

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:

- ▶ defines "friendly adult";
- ▶ addresses the right of a child to have a parent, a legal guardian, or a friendly adult present when the child is in custody and subject to questioning;
- ▶ provides the requirements and exceptions to questioning a child who is in custody and subject to questioning;
- ▶ addresses the questioning of a minor in a detention facility, a secure facility, or a correctional facility;
- ▶ 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:



26 AMENDS:

27 **78B-22-204**, as enacted by Laws of Utah 2019, Chapter 326

28 ENACTS:

29 **78A-6-112.5**, Utah Code Annotated 1953

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

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

33 **78A-6-112.5. Interview of a child -- Presence of a parent, legal guardian, or other**
34 **adult -- Interview of minor in a facility.**

35 (1) As used in this section:

36 (a) "Friendly adult" means an adult:

37 (i) that has an established relationship with the child to the extent that the adult can
38 provide meaningful advice and concerned help to the child should the need arise; and

39 (ii) who is not hostile or adverse to the child's interest.

40 (b) "Friendly adult" does not include a parent or legal guardian of the child.

41 (2) If a child is in custody and subject to questioning for an offense, the child has the
42 right:

43 (a) to have the child's parent or legal guardian present during any questioning of the
44 child; or

45 (b) to have a friendly adult present during any questioning of the child if:

46 (i) there is reason to believe that the child's parent or legal guardian has abused or
47 threatened the child; or

48 (ii) the child's parent's or legal guardian's interest is adverse to the child's interest,
49 including that the parent or legal guardian is a victim or a codefendant of the offense alleged to
50 have been committed by the child.

51 (3) If a child is in custody and subject to questioning of an offense, the child may not
52 be interviewed unless:

53 (a) the child has been advised of the child's constitutional rights and the child's right to
54 have a parent or legal guardian, or a friendly adult if applicable under Subsection (2)(b),
55 present during the questioning;

56 (b) the child has waived the child's constitutional rights;

57 (c) except as provided in Subsection (4), the child's parent or legal guardian, or the
58 friendly adult if applicable under Subsection (2)(b), was present during the child's waiver under
59 Subsection (3)(b) and has given permission for the child to be questioned; and

60 (d) if the child is in the custody of the Division of Child and Family Services and a
61 guardian ad litem has been appointed for the child, the child's guardian ad litem has given
62 consent to an interview of the child as described in Section [62A-4a-215](#).

63 (4) A child's parent or legal guardian, or a friendly adult if applicable under Subsection
64 (2)(b), is not required to be present during the child's waiver under Subsection (3) or to give
65 permission to the questioning of the child if:

66 (a) the child is emancipated as described in Section [78A-6-805](#);

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

69 (c) a peace officer or a law enforcement agency:

70 (i) has made reasonable efforts to contact the child's parent or legal guardian, or a
71 friendly adult if applicable under Subsection (2)(b); and

72 (ii) has been unable to make contact within one hour after the time in which the child is
73 in custody.

74 (5) (a) If a minor is admitted to a detention facility under Section [78A-6-112](#), or the
75 minor is committed to a secure facility or a correctional facility as defined in Section
76 [62A-7-101](#), and is subject to questioning for an offense, the minor may not be questioned
77 unless:

78 (i) the minor has had a meaningful opportunity to consult with the minor's appointed or
79 retained attorney;

80 (ii) the minor waives the minor's constitutional rights after consultation with the
81 minor's appointed or retained attorney; and

82 (iii) the minor's appointed or retained attorney is present for the interview.

83 (b) Subsection (5)(a) 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 minor may only waive the minor's right to be represented by counsel at all stages
87 of court proceedings as described in Section [78B-22-204](#).

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

89 **78B-22-204. Waiver by a minor.**

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

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

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

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

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