

Representative Marsha Judkins proposes the following substitute bill:

JUVENILE INTERROGATION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marsha Judkins

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses the questioning of minors who are in custody for an offense.

Highlighted Provisions:

This bill:

- ▶ addresses the rights of minors who are in custody and subject to questioning for an offense;
- ▶ addresses the waiver of certain rights by children;
- ▶ addresses the knowingness, intelligentsness, and voluntariness of waivers by children;
- ▶ clarifies a minor's waiver to the right to counsel for court proceedings; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-22-204, as enacted by Laws of Utah 2019, Chapter 326



26 ENACTS:

27 [78A-6-112.5](#), Utah Code Annotated 1953



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

30 Section 1. Section [78A-6-112.5](#) is enacted to read:

31 **[78A-6-112.5. Rights of minor in custody for offense -- Waiver of child's rights --](#)**
32 **Interview of minor in facility -- Presumption.**

33 (1) If a minor is in custody and subject to questioning for an offense, the minor must be
34 informed of the minor's constitutional rights, including the right to:

35 (a) remain silent;

36 (b) be advised that any statement or admission by the minor can be used against the
37 minor in a court proceeding;

38 (c) be represented by an attorney during any questioning of the minor; and

39 (d) be appointed an attorney in accordance with Title 78B, Chapter 22, Part 2,

40 Appointment of Counsel.

41 (2) If a child is in custody and subject to questioning for an offense:

42 (a) the child has the right to have the child's parent or guardian present during any
43 questioning of the child; and

44 (b) the child may not be questioned, unless:

45 (i) the child has been informed of the child's rights under Subsections (1) and (2)(a);

46 and

47 (ii) the child waives the child's rights in accordance with Subsection (3).

48 (3) A child may only waive a child's rights described in Subsections (1) and (2)(a) if:

49 (a) the child knowingly, intelligently, and voluntarily waives the child's rights; and

50 (b) (i) if a guardian ad litem has been appointed to the child, the guardian ad litem
51 consents to the child's waiver as described in Section [62A-4a-415](#);

52 (ii) (A) the child is given an opportunity to consult with the child's parent or guardian;

53 (B) the child's parent or guardian has legal custody of the child;

54 (C) the child's parent or guardian knowingly, intelligently, and voluntarily consents to
55 the child's waiver; and

56 (D) the child's parent or guardian has no interest adverse to the child, including that the

57 parent or guardian is not a victim or a codefendant of any offense alleged to have been
58 committed by the child;

59 (iii) if the child is appointed or retains an attorney, the child is given an opportunity to
60 consult with the child's attorney;

61 (iv) the child is emancipated as described in Section [78A-6-805](#);
62 (v) the child has misrepresented the child's age as being 18 years old or older and a
63 peace officer has relied on that misrepresentation in good faith; or

64 (vi) a peace officer or a law enforcement agency:

65 (A) makes reasonable efforts to contact the child's parent or guardian; and
66 (B) is unable to make contact within one hour after the time in which the child is taken
67 into custody.

68 (4) A waiver under Subsection (3) shall be in writing and signed by the child and the
69 child's parent or guardian if the child's parent or guardian consents to the waiver.

70 (5) If a minor is admitted to a detention facility under Section [78A-6-112](#), or the minor
71 is committed to a secure facility or a correctional facility as defined in Section [62A-7-101](#):

72 (a) the minor has a right to confer in private with the minor's counsel, the minor's
73 parent or guardian, or a member of the clergy; and

74 (b) the minor may not be interviewed about an offense that the minor is alleged to have
75 committed, unless:

76 (i) (A) the minor has waived the minor's rights described in Subsection (1); or
77 (B) if the minor is a child, the minor has waived the minor's rights described in
78 Subsection (1) and (2)(a) in accordance with this section;

79 (ii) if the minor has been appointed a guardian ad litem, the minor's guardian ad litem
80 has consented to an interview of the minor as described in Section [62A-4a-415](#); and

81 (iii) if the minor has appointed or retained an attorney, the minor's attorney has
82 consented to an interview of the minor.

83 (c) Subsection (5)(b) does not apply to a juvenile probation officer, or a staff member
84 of a detention facility, unless the juvenile probation officer or the staff member is questioning
85 the minor on behalf of a peace officer or a law enforcement agency.

86 (6) (a) If a child waives the child's rights described in Subsection (1) and (2)(a) in
87 accordance with Subsection (3)(b)(iv), (v), or (vi), the child is presumed to:

88 (i) not be adequately mature and experienced to waive the child's rights knowingly,
89 intelligently, and voluntarily; and

90 (ii) be unable to understand the child's rights.

91 (b) The presumption under Subsection (6)(a) may only be overcome by a
92 preponderance of the evidence showing that the child had the ability to comprehend and waive
93 the child's rights.

94 (7) A minor may only waive a minor's right to be represented by counsel at all stages of
95 court proceedings in accordance with Section [78B-22-204](#).

96 Section 2. Section **78B-22-204** is amended to read:

97 **78B-22-204. Waiver by a minor.**

98 A minor may not waive the right to [~~counsel before~~] be represented by counsel at all
99 stages of court proceedings unless:

100 (1) the minor has consulted with counsel; and

101 (2) the court is satisfied that in light of the minor's unique circumstances and attributes:

102 (a) the minor's waiver is knowing and voluntary; and

103 (b) the minor understands the consequences of the waiver.