

HB0158S01 compared with HB0158

~~text~~ shows text that was in HB0158 but was deleted in HB0158S01.

text shows text that was not in HB0158 but was inserted into HB0158S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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~~in custody for an offense.

Highlighted Provisions:

This bill:

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

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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

ENACTS:

78A-6-112.5, Utah Code Annotated 1953

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

Section 1. Section 78A-6-112.5 is enacted to read:

78A-6-112.5. Rights of {a} minor in custody for {an} offense -- Waiver of child's rights -- Interview of {a} minor in {a detention} facility -- Presumption.

(1) If a minor is {taken into}in custody {under this chapter}and subject to questioning for an offense, the minor {has a}must be informed of the minor's constitutional rights, including the right to:

(a) remain silent;

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

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

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

Appointment of Counsel{; and};

{c} if the minor is a child, have the minor's}2) If a child is in custody and subject to questioning for an offense:

(a) the child has the right to have the child's parent or guardian present during any questioning of the {minor};

(2) (a) If a minor who is 18 years old or older is taken into custody for an offense, the minor may not be questioned unless:

(i) the minor is advised of the minor's rights under Subsection (1);

(ii) the minor waives the minor's rights in accordance with Subsection (3); and

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~~(iii) if the minor does not waive the minor's right under Subsections (1)(c) and (d), the minor's appointed or retained attorney is present for the questioning of the minor;~~

~~(b) If a child is taken into custody for an offense, } child; and~~

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

~~(i) the child ~~is advised~~ has been informed of the child's rights under ~~Subsection~~ Subsections (1) and (2)(a); and~~

~~(ii) the child waives the child's rights in accordance with Subsection ~~(4)~~;~~

~~(iii) if the child does not waive the child's rights under Subsections (1)(c) and (d), the child's appointed or retained attorney is present for the questioning of the child; and~~

~~(iv) if the child does not waive the child's right to have the child's parent or guardian present during questioning under Subsection (1)(c), the child's parent or guardian is present for the questioning of the child.~~

~~(3) A minor who is 18 years old or older may only waive the minor's rights under Subsection (1) if the minor knowingly and voluntarily waives the minor's rights:~~

~~(4)3).~~

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

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

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

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

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

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

~~(~~C~~) D) the child's parent or guardian has no interest adverse to the child, including that the parent or guardian is not a victim or a codefendant of any offense alleged to have been committed by the child;~~

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

~~(iii) if a guardian ad litem has been appointed to the child;~~

~~(A) the child is given an opportunity to consult with the child's guardian ad litem; and~~

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~~(B) the guardian ad litem consents to any questioning of the child;~~

~~(iv) the child is emancipated as described in Section 78A-6-805;~~

~~(v) the child has misrepresented the child's age as being 18 years old or older and a peace officer has relied on that misrepresentation in good faith; or~~

~~(vi) a peace officer or a law enforcement agency ~~is unable~~;~~

(A) makes reasonable efforts to contact the child's parent or guardian; and

(B) is unable to make contact within ~~two hours~~ one hour after the time in which the child is taken into custody.

~~(5)4~~ A waiver under Subsection ~~(4)3~~ shall be in writing and signed by the child and the child's parent or guardian if the child's parent or guardian consents to the waiver.

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

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

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

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

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

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

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

~~(7)6~~ (a) If a child waives the child's rights ~~under~~ described in Subsection (1) and (2)(a) in accordance with Subsection ~~(4)3~~(b)(iv), (v), or (vi), the child is presumed to:

(i) not be adequately mature and experienced to ~~knowingly and voluntarily~~ waive the child's rights ~~under Subsection (1)~~ knowingly, intelligently, and voluntarily; and

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(ii) be unable to understand the child's rights ~~under Subsection (1)~~.

(b) The presumption under Subsection (~~7~~6)(a) may only be overcome by a preponderance of the evidence showing that the child had the ability to comprehend and waive the child's rights ~~under Subsection (1)~~.

~~(8)7~~ A minor may only waive a minor's right to be represented by counsel at all stages of court proceedings in accordance with Section 78B-22-204.

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

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

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

- (1) the minor has consulted with counsel; and
- (2) the court is satisfied that in light of the minor's unique circumstances and attributes:
 - (a) the minor's waiver is knowing and voluntary; and
 - (b) the minor understands the consequences of the waiver.