

## HB0132S04 compared with HB0132S03

~~{deleted text}~~ shows text that was in HB0132S03 but was deleted in HB0132S04.

Inserted text shows text that was not in HB0132S03 but was inserted into HB0132S04.

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~~{Representative V. Lowry Snow}~~Senator Todd Weiler proposes the following substitute bill:

### JUVENILE JUSTICE MODIFICATIONS

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: V. Lowry Snow**

Senate Sponsor: Todd Weiler

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#### LONG TITLE

##### General Description:

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

##### Highlighted Provisions:

This bill:

- ▶ expands the uses of appropriations for the Enhancement for At-Risk Students Program;
- ▶ modifies provisions related to responses to school-based behavior;
- ▶ clarifies when a prosecutor may file a petition or review a referral;
- ▶ addresses adjudication of jurisdiction by juvenile court, including addressing suspended custody orders;
- ▶ addresses the inquiry a prosecutor shall conduct before filing a petition;

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- ▶ addresses victim related issues;
- ▶ creates a sunset review for certain provisions; 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:

**53F-2-410**, as renumbered and amended by Laws of Utah 2018, Chapter 2

**53G-8-211**, as renumbered and amended by Laws of Utah 2018, Chapter 3

**53G-8-506**, as renumbered and amended by Laws of Utah 2018, Chapter 3

**63I-1-253**, as last amended by Laws of Utah 2017, Chapters 166 and 181

**78A-6-117 (Effective 07/01/18)**, as last amended by Laws of Utah 2017, Chapter 330

**78A-6-210**, as last amended by Laws of Utah 2017, Chapter 186

**78A-6-602**, as last amended by Laws of Utah 2017, Chapter 330

**78A-6-603**, as last amended by Laws of Utah 2017, Chapter 330

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

Section 1. Section **53F-2-410** is amended to read:

**53F-2-410. Enhancement for At-Risk Students Program.**

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

(b) (i) The State Board of Education shall appropriate \$1,200,000 from the appropriation for Enhancement for At-Risk Students Program for a gang prevention and intervention program designed to help students ~~[at-risk]~~ at risk for gang involvement stay in school.

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

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

- (a) low performance on statewide assessments described in Section 53E-4-301;
- (b) poverty;
- (c) mobility; and
- (d) limited English proficiency.

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

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

(5) If a school district or charter school receives an allocation of less than \$10,000 under this section, the school district or charter school may use the allocation as described in Section 53F-2-206.

Section 2. Section **53G-8-211** is amended to read:

### **53G-8-211. Responses to school-based behavior.**

(1) As used in this section:

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

(a) "Evidence-based" means a program or practice that has:

(i) had multiple randomized control studies or a meta-analysis demonstrating that the program or practice is effective for a specific population;

(ii) been rated as effective by a standardized program evaluation tool; or

(iii) been approved by the State Board of Education.

(b) "Mobile crisis outreach team" means the same as that term is defined in Section 78A-6-105.

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

~~[(d)]~~ (c) "Restorative justice program" means a school-based program or a program used or adopted by a local education agency that is designed to enhance school safety, reduce

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school suspensions, and limit referrals to court, and is designed to help minors take responsibility for and repair the harm of behavior that occurs in school.

(d) "School administrator" means a principal of a school.

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

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

(g) (i) "School-sponsored activity" means an activity, fundraising event, club, camp, clinic, or other event or activity that is authorized by a specific local education agency or public school, according to local board policy, and satisfies at least one of the following conditions:

(A) the activity is managed or supervised by a local education agency or public school, or local education agency or public school employee;

(B) the activity uses the local education agency or public school's facilities, equipment, or other school resources; or

(C) the activity is supported or subsidized, more than inconsequentially, by public funds, including the public school's activity funds or minimum school program dollars.

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

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

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

(2) This section applies to a minor enrolled in school who is alleged to have committed an offense at the school where the student is enrolled:

(a) on school property~~;~~ where the student is enrolled:

(i) when school is in session; or

(ii) during a school-sponsored activity; or

(b) that is truancy.

(3) (a) If the alleged offense is a class C misdemeanor, an infraction, a status offense

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on school property, or truancy, the minor may not be referred to law enforcement or court but may be referred to evidence-based alternative [~~school-related~~] interventions, including:

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

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

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

(iv) evidence-based interventions created and developed by the school or school district; and

(v) other evidence-based interventions that may be jointly created and developed by a local education agency, the State Board of Education, the juvenile court, local counties and municipalities, the Department of Health, or the Department of Human Services.

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

(i) investigate possible criminal offenses and conduct, including conducting probable cause searches;

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

(iii) transport a minor enrolled in a school to a location if the location is permitted by law;

(iv) take temporary custody of a minor pursuant to Subsection 78A-6-112(1); or

(v) protect the safety of students and the school community, including the use of reasonable and necessary physical force when appropriate based on the totality of the circumstances.

(c) Notwithstanding other provisions of this section, a law enforcement officer who has cause to believe a minor has committed an offense on school property when school is not in session nor during a school-sponsored activity, the law enforcement officer may refer the minor to court or may refer the minor to evidence-based alternative interventions at the discretion of the law enforcement officer.

(4) (a) Notwithstanding Subsection (3)(a) and subject to the requirements of this Subsection (4), a school district or school may refer a minor to court for a class C misdemeanor committed on school property or for being a habitual truant, as defined in Section 53G-6-201, if the minor refuses to participate in an evidence-based alternative intervention described in

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### Subsection (3)(a).

(b) (i) When a minor is referred to court under Subsection (4)(a), the school shall appoint a school representative to continue to engage with the minor and the minor's family through the court process.

(ii) A school representative appointed under this Subsection (4)(b) may not be a school resource officer.

(c) A school district or school shall include the following in its referral to the court:

(i) attendance records for the minor;

(ii) a report of evidence-based alternative interventions used by the school before referral, including outcomes;

(iii) the name and contact information of the school representative assigned to actively participate in the court process with the minor and the minor's family; and

(iv) any other information the school district or school considers relevant.

(d) A minor referred to court under this Subsection (4), may not be ordered to or placed in secure detention, including for a contempt charge or violation of a valid court order under Section 78A-6-1101 when the underlying offense is a class C misdemeanor occurring on school property or habitual truancy.

(e) If a minor is referred to court under this Subsection (4), the court may use, when available, the resources of the Division of Juvenile Justice Services or the Division of Substance Abuse and Mental Health to address the minor.

~~[(4)]~~ (5) If the alleged offense is a class B misdemeanor or a [nonperson] class A misdemeanor, the minor may be referred directly to the juvenile court by the school administrator [or], the school administrator's designee, or a school resource officer, or the minor may be referred to the evidence-based alternative interventions in Subsection (3)(a).

Section 3. Section **53G-8-506** is amended to read:

### **53G-8-506. Reporting of prohibited acts affecting a school -- Confidentiality.**

(1) A person who has reasonable cause to believe that an individual has committed a prohibited act shall, in accordance with Section 53G-8-211, immediately notify:

(a) the principal;

(b) an administrator of the affected school;

(c) the superintendent of the affected school district; or

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(d) an administrator of the affected school district.

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

(3) A school official may only refer a complaint of an alleged prohibited act reported as occurring on school [grounds] property or in connection with school-sponsored activities to an appropriate law enforcement agency in accordance with Section 53G-8-211.

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

Section 4. Section **63I-1-253** is amended to read:

**63I-1-253. Repeal dates, Titles 53, 53A, and 53B.**

The following provisions are repealed on the following dates:

(1) Subsection 53-10-202(18) is repealed July 1, 2018.

(2) Section 53-10-202.1 is repealed July 1, 2018.

(3) Title 53A, Chapter 1a, Part 6, Public Education Job Enhancement Program, is repealed July 1, 2020.

(4) Section 53A-13-106.5 is repealed July 1, 2019.

(5) Section 53A-15-106 is repealed July 1, 2019.

(6) Sections 53A-15-206 and 53A-15-207 are repealed January 1, 2023.

(7) Title 53A, Chapter 31, Part 4, American Indian and Alaskan Native Education State Plan Pilot Program, is repealed July 1, 2022.

(8) Section 53B-24-402, Rural residency training program, is repealed July 1, 2020.

(9) Subsection 53C-3-203(4)(b)(vii), which provides for the distribution of money from the Land Exchange Distribution Account to the Geological Survey for test wells, other hydrologic studies, and air quality monitoring in the West Desert, is repealed July 1, 2020.

(10) Subsection 53G-8-211(4) is repealed July 1, 2020.

Section 5. Section 78A-6-117 (Effective 07/01/18) is amended to read:

**78A-6-117 (Effective 07/01/18). Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court.**

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

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necessary.

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

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

(ii) if available, if the victim:

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

(B) attends the same school as the minor.

(c) An adjudicated minor shall undergo a risk screening or, if indicated, a validated risk and needs assessment. Results of the screening or assessment shall be used to inform disposition decisions and case planning. Assessment results, if available, may not be shared with the court before adjudication.

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

(a) (i) the court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including community or compensatory service;

(ii) a condition ordered by the court under Subsection (2)(a)(i):

(A) shall be individualized and address a specific risk or need;

(B) shall be based on information provided to the court, including the results of a validated risk and needs assessment conducted under Subsection (1)(c); and

(C) if the court orders treatment, be based on a validated risk and needs assessment conducted under Subsection (1)(c);

(iii) a court may not issue a standard order that contains control-oriented conditions;

(iv) prohibitions on weapon possession, where appropriate, shall be specific to the minor and not the minor's family;

(v) if the court orders probation, the court may direct that notice of the court's order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, that the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety; and



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

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

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

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

(c) (i) The court shall only vest legal custody of the minor in the Division of Juvenile Justice Services and order the Division of Juvenile Justice Services to provide dispositional recommendations and services if:

(A) nonresidential treatment options have been exhausted or nonresidential treatment options are not appropriate; and

(B) the minor is adjudicated under this section for a felony offense, a misdemeanor when the minor has five prior misdemeanors or felony adjudications arising from separate criminal episodes, or a misdemeanor involving the use of a dangerous weapon as defined in Section 76-1-601.

(ii) The court may not vest legal custody of a minor in the Division of Juvenile Justice Services for:

(A) contempt of court except to the extent permitted under Section 78A-6-1101;

(B) a violation of probation;

(C) failure to pay a fine, fee, restitution, or other financial obligation;

(D) unfinished compensatory or community service hours;

(E) an infraction; or

(F) a status offense.

(iii) (A) A minor who is 18 years old or older, but younger than 21 years old, may petition the court to express the minor's desire to be removed from the jurisdiction of the juvenile court and from the custody of the Division of Child and Family Services if the minor is in the division's custody on grounds of abuse, neglect, or dependency.

(B) If the minor's parent's rights have not been terminated in accordance with Part 5,

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Termination of Parental Rights Act, the minor's petition shall contain a statement from the minor's parent or guardian agreeing that the minor should be removed from the custody of the Division of Child and Family Services.

(C) The minor and the minor's parent or guardian shall sign the petition.

(D) The court shall review the petition within 14 days.

(E) The court shall remove the minor from the custody of the Division of Child and Family Services if the minor and the minor's parent or guardian have met the requirements described in Subsections (2)(c)(iv)(B) and (C) and if the court finds, based on input from the Division of Child and Family Services, the minor's guardian ad litem, and the Office of the Attorney General, that the minor does not pose an imminent threat to self or others.

(F) A minor removed from custody under Subsection (2)(c)(iv)(E) may, within 90 days of the date of removal, petition the court to re-enter custody of the Division of Child and Family Services.

(G) Upon receiving a petition under Subsection (2)(c)(iv)(F), the court shall order the Division of Child and Family Services to take custody of the minor based on the findings the court entered when the court originally vested custody in the Division of Child and Family Services.

(d) (i) The court shall only commit a minor to the Division of Juvenile Justice Services for secure confinement if the court finds that the minor poses a risk of harm to others and is adjudicated under this section for:

(A) a felony offense;

(B) a misdemeanor if the minor has five prior misdemeanor or felony adjudications arising from separate criminal episodes; or

(C) a misdemeanor involving use of a dangerous weapon as defined in Section 76-1-601.

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

(iii) The court may not commit a minor to the Division of Juvenile Justice Services for secure confinement for:

(A) contempt of court;

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(B) a violation of probation;

(C) failure to pay a fine, fee, restitution, or other financial obligation;

(D) unfinished compensatory or community service hours;

(E) an infraction; or

(F) a status offense.

(e) The court may order nonresidential, diagnostic assessment, including substance use disorder, mental health, psychological, or sexual behavior risk assessment.

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

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

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

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

(iii) The court may not commit a minor to a place of detention for:

(A) contempt of court except to the extent allowed under Section 78A-6-1101;

(B) a violation of probation;

(C) failure to pay a fine, fee, restitution, or other financial obligation;

(D) unfinished compensatory or community service hours;

(E) an infraction; or

(F) a status offense.

(iv) (A) Time spent in detention pre-adjudication shall be credited toward the 30 cumulative days eligible as a disposition under Subsection (2)(f)(i). If the minor spent more than 30 days in a place of detention before disposition, the court may not commit a minor to detention under this section.

(B) Notwithstanding Subsection (2)(f)(iv)(A), the court may commit a minor for a maximum of seven days while a minor is awaiting placement under Subsection (2)(c)(i). Only the seven days under this Subsection (2)(f)(iv)(B) may be combined with a nonsecure placement.

(v) Notwithstanding Subsection (2)(t), no more than seven days of detention may be ordered in combination with an order under Subsection (2)(c)(i).

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

(h) (i) The court may order a minor to repair, replace, or otherwise make restitution for material loss caused by the minor's wrongful act or for conduct for which the minor agrees to make restitution.

(ii) A victim has the meaning defined under Subsection 77-38a-102(14). A victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the minor's delinquency conduct in the course of the scheme, conspiracy, or pattern.

(iii) If the victim and the minor agree to participate, the court may refer the case to a restorative justice program such as victim offender mediation to address how loss resulting from the adjudicated act may be addressed.

(iv) For the purpose of determining whether and how much restitution is appropriate, the court shall consider the following:

(A) restitution shall only be ordered for the victim's material loss;

(B) restitution may not be ordered if the court finds that the minor is unable to pay or acquire the means to pay; and

(C) any amount paid by the minor to the victim in civil penalty shall be credited against restitution owed.

(v) Any amount paid to the victim in restitution shall be credited against liability in a civil suit.

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

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

(viii) The prosecutor shall submit a request for restitution to the court at the time of

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disposition, if feasible, otherwise within three months after disposition.

(ix) A financial disposition ordered shall prioritize the payment of restitution.

(i) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions, except for an order that changes the custody of the minor, including detention or other secure or nonsecure residential placements.

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

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

(iii) The court may order the minor to:

(A) pay a fine, fee, restitution, or other cost; or

(B) complete service hours.

(iv) If the court orders a minor to pay a fine, fee, restitution, or other cost, or to complete service hours, those dispositions shall be considered collectively to ensure that the order is reasonable and prioritizes restitution.

(v) If the court orders a minor to pay a fine, fee, or other cost, or complete service hours, the cumulative order shall be limited per criminal episode as follows:

(A) for children under age 16 at adjudication, the court may impose up to \$180 or up to 24 hours of service; and

(B) for minors 16 and older at adjudication, the court may impose up to \$270 or up to 36 hours of service.

(vi) The cumulative order under Subsection (2)(j)(v) does not include restitution.

(vii) If the court converts a fine, fee, or restitution amount to service hours, the rate of conversion shall be no less than the minimum wage.

(k) (i) In violations of traffic laws within the court's jurisdiction, when the court finds that as part of the commission of the violation the minor was in actual physical control of a motor vehicle, the court may, in addition to any other disposition authorized by this section:

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

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and

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

(ii) The court may enter any other eligible disposition under Subsection (2)(k)(i) except for a disposition under Subsection (2)(c), (d), or (f). However, the suspension of driving privileges for an offense under Section 78A-6-606 is governed only by Section 78A-6-606.

(l) (i) The court may order a minor to complete community or compensatory service hours in accordance with Subsections (2)(j)(iv) and (v).

(ii) When community service is ordered, the presumptive service order shall include between five and 10 hours of service.

(iii) Satisfactory completion of an approved substance use disorder prevention or treatment program or other court-ordered condition may be credited by the court as compensatory service hours.

(iv) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may order the minor to clean up graffiti created by the minor or any other person at a time and place within the jurisdiction of the court. Compensatory service ordered under this section may be performed in the presence and under the direct supervision of the minor's parent or legal guardian. The parent or legal guardian shall report completion of the order to the court. The court may also require the minor to perform other alternative forms of restitution or repair to the damaged property pursuant to Subsection (2)(h).

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

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

(B) receive other special care.

(ii) For purposes of receiving the examination, treatment, or care described in Subsection (2)(m)(i), the court may place the minor in a hospital or other suitable facility that is not a secure facility or secure detention.

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

(A) the desires of the minor;

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

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

(iv) The Division of Child and Family Services shall take reasonable measures to notify a parent or guardian of any non-emergency health treatment or care scheduled for a child, shall include the parent or guardian as fully as possible in making health care decisions for the child, and shall defer to the parent's or guardian's reasonable and informed decisions regarding the child's health care to the extent that the child's health and well being are not unreasonably compromised by the parent's or guardian's decision.

(v) The Division of Child and Family Services shall notify the parent or guardian of a child within five business days after a child in the custody of the Division of Child and Family Services receives emergency health care or treatment.

(vi) The Division of Child and Family Services shall use the least restrictive means to accomplish a compelling interest in the care and treatment of a child described in this Subsection (2)(m).

(n) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint as guardian a public or private institution or agency, but not a nonsecure residential placement provider, in which legal custody of the minor is vested.

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

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

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

(B) restrictions on the minor's associates;

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

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

(ii) A minor whose parents or guardians successfully complete a family or other

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counseling program may be credited by the court for detention, confinement, or probation time.

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

(q) (i) The court may make an order committing a minor within the court's jurisdiction to the Utah State Developmental Center if the minor has an intellectual disability in accordance with Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability.

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

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

(s) The court may make other reasonable orders for the best interest of the minor and as required for the protection of the public, except that a child may not be committed to jail, prison, secure detention, or the custody of the Division of Juvenile Justice Services under Subsections (2)(c) and (d).

(t) The court may combine the dispositions listed in this section if it is permissible and they are compatible.

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

(v) Except as provided in Subsection (2)(x)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review and presumptive termination of the case by the court in accordance with Subsection (6) and Section 62A-7-404. A new date shall be set upon each review.

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

(x) (i) The juvenile court may enter an order of permanent custody and guardianship



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with an individual or relative of a child where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an order for child support on behalf of the child against the natural or adoptive parents of the child.

(ii) Orders under Subsection (2)(x)(i):

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

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

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

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

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

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

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

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

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

(iii) was committed with a weapon; and

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

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

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

(c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA

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Specimen Restricted Account created in Section 53-10-407.

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

(5) (a) A disposition made by the court pursuant to this section may not be suspended, except for the following:

(i) If a minor qualifies for commitment to the Division of Juvenile Justice Services under Subsection (2)(c) or (d), the court may suspend a custody order pursuant to Subsection (2)(c) or (d) in lieu of immediate commitment, upon the condition that the minor commit no new misdemeanor or felony offense during the three months following the day of disposition.

(ii) The duration of a suspended custody order made under Subsection (5)(a)(i) may not exceed three months post-disposition and may not be extended under any circumstance.

(iii) The court may only impose a custody order suspended under Subsection (5)(a)(i) following adjudication of a new misdemeanor or felony offense committed by the minor during the period of suspension set out under Subsection (5)(a)(ii) or if a new assessment or evaluation has been completed and recommends that a higher level of care is needed and nonresidential treatment options have been exhausted or nonresidential treatment options are not appropriate.

(iv) A suspended custody order may not be imposed without notice to the minor, notice to counsel, and a hearing.

(b) The court pursuant to Subsection (5)(a) shall terminate jurisdiction over the minor at the end of the presumptive time frame unless at least one the following circumstances exists:

(i) termination pursuant to Subsection (6)(a)(ii) would interrupt the completion of a program determined to be necessary by the results of a validated risk and needs assessment with completion found by the court after considering the recommendation of a licensed service provider on the basis of the minor completing the goals of the necessary treatment program;

(ii) the minor commits a new misdemeanor or felony offense;

(iii) service hours have not been completed; or

(iv) there is an outstanding fine.

(6) When the court places a minor on probation under Subsection (2)(a) or vests legal custody of the minor in the Division of Juvenile Justice Services under Subsection (2)(c), the court shall do so for a defined period of time pursuant to this section.

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(a) For the purposes of placing a minor on probation under Subsection (2)(a), the court shall establish a presumptive term of probation as specified in this Subsection (6):

(i) the presumptive maximum length of intake probation may not exceed three months;  
and

(ii) the presumptive maximum length of formal probation may not exceed four to six months.

(b) For the purposes of vesting legal custody of the minor in the Division of Juvenile Justice Services under Subsection (2)(c), the court shall establish a maximum term of custody and a maximum term of aftercare as specified in this Subsection (6):

(i) the presumptive maximum length of out-of-home placement may not exceed three to six months; and

(ii) the presumptive maximum length of aftercare supervision, for those previously placed out-of-home, may not exceed three to four months, and minors may serve the term of aftercare in the home of a qualifying relative or guardian or at an independent living program contracted or operated by the Division of Juvenile Justice Services.

(c) The court pursuant to Subsections (6)(a) and (b), and the Youth Parole Authority pursuant to Subsection (6)(b), shall terminate jurisdiction over the minor at the end of the presumptive time frame unless at least one of the following circumstances exists:

(i) termination pursuant to Subsection (6)(a)(ii) would interrupt the completion of a court ordered program determined to be necessary by the results of a validated assessment, with completion found by the court after considering the recommendations of a licensed service provider or facilitator of court ordered treatment or intervention program on the basis of the minor completing the goals of the necessary treatment program;

(ii) termination pursuant to Subsection (6)(a)(i) or (6)(b) would interrupt the completion of a program determined to be necessary by the results of a validated assessment, with completion determined on the basis of whether the minor has regularly and consistently attended the treatment program and completed the goals of the necessary treatment program as determined by the court or Youth Parole Authority after considering the recommendation of a licensed service provider or facilitator of court ordered treatment or intervention program;

(iii) the minor commits a new misdemeanor or felony offense;

(iv) service hours have not been completed; or

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(v) there is an outstanding fine.

(d) (i) Subject to Subsection (6)(g), if one of the circumstances under Subsection (6)(c)(i), (ii), (iii), or (iv) exists, the court may extend jurisdiction for the time needed to address the specific circumstance.

(ii) Subject to Subsection (6)(g), if one of the circumstances under Subsection (6)(c)(i), (ii), (iii), or (iv) exists, and the Youth Parole Authority has jurisdiction, the Youth Parole Authority may extend jurisdiction for the time needed to address the specific circumstance.

(e) If the circumstance under Subsection (6)(c)(iv) exists, the court, or the Youth Parole Authority if the Youth Parole Authority has jurisdiction, may extend jurisdiction one time for up to three months.

(f) Grounds for extension of the presumptive length of supervision or placement and the length of any extension shall be recorded in the court record or records of the Youth Parole Authority if the Youth Parole Authority has jurisdiction, and tracked in the data system used by the Administrative Office of the Courts and the Division of Juvenile Justice Services.

(g) (i) For a minor who is under the supervision of the juvenile court and whose supervision is extended to complete service hours under Subsection (6)(c)(iv), jurisdiction may only be continued under the supervision of intake probation.

(ii) For a minor who is under the jurisdiction of the Youth Parole Authority whose supervision is extended to complete service hours under Subsection (6)(c)(iv), jurisdiction may only be continued on parole and not in secure confinement.

(h) In the event of an unauthorized leave lasting more than 24 hours, the supervision period shall toll until the minor returns.

(7) Subsection (6) does not apply to any minor adjudicated under this section for:

(a) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

(b) Section 76-5-202, attempted aggravated murder;

(c) Section 76-5-203, murder or attempted murder;

(d) Section 76-5-302, aggravated kidnapping;

(e) Section 76-5-405, aggravated sexual assault;

(f) a felony violation of Section 76-6-103, aggravated arson;

(g) Section 76-6-203, aggravated burglary;

(h) Section 76-6-302, aggravated robbery;

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(i) Section 76-10-508.1, felony discharge of a firearm; or

(j) an offense other than those listed in Subsections (7)(a) through (i) involving the use of a dangerous weapon, as defined in Section 76-1-601, that is a felony, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon.

Section 6. Section **78A-6-210** is amended to read:

### **78A-6-210. Fines -- Fees -- Deposit with state treasurer -- Restricted account.**

(1) There is created within the General Fund a restricted account known as the "Nonjudicial Adjustment Account."

(2) (a) The account shall be funded from the financial penalty established under Subsection 78A-6-602(2)(~~d~~)(e)(i).

(b) The court shall deposit all money collected as a result of penalties assessed as part of the nonjudicial adjustment of a case in the account.

(c) The account shall be used to pay the expenses of juvenile compensatory service, victim restitution, and diversion programs.

(3) (a) Except under Subsections (3)(b), (4), and as otherwise provided by law, all fines, fees, penalties, and forfeitures imposed and collected by the juvenile court shall be paid to the state treasurer for deposit in the General Fund.

(b) Not more than 50% of any fine or forfeiture collected may be paid to a state rehabilitative employment program for delinquent minors that provides for employment of the minor in the county of the minor's residence if:

(i) reimbursement for the minor's labor is paid to the victim of the minor's delinquent behavior;

(ii) the amount earned and paid is set by court order;

(iii) the minor is not paid more than the hourly minimum wage; and

(iv) no payments to victims are made without the minor's involvement in a rehabilitative work program.

(c) Fines withheld under Subsection (3)(b) and any private contributions to the rehabilitative employment program are accounted for separately and are subject to audit at any time by the state auditor.

(d) Funds withheld under Subsection (3)(b) and private contributions are nonlapsing. The Board of Juvenile Court Judges shall establish policies for the use of the funds described

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in this subsection.

(4) For fines and forfeitures collected by the court for a violation of Section 41-6a-1302 in instances where evidence of the violation was obtained by an automated traffic enforcement safety device as described in Section 41-6a-1310, the court shall allocate 20% to the school district or private school that owns or contracts for the use of the bus, and the state treasurer shall allocate 80% to the General Fund.

(5) No fee may be charged by any state or local public officer for the service of process in any proceedings initiated by a public agency.

Section ~~67~~7. Section **78A-6-602** is amended to read:

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

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

(2) (a) A peace officer or a public official of the state, a county, city, or town charged with the enforcement of the laws of the state or local jurisdiction shall file a formal referral with the juvenile court within 10 days of a minor's arrest. If the arrested minor is taken to a detention facility, the formal referral shall be filed with the juvenile court within 72 hours, excluding weekends and holidays. A formal referral under Section ~~[53A-11-911]~~ 53G-8-211 may not be filed with the juvenile court on an offense unless the offense is subject to referral under Section ~~[53A-11-911]~~ 53G-8-211.

(b) (i) When the court is informed by a peace officer or other person that a minor is or appears to be within the court's jurisdiction, the probation department shall make a preliminary inquiry to determine whether the minor is eligible to enter into a written consent agreement with the probation department and, if the minor is a child, the minor's parent, guardian, or custodian for the nonjudicial adjustment of the case pursuant to this Subsection (2). ~~[The]~~

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

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

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

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

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

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means an action based on a single episode of conduct that is closely related in time and is incident to an attempt or an accomplishment of a single objective.

(c) (i) Within seven days of receiving a referral that appears to be eligible for a nonjudicial adjustment pursuant to Subsection (2)(b), the probation department shall provide an initial notice to reasonably identifiable and locatable victims of the offense contained in the referral.

(ii) The victim shall be responsible to provide to the division upon request:

(A) invoices, bills, receipts, and other evidence of injury, loss of earnings, and out-of-pocket loss;

(B) documentation and evidence of compensation or reimbursement from insurance companies or agencies of Utah, any other state, or federal government received as a direct result of the crime for injury, loss of earnings, or out-of-pocket loss; and

(C) proof of identification, including home and work address and telephone numbers.

(iii) The inability, failure, or refusal of the victim to provide all or part of the requested information shall result in the probation department determining restitution based on the best information available.

~~(c)~~ (d) (i) Notwithstanding Subsection (2)(b), the probation department may conduct a validated risk and needs assessment and may request that the prosecutor review the referral pursuant to Subsection (2)~~(g)~~(h) to determine whether to dismiss the referral or file a petition instead of offering a nonjudicial adjustment if:

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

(B) the results of the assessment indicate the youth is moderate risk and the referral is for a class A misdemeanor violation under Title 76, Chapter 5, Offenses Against the Person, or Title 76, Chapter 9, Part 7, Miscellaneous Provisions.

(ii) ~~The~~ Except as provided in Subsection (2)(k), the court's probation department~~;~~ may offer a nonjudicial adjustment to any other minor who does not meet the criteria provided in Subsection (2)(b).

(iii) Acceptance of an offer of nonjudicial adjustment may not be predicated on an admission of guilt.

(iv) A minor may not be denied an offer of nonjudicial adjustment due to an inability to pay a financial penalty under Subsection (2)~~(d)~~(e).

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(v) Efforts to effect a nonjudicial adjustment may not extend for a period of more than 90 days without leave of a judge of the court, who may extend the period for an additional 90 days.

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

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

(B) the minor declines nonjudicial adjustment;

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

(D) the minor fails to respond to the probation department's inquiry regarding eligibility for or an offer of a nonjudicial adjustment after being provided with notice for preliminary inquiry; or

(E) the prosecutor is acting under Subsection (2)(k).

~~(f)~~ (e) The nonjudicial adjustment of a case may include the following conditions agreed upon as part of the nonjudicial closure:

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

(ii) payment of victim restitution;

(iii) satisfactory completion of community or compensatory service;

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

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

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

(vii) victim-offender mediation, if requested by the victim; and

~~(viii)~~ (viii) other reasonable actions that are in the interest of the child or minor ~~and~~, the community, and the victim.

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

~~(f)~~ (g) If a prosecutor learns of a referral involving an offense identified in Subsection (2)(k), if a minor fails to substantially comply with the conditions agreed upon as part of the



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nonjudicial closure, or if a minor is not offered or declines a nonjudicial adjustment pursuant to Subsection (2)(b) [~~or (2)(c)(ii)~~], (2)(d)(ii), or (2)(d)(vi), the prosecutor shall review the case and take one of the following actions:

(i) dismiss the case;

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

(iii) [~~in accordance with Subsections~~] subject to Subsection (2)(~~h~~)(i), file a petition with the court.

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

(i) the charges are supported by probable cause;

(ii) admissible evidence will be sufficient to support [~~conviction~~] adjudication beyond a reasonable doubt; and

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

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

~~(i) A~~ (j) Notwithstanding Subsection (2)(i), a violation of Section 76-10-105 that is subject to the jurisdiction of the juvenile court may include a fine or penalty and participation in a court-approved tobacco education program, which may include a participation fee.

(k) Notwithstanding the other provisions of this section, the probation department shall request that a prosecutor review a referral in accordance with Subsection (2)(g) if:

(i) the referral involves a violation of:

(~~ii~~) A) Section ~~76-5-206~~ 41-6a-502, ~~negligent homicide~~ driving under the influence;

(~~iii~~) B) Section 76-5-112, reckless endangerment creating a substantial risk of death or serious bodily injury;

(~~iii~~) C) Section 76-5-206, negligent homicide;

(D) Section 76-9-702.1, sexual battery;

(E) Section 76-10-505.5, possession of a dangerous weapon, firearm, or short barreled

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shotgun on or about school premises; or

~~(fv)E~~ Section 76-10-509, possession of dangerous weapon by minor, but only if the dangerous weapon is a firearm;~~f~~

~~(v) Section 76-9-702.1, sexual battery; or~~

~~(vi) Section 41-6a-502, driving under the influence.~~

~~f~~ or

(ii) the minor has a current suspended order for custody under Subsection 78A-6-117(5)(a).

~~(f)~~ (l) If the prosecutor files a petition in court, the court may refer the case to the probation department for another offer of nonjudicial adjustment.

(m) If a minor violates Section 41-6a-502, regardless of whether a prosecutor reviews a referral under Subsection (2)(k)(~~vi~~)~~i~~(A), the minor shall be subject to a drug and alcohol screening and participate in an assessment, if found appropriate by the screening, and if warranted, follow the recommendations of the assessment.

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

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

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

Section ~~f7~~8. Section **78A-6-603** is amended to read:

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

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

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

(3) A copy of the citation shall contain:

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

(b) the name of the minor cited;

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

(d) a brief description of the offense charged;

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

(f) the date the citation was issued;

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

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

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

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

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

(a) the minor's address;

(b) the minor's date of birth;

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

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

(5) A citation received by the court beyond the time designated in Subsection (2) shall include a written explanation for the delay.

(6) In accordance with Section [~~53A-11-911~~] 53G-8-211, the following offenses may be sent to the juvenile court as a citation:

(a) violations of wildlife laws;

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- (b) violations of boating laws;
  - (c) violations of curfew laws;
  - (d) any class B misdemeanor or less traffic violations where the person is under the age of 16;
  - (e) any class B or class C misdemeanor or infraction;
  - (f) any other infraction or misdemeanor as designated by general order of the Board of Juvenile Court Judges; and
  - (g) violations of Section 76-10-105 subject to the jurisdiction of the juvenile court.
- (7) A minor offense defined under Section 78A-6-1202, alleged to have been committed by an enrolled child on school property or related to school attendance, may only be sent to the prosecutor or the juvenile court in accordance with Section ~~[53A-11-911]~~ 53G-8-211.

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

(8) An inquiry shall be conducted:

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

(i) the charges are supported by probable cause;

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

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

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

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

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

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

(11) A minor who receives a citation and willfully fails to appear before the juvenile court pursuant to a citation may be found in contempt of court. The court may proceed against the minor as provided in Section 78A-6-1101.

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

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- (a) the court; and
- (b) if the minor is a child, the parent or legal guardian of the child cited.

Section ~~{8}~~9. **Effective date.**

~~ff~~(1) Except as provided in Subsection (2), if approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

(2) The amendments to Section 78A-6-117 (Effective 07/01/18) take effect on July 1, 2018.