

## HB0262S02 compared with HB0262S01

~~text~~ shows text that was in HB0262S01 but was deleted in HB0262S02.

text shows text that was not in HB0262S01 but was inserted into HB0262S02.

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Representative Craig Hall proposes the following substitute bill:

### JUVENILE DELINQUENCY AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Craig Hall**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

#### General Description:

This bill amends provisions relating to juvenile delinquency.

#### Highlighted Provisions:

This bill:

- ▶ modifies the definition of a youth offender in the custody of the Division of Juvenile Justice Services;
- ▶ adds a definition for a referral to a juvenile court for a nonjudicial adjustment;
- ▶ clarifies and amends the referral, citation, and petition process for the juvenile court;
- ▶ prohibits the prosecution of an individual for offenses that occurred before the individual was ~~13~~12 years old with exceptions;
- ▶ makes technical and conforming changes.

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### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a special effective date.

### Utah Code Sections Affected:

#### AMENDS:

**17-18a-404**, as last amended by Laws of Utah 2017, Chapter 330

**76-10-105 (Superseded 07/01/20)**, as last amended by Laws of Utah 2018, Chapter 415

**76-10-105 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232

**78A-6-105**, as last amended by Laws of Utah 2019, Chapters 335 and 388

**78A-6-113**, as last amended by Laws of Utah 2018, Chapter 285

**78A-6-116**, as last amended by Laws of Utah 2010, Chapter 38

**78A-6-210**, as last amended by Laws of Utah 2018, Chapter 117

**78A-6-601**, as last amended by Laws of Utah 2010, Chapter 38

**78A-6-602**, as last amended by Laws of Utah 2018, Chapters 117 and 415

**78A-6-603**, as last amended by Laws of Utah 2018, Chapters 117 and 415

**78A-6-703**, as last amended by Laws of Utah 2019, Chapter 326

**78A-7-106**, as last amended by Laws of Utah 2019, Chapter 136

#### ENACTS:

**78A-6-602.5**, Utah Code Annotated 1953

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

Section 1. Section **17-18a-404** is amended to read:

**17-18a-404. Juvenile proceedings.**

For a proceeding involving a charge of juvenile delinquency, infraction, or a status offense, a prosecutor shall:

(1) review cases [~~pursuant to Section~~] in accordance with Sections 78A-6-602, 78A-6-602.5, and 78A-6-603; and

(2) appear and prosecute for the state in the juvenile court of the county.

Section 2. Section **76-10-105 (Superseded 07/01/20)** is amended to read:

**76-10-105 (Superseded 07/01/20). Buying or possessing a cigar, cigarette,**

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### **electronic cigarette, or tobacco by a minor -- Penalty -- Compliance officer authority.**

(1) Any 18 year old person who buys or attempts to buy, accepts, or has in the person's possession any cigar, cigarette, electronic cigarette, or tobacco in any form is guilty of a class C misdemeanor and subject to:

(a) a minimum fine or penalty of \$60; and

(b) participation in a court-approved tobacco education program, which may include a participation fee.

(2) Any person under the age of 18 who buys or attempts to buy, accepts, or has in the person's possession any cigar, cigarette, electronic cigarette, or tobacco in any form is subject to ~~[the jurisdiction of the juvenile court and subject to Section 78A-6-602]~~ a citation under Section 78A-6-603, unless the violation is committed on school property. If a violation under this section is adjudicated under Section 78A-6-117, the minor may be subject to the following:

(a) a fine or penalty, in accordance with Section 78A-6-117; and

(b) participation in a court-approved tobacco education program, which may include a participation fee.

(3) A compliance officer appointed by a board of education under Section 53G-4-402 may not issue a citation for a violation of this section committed on school property. A cited violation committed on school property shall be addressed in accordance with Section 53G-8-211.

Section 3. Section **76-10-105 (Effective 07/01/20)** is amended to read:

### **76-10-105 (Effective 07/01/20). Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco by a minor -- Penalty -- Compliance officer authority.**

(1) (a) An individual who is 18 years old or older, but younger than the age specified in Subsection (1)(b), and buys or attempts to buy, accepts, or has in the individual's possession any cigar, cigarette, electronic cigarette, or tobacco in any form is guilty of an infraction and subject to:

(i) a minimum fine or penalty of \$60; and

(ii) participation in a court-approved tobacco education or cessation program, which may include a participation fee.

(b) For purposes of Subsection (1)(a), the individual is younger than:

(i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and

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(ii) beginning July 1, 2021, 21 years old.

(2) An individual under [~~the age of~~] 18 years old who buys or attempts to buy, accepts, or has in the individual's possession any cigar, cigarette, electronic cigarette, or tobacco in any form is subject to [~~the jurisdiction of the juvenile court and subject to Section 78A-6-602]~~ a citation under Section 78A-6-603, unless the violation is committed on school property. If a violation under this section is adjudicated under Section 78A-6-117, the minor may be subject to the following:

(a) a fine or penalty, in accordance with Section 78A-6-117; and

(b) participation in a court-approved tobacco education program, which may include a participation fee.

(3) A compliance officer appointed by a board of education under Section 53G-4-402 may not issue a citation for a violation of this section committed on school property. A cited violation committed on school property shall be addressed in accordance with Section 53G-8-211.

(4) (a) This section does not apply to the purchase or possession of a cigar, cigarette, electronic cigarette, tobacco, or tobacco paraphernalia by an individual who is 18 years old or older and is:

(i) on active duty in the United States Armed Forces; or

(ii) a spouse or dependent of an individual who is on active duty in the United States Armed Forces.

(b) A valid, government-issued military identification card is required to verify proof of age under Subsection (4)(a).

Section 4. Section **78A-6-105** is amended to read:

### **78A-6-105. Definitions.**

As used in this chapter:

(1) (a) "Abuse" means:

(i) (A) nonaccidental harm of a child;

(B) threatened harm of a child;

(C) sexual exploitation;

(D) sexual abuse; or

(E) human trafficking of a child in violation of Section 76-5-308.5; or

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(ii) that a child's natural parent:

(A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.

(b) "Abuse" does not include:

(i) reasonable discipline or management of a child, including withholding privileges;

(ii) conduct described in Section 76-2-401; or

(iii) the use of reasonable and necessary physical restraint or force on a child:

(A) in self-defense;

(B) in defense of others;

(C) to protect the child; or

(D) to remove a weapon in the possession of a child for any of the reasons described in Subsections (1)(b)(iii)(A) through (C).

(2) "Abused child" means a child who has been subjected to abuse.

(3) (a) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved. [~~A~~]

(b) "Adjudication" does not mean a finding of not competent to proceed [~~pursuant to~~] in accordance with Section 78A-6-1302 [~~is not an adjudication~~].

(4) (a) "Adult" means an individual [~~+18 years of age or over, except that an individual +18 years or over under~~] who is 18 years old or older.

(b) "Adult" does not include an individual who is 18 years old or older and under the continuing jurisdiction of the juvenile court [~~pursuant to~~] in accordance with Section 78A-6-120 [~~shall be referred to as a minor~~].

(5) "Board" means the Board of Juvenile Court Judges.

(6) "Child" means an individual under 18 years [~~of age~~] old.

(7) "Child placement agency" means:

(a) a private agency licensed to receive a child for placement or adoption under this code; or

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(b) a private agency that receives a child for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

(8) "Clandestine laboratory operation" means the same as that term is defined in Section 58-37d-3.

(9) "Commit" means, unless specified otherwise:

(a) with respect to a child, to transfer legal custody; and

(b) with respect to a minor who is at least 18 years [~~of age~~] old, to transfer custody.

(10) "Court" means the juvenile court.

(11) "Criminogenic risk factors" means evidence-based factors that are associated with a minor's likelihood of reoffending.

(12) "Delinquent act" means an act that would constitute a felony or misdemeanor if committed by an adult.

(13) "Department" means the Department of Human Services created in Section 62A-1-102.

(14) "Dependent child" includes a child who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

(15) "Deprivation of custody" means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.

(16) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of a minor who requires secure custody in a physically restricting facility:

(a) pending court disposition or transfer to another jurisdiction; or

(b) while under the continuing jurisdiction of the court.

(17) "Detention risk assessment tool" means an evidence-based tool established under Section 78A-6-124, on and after July 1, 2018, that assesses a minor's risk of failing to appear in court or reoffending pre-adjudication and designed to assist in making detention determinations.

(18) "Developmental immaturity" means incomplete development in one or more domains which manifests as a functional limitation in the minor's present ability to consult with counsel with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings.

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(19) "Division" means the Division of Child and Family Services.

(20) "Educational neglect" means that, after receiving a notice of compulsory education violation under Section 53G-6-202, the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(21) "Evidence-based" means a program or practice that has had multiple randomized control studies or a meta-analysis demonstrating that the program or practice is effective for a specific population or has been rated as effective by a standardized program evaluation tool.

(22) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.

(23) "Formal probation" means a minor is under field supervision by the probation department or other agency designated by the court and subject to return to the court in accordance with Section 78A-6-123 on and after July 1, 2018.

(24) "Formal referral" means a written report from a peace officer or other person informing the court that a minor is or appears to be within the court's jurisdiction and that [a] the minor's case must be reviewed by the court's probation department or a prosecuting attorney.

(25) "Group rehabilitation therapy" means psychological and social counseling of one or more individuals in the group, depending upon the recommendation of the therapist.

(26) "Guardianship of the person" includes the authority to consent to:

- (a) marriage;
- (b) enlistment in the armed forces;
- (c) major medical, surgical, or psychiatric treatment; or
- (d) legal custody, if legal custody is not vested in another individual, agency, or

institution.

(27) "Habitual truant" means the same as that term is defined in Section 53G-6-201.

(28) "Harm" means:

- (a) physical or developmental injury or damage;
- (b) emotional damage that results in a serious impairment in the child's growth, development, behavior, or psychological functioning;

(c) sexual abuse; or

(d) sexual exploitation.

(29) (a) "Incest" means engaging in sexual intercourse with an individual whom the

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perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.

(b) The relationships described in Subsection (29)(a) include:

(i) blood relationships of the whole or half blood, without regard to legitimacy;

(ii) relationships of parent and child by adoption; and

(iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.

(30) "Intake probation" means a period of court monitoring that does not include field supervision, but is overseen by a juvenile probation officer, during which a minor is subject to return to the court in accordance with Section 78A-6-123 on and after July 1, 2018.

(31) "Intellectual disability" means a significant subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior that constitutes a substantial limitation to the individual's ability to function in society.

(32) "Legal custody" means a relationship embodying the following rights and duties:

(a) the right to physical custody of the minor;

(b) the right and duty to protect, train, and discipline the minor;

(c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;

(d) the right to determine where and with whom the minor shall live; and

(e) the right, in an emergency, to authorize surgery or other extraordinary care.

(33) "Material loss" means an uninsured:

(a) property loss;

(b) out-of-pocket monetary loss;

(c) lost wages; or

(d) medical [~~expenses~~] expense.

(34) "Mental illness" means:

(a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or related functioning; or

(b) the same as that term is defined in:

(i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or



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(ii) the current edition of the International Statistical Classification of Diseases and Related Health Problems.

(35) "Minor" means:

(a) a child; or

(b) an individual who is:

(i) at least 18 years ~~[of age]~~ old and younger than 21 years ~~[of age]~~ old; and

(ii) under the jurisdiction of the juvenile court.

(36) "Mobile crisis outreach team" means a crisis intervention service for minors or families of minors experiencing behavioral health or psychiatric emergencies.

(37) "Molestation" means that an individual, with the intent to arouse or gratify the sexual desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child, or the breast of a female child, or takes indecent liberties with a child as defined in Section 76-5-416.

(38) (a) "Natural parent" means a minor's biological or adoptive parent~~[, and]~~.

(b) "Natural parent" includes the minor's noncustodial parent.

(39) (a) "Neglect" means action or inaction causing:

(i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;

(iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence or medical care, or any other care necessary for the child's health, safety, morals, or well-being;

(iv) a child to be at risk of being neglected or abused because another child in the same home is neglected or abused;

(v) abandonment of a child through an unregulated custody transfer; or

(vi) educational neglect.

(b) "Neglect" does not include:

(i) a parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child;

(ii) a health care decision made for a child by the child's parent or guardian, unless the

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state or other party to a proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed;

(iii) a parent or guardian exercising the right described in Section 78A-6-301.5; or

(iv) permitting a child, whose basic needs are met and who is of sufficient age and maturity to avoid harm or unreasonable risk of harm, to engage in independent activities, including:

(A) traveling to and from school, including by walking, running, or bicycling;

(B) traveling to and from nearby commercial or recreational facilities;

(C) engaging in outdoor play;

(D) remaining in a vehicle unattended, except under the conditions described in Subsection 76-10-2202(2);

(E) remaining at home unattended; or

(F) engaging in a similar independent activity.

(40) "Neglected child" means a child who has been subjected to neglect.

(41) "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of:

(a) the assigned probation officer; and

(b) (i) the minor; or

(ii) the minor and the minor's parent, legal guardian, or custodian.

(42) "Not competent to proceed" means that a minor, due to a mental illness, intellectual disability or related condition, or developmental immaturity, lacks the ability to:

(a) understand the nature of the proceedings against [~~them~~] the minor or of the potential disposition for the offense charged; or

(b) consult with counsel and participate in the proceedings against [~~them~~] the minor with a reasonable degree of rational understanding.

(43) "Physical abuse" means abuse that results in physical injury or damage to a child.

(44) "Probation" means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78A-6-103, whereby the minor is permitted to remain in the minor's home under prescribed conditions.

(45) "Prosecuting attorney" means:

(a) the attorney general and any assistant attorney general;

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(b) any district attorney or deputy district attorney;

(c) any county attorney or assistant county attorney; and

(d) any other attorney authorized to commence an action on behalf of the state.

~~[(45)]~~ (46) "Protective supervision" means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

~~[(46)]~~ (47) (a) "Related condition" means a condition that:

(i) is found to be closely related to intellectual disability;

(ii) results in impairment of general intellectual functioning or adaptive behavior similar to that of an intellectually disabled individual;

(iii) is likely to continue indefinitely; and

(iv) constitutes a substantial limitation to the individual's ability to function in society.

(b) "Related condition" does not include mental illness, psychiatric impairment, or serious emotional or behavioral disturbance.

~~[(47)]~~ (48) (a) "Residual parental rights and duties" means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including:

(i) the responsibility for support;

(ii) the right to consent to adoption;

(iii) the right to determine the child's religious affiliation; and

(iv) the right to reasonable parent-time unless restricted by the court.

(b) If no guardian has been appointed, "residual parental rights and duties" ~~[also include]~~ includes the right to consent to:

(i) marriage;

(ii) enlistment; and

(iii) major medical, surgical, or psychiatric treatment.

~~[(48)]~~ (49) "Secure facility" means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation pursuant to Subsection

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78A-6-117(2)(d).

~~[(49)]~~ (50) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.

~~[(50)]~~ (51) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.

~~[(51)]~~ (52) "Sexual abuse" means:

(a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an adult directed towards a child;

(b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation committed by a child towards another child if:

(i) there is an indication of force or coercion;

(ii) the children are related, as described in Subsection (29), including siblings by marriage while the marriage exists or by adoption;

(iii) there have been repeated incidents of sexual contact between the two children, unless the children are 14 years of age or older; or

(iv) there is a disparity in chronological age of four or more years between the two children;

(c) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the individual who engages in the conduct is actually charged with, or convicted of, the offense:

(i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the alleged perpetrator of an offense described in Section 76-5-401 is a minor;

(ii) child bigamy, Section 76-7-101.5;

(iii) incest, Section 76-7-102;

(iv) lewdness, Section 76-9-702;

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

(vi) lewdness involving a child, Section 76-9-702.5; or

(vii) voyeurism, Section 76-9-702.7; or

(d) subjecting a child to participate in or threatening to subject a child to participate in a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural marriage.

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~~(52)~~ (53) "Sexual exploitation" means knowingly:

(a) employing, using, persuading, inducing, enticing, or coercing any child to:

(i) pose in the nude for the purpose of sexual arousal of any individual; or

(ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;

(b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:

(i) in the nude, for the purpose of sexual arousal of any individual; or

(ii) engaging in sexual or simulated sexual conduct; or

(c) engaging in any conduct that would constitute an offense under Section 76-5b-201, sexual exploitation of a minor, regardless of whether the individual who engages in the conduct is actually charged with, or convicted of, the offense.

~~(53)~~ (54) "Shelter" means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.

(55) "Same or single criminal episode" means the same as that term is defined in Section 76-1-401.

~~(54)~~ (56) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

~~(55)~~ (57) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.

~~(56)~~ (58) "Substantiated" means the same as that term is defined in Section 62A-4a-101.

~~(57)~~ (59) "Supported" means the same as that term is defined in Section 62A-4a-101.

~~(58)~~ (60) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

~~(59)~~ (61) "Therapist" means:

(a) an individual employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody; or

(b) any other individual licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

~~(60)~~ (62) "Threatened harm" means actions, inactions, or credible verbal threats,

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indicating that the child is at an unreasonable risk of harm or neglect.

~~[(61)]~~ (63) "Unregulated custody transfer" means the placement of a child:

(a) with an individual who is not the child's parent, step-parent, grandparent, adult sibling, adult uncle or aunt, or legal guardian, or a friend of the family who is an adult and with whom the child is familiar, or a member of the child's federally recognized tribe;

(b) with the intent of severing the child's existing parent-child or guardian-child relationship; and

(c) without taking:

(i) reasonable steps to ensure the safety of the child and permanency of the placement; and

(ii) the necessary steps to transfer the legal rights and responsibilities of parenthood or guardianship to the individual taking custody of the child.

~~[(62)]~~ (64) "Unsupported" means the same as that term is defined in Section 62A-4a-101.

~~[(63)]~~ (65) "Unsubstantiated" means the same as that term is defined in Section 62A-4a-101.

~~[(64)]~~ (66) "Validated risk and needs assessment" means an evidence-based tool that assesses a minor's risk of reoffending and a minor's criminogenic needs.

~~[(65)]~~ (67) "Without merit" means the same as that term is defined in Section 62A-4a-101.

Section 5. Section **78A-6-113** is amended to read:

**78A-6-113. Placement of minor in detention or shelter facility -- Grounds -- Detention hearings -- Period of detention -- Notice -- Confinement for criminal proceedings -- Bail laws inapplicable -- Exception.**

(1) (a) A minor may not be placed or kept in a secure detention facility pending court proceedings except in accordance with Section 78A-6-112.

(b) A child may not be placed or kept in a shelter facility pending court proceedings unless it is unsafe to leave the child with the child's parents, guardian, or custodian.

(c) (i) A court may temporarily place in a detention facility, as provided in Subsection (4), a child who is taken into custody based upon a warrant issued under Subsection 78A-6-106(6), if the court finds that detention is the least restrictive placement available to

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ensure the immediate safety of the child.

(ii) A child placed in detention under Subsection (1)(c)(i) may not be held in detention longer than is necessary for the division to identify a less restrictive, available, and appropriate placement for the child.

(2) (a) After admission of a child to a detention facility pursuant to Section 78A-6-112 and immediate investigation by an authorized officer of the court, the judge or the officer shall order the release of the child to the child's parents, guardian, or custodian if ~~[it is found]~~ the judge or officer finds that the child can be safely returned to their care, either upon written promise to bring the child to the court at a time set or without restriction.

~~[(a)]~~ (b) If a child's parent, guardian, or custodian fails to retrieve the child from a facility within 24 hours after notification of release, the parent, guardian, or custodian is responsible for the cost of care for the time the child remains in the facility.

~~[(b)]~~ (c) The facility shall determine the cost of care.

~~[(c)]~~ (d) Any money collected under this Subsection (2) shall be retained by the Division of Juvenile Justice Services to recover the cost of care for the time the child remains in the facility.

(3) (a) When a child is detained in a detention or shelter facility, the parents or guardian shall be informed by the person in charge of the facility that the parent's or guardian's child has the right to a prompt hearing in court to determine whether the child is to be further detained or released.

(b) When a minor is detained in a detention facility, the minor shall be informed by the person in charge of the facility that the minor has the right to a prompt hearing in court to determine whether the minor is to be further detained or released.

(c) Detention hearings shall be held by the judge or by a commissioner.

(d) The court may, at any time, order the release of the minor, whether a detention hearing is held or not.

(e) If a child is released, and the child remains in the facility, because the parents, guardian, or custodian fails to retrieve the child, the parents, guardian, or custodian shall be responsible for the cost of care as provided in Subsections ~~[(2)(a), (b), and (c)]~~ (2)(b), (c), and (d).

(4) (a) A minor may not be held in a detention facility longer than 48 hours before a

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detention hearing, excluding weekends and holidays, unless the court has entered an order for continued detention.

(b) A child may not be held in a shelter facility longer than 48 hours before a shelter hearing, excluding weekends and holidays, unless a court order for extended shelter has been entered by the court after notice to all parties described in Section 78A-6-306.

(c) (i) A hearing for detention or shelter may not be waived.

(ii) Detention staff shall provide the court with all information received from the ~~[person]~~ individual who brought the minor to the detention facility.

(d) The judge or commissioner may only order a minor to be held in the facility or be placed in another appropriate facility, subject to further order of the court, if the court finds at a detention hearing that:

(i) releasing the minor to the minor's parent, guardian, or custodian presents an unreasonable risk to public safety;

(ii) less restrictive nonresidential alternatives to detention have been considered and, where appropriate, attempted; and

(iii) the minor is eligible for detention under the division guidelines for detention admissions established by the Division of Juvenile Justice Services, under Section 62A-7-202 and under Section 78A-6-112.

(e) (i) After a detention hearing has been held, only the court may release a minor from detention. If a minor remains in a detention facility, periodic reviews shall be held ~~[pursuant to the Utah State Juvenile Court Rules of Practice and Procedure]~~ in accordance with the Utah Rules of Juvenile Procedure to ensure that continued detention is necessary.

(ii) After a detention hearing for a violent felony, as defined in Section 76-3-203.5, or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the court shall direct that notice of ~~[its]~~ the court's decision, including any disposition, order, or no contact orders, be provided to designated persons in the appropriate local law enforcement agency and the district superintendent or 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.

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



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(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 disclosure constitutes a knowing violation of Section 63G-2-801.

(5) A minor may not be held in a detention facility, following a dispositional order of the court for nonsecure substitute care as defined in Section 62A-4a-101, or for community-based placement under Section 62A-7-101.

(6) (a) Except as otherwise provided in this section, a minor may not be held in a detention facility following a disposition order of the court for longer than 72 hours, excluding weekends and holidays.

(b) The period of detention may be extended by the court for a cumulative total of seven calendar days if:

(i) the Division of Juvenile Justice Services or another agency responsible for placement files a written petition with the court requesting the extension and setting forth good cause; and

(ii) the court enters a written finding that it is in the best interests of both the minor and the community to extend the period of detention.

(c) The court may extend the period of detention beyond the seven calendar days if the court finds by clear and convincing evidence that:

(i) the Division of Juvenile Justice Services or another agency responsible for placement does not have space for the minor; and

(ii) the safety of the minor and community requires an extension of the period of detention.

(d) The Division of Juvenile Justice Services shall report to the court every 48 hours, excluding weekends and holidays, regarding [~~the status of~~] whether the Division of Juvenile Justice Services or another agency responsible for placement has space for the minor.

(7) The agency requesting an extension shall promptly notify the detention facility that a written petition has been filed.

(8) The court shall promptly notify the detention facility regarding [~~its~~] the court's initial disposition and any ruling on a petition for an extension, whether granted or denied.

(9) (a) A child under 16 years of age may not be held in a jail, lockup, or other place

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for adult detention except as provided by Section 62A-7-201 or unless certified as an adult pursuant to Section 78A-6-703. Section 62A-7-201 regarding confinement facilities applies to this Subsection (9).

(b) A child 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the detention facility for children may, by court order that specifies the reasons, be detained in another place of confinement considered appropriate by the court, including a jail or other place of confinement for adults. However, a secure facility is not an appropriate place of confinement for detention purposes under this section.

(10) A sheriff, warden, or other official in charge of a jail or other facility for the detention of adult offenders or ~~[persons]~~ individuals charged with ~~[crime]~~ an offense shall immediately notify the juvenile court when ~~[a person]~~ an individual who is or appears to be under 18 years ~~[of age]~~ old is received at the facility and shall make arrangements for the transfer of the ~~[person]~~ individual to a detention facility, unless otherwise ordered by the juvenile court.

(11) This section does not apply to a minor who is brought to the adult facility under charges pursuant to Section 78A-6-701 or by order of the juvenile court to be held for criminal proceedings in the district court under Section 78A-6-702 or 78A-6-703.

(12) A minor held for criminal proceedings under Section 78A-6-701, 78A-6-702, or 78A-6-703 may be detained in a jail or other place of detention used for adults charged with crime.

(13) Provisions of law regarding bail are not applicable to minors detained or taken into custody under this chapter, except that bail may be allowed:

(a) if a minor who need not be detained lives outside this state; or

(b) when a minor who need not be detained comes within one of the classes in

~~[Subsection 78A-6-603(11)]~~ Section 78A-6-1101.

(14) Section 76-8-418 is applicable to a child who willfully and intentionally commits an act against a jail or other place of confinement, including a Division of Juvenile Justice Services detention, shelter, or secure confinement facility ~~[which]~~ that would be a third degree felony if committed by an adult.

Section 6. Section **78A-6-116** is amended to read:

**78A-6-116. Minor's cases considered civil proceedings -- Adjudication of**

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**jurisdiction by juvenile court not conviction of crime -- Exceptions -- Minor not to be charged with crime -- Exception -- Traffic violation cases -- Abstracts to Department of Public Safety.**

(1) Except as provided in Sections 78A-6-701, 78A-6-702, and 78A-6-703, ~~[proceedings]~~ a proceeding in a minor's case ~~[shall be regarded as civil proceedings]~~ is a civil proceeding with the court exercising equitable powers.

(2) (a) An adjudication by a juvenile court that a minor is within ~~[its]~~ the court's jurisdiction under Section 78A-6-103 is not considered a conviction of a crime, except in cases involving traffic violations.

(b) An adjudication may not:

(i) operate to impose any civil disabilities upon the minor ~~[nor to];~~ or

(ii) disqualify the minor for any civil service or military service or appointment.

(3) ~~[A]~~ (a) Except for cases involving traffic violations, and as provided in Sections 78A-6-701, 78A-6-702, and 78A-6-703, a minor may not be charged with a crime or convicted in any court [except as provided in Sections 78A-6-701, 78A-6-702, and 78A-6-703, and in cases involving traffic violations. When].

(b) Except as provided in Sections 78A-6-702 and 78A-6-703, if a petition [has been] is filed in the juvenile court, [the] a minor may not later be [subjected] subject to criminal prosecution based on the same facts [except as provided in Section 78A-6-702 or 78A-6-703].

(c) Except as provided in Section 78A-6-602, an individual may not be subject to a delinquency proceeding for an offense that the individual is alleged to have committed before the individual was ~~13~~12 years old.

(4) (a) An adjudication by a juvenile court that a minor is within ~~[its]~~ the court's jurisdiction under Section 78A-6-103 is considered a conviction for the purposes of determining the level of offense for which a minor may be charged and enhancing the level of an offense in the juvenile court.

(b) A prior adjudication may be used to enhance the level or degree of an offense committed by an adult only as otherwise specifically provided.

(5) Abstracts of court records for all adjudications of traffic violations shall be submitted to the Department of Public Safety as provided in Section 53-3-218.

(6) Information necessary to collect unpaid fines, fees, assessments, bail, or restitution

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may be forwarded to employers, financial institutions, law enforcement, constables, the Office of Recovery Services, or other agencies for purposes of enforcing the order as provided in Section 78A-6-117.

Section 7. 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)(c)(i)~~](8)(a).

(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~~] Subsection (3)(b)[;] or (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~~] into 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 in this subsection.

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(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 8. Section **78A-6-601** is amended to read:

**78A-6-601. Criminal proceedings involving minors -- Transfer to juvenile court -- Exceptions.**

(1) [~~If, during the pendency of a criminal or quasi-criminal proceeding in another court, including a preliminary hearing, it is determined that the person charged]~~ Except as provided in Subsection (3) and Sections 78A-6-701, 78A-6-702, and 78A-6-703, if while a criminal or quasi-criminal proceeding is pending, a district court or justice court determines that an individual being charged is under 21 years [of age] old and was [less] younger than 18 years [of age] old at the time of committing the alleged offense, [that] the district court or justice court shall transfer the case to the juvenile court[~~, together~~] with all the papers, documents, and transcripts of any testimony [except as provided in Sections ~~78A-6-701, 78A-6-702, and 78A-6-703~~].

(2) (a) [~~The~~] Except as provided in Subsection (2)(b), the district or justice court making the transfer shall:

(i) order the [~~person~~] individual to be taken immediately to the juvenile court or to a place of detention designated by the juvenile court[~~, or shall~~]; or

(ii) release [~~him~~] the individual to the custody of [~~his~~] the individual's parent or guardian, or other person legally responsible for [~~him~~] the individual, to be brought before the juvenile court at a time designated by [~~it~~] the juvenile court.

(b) If the alleged offense under Subsection (1) occurred before the individual was ~~13~~12 years old:

(i) the district court or justice court making the transfer shall release the individual to the custody of the individual's parent or guardian, or other person legally responsible for the individual;

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(ii) the juvenile court shall treat the transfer as a referral under Subsection 78A-6-602(3); and

(iii) the juvenile court's probation department shall make a preliminary inquiry to determine whether the individual is eligible for a nonjudicial adjustment in accordance with Section 78A-6-602.

~~[The] (c) If a case is transferred to the juvenile court under this section, the juvenile court shall [then proceed as provided in] proceed in accordance with this chapter.~~

(3) A district court or justice court does not have to transfer a case under Subsection (1) if the district court or justice court would have had jurisdiction over the case at the time the individual committed the offense in accordance with Subsections 78A-5-102(9) and 78A-7-106(2).

Section 9. Section **78A-6-602** is amended to read:

### **78A-6-602. Referrals -- Nonjudicial adjustments.**

~~[(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.]~~

(1) As used in this section, "referral" means a formal referral, a referral to the court under Section 53G-8-211 or Subsection 78A-6-601(2)(b), or a citation issued to a minor for which the court receives notice under Section 78A-6-603.

(2) (a) A peace officer<sub>2</sub> 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<sub>2</sub> shall file a formal referral with the [juvenile] court within 10 days of a minor's arrest.

~~(b) If the arrested minor is taken to a detention facility, [the formal referral shall be filed] the peace officer, or public official, shall file the formal referral with the [juvenile] court within 72 hours, excluding weekends and holidays. [A formal referral under Section 53G-8-211 may not be filed with the juvenile court on an offense unless the offense is subject to referral under Section 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).]~~

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(c) A peace officer, public official, school district, or school may only make a referral to the court under Section 53G-8-211 for an offense that is subject to referral under Section 53G-8-211.

(3) If the court receives a referral for a minor who is, or appears to be, within the court's jurisdiction, the court's probation department shall make a preliminary inquiry in accordance with Subsections (5), (6), and (7) to determine whether the minor is eligible to enter into a nonjudicial adjustment.

(4) If a minor is referred to the court for multiple offenses arising from a single criminal episode, and the minor is eligible under this section for a nonjudicial adjustment, the court's probation department shall offer the minor one nonjudicial adjustment for all offenses arising from the single criminal episode.

(5) (a) The court's probation department may:

(i) conduct a validated risk and needs assessment; and

(ii) request that a prosecuting attorney review a referral in accordance with Subsection

(11) if:

(A) the results of the validated risk and needs assessment indicate the minor is high risk; or

(B) the results of the validated risk and needs assessment indicate the minor 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.

(b) If a minor violates Section 41-6a-502, the minor shall:

(i) undergo a drug and alcohol screening;

(ii) if found appropriate by the screening, participate in an assessment; and

(iii) if warranted by the screening and assessment, follow the recommendations of the assessment.

(6) Except as provided in Subsection (7)(b), the probation department shall request that a prosecuting attorney review a referral in accordance with Subsection (11) if:

(a) the referral involves:

(i) a felony offense; or

(ii) a violation of:

(A) Section 41-6a-502, driving under the influence;

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

(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 shotgun on or about school premises; or

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

(b) the minor has a current suspended order for custody under Subsection 78A-6-117(5)(a); or

(c) the referral involves an offense alleged to have occurred before an individual was ~~13~~12 years old and the offense is a felony violation of:

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

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

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

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

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

(vi) Section 76-6-103, aggravated arson;

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

(viii) Section 76-6-302, aggravated robbery; or

(ix) Section 76-10-508.1, felony discharge of a firearm.

~~(ii)~~ (7) (a) Except as provided in ~~[Subsection (2)(k)]~~ Subsections (5) and (6), the court's probation department shall offer a nonjudicial adjustment to a minor if the minor:

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

~~(B)~~ (ii) has no more than two prior adjudications; and

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

(b) If the court receives a referral for an offense that is alleged to have occurred before an individual was ~~13~~12 years old, the court's probation department shall offer a nonjudicial adjustment to the individual, unless the referral includes an offense described in Subsection (6)(c).



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(c) (i) For purposes of determining a minor's eligibility for a nonjudicial adjustment under this Subsection (7), the court's probation department shall treat all offenses arising out of a single criminal episode that resulted in a nonjudicial adjustment as one prior nonjudicial adjustment.

(ii) For purposes of determining a minor's eligibility for a nonjudicial adjustment under this Subsection (7), the court's probation department shall treat all offenses arising out of a single criminal episode that resulted in one or more prior adjudications as a single adjudication.

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

~~[(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)(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]~~

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~~Title 76, Chapter 9, Part 7, Miscellaneous Provisions.]~~

~~[(ii)] (d) Except as provided in Subsection [(2)(k)] (6), the court's probation department may offer a nonjudicial adjustment to [any other] a minor who does not meet the criteria provided in Subsection [(2)(b)] (7)(a).~~

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

(8) For a nonjudicial adjustment, the court's probation department may require a minor to:

(a) pay a financial penalty of no more than \$250 to the juvenile court, subject to the terms established under Subsection (10)(c):

(b) pay restitution to any victim;

(c) complete community or compensatory service;

(d) attend counseling or treatment with an appropriate provider;

(e) attend substantive abuse treatment or counseling;

(f) comply with specified restrictions on activities or associations;

(g) attend victim-offender mediation if requested by the victim; and

(h) comply with any other reasonable action that is in the interest of the minor, the community, or the victim.

(9) (a) Within seven days of receiving a referral that appears to be eligible for a nonjudicial adjustment in accordance with Subsection (7), the court's probation department shall provide an initial notice to reasonably identifiable and locatable victims of the offense contained in the referral.

(b) The victim shall be responsible to provide to the probation department upon request:

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

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

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

(c) The inability, failure, or refusal of the victim to provide all or part of the requested

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information shall result in the probation department determining restitution based on the best information available.

(10) (a) The court's probation department may not predicate acceptance of an offer of a nonjudicial adjustment on an admission of guilt.

~~[(iv)] (b) [A minor may not be denied] The court's probation department may not deny a minor an offer of nonjudicial adjustment due to [an] a minor's inability to pay a financial penalty under Subsection [(2)(e)] (8).~~

(c) The court's probation department shall base a fee, fine, or the restitution for a nonjudicial adjustment under Subsection (8) upon the ability of the minor's family to pay as determined by a statewide sliding scale developed in accordance with Section 63M-7-208 on or after July 1, 2018.

~~[(v) Efforts to effect a] (d) 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], unless a juvenile court judge extends the nonjudicial adjustment for an additional 90 days.~~

(e) If a minor violates Section 76-10-105, the minor may be required to pay a fine or penalty and participate in a court-approved tobacco education program with a participation fee.

~~[(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).]~~

~~[(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);]~~

~~[(ii) payment of victim restitution;]~~

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~~[(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;]~~

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

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

~~[(f) A fee, fine, or restitution included in a nonjudicial closure in accordance with Subsection (2)(c) 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.]~~

~~[(g) (11) If a [prosecutor learns of a referral involving an offense identified in Subsection (2)(k), if] prosecuting attorney is requested to review a referral in accordance with Subsection (5) or (6), a minor fails to substantially comply with ~~[the conditions]~~ a condition agreed upon as part of the nonjudicial ~~[closure]~~ adjustment, or ~~[if]~~ a minor is not offered or declines a nonjudicial adjustment ~~[pursuant to Subsection (2)(b), (2)(d)(ii), or (2)(d)(vi), the prosecutor shall review the case and take one of the following actions:]~~ in accordance with Subsection (7), the prosecuting attorney shall:~~

~~(a) review the case; and~~

~~(b) (i) dismiss the case;~~

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

~~(iii) [subject to Subsection (2)(i)] except as provided in Subsections (12)(b), (13), and 78A-6-602.5(2), file a petition with the court.~~

~~[(h) Notwithstanding Subsection (2)(g), a petition may only be filed]~~

~~(12) (a) A prosecuting attorney may file a petition only 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.~~

~~[(†) (b) Failure to pay a fine or fee may not serve as a basis for filing of a petition~~

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under Subsection ~~[(2)(g)(iii)]~~ (11)(b)(iii) if the minor has substantially complied with the other conditions agreed upon in accordance with Subsection ~~[(2)(e) or those]~~ (8) or conditions imposed through any other court diversion program.

~~[(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:]~~

~~[(A) Section 41-6a-502, driving under the influence;]~~

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

~~[(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 shotgun on or about school premises; or]~~

~~[(F) Section 76-10-509, possession of dangerous weapon by minor, but only if the dangerous weapon is a firearm; or]~~

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

(13) A prosecuting attorney may not file a petition against a minor unless:

(a) the prosecuting attorney has statutory authority to file the petition under Section 78A-6-602.5; and

(b) (i) the minor does not qualify for a nonjudicial adjustment under Subsection (7);

(ii) the minor declines nonjudicial adjustment;

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

(iv) 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

(v) the prosecuting attorney is acting under Subsection (11).

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~~[(f)] (14)~~ If the ~~[prosecutor]~~ prosecuting attorney files a petition in court or a proceeding is commenced against a minor under Section 78A-6-603, 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)(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)](15)~~ Any failure to comply with the time deadline on a formal referral may not be the basis of dismissing the formal referral.

Section 10. Section **78A-6-602.5** is enacted to read:

### **78A-6-602.5. Petition for a delinquency proceeding -- Criminal information.**

(1) A prosecuting attorney shall file a petition to commence a proceeding against a minor for an adjudication of an alleged offense, except as provided in:

- (a) Subsection (2);
- (b) Subsection (3);
- (c) Section 78A-6-603;
- (d) Section 78A-6-701; and
- (e) Section 78A-6-702.

(2) A prosecuting attorney may not file a petition under Subsection (1) against an individual for an offense alleged to have occurred before the individual was ~~13~~12 years old, unless:

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(a) the individual is alleged to have committed a felony violation of:

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

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

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

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

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

(vi) Section 76-6-103, aggravated arson;

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

(viii) Section 76-6-302, aggravated robbery; or

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

(b) an offer for a nonjudicial adjustment is made under Section 78A-6-602 and the minor:

(i) declines to accept the offer for the nonjudicial adjustment; or

(ii) fails to substantially comply with the conditions agreed upon as part of the nonjudicial adjustment.

(3) Except as provided in Sections 78A-6-701 and 78A-6-702, if a minor was 14 years old or older at the time the offense was alleged to have occurred, the prosecuting attorney may commence an action by filing:

(a) a criminal information in the juvenile court; and

(b) a motion requesting the juvenile court waive the court's jurisdiction and certify the minor to the district court under Section 78A-6-703.

Section 11. 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.]~~

(1) A petition is not required to commence a proceeding against a minor for an adjudication of an alleged offense if a citation is issued for an offense for which the court has jurisdiction over and the offense listed in the citation is for:

(a) a violation of a wildlife law;

(b) a violation of a boating law;

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(c) a class B or C misdemeanor or an infraction other than a misdemeanor or infraction:

(i) for a traffic violation; or

(ii) designated as a citable offense by general order of the Board of Juvenile Court

Judges;

(d) a class B misdemeanor or infraction for a traffic violation where the individual is 15 years old or younger at the time the offense was alleged to have occurred;

(e) an infraction or misdemeanor designated as a citable offense by a general order of the Board of Juvenile Court Judges; or

(f) a violation of Subsection 76-10-105(2).

(2) ~~[A citation]~~ Except as provided in Subsection (6) and Section 53G-8-211, a citation for an offense listed in Subsection (1) shall be submitted to the court within five days of issuance to a minor.

(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 the minor 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]~~ court when notified by the court.

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



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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 53G-8-211, the following offenses may be sent to the juvenile court as a citation:]~~

~~[(a) violations of wildlife laws;]~~

~~[(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)] (6) A minor offense, as defined [under] in 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] referred to the [prosecutor] prosecuting attorney or the [juvenile] court in accordance with Section 53G-8-211.~~

(7) If a court receives a citation described in Subsection (1), the court's probation department shall make a preliminary inquiry as to whether the minor is eligible for a nonjudicial adjustment in accordance with Subsection 78A-6-602(7).

(8) (a) Except as provided in Subsection (8)(b), if a citation is issued to a minor, a prosecuting attorney may commence a proceeding against a minor, without filing a petition, for an adjudication of the offense in the citation only if:

- (i) the minor is not eligible for, or does not complete, a nonjudicial adjustment in

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accordance with Section 78A-6-602; and

(ii) the prosecuting attorney conducts an inquiry under Subsection (9).

(b) Except as provided in Subsection 78A-6-602.5(2), a prosecuting attorney may not commence a proceeding against an individual for any offense listed in a citation alleged to have occurred before the individual was ~~13~~12 years old.

~~[(8) An inquiry shall be conducted:]~~

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

(9) The prosecuting attorney shall conduct an inquiry to determine, upon reasonable belief, that:

~~[(i) the charges are]~~ (a) the charge listed in the citation is supported by probable cause;

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

~~[(iii)]~~ (c) the decision to charge is in the interests of justice~~[-and]~~.

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

~~[(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.]~~

(10) If a proceeding is commenced against a minor under Subsection (8)(a), the minor shall appear at the court at a date and time established by the court.

(11) [A] If a minor [who receives a citation and] willfully fails to appear before the [juvenile court pursuant to a citation may be found] court for a proceeding under Subsection (8)(a), the court may:

(a) find the minor in contempt of court~~[-The court may]~~; and

(b) proceed against the minor as provided in Section 78A-6-1101.

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

(a) the court; and

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

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Section 12. Section 78A-6-703 is amended to read:

### **78A-6-703. Certification hearings -- Juvenile court to hold preliminary hearing -- Factors considered by juvenile court for waiver of jurisdiction to district court.**

(1) If a criminal information filed in accordance with Subsection [~~78A-6-602(3)~~] 78A-6-602.5(3) alleges the commission of an act [~~which~~] that would constitute a felony if committed by an adult, the juvenile court shall conduct a preliminary hearing.

(2) At the preliminary hearing the state shall have the burden of going forward with [~~its~~] the state's case and the burden of establishing:

(a) probable cause to believe that a crime was committed and that the [~~defendant~~] minor committed it; and

(b) by a preponderance of the evidence, that it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction.

(3) In considering whether or not it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may base its decision on, the finding of one or more of the following factors:

(a) the seriousness of the offense and whether the protection of the community requires isolation of the minor beyond that afforded by juvenile facilities;

(b) whether the alleged offense was committed by the minor under circumstances [~~which~~] that would subject the minor to enhanced penalties under Section 76-3-203.1 if the minor were adult and the offense was committed:

(i) in concert with two or more persons;

(ii) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or

(iii) to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;

(c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons, except as provided in Section 76-8-418;

(e) the maturity of the minor as determined by considerations of the minor's home, environment, emotional attitude, and pattern of living;

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(f) the record and previous history of the minor;

(g) the likelihood of rehabilitation of the minor by use of facilities available to the juvenile court;

(h) the desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime in the district court;

(i) whether the minor used a firearm in the commission of an offense; and

(j) whether the minor possessed a dangerous weapon on or about school premises as provided in Section 76-10-505.5.

(4) The amount of weight to be given to each of the factors listed in Subsection (3) is discretionary with the court.

(5) (a) [~~Written~~] The court may consider written reports and other materials relating to the minor's mental, physical, educational, and social history [~~may be considered by the court~~].

(b) If requested by the minor, the minor's parent, guardian, or other interested party, the court shall require the person or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

(6) At the conclusion of the state's case, the minor may testify under oath, call witnesses, cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3).

(7) At the time the minor is bound over to the district court, the juvenile court shall make the initial determination on where the minor shall be held.

(8) The juvenile court shall consider the following when determining where the minor will be held until the time of trial:

(a) the age of the minor;

(b) the nature, seriousness, and circumstances of the alleged offense;

(c) the minor's history of prior criminal acts;

(d) whether detention in a juvenile detention facility will adequately serve the need for community protection pending the outcome of any criminal proceedings;

(e) whether the minor's placement in a juvenile detention facility will negatively impact the functioning of the facility by compromising the goals of the facility to maintain a safe, positive, and secure environment for all minors within the facility;

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(f) the relative ability of the facility to meet the needs of the minor and protect the public;

(g) whether the minor presents an imminent risk of harm to the minor or others within the facility;

(h) the physical maturity of the minor;

(i) the current mental state of the minor as evidenced by relevant mental health or psychological assessments or screenings that are made available to the court; and

(j) any other factors the court considers relevant.

(9) If a minor is ordered to a juvenile detention facility under Subsection (8), the minor shall remain in the facility until released by a district court judge, or if convicted, until sentencing.

(10) A minor held in a juvenile detention facility under this section shall have the same right to bail as any other criminal defendant.

(11) If the minor ordered to a juvenile detention facility under Subsection (8) attains the age of 18 years, the minor shall be transferred within 30 days to an adult jail until released by the district court judge, or if convicted, until sentencing.

(12) A minor 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the juvenile detention facility may, by court order that specifies the reasons, be detained in another place of confinement considered appropriate by the court, including jail or other place of confinement for adults.

(13) The district court may reconsider the decision on where the minor shall be held pursuant to Subsection (7).

(14) If the court finds the state has met its burden under Subsection (2), the court may enter an order:

(a) certifying that finding; and

(b) directing that the minor be held for criminal proceedings in the district court.

(15) If an indictment is returned by a grand jury, the preliminary examination held by the juvenile court need not include a finding of probable cause, but the juvenile court shall proceed in accordance with this section regarding the additional consideration referred to in Subsection (2)(b).

(16) Title 78B, Chapter 22, Indigent Defense Act, Section 78A-6-115, and other

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provisions relating to proceedings in juvenile cases are applicable to the hearing held under this section to the extent they are pertinent.

(17) A minor who has been directed to be held for criminal proceedings in the district court is not entitled to a preliminary examination in the district court.

(18) A minor who has been certified for trial in the district court shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(19) When a minor has been certified to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against the minor, except as provided in Subsection (21) or Section 78A-6-705.

(20) If a minor enters a plea to, or is found guilty of any of the charges filed or on any other offense arising out of the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(21) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Section 13. Section **78A-7-106** is amended to read:

### **78A-7-106. Jurisdiction.**

(1) [~~Justice courts have~~] A justice court has jurisdiction over class B and C misdemeanors, violation of ordinances, and infractions committed within [~~their~~] the court's territorial jurisdiction by [~~a person~~] an individual who is 18 years [~~of age~~] old or older.

(2) Except those offenses over which the juvenile court has exclusive jurisdiction, [~~justice courts have~~] a justice court has jurisdiction over the following offenses committed within [~~their~~] the court's territorial jurisdiction by [~~a person~~] an individual who is 16 or 17 years [~~of age~~] old:

(a) class C misdemeanor and infraction violations of Title 53, Chapter 3, Part 2, Driver Licensing Act; and

(b) class B and C misdemeanor and infraction violations of:

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- (i) Title 23, Wildlife Resources Code of Utah;
  - (ii) Title 41, Chapter 1a, Motor Vehicle Act;
  - (iii) Title 41, Chapter 6a, Traffic Code;
  - (iv) Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act;
  - (v) Title 41, Chapter 22, Off-Highway Vehicles;
  - (vi) Title 73, Chapter 18, State Boating Act;
  - (vii) Title 73, Chapter 18a, Boating - Litter and Pollution Control;
  - (viii) Title 73, Chapter 18b, Water Safety; and
  - (ix) Title 73, Chapter 18c, Financial Responsibility of Motorboat Owners and Operators Act.
- (3) As used in this section, "the court's jurisdiction" means the territorial jurisdiction of a justice court.
- (4) An offense is committed within the territorial jurisdiction of a justice court if:
- (a) conduct constituting an element of the offense or a result constituting an element of the offense occurs within the court's jurisdiction, regardless of whether the conduct or result is itself unlawful;
  - (b) either [~~a person~~] an individual committing an offense or a victim of an offense is located within the court's jurisdiction at the time the offense is committed;
  - (c) either a cause of injury occurs within the court's jurisdiction or the injury occurs within the court's jurisdiction;
  - (d) [~~a person~~] an individual commits any act constituting an element of an inchoate offense within the court's jurisdiction, including an agreement in a conspiracy;
  - (e) [~~a person~~] an individual solicits, aids, or abets, or attempts to solicit, aid, or abet another [~~person~~] individual in the planning or commission of an offense within the court's jurisdiction;
  - (f) the investigation of the offense does not readily indicate in which court's jurisdiction the offense occurred, and:
    - (i) the offense is committed upon or in any railroad car, vehicle, watercraft, or aircraft passing within the court's jurisdiction;
    - (ii) (A) the offense is committed on or in any body of water bordering on or within this

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state if the territorial limits of the justice court are adjacent to the body of water; and

(B) as used in Subsection(4)(f)(ii)(A), "body of water" includes any stream, river, lake, or reservoir, whether natural or man-made;

(iii) [~~a person~~] an individual who commits theft exercises control over the affected property within the court's jurisdiction; or

(iv) the offense is committed on or near the boundary of the court's jurisdiction;

(g) the offense consists of an unlawful communication that was initiated or received within the court's jurisdiction; or

(h) jurisdiction is otherwise specifically provided by law.

(5) A justice court judge may transfer a criminal matter in which the defendant is a child to the juvenile court for further proceedings if the justice court judge determines and the juvenile court concurs that the best interests of the minor would be served by the continuing jurisdiction of the juvenile court[~~, subject to Section 78A-6-602~~].

(6) Justice courts have jurisdiction of small claims cases under Title 78A, Chapter 8, Small Claims Courts, if a defendant resides in or the debt arose within the territorial jurisdiction of the justice court.

### Section 14. **Effective date.**

(1) Except as provided in Subsection (2), this bill takes effect on May 12, 2020.

(2) The actions affecting Section 76-10-105 (Effective 07/01/20) take effect on July 1, 2020.