare shall be the division's paramount concern, and the court shall so order.

580 (ii) The court shall:

581 (A) determine whether the services offered or provided by the division under the child
582 and family plan constitute "reasonable efforts" on the part of the division;

583 (B) determine and define the responsibilities of the parent under the child and family
584 plan in accordance with Subsection 62A-4a-205(6)(e); and

585 (C) identify on the record, or in writing, the responsibilities described in Subsection

586 (2)(d)(ii)(B), for the purpose of assisting in any future determination regarding the provision of
587 reasonable efforts, in accordance with state and federal law.

588 (iii) (A) The time period for reunification services may not exceed 12 months from the
589 date that the minor was initially removed from the minor's home, unless the time period is
590 extended under Subsection 78A-6-314(8).

591 (B) Nothing in this section may be construed to entitle any parent to an entire 12
592 months of reunification services.

593 (iv) If reunification services are ordered, the court may terminate those services at any
594 time.

595 (v) If, at any time, continuation of reasonable efforts to reunify a minor is determined
596 to be inconsistent with the final permanency plan for the minor established pursuant to Section
597 78A-6-314, then measures shall be taken, in a timely manner, to:

598 (A) place the minor in accordance with the permanency plan; and

599 (B) complete whatever steps are necessary to finalize the permanent placement of the
600 minor.

601 (e) Any physical custody of the minor by the parent or a relative during the period
602 described in Subsection (2)(d) does not interrupt the running of the period.

603 (f) (i) If reunification services are ordered, a permanency hearing shall be conducted by
604 the court in accordance with Section 78A-6-314 at the expiration of the time period for
605 reunification services.

606 (ii) The permanency hearing shall be held no later than 12 months after the original
607 removal of the minor.

608 (iii) If reunification services are not ordered, a permanency hearing shall be conducted
609 within 30 days, in accordance with Section 78A-6-314.

610 (g) With regard to a minor who is 36 months of age or younger at the time the minor is
611 initially removed from the home, the court shall:

612 (i) hold a permanency hearing eight months after the date of the initial removal,
613 pursuant to Section 78A-6-314; and

614 (ii) order the discontinuance of those services after eight months from the initial
615 removal of the minor from the home if the parent or parents have not made substantial efforts
616 to comply with the child and family plan.

617 (h) With regard to a minor in the custody of the division whose parent or parents are
618 ordered to receive reunification services but who have abandoned that minor for a period of six
619 months from the date that reunification services were ordered:

- 620 (i) the court shall terminate reunification services; and
- 621 (ii) the division shall petition the court for termination of parental rights.

622 (i) When a court conducts a permanency hearing for a minor under Section 78A-6-314,
623 the court shall attempt to keep the minor's sibling group together if keeping the sibling group
624 together is:

- 625 (i) practicable; and
- 626 (ii) in accordance with the best interest of the minor.

627 (3) (a) Because of the state's interest in and responsibility to protect and provide
628 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a
629 parent's interest in receiving reunification services is limited.

630 (b) The court may determine that:

- 631 (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate,
632 based on the individual circumstances; and
- 633 (ii) reunification services should not be provided.

634 (c) In determining "reasonable efforts" to be made with respect to a minor, and in
635 making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount
636 concern.

637 (d) (i) There is a presumption that reunification services should not be provided to a
638 parent if the court finds, by clear and convincing evidence, that any of the following
639 circumstances exist:

- 640 (A) the whereabouts of the parents are unknown, based upon a verified affidavit
641 indicating that a reasonably diligent search has failed to locate the parent;
- 642 (B) subject to Subsection (3)(d)(ii), the parent is suffering from a mental illness of such
643 magnitude that it renders the parent incapable of utilizing reunification services;
- 644 (C) the minor was previously adjudicated as an abused child due to physical abuse,
645 sexual abuse, or sexual exploitation, and following the adjudication the minor:
 - 646 (I) was removed from the custody of the minor's parent;
 - 647 (II) was subsequently returned to the custody of the parent; and

648 (III) is being removed due to additional physical abuse, sexual abuse, or sexual
649 exploitation;

650 (D) the parent:

651 (I) caused the death of another minor through abuse or neglect; or

652 (II) committed, aided, abetted, attempted, conspired, or solicited to commit:

653 (Aa) murder or manslaughter of a child; or

654 (Bb) child abuse homicide;

655 (E) the minor suffered severe abuse by the parent or by any person known by the
656 parent, if the parent knew or reasonably should have known that the person was abusing the
657 minor;

658 (F) the minor is adjudicated an abused child as a result of severe abuse by the parent,
659 and the court finds that it would not benefit the minor to pursue reunification services with the
660 offending parent;

661 (G) the parent's rights are terminated with regard to any other minor;

662 (H) the minor is removed from the minor's home on at least two previous occasions
663 and reunification services were offered or provided to the family at those times;

664 (I) the parent has abandoned the minor for a period of six months or longer;

665 (J) the parent permitted the child to reside, on a permanent or temporary basis, at a
666 location where the parent knew or should have known that a clandestine laboratory operation
667 was located; or

668 (K) any other circumstance that the court determines should preclude reunification
669 efforts or services.

670 (ii) The finding under Subsection (3)(d)(i)(B) shall be based on competent evidence
671 from at least two medical or mental health professionals, who are not associates, establishing
672 that, even with the provision of services, the parent is not likely to be capable of adequately
673 caring for the minor within 12 months after the day on which the court finding is made.

674 (4) In determining whether reunification services are appropriate, the court shall take
675 into consideration:

676 (a) failure of the parent to respond to previous services or comply with a previous child
677 and family plan;

678 (b) the fact that the minor was abused while the parent was under the influence of

679 drugs or alcohol;

680 (c) any history of violent behavior directed at the child or an immediate family
681 member;

682 (d) whether a parent continues to live with an individual who abused the minor;

683 (e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

684 (f) testimony by a competent professional that the parent's behavior is unlikely to be
685 successful; and

686 (g) whether the parent has expressed an interest in reunification with the minor.

687 (5) (a) If reunification services are not ordered pursuant to Subsection (3), and the
688 whereabouts of a parent become known within six months after the day on which the
689 out-of-home placement of the minor is made, the court may order the division to provide
690 reunification services.

691 (b) The time limits described in Subsection (2) are not tolled by the parent's absence.

692 (6) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable
693 services unless it determines that those services would be detrimental to the minor.

694 (b) In making the determination described in Subsection (6)(a), the court shall
695 consider:

696 (i) the age of the minor;

697 (ii) the degree of parent-child bonding;

698 (iii) the length of the sentence;

699 (iv) the nature of the treatment;

700 (v) the nature of the crime or illness;

701 (vi) the degree of detriment to the minor if services are not offered;

702 (vii) for a minor 10 years of age or older, the minor's attitude toward the
703 implementation of family reunification services; and

704 (viii) any other appropriate factors.

705 (c) Reunification services for an incarcerated parent are subject to the time limitation
706 imposed in Subsection (2).

707 (d) Reunification services for an institutionalized parent are subject to the time
708 limitation imposed in Subsection (2), unless the court determines that continued reunification
709 services would be in the minor's best interest.

710 (7) If, pursuant to Subsections (3)(d)(i)(B) through (K), the court does not order
711 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
712 with Section 78A-6-314.

713 Section 5. Section **78A-6-604** is amended to read:

714 **78A-6-604. Minor held in detention -- Credit for good behavior.**

715 (1) The judge may order whether a minor held in detention under Subsection
716 78A-6-117(2)(f) or 78A-6-1101(3) is eligible to receive credit for good behavior against the
717 period of detention. The rate of credit is one day for every three days served. The Division of
718 Juvenile Justice Services shall, in accordance with Title 63G, Chapter 3, Utah Administrative
719 Rulemaking Act, establish rules describing good behavior for which credit may be earned.

720 (2) Any disposition including detention under Subsection 78A-6-117(2)(f) or
721 78A-6-1101(3) [~~shall be~~] may, in the court's discretion, run concurrent with any other order of
722 detention.

Legislative Review Note
as of 12-30-10 7:52 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 207, 2011 General Session

SHORT TITLE: **Juvenile Amendments**

SPONSOR: **Harper, W.**

STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Provisions of this bill will double the time period courts may commit minors to alternatives to detention. It is estimated this provision will cost the Division of Juvenile Justice Services (DJJS) \$70,500. Provisions in this bill remove the mandatory language of running sentences for multiple juvenile offenses concurrently and allow a judge the latitude to order detention sentences run consecutively. It is estimated this provision will cost DJJS \$54,900.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue	\$0	\$0	\$0
Expenditure:			
General Fund	\$0	\$125,400	\$125,400
Total Expenditure	\$0	\$125,400	\$125,400
Net Impact, All Funds (Rev.-Exp.)	\$0	(\$125,400)	(\$125,400)
Net Impact, General/Education Funds	\$0	(\$125,400)	(\$125,400)

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.