

## HB0158S03 compared with HB0158S02

~~deleted text~~ shows text that was in HB0158S02 but was deleted in HB0158S03.

inserted text shows text that was not in HB0158S02 but was inserted into HB0158S03.

**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: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill addresses the ~~questioning~~interrogation 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~~interrogation;
- ▶ provides the requirements and exceptions to ~~questioning~~interrogating a child who is in custody and subject to ~~questioning~~interrogation;
- ▶ addresses the ~~questioning~~interrogation of a minor in a detention facility, a secure facility, or a correctional facility;

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- ▶ 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

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*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. Interview of a child -- Presence of a parent, legal guardian, or other adult -- Interview of minor in a facility.**

(1) As used in this section:

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

(~~fi~~A) 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

(~~fi~~B) who is not hostile or adverse to the child's interest.

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

(b) (i) "Interrogation" means any express questioning or any words or actions that are reasonably likely to elicit an incriminating response.

(ii) "Interrogation" does not include words or actions normally attendant to arrest and custody.

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

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

(b) to have a friendly adult present during ~~any questioning~~ an interrogation of the

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child if:

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

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

(3) If a child is in custody and subject to ~~questioning~~ interrogation of an offense, the child may not be ~~interviewed~~ interrogated 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~~ interrogation;

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

(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~~ interrogated; and

(d) if the child is 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~~ 62A-4a-415.

(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~~ interrogation of the child if:

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

(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

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

(i) has made reasonable efforts to contact the child's parent or 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 in custody.

(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

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62A-7-101, and is subject to ~~questioning~~ interrogation for an offense, the minor may not be ~~questioned~~ interrogated unless:

(i) the minor has had a meaningful opportunity to consult with the minor's appointed or retained 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~~ interrogation.

(b) Subsection (5)(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~~ interrogating the minor on behalf of a peace officer or a law enforcement agency.

(6) A minor may only waive the minor's right to be represented by counsel at all stages of court proceedings as described in 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.