

HB0158S02 compared with HB0158S01

~~{deleted text}~~ shows text that was in HB0158S01 but was deleted in HB0158S02.

inserted text shows text that was not in HB0158S01 but was inserted into HB0158S02.

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 custody for an offense.

Highlighted Provisions:

This bill:

- ▶ defines "friendly adult";
- ▶ addresses the ~~{rights of minors who are}~~ 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 ~~{ for an offense}~~;
- ▶ provides the requirements and exceptions to questioning a child who is in custody and subject to questioning;
- ▶ addresses the ~~{waiver of certain rights by children;~~
- ▶ ~~addresses the knowingness, intelligentness, and voluntariness of waivers by~~

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~~children}~~ 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:

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 minor in custody for offense -- Waiver of child's rights} Interview of a child -- Presence of a parent, legal guardian, or other adult --~~

~~Interview of minor in a facility{ -- Presumption.~~

~~———— (1) If a minor is in custody and subject to questioning for an offense, the minor 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};~~

~~(1) As used in this section:~~

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

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

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

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

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

~~(a) }, the child has the right:~~

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

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

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

~~(ii) the child waives the child's rights in accordance with Subsection (3);~~

~~(3) A child may only waive a child's rights 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 } or~~

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

(i) there is reason to believe that the child's parent or } guardian;

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

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

~~(D) legal guardian has abused or threatened the child; or~~

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

~~(iii);~~

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

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

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

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

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

~~(iv) in the custody of the Division of Child and Family Services and a guardian ad litem has been appointed for the child, the child's guardian ad litem has given consent to an interview of the child as described in Section 62A-4a-215.~~

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

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

(~~v~~)**b**) 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~~)**c**) a peace officer or a law enforcement agency:

(~~A~~)**i**) ~~makes~~ **has made** reasonable efforts to contact the child's parent or ~~guardian;~~ **and**

~~(B) is~~ legal guardian, or a friendly adult if applicable under Subsection (2)(b); and

(**ii**) **has been** unable to make contact within one hour after the time in which the child is ~~taken into~~ **in** custody.

(~~4~~) A waiver under Subsection (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.

~~(5)~~**5** (a) 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) ;~~ **and is subject to questioning for an offense,** the minor may not be ~~interviewed about an offense that the minor is alleged to have committed, unless:~~

(i) (A) **questioned unless:**

(i) the minor has ~~waived the minor's rights described in Subsection (1); or~~

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~~_____ (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 } had a meaningful opportunity to consult with the minor's appointed or retained {an attorney, the minor's attorney has consented to an interview of the minor:~~

~~_____ (c) attorney;~~

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

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

(b) Subsection (5)(~~f~~~~b~~~~a~~) 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.

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

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

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

~~_____ (b) The presumption under Subsection (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.~~

~~† (~~f~~~~7~~~~6~~) A minor may only waive ~~f~~~~a~~~~t~~the minor's right to be represented by counsel at all stages of court proceedings as described 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

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