

# HB0384S01 compared with HB0384

~~text~~ shows text that was in HB0384 but was deleted in HB0384S01.

text shows text that was not in HB0384 but was inserted into HB0384S01.

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Representative V. Lowry Snow proposes the following substitute bill:

## JUVENILE JUSTICE AMENDMENTS

2020 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 provisions related to juvenile justice.

#### Highlighted Provisions:

This bill:

- ▶ adds and modifies definitions;
- ▶ amends provisions regarding offenses committed by minors on school property, including requiring a referral to the Division of Juvenile Justice Services if a minor refuses to participate in an evidence-based intervention;
- ▶ amends a sunset date related to offenses committed by minors on school property;
- ▶ clarifies a reporting requirement for the Division of Juvenile Justice Services;
- ▶ defines the term "defendant" in Title 77, Chapter 38a, Crime Victims Restitution Act, to exclude a minor who is adjudicated, or enters into a nonjudicial adjustment,

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for any offense under Title 78A, Chapter 6, Juvenile Court Act;

- ▶ amends and clarifies the jurisdiction of the juvenile court, district court, and justice court regarding offenses committed by minors;
- ▶ requires a peace officer to have probable cause in order to take a minor into custody;
- ▶ requires a probable cause determination and detention hearing within 24 hours of a minor being held for detention;
- ▶ allows a court to order secure confinement for a minor if a minor's conduct resulted in death;
- ▶ requires a prosecutor or the court's probation department to notify a victim of the restitution process;
- ▶ requires a victim to provide the prosecutor with certain information for restitution;
- ▶ amends the amount of time that restitution may be requested;
- ▶ exempts certain offenses committed by a minor from the presumptive timeframes for custody and supervision;
- ▶ modifies the continuing jurisdiction of the juvenile court;
- ▶ ~~repeals~~ amends the exclusive jurisdiction of the district court over minors who committed certain offenses;
- ▶ amends requirements for minors who are changed in the district court for certain offenses;
- ▶ repeals the certification and transfer of minors who committed certain offenses to the district court;
- ▶ allows that a criminal information may be filed for minors who are 14 years old or older and are alleged to have committed certain offenses;
- ▶ requires a preliminary hearing before a juvenile court to determine whether a minor, for which a criminal information or indictment has been filed, will be bound over to the district court to be held for trial;
- ▶ provides the requirements for binding a minor over to the district court;
- ▶ provides the detention requirements for a minor who has been bound over to the district court;
- ▶ allows a juvenile court to extend continuing jurisdiction over a minor to the age of 25 years old if a minor is not bound over to the district court; and

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- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a special effective date.

[This bill provides coordination clauses.](#)

### Utah Code Sections Affected:

#### AMENDS:

**17-18a-404**, as last amended by Laws of Utah 2017, Chapter 330  
**53-10-403**, as last amended by Laws of Utah 2017, Chapter 289  
**53G-8-211**, as last amended by Laws of Utah 2019, Chapter 293  
**62A-4a-201**, as last amended by Laws of Utah 2019, Chapters 136, 335, and 388  
**62A-7-101**, as last amended by Laws of Utah 2019, Chapters 162 and 246  
**62A-7-104**, as last amended by Laws of Utah 2019, Chapter 246  
**62A-7-105.5**, as renumbered and amended by Laws of Utah 2005, Chapter 13  
**62A-7-107.5**, as last amended by Laws of Utah 2017, Chapter 330  
**62A-7-108.5**, as renumbered and amended by Laws of Utah 2005, Chapter 13  
**62A-7-109.5**, as last amended by Laws of Utah 2017, Chapter 330  
**62A-7-111.5**, as last amended by Laws of Utah 2007, Chapter 308  
**62A-7-113**, as enacted by Laws of Utah 2019, Chapter 162  
**62A-7-201**, as last amended by Laws of Utah 2019, Chapter 246  
**62A-7-401.5**, as last amended by Laws of Utah 2019, Chapter 246  
**62A-7-402**, as renumbered and amended by Laws of Utah 2005, Chapter 13  
**62A-7-403**, as renumbered and amended by Laws of Utah 2005, Chapter 13  
**62A-7-501**, as last amended by Laws of Utah 2019, Chapter 246  
**62A-7-502**, as last amended by Laws of Utah 2019, Chapter 246  
**62A-7-504**, as last amended by Laws of Utah 2017, Chapter 330  
**62A-7-505**, as renumbered and amended by Laws of Utah 2005, Chapter 13  
**62A-7-506**, as last amended by Laws of Utah 2019, Chapter 246  
**62A-7-507**, as renumbered and amended by Laws of Utah 2005, Chapter 13  
**62A-7-701**, as last amended by Laws of Utah 2019, Chapter 246

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- 62A-7-702**, as renumbered and amended by Laws of Utah 2005, Chapter 13
- 63I-1-253**, as last amended by Laws of Utah 2019, Chapters 90, 136, 166, 173, 246, 325, 344 and last amended by Coordination Clause, Laws of Utah 2019, Chapter 246
- 76-3-406**, as last amended by Laws of Utah 2019, Chapter 189
- 76-5-401.3**, as enacted by Laws of Utah 2017, Chapter 397
- 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
- 76-10-1302**, as last amended by Laws of Utah 2019, Chapters 26, 189, and 200
- 77-2-9**, as last amended by Laws of Utah 2017, Chapter 397
- 77-38a-102**, as last amended by Laws of Utah 2017, Chapter 304
- 77-38a-302**, as last amended by Laws of Utah 2019, Chapter 171
- 77-38a-404**, as last amended by Laws of Utah 2017, Chapter 304
- 78A-5-102**, as last amended by Laws of Utah 2010, Chapter 34
- 78A-6-103**, as last amended by Laws of Utah 2019, Chapter 300
- 78A-6-104**, as last amended by Laws of Utah 2019, Chapter 188
- 78A-6-105**, as last amended by Laws of Utah 2019, Chapters 335 and 388
- 78A-6-108**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 78A-6-112**, as last amended by Laws of Utah 2018, Chapter 415
- 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-6-117**, as last amended by Laws of Utah 2019, Chapters 162 and 335
- 78A-6-118**, as last amended by Laws of Utah 2017, Chapter 330
- 78A-6-120**, as last amended by Laws of Utah 2017, Chapter 330
- 78A-6-306**, as last amended by Laws of Utah 2019, Chapters 136, 326, and 335
- 78A-6-312**, as last amended by Laws of Utah 2019, Chapters 136, 335, and 388
- 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-6-704**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 78A-6-705**, as enacted by Laws of Utah 2015, Chapter 338

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78A-6-1107, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-1108, as last amended by Laws of Utah 2011, Chapter 208

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

78B-6-105, as last amended by Laws of Utah 2013, Chapter 458

### ENACTS:

62A-7-404.5, Utah Code Annotated 1953

78A-6-703.1, Utah Code Annotated 1953

78A-6-703.2, Utah Code Annotated 1953

78A-6-703.3, Utah Code Annotated 1953

78A-6-703.4, Utah Code Annotated 1953

78A-6-703.5, Utah Code Annotated 1953

78A-6-703.~~7~~6, Utah Code Annotated 1953

~~{ 78A-6-703.9, Utah Code Annotated 1953~~

### REPEALS AND REENACTS:

62A-7-404, as last amended by Laws of Utah 2017, Chapter 330

### REPEALS:

78A-6-701, as last amended by Laws of Utah 2017, Chapter 330

78A-6-702, as last amended by Laws of Utah 2015, Chapter 338

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

### Utah Code Sections Affected by Coordination Clause:

76-10-105, as last amended by Laws of Utah 2019, Chapter 232

76-10-1302, as last amended by Laws of Utah 2019, Chapters 26, 189, and 200

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

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

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-6-602.5, Utah Code Annotated 1953

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

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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:

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

For a proceeding involving [~~a charge of juvenile delinquency, infraction, or a status offense~~] an offense committed by a minor as defined in Section 78A-6-105, a prosecutor shall:

- (1) review cases pursuant to Section 78A-6-602; and
- (2) appear and prosecute for the state in the juvenile court of the county.

Section 2. Section **53-10-403** is amended to read:

### **53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

(1) Sections 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406 apply to any person who:

(a) has pled guilty to or has been convicted of any of the offenses under Subsection (2)(a) or (b) on or after July 1, 2002;

(b) has pled guilty to or has been convicted by any other state or by the United States government of an offense which if committed in this state would be punishable as one or more of the offenses listed in Subsection (2)(a) or (b) on or after July 1, 2003;

(c) has been booked on or after January 1, 2011, through December 31, 2014, for any offense under Subsection (2)(c);

(d) has been booked:

(i) by a law enforcement agency that is obtaining a DNA specimen on or after May 13, 2014, through December 31, 2014, under Subsection 53-10-404(4)(b) for any felony offense; or

(ii) on or after January 1, 2015, for any felony offense; or

(e) is a minor under Subsection (3).

(2) Offenses referred to in Subsection (1) are:

(a) any felony or class A misdemeanor under the Utah Code;

(b) any offense under Subsection (2)(a):

(i) for which the court enters a judgment for conviction to a lower degree of offense under Section 76-3-402; or

(ii) regarding which the court allows the defendant to enter a plea in abeyance as defined in Section 77-2a-1; or

(c) (i) any violent felony as defined in Section 53-10-403.5;

(ii) sale or use of body parts, Section 26-28-116;

(iii) failure to stop at an accident that resulted in death, Section 41-6a-401.5;

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(iv) driving with any amount of a controlled substance in a person's body and causing serious bodily injury or death, Subsection 58-37-8(2)(g);

(v) a felony violation of enticing a minor over the Internet, Section 76-4-401;

(vi) a felony violation of propelling a substance or object at a correctional officer, a peace officer, or an employee or a volunteer, including health care providers, Section 76-5-102.6;

(vii) aggravated human trafficking and aggravated human smuggling, Section 76-5-310;

(viii) a felony violation of unlawful sexual activity with a minor, Section 76-5-401;

(ix) a felony violation of sexual abuse of a minor, Section 76-5-401.1;

(x) unlawful sexual contact with a 16 or 17-year old, Section 76-5-401.2;

(xi) sale of a child, Section 76-7-203;

(xii) aggravated escape, Subsection 76-8-309(2);

(xiii) a felony violation of assault on an elected official, Section 76-8-315;

(xiv) influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole, Section 76-8-316;

(xv) advocating criminal syndicalism or sabotage, Section 76-8-902;

(xvi) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;

(xvii) a felony violation of sexual battery, Section 76-9-702.1;

(xviii) a felony violation of lewdness involving a child, Section 76-9-702.5;

(xix) a felony violation of abuse or desecration of a dead human body, Section 76-9-704;

(xx) manufacture, possession, sale, or use of a weapon of mass destruction, Section 76-10-402;

(xxi) manufacture, possession, sale, or use of a hoax weapon of mass destruction, Section 76-10-403;

(xxii) possession of a concealed firearm in the commission of a violent felony, Subsection 76-10-504(4);

(xxiii) assault with the intent to commit bus hijacking with a dangerous weapon, Subsection 76-10-1504(3);

(xxiv) commercial obstruction, Subsection 76-10-2402(2);

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(xxv) a felony violation of failure to register as a sex or kidnap offender, Section 77-41-107;

(xxvi) repeat violation of a protective order, Subsection 77-36-1.1(2)(c); or

(xxvii) violation of condition for release after arrest under Section 77-20-3.5.

(3) A minor under Subsection (1) is a minor 14 years ~~[of age]~~ old or older ~~[whom a Utah court has]~~ who is adjudicated ~~[to be within the jurisdiction of]~~ by the juvenile court due to the commission of any offense described in Subsection (2), and who ~~[is]~~:

(a) committed an offense under Subsection (2) within the jurisdiction of the juvenile court on or after July 1, 2002 ~~[for an offense under Subsection (2)]~~; or

(b) is in the legal custody of the Division of Juvenile Justice Services on or after July 1, 2002, for an offense under Subsection (2).

Section 3. Section **53G-8-211** is amended to read:

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

(1) As used in this section:

(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.

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

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

(d) "Prosecuting attorney" means the same as that term is defined in Subsections 78A-6-105(b) and (c).

~~[(e)]~~ (e) "Restorative justice program" means a school-based program or a program used or adopted by a local education agency that is designed:

(i) to enhance school safety, reduce school suspensions, and limit referrals ~~[to court, and is designed]~~ to law enforcement agencies and courts; and

(ii) to help minors take responsibility for and repair ~~[the harm of]~~ harmful behavior that occurs in school.

~~[(f)]~~ (f) "School administrator" means a principal of a school.

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~~(e)~~ (g) "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)~~ (h) "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) (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 LEA governing 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]~~ agency's 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)~~ (j) (i) "Status offense" means ~~[a violation of the law]~~ an offense that would not be ~~[a violation]~~ an offense but for the age of the offender.

(ii) ~~[Notwithstanding Subsection (1)(h)(i), a status offense does not include a violation]~~ "Status offense" does not mean an offense 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]~~ Except as provided in Subsections (3)(e) and (5), if a minor is alleged to have committed an offense that is a class C misdemeanor, an infraction, a status offense on

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school property, or an offense that is truancy~~[, the minor may not be referred to law enforcement or court but may be referred]~~:

(i) a school district or school may not refer the minor to a law enforcement officer or agency or a court; and

(ii) a law enforcement officer or agency may not refer the minor to a prosecuting attorney or a court.

(b) Except as provided in Subsection (3)(e), if a minor is alleged to have committed an offense that is a class C misdemeanor, an infraction, a status offense on school property, or an offense that is truancy, a school district, school, or law enforcement officer or agency may refer the minor to evidence-based alternative interventions, including:

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

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

(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, the juvenile court, local counties and municipalities, the Department of Health, or the Department of Human Services.

~~(b)~~ (c) 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]~~ in accordance with 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.

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~~[(e)]~~ (d) Notwithstanding other provisions of this section, if 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]~~ and not during a school-sponsored activity, the law enforcement officer may refer the minor to:

(i) a prosecuting attorney or a court; or ~~[may refer the minor to]~~

(ii) evidence-based alternative interventions at the discretion of the law enforcement officer.

(e) If a minor is alleged to have committed a traffic offense that is an infraction, a school district, a school, or a law enforcement officer or agency may refer the minor to a prosecuting attorney or a court for the traffic offense.

~~[(4)(a) Notwithstanding Subsection (3)(a) and subject to the requirements of this Subsection (4), a]~~

(4) A school district or school [may] shall refer a minor [to court] for prevention and early intervention youth services, as described in Section 62A-7-104, by the Division of Juvenile Justice Services 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 Subsection (3)[(a)](b).

(5) A school district or school may refer a minor to a court or a law enforcement officer or agency for an alleged class C misdemeanor committed on school property or for allegedly being a habitual truant, as defined in Section 53G-6-201, if the minor:

(a) refuses to participate in an evidence-based alternative intervention under Subsection (3)(b); and

(b) fails to participate in prevention and early intervention youth services provided by the Division of Juvenile Justice Services under Subsection (4).

~~[(b)(i) When]~~ (6) (a) If a minor is referred to a court or a law enforcement officer or agency under Subsection ~~[(4)(a)]~~ (5), the school shall appoint a school representative to continue to engage with the minor and the minor's family through the court process.

~~[(ii)]~~ (b) A school representative appointed under [this] Subsection ~~[(4)(b)]~~ (6)(a) may not be a school resource officer.

(c) A school district or school shall include the following in [its] the school district's or school's referral to the court or the law enforcement officer or agency:

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- (i) attendance records for the minor;
- (ii) a report of evidence-based alternative interventions used by the school before the 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) a report from the Division of Juvenile Justice Services that demonstrates the minor's failure to complete or participate in prevention and early intervention youth services under Subsection (4); and

~~[(iv)]~~ (v) any other information that the school district or school considers relevant.

(d) A minor referred to a court under ~~[this Subsection (4);]~~ Subsection (5) 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 a court under ~~[this Subsection (4)]~~ Subsection (5), 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.

~~[(5)]~~ (7) If the alleged offense is a class B misdemeanor or a class A misdemeanor, ~~[the minor may be referred directly to the juvenile court by]~~ the school administrator, the school administrator's designee, or a school resource officer~~[, or the minor may be referred]~~ may refer the minor directly to a juvenile court or to the evidence-based alternative interventions in Subsection (3)~~[(a)]~~(b).

Section 4. Section **62A-4a-201** is amended to read:

**62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of state.**

(1) (a) Under both the United States Constitution and the constitution of this state, a parent possesses a fundamental liberty interest in the care, custody, and management of the parent's children. A fundamentally fair process must be provided to parents if the state moves to challenge or interfere with parental rights. A governmental entity must support any actions or allegations made in opposition to the rights and desires of a parent regarding the parent's children by sufficient evidence to satisfy a parent's constitutional entitlement to heightened protection against government interference with the parent's fundamental rights and liberty

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interests and, concomitantly, the right of the child to be reared by the child's natural parent.

(b) The fundamental liberty interest of a parent concerning the care, custody, and management of the parent's children is recognized, protected, and does not cease to exist simply because a parent may fail to be a model parent or because the parent's child is placed in the temporary custody of the state. At all times, a parent retains a vital interest in preventing the irretrievable destruction of family life. Prior to an adjudication of unfitness, government action in relation to parents and their children may not exceed the least restrictive means or alternatives available to accomplish a compelling state interest. Until the state proves parental unfitness, and the child suffers, or is substantially likely to suffer, serious detriment as a result, the child and the child's parents share a vital interest in preventing erroneous termination of their natural relationship and the state cannot presume that a child and the child's parents are adversaries.

(c) It is in the best interest and welfare of a child to be raised under the care and supervision of the child's natural parents. A child's need for a normal family life in a permanent home, and for positive, nurturing family relationships is usually best met by the child's natural parents. Additionally, the integrity of the family unit and the right of parents to conceive and raise their children are constitutionally protected. The right of a fit, competent parent to raise the parent's child without undue government interference is a fundamental liberty interest that has long been protected by the laws and Constitution and is a fundamental public policy of this state.

(d) The state recognizes that:

(i) a parent has the right, obligation, responsibility, and authority to raise, manage, train, educate, provide and care for, and reasonably discipline the parent's children; and

(ii) the state's role is secondary and supportive to the primary role of a parent.

(e) It is the public policy of this state that parents retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of their children.

(f) Subsections (2) through (7) shall be interpreted and applied consistent with this Subsection (1).

(2) It is also the public policy of this state that children have the right to protection from abuse and neglect, and that the state retains a compelling interest in investigating,

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prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78A, Chapter 6, Juvenile Court Act. Therefore, the state, as *parens patriae*, has an interest in and responsibility to protect children whose parents abuse them or do not adequately provide for their welfare. There may be circumstances where a parent's conduct or condition is a substantial departure from the norm and the parent is unable or unwilling to render safe and proper parental care and protection. Under those circumstances, the state may take action for the welfare and protection of the parent's children.

(3) When the division intervenes on behalf of an abused, neglected, or dependent child, it shall take into account the child's need for protection from immediate harm and the extent to which the child's extended family may provide needed protection. Throughout its involvement, the division shall utilize the least intrusive and least restrictive means available to protect a child, in an effort to ensure that children are brought up in stable, permanent families, rather than in temporary foster placements under the supervision of the state.

(4) When circumstances within the family pose a threat to the child's immediate safety or welfare, the division may seek custody of the child for a planned, temporary period and place the child in a safe environment, subject to the requirements of this section and in accordance with the requirements of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and:

- (a) when safe and appropriate, return the child to the child's parent; or
- (b) as a last resort, pursue another permanency plan.

(5) In determining and making "reasonable efforts" with regard to a child, pursuant to the provisions of Section 62A-4a-203, both the division's and the court's paramount concern shall be the child's health, safety, and welfare. The desires of a parent for the parent's child, and the constitutionally protected rights of a parent, as described in this section, shall be given full and serious consideration by the division and the court.

(6) In cases where actual sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are established, the state has no duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, provide reunification services, or to attempt to rehabilitate the offending parent or parents. This Subsection (6) does not exempt the division from providing court-ordered services.

- (7) (a) In accordance with Subsection (1), the division shall strive to achieve

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appropriate permanency for children who are abused, neglected, or dependent. The division shall provide in-home services, where appropriate and safe, in an effort to help a parent to correct the behavior that resulted in abuse, neglect, or dependency of the parent's child. The division may pursue a foster placement only if in-home services fail or are otherwise insufficient or inappropriate, kinship placement is not safe or appropriate, or in-home services and kinship placement fail and cannot be corrected. The division shall also seek qualified extended family support or a kinship placement to maintain a sense of security and stability for the child.

(b) If the use or continuation of "reasonable efforts," as described in Subsections (5) and (6), is determined to be inconsistent with the permanency plan for a child, then measures shall be taken, in a timely manner, to place the child in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(c) Subject to the parental rights recognized and protected under this section, if, because of a parent's conduct or condition, the parent is determined to be unfit or incompetent based on the grounds for termination of parental rights described in Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, the continuing welfare and best interest of the child is of paramount importance, and shall be protected in determining whether that parent's rights should be terminated.

(8) The state's right to direct or intervene in the provision of medical or mental health care for a child is subject to Subsections 78A-6-105~~(39)~~(40)(b)(i) through (iii) and 78A-6-117(2) and Section 78A-6-301.5.

Section 5. Section **62A-7-101** is amended to read:

### **62A-7-101. Definitions.**

As used in this chapter:

(1) "Account" means the Juvenile Justice Reinvestment Restricted Account created in Section 62A-7-112.

(2) (a) "Adult" means an individual who is 18 years or older.

(b) "Adult" does not include a juvenile offender.

~~(2)~~ (3) "Authority" means the Youth Parole Authority, established in accordance with Section 62A-7-501.

(4) "Child" means an individual who is under 18 years old.

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(5) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.

~~[(3)]~~ (6) "Community-based program" means a nonsecure residential or nonresidential program designated to supervise and rehabilitate youth offenders in accordance with Subsection 78A-6-117(2) that prioritizes the least restrictive nonresidential setting, consistent with public safety, and designated or operated by or under contract with the division.

~~[(4)]~~ (7) "Control" means the authority to detain, restrict, and supervise a youth in a manner consistent with public safety and the well being of the youth and division employees.

(8) "Correctional facility" means:

(a) a county jail; or

(b) a secure correctional facility as defined in Section 64-13-1.

~~[(5)]~~ (9) "Court" means the juvenile court.

~~[(6)]~~ (10) "Delinquent act" is an act [which] that would constitute a felony or a misdemeanor if committed by an adult.

~~[(7)]~~ (11) "Detention" means secure detention or home detention.

~~[(8)]~~ (12) "Detention center" means a facility established in accordance with Title 62A, Chapter 7, Part 2, Detention Facilities.

~~[(9)]~~ (13) "Director" means the director of the Division of Juvenile Justice Services.

~~[(10)]~~ (14) "Discharge" means a written order of the Youth Parole Authority that removes a [~~youth~~] juvenile offender from [~~its~~] the Youth Parole Authority's jurisdiction.

~~[(11)]~~ (15) "Division" means the Division of Juvenile Justice Services.

~~[(12)]~~ (16) "Home detention" means predispositional placement of a child in the child's home or a surrogate home with the consent of the child's parent, guardian, or custodian for conduct by a child who is alleged to have committed a delinquent act or postdispositional placement [~~pursuant to~~] in accordance with Subsection 78A-6-117(2)(f) or 78A-6-1101(3).

~~[(13)]~~ (17) "Observation and assessment program" means a nonresidential service program operated or purchased by the division that is responsible only for diagnostic assessment of minors, including for substance use disorder, mental health, psychological, and sexual behavior risk assessments.

(18) "Juvenile offender" means:

(a) a serious youth offender; or

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(b) a youth offender.

~~[(14)]~~ (19) "Parole" means a conditional release of a [~~youth~~] juvenile offender from residency in a secure facility to live outside that facility under the supervision of the Division of Juvenile Justice Services or other person designated by the division.

~~[(15)]~~ (20) "Performance-based contracting" means a system of contracting with service providers for the provision of residential or nonresidential services that:

(a) provides incentives for the implementation of evidence-based juvenile justice programs or programs rated as effective for reducing recidivism by a standardized tool pursuant to Section 63M-7-208; and

(b) provides a premium rate allocation for a minor who receives the evidence-based dosage of treatment and successfully completes the program within three months.

~~[(16)]~~ (21) "Receiving center" means a nonsecure, nonresidential program established by the division, or under contract with the division, that is responsible for juveniles taken into custody by a law enforcement officer for status offenses, infractions, or delinquent acts.

~~[(17)]~~ (22) "Rescission" means a written order of the Youth Parole Authority that rescinds a parole date.

~~[(18)]~~ (23) "Revocation of parole" means a written order of the Youth Parole Authority that terminates parole supervision of a [~~youth~~] juvenile offender and directs return of the youth offender to the custody of a secure facility after a hearing and a determination that there has been a violation of law or of a condition of parole that warrants a return to a secure facility in accordance with Section 62A-7-504.

~~[(19)]~~ (24) "Runaway" means a youth who willfully leaves the residence of a parent or guardian without the permission of the parent or guardian.

~~[(20)]~~ (25) "Secure detention" means predisposition placement in a facility operated by or under contract with the division, for conduct by a child who is alleged to have committed a delinquent act.

~~[(21)]~~ (26) "Secure facility" means any facility operated by or under contract with the division, that provides 24-hour supervision and confinement for [~~youth~~] juvenile offenders committed to the division for custody and rehabilitation.

(27) "Serious youth offender" means an individual who:

(a) is at least 14 years old, but under 25 years old;

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(b) committed a felony listed in Subsection 78A-6-703. ~~(5)3~~(1) and the continuing jurisdiction of the court was extended over the individual's case until the individual was 25 years old in accordance with Section 78A-6-703. ~~(5)4~~; and

(c) is committed or admitted by the court to the custody, care, and jurisdiction of the division for confinement in a secure facility or supervision in the community, following an adjudication for a delinquent act in accordance with Section 78A-6-117.

~~[(22)]~~ (28) "Shelter" means the temporary care of ~~[children]~~ a child in a physically unrestricted ~~[facilities]~~ facility pending court disposition or transfer to another jurisdiction.

~~[(23)]~~ (29) (a) "Temporary custody" means control and responsibility of nonadjudicated youth until the youth can be released to the parent, guardian, a responsible adult, or to an appropriate agency.

(b) "Temporary custody" does not include a placement in a secure facility, including secure detention, or a residential community-based program operated or contracted by the division, except ~~[pursuant to]~~ in accordance with Subsection 78A-6-117(2).

~~[(24)]~~ (30) "Termination" means a written order of the Youth Parole Authority that terminates a ~~[youth]~~ juvenile offender from parole.

~~[(25)]~~ (31) "Ungovernable" means a youth in conflict with a parent or guardian, and the conflict:

(a) results in behavior that is beyond the control or ability of the youth, or the parent or guardian, to manage effectively;

(b) poses a threat to the safety or well-being of the youth, the family, or others; or

(c) results in the situations described in ~~[both]~~ Subsections ~~[(25)]~~ (31)(a) and (b).

~~[(26)]~~ (32) "Work program" means a nonresidential public or private service work project established and administered by the division for ~~[youth]~~ juvenile offenders for the purpose of rehabilitation, education, and restitution to victims.

~~[(27)]~~ (33) "Youth offender" means ~~[a person 12 years of age or older, and who has not reached 21 years of age,]~~ an individual who is:

(a) at least 12 years old, but under 21 years old; and

(b) committed or admitted by the [juvenile] court to the custody, care, and jurisdiction of the division[;] for confinement in a secure facility or supervision in the community, following an adjudication for a delinquent act [~~which would constitute a felony or~~

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~~misdemeanor if committed by an adult~~ in accordance with Section 78A-6-117.

~~(28)~~ (34) (a) "Youth services" means services provided in an effort to resolve family conflict:

- (i) for families in crisis when a minor is ungovernable or runaway; or
  - (ii) involving a minor and the minor's parent or guardian.
- (b) ~~These services~~ "Youth services" include efforts to:
- (i) resolve family conflict;
  - (ii) maintain or reunite minors with their families; and
  - (iii) divert minors from entering or escalating in the juvenile justice system.
- (c) ~~The services~~ "Youth services" may provide:
- (i) crisis intervention;
  - (ii) short-term shelter;
  - (iii) time out placement; and
  - (iv) family counseling.

Section 6. Section **62A-7-104** is amended to read:

### **62A-7-104. Division responsibilities.**

(1) The division is responsible for all ~~youth~~ juvenile offenders committed to the division by juvenile courts for secure confinement or supervision and treatment in the community in accordance with Section 78A-6-117.

(2) The division shall:

- (a) establish and administer a continuum of community, secure, and nonsecure programs for all ~~youth~~ juvenile offenders committed to the division;
- (b) establish and maintain all detention and secure facilities and set minimum standards for those facilities;
- (c) establish and operate prevention and early intervention youth services programs for nonadjudicated youth placed with the division; and
- (d) establish observation and assessment programs necessary to serve ~~youth~~ juvenile offenders in a nonresidential setting under Subsection 78A-6-117(2)(e).

(3) The division shall place ~~youth~~ juvenile offenders committed to it in the most appropriate program for supervision and treatment.

(4) (a) In ~~any~~ an order committing a ~~youth~~ juvenile offender to the division, the

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[juvenile] court shall find whether the [youth] juvenile offender is being committed for secure confinement under Subsection 78A-6-117(2)(c), or placement in a community-based program under Subsection 78A-6-117(2)(c), and specify the criteria under Subsection 78A-6-117(2)(c) or (d) underlying the commitment.

(b) The division shall place [~~the youth~~] a juvenile offender in the most appropriate program within the category specified by the court.

(5) The division shall employ staff necessary to:

(a) supervise and control [youth] juvenile offenders in secure facilities or in the community;

(b) supervise and coordinate treatment of [youth] juvenile offenders committed to the division for placement in community-based programs; and

(c) control and supervise adjudicated and nonadjudicated youth placed with the division for temporary services in receiving centers, youth services, and other programs established by the division.

(6) (a) Youth in the custody or temporary custody of the division are controlled or detained in a manner consistent with public safety and rules made by the division. In the event of an unauthorized leave from a secure facility, detention center, community-based program, receiving center, home, or any other designated placement, division employees have the authority and duty to locate and apprehend the youth, or to initiate action with local law enforcement agencies for assistance.

(b) A rule made by the division under this Subsection (6) may not permit secure detention based solely on the existence of multiple status offenses, misdemeanors, or infractions alleged in the same criminal episode.

(7) The division shall establish and operate compensatory-service work programs for [youth] juvenile offenders committed to the division by the [juvenile] court. The compensatory-service work program may not be residential and shall:

(a) provide labor to help in the operation, repair, and maintenance of public facilities, parks, highways, and other programs designated by the division;

(b) provide educational and prevocational programs in cooperation with the State Board of Education for [youth] juvenile offenders placed in the program; and

(c) provide counseling to [youth] juvenile offenders.

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(8) The division shall establish minimum standards for the operation of all private residential and nonresidential rehabilitation facilities that provide services to juveniles who have committed a delinquent act or infraction in this state or in any other state.

(9) The division shall provide regular training for staff of secure facilities, detention staff, case management staff, and staff of the community-based programs.

(10) (a) The division is authorized to employ special function officers, as defined in Section 53-13-105, to locate and apprehend minors who have absconded from division custody, transport minors taken into custody pursuant to division policy, investigate cases, and carry out other duties as assigned by the division.

(b) Special function officers may be employed through contract with the Department of Public Safety, any P.O.S.T. certified law enforcement agency, or directly hired by the division.

(11) The division shall designate employees to obtain the saliva DNA specimens required under Section 53-10-403. The division shall ensure that the designated employees receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(12) The division shall register an individual with the Department of Corrections [~~any person~~] who:

(a) [~~has been~~] is adjudicated delinquent [~~based on~~] for an offense listed in Subsection 77-41-102(17)(a) or 77-43-102(2);

(b) [~~has been~~] is committed to the division for secure confinement; and

(c) (i) if the individual is a youth offender, remains in the division's custody 30 days before the [person's] individual's 21st birthday[-]; or

(ii) if the individual is a serious youth offender, remains in the division's custody 30 days before the individual's 25th birthday.

(13) The division shall ensure that a program delivered to a [~~youth~~] juvenile offender under this section is evidence based in accordance with Section 63M-7-208.

Section 7. Section **62A-7-105.5** is amended to read:

### **62A-7-105.5. Information supplied to division.**

(1) Juvenile court probation sections shall render full and complete cooperation to the division in supplying the division with all pertinent information relating to [~~youth~~] juvenile offenders who have been committed to the division.

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(2) Information under Subsection (1) may include, but is not limited to, prior criminal history, social history, psychological evaluations, and identifying information specified by the division.

Section 8. Section **62A-7-107.5** is amended to read:

### **62A-7-107.5. Contracts with private providers.**

(1) This chapter does not prohibit the division from contracting with private providers or other agencies for the construction, operation, and maintenance of juvenile facilities or the provision of care, treatment, and supervision of [youth] juvenile offenders who have been committed to the care of the division.

(2) All programs for the care, treatment, and supervision of [youth] juvenile offenders committed to the division shall be licensed in compliance with division standards within six months after commencing operation.

(3) A contract for the care, treatment, and supervision of a [youth] juvenile offender committed to the division shall be executed in accordance with the performance-based contracting system developed under Section 63M-7-208.

Section 9. Section **62A-7-108.5** is amended to read:

### **62A-7-108.5. Records -- Property of division.**

(1) All records maintained by programs that are under contract with the division to provide services to [youth] juvenile offenders, are the property of the division and shall be returned to [it] the division when the [youth] juvenile offender is terminated from the program.

(2) The division shall maintain an accurate audit trail of information provided to other programs or agencies regarding [youth] juvenile offenders under [its] the division's jurisdiction.

Section 10. Section **62A-7-109.5** is amended to read:

### **62A-7-109.5. Restitution by a juvenile offender.**

(1) The division shall make reasonable efforts to ensure that restitution is made to the victim of a [youth] juvenile offender. Restitution shall be made through the employment of [youth] juvenile offenders in work programs. However, reimbursement to the victim of a [youth] juvenile offender is conditional upon [that youth] the juvenile offender's involvement in the work program.

(2) Restitution ordered by the court may be made a condition of release, placement, or parole by the division.

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(3) The division shall notify the juvenile court of all restitution paid to victims through the employment of [youth] juvenile offenders in work programs.

Section 11. Section **62A-7-111.5** is amended to read:

**62A-7-111.5. Cost of support and maintenance of a juvenile offender -- Responsibility.**

On commitment of a [youth] juvenile offender to the division, and on recommendation of the division to the [juvenile] court, the [juvenile] court may order the [youth] juvenile offender or [his] the juvenile offender's parent, guardian, or custodian, to share in the costs of support and maintenance for the [youth] offender during [his] the juvenile offender's term of commitment.

Section 12. Section **62A-7-113** is amended to read:

**62A-7-113. Rulemaking authority and division responsibilities.**

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules that establish a formula, in consultation with the Office of the Legislative Fiscal Analyst, to calculate savings from General Fund appropriations under 2017 Laws of Utah, Chapter 330 resulting from the reduction in out-of-home placements for [youth] juvenile offenders with the division.

(2) No later than December 31 of each year, the division shall provide to the Executive Offices and Criminal Justice Appropriations Subcommittee a written report of the division's activities under this section and Section 62A-7-112, including:

(a) for the report submitted in 2019, the formula used to calculate the savings from General Fund appropriations under Subsection (1);

(b) the amount of savings from General Fund appropriations calculated by the division for the previous fiscal year;

(c) an accounting of the money expended or committed to be expended under Subsection 62A-7-112(4); and

(d) the balance of the account.

Section 13. Section **62A-7-201** is amended to read:

**62A-7-201. Confinement -- Facilities -- Restrictions.**

~~[(1) Children under 18 years of age, who are apprehended by any officer or brought before any court for examination under any provision of state law, may not be confined in jails,~~

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~~lockups, or cells used for persons 18 years of age or older who are charged with crime, or in secure postadjudication correctional facilities operated by the division, except as provided in Subsection (2) or other specific statute.]~~

~~[(2) (a) Children charged with crimes under Section 78A-6-701, as a serious youth offender under Section 78A-6-702 and bound over to the jurisdiction of the district court, or certified to stand trial as an adult pursuant to Section 78A-6-703, if detained, shall be detained as provided in these sections:]~~

~~[(b) Children detained in adult facilities under Section 78A-6-702 or 78A-6-703 before a hearing before a magistrate, or under Subsection 78A-6-113(3);]~~

(1) Except as provided in Subsection (2) or by another statute, if a child is apprehended by an officer, or brought before a court for examination under state law, the child may not be confined:

(a) in a jail, lockup, or cell used for an adult who is charged with a crime; or

(b) in a secure facility operated by the division.

(2) (a) The division shall detain a child in accordance with Sections 78A-6-703.~~47~~2, ~~78A-6-703.5~~, and 78A-6-703.~~49~~6 if:

(i) the child is charged with an offense under Section 78A-6-703.2 or ~~78A-6-703.3~~;

(ii) the district court has obtained jurisdiction over the offense and the child is bound over to the district court under Section 78A-6-703.~~47~~5; and

(iii) the court orders the detention of the child.

(b) (i) If a child is detained before a hearing under Subsection 78A-6-113(3) or Section 78A-6-703.~~47~~5, the child may only be held in certified juvenile detention accommodations in accordance with rules made by the [Commission on Criminal and Juvenile Justice. Those rules] commission.

(ii) The commission's rules shall include [standards] rules for acceptable sight and sound separation from adult inmates.

(iii) The [Commission on Criminal and Juvenile Justice certifies facilities that are] commission shall certify that a correctional facility is in compliance with the [Commission on Criminal and Juvenile Justice's standards] commission's rules.

(iv) This Subsection (2)(b) does not apply to [juveniles] a child held in an adult detention facility in accordance with Subsection (2)(a).

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(3) (a) In ~~[areas]~~ an area of low density population, the ~~[Commission on Criminal and Juvenile Justice]~~ commission may, by rule, approve ~~[juvenile holding accommodations within adult facilities that have]~~ a juvenile detention accommodation within a correctional facility that has acceptable sight and sound separation. ~~[Those facilities]~~

(b) An accommodation described in Subsection (3)(a) shall be used only:

(i) for short-term holding ~~[purposes, with a maximum confinement of six hours, for children]~~ of a child who is alleged to have committed an act ~~[which]~~ that would be a criminal offense if committed by an adult~~[- Acceptable short-term holding purposes are:]; and~~

(ii) for a maximum confinement period of six hours.

(c) A child may only be held in an accommodation described in Subsection (3)(a) for:

(i) identification~~[;];~~

(ii) notification of a juvenile court ~~[officials,]~~ official;

(iii) processing~~[;];~~ and

(iv) allowance of adequate time for evaluation of needs and circumstances regarding the release or transfer of the child to a shelter or detention facility.

(d) This Subsection (3) does not apply to ~~[juveniles]~~ a child held in ~~[an adult detention facility]~~ a correctional facility in accordance with Subsection (2)(a).

(4) (a) ~~[Children who are]~~ If a child is alleged to have committed an act that would be a criminal offense if committed by an adult, the child may be detained in ~~[holding rooms in local law enforcement agency facilities]~~ a holding room in a local law enforcement agency facility for a maximum of two hours, for identification or interrogation, or while awaiting release to a parent or other responsible adult. ~~[Those rooms]~~

(b) A holding room described in Subsection (4)(a) shall be certified by ~~[the Commission on Criminal and Juvenile Justice, according to the Commission on Criminal and Juvenile Justice's]~~ the commission in accordance with the commission's rules. ~~[Those rules]~~

(c) The commission's rules shall include provisions for constant supervision and for sight and sound separation from adult inmates.

(5) Willful failure to comply with this section is a class B misdemeanor.

(6) (a) The division is responsible for the custody and detention of ~~[children under 18 years of age who require]~~;

(i) a child who requires detention care before trial or examination, or ~~[white]~~ is

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awaiting assignment to a home or facility, as a dispositional placement under Subsection 78A-6-117(2)(f)(i); and ~~[of youth offenders]~~

(ii) a juvenile offender under Subsection 62A-7-504(9). ~~[This]~~

(b) Subsection (6)(a) does not apply to ~~[juveniles]~~ a child held in ~~[an adult detention facility]~~ a correctional facility in accordance with Subsection (2)(a).

~~[(b)]~~ (c) (i) The ~~[Commission on Criminal and Juvenile Justice]~~ commission shall provide standards for custody or detention under Subsections (2)(b), (3), and (4).

(ii) The division shall determine and set standards for conditions of care and confinement of children in detention facilities.

~~[(c) All other custody or detention shall be provided by the]~~

(d) (i) The division, or ~~[by contract with]~~ a public or private agency willing to undertake temporary custody or detention upon agreed terms~~[-or]~~ in a contract with the division, shall provide all other custody or detention in suitable premises distinct and separate from the general jails, lockups, or cells used in law enforcement and corrections systems.

(ii) This Subsection ~~[(6)(c)]~~ (6)(d) does not apply to ~~[juveniles]~~ a child held in ~~[an adult detention facility]~~ a correctional facility in accordance with Subsection (2)(a).

Section 14. Section **62A-7-401.5** is amended to read:

### **62A-7-401.5. Secure facilities.**

(1) The division shall maintain and operate secure facilities for the custody and rehabilitation of ~~[youth]~~ juvenile offenders who pose a danger of serious bodily harm to others, who cannot be controlled in a less secure setting, or who have engaged in a pattern of conduct characterized by persistent and serious criminal offenses which, as demonstrated through the use of other alternatives, cannot be controlled in a less secure setting.

(2) The director shall appoint an administrator for each secure facility. An administrator of a secure facility shall have experience in social work, law, criminology, corrections, or a related field, and also in administration.

(3) (a) The division, in cooperation with the State Board of Education, shall provide instruction, or make instruction available, to ~~[youth]~~ juvenile offenders in secure facilities. The instruction shall be appropriate to the age, needs, and range of abilities of the ~~[youth]~~ juvenile offender.

(b) An assessment shall be made of each ~~[youth]~~ juvenile offender by the appropriate

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secure facility to determine the offender's abilities, possible learning disabilities, interests, attitudes, and other attributes related to appropriate educational programs.

(c) Prevocational education shall be provided to acquaint [youth] juvenile offenders with vocations, and vocational requirements and opportunities.

(4) The division shall place [youth] juvenile offenders who have been committed to the division for secure confinement and rehabilitation in a secure facility, operated by the division or by a private entity, that is appropriate to ensure that humane care and rehabilitation opportunities are afforded to the [youth] juvenile offender.

(5) The division shall adopt standards, policies, and procedures for the regulation and operation of secure facilities, consistent with state and federal law.

Section 15. Section **62A-7-402** is amended to read:

### **62A-7-402. Aiding or concealing offender -- Trespass -- Criminal penalties.**

(1) [~~A person~~] An individual who commits any of the following offenses is guilty of a class A misdemeanor:

(a) entering, or attempting to enter, a building or enclosure appropriated to the use of [youth] juvenile offenders, without permission;

(b) entering any premises belonging to a secure facility and committing or attempting to commit a trespass or damage on those premises; or

(c) willfully annoying or disturbing the peace and quiet of a secure facility or of a [youth] juvenile offender in a secure facility.

(2) [~~A person~~] An individual is guilty of a third degree felony who:

(a) knowingly harbors or conceals a [youth] juvenile offender who has:

(i) escaped from a secure facility; or

(ii) absconded from:

(A) a facility or supervision; or

(B) supervision of the [~~Division of Juvenile Justice Services~~] division; or

(b) willfully aided or assisted a [youth] juvenile offender who has been lawfully committed to a secure facility in escaping or attempting to escape from that facility.

(3) As used in this section:

(a) a [youth] juvenile offender absconds from a facility when [~~he~~] the juvenile offender:

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(i) leaves the facility without permission; or

(ii) fails to return at a prescribed time.

(b) A [youth] juvenile offender absconds from supervision when [he] the juvenile offender:

(i) changes [his] the juvenile offender's residence from the residence that [he] the juvenile offender reported to the division as [his] the juvenile offender's correct address to another residence, without notifying the ~~[Division of Juvenile Justice Services]~~ division or obtaining permission; or

(ii) for the purpose of avoiding supervision:

(A) hides at a different location from [his] the juvenile offender's reported residence; or

(B) leaves [his] the juvenile offender's reported residence.

Section 16. Section **62A-7-403** is amended to read:

### **62A-7-403. Care of pregnant juvenile offender.**

(1) When a [youth] juvenile offender in a secure facility is pregnant, the division shall ensure that adequate prenatal and postnatal care is provided, and shall place [her] the juvenile offender in an accredited hospital before delivery. As soon as [her] the juvenile offender's condition after delivery will permit, the [youth] juvenile offender may be returned to the secure facility.

(2) If the division has concern regarding the [youth] juvenile offender's fitness to raise [her] the juvenile offender's child, the division shall petition the juvenile court to hold a custody hearing.

Section 17. Section **62A-7-404** is repealed and reenacted to read:

### **62A-7-404. Commitment.**

(1) If a youth offender has been committed to a secure facility under Section 78A-6-117, the youth offender shall remain at the secure facility until the youth offender is:

(a) 21 years old;

(b) paroled; or

(c) discharged.

(2) If a serious youth offender has been committed to a secure facility under Section 78A-6-117, the serious youth offender shall remain at the secure facility until the serious youth offender is:

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- (a) 25 years old;
- (b) paroled; or
- (c) discharged.

Section 18. Section **62A-7-404.5** is enacted to read:

### **62A-7-404.5. Review and termination of commitment.**

(1) If a juvenile offender has been committed to a secure facility, the juvenile offender shall appear before the authority within 45 days after the day on which the juvenile offender is committed to a secure facility for review of a treatment plan and to establish parole release guidelines.

(2) (a) If a juvenile offender is committed to a secure facility, the authority shall set a presumptive term of commitment for the juvenile offender that does not exceed three to six months.

(b) The authority shall release the juvenile offender on parole at the end of the presumptive term of commitment unless at least one the following circumstances exists:

- (i) termination would interrupt the completion of a necessary treatment program; or
- (ii) the juvenile offender commits a new misdemeanor or felony offense.

(c) The authority shall determine whether a juvenile offender has completed a program under Subsection (2)(b)(i) by considering the recommendations of the licensed service provider, the juvenile offender's consistent attendance record, and the juvenile offender's completion of the goals of the necessary treatment program.

(d) The authority may extend the length of commitment and delay parole release for the time needed to address the specific circumstance only if one of the circumstances under Subsection (2)(b) exists.

(e) The authority shall:

- (i) record the length of the extension and the grounds for the extension; and
- (ii) report annually the length and grounds of extension to the commission.

(3) (a) If a juvenile offender is committed to a secure facility, the authority shall set a presumptive term of parole supervision that does not exceed three to four months.

(b) If the authority determines that a juvenile offender is unable to return home immediately upon release, the juvenile offender may serve the term of parole in the home of a qualifying relative or guardian or at an independent living program contracted or operated by

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the division.

(c) The authority shall release a juvenile offender from parole and terminate jurisdiction at the end of the presumptive term of parole, unless at least one the following circumstances exists:

(i) termination would interrupt the completion of a necessary treatment program;

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

(iii) restitution has not been completed.

(d) The authority shall determine whether a juvenile offender has completed a program under Subsection (2)(c) by considering the recommendations of the licensed services provider, the juvenile offender's consistent attendance record, and the juvenile offender's completion of the goals of the necessary treatment program.

(e) If one of the circumstances under Subsection (3)(c) exists, the authority may delay parole release only for the time needed to address the specific circumstance.

(f) The authority shall:

(i) record the grounds for extension of the presumptive length of parole and the length of the extension; and

(ii) report annually the extension and the length of the extension to the commission.

(g) In the event of an unauthorized leave lasting more than 24 hours, the term of parole shall toll until the juvenile offender returns.

(4) Subsections (2) and (3) do not apply to a juvenile offender committed to a secure facility for a felony violation of:

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

(b) Section 76-5-202, aggravated murder or 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) Section 76-6-103, aggravated arson;

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

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

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

(j) an offense other than ~~those~~ **an offense** listed in Subsections (4)(a) through (i)

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involving the use of a dangerous weapon:

(i) if the offense would be a felony had an adult committed the offense; and

(ii) the juvenile offender has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon that would have been a felony if committed by an adult; or

(k) an offense other than an offense listed in Subsections (4)(a) through (j) and the minor has been previously committed to the custody of the Division of Juvenile Justice Services for secure confinement.

(5) (a) The division may continue to have responsibility over a juvenile offender, who is discharged under this section from parole, to participate in a specific educational or rehabilitative program:

(i) until the juvenile offender is:

(A) if the juvenile offender is a youth offender, 21 years old; or

(B) if the juvenile offender is a serious youth offender, 25 years old; and

(ii) under an agreement by the division and the juvenile offender that the program has certain conditions.

(b) The division and the juvenile offender may terminate participation in a program under Subsection (5)(a) at any time.

(c) The division shall offer an educational or rehabilitative program before a juvenile offender's discharge date in accordance with this section.

(d) A juvenile offender may request the services described in this Subsection (5), even if the offender has been previously declined services or services were terminated for noncompliance.

(e) Notwithstanding Subsection (5)(c), the division:

(i) shall consider a request by a juvenile offender under Subsection (5)(d) for the services described in this section for up to 365 days after the juvenile offender's effective date of discharge, even if the juvenile offender has previously declined services or services were terminated for noncompliance; and

(ii) may reach an agreement with the juvenile offender to provide the services described in this Subsection (5) until the juvenile offender is:

(A) if the juvenile offender is a youth offender, 21 years old; or

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(B) if the juvenile offender is a serious youth offender, 25 years old.

(f) The division and the juvenile offender may terminate an agreement for services under this Subsection (5) at any time.

Section 19. Section **62A-7-501** is amended to read:

### **62A-7-501. Youth Parole Authority -- Expenses -- Responsibilities -- Procedures.**

(1) There is created the Youth Parole Authority within the division [~~a Youth Parole Authority~~].

(2) (a) The authority is composed of 10 part-time members and five pro tempore members who are residents of this state. No more than three pro tempore members may serve on the authority at any one time.

(b) Throughout this section, the term "member" refers to both part-time and pro tempore members of the Youth Parole Authority.

(3) (a) Except as required by Subsection (3)(b), members shall be appointed to four-year terms by the governor with the consent of the Senate.

(b) The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of authority members are staggered so that approximately half of the authority is appointed every two years.

(4) Each member shall have training or experience in social work, law, juvenile or criminal justice, or related behavioral sciences.

(5) When a vacancy occurs in the membership for any reason, the replacement member shall be appointed for the unexpired term.

(6) During the tenure of the member's appointment, a member may not:

(a) be an employee of the department, other than in the member's capacity as a member of the authority;

(b) hold any public office;

(c) hold any position in the state's juvenile justice system; or

(d) be an employee, officer, advisor, policy board member, or subcontractor of any juvenile justice agency or its contractor.

(7) In extraordinary circumstances or when a regular member is absent or otherwise unavailable, the chair may assign a pro tempore member to act in the absent member's place.

(8) A member may not receive compensation or benefits for the member's service[;]

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but may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance [~~pursuant to~~] in accordance with Sections 63A-3-106 and 63A-3-107.

(9) The authority shall determine appropriate parole dates for [~~youth~~] juvenile offenders in accordance with Section [~~62A-7-404~~] 62A-7-404.5.

(10) [~~Youth offenders~~] A juvenile offender may be paroled to [~~their own homes~~] the juvenile offender's home, to an independent living program contracted or operated by the division, to an approved independent living setting, or to other appropriate residences of qualifying relatives or guardians, but shall remain on parole until parole is terminated by the authority in accordance with Section [~~62A-7-404~~] 62A-7-404.5.

(11) The division's case management staff shall implement parole release plans and shall supervise [~~youth~~] juvenile offenders while on parole.

(12) The division shall permit the authority to have reasonable access to [~~youth~~] juvenile offenders in secure facilities and shall furnish all pertinent data requested by the authority in matters of parole, revocation, and termination.

Section 20. Section **62A-7-502** is amended to read:

### **62A-7-502. Youth Parole Authority -- Parole procedures.**

(1) The authority has responsibility for parole release, rescission, revocation, and termination for [~~youth~~] juvenile offenders who have been committed to the division for secure confinement. The authority shall determine when and under what conditions [~~youth~~] juvenile offenders who have been committed to a secure facility are eligible for parole.

(2) [~~Each youth~~] A juvenile offender shall be served with notice of parole hearings[;] and has the right to personally appear before the authority for parole consideration.

(3) Orders and decisions of the authority shall be in writing, and [~~each youth~~] a juvenile offender shall be provided written notice of the authority's reasoning and decision in the [~~youth~~] juvenile offender's case.

(4) The authority shall establish policies and procedures for the authority's governance, meetings, hearings, the conduct of proceedings before [~~it~~] the authority, the parole of [~~youth~~] juvenile offenders, and the general conditions under which parole may be granted, rescinded,

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revoked, modified, and terminated.

Section 21. Section **62A-7-504** is amended to read:

### **62A-7-504. Parole revocation -- Hearing -- Procedures.**

(1) The authority may revoke the parole of a [youth] juvenile offender only after a hearing and upon determination that there has been a violation of law or of a condition of parole by the [youth] juvenile offender that warrants the [youth] juvenile offender's return to a secure facility. The parole revocation hearing shall be held at a secure facility.

(2) (a) Before returning a [youth] juvenile offender to a secure facility for a parole revocation or rescission hearing, the division shall provide a prerevocation or prerescission hearing within the vicinity of the alleged violation, to determine whether there is probable cause to believe that the [youth] juvenile offender violated the conditions of the [youth] juvenile offender's parole.

(b) Upon a finding of probable cause, the [youth] juvenile offender may be remanded to a secure facility, pending a revocation hearing.

(3) The authority shall only proceed with the parole revocation or rescission process in accordance with the system of appropriate responses developed [~~pursuant to~~] in accordance with Section 78A-6-123 on [~~and~~] or after July 1, 2018.

(4) A paroled [youth] juvenile offender is entitled to legal representation at the parole revocation hearing, and if the [youth] juvenile offender or the [youth] juvenile offender's family has requested but cannot afford legal representation, the authority shall appoint legal counsel.

(5) The authority and the administrative officer have power to issue subpoenas, compel attendance of witnesses, compel production of books, papers and other documents, administer oaths, and take testimony under oath for the purposes of conducting the hearings.

(6) (a) A [youth] juvenile offender shall receive timely advance notice of the date, time, place, and reason for the hearing, and has the right to appear at the hearing.

(b) The authority shall provide the [youth] juvenile offender an opportunity to be heard, to present witnesses and evidence, and to confront and cross-examine adverse witnesses, unless there is good cause for disallowing that confrontation.

(7) Decisions in parole revocation or rescission hearings shall be reached by a majority vote of the present members of the authority.

(8) The administrative officer shall maintain summary records of all hearings and

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provide written notice to the [youth] juvenile offender of the decision and reason for the decision.

(9) (a) The authority may issue a warrant to order any peace officer or division employee to take into custody a [youth] juvenile offender alleged to be in violation of parole conditions in accordance with Section 78A-6-123 on [~~and~~] or after July 1, 2018.

(b) The division may issue a warrant to any peace officer or division employee to retake a [youth] juvenile offender who has escaped from a secure facility.

(c) Based upon the warrant issued under this Subsection (9), a [youth] juvenile offender may be held in a local detention facility for no longer than 48 hours, excluding weekends and legal holidays, to allow time for a prerevocation or prerevocation hearing of the alleged parole violation, or in the case of an escapee, arrangement for transportation to the secure facility.

Section 22. Section **62A-7-505** is amended to read:

### **62A-7-505. Conditions of parole.**

Conditions of parole shall be specified in writing and agreed to by the [youth] juvenile offender. That agreement shall be evidenced by the signature of the [youth] juvenile offender, which shall be affixed to the parole document.

Section 23. Section **62A-7-506** is amended to read:

### **62A-7-506. Discharge of juvenile offender.**

(1) A [youth] juvenile offender may be discharged from the jurisdiction of the division at any time, by written order of the [~~Youth Parole Authority~~] authority, upon a finding that no further purpose would be served by secure confinement or supervision in a community setting.

(2) A [youth] juvenile offender shall be discharged in accordance with Section [~~62A-7-404~~] 62A-7-404.5.

(3) Discharge of a [youth] juvenile offender is a complete release of all penalties incurred by adjudication of the offense for which the [youth] juvenile offender was committed.

Section 24. Section **62A-7-507** is amended to read:

### **62A-7-507. Appeal regarding parole release or revocation.**

(1) A [youth] juvenile offender, or the parent or legal guardian of a [youth] juvenile offender, may appeal to the executive director or his designee any decision of the authority regarding parole release, rescission, or revocation.

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(2) The executive director, or [his] the executive director's designee, may set aside or remand the authority's decision only if [it] the authority's decision is arbitrary, capricious, an abuse of discretion, or contrary to law.

Section 25. Section **62A-7-701** is amended to read:

### **62A-7-701. Community-based programs.**

(1) (a) The division shall operate residential and nonresidential community-based programs to provide care, treatment, and supervision for [youth] juvenile offenders committed to the division by juvenile courts.

(b) The division shall operate or contract for nonresidential community-based programs and independent living programs to provide care, treatment, and supervision of paroled [youth] juvenile offenders.

(2) The division shall adopt minimum standards for the organization and operation of community-based corrections programs for [youth] juvenile offenders.

(3) The division shall place [youth] juvenile offenders committed to [it] the division for community-based programs in the most appropriate program based upon the division's evaluation of the [youth] juvenile offender's needs and the division's available resources in accordance with Sections [~~62A-7-404~~] 62A-7-404.5 and 78A-6-117.

Section 26. Section **62A-7-702** is amended to read:

### **62A-7-702. Case management staff.**

(1) The division shall provide a sufficient number of case management staff members to provide care, treatment, and supervision for [youth] juvenile offenders on parole and for [youth] juvenile offenders committed to the division by the juvenile courts for community-based programs.

(2) (a) Case management staff shall develop treatment programs for each [youth] juvenile offender in the community, provide appropriate services, and monitor individual progress.

(b) Progress reports shall be filed every three months with the [juvenile] court for each [youth] juvenile offender committed to the division for community-based programs and with the authority for each parolee.

(c) The authority, in the case of parolees, or the [juvenile] court, in the case of youth committed to the division for placement in community programs, shall be immediately

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notified, in writing, of any violation of law or of conditions of parole or placement.

(3) Case management staff shall:

(a) conduct investigations and make reports requested by the courts to aid them in determining appropriate case dispositions; and

(b) conduct investigations and make reports requested by the authority to aid it in making appropriate dispositions in cases of parole, revocation, and termination.

Section 27. Section **63I-1-253** is amended to read:

**63I-1-253. Repeal dates, Titles 53 through 53G.**

The following provisions are repealed on the following dates:

(1) Subsection 53-6-203(1)(b)(ii), regarding being 19 years old at certification, is repealed July 1, 2022.

(2) Subsection 53-13-104(6), regarding being 19 years old at certification, is repealed July 1, 2022.

(3) Title 53B, Chapter 17, Part 11, USTAR Researchers, is repealed July 1, 2028.

(4) Section 53B-18-1501 is repealed July 1, 2021.

(5) Title 53B, Chapter 18, Part 16, USTAR Researchers, is repealed July 1, 2028.

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

(7) 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.

(8) Section 53E-3-515 is repealed January 1, 2023.

(9) In relation to a standards review committee, on January 1, 2023:

(a) in Subsection 53E-4-202(8), the language that states "by a standards review committee and the recommendations of a standards review committee established under Section 53E-4-203" is repealed; and

(b) Section 53E-4-203 is repealed.

(10) In relation to the SafeUT and School Safety Commission, on January 1, 2023:

(a) Subsection 53B-17-1201(1) is repealed;

(b) Section 53B-17-1203 is repealed;

(c) Subsection 53B-17-1204(2) is repealed;

(d) Subsection 53B-17-1204(4)(a), the language that states "in accordance with the

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method described in Subsection (4)(c)" is repealed; and

(e) Subsection 53B-17-1204(4)(c) is repealed.

(11) Section 53F-2-514 is repealed July 1, 2020.

(12) Section 53F-5-203 is repealed July 1, 2024.

(13) Section 53F-5-212 is repealed July 1, 2024.

(14) Section 53F-5-213 is repealed July 1, 2023.

(15) Title 53F, Chapter 5, Part 6, American Indian and Alaskan Native Education State Plan Pilot Program, is repealed July 1, 2022.

~~[(16) Section 53F-6-201 is repealed July 1, 2019.]~~

~~[(17)]~~ (16) Section 53F-9-501 is repealed January 1, 2023.

~~[(18)]~~ (17) Subsections 53G-4-608(2)(b) and (4)(b), related to the Utah Seismic Safety Commission, are repealed January 1, 2025.

~~[(19)]~~ (18) Subsection 53G-8-211~~[(4)]~~(5), regarding referrals of a minor to court for a class C misdemeanor, is repealed July 1, ~~[2020]~~ 2022.

Section 28. Section **76-3-406** is amended to read:

**76-3-406. Crimes for which probation, suspension of sentence, lower category of offense, or hospitalization may not be granted.**

(1) Notwithstanding Sections 76-3-201 and 77-18-1 and Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness, except as provided in Section 76-5-406.5, probation may not be granted, the execution or imposition of sentence may not be suspended, the court may not enter a judgment for a lower category of offense, and hospitalization may not be ordered, the effect of which would in any way shorten the prison sentence for an individual who commits a capital felony or a first degree felony involving:

(a) Section 76-5-202, aggravated murder;

(b) Section 76-5-203, murder;

(c) Section 76-5-301.1, child kidnaping;

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

(e) Section 76-5-402, rape, if the individual is sentenced under Subsection 76-5-402(3)(b), (3)(c), or (4);

(f) Section 76-5-402.1, rape of a child;

(g) Section 76-5-402.2, object rape, if the individual is sentenced under Subsection

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76-5-402.2(1)(b), (1)(c), or (2);

(h) Section 76-5-402.3, object rape of a child;

(i) Section 76-5-403, forcible sodomy, if the individual is sentenced under Subsection 76-5-403(3)(b), (3)(c), or (4);

(j) Section 76-5-403.1, sodomy on a child;

(k) Section 76-5-404, forcible sexual abuse, if the individual is sentenced under Subsection 76-5-404(2)(b) or (3);

(l) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;

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

(n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).

(2) [The] Except for an offense ~~transferred to~~ before the district ~~court by the juvenile~~ court in accordance with Section 78A-6-703. ~~7~~2 or 78A-6-703.5, the provisions of this section do not apply if the sentencing court finds that the defendant:

(a) was under ~~the age of~~ 18 years old at the time of the offense; and

(b) could have been adjudicated in the juvenile court but for the delayed reporting or delayed filing of the ~~Information, unless the offenses are before the court pursuant to Section 78A-6-701, 78A-6-702, or 78A-6-703~~ information.

Section 29. Section **76-5-401.3** is amended to read:

### **76-5-401.3. Unlawful adolescent sexual activity.**

(1) As used in this section:

(a) "Adolescent" means ~~a person~~ an individual in the transitional phase of human physical and psychological growth and development between childhood and adulthood who is 12 years ~~of age~~ old or older, but under 18 years ~~of age~~ old.

(b) "Unlawful adolescent sexual activity" means sexual activity between adolescents under circumstances not amounting to:

(i) rape, in violation of Section 76-5-402;

(ii) rape of a child, in violation of Section 76-5-402.1;

(iii) object rape, in violation of Section 76-5-402.2;

(iv) object rape of a child, in violation of Section 76-5-402.3;

(v) forcible sodomy, in violation of Section 76-5-403;

(vi) sodomy on a child, in violation of Section 76-5-403.1;

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~~[(vii) aggravated sexual assault, in violation of Section 76-5-405;]~~

~~[(viii)]~~ (vii) sexual abuse of a child, in violation of Section 76-5-404; ~~[or]~~

(viii) aggravated sexual assault, in violation of Section 76-5-405; or

(ix) incest, in violation of Section 76-7-102.

(2) Unlawful adolescent sexual activity is punishable as a:

(a) third degree felony if an adolescent who is 17 years ~~[of age]~~ old engages in unlawful adolescent sexual activity with an adolescent who is 12 or 13 years ~~[of age]~~ old;

(b) third degree felony if an adolescent who is 16 years ~~[of age]~~ old engages in unlawful adolescent sexual activity with an adolescent who is 12 years ~~[of age]~~ old;

(c) class A misdemeanor if an adolescent who is 16 years ~~[of age]~~ old engages in unlawful adolescent sexual activity with an adolescent who is 13 years ~~[of age]~~ old;

(d) class A misdemeanor if an adolescent who is 14 or 15 years ~~[of age]~~ old engages in unlawful adolescent sexual activity with an adolescent who is 12 years ~~[of age]~~ old;

(e) class B misdemeanor if an adolescent who is 17 years ~~[of age]~~ old engages in unlawful adolescent sexual activity with an adolescent who is 14 years ~~[of age]~~ old;

(f) class B misdemeanor if an adolescent who is 15 years ~~[of age]~~ old engages in unlawful adolescent sexual activity with an adolescent who is 13 years ~~[of age]~~ old;

(g) class C misdemeanor if an adolescent who is 12 or 13 years ~~[of age]~~ old engages in unlawful adolescent sexual activity with an adolescent who is 12 or 13 years ~~[of age]~~ old; and

(h) class C misdemeanor if an adolescent who is 14 years ~~[of age]~~ old engages in unlawful adolescent sexual activity with an adolescent who is 13 years ~~[of age]~~ old.

(3) ~~[Offenses]~~ An offense under this section ~~[are]~~ is not eligible for a nonjudicial adjustment under Section 78A-6-602 or a referral to youth court under Section 78A-6-1203.

(4) ~~[Unless the offenses are before the court pursuant to Section 78A-6-701, 78A-6-702, or 78A-6-703]~~ Except for an offense that is transferred to a district court by the juvenile court in accordance with Section 78A-6-703.7, the district court may enter any sentence or combination of sentences ~~[which]~~ that would have been available in juvenile court but for the delayed reporting or delayed filing of the information in the district court.

(5) An offense under this section is not subject to registration under Subsection 77-41-102(17).

Section 30. Section **76-10-105 (Superseded 07/01/20)** is amended to read:

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**76-10-105 (Superseded 07/01/20). Buying or possessing a cigar, cigarette, 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, unless the violation is committed on school property under Section 53G-8-211. 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 31. 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:

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

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

(2) (a) 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, unless the violation is committed on school property under Section 53G-8-211.

(b) If a violation under this section is adjudicated under Section 78A-6-117, the minor may be subject to the following:

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

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

(3) (a) 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.

(b) 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 32. Section **76-10-1302** is amended to read:

### **76-10-1302. Prostitution.**

(1) An individual is guilty of prostitution when the individual:

(a) engages, offers, or agrees to engage in any sexual activity with another individual for a fee, or the functional equivalent of a fee;

(b) takes steps in arranging a meeting through any form of advertising, agreeing to meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee

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or the functional equivalent of a fee; or

(c) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.

(2) (a) Except as provided in Subsection (2)(b) and Section 76-10-1309, prostitution is a class B misdemeanor.

(b) Except as provided in Section 76-10-1309, an individual who is convicted a second time, and on all subsequent convictions, of a subsequent offense of prostitution under this section or under a local ordinance adopted in compliance with Section 76-10-1307, is guilty of a class A misdemeanor.

(3) (a) As used in this Subsection (3):

(i) "Child" means the same as that term is defined in Section 76-10-1301.

(ii) "Child engaged in commercial sex" means a child who engages in conduct described in Subsection (1).

(iii) "Child engaged in sexual solicitation" means a child who offers or agrees to commit or engage in any sexual activity with another person for a fee or the functional equivalent of a fee under Subsection 76-10-1313(1)(a) or (c).

(iv) "Division" means the Division of Child and Family Services created in Section 62A-4a-103.

(v) "Receiving center" means the same as that term is defined in Section 62A-7-101.

(b) Upon encountering a child engaged in commercial sex or sexual solicitation, a law enforcement officer shall:

(i) conduct an investigation regarding possible human trafficking of the child pursuant to Sections 76-5-308 and 76-5-308.5;

(ii) refer the child to the division;

(iii) bring the child to a receiving center, if available; and

(iv) contact the child's parent or guardian, if practicable.

(c) When law enforcement refers a child to the division under Subsection (3)(b)(ii) the division shall provide services to the child under Title 62A, Chapter 4a, Child and Family Services.

(4) A child may not be subjected to [~~delinquency proceedings under Title 62A, Chapter 7, Juvenile Justice Services, and Section 78A-6-601 through Section 78A-6-704~~] a delinquency

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~~for criminal~~ proceeding for prostitution under Title 78A, Chapter 6, Juvenile Court Act.

(5) A prosecutor may not prosecute an individual for a violation of Subsection (1) if the individual engages in a violation of Subsection (1) at or near the time the individual witnesses or is a victim of any of the following offenses, or an attempt to commit any of the following offenses, and the individual reports the offense or attempt to law enforcement in good faith:

- (a) assault, Section 76-5-102;
- (b) aggravated assault, Section 76-5-103;
- (c) mayhem, Section 76-5-105;
- (d) aggravated murder, murder, manslaughter, negligent homicide, child abuse homicide, or homicide by assault under Title 76, Chapter 5, Part 2, Criminal Homicide;
- (e) kidnapping, child kidnapping, aggravated kidnapping, human trafficking or aggravated human trafficking, human smuggling or aggravated human smuggling, or human trafficking of a child under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- (f) rape, Section 76-5-402;
- (g) rape of a child, Section 76-5-402.1;
- (h) object rape, Section 76-5-402.2;
- (i) object rape of a child, Section 76-5-402.3;
- (j) forcible sodomy, Section 76-5-403;
- (k) sodomy on a child, Section 76-5-403.1;
- (l) forcible sexual abuse, Section 76-5-404;
- (m) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;
- (n) aggravated sexual assault, Section 76-5-405;
- (o) sexual exploitation of a minor, Section 76-5b-201;
- (p) sexual exploitation of a vulnerable adult, Section 76-5b-202;
- (q) aggravated burglary or burglary of a dwelling under Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;
- (r) aggravated robbery or robbery under Title 76, Chapter 6, Part 3, Robbery; or
- (s) theft by extortion under Subsection 76-6-406(2)(a) or (b).

Section 33. Section **77-2-9** is amended to read:

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### 77-2-9. Offenses ineligible for diversion.

~~[(1) Except as provided in Subsection (2), diversion may not be granted by a magistrate for:]~~

(1) A magistrate may not grant a diversion for:

- (a) a capital felony;
- (b) a felony in the first degree;
- (c) any case involving a sexual offense against a victim who is under ~~[the age of]~~ 14 years old;

(d) any motor vehicle related offense involving alcohol or drugs;

(e) any case involving using a motor vehicle in the commission of a felony;

(f) driving a motor vehicle or commercial motor vehicle on a revoked or suspended license;

(g) any case involving operating a commercial motor vehicle in a negligent manner causing the death of another including the offenses of:

(i) manslaughter under Section 76-5-205; or

(ii) negligent homicide under Section 76-5-206; or

(h) a crime of domestic violence as defined in Section 77-36-1.

(2) When ~~[a person]~~ an individual is alleged to have committed any violation of Title 76, Chapter 5, Part 4, Sexual Offenses, while under ~~[the age of]~~ 16 years old, the court may enter a diversion in the matter if the court enters on the record ~~[its]~~ the court's findings that:

(a) the offenses could have been adjudicated in juvenile court but for the delayed reporting or delayed filing of the information in the district court, unless the offenses are before the court ~~[pursuant to Section 78A-6-701, 78A-6-702, or 78A-6-703]~~ in accordance with Section 78A-6-703.4; 78A-6-703.5;

(b) the ~~[person]~~ individual did not use coercion or force;

(c) there is no more than three years' difference between the ages of the participants;

and

(d) it would be in the best interest of the person to grant diversion.

Section 34. Section ~~77-38a-102~~ is amended to read:

### **77-38a-102. Definitions.**

As used in this chapter:

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(1) "Conviction" includes a:

- (a) judgment of guilt;
- (b) a plea of guilty; or
- (c) a plea of no contest.

(2) "Criminal activities" means:

- (a) any misdemeanor or felony offense of which the defendant is convicted; or
- (b) any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(3) (a) "Defendant" means an individual who has been convicted of, or entered into a plea disposition for, a criminal activity.

(b) "Defendant" does not include a minor, as defined in Section 78A-6-105, who is adjudicated, or enters into a nonjudicial adjustment, for any offense under Title 78A, Chapter 6, Juvenile Court Act.

~~(3)~~ (4) "Department" means the Department of Corrections.

~~(4)~~ (5) "Diversion" means suspending criminal proceedings prior to conviction on the condition that a defendant agree to participate in a rehabilitation program, make restitution to the victim, or fulfill some other condition.

~~(5)~~ (6) "Party" means the prosecutor, defendant, or department involved in a prosecution.

~~(6)~~ (7) "Pecuniary damages" means all demonstrable economic injury, whether or not yet incurred, including those which a person could recover in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the fair market value of property taken, destroyed, broken, or otherwise harmed, and losses, including lost earnings, including those and other travel expenses reasonably incurred as a result of participation in criminal proceedings, and medical and other expenses, but excludes punitive or exemplary damages and pain and suffering.

~~(7)~~ (8) "Plea agreement" means an agreement entered between the prosecution and defendant setting forth the special terms and conditions and criminal charges upon which the defendant will enter a plea of guilty or no contest.

~~(8)~~ (9) "Plea disposition" means an agreement entered into between the prosecution and defendant including diversion, plea agreement, plea in abeyance agreement, or any

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agreement by which the defendant may enter a plea in any other jurisdiction or where charges are dismissed without a plea.

~~[(9)]~~ (10) "Plea in abeyance" means an order by a court, upon motion of the prosecution and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against him nor imposing sentence upon him on condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

~~[(10)]~~ (11) "Plea in abeyance agreement" means an agreement entered into between the prosecution and the defendant setting forth the specific terms and conditions upon which, following acceptance of the agreement by the court, a plea may be held in abeyance.

~~[(11)]~~ (12) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, including prejudgment interest, the accrual of interest from the time of sentencing, insured damages, reimbursement for payment of a reward, and payment for expenses to a governmental entity for extradition or transportation and as may be further defined by law.

~~[(12)]~~ (13) (a) "Reward" means a sum of money:

(i) offered to the public for information leading to the arrest and conviction of an offender; and

(ii) that has been paid to a person or persons who provide this information, except that the person receiving the payment may not be a codefendant, an accomplice, or a bounty hunter.

(b) "Reward" does not include any amount paid in excess of the sum offered to the public.

~~[(13)]~~ (14) "Screening" means the process used by a prosecuting attorney to terminate investigative action, proceed with prosecution, move to dismiss a prosecution that has been commenced, or cause a prosecution to be diverted.

~~[(14)]~~ (15) (a) "Victim" means ~~[any person]~~ an individual or entity, including the Utah Office for Victims of Crime, ~~[who]~~ that the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(b) "Victim" may not include a codefendant or accomplice.

Section 35. Section ~~77-38a-302~~ is amended to read:

**77-38a-302. Restitution criteria.**

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(1) When a defendant enters into a plea disposition or is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence or term of a plea in abeyance [it] the court may impose, the court shall order that the defendant make restitution to [~~victims~~] any victim of crime as provided in this chapter, or for conduct for which the defendant has agreed to make restitution as part of a plea disposition. [~~For purposes of restitution, "victim" means the same as that term is defined in Subsection 77-38a-102(14).]~~ In determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Subsections (2) through (5).

(2) In determining restitution, the court shall determine complete restitution and court-ordered restitution.

(a) "Complete restitution" means restitution necessary to compensate a victim for all losses caused by the defendant.

(b) "Court-ordered restitution" means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence.

(c) Complete restitution and court-ordered restitution shall be determined as provided in Subsection (5).

(3) If the court determines that restitution is appropriate or inappropriate under this part, the court shall make the reasons for the decision part of the court record.

(4) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall allow the defendant a full hearing on the issue.

(5) (a) For the purpose of determining restitution for an offense, the offense shall include any criminal conduct admitted by the defendant to the sentencing court or for which the defendant agrees to pay restitution. 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 defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

(b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including:

(i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense;

(ii) the cost of necessary medical and related professional services and devices relating to physical or mental health care, including nonmedical care and treatment rendered in

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accordance with a method of healing recognized by the law of the place of treatment;

(iii) the cost of necessary physical and occupational therapy and rehabilitation;

(iv) the income lost by the victim as a result of the offense;

(v) the individual victim's reasonable determinable wages that are lost due to theft of or damage to tools or equipment items of a trade that were owned by the victim and were essential to the victim's current employment at the time of the offense;

(vi) the cost of necessary funeral and related services if the offense resulted in the death of a victim; and

(vii) expenses incurred by a victim in implementing reasonable security measures in response to the offense.

(c) In determining the monetary sum and other conditions for court-ordered restitution, the court shall consider:

(i) the factors listed in Subsections (5)(a) and (b);

(ii) the financial resources of the defendant, as disclosed in the financial declaration described in Section 77-38a-204;

(iii) the burden that payment of restitution will impose, with regard to the other obligations of the defendant;

(iv) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;

(v) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and

(vi) other circumstances that the court determines may make restitution inappropriate.

(d) (i) The prosecuting agency shall submit all requests for complete restitution and court-ordered restitution to the court at the time of sentencing if feasible, otherwise within one year after sentencing.

(ii) If a defendant is placed on probation pursuant to Section 77-18-1:

(A) the court shall determine complete restitution and court-ordered restitution; and

(B) the time period for determination of complete restitution and court-ordered restitution may be extended by the court upon a finding of good cause, but may not exceed the period of the probation term served by the defendant.

(iii) If the defendant is committed to prison:

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(A) any pecuniary damages that have not been determined by the court within one year after sentencing may be determined by the Board of Pardons and Parole; and

(B) the Board of Pardons and Parole may, within one year after sentencing, refer an order of judgment and commitment back to the court for determination of restitution.

Section 36. Section ~~77-38a-404~~ is amended to read:

### **77-38a-404. Priority.**

(1) Restitution payments made pursuant to a court order shall be disbursed to victims within 60 days of receipt from the defendant by the court or department provided:

(a) the victim has complied with Subsection 77-38a-203(1)(b);

(b) if the defendant has tendered a negotiable instrument, funds from the financial institution are actually received; and

(c) the payment to the victim is at least \$5, unless the payment is the final payment.

(2) If restitution to more than one person, agency, or entity is required at the same time, the department shall establish the following priorities of payment, except as provided in Subsection (4):

(a) the crime victim;

(b) the Utah Office for Victims of Crime;

(c) any other government agency which has provided reimbursement to the victim as a result of the offender's criminal conduct;

(d) the person, entity, or governmental agency that has offered and paid a reward under Section 77-32a-101 [~~or 78A-6-117~~];

(e) any insurance company which has provided reimbursement to the victim as a result of the offender's criminal conduct; and

(f) any county correctional facility to which the defendant is required to pay restitution under Subsection 76-3-201(6).

(3) Restitution ordered under Subsection (2)(f) is paid after criminal fines and surcharges are paid.

(4) If the offender is required under Section 53-10-404 to reimburse the department for the cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after restitution to the crime victim under Subsection (2)(a).

(5) All money collected for court-ordered obligations from offenders by the department

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will be applied:

(a) first, to victim restitution, except the current and past due amount of \$30 per month required to be collected by the department under Section 64-13-21, if applicable; and

(b) second, if applicable, to the cost of obtaining a DNA specimen under Subsection (4).

(6) Restitution owed to more than one victim shall be disbursed to each victim according to the percentage of each victim's share of the total restitution order.

Section 37. Section **78A-5-102** is amended to read:

### **78A-5-102. Jurisdiction -- Appeals.**

(1) As used in this section:

(a) "Qualifying offense" means an offense described in Subsection 78A-6-703.2(1)(b).

(b) "Separate offense" means any offense that is not a qualifying offense.

(c) "Single criminal episode" means the same as that term is defined in Section 76-1-401.

~~[(1) {} The]~~ (2) Except as otherwise provided by the Utah Constitution or by statute, the district court has original jurisdiction in all matters civil and criminal ~~[, not excepted in the Utah Constitution and not prohibited by law].~~

~~[(2) {} The district court judges] {}~~

(3) A district court judge may issue all extraordinary writs and other writs necessary to carry into effect ~~[their]~~ the district court judge's orders, judgments, and decrees.

~~[(3)]~~ (4) The district court has jurisdiction over matters of lawyer discipline consistent with the rules of the Supreme Court.

~~[(4)]~~ (5) The district court has jurisdiction over all matters properly filed in the circuit court prior to July 1, 1996.

~~[(5)]~~ (6) The district court has appellate jurisdiction over judgments and orders of the justice court as outlined in Section 78A-7-118 and small claims appeals filed ~~[pursuant to]~~ in accordance with Section 78A-8-106.

~~[(6) {} Appeals]~~ (7) Jurisdiction over appeals from the final orders, judgments, and decrees of the district court ~~[are under]~~ is described in Sections 78A-3-102 and 78A-4-103.

~~[(7)]~~ (8) The district court has jurisdiction to review:

(a) agency adjudicative proceedings as set forth in Title 63G, Chapter 4,

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Administrative Procedures Act, and shall comply with the requirements of that chapter in its review of agency adjudicative proceedings; and

(b) municipal administrative proceedings in accordance with Section 10-3-703.7.

~~[(8) Notwithstanding Subsection (1), the district court has subject matter jurisdiction in class B misdemeanors, class C misdemeanors, infractions, and violations of ordinances only if:]~~

~~(~~8~~9) Notwithstanding Section 78A-7-106, the district court has original jurisdiction over:~~

~~(a) a class B misdemeanor, a class C misdemeanor, an infraction, ~~and~~ or a violation of an ordinance for which a justice court has original jurisdiction under Section 78A-6-106 if:~~

~~[(a) (i) there is no justice court with territorial jurisdiction;~~

~~[(b) (ii) the offense occurred within the boundaries of the municipality in which the district courthouse is located and that municipality has not formed, or has not formed and then dissolved, a justice court; or~~

~~[(c) ~~{} they are~~ (iii) the offense is included in an indictment or information covering a single criminal episode alleging the commission of a felony or a class A misdemeanor ~~;~~ by an individual who is 18 years old or older; ~~or~~;~~

~~;~~

~~(b) a qualifying offense committed by an individual who is 16 or 17 years old.~~

~~[(9) If the district court has subject matter jurisdiction pursuant to Subsection (5) or (8), it also has jurisdiction over offenses listed in Section 78A-7-106 even if those offenses are committed by a person 16 years of age or older.]~~

~~(10) (a) Notwithstanding Section 78A-7-106(2), the district court has exclusive jurisdiction over any separate offense:~~

~~(i) committed by an individual who is 16 or 17 years old; and~~

~~(ii) arising from a single criminal episode containing a qualifying offense for which the district court has original jurisdiction under Subsection (9)(b).~~

~~(b) If an individual who is charged with a qualifying offense enters a plea to, or is found guilty of, a separate offense other than the qualifying offense, the district court shall have jurisdiction over the separate offense.~~

~~(c) If an individual who is 16 or 17 years old is charged with a qualifying offense and~~

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the qualifying offense results in an acquittal, a finding of not guilty, or a dismissal, the exclusive jurisdiction of the district court over any separate offense is terminated.

(~~9~~11) If a district court has jurisdiction in accordance with Subsection (~~5~~6), (~~8~~9)(a)(i), or (~~8~~9)(b)(ii), the district court has jurisdiction over an offense listed in Subsection 78A-7-106(2) even if the offense is committed by an individual who is 16 or 17 years old.

(~~10~~12) The district court has subject matter jurisdiction over an offense for which the juvenile court has original jurisdiction if the juvenile court transfers jurisdiction over the offense to the district court in accordance with Section 78A-6-703.~~7~~5.

~~(10)~~ (~~11~~13) The district court has subject matter jurisdiction [~~of actions~~] over an action under Title 78B, Chapter 7, Part 2, Child Protective Orders, if the juvenile court transfers the [~~case~~] action to the district court.

Section 38. Section **78A-6-103** is amended to read:

### **78A-6-103. Jurisdiction of juvenile court -- Original -- Exclusive.**

~~[(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:]~~

~~[(a) a child who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding offenses:]~~

~~[(i) in Section 53G-8-211 until such time that the child is referred to the courts under Section 53G-8-211; and]~~

~~[(ii) in Subsection 78A-7-106(2);]~~

(1) Except as otherwise provided by ~~Subsection~~ Subsections 78A-5-102(9), 78A-5-102(10), and 78A-7-106(2), the juvenile court has original jurisdiction over:

(a) a felony, misdemeanor, infraction, or violation of an ordinance, under municipal, state, or federal law, that was committed by a child; and

(b) a felony, misdemeanor, infraction, or violation of an ordinance, under municipal, state, or federal law, that was committed by an individual:

(i) who is under 21 years old at the time of all court proceedings; and

(ii) who was under 18 years old at the time the offense was committed.

(2) The juvenile court has original jurisdiction over any proceeding concerning:

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~~[(b)]~~ (a) a child who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78A-6-105;

~~[(c)]~~ (b) a protective order for a child ~~[pursuant to]~~ in accordance with Title 78B, Chapter 7, Part 2, Child Protective Orders, which the juvenile court may transfer to the district court if the juvenile court has entered an ex parte protective order and finds that:

(i) the petitioner and the respondent are the natural parent, adoptive parent, or step parent of the child who is the object of the petition;

(ii) the district court has a petition pending or an order related to custody or parent-time entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the petitioner and the respondent are parties; and

(iii) the best interests of the child will be better served in the district court;

~~[(d)]~~ (c) the appointment of a guardian of the ~~[person]~~ individual or other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

~~[(e)]~~ (d) the emancipation of a minor in accordance with Part 8, Emancipation;

~~[(f)]~~ (e) the termination of the legal parent-child relationship in accordance with Part 5, Termination of Parental Rights Act, including termination of residual parental rights and duties;

~~[(g)]~~ (f) the treatment or commitment of a minor who has an intellectual disability;

~~[(h)]~~ (g) the judicial consent to the marriage of a minor 16 or 17 years old upon a determination of voluntariness or where otherwise required by law;

~~[(i)]~~ (h) any parent ~~[or parents]~~ of a child committed to a secure youth facility, to order, at the discretion of the court and on the recommendation of a secure facility, the parent ~~[or parents]~~ of a child committed to a secure facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure facility therapist, who has supervision of that parent's ~~[or parents']~~ child, or any other therapist the court may direct, for a period directed by the court as recommended by a secure facility;

~~[(j)]~~ (i) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;

~~[(k) subject to Subsection (8);]~~

(j) the treatment or commitment of a child with a mental illness in accordance with Subsection (10);

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~~[(†)]~~ (k) the commitment of a child to a secure drug or alcohol facility in accordance with Section 62A-15-301;

~~[(m)]~~ (l) a minor found not competent to proceed ~~[pursuant to]~~ in accordance with Section 78A-6-1301;

~~[(n)]~~ (m) de novo review of final agency actions resulting from an informal adjudicative proceeding as provided in Section 63G-4-402; and

~~[(o)]~~ (n) adoptions conducted in accordance with the procedures described in Title 78B, Chapter 6, Part 1, Utah Adoption Act, when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the child.

~~[(2)(a) Notwithstanding Section 78A-7-106 and Subsection 78A-5-102(9), the juvenile court has exclusive jurisdiction over the following offenses committed by a child:]~~

~~[(i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;]~~

~~[(ii) Section 73-18-12, reckless operation; and]~~

~~[(iii) class B and C misdemeanors, infractions, or violations of ordinances that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.]~~

~~[(b) A juvenile court may only order substance use disorder treatment or an educational series if the minor has an assessed need for the intervention on the basis of the results of a validated assessment.]~~

(3) (a) Except as provided in Subsection (3)(c), the juvenile court has exclusive jurisdiction over a felony, misdemeanor, infraction, or violation of an ordinance:

(i) committed by a child and that arises from a single criminal episode containing an offense for which:

(A) a citation, petition, indictment, or criminal information is filed; and

(B) the court has original jurisdiction; and

(ii) committed by an individual who is under 21 years old at the time of all court proceedings, but committed before the individual was 18 years old, and that arises from a single criminal episode containing an offense for which:

(A) a citation, petition, indictment, or criminal information is filed; and

(B) the court has original jurisdiction.

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(b) For purposes of this Subsection (3), the juvenile court has jurisdiction over the following offenses committed by an individual who is under 21 years old at the time of all court proceedings, but was under 18 years old at the time the offense was committed:

(i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; and

(ii) Section 73-18-12.

(c) If a juvenile court transfers jurisdiction of an offense to the district court under Section 78A-6-703. ~~(7)~~5, the exclusive jurisdiction of the juvenile court over that offense is terminated.

~~(d) If an individual~~4) (a) As used in this Subsection (4):

(i) "Qualifying offense" means an offense described in Sections 78A-3-703.2 and 78A-3-703.3.

(ii) "Separate offense" means any offense that is not a qualifying offense.

(b) The juvenile court:

(i) regains exclusive jurisdiction over any separate offense described in Subsection (3)(a) if:

(A) the individual who is alleged to have committed the separate offense is bound over to the district court for ~~an~~a qualifying offense under Section 78A-6-703. ~~(3 by)~~5; and

(B) the ~~juvenile court and the~~qualifying offense results in an acquittal, a finding of not guilty, or a dismissal ~~, the juvenile court regains~~; and

(ii) gains exclusive jurisdiction over any separate offense ~~committed by the individual.~~

~~(3)~~4) described in Subsection (3)(a) if:

(A) the individual who is alleged to have committed the separate offense is charged for a qualifying offense under Section 78A-6-703.2 in the district court; and

(B) the qualifying offense results in an acquittal, a finding of not guilty, or a dismissal in the district court.

~~(3)~~ (5) The juvenile court has jurisdiction over an ungovernable or runaway child who is referred to ~~it~~ the juvenile court by the ~~(f)~~Division of Child and Family Services ~~(f division)~~ or by public or private agencies that contract with the division to provide services to that child when, despite earnest and persistent efforts by the division or agency, the child has demonstrated that the child:

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(a) is beyond the control of the child's parent, guardian, or lawful custodian to the extent that the child's behavior or condition endangers the child's own welfare or the welfare of others; or

(b) has run away from home.

~~(5)(6)~~ The juvenile court has continuing jurisdiction over a minor's case for an offense that is adjudicated under Section 78A-6-117 until jurisdiction is terminated in accordance with Section 78A-6-120.

~~(4)~~ ~~(6)(7)~~ This section does not restrict the right of access to the juvenile court by private agencies or other persons.

~~(5)~~ ~~(7)(8)~~ The juvenile court has jurisdiction of all magistrate functions relative to cases arising under ~~[Section 78A-6-702]~~ Part 7, Transfer of Jurisdiction.

~~(6)~~ ~~(8)(9)~~ The juvenile court has jurisdiction to make a finding of substantiated, unsubstantiated, or without merit, in accordance with Section 78A-6-323.

~~(7)~~ ~~(9)(10)~~ The juvenile court has subject matter jurisdiction ~~[of]~~ over matters transferred to ~~[it]~~ the juvenile court by another trial court ~~[pursuant to]~~ in accordance with Subsection 78A-7-106~~(5)~~(4) ~~[and subject to Section 53G-8-211]~~ and Section 78A-6-601.

~~(8)~~ ~~(10)(11)~~ The juvenile court may commit a child to the physical custody of a local mental health authority in accordance with Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, but not directly to the Utah State Hospital.

Section 39. Section **78A-6-104** is amended to read:

### **78A-6-104. Concurrent jurisdiction.**

(1) The district court, or any other court, has concurrent jurisdiction with the juvenile court ~~[as follows: (a) when a person who is 18 years of age or older and who is under the continuing jurisdiction of the juvenile court under Section 78A-6-117 violates any federal, state, or local law or municipal ordinance; and (b)]~~ in establishing paternity and ordering testing for the purposes of establishing paternity, in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act, with regard to proceedings initiated under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of Parental Rights Act.

(2) The juvenile court has jurisdiction over petitions to modify a minor's birth certificate if the court otherwise has jurisdiction over the minor.

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(3) This section does not deprive the district court of jurisdiction to appoint a guardian for a child, or to determine the support, custody, and parent-time of a child upon writ of habeas corpus or when the question of support, custody, and parent-time is incidental to the determination of a cause in the district court.

(4) (a) When a support, custody, or parent-time award has been made by a district court in a divorce action or other proceeding, and the jurisdiction of the district court in the case is continuing, the juvenile court may acquire jurisdiction in a case involving the same child if the child is dependent, abused, neglected, or otherwise comes within the jurisdiction of the juvenile court under Section 78A-6-103.

(b) The juvenile court may, by order, change the custody, subject to Subsection 30-3-10(6), support, parent-time, and visitation rights previously ordered in the district court as necessary to implement the order of the juvenile court for the safety and welfare of the child. The juvenile court order remains in effect so long as the jurisdiction of the juvenile court continues.

(c) If a copy of the findings and order of the juvenile court has been filed with the district court, the findings and order of the juvenile court are binding on the parties to the divorce action as though entered in the district court.

(5) The juvenile court has jurisdiction over questions of custody, support, and parent-time of a minor who comes within the court's jurisdiction under this section or Section 78A-6-103.

Section 40. 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

(ii) that a child's natural parent:

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

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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:

(i) who is 18 years old or older; and

(ii) whose case is 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 who is 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

(b) a private agency that receives a child for placement or adoption in another state,

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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 the minor's case is 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.

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

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(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) "Educational series" means an evidence-based instructional series:

(a) obtained at a substance abuse program that is approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105; and

(b) designed to prevent substance use or the onset of a mental health disorder.

~~[(21)]~~ (22) "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)]~~ (23) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.

~~[(23)]~~ (24) "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)]~~ (25) "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 case]~~ the minor's case must be reviewed by the court's probation department or a prosecuting attorney.

~~[(25)]~~ (26) "Group rehabilitation therapy" means psychological and social counseling of one or more individuals in the group, depending upon the recommendation of the therapist.

~~[(26)]~~ (27) "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)]~~ (28) "Habitual truant" means the same as that term is defined in Section 53G-6-201.

~~[(28)]~~ (29) "Harm" means:

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(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)]~~ (30) (a) "Incest" means engaging in sexual intercourse with an individual whom the 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)]~~ (30)(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)]~~ (31) "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)]~~ (32) "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)]~~ (33) "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)]~~ (34) "Material loss" means an uninsured:

(a) property loss;

(b) out-of-pocket monetary loss for property that is stolen, damaged, or destroyed;

(c) lost wages because of an injury, time spent as a witness, or time spent assisting the

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police or prosecution; or

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

~~(34)~~ (35) "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

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

~~(35)~~ (36) "Minor" means:

~~(a) a child; or~~

~~(b) an individual who is:~~

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

~~(ii) under the jurisdiction of the juvenile court.]~~

(a) for the purpose of juvenile delinquency:

(i) a child; or

(ii) an individual:

(A) who is at least 18 years old and younger than 25 years old; and

(B) whose case is under the jurisdiction of the juvenile court; and

(b) for all other purposes in this chapter:

(i) a child; or

(ii) an individual:

(A) who is at least 18 years old and younger than 21 years old; and

(B) whose case is under the jurisdiction of the juvenile court.

~~(36)~~ (37) "Mobile crisis outreach team" means a crisis intervention service for ~~[minors or families of minors experiencing]~~ a minor or the family of a minor experiencing a behavioral health or psychiatric [~~emergencies~~] emergency.

~~(37)~~ (38) "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

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Section 76-5-416.

~~[(38)]~~ (39) (a) "Natural parent" means a minor's biological or adoptive parent~~[-and]~~.

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

~~[(39)]~~ (40) (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 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

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(F) engaging in a similar independent activity.

~~[(40)]~~ (41) "Neglected child" means a child who has been subjected to neglect.

~~[(41)]~~ (42) "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)]~~ (43) "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)]~~ (44) "Physical abuse" means abuse that results in physical injury or damage to a child.

~~[(44)]~~ (45) "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.

(46) "Prosecuting attorney" means:

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

(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)]~~ (47) "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)]~~ (48) (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

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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)]~~ (49) (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)]~~ (50) "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]~~ in accordance with Subsection 78A-6-117(2)(d).

~~[(49)]~~ (51) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.

~~[(50)]~~ (52) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.

~~[(51)]~~ (53) "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;

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(ii) the children are related, as described in Subsection [~~(29)~~] (30), 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~~] old 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.

[~~(52)~~] (54) "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

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is actually charged with, or convicted of, the offense.

~~[(53)]~~ (55) "Shelter" means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.

(56) "Single criminal episode" means the same as that term is defined in Section 76-1-401.

~~[(54)]~~ (57) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

~~[(55)]~~ (58) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.

~~[(56)]~~ (59) "Substantiated" means the same as that term is defined in Section 62A-4a-101.

~~[(57)]~~ (60) "Supported" means the same as that term is defined in Section 62A-4a-101.

~~[(58)]~~ (61) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

~~[(59)]~~ (62) "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)]~~ (63) "Threatened harm" means actions, inactions, or credible verbal threats, indicating that the child is at an unreasonable risk of harm or neglect.

~~[(61)]~~ (64) "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

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guardianship to the individual taking custody of the child.

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

~~[(63)]~~ (66) "Unsubstantiated" means the same as that term is defined in Section 62A-4a-101.

~~[(64)]~~ (67) "Validated risk and needs assessment" means an evidence-based tool that assesses a minor's risk of reoffending and a minor's criminogenic needs.

(68) (a) "Victim" means a person that the court determines has suffered a material loss as a result of a minor's wrongful act or conduct.

(b) "Victim" includes the Utah Office for Victims of Crime.

~~[(65)]~~ (69) "Without merit" means the same as that term is defined in Section 62A-4a-101.

Section 41. Section **78A-6-108** is amended to read:

**78A-6-108. Title of petition and other court documents -- Form and contents of petition -- Order for temporary custody or protective services -- Physical or psychological examination of minor, parent, or guardian -- Dismissal of petition.**

(1) The petition and all subsequent court documents in the proceeding shall be entitled: "State of Utah, in the interest of....., ~~[a person]~~ an individual under 18 years ~~[of age]~~ old (or ~~[a person]~~ an individual under 21 years ~~[of age]~~ old)."

(2) The petition shall be verified and statements in the petition may be made upon information and belief.

(3) The petition shall be written in simple and brief language and include the facts which bring the minor within the jurisdiction of the court, as provided in Section 78A-6-103.

(4) The petition shall further state:

(a) the name, age, and residence of the minor;

(b) the names and residences of the minor's parents;

(c) the name and residence of the guardian, if there is one;

(d) the name and address of the nearest known relative, if no parent or guardian of a minor is known; and

(e) the name and residence of the person having physical custody of the minor. If any of the facts required are not known by the petitioner, the petition shall so state.

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(5) At any time after a petition is filed, the court may make an order:

(a) providing for temporary custody of the minor; or

(b) that the [~~Division of Child and Family Services~~] division provide protective services to the child, if the court determines that:

(i) the child is at risk of being removed from the child's home due to abuse or neglect;

and

(ii) the provision of protective services may make the removal described in Subsection (5)(b)(i) unnecessary.

(6) (a) The court may order that a minor concerning whom a petition has been filed shall be examined by a physician, surgeon, psychiatrist, or psychologist and may place the minor in a hospital or other facility for examination.

(b) After notice and a hearing set for the specific purpose, the court may order a similar examination of a parent or guardian whose ability to care for a minor is at issue, if the court finds from the evidence presented at the hearing that the parent's or guardian's physical, mental, or emotional condition may be a factor in causing the neglect, dependency, or delinquency of the minor.

~~[(7) Pursuant to Rule 506(d)(3), Utah Rules of Evidence, examinations conducted pursuant to Subsection (6) are not privileged communications, but are exempt from the general rule of privilege.]~~

(7) An examination conducted in accordance with Subsection (6) is not a privileged communication under Utah Rules of Evidence, Rule 506(d)(3), and is exempt from the general rule of privilege.

(8) The court may dismiss a petition at any stage of the proceedings.

(9) If the petition is filed under Section 78A-6-304 or 78A-6-505, or if the matter is referred to the court under Subsection 78A-6-104[(5)](6), the court may require the parties to participate in mediation in accordance with Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act.

Section 42. Section **78A-6-112** is amended to read:

**78A-6-112. Minor taken into custody by peace officer, private citizen, or probation officer -- Grounds -- Notice requirements -- Release or detention -- Grounds for peace officer to take adult into custody.**

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(1) A minor may be taken into custody by a peace officer without ~~[order of the court if:]~~ a court order if the officer has probable cause to believe that:

(a) ~~[in the presence of the officer]~~ the minor has ~~[violated a state law, federal law, local law, or municipal ordinance]~~ committed an offense under municipal, state, or federal law;

(b) ~~[there are reasonable grounds to believe]~~ the minor has committed an act which if committed by an adult would be a felony;

(c) the minor:

(i) (A) is seriously endangered in the minor's surroundings; or

(B) seriously endangers others; and

(ii) immediate removal appears to be necessary for the minor's protection or the protection of others;

(d) ~~[there are reasonable grounds to believe]~~ the minor has run away or escaped from the minor's parents, guardian, or custodian; or

(e) ~~[there is reason to believe]~~ that the minor is:

(i) subject to the state's compulsory education law; and

(ii) absent from school without legitimate or valid excuse, subject to Section 53G-6-208.

(2) (a) A private citizen or a probation officer may take a minor into custody if under the circumstances the private citizen or probation officer could make a citizen's arrest if the minor was an adult.

(b) A probation officer may ~~[also]~~ take a minor into custody:

(i) under the same circumstances as a peace officer in Subsection (1); ~~[or if]~~

(ii) if the minor has violated the conditions of probation; ~~[if];~~

(iii) if the minor is under the continuing jurisdiction of the juvenile court; or

(iv) in emergency situations in which a peace officer is not immediately available.

(3) (a) (i) If an officer or other person takes a minor into temporary custody under Subsection (1) or (2), the officer or person shall, without unnecessary delay, notify the parents, guardian, or custodian.

(ii) The minor shall then be released to the care of the minor's parent or other responsible adult, unless the minor's immediate welfare or the protection of the community requires the minor's detention.

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(b) If the minor is taken into custody under Subsection (1) or (2) or placed in detention under Subsection (4) 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 officer or other law enforcement agent taking the minor into custody shall, as soon as practicable or as established under Subsection 53G-8-402(2), notify the school superintendent of the district in which the minor resides or attends school for the purposes of the minor's supervision and student safety.

(i) The notice shall disclose only:

(A) the name of the minor;

(B) the offense for which the minor was taken into custody or detention; and

(C) if available, the name of the victim, if the victim:

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

(II) attends the same school as the minor.

(ii) The notice shall be classified as a protected record under Section 63G-2-305.

(iii) All other records disclosures are governed by Title 63G, Chapter 2, Government Records Access and Management Act, and the federal Family Educational Rights and Privacy Act.

(c) Employees of a governmental agency are immune from any criminal liability for providing or failing to provide the information required by this section unless the person acts or fails to act due to malice, gross negligence, or deliberate indifference to the consequences.

(d) Before the minor is released, the parent or other person to whom the minor is released shall be required to sign a written promise on forms supplied by the court to bring the minor to the court at a time set or to be set by the court.

(4) (a) A child may not be held in temporary custody by law enforcement any longer than is reasonably necessary to obtain the child's name, age, residence, and other necessary information and to contact the child's parents, guardian, or custodian.

(b) If the minor is not released under Subsection (3), the minor shall be taken to a place of detention or shelter without unnecessary delay.

(5) (a) The person who takes a minor to a detention or shelter facility shall promptly file with the detention or shelter facility a written report on a form provided by the division stating:

(i) the details of the presently alleged offense;

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(ii) the facts that bring the minor within the jurisdiction of the juvenile court;

(iii) the reason the minor was not released by law enforcement; and

(iv) the eligibility of the minor under the division guidelines for detention admissions established by the Division of Juvenile Justice Services under Section 62A-7-202 if the minor is under consideration for detention.

(b) (i) The designated facility staff person shall immediately review the form and determine, based on the guidelines for detention admissions established by the Division of Juvenile Justice Services under Section 62A-7-202, the results of the detention risk assessment, and the criteria for detention eligibility under Section 78A-6-113, whether to:

(A) admit the minor to secure detention;

(B) admit the minor to home detention;

(C) place the minor in another alternative to detention; or

(D) return the minor home upon written promise to bring the minor to the court at a time set, or without restriction.

(ii) If the designated facility staff person determines to admit the minor to home detention, that staff person shall notify the juvenile court of that determination. The court shall order that notice be provided to the designated persons in the local law enforcement agency and the school or transferee school, if applicable, which the minor attends of the home detention. 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 and the school [~~which~~] that the minor attends who discloses the notification of home detention is not:

(A) civilly liable except when 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.

(iv) The person who takes a minor to a detention facility or the designated facility staff person may release a minor to a less restrictive alternative even if the minor is eligible for secure detention under this Subsection (5).

(c) A minor may not be admitted to detention unless;

(i) the minor is detainable based on the guidelines; or

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(ii) the minor has been brought to detention [~~pursuant to~~] in accordance with:

(A) a judicial order; or

(B) a division warrant [~~pursuant to~~] in accordance with Section 62A-7-504.

(d) If a minor taken to detention does not qualify for admission under the guidelines established by the division under Section 62A-7-104 or the eligibility criteria under Subsection (4) and this Subsection (5), detention staff shall arrange an appropriate alternative.

(e) If a minor is taken into custody and admitted to a secure detention or shelter facility, facility staff shall:

(i) immediately notify the minor's parents, guardian, or custodian; and

(ii) promptly notify the court of the placement.

(f) If the minor is admitted to a secure detention or shelter facility outside the county of the minor's residence and it is determined in the hearing held under Subsection 78A-6-113(3) that detention shall continue, the judge or commissioner shall direct the sheriff of the county of the minor's residence to transport the minor to a detention or shelter facility as provided in this section.

(6) [~~A person~~] An individual may be taken into custody by a peace officer without a court order:

(i) if the [~~person~~] individual is in apparent violation of a protective order; or

(ii) if there is reason to believe that a child is being abused by the [~~person~~] individual and any of the situations [~~outlined~~] described in Section 77-7-2 exist.

Section 43. 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]~~ parent, guardian, or custodian if ~~[it is found]~~ the judge or officer finds that the child can be safely returned to ~~[their]~~ the parent's, the guardian's, or the custodian's 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).

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~~[(4)(a) A minor may not be held in a detention facility longer than 48 hours before a detention hearing, excluding weekends and holidays, unless the court has entered an order for continued detention.]~~

(4) (a) A minor may not be held in a detention facility longer than 24 hours, unless a court determines that there is probable cause ~~{to detain}~~ for the ~~{minor for longer than 24 hours}~~ minor's arrest.

(b) The court shall hold a detention hearing ~~{at the time of the probable cause determination described in Subsection (4)(a)}~~.

~~——~~ (c) Notwithstanding the requirement in Subsection (4)(b), if the {within 48 hours of the minor's arrest, excluding weekends and holidays, to determine whether the minor should:

(i) remain in detention in accordance with Subsection 78A-6-113(4)(f);

(ii) be released to a parent or guardian; or

(iii) be placed in any other party's custody as authorized by statute.

(c) The probable cause determination under Subsection (4)(a) {occurs on a weekend or holiday, the court shall hold} and the detention hearing under Subsection (4)(b) {on the following business day} may occur at the same time if the probable cause determination and detention hearing occur within the time frames under Subsection (4)(a) and (4)(b).

~~[(b)]~~ (d) 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)]~~ (e) A hearing for detention or shelter may not be waived. Detention staff shall provide the court with all information received from the person who brought the minor to the detention facility.

~~[(d)]~~ (f) 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

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admissions established by the Division of Juvenile Justice Services, under Section 62A-7-202 and under Section 78A-6-112.

~~[(e)]~~ (g) (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:

(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

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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) (i) A child [~~under 16 years of age~~] who is younger than 16 years old may not be held in a jail, lockup, or other place for adult detention, except as provided by [~~Section 62A-7-201 or unless certified as an adult pursuant to Section 78A-6-703~~] {Sections} Section 62A-7-201, 78A-6-703. {7, and} 5 or 78A-6-703. {9} 6.

(ii) Section 62A-7-201 regarding confinement facilities applies to this Subsection (9).

(b) (i) A child [~~16 years of age or older~~] who is 16 years old or older and 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~~]

(ii) 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~~] with 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

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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.~~] in accordance with Section 78A-6-703. ~~7~~2, 78A-6-703.5, or 78A-6-703. ~~9~~6.

~~[(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]~~

(12) A provision of law regarding bail [~~are~~] is 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)]~~ (13) 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 44. Section **78A-6-116** is amended to read:

**78A-6-116. Minor's cases considered civil proceedings -- Effect of adjudication of jurisdiction by juvenile court -- Minor not to be charged with crime -- Exception for a prior adjudication -- Traffic violation cases -- Abstracts to Department of Public Safety.**

(1) Except as provided in Sections ~~7~~78A-6-701, 78A-6-702, and 78A-6-703 ~~78A-6-703.7 and~~ Section 78A-6-703. ~~9~~2, 78A-6-703.5, or 78A-6-703.6, [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 jurisdiction under Section 78A-6-103~~] of a minor under Section 78A-6-117 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

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

(3) (a) [A] Except in cases involving traffic violations, and as provided in ~~Sections~~ Section 78A-6-703.2, 78A-6-703.3 ~~and~~, or 78A-6-703. ~~7~~5, a minor may not be charged with a crime [or] and 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 Section 78A-6-703. ~~7~~5, if a petition [~~has been~~] is filed in the juvenile court, the 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~~].

(4) (a) An adjudication by a juvenile court [~~that a minor is within its jurisdiction under Section 78A-6-103~~] of a minor under Section 78A-6-117 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 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 45. Section **78A-6-117** is amended to read:

**78A-6-117. Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court.**

(1) (a) Except as provided in Subsection (1)(b), when a minor is found to come within Section 78A-6-103, the court shall adjudicate the case and make findings of fact upon which the court bases the court's jurisdiction over the [~~minor~~] case.

(b) For a case described in Subsection 78A-6-103(1), findings of fact are not necessary.

(c) If the court adjudicates a minor for [~~a crime~~] an offense of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the court 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

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adjudication and shall include:

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

(ii) if available, whether the victim:

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

(B) attends the same school as the minor.

(d) (i) An adjudicated minor shall undergo a risk screening or, if indicated, a validated risk and needs assessment.

(ii) 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)(d);

(C) if the court orders substance abuse treatment or an educational series, shall be based on a validated risk and needs assessment conducted under Subsection (1)(d); and

(D) if the court orders protective supervision, may not designate the division as the provider of protective supervision unless there is a petition regarding abuse, neglect, or dependency before the court requesting that the division provide protective supervision;

(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 individuals in the local law enforcement agency and the school or transferee school, if applicable, that the minor attends. The designated individuals may receive the information for purposes of the minor's supervision and student safety; and

(vi) an employee of the local law enforcement agency and the school that the minor

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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 individual, with or without probation or other court-specified child welfare services, but the juvenile court may not assume the function of developing foster home services.

(c) 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:

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

(ii) 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.

(d) (i) 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.

(ii) (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~~] division 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, Termination of Parental Rights Act, the minor's petition shall contain a statement from the

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minor's parent or guardian agreeing that the minor should be removed from the custody of the ~~[Division of Child and Family Services]~~ division.

(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]~~ division if the minor and the minor's parent or guardian have met the requirements described in Subsections (2)(d)(ii)(B) and (C) and if the court finds, based on input from the ~~[Division of Child and Family Services]~~ division, 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)(d)(ii)(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]~~ division.

(G) Upon receiving a petition under Subsection (2)(d)(ii)(F), the court shall order the ~~[Division of Child and Family Services]~~ division 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]~~ division.

(e) The court shall only commit a minor to the Division of Juvenile Justice Services for secure confinement if the court finds that:

(i) (A) the minor poses a risk of harm to others; ~~[and]~~ or  
(B) the minor's conduct resulted in the victim's death; and

(ii) the minor is adjudicated under this section for:

~~[(i)]~~ (A) a felony offense;

~~[(ii)]~~ (B) a misdemeanor if the minor has five prior misdemeanor or felony adjudications arising from separate criminal episodes; ~~{}~~ or ~~{}~~

~~[(iii)]~~ (C) a misdemeanor involving use of a dangerous weapon as defined in Section 76-1-601 ~~{}~~ . {} or {}

~~{~~ (D) an offense that resulted in the death of the victim.

~~†~~ (f) (i) 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.

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

- (A) contempt of court;
- (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.

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

(h) (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~~] minor's case. This commitment may not be suspended upon conditions ordered by the court.

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

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

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

(j) (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[~~, as defined in Subsection 77-38a-102(14),~~] 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;

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

(D) the length of the presumptive term of supervision shall be taken into account in determining the minor's ability to satisfy the restitution order within the presumptive term.

(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.

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(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) Within seven days after the day on which a petition is filed under Section 78A-6-602, the prosecuting attorney or the court's probation department shall provide notification of the restitution process to all reasonably identifiable and locatable victims of an offense listed in the petition.

(ix) A victim that receives notice under Subsection (2)(j)(viii) is responsible for providing the prosecutor with:

(A) all invoices, bills, receipts, and any other evidence of the injury or out-of-pocket loss;

(B) all documentation of any compensation or reimbursement from an insurance company or a local, state, or federal agency that is related to the injury or out-of-pocket loss;

(C) if applicable, the victim's proof of identification, including the victim's date of birth, social security number, or driver license number; and

(D) the victim's contact information, including the victim's current home and work address and telephone number.

~~[(viii) The prosecutor]~~

(x) A prosecutor or victim shall submit a request for restitution to the court at the time of disposition, if feasible, otherwise within ~~[three months]~~ 90 days after disposition.

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

(xi) The court shall order a financial disposition that prioritizes the payment of restitution.

(k) 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.

(l) (i) The court may through the court's probation department encourage the development of nonresidential employment or work programs to enable a minor to fulfill the minor's obligations under Subsection (2)(j) and for other purposes considered desirable by the court.

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(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:

(A) is reasonable;

(B) prioritizes restitution; and

(C) takes into account the minor's ability to satisfy the order within the presumptive term of supervision.

(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~~] a minor younger than 16 years old at adjudication, the court may impose up to \$180 or up to 24 hours of service; and

(B) for [~~minors 16 and~~] a minor 16 years old or older at adjudication, the court may impose up to \$270 or up to 36 hours of service.

(vi) The cumulative order under Subsection (2)(l)(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.

(m) (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; and

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

(ii) (A) The court may enter any other eligible disposition under Subsection (2)(m)(i) except for a disposition under Subsection (2)(c), (d), (e), or (f). [~~However, the~~]

(B) The suspension of driving privileges for an offense under Section 78A-6-606 is

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governed only by Section 78A-6-606.

(n) (i) The court may order a minor to complete community or compensatory service hours in accordance with Subsections (2)(l)(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~~] commits an offense involving the use of graffiti under Section 76-6-106 or 76-6-206, the court may order the minor to clean up graffiti created by the minor or any other individual 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)(j).

(o) (i) Subject to Subsection (2)(o)(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)(o)(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)(o)(i), the court shall consider:

(A) the desires of the minor;

(B) if the minor is [~~under the age of 18~~] younger than 18 years old, the desires of the parents or guardian of the minor; and

(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

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the examination, treatment, or care.

(iv) The [~~Division of Child and Family Services~~] division shall:

(A) take reasonable measures to notify a parent or guardian of any non-emergency health treatment or care scheduled for a child[~~, shall~~];

(B) include the parent or guardian as fully as possible in making health care decisions for the child[~~, and shall~~]; and

(C) 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~~] division 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~~] division receives emergency health care or treatment.

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

(p) (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.

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

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(r) 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.

(s) (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)(s)(i).

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

(u) 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), (d), (e), and (f).

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

(w) 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 individual, agency, or institution in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

(x) Except as provided in Subsection (2)(z)(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~~] 62A-7-404.5. A new date shall be set upon each review.

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

(z) (i) The juvenile court may enter an order of permanent custody and guardianship with an individual or relative of a child where the court has previously acquired jurisdiction as

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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)(z)(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,~~] If a court adjudicates a minor for an offense, the minor may be given a choice by the court to serve in the National Guard in lieu of other sanctions[~~;~~ provided] described in Subsection (2) if:

(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~~] offense:

(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 an employee designated to collect the saliva DNA specimens receives 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~~] in accordance with 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), (d), (e), or (f)~~] (2)(e), the court may suspend a custody order [~~pursuant to Subsection (2)(c), (d), (e), or (f)~~] in accordance with Subsection (2)(c) 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):

(A) 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);

(B) 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; or

(C) if, after a notice and a hearing, the court finds a new or previous evaluation recommends a higher level of treatment, and the minor willfully failed to comply with a lower level of treatment and has been unsuccessfully discharged from treatment.

(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~~] in accordance with Subsection (5)(a) shall terminate continuing jurisdiction over [~~the minor~~] a minor's case at the end of the presumptive time frame unless at least one the following circumstances exists:

(i) termination [~~pursuant to~~] in accordance with 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;

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- (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) [~~or (d)~~], the court shall do so for a defined period of time [~~pursuant to~~] in accordance with this section.

(a) [~~For the purposes of~~] In 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~~] In vesting legal custody of the minor in the Division of Juvenile Justice Services under Subsection (2)(c) or (d), 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~~] in accordance with Subsections (6)(a) and (b), and the Youth Parole Authority [~~pursuant to~~] in accordance with Subsection (6)(b), shall terminate continuing jurisdiction over [~~the minor~~] a minor's case 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;

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(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;

(v) there is an outstanding fine; or

(vi) there is a failure to pay restitution in full.

(d) (i) Subject to Subsection (6)(g), if one of the circumstances under Subsection (6)(c) 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) 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 under Subsection (6)(c)(iv), (v), or (vi), 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 under Subsection (6)(c)(iv), (v), or (vi), 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.

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(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, aggravated murder or attempted aggravated murder;

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

(d) Section 76-5-205, manslaughter;

(e) Section 76-5-206, negligent homicide;

(f) Section 76-5-207, automobile homicide;

(g) Section 76-5-207.5, automobile homicide involving handheld wireless

communication device;

(h) Section 76-5-208, child abuse homicide;

(i) Section 76-5-209, homicide by assault;

~~[(d)]~~ (j) Section 76-5-302, aggravated kidnapping;

~~[(e)]~~ (k) Section 76-5-405, aggravated sexual assault;

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

~~[(g)]~~ (m) Section 76-6-203, aggravated burglary;

~~[(h)]~~ (n) Section 76-6-302, aggravated robbery;

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

~~[(j)]~~ (p) (i) an offense other than ~~[those]~~ an offense listed in Subsections (7)(a) through ~~[(j)]~~ (o) involving the use of a dangerous weapon, as defined in Section 76-1-601, that is a felony~~];~~; and

(ii) the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon~~];~~; or

(q) a felony offense other than an offense listed in Subsections (7)(a) through (p) and the minor has been previously committed to the custody of the Division of Juvenile Justice Services for secure confinement.

Section 46. Section **78A-6-118** is amended to read:

**78A-6-118. Period of effect for a judgment, decree, or order by a juvenile court.**

(1) A judgment, order, or decree of the juvenile court ~~[does not operate after the minor becomes 21 years of age]~~ is no longer in effect after a minor is 21 years old, except ~~[for]~~:

~~[(1) orders]~~

(a) for an order of commitment to the Utah State Developmental Center or to the

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custody of the Division of Substance Abuse and Mental Health;

~~[(2) adoption orders]~~

(b) for an adoption under Subsection 78A-6-103(1); ~~[and]~~

~~[(3) orders]~~

(c) for an order permanently terminating the rights of a parent, guardian, or custodian~~;~~  
~~and permanent orders];~~

(d) for a permanent order of custody and ~~[guardianships.]~~ guardianship; and

(e) as provided in Subsection (2).

(2) If the juvenile court enters a judgment or order for a minor for whom the court has extended continuing jurisdiction over the minor's case until the minor is 25 years old under Section 78A-6-703. ~~5;4~~, the juvenile court's judgment or order is no longer in effect after the minor is 25 years old.

Section 47. Section **78A-6-120** is amended to read:

**78A-6-120. Continuing jurisdiction of juvenile court -- Period of and termination of jurisdiction -- Notice of discharge from custody of local mental health authority or Utah State Developmental Center -- Transfer of continuing jurisdiction to other district.**

~~[(1) Jurisdiction of a minor obtained by the court through adjudication under Section 78A-6-117 continues for purposes of this chapter until the minor becomes 21 years of age, unless terminated earlier in accordance with Sections 62A-7-404 and 78A-6-117.]~~

(1) Except as provided in Subsection (2), if the court retains jurisdiction over a minor's case under Section 78A-6-117, the court's jurisdiction over the minor's case continues until:

(a) the minor is 21 years old; or

(b) if the court extends jurisdiction over the minor's case until the minor is 25 years old under Section 78A-6-703. ~~7;4~~, the minor is 25 years old.

(2) (a) The ~~[continuing jurisdiction of the court]~~ court's continuing jurisdiction under Subsection (1) terminates:

(i) upon order of the court;

(ii) upon commitment to a secure facility;

(iii) upon commencement of proceedings in adult cases under Section 78A-6-1001; or

(iv) in accordance with Sections 62A-7-404 and 78A-6-117.

(b) The continuing jurisdiction of the court over a minor's case is not terminated;

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(i) by marriage[-]; or

(ii) when a minor commits an offense under municipal, state, or federal law under the jurisdiction of another court, and the minor is at least 18 years old at the time of the offense.

(c) Notwithstanding Subsection (2)(a)(ii), the court retains jurisdiction to make and enforce orders related to restitution until the Youth Parole Authority discharges the [~~youth offender~~] minor.

(3) When a minor has been committed by the court to the physical custody of a local mental health authority or [~~its~~] the local mental health authority's designee or to the Utah State Developmental Center, the local mental health authority or [~~its~~] the local mental health authority's designee or the superintendent of the Utah State Developmental Center shall give the court written notice of [~~its~~] the intention to discharge, release, or parole the minor not fewer than five days before the discharge, release, or parole.

(4) (a) [~~Jurisdiction over a minor~~] The court may transfer a case of a minor who is on probation or under protective supervision, or of a minor who is otherwise under the continuing jurisdiction of the court, [~~may be transferred by the court to the~~] to a court of another district, if the receiving court consents, or upon direction of the chair of the Board of Juvenile Court Judges.

(b) The receiving court has the same powers with respect to the minor that [~~it~~] the court would have if the proceedings originated in that court.

~~[(5) On and after July 1, 2018, a minor adjudicated under Section 78A-6-117 and who underwent a validated risk and needs assessment under Subsection 78A-6-117(1)(c)]~~

(5) A minor shall undergo a validated risk and needs assessment within seven days of the day on which an order terminating jurisdiction is issued[-] if:

(a) the minor is adjudicated under Section 78A-6-117; and

(b) the minor underwent a validated risk and needs assessment under Subsection 78A-6-117(1)(d).

Section 48. Section **78A-6-306** is amended to read:

### **78A-6-306. Shelter hearing.**

(1) A shelter hearing shall be held within 72 hours excluding weekends and holidays after any one or all of the following occur:

(a) removal of the child from the child's home by the division;

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- (b) placement of the child in the protective custody of the division;
- (c) emergency placement under Subsection 62A-4a-202.1(4);
- (d) as an alternative to removal of the child, a parent enters a domestic violence shelter

at the request of the division; or

(e) a "Motion for Expedited Placement in Temporary Custody" is filed under Subsection 78A-6-106(4).

(2) If one of the circumstances described in Subsections (1)(a) through (e) occurs, the division shall issue a notice that contains all of the following:

- (a) the name and address of the person to whom the notice is directed;
- (b) the date, time, and place of the shelter hearing;
- (c) the name of the child on whose behalf a petition is being brought;
- (d) a concise statement regarding:
  - (i) the reasons for removal or other action of the division under Subsection (1); and
  - (ii) the allegations and code sections under which the proceeding has been instituted;
- (e) a statement that the parent or guardian to whom notice is given, and the child, are

entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided in accordance with Title 78B, Chapter 22, Indigent Defense Act; and

(f) a statement that the parent or guardian is liable for the cost of support of the child in the protective custody, temporary custody, and custody of the division, and the cost for legal counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial ability of the parent or guardian.

(3) The notice described in Subsection (2) shall be personally served as soon as possible, but no later than one business day after removal of the child from the child's home, or the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection 78A-6-106(4), on:

- (a) the appropriate guardian ad litem; and
- (b) both parents and any guardian of the child, unless the parents or guardians cannot

be located.

(4) The following persons shall be present at the shelter hearing:

- (a) the child, unless it would be detrimental for the child;

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(b) the child's parents or guardian, unless the parents or guardian cannot be located, or fail to appear in response to the notice;

(c) counsel for the parents, if one is requested;

(d) the child's guardian ad litem;

(e) the caseworker from the division who is assigned to the case; and

(f) the attorney from the attorney general's office who is representing the division.

(5) (a) At the shelter hearing, the court shall:

(i) provide an opportunity to provide relevant testimony to:

(A) the child's parent or guardian, if present; and

(B) any other person having relevant knowledge; and

(ii) subject to Section 78A-6-305, provide an opportunity for the child to testify.

(b) The court:

(i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile Procedure;

(ii) shall hear relevant evidence presented by the child, the child's parent or guardian, the requesting party, or their counsel; and

(iii) may in its discretion limit testimony and evidence to only that which goes to the issues of removal and the child's need for continued protection.

(6) If the child is in the protective custody of the division, the division shall report to the court:

(a) the reason why the child was removed from the parent's or guardian's custody;

(b) any services provided to the child and the child's family in an effort to prevent removal;

(c) the need, if any, for continued shelter;

(d) the available services that could facilitate the return of the child to the custody of the child's parent or guardian; and

(e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the child or friends of the child's parents may be able and willing to accept temporary placement of the child.

(7) The court shall consider all relevant evidence provided by persons or entities authorized to present relevant evidence pursuant to this section.

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(8) (a) If necessary to protect the child, preserve the rights of a party, or for other good cause shown, the court may grant no more than one continuance, not to exceed five judicial days.

(b) A court shall honor, as nearly as practicable, the request by a parent or guardian for a continuance under Subsection (8)(a).

(c) Notwithstanding Subsection (8)(a), if the division fails to provide the notice described in Subsection (2) within the time described in Subsection (3), the court may grant the request of a parent or guardian for a continuance, not to exceed five judicial days.

(9) (a) If the child is in the protective custody of the division, the court shall order that the child be returned to the custody of the parent or guardian unless it finds, by a preponderance of the evidence, consistent with the protections and requirements provided in Subsection 62A-4a-201(1), that any one of the following exists:

(i) subject to Subsection (9)(b)(i), there is a serious danger to the physical health or safety of the child and the child's physical health or safety may not be protected without removing the child from the custody of the child's parent;

(ii) (A) the child is suffering emotional damage that results in a serious impairment in the child's growth, development, behavior, or psychological functioning;

(B) the parent or guardian is unwilling or unable to make reasonable changes that would sufficiently prevent future damage; and

(C) there are no reasonable means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;

(iii) there is a substantial risk that the child will suffer abuse or neglect if the child is not removed from the custody of the child's parent or guardian;

(iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited by a:

(A) parent or guardian;

(B) member of the parent's household or the guardian's household; or

(C) person known to the parent or guardian;

(v) the parent or guardian is unwilling to have physical custody of the child;

(vi) the child is without any provision for the child's support;

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(vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the child;

(viii) (A) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;

(B) the whereabouts of the parent or guardian are unknown; and

(C) reasonable efforts to locate the parent or guardian are unsuccessful;

(ix) subject to Subsections 78A-6-105[(39)](40)(b) and 78A-6-117(2) and Section 78A-6-301.5, the child is in immediate need of medical care;

(x) (A) the physical environment or the fact that the child is left unattended beyond a reasonable period of time poses a threat to the child's health or safety; and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would remove the threat;

(xi) (A) the child or a minor residing in the same household has been neglected; and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would prevent the neglect;

(xii) the parent, guardian, or an adult residing in the same household as the parent or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation was located in the residence or on the property where the child resided;

(xiii) (A) the child's welfare is substantially endangered; and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would remove the danger; or

(xiv) the 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) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is established if:

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(A) a court previously adjudicated that the child suffered abuse, neglect, or dependency involving the parent; and

(B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

(ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly allowed the child to be in the physical care of a person after the parent received actual notice that the person physically abused, sexually abused, or sexually exploited the child, that fact constitutes prima facie evidence that there is a substantial risk that the child will be physically abused, sexually abused, or sexually exploited.

(10) (a) (i) The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from the child's home and whether there are available services that would prevent the need for continued removal.

(ii) If the court finds that the child can be safely returned to the custody of the child's parent or guardian through the provision of those services, the court shall place the child with the child's parent or guardian and order that those services be provided by the division.

(b) In making the determination described in Subsection (10)(a), and in ordering and providing services, the child's health, safety, and welfare shall be the paramount concern, in accordance with federal law.

(11) Where the division's first contact with the family occurred during an emergency situation in which the child could not safely remain at home, the court shall make a finding that any lack of preplacement preventive efforts was appropriate.

(12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, return a child to the child's home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

(13) The court may not order continued removal of a child solely on the basis of educational neglect as defined in Section 78A-6-105, truancy, or failure to comply with a court order to attend school.

(14) (a) Whenever a court orders continued removal of a child under this section, the court shall state the facts on which that decision is based.

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(b) If no continued removal is ordered and the child is returned home, the court shall state the facts on which that decision is based.

(15) If the court finds that continued removal and temporary custody are necessary for the protection of a child pursuant to Subsection (9)(a), the court shall order continued removal regardless of:

- (a) any error in the initial removal of the child;
- (b) the failure of a party to comply with notice provisions; or
- (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

Section 49. Section **78A-6-312** is amended to read:

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

- (1) The court may:
  - (a) make any of the dispositions described in Section 78A-6-117;
  - (b) place the minor in the custody or guardianship of any:
    - (i) individual; or
    - (ii) public or private entity or agency; or
    - (c) order:
      - (i) protective supervision;
      - (ii) family preservation;
      - (iii) subject to Subsections (12)(b), 78A-6-105[(39)](40), and 78A-6-117(2) and Section 78A-6-301.5, medical or mental health treatment;
      - (iv) sibling visitation; or
      - (v) other services.
- (2) Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the division, the court shall first:
  - (a) establish a primary permanency plan for the minor; and
  - (b) determine whether, in view of the primary permanency plan, reunification services are appropriate for the minor and the minor's family, pursuant to Subsections (21) through (23).
- (3) Subject to Subsections (6) and (7), if the court determines that reunification services are appropriate for the minor and the minor's family, the court shall provide for reasonable parent-time with the parent or parents from whose custody the minor was removed,

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

(4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the offending parent or parents.

(5) In all cases, the minor's health, safety, and welfare shall be the court's paramount concern in determining whether reasonable efforts to reunify should be made.

(6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless the court makes a finding that it is necessary to deny parent-time in order to:

- (a) protect the physical safety of the minor;
- (b) protect the life of the minor; or
- (c) prevent the minor from being traumatized by contact with the parent due to the

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

(7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a parent's failure to:

- (a) prove that the parent has not used legal or illegal substances; or
- (b) comply with an aspect of the child and family plan that is ordered by the court.

(8) (a) In addition to the primary permanency plan, the court shall establish a concurrent permanency plan that shall include:

(i) a representative list of the conditions under which the primary permanency plan will be abandoned in favor of the concurrent permanency plan; and

(ii) an explanation of the effect of abandoning or modifying the primary permanency plan.

(b) In determining the primary permanency plan and concurrent permanency plan, the court shall consider:

(i) the preference for kinship placement over nonkinship placement;

(ii) the potential for a guardianship placement if the parent-child relationship is legally terminated and no appropriate adoption placement is available; and

(iii) the use of an individualized permanency plan, only as a last resort.

(9) A permanency hearing shall be conducted in accordance with Subsection 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if

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something other than reunification is initially established as a minor's primary permanency plan.

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

(b) The court is not limited to the terms of the concurrent permanency plan in the event that the primary permanency plan is abandoned.

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

(i) 30 days after the day on which the court makes the determination described in this Subsection (10)(c); or

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

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

(b) In providing the services described in Subsection (11)(a), the minor's health, safety, and welfare shall be the division's paramount concern, and the court shall so order.

(12) (a) The court shall:

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

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

(iii) identify verbally on the record, or in a written document provided to the parties, the responsibilities described in Subsection (12)(a)(ii), for the purpose of assisting in any future determination regarding the provision of reasonable efforts, in accordance with state and federal law.

(b) If the parent is in a substance use disorder treatment program, other than a certified drug court program:

(i) the court may order the parent to submit to supplementary drug or alcohol testing in

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addition to the testing recommended by the parent's substance use disorder program based on a finding of reasonable suspicion that the parent is abusing drugs or alcohol; and

(ii) the court may order the parent to provide the results of drug or alcohol testing recommended by the substance use disorder program to the court or division.

(13) (a) The time period for reunification services may not exceed 12 months from the date that the minor was initially removed from the minor's home, unless the time period is extended under Subsection 78A-6-314(7).

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

(14) (a) If reunification services are ordered, the court may terminate those services at any time.

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

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

(ii) complete whatever steps are necessary to finalize the permanent placement of the minor.

(15) Any physical custody of the minor by the parent or a relative during the period described in Subsections (11) through (14) does not interrupt the running of the period.

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

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

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

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

(a) the court shall terminate reunification services; and

(b) the division shall petition the court for termination of parental rights.

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

- (a) practicable; and
- (b) in accordance with the best interest of the minor.

(19) When a child is under the custody of the division and has been separated from a sibling due to foster care or adoptive placement, a court may order sibling visitation, subject to the division obtaining consent from the sibling's legal guardian, according to the court's determination of the best interests of the child for whom the hearing is held.

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

(b) The court may determine that:

(i) efforts to reunify a minor with the minor's family are not reasonable or appropriate, based on the individual circumstances; and

(ii) reunification services should not be provided.

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

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

(a) the whereabouts of the parents are unknown, based upon a verified affidavit indicating that a reasonably diligent search has failed to locate the parent;

(b) subject to Subsection (22)(a), the parent is suffering from a mental illness of such magnitude that it renders the parent incapable of utilizing reunification services;

(c) the minor was previously adjudicated as an abused child due to physical abuse, sexual abuse, or sexual exploitation, and following the adjudication the minor:

(i) was removed from the custody of the minor's parent;

(ii) was subsequently returned to the custody of the parent; and

(iii) is being removed due to additional physical abuse, sexual abuse, or sexual

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exploitation;

(d) the parent:

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

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

(A) murder or manslaughter of a child; or

(B) child abuse homicide;

(iii) committed sexual abuse against the child;

(iv) is a registered sex offender or required to register as a sex offender; or

(v) (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;

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

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

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

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

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

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

(k) except as provided in Subsection (22)(b), with respect to a parent who is the child's birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was exposed to an illegal or prescription drug that was abused by the child's mother while the child was in utero, if the child was taken into division custody for that reason, unless the mother

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agrees to enroll in, is currently enrolled in, or has recently and successfully completed a substance use disorder treatment program approved by the department; or

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

(22) (a) The finding under Subsection (21)(b) shall be based on competent evidence from at least two medical or mental health professionals, who are not associates, establishing that, even with the provision of services, the parent is not likely to be capable of adequately caring for the minor within 12 months after the day on which the court finding is made.

(b) A judge may disregard the provisions of Subsection (21)(k) if the court finds, under the circumstances of the case, that the substance use disorder treatment described in Subsection (21)(k) is not warranted.

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

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

(b) the fact that the minor was abused while the parent was under the influence of drugs or alcohol;

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

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

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

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

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

(24) (a) If reunification services are not ordered pursuant to Subsections (20) through (22), and the whereabouts of a parent become known within six months after the day on which the out-of-home placement of the minor is made, the court may order the division to provide reunification services.

(b) The time limits described in Subsections (2) through (18) are not tolled by the parent's absence.

(25) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable

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services unless the court determines that those services would be detrimental to the minor.

(b) In making the determination described in Subsection (25)(a), the court shall consider:

- (i) the age of the minor;
- (ii) the degree of parent-child bonding;
- (iii) the length of the sentence;
- (iv) the nature of the treatment;
- (v) the nature of the crime or illness;
- (vi) the degree of detriment to the minor if services are not offered;
- (vii) for a minor 10 years old or older, the minor's attitude toward the implementation of family reunification services; and
- (viii) any other appropriate factors.

(c) Reunification services for an incarcerated parent are subject to the time limitations imposed in Subsections (2) through (18).

(d) Reunification services for an institutionalized parent are subject to the time limitations imposed in Subsections (2) through (18), unless the court determines that continued reunification services would be in the minor's best interest.

(26) If, pursuant to Subsections (21)(b) through (l), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

Section 50. Section **78A-6-601** is amended to read:

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

~~[(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 is under 21 years of age and was less than 18 years of age at the time of committing the alleged offense, that 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.]~~

(1) (a) 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 old and was younger

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than 18 years old at the time of committing the alleged offense, the district or justice court shall transfer the case to the juvenile court with all the papers, documents, and transcripts of any testimony.

(b) (i) Notwithstanding Subsection (1)(a), a district court may not transfer an offense that is:

(A) filed in the district court in accordance with Section 78A-6-703.2; or

(B) transferred to the district court in accordance with Section 78A-6-703.475.

(ii) Notwithstanding Subsection (1)(a), a justice court may decline to transfer an offense for which the justice court has original jurisdiction under Subsection 78A-7-106(2).

(2) The district court or justice court making the transfer shall:

(a) 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~~]

(b) 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.

(3) The juvenile court shall then proceed as provided in this chapter.

Section 51. 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~~] Section 78A-6-703.3.

(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~~] 24 hours. 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

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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).

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

(A) is referred with a misdemeanor, infraction, or status offense;

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

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

(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) 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)(e).

(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~~] prosecuting attorney 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~~] prosecuting attorney 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;

(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

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(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~~] adjustment in accordance with Subsection (2)(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.

(g) If a [~~prosecutor~~] prosecuting attorney 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 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~~] prosecuting attorney 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) subject to Subsection (2)(i), file a petition with the court.

(h) Notwithstanding Subsection (2)(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 adjudication beyond a reasonable doubt; and

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

(i) Failure to pay a fine or fee may not serve as a basis for filing of a petition under Subsection (2)(g)(iii) if the minor has substantially complied with the other conditions agreed upon in accordance with Subsection (2)(e) or those 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~~] prosecuting attorney review a referral in accordance with Subsection (2)(g) if:

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(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).

(l) If the [prosecutor] prosecuting attorney 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] prosecuting attorney 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) Any failure to comply with the time deadline on a formal referral may not be the basis of dismissing the formal referral.]~~

Section 52. Section **78A-6-603** is amended to read:

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**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~~].

(2) 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;

(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)~~ (3) A citation shall be submitted to the court within five days of issuance.

~~(3)~~ (4) 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

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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)]~~ (5) 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)]~~ (6) A citation received by the court beyond the time designated in Subsection ~~[(2)]~~(3) 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) 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 to the ~~[prosecutor]~~ prosecuting attorney or the ~~[juvenile]~~ court in accordance with Section 53G-8-211.

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(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.

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

~~[(10)]~~ (9) (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] the citation's issuance.

~~[(11)]~~ (10) 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)]~~ (11) When a citation is issued 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.

Section 53. Section **78A-6-703.1** is enacted to read:

### **78A-6-703.1. Definitions.**

As used in this part:

~~{~~ ~~(1) "Lesser offense or offense" means any offense that is not a qualifying offense.~~

~~}~~ ~~(~~1~~)~~ "Qualifying offense" means an offense described in Subsection 78A-6-703.3(1)

or (2)(b).

(2) "Separate offense" means any offense that is not a qualifying offense.

Section 54. Section **78A-6-703.1** ~~is~~ is enacted to read:

### **78A-6-703.2. Criminal information for a minor in district court.**

(1) If a prosecuting attorney charges a minor with aggravated murder under Section 76-5-202 or murder under Section 76-5-203, the prosecuting attorney shall file a criminal

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information in the district court if the minor was the principal actor in an offense and the information alleges:

(a) the minor was 16 or 17 years old at the time of the offense; and

(b) the offense for which the minor is being charged is:

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

(ii) Section 76-5-203, murder.

(2) If the prosecuting attorney files a criminal information in the district court in accordance with Subsection (1), the district court shall try the minor as an adult, except:

(a) the minor is not subject to a sentence of death in accordance with Subsection 76-3-206(2)(b); and

(b) the minor is not subject to a sentence of life without parole in accordance with Subsection 76-3-206(2)(b) or 76-3-207.5(3) or Section 76-3-209.

(3) Except for a minor who is subject to the authority of the Board of Pardons and Parole, a minor shall be held in a juvenile detention facility until the district court determines where the minor will be held until the time of trial if:

(a) the minor is 16 or 17 years old; and

(b) the minor is arrested for aggravated murder or murder.

(4) In considering where a minor will be detained until the time of trial, the district court shall consider:

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

(f) the physical maturity of the minor;

(g) the current mental state of the minor as evidenced by relevant mental health or a psychological assessment or screening that is made available to the court; and

(h) any other factors that the court considers relevant.

(5) A minor ordered to a juvenile detention facility under Subsection (4) shall remain

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in the facility:

(a) until released by the district court; or

(b) if convicted, until sentencing.

(6) If a minor is held in a juvenile detention facility under Subsection (4), the court

shall:

(a) advise the minor of the right to bail; and

(b) set initial bail in accordance with Title 77, Chapter 20, Bail.

(7) If the minor ordered to a juvenile detention facility under Subsection (4) attains the age of 18 years, the minor shall be transferred within 30 days to an adult jail until:

(a) released by the district court judge; or

(b) if convicted, sentencing.

(8) If minor is ordered to a juvenile detention facility under Subsection (4) and the minor's conduct or condition endangers the safety or welfare of others in the juvenile detention facility may, the court may find that the minor shall be detained in another place of confinement considered appropriate by the court, including a jail or an adult facility for pretrial confinement.

(9) If a minor is charged for aggravated murder or murder in the district court under this section, and all charges for aggravated murder or murder result in an acquittal, a finding of not guilty, or a dismissal:

(a) the juvenile court gains jurisdiction over all other offenses committed by the minor;

and

(b) the Division of Juvenile Justice Services gains jurisdiction over the minor.

Section 55. Section 78A-6-703.3 is enacted to read:

**78A-6-703.3. Criminal information for a minor in juvenile court.**

Notwithstanding Section 78A-6-602, if a prosecuting attorney charges a minor with a felony, the prosecuting attorney may file a criminal information in the court if the minor was a principal actor in an offense and the information alleges:

(1) (a) the minor was 16 or 17 years old at the time of the offense; and

(b) the offense for which the minor is being charged is a felony violation of:

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

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

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

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

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

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

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

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

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

(~~viii~~x) an offense other than ~~those~~an offense listed in Subsections (1)(b)(i) through (~~vii~~ix) involving the use of a dangerous weapon:

(A) if the offense would be a felony had an adult committed the offense; and

(B) the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon that would have been a felony if committed by an adult; or

(2) (a) the minor was 14 ~~or 15~~ years old ~~{or older}~~ at the time of the offense; and

(b) the offense for which the minor is being charged is a felony violation of:

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

(ii) Section 76-5-203, murder or attempted murder.

Section ~~{55}~~56. Section 78A-6-703.~~{5}~~4 is enacted to read:

**78A-6-703.~~{5}~~4. Extension of juvenile court jurisdiction -- Procedure.**

(1) At the time that a prosecuting attorney charges a minor who is 14 years old or older with a felony, either party may file a motion to extend the ~~juvenile~~ court's continuing jurisdiction over the minor's case until the minor is 25 years old if:

(a) the minor was the principal actor in the offense; and

(b) the petition or criminal information alleges 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;

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

(x) (A) an offense other than the offenses listed in Subsections (1)(b)(i) through (ix) involving the use of a dangerous weapon that would be a felony if committed by an adult; and

(B) the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon that would have been a felony if committed by an adult.

(2) (a) Notwithstanding Subsection (1), either party may file a motion to extend the court's continuing jurisdiction after a determination by the court that the minor will not be bound over to the district court under Section 78A-6-703. ~~47~~5.

(3) The court shall make a determination on a motion under Subsection (1) or (2) at the time of disposition.

(4) The court shall extend the continuing jurisdiction over the minor's case until the minor is 25 years old if the court finds, by a preponderance of the evidence, that extending continuing jurisdiction is in the best interest of the minor and the public.

(5) In considering whether it is in the best interest of the minor and the public for the court to extend jurisdiction over the minor's case until the minor is 25 years old, the court shall consider and base the court's decision on:

(a) whether the protection of the community requires an extension of jurisdiction beyond the age of 21;

(b) the extent to which the minor's actions in the offense were committed in an aggressive, violent, premeditated, or willful manner;

(c) the minor's mental, physical, educational, trauma, and social history; and

(d) the criminal record and previous history of the minor.

(6) The amount of weight that each factor in Subsection (5) is given is in the court's discretion.

(7) (a) The court may consider written reports and other materials relating to the minor's mental, physical, educational, trauma, and social history.

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

(8) A minor may testify under oath, call witnesses, cross-examine witnesses, and present evidence on the factors described in Subsection (5).

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Section ~~56~~57. Section 78A-6-703.~~77~~5 is enacted to read:

### 78A-6-703.~~77~~5. Preliminary hearing.

(1) If a prosecuting attorney files a criminal information in accordance with Section 78A-6-703.3, the court shall conduct a preliminary hearing to determine whether a minor should be bound over to the district court for a qualifying offense.

(2) At the preliminary hearing under Subsection (1), the prosecuting attorney shall have the burden of establishing:

(a) probable cause to believe that a qualifying offense was committed and the minor committed that offense; and

(b) by a preponderance of the evidence, that it is contrary to the best interests of the minor and the public for the juvenile court to retain jurisdiction over the offense.

(3) In making a determination under Subsection (2)(b), the court shall consider and make findings on:

(a) the seriousness of the qualifying offense and whether the protection of the community requires that the minor is detained beyond the amount of time allowed under Subsection 78A-6-117(2)(h), or beyond the age of continuing jurisdiction that the court may exercise under Section 78A-6-703.~~57~~4;

(b) the extent to which the minor's actions in the qualifying offense were committed in an aggressive, violent, premeditated, or willful manner;

(c) the minor's mental, physical, educational, trauma, and social history;

(d) the criminal record or history of the minor; and

(e) the likelihood of the minor's rehabilitation by the use of services and facilities that are available to the court.

(4) The amount of weight that each factor in Subsection (3) is given is in the court's discretion.

(5) (a) The court may consider any written report or other material that relates to the minor's mental, physical, educational, trauma, and social history.

(b) Upon request by the minor, the minor's parent, guardian, or other interested party, the court shall require the person preparing the report, or other material, under Subsection (5)(a) to appear and be subject to direct and cross-examination.

(6) At the preliminary hearing under Subsection (1), a minor may testify under oath,

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call witnesses, cross-examine witnesses, and present evidence on the factors described in Subsection (3).

(7) (a) A proceeding before the court related to a charge filed under this part shall be conducted in conformity with the Utah Rules of Juvenile Procedure.

(b) Title 78B, Chapter 22, Indigent Defense Act, and Section 78A-6-115 are applicable to the preliminary hearing under this section.

(8) If the court finds that the prosecuting attorney has met the burden of proof under Subsection (2), the court shall bind the minor over to the district court to be held for trial.

(9) (a) If the court finds that a qualifying offense has been committed by a minor, but the prosecuting attorney has not met the burden of proof under Subsection (2)(b), the court shall:

(i) proceed upon the criminal information as if the information were a petition under Section 78A-6-602;

(ii) release or detain the minor in accordance with Section 78A-6-113; and

(iii) proceed with an adjudication for the minor in accordance with this chapter.

(b) If the court finds that the prosecuting attorney has not met the burden under Subsection (2) to bind a minor over to the district court, the prosecuting attorney may file a motion to extend the court's continuing jurisdiction over the minor's case until the minor is 25 years old in accordance with Section 78A-6-703. ~~5~~4.

(10) (a) A prosecuting attorney may charge a minor with a ~~flesser~~separate offense in the same criminal information as the qualifying offense if the qualifying offense and ~~flesser~~separate offense arise from a single criminal episode.

(b) If the prosecuting attorney charges a minor with a ~~flesser~~separate offense as described in Subsection (10)(a):

(i) the prosecuting attorney shall have the burden of establishing probable cause to believe that the ~~flesser~~separate offense was committed and the minor committed ~~that~~the separate offense; and

(ii) if the prosecuting attorney establishes probable cause for the ~~flesser~~separate offense under Subsection (10)(b)(i) and the court binds the minor over to the district court for the qualifying offense, the court shall also bind the minor over for the ~~flesser~~separate offense to the district court.

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(11) If a grand jury indicts a minor for a qualifying offense:

(a) the prosecuting attorney does not need to establish probable cause under Subsection (2)(a) for the qualifying offense and any ~~flesser~~ separate offense included in the indictment;  
and

(b) the court shall proceed with determining whether the minor should be bound over to the district court for the qualifying offense and any ~~flesser~~ separate offense included in the indictment in accordance with Subsections (2)(b) and (3).

(12) If a minor is bound over to the district court, the court shall:

(a) issue a criminal warrant of arrest;

(b) advise the minor of the right to bail; and

(c) set initial bail in accordance with Title 77, Chapter 20, Bail.

(13) (a) At the time that a minor is bound over to the district court, the court shall make an initial determination on where the minor is held until the time of trial.

(b) In determining where a minor is held until the time of trial, the court shall consider:

(i) the age of the minor;

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

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

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

(v) the physical maturity of the minor;

(vi) 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

(vii) any other factors that the court considers relevant.

(14) If the court orders a minor to be detained in a juvenile detention facility under Subsection (13), the minor shall remain in the facility:

(a) until released by a district court; or

(b) if convicted, until sentencing.

(15) If the court orders the minor to be detained in a juvenile detention facility under Subsection (13) and the minor attains the age of 18 while detained at the facility, the minor shall be transferred within 30 days to an adult jail to remain:

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(a) until released by the district court; or

(b) if convicted, until sentencing.

(16) Except as provided in Subsection (17) and Section 78A-6-705, if a minor is bound over to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the minor is terminated for the qualifying offense and any other ~~flesser~~ separate offense for which the minor is bound over.

(17) If a minor is bound over to the district court for a qualifying offense and the qualifying offense results in an acquittal, a finding of not guilty, or a dismissal:

(a) the juvenile court regains jurisdiction over any separate offense committed by the minor; and

(b) the Division of Juvenile Justice Services regains jurisdiction over the minor.

Section ~~57~~ 58. Section **78A-6-703. ~~9~~ 6** is enacted to read:

**78A-6-703. ~~9~~ 6. Criminal proceedings for a minor bound over to district court.**

(1) If the juvenile court binds a minor over to the district court in accordance with Section 78A-6-703. ~~7~~ 5, the prosecuting attorney shall try the minor as if the minor is an adult in the district court except:

(a) the minor is not subject to a sentence of death in accordance with Subsection 76-3-206(2)(b); and

(b) the minor is not subject to a sentence of life without parole in accordance with Subsections 76-3-206(2)(b) and 76-3-207.5(3) and Section 76-3-209.

(2) A minor who is bound over to the district court to answer as an adult is not entitled to a preliminary hearing in the district court.

(3) (a) If a minor is bound over to the district court by the juvenile court, the district court may reconsider the juvenile court's decision under Subsection 78A-6-703. ~~7~~ 5(13) as to where the minor is being held until trial.

(b) If the district court reconsiders the juvenile court's decision as to where the minor is held, the district court shall consider and make findings on:

(i) the age of the minor;

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

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

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

(v) the physical maturity of the minor;

(vi) 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

(vii) any other factors the court considers relevant.

(4) A minor who is ordered to a juvenile detention facility under Subsection (3) shall remain in the facility:

(a) until released by a district court; or

(b) if convicted, until sentencing.

(5) If the district court orders the minor to be detained in a juvenile detention facility under Subsection (3) and the minor attains the age of 18 while detained at the facility, the minor shall be transferred within 30 days to an adult jail to remain:

(a) until released by the district court; or

(b) if convicted, until sentencing.

(6) If a minor is bound over to the district court and detained in a juvenile detention facility, the district court may order the minor be detained in another place of confinement that is considered appropriate by the district court, including a jail or other place of pretrial confinement for adults if the minor's conduct or condition endangers the safety and welfare of others in the facility.

(7) If the district court obtains jurisdiction over a minor under Section 78A-6-703. ~~77~~5, the district court is not divested of jurisdiction for a qualifying offense or ~~lesser~~ a separate offense listed in the criminal information when the minor is allowed to enter a plea to, or is found guilty of, another offense in the same criminal information.

Section ~~58~~59. Section 78A-6-704 is amended to read:

### **78A-6-704. Appeals from bind over proceedings.**

(1) A minor may, as a matter of right, appeal from ~~[-(a)]~~ an order of the juvenile court binding the minor over to the district court ~~[as a serious youth offender pursuant to Section 78A-6-702; or (b) an order of the juvenile court, after certification proceedings pursuant to Section 78A-6-703, directing that the minor be held for criminal proceedings in the district court.]~~ under Section 78A-6-703. ~~77~~5.

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(2) The [~~prosecution~~] prosecuting attorney may, as a matter of right, appeal [~~from: (a)~~] an order of the juvenile court that a minor charged [~~as a serious youth offender pursuant to Section 78A-6-702 be held for trial~~] in accordance with Section 78A-6-703. ~~§73~~ will be adjudicated in the juvenile court[~~;~~ ~~or~~].

[~~(b) a refusal by the juvenile court, after certification proceedings pursuant to Section 78A-6-703, to order that a minor be held for criminal proceedings in the district court.~~]

Section ~~59~~ 60. Section **78A-6-705** is amended to read:

### **78A-6-705. Youth prison commitment.**

(1) (a) Before sentencing a minor, who [~~is under the jurisdiction of the district court under Section 78A-6-701, 78A-6-702, or 78A-6-703~~] was bound over to the district court under Section 78A-6-703. ~~§75~~ to be tried as an adult, to prison the district court shall request a report from the Division of Juvenile Justice Services regarding the potential risk to other [~~juveniles~~] minors if the minor were to be committed to the custody of the [~~division~~] Division of Juvenile Justice Services.

(b) The [~~division~~] Division of Juvenile Justice Services shall submit the requested report to the district court as part of the pre-sentence report or as a separate report.

(2) If, after receiving the report described in Subsection (1), the district court determines that probation is not appropriate and commitment to prison is an appropriate sentence, the district court shall order the minor committed to prison and the minor shall be provisionally housed in a secure facility operated by the Division of Juvenile Justice Services until the minor reaches 18 years [~~of age~~] old, unless released earlier from incarceration by the Board of Pardons and Parole.

(3) The district court may order the minor committed directly to the custody of the Department of Corrections if the court finds that:

(a) the minor would present an unreasonable risk to others while in the [~~division's~~] custody of the Division of Juvenile Justice Services;

(b) the minor has previously been committed to a prison for adult offenders; or

(c) housing the minor in a secure facility operated by the Division of Juvenile Justice Services would be contrary to the interests of justice.

(4) (a) The Division of Juvenile Justice Services shall adopt procedures by rule, [~~pursuant to~~] in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

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regarding the transfer of a minor provisionally housed in a division facility under Subsection (2) to the custody of the Department of Corrections.

(b) If, in accordance with ~~[those rules]~~ the rules adopted under Subsection (4)(a), the ~~[division]~~ Division of Juvenile Justice Services determines that housing the minor in a division facility presents an unreasonable risk to others or that it is not in the best interest of the minor, ~~[it]~~ the Division of Juvenile Justice Services shall transfer the physical custody of the minor to the Department of Corrections.

(5) (a) When a minor is committed to prison but ordered by a district court to be housed in a Division of Juvenile Justice Services facility under this section, the district court and the ~~[division]~~ Division of Juvenile Justice Services shall immediately notify the Board of Pardons and Parole so that the minor may be scheduled for a hearing according to board procedures.

(b) If a minor who is provisionally housed in a ~~[division]~~ Division of Juvenile Justice Services facility under this section has not been paroled or otherwise released from incarceration by the time the minor reaches 18 years ~~[of age, the division]~~ old, the Division of Juvenile Justice Services shall as soon as reasonably possible, but not later than when the minor reaches 18 years and 6 months ~~[of age]~~ old, transfer the minor to the physical custody of the Department of Corrections.

(6) Upon the commitment of a minor to the custody of the Division of Juvenile Justice Services or the Department of Corrections under this section, the Board of Pardons and Parole has authority over the minor for purposes of parole, pardon, commutation, termination of sentence, remission of fines or forfeitures, orders of restitution, and all other purposes authorized by law.

(7) The Youth Parole Authority may hold hearings, receive reports, or otherwise keep informed of the progress of a minor in the custody of the Division of Juvenile Justice Services under this section and may forward to the Board of Pardons and Parole any information or recommendations concerning the minor.

(8) Commitment of a minor under this section is a prison commitment for all sentencing purposes.

Section ~~60~~61. Section **78A-6-1107** is amended to read:

**78A-6-1107. Transfer of continuing jurisdiction to other district.**

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(1) ~~[Jurisdiction over]~~ If a minor is on probation or under protective supervision, or [of a minor who is otherwise] under the continuing jurisdiction of the court, ~~[may be transferred by the court]~~ the court may transfer the minor's case to [the] a court of another district, if the receiving court consents, or upon direction of the chair of the Board of Juvenile Court Judges.

(2) The receiving court has the same powers with respect to the minor that it would have if the proceedings originated in that court.

Section ~~{61}~~62. Section **78A-6-1108** is amended to read:

### **78A-6-1108. New hearings authorized -- Grounds and procedure.**

(1) A parent, guardian, ~~[or]~~ custodian, or attorney of ~~[any]~~ a child adjudicated under this chapter, ~~[or any]~~ a minor who is at least 18 years old, or an adult affected by a decree in a proceeding under this chapter~~;~~ may at any time petition the court for a new hearing on the ground that new evidence ~~[which]~~ has been discovered that:

(a) was not known ~~[and]~~;

(b) could not with due diligence have been made available at the original hearing; and ~~[which]~~

(c) might affect the decree~~[-has been discovered]~~.

(2) If it appears to the court that there is new evidence ~~[which]~~ that might affect ~~[its]~~ the court's decree, ~~[it]~~ the court shall order a new hearing, enter a decree, and make any disposition of the case warranted by all the facts and circumstances and the best interests of the minor.

(3) This section does not apply to a minor's case handled under ~~[the provisions of Section 78A-6-702]~~ Part 7, Transfer of Jurisdiction.

Section ~~{62}~~63. Section **78A-7-106** is amended to read:

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

(1) ~~[Justice courts have]~~ Except as otherwise provided by Subsection 78A-5-102(8), a justice court has original jurisdiction over class B and C misdemeanors, violation of ordinances, and infractions committed within [their] the justice 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]~~ Except for an offense for which the juvenile court ~~or the district court~~ has exclusive jurisdiction under Subsection 78A-5-102(10) or 78A-6-103(3), a justice court has

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original jurisdiction over the following offenses committed within ~~[their]~~ the justice 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:

(i) Title 23, Wildlife Resources Code of Utah;

(ii) Title 41, Chapter 1a, Motor Vehicle Act;

(iii) Title 41, Chapter 6a, Traffic Code, except Title 41, Chapter 6a, Part 5, Driving

Under the Influence and Reckless Driving;

(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, except Section 73-18-12;

(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)]~~ (3) 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

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

(B) as used in Subsection ~~[(4)]~~ (3)(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]~~ (4) If in a criminal case the defendant is 16 or 17 years old, a justice court judge may transfer [a criminal matter in which the defendant is a child] the case 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] defendant would be served by the continuing jurisdiction of the juvenile court~~[, subject to Section 78A-6-602].~~

~~[(6)]~~ (5) 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 ~~{63}~~64. Section **78B-6-105** is amended to read:

**78B-6-105. District court venue -- Jurisdiction of juvenile court -- Jurisdiction over nonresidents -- Time for filing.**

(1) Adoption proceedings shall be commenced by filing a petition with the clerk of the district court either:

(a) in the district where the prospective adoptive parent resides;

(b) if the prospective adoptive parent is not a resident of this state, in the district where:

(i) the adoptee was born;

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- (ii) the adoptee resides on the day on which the petition is filed; or
- (iii) a parent of the proposed adoptee resides on the day on which the petition is filed;

or

(c) with the juvenile court as provided in Subsection 78A-6-103~~(1)~~(2).

(2) All orders, decrees, agreements, and notices in the proceedings shall be filed with the clerk of the court where the adoption proceedings were commenced under Subsection (1).

(3) A petition for adoption:

(a) may be filed before the birth of a child;

(b) may be filed before or after the adoptee is placed in the home of the petitioner for the purpose of adoption; and

(c) shall be filed no later than 30 days after the day on which the adoptee is placed in the home of the petitioners for the purpose of adoption, unless:

(i) the time for filing has been extended by the court; or

(ii) the adoption is arranged by a child-placing agency in which case the agency may extend the filing time.

(4) (a) If a person whose consent for the adoption is required under Section 78B-6-120 or 78B-6-121 cannot be found within the state, the fact of the minor's presence within the state shall confer jurisdiction on the court in proceedings under this chapter as to such absent person, provided that due notice has been given in accordance with the Utah Rules of Civil Procedure.

(b) The notice may not include the name of:

(i) a prospective adoptive parent; or

(ii) an unmarried mother without her consent.

(5) Service of notice as provided in Subsection (6) shall vest the court with jurisdiction over the person served in the same manner and to the same extent as if the person served was served personally within the state.

(6) In the case of service outside the state, service completed not less than five days before the time set in the notice for appearance of the person served shall be sufficient to confer jurisdiction.

(7) Computation of periods of time not otherwise set forth in this section shall be made in accordance with the Utah Rules of Civil Procedure.

Section ~~64~~65. Repealer.

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This bill repeals:

Section 78A-6-701, Jurisdiction of district court.

Section 78A-6-702, Serious youth offender -- Procedure.

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

Section ~~65~~66. 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.

Section 67. Coordinating H.B. 384 with H.B. 262 -- Substantive and technical amendments -- Omitting substantive changes.

If this H.B. 384 and H.B. 262, Juvenile Delinquency Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication as follows:

(1) by amending Subsection 76-10-105(2) (Superseded 07/01/20) to read:

"(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 under Section 53G-8-211. 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.";

(2) by amending Subsection 76-10-105(2) (Effective 07/01/20) to read:

"(2) (a) An individual under the age of 18 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 under Section 53G-8-211.

(b) If a violation under this section is adjudicated under Section 78A-6-117, the minor

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may be subject to the following:

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

[(b)] (ii) participation in a court-approved tobacco education program, which may include a participation fee.";

(3) by making the amendments to Section 78A-6-105 in this bill supersede the amendments to Section 78A-6-105 in H.B. 262;

(4) by making the amendments to Section 78A-6-116 in this bill supersede the amendments to Section 78A-6-116 in H.B. 262;

(5) by amending Section 78A-6-601 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 is under 21 years of age and was less than 18 years of age at the time of committing the alleged offense, that 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.]

(1) (a) 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 old and was younger than 18 years old at the time of committing the alleged offense, the district court or justice court shall transfer the case to the juvenile court with all the papers, documents, and transcripts of any testimony.

(b) (i) Notwithstanding Subsection (1)(a), a district court may not transfer an offense that is:

(A) filed in the district court in accordance with Section 78A-6-703.2; or

(B) transferred to the district court in accordance with Section 78A-6-703.5.

(ii) Notwithstanding Subsection (1)(a), a justice court may decline to transfer an offense for which the justice court has original jurisdiction under Subsection 78A-7-106(2).

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

(i) order the [person] individual to be taken immediately to the juvenile court or to a

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place of detention designated by the juvenile court~~[-, or shall]~~; or

(i) 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. ~~[The]~~

(b) If the alleged offense under Subsection (1) occurred before the individual was 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;

(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.

(c) If the 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-6-102(9) and 78A-7-106(2).";

(6) by amending Section 78A-6-602 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, 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.

(b) If the arrested minor is taken to a detention facility, ~~[the formal referral shall be~~

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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.] 24 hours.

[(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).]

(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;

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(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;

(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 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

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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 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).

(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~~

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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 Title 76, Chapter 9, Part 7, Miscellaneous Provisions:]

[(iii)] (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.

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(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 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) (i) Notwithstanding Subsection (10)(d), a juvenile court judge may extend a nonjudicial adjustment beyond the 180 days permitted under Subsection (10)(d) for a minor who is offered a nonjudicial adjustment under Subsection (7)(b) for a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, or is referred under Subsection (11)(b)(ii) for a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, that the minor committed before the minor was 12 years old, if the judge determines that:

(A) the nonjudicial adjustment requires specific treatment for the sexual offense;

(B) the treatment cannot be completed within 180 days after the day on which the

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minor entered into the nonjudicial adjustment; and

(C) the treatment is necessary based on a clinical assessment that is developmentally appropriate for the minor.

(ii) If a juvenile court judge extends a minor's nonjudicial adjustment under Subsection (10)(e)(i), the judge may extend the nonjudicial adjustment until the minor completes the treatment under this Subsection (10)(e), but the judge may only grant each extension for 90 days at a time.

(f) 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;]

[(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.]

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~~[(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 838 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.~~

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

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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).

[(t)] (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.]

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~~[(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.]"~~;

~~(7) by deleting Subsection 78A-6-602.5(3) enacted by H.B. 262; and~~

~~(8) by making the amendments to Section 78A-6-603 in H.B. 262 supersede the amendments to Section 78A-6-603 in this bill.~~

~~Section 68. Coordinating H.B. 384 with H.B. 291 -- Substantive and technical amendments.~~

~~If this H.B. 384 and H.B. 291, Human Trafficking Amendments, both pass and become law, it is the intent of the Legislature that the amendments to Section 76-10-1302 in H.B. 291 supersede the amendments to Section 76-10-1302 in this bill when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication.~~