

JUVENILE JUSTICE MODIFICATIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses treatment of minors who commit offenses or truancy.

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to responses to school-based behavior;
- ▶ expands the uses of appropriations for the Enhancement for At-Risk Students Program;
- ▶ clarifies when a prosecutor may file a petition;
- ▶ addresses the inquiry a prosecutor shall conduct before filing a petition; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

- 53A-11-911**, as enacted by Laws of Utah 2017, Chapter 330
- 53A-11-1302**, as last amended by Laws of Utah 2017, Chapter 330
- 53A-17a-166**, as last amended by Laws of Utah 2017, Chapters 173, 372, and 378
- 78A-6-602**, as last amended by Laws of Utah 2017, Chapter 330



28 [78A-6-603](#), as last amended by Laws of Utah 2017, Chapter 330



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

31 Section 1. Section **53A-11-911** is amended to read:

32 **53A-11-911. Responses to school-based behavior.**

33 (1) As used in this section:

34 ~~[(a) "Class A misdemeanor person offense" means a class A misdemeanor described in~~
35 ~~Title 76, Chapter 5, Offenses Against the Person, or Title 76, Chapter 5b, Sexual Exploitation~~
36 ~~Act.]~~

37 ~~[(b)]~~ (a) "Mobile crisis outreach team" means the same as that term is defined in
38 Section [78A-6-105](#).

39 ~~[(c) "Nonperson class A misdemeanor" means a class A misdemeanor that is not a~~
40 ~~class A misdemeanor person offense.]~~

41 ~~[(d)]~~ (b) "Restorative justice program" means a school-based program that is designed
42 to enhance school safety, reduce school suspensions, and limit referrals to court, and is
43 designed to help minors take responsibility for and repair the harm of behavior that occurs in
44 school.

45 (c) "School is in session" means a day during which the school conducts instruction for
46 which student attendance is counted toward calculating average daily membership.

47 (d) "School resource officer" means a law enforcement officer, as defined in Section
48 [53-13-103](#), who contracts with, is employed by, or whose law enforcement agency contracts
49 with a local education agency to provide law enforcement services for the local education
50 agency.

51 (e) (i) "School-sponsored activity" means a voluntary activity sponsored by a school, a
52 local education agency, or an organization sanctioned by the local education agency that
53 requires a student or faculty to miss normal class time or takes place outside regular school
54 time.

55 (ii) "School-sponsored activity" includes preparation for and involvement in a public
56 performance, contest, athletic competition, demonstration, display, or club activity.

57 (f) (i) "Status offense" means a violation of the law that would not be a violation but
58 for the age of the offender.

59 (ii) Notwithstanding Subsection (1)(f)(i), a status offense does not include a violation
60 that by statute is made a misdemeanor or felony.

61 (2) This section applies to a minor enrolled in school who is alleged to have committed
62 an offense:

63 (a) on school property~~[-or]~~:

64 (i) when school is in session; or

65 (ii) during a school-sponsored activity; or

66 (b) that is truancy.

67 (3) (a) If the alleged offense is a class C misdemeanor, an infraction, a status offense
68 on school property, or truancy, the minor may not be referred to law enforcement or court but
69 may be referred to alternative school-related interventions, including:

70 ~~[(a)]~~ (i) a mobile crisis outreach team, as defined in Section [78A-6-105](#);

71 ~~[(b)]~~ (ii) a receiving center operated by the Division of Juvenile Justice Services in
72 accordance with Section [62A-7-104](#); and

73 ~~[(c)]~~ (iii) a youth court or comparable restorative justice program.

74 (b) Notwithstanding Subsection (3)(a), a school resource officer may:

75 (i) investigate possible offenses;

76 (ii) consult with a school administration about the conduct of a minor enrolled in a
77 school;

78 (iii) transport a minor enrolled in a school to a location permitted by law;

79 (iv) take temporary custody of a minor pursuant to Subsection [78A-6-112\(1\)](#);

80 (v) conduct reasonable searches on school property;

81 (vi) use reasonable and necessary physical restraint in self-defense or when otherwise
82 appropriate to the circumstances to:

83 (A) obtain possession of a weapon or other dangerous object in the possession or under
84 the control of a minor;

85 (B) protect a minor or another individual from physical injury;

86 (C) remove from a situation a minor who is violent; or

87 (D) protect property from being damaged, when physical safety is at risk; or

88 (vii) engage in conduct similar to that described in this Subsection (3)(b).

89 (c) Notwithstanding other provisions of this section, a law enforcement officer who has

90 cause to believe a minor has committed an offense on school property when school is not in
91 session nor during a school-sponsored activity, the law enforcement officer may refer the minor
92 to court or may refer the minor to alternative interventions at the discretion of the law
93 enforcement officer.

94 (4) If the alleged offense is a class B misdemeanor or a [~~nonperson~~] class A
95 misdemeanor, the minor may be referred directly to the juvenile court by the school
96 administrator [~~or~~], the school administrator's designee, or a school resource officer, or the
97 minor may be referred to the alternative interventions in Subsection (3)(a).

98 Section 2. Section **53A-11-1302** is amended to read:

99 **53A-11-1302. Reporting of prohibited acts affecting a school -- Confidentiality.**

100 (1) A person who has reasonable cause to believe that an individual has committed a
101 prohibited act shall, in accordance with Section **53A-11-911**, immediately notify:

- 102 (a) the principal;
- 103 (b) an administrator of the affected school;
- 104 (c) the superintendent of the affected school district; or
- 105 (d) an administrator of the affected school district.

106 (2) If notice is given to a school official, the official may authorize an investigation
107 into allegations involving school property, students, or school district employees.

108 (3) A school official may only refer a complaint of an alleged prohibited act reported as
109 occurring on school [~~grounds~~] property or in connection with school-sponsored activities to an
110 appropriate law enforcement agency in accordance with Section **53A-11-911**.

111 (4) The identity of persons making reports pursuant to this section shall be kept
112 confidential.

113 Section 3. Section **53A-17a-166** is amended to read:

114 **53A-17a-166. Enhancement for At-Risk Students Program.**

115 (1) (a) Subject to [~~the requirements of~~] Subsection (1)(b), the State Board of Education
116 shall distribute money appropriated for the Enhancement for At-Risk Students Program to
117 school districts and charter schools according to a formula adopted by the State Board of
118 Education, after consultation with local education boards.

119 (b) (i) The State Board of Education shall appropriate \$1,200,000 from the
120 appropriation for Enhancement for At-Risk Students Program for a gang prevention and

121 intervention program designed to help students [~~at-risk~~] at risk for gang involvement stay in
122 school.

123 (ii) Money for the gang prevention and intervention program shall be distributed to
124 school districts and charter schools through a request for proposals process.

125 (2) In establishing a distribution formula under Subsection (1)(a), the State Board of
126 Education shall use the following criteria:

127 (a) low performance on statewide assessments described in Section 53A-1-602;

128 (b) poverty;

129 (c) mobility; and

130 (d) limited English proficiency.

131 (3) A local education board shall use money distributed under this section to improve
132 the academic achievement of students who are at risk of academic failure and to address
133 truancy.

134 (4) The State Board of Education shall develop performance criteria to measure the
135 effectiveness of the Enhancement for At-Risk Students Program.

136 Section 4. Section 78A-6-602 is amended to read:

137 **78A-6-602. Petition -- Preliminary inquiry -- Nonjudicial adjustments -- Formal**
138 **referral -- Citation -- Failure to appear.**

139 (1) A proceeding in a minor's case is commenced by petition, except as provided in
140 Sections 78A-6-701, 78A-6-702, and 78A-6-703.

141 (2) (a) A peace officer or a public official of the state, a county, city, or town charged
142 with the enforcement of the laws of the state or local jurisdiction shall file a formal referral
143 with the juvenile court within 10 days of a minor's arrest. If the arrested minor is taken to a
144 detention facility, the formal referral shall be filed with the juvenile court within 72 hours,
145 excluding weekends and holidays. A formal referral under Section 53A-11-911 may not be
146 filed with the juvenile court on an offense unless the offense is subject to referral under Section
147 53A-11-911.

148 (b) (i) When the court is informed by a peace officer or other person that a minor is or
149 appears to be within the court's jurisdiction, the probation department shall make a preliminary
150 inquiry to determine whether the minor is eligible to enter into a written consent agreement
151 with the probation department and, if the minor is a child, the minor's parent, guardian, or

152 custodian for the nonjudicial adjustment of the case pursuant to this Subsection (2). [~~The~~]

153 (ii) Except as provided in Subsection (2)(j), the court's probation department shall offer
154 a nonjudicial adjustment if the minor:

155 [~~(i)~~] (A) is referred with a misdemeanor, infraction, or status offense;

156 [~~(ii)~~] (B) has [~~fewer than three~~] no more than two prior adjudications; and

157 [~~(iii)~~] (C) has no more than three prior unsuccessful nonjudicial adjustment attempts.

158 (iii) For purposes of this Subsection (2)(b), an adjudication or nonjudicial adjustment

159 means an action based on a single episode of conduct that is closely related in time and is

160 incident to an attempt or an accomplishment of a single objective.

161 (c) (i) Notwithstanding Subsection (2)(b), the probation department may conduct a

162 validated risk and needs assessment and may request that the prosecutor review the referral

163 pursuant to Subsection (2)(g) to determine whether to dismiss the referral or file a petition

164 instead of offering a nonjudicial adjustment if:

165 (A) the results of the assessment indicate the youth is high risk; or

166 (B) the results of the assessment indicate the youth is moderate risk and the referral is

167 for a class A misdemeanor violation under Title 76, Chapter 5, Offenses Against the Person, or

168 Title 76, Chapter 9, Part 7, Miscellaneous Provisions.

169 (ii) [~~The~~] Except as provided in Subsection (2)(j), the court's probation department,

170 may offer a nonjudicial adjustment to any other minor who does not meet the criteria provided

171 in Subsection (2)(b).

172 (iii) Acceptance of an offer of nonjudicial adjustment may not be predicated on an

173 admission of guilt.

174 (iv) A minor may not be denied an offer of nonjudicial adjustment due to an inability to

175 pay a financial penalty under Subsection (2)(d).

176 (v) Efforts to effect a nonjudicial adjustment may not extend for a period of more than

177 90 days without leave of a judge of the court, who may extend the period for an additional 90

178 days.

179 (vi) A prosecutor may not file a petition against a minor unless:

180 (A) the minor does not qualify for nonjudicial adjustment under Subsection (2)(b) or

181 (c)(ii);

182 (B) the minor declines nonjudicial adjustment or, if the minor is a child, the minor's

183 parent, guardian, or custodian declines nonjudicial adjustment;

184 (C) the minor fails to substantially comply with the conditions agreed upon as part of
185 the nonjudicial adjustment; or

186 (D) the prosecutor is acting under Subsection (2)(j).

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

189 (i) payment of a financial penalty of not more than \$250 to the juvenile court subject to
190 the terms established under Subsection (2)(e);

191 (ii) payment of victim restitution;

192 (iii) satisfactory completion of compensatory service;

193 (iv) referral to an appropriate provider for counseling or treatment;

194 (v) attendance at substance use disorder programs or counseling programs;

195 (vi) compliance with specified restrictions on activities and associations; and

196 (vii) other reasonable actions that are in the interest of the child or minor and the
197 community.

198 (e) A fee, fine, or restitution included in a nonjudicial closure in accordance with
199 Subsection (2)(d) shall be based upon the ability of the minor's family to pay as determined by
200 a statewide sliding scale developed as provided in Section [63M-7-208](#) on and after July 1,
201 2018.

202 (f) If a prosecutor learns of a referral involving an offense identified in Subsection
203 (2)(j), if a minor fails to substantially comply with the conditions agreed upon as part of the
204 nonjudicial closure, or if a minor is not offered or declines a nonjudicial adjustment pursuant to
205 Subsection (2)(~~b~~) or (2)(~~c~~)(~~ii~~)(c)(vi), the prosecutor shall review the case and take one of the
206 following actions:

207 (i) dismiss the case;

208 (ii) refer the case back to the probation department for a new attempt at nonjudicial
209 adjustment; or

210 (iii) in accordance with Subsections (2)(h), file a petition with the court.

211 (g) Notwithstanding Subsection (2)(f), a petition may only be filed upon reasonable
212 belief that:

213 (i) the charges are supported by probable cause;

214 (ii) admissible evidence will be sufficient to support conviction beyond a reasonable
215 doubt; and

216 (iii) the decision to charge is in the interests of justice.

217 (h) Failure to [a] pay a fine or fee may not serve as a basis for filing of a petition under
218 Subsection (2)(f)(iii) if the minor has substantially complied with the other conditions agreed
219 upon in accordance with Subsection (2)(d) or those imposed through any other court diversion
220 program.

221 (i) A violation of Section 76-10-105 that is subject to the jurisdiction of the juvenile
222 court may include a fine or penalty and participation in a court-approved tobacco education
223 program, which may include a participation fee.

224 (j) Notwithstanding the other provisions of this section, the probation department shall
225 request that a prosecutor review a referral in accordance with Subsection (2)(f) if the referral
226 involves a violation of:

227 (i) Section 76-5-206, negligent homicide; or

228 (ii) Subsection 41-6a-503(1)(b)(i) or (ii), class A misdemeanor for driving under the
229 influence.

230 [(j)] (k) If the prosecutor files a petition in court, the court may refer the case to the
231 probation department for another offer of nonjudicial adjustment.

232 (3) Except as provided in Sections 78A-6-701 and 78A-6-702, in the case of a minor
233 14 years of age or older, the county attorney, district attorney, or attorney general may
234 commence an action by filing a criminal information and a motion requesting the juvenile court
235 to waive its jurisdiction and certify the minor to the district court.

236 (4) (a) In cases of violations of wildlife laws, boating laws, class B and class C
237 misdemeanors, other infractions or misdemeanors as designated by general order of the Board
238 of Juvenile Court Judges, and violations of Section 76-10-105 subject to the jurisdiction of the
239 juvenile court, a petition is not required and the issuance of a citation as provided in Section
240 78A-6-603 is sufficient to invoke the jurisdiction of the court. A preliminary inquiry in
241 accordance with Subsection (2)(b)(i) is required.

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

244 Section 5. Section 78A-6-603 is amended to read:

245 **78A-6-603. Citation procedure -- Citation -- Offenses -- Time limits -- Failure to**
246 **appear.**

247 (1) As used in this section, "citation" means an abbreviated referral and is sufficient to
248 invoke the jurisdiction of the court in lieu of a petition.

249 (2) A citation shall be submitted to the court within five days of issuance.

250 (3) A copy of the citation shall contain:

251 (a) the name and address of the juvenile court before which the minor may be required
252 to appear;

253 (b) the name of the minor cited;

254 (c) the statute or local ordinance that is alleged to have been violated;

255 (d) a brief description of the offense charged;

256 (e) the date, time, and location at which the offense is alleged to have occurred;

257 (f) the date the citation was issued;

258 (g) the name and badge or identification number of the peace officer or public official
259 who issued the citation;

260 (h) the name of the arresting person if an arrest was made by a private party and the
261 citation was issued in lieu of taking the arrested minor into custody as provided in Section
262 [78A-6-112](#);

263 (i) the date and time when the minor is to appear, or a statement that the minor and
264 parent or legal guardian are to appear when notified by the juvenile court; and

265 (j) the signature of the minor and the parent or legal guardian, if present, agreeing to
266 appear at the juvenile court as designated on the citation.

267 (4) A copy of the citation shall contain space for the following information to be
268 entered if known:

269 (a) the minor's address;

270 (b) the minor's date of birth;

271 (c) the name and address of the child's custodial parent or legal guardian, if different
272 from the child; and

273 (d) if there is a victim, the victim's name, address, and an estimate of loss, except that
274 this information shall be removed from the documents the minor receives.

275 (5) A citation received by the court beyond the time designated in Subsection (2) shall

276 include a written explanation for the delay.

277 (6) In accordance with Section 53A-11-911, the following offenses may be sent to the
278 juvenile court as a citation:

279 (a) violations of wildlife laws;

280 (b) violations of boating laws;

281 (c) violations of curfew laws;

282 (d) any class B misdemeanor or less traffic violations where the person is under the age
283 of 16;

284 (e) any class B or class C misdemeanor or infraction;

285 (f) any other infraction or misdemeanor as designated by general order of the Board of
286 Juvenile Court Judges; and

287 (g) violations of Section 76-10-105 subject to the jurisdiction of the juvenile court.

288 (7) A minor offense defined under Section 78A-6-1202, alleged to have been
289 committed by an enrolled child on school property or related to school attendance, may only be
290 sent to the prosecutor or the juvenile court in accordance with Section 53A-11-911.

291 [~~(8) A preliminary inquiry by the prosecutor, and]~~

292 (8) An inquiry shall be conducted:

293 (a) by the prosecutor to determine upon reasonable belief that:

294 (i) the charges are supported by probable cause;

295 (ii) admissible evidence will be sufficient to support conviction beyond a reasonable
296 doubt; and

297 (iii) the decision to charge is in the interests of justice; and

298 (b) if appropriate, by the court[;] under Section 78A-6-117 [is required].

299 (9) Subsection (5) may not apply to a runaway child.

300 (10) (a) A minor receiving a citation described in this section shall appear at the
301 juvenile court designated in the citation on the time and date specified in the citation or when
302 notified by the juvenile court.

303 (b) A citation may not require a minor to appear sooner than five days following its
304 issuance.

305 (11) A minor who receives a citation and willfully fails to appear before the juvenile
306 court pursuant to a citation may be found in contempt of court. The court may proceed against

307 the minor as provided in Section 78A-6-1101.

308 (12) When a citation is issued under this section, bail may be posted and forfeited
309 under Section 78A-6-113 with the consent of:

310 (a) the court; and

311 (b) if the minor is a child, the parent or legal guardian of the child cited.

312 Section 6. **Effective date.**

313 If approved by two-thirds of all the members elected to each house, this bill takes effect
314 upon approval by the governor, or the day following the constitutional time limit of Utah
315 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
316 the date of veto override.

Legislative Review Note
Office of Legislative Research and General Counsel