

SB0102S01 compared with SB0102

~~deleted text~~ shows text that was in SB0102 but was deleted in SB0102S01.

inserted text shows text that was not in SB0102 but was inserted into SB0102S01.

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Senator Chris H. Wilson proposes the following substitute bill:

WIRELESS COMMUNICATION DEVICE USE IN A MOTOR VEHICLE

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Chris H. Wilson

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the use of a wireless communication device while operating a motor vehicle.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ defines "operate a motor vehicle" to include operating:
 - a moving motor vehicle; or
 - a motor vehicle stopped in compliance with a traffic-control device;
- ▶ prohibits an individual from using a wireless communication device to view or take

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a photograph while operating a motor vehicle;

- ▶ modifies provisions related to suspending an individual's driver license upon a conviction of using a wireless communication device while operating a motor vehicle;
- ▶ modifies the conduct that constitutes automobile homicide involving using a wireless communication device while operating a motor vehicle; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

41-6a-1716, as last amended by Laws of Utah 2021, Chapter 232

53-3-218, as last amended by Laws of Utah 2021, Chapter 120

53-3-402, as last amended by Laws of Utah 2015, Chapters 52 and 422

76-5-207.5, as last amended by Laws of Utah 2012, Chapter 193

80-6-712, as enacted by Laws of Utah 2021, Chapter 261

80-6-804, as last amended by Laws of Utah 2021, First Special Session, Chapter 2

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

Section 1. Section **41-6a-1716** is amended to read:

41-6a-1716. Prohibition on using a wireless communication device while operating a motor vehicle -- Exceptions -- Penalties.

(1) As used in this section:

~~[(a) "Handheld wireless communication device" means a handheld device used for the transfer of information without the use of electrical conductors or wires.]~~

~~[(b) "Handheld wireless communication device" includes a:]~~

~~[(i) wireless telephone;]~~

~~[(ii) text messaging device;]~~

~~[(iii) laptop; or]~~

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~~[(iv) any substantially similar communication device that is readily removable from the vehicle and is used to write, send, or read text or data through manual input.]~~

~~[(c) "Handheld wireless communication device" does not include a two-way radio device described in 47 C.F.R. Part 90, 95, or 97.]~~

(a) "Operate a motor vehicle" means to operate:

(i) a moving motor vehicle; or

(ii) a motor vehicle stopped in compliance with a traffic-control device.

(b) (i) "Wireless communication device" means an electronic device that is:

(A) readily removable from a vehicle; and

(B) used for the transfer of information without the use of electrical conductors or wires, including to write, send, or read text or data.

(ii) "Wireless communication device" does not include a two-way radio device described in 47 C.F.R. Part 90, 95, or 97, or a functional equivalent.

(2) Except as provided in Subsection (3), ~~[a person]~~ an individual may not use a ~~[handheld]~~ wireless communication device while operating a ~~[moving]~~ motor vehicle on a highway in this state to ~~[manually]~~:

(a) write, send, or read a written communication, including:

(i) a text message;

(ii) an instant message; or

(iii) electronic mail;

(b) dial a phone number;

(c) access the Internet;

(d) view or record video; ~~[or]~~

(e) view or take a photograph; or

~~[(e)]~~ (f) enter data into a [handheld] wireless communication device.

(3) Subsection (2) does not prohibit ~~[a person]~~ an individual from using a ~~[handheld]~~ wireless communication device while operating a ~~[moving]~~ motor vehicle:

(a) when using a ~~[handheld]~~ wireless communication device for voice communication;

(b) to view a global positioning or navigation device or a global positioning or navigation application;

(c) during a medical emergency;

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(d) when reporting a safety hazard or requesting assistance relating to a safety hazard;
(e) when reporting criminal activity or requesting assistance relating to a criminal activity;

(f) when used by a law enforcement officer or emergency service personnel acting within the course and scope of the law enforcement officer's or emergency service personnel's employment; or

(g) to operate:

(i) hands-free or voice operated technology; or

(ii) a system that is physically or electronically integrated into the motor vehicle.

(4) [~~A person~~] An individual convicted of a violation of this section is guilty of a:

(a) class C misdemeanor with a maximum fine of \$100; or

(b) class B misdemeanor if the [~~person~~] individual:

(i) has also inflicted serious bodily injury upon another as a proximate result of using a [~~handheld~~] wireless communication device in violation of this section while operating a [~~moving~~] motor vehicle on a highway in this state; or

(ii) has a prior conviction under this section, that is within three years of:

(A) the current conviction under this section; or

(B) the commission of the offense upon which the current conviction is based.

Section 2. Section **53-3-218** is amended to read:

53-3-218. Court to report convictions and may recommend suspension of license -- Severity of speeding violation defined.

(1) As used in this section, "conviction" means conviction by the court of first impression or final administrative determination in an administrative traffic proceeding.

(2) (a) Except as provided in Subsection (2)(c), a court having jurisdiction over offenses committed under this chapter or any other law of this state, or under any municipal ordinance regulating driving motor vehicles on highways or driving motorboats on the water, shall forward to the division within five days, an abstract of the court record of the conviction or plea held in abeyance of any person in the court for a reportable traffic or motorboating violation of any laws or ordinances, and may recommend the suspension of the license of the person convicted.

(b) When the division receives a court record of a conviction or plea in abeyance for a

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motorboat violation, the division may only take action against a person's driver license if the motorboat violation is for a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

(c) A court may not forward to the division an abstract of a court record of a conviction for a violation described in Subsection 53-3-220(1)(c)(i) or (ii), unless the court found that the person convicted of the violation was an operator of a motor vehicle at the time of the violation.

(3) (a) A court may not order the division to suspend a person's driver license based solely on the person's failure to pay a penalty accounts receivable.

(b) The court may notify the division, and the division may, prior to sentencing, suspend the driver license of a person who fails to appear if the person is charged with:

(i) an offense of any level that is a moving traffic violation;

(ii) an offense described in Title 41, Chapter 12a, Part 3, Owner's or Operator's Security Requirement; or

(iii) an offense described in Subsection 53-3-220(1)(a) or (b).

(4) The abstract shall be made in the form prescribed by the division and shall include:

(a) the name, date of birth, and address of the party charged;

(b) the license certificate number of the party charged, if any;

(c) the registration number of the motor vehicle or motorboat involved;

(d) whether the motor vehicle was a commercial motor vehicle;

(e) whether the motor vehicle carried hazardous materials;

(f) whether the motor vehicle carried 16 or more occupants;

(g) whether the driver presented a commercial driver license;

(h) the nature of the offense;

(i) whether the offense involved an accident;

(j) the driver's blood alcohol content, if applicable;

(k) if the offense involved a speeding violation:

(i) the posted speed limit;

(ii) the actual speed; and

(iii) whether the speeding violation occurred on a highway that is part of the interstate system as defined in Section 72-1-102;

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- (l) the date of the hearing;
- (m) the plea;
- (n) the judgment or whether bail was forfeited; and
- (o) the severity of the violation, which shall be graded by the court as "minimum," "intermediate," or "maximum" as established in accordance with Subsection 53-3-221(4).

(5) When a convicted person secures a judgment of acquittal or reversal in any appellate court after conviction in the court of first impression, the division shall reinstate the convicted person's license immediately upon receipt of a certified copy of the judgment of acquittal or reversal.

(6) Upon a conviction for a violation of the prohibition on using a ~~handheld~~ wireless communication device ~~[for text messaging or electronic mail communication]~~ while operating a ~~moving~~ motor vehicle under Section 41-6a-1716, a judge may order a suspension of the convicted person's license for a period of three months.

(7) Upon a conviction for a violation of careless driving under Section 41-6a-1715 that causes or results in the death of another person, a judge may order a revocation of the convicted person's license for a period of one year.

Section 3. Section **53-3-402** is amended to read:

53-3-402. Definitions.

As used in this part:

(1) "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means the number of grams of alcohol per:

- (a) 100 milliliters of blood;
- (b) 210 liters of breath; or
- (c) 67 milliliters of urine.

(3) "Commercial driver license information system" or "CDLIS" means the information system established under Title XII, Pub. L. 99-570, the Commercial Motor Vehicle Safety Act of 1986, as a clearinghouse for information related to the licensing and identification of commercial motor vehicle drivers.

(4) "Controlled substance" means any substance so classified under Section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6), and includes all substances listed on the

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current Schedules I through V of 21 C.F.R., Part 1308 as they may be revised from time to time.

(5) "Employee" means any driver of a commercial motor vehicle, including:

- (a) full-time, regularly employed drivers;
- (b) casual, intermittent, or occasional drivers;
- (c) leased drivers; and

(d) independent, owner-operator contractors while in the course of driving a commercial motor vehicle who are either directly employed by or under lease to an employer.

(6) "Employer" means any individual or person including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns an individual to drive a commercial motor vehicle.

(7) "Felony" means any offense under state or federal law that is punishable by death or imprisonment for a term of more than one year.

(8) "Foreign jurisdiction" means any jurisdiction other than the United States or a state of the United States.

(9) "Gross vehicle weight rating" or "GVWR" means the value specified by the manufacturer as the maximum loaded weight of a single vehicle or GVWR of a combination or articulated vehicle, and includes the GVWR of the power unit plus the total weight of all towed units and the loads on those units.

(10) "Hazardous material" has the same meaning as defined under 49 C.F.R. Sec. 383.5.

(11) "Imminent hazard" means the existence of a condition, practice, or violation that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment is expected to occur immediately, or before the condition, practice, or violation can be abated.

(12) "Medical certification status" means the medical certification of a commercial driver license holder or commercial motor vehicle operator in any of the following categories:

(a) Non-excepted interstate. A person shall certify that the person:

(i) operates or expects to operate in interstate commerce;

(ii) is both subject to and meets the qualification requirements under 49 C.F.R. Part 391; and

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(iii) is required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45.

(b) Excepted interstate. A person shall certify that the person:

(i) operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 C.F.R. Sec. 390.3(f), 391.2, 391.68, or 398.3 from all or parts of the qualification requirements of 49 C.F.R. Part 391; and

(ii) is not required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45.

(c) Non-excepted intrastate. A person shall certify that the person:

(i) operates only in intrastate commerce; and

(ii) is subject to state driver qualification requirements under Sections 53-3-303.5, 53-3-304, and 53-3-414.

(d) Excepted intrastate. A person shall certify that the person:

(i) operates in intrastate commerce; and

(ii) engages exclusively in transportation or operations excepted from all parts of the state driver qualification requirements.

(13) "NDR" means the National Driver Register.

(14) "Nonresident CDL" means a commercial driver license issued by a state to an individual who resides in a foreign jurisdiction.

(15) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.

(16) "Port-of-entry agent" has the same meaning as provided in Section 72-1-102.

(17) "Serious traffic violation" means a conviction of any of the following:

(a) speeding 15 or more miles per hour above the posted speed limit;

(b) reckless driving as defined by state or local law;

(c) improper or erratic traffic lane changes;

(d) following the vehicle ahead too closely;

(e) any other motor vehicle traffic law which arises in connection with a fatal traffic accident;

(f) operating a commercial motor vehicle without a CDL or a CDIP;

(g) operating a commercial motor vehicle without the proper class of CDL or CDL endorsement for the type of vehicle group being operated or for the passengers or cargo being

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transported;

(h) operating a commercial motor vehicle without a CDL or CDIP license certificate in the driver's possession in violation of Section 53-3-404;

(i) using a [~~handheld~~] wireless communication device in violation of Section 41-6a-1716 while operating a commercial motor vehicle; or

(j) using a hand-held mobile telephone while operating a commercial motor vehicle in violation of 49 C.F.R. Sec. 392.82.

(18) "State" means a state of the United States, the District of Columbia, any province or territory of Canada, or Mexico.

(19) "United States" means the 50 states and the District of Columbia.

Section 4. Section **76-5-207.5** is amended to read:

76-5-207.5. Automobile homicide involving using a wireless communication device while operating a motor vehicle.

(1) As used in this section:

(a) "Criminally negligent" means criminal negligence as defined [~~by~~] in Subsection 76-2-103(4).

~~[(b) "Handheld wireless communication device" has the same meaning as defined in Section 41-6a-1716.]~~

~~[(c)]~~ (b) "Motor vehicle" means any self-propelled vehicle [~~and includes any~~], including an automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

~~[(d)]~~ (c) "Negligent" means [~~simple negligence~~], the failure to exercise [~~that~~] the degree of care that a reasonable and prudent [~~persons exercise under like or~~] person exercises under similar circumstances.

(d) "Operate a motor vehicle" means the same as that term is defined in Section 41-6a-1716.

(e) "Wireless communication device" means the same as that term is defined in Section 41-6a-1716.

(2) Criminal homicide is automobile homicide, a third degree felony, if the person operates a [~~moving~~] motor vehicle in a negligent manner:

(a) while using a [~~handheld~~] wireless communication device in violation of Section 41-6a-1716; and

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(b) causing the death of another person.

(3) Criminal homicide is automobile homicide, a second degree felony, if the person operates a [moving] motor vehicle in a criminally negligent manner:

(a) while using a [handheld] wireless communication device in violation of Section 41-6a-1716; and

(b) causing the death of another person.

Section 5. Section **80-6-712** is amended to read:

80-6-712. Time periods for supervision of probation or placement -- Termination of continuing jurisdiction.

(1) If the juvenile court places a minor on probation under Section 80-6-702, the juvenile court shall establish a period of time for supervision for the minor that is:

(a) if the minor is placed on intake probation, no more than three months; or

(b) if the minor is placed on formal probation, from four to six months, but may not exceed six months.

(2) (a) If the juvenile court commits a minor to the division under Section 80-6-703, and the minor's case is under the jurisdiction of the court, the juvenile court shall establish:

(i) for a minor placed out of the home, a period of custody from three to six months, but may not exceed six months; and

(ii) for aftercare services if the minor was placed out of the home, a period of supervision from three to four months, but may not exceed four months.

(b) A minor may be supervised for aftercare under Subsection (2)(a)(ii) in the home of a qualifying relative or guardian, or at an independent living program contracted or operated by the division.

(3) If the juvenile court orders a minor to secure care, the authority shall:

(a) have jurisdiction over the minor's case; and

(b) apply the provisions of Part 8, Commitment and Parole.

(4) (a) In accordance with Section 80-6-711 and Subsections (1) and (2), the juvenile court shall terminate continuing jurisdiction over a minor's case at the end of the time period described in Subsection (1) for probation, or Subsection (2) for commitment to the division, unless:

(i) termination would interrupt the completion of the treatment program determined to

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be necessary by the results of a validated risk and needs assessment under Section 80-6-606;

- (ii) the minor commits a new misdemeanor or felony offense;
- (iii) community or compensatory service hours have not been completed;
- (iv) there is an outstanding fine; or
- (v) there is a failure to pay restitution in full.

(b) The juvenile court shall determine whether a minor has completed a treatment program under Subsection (4)(a)(i) by considering:

- (i) the recommendations of the licensed service provider for the treatment program;
- (ii) the minor's record in the treatment program; and
- (iii) the minor's completion of the goals of the treatment program.

(5) Subject to Subsection (8), if one of the circumstances under Subsection (4) exists the juvenile court may extend supervision for the time needed to address the specific circumstance.

(6) If a circumstance under Subsection (4)(a)(iii), (iv), or (v) exists, the juvenile court may extend supervision for no more than three months.

(7) If the juvenile court extends supervision under this section, the grounds for the extension and the length of any extension shall be recorded in the court records and tracked in the data system used by the Administrative Office of the Courts and the division.

(8) For a minor who is under the continuing jurisdiction of the juvenile court and whose supervision is extended under Subsection (4)(a)(iii), (iv), or (v), supervision may only be extended as intake probation.

(9) If a minor leaves supervision without authorization for more than 24 hours, the supervision period for the minor shall toll until the minor returns.

(10) This section does not apply to any minor adjudicated under this chapter for:

- (a) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;
- (b) Section 76-5-202, aggravated murder or attempted aggravated murder;
- (c) Section 76-5-203, murder or attempted murder;
- (d) Section 76-5-205, manslaughter;
- (e) Section 76-5-206, negligent homicide;
- (f) Section 76-5-207, automobile homicide;
- (g) Section 76-5-207.5, automobile homicide involving ~~handheld~~ using a wireless

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communication device while operating a motor vehicle;

- (h) Section 76-5-208, child abuse homicide;
- (i) Section 76-5-209, homicide by assault;
- (j) Section 76-5-302, aggravated kidnapping;
- (k) Section 76-5-405, aggravated sexual assault;
- (l) a felony violation of Section 76-6-103, aggravated arson;
- (m) Section 76-6-203, aggravated burglary;
- (n) Section 76-6-302, aggravated robbery;
- (o) Section 76-10-508.1, felony discharge of a firearm;
- (p) (i) an offense other than an offense listed in Subsections (10)(a) through (o)

involving the use of a dangerous weapon, as defined in Section 76-1-601, that is a felony; and

(ii) the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon; or

(q) a felony offense other than an offense listed in Subsections (10)(a) through (p) and the minor has been previously committed to the division for secure care.

Section 6. Section **80-6-804** is amended to read:

80-6-804. Review and termination of secure care.

(1) If a juvenile offender is ordered to secure care under Section 80-6-705, the juvenile offender shall appear before the authority within 45 days after the day on which the juvenile offender is ordered to secure care for review of a treatment plan and to establish parole release guidelines.

(2) (a) If a juvenile offender is ordered to secure care under Section 80-6-705, the authority shall set a presumptive term of commitment for the juvenile offender from three to six months, but the presumptive term may not exceed six months.

(b) The authority shall release the juvenile offender on parole at the end of the presumptive term of commitment unless:

(i) termination would interrupt the completion of a treatment program determined to be necessary by the results of a validated risk and needs assessment under Section 80-6-606; or

(ii) the juvenile offender commits a new misdemeanor or felony offense.

(c) The authority shall determine whether a juvenile offender has completed a treatment program under Subsection (2)(b)(i) by considering:

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- (i) the recommendations of the licensed service provider for the treatment program;
- (ii) the juvenile offender's record in the treatment program; and
- (iii) the juvenile offender's completion of the goals of the treatment program.

(d) The authority may extend the length of commitment and delay parole release for the time needed to address the specific circumstance if one of the circumstances under Subsection (2)(b) exists.

(e) The authority shall:

- (i) record the length of the extension and the grounds for the extension; and
- (ii) report annually the length and grounds of extension to the commission.

(f) Records under Subsection (2)(e) shall be tracked in the data system used by the juvenile court and the division.

(3) (a) If a juvenile offender is committed to secure care, the authority shall set a presumptive term of parole supervision, including aftercare services, from three to four months, but the presumptive term may not exceed four months.

(b) If the authority determines that a juvenile offender is unable to return home immediately upon release, the juvenile offender may serve the term of parole in the home of a qualifying relative or guardian or at an independent living program contracted or operated by the division.

(c) The authority shall release a juvenile offender from parole and terminate the authority's jurisdiction at the end of the presumptive term of parole, unless:

(i) termination would interrupt the completion of a treatment program that is determined to be necessary by the results of a validated risk and needs assessment under Section 80-6-606;

- (ii) the juvenile offender commits a new misdemeanor or felony offense; or
- (iii) restitution has not been completed.

(d) The authority shall determine whether a juvenile offender has completed a treatment program under Subsection (2)(c)(i) by considering:

- (i) the recommendations of the licensed service provider;
- (ii) the juvenile offender's record in the treatment program; and
- (iii) the juvenile offender's completion of the goals of the treatment program.

(e) If one of the circumstances under Subsection (3)(c) exists, the authority may delay

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parole release only for the time needed to address the specific circumstance.

(f) The authority shall:

(i) record the grounds for extension of the presumptive length of parole and the length of the extension; and

(ii) report annually the extension and the length of the extension to the commission.

(g) Records under Subsection (3)(f) shall be tracked in the data system used by the juvenile court and the division.

(h) If a juvenile offender leaves parole supervision without authorization for more than 24 hours, the term of parole shall toll until the juvenile offender returns.

(4) Subsections (2) and (3) do not apply to a juvenile offender committed to secure care for:

(a) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

(b) Section 76-5-202, aggravated murder or attempted aggravated murder;

(c) Section 76-5-203, murder or attempted murder;

(d) Section 76-5-205, manslaughter;

(e) Section 76-5-206, negligent homicide;

(f) Section 76-5-207, automobile homicide;

(g) Section 76-5-207.5, automobile homicide involving [~~a handheld~~] using a wireless communication device while operating a motor vehicle;

(h) Section 76-5-208, child abuse homicide;

(i) Section 76-5-209, homicide by assault;

(j) Section 76-5-302, aggravated kidnapping;

(k) Section 76-5-405, aggravated sexual assault;

(l) a felony violation of Section 76-6-103, aggravated arson;

(m) Section 76-6-203, aggravated burglary;

(n) Section 76-6-302, aggravated robbery;

(o) Section 76-10-508.1, felony discharge of a firearm;

(p) (i) an offense other than an offense listed in Subsections (4)(a) through (o) involving the use of a dangerous weapon, as defined in Section 76-1-601, that is a felony; and

(ii) the juvenile offender has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon, as defined in Section 76-1-601; or

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(q) an offense other than an offense listed in Subsections (4)(a) through (p) and the juvenile offender has been previously committed to the division for secure care.

(5) (a) The division may continue to have responsibility over a juvenile offender, who is discharged under this section from parole, to participate in a specific educational or rehabilitative program:

(i) until the juvenile offender is:

(A) if the juvenile offender is a youth offender, 21 years old; or

(B) if the juvenile offender is a serious youth offender, 25 years old; and

(ii) under an agreement by the division and the juvenile offender that the program has certain conditions.

(b) The division and the juvenile offender may terminate participation in a program under Subsection (5)(a) at any time.

(c) The division shall offer an educational or rehabilitative program before a juvenile offender's discharge date in accordance with this section.

(d) A juvenile offender may request the services described in this Subsection (5), even if the offender has been previously declined services or services were terminated for noncompliance.

(e) Notwithstanding Subsection (5)(c), the division:

(i) shall consider a request by a juvenile offender under Subsection (5)(d) for the services described in this Subsection (5) for up to 365 days after the juvenile offender's effective date of discharge, even if the juvenile offender has previously declined services or services were terminated for noncompliance; and

(ii) may reach an agreement with the juvenile offender to provide the services described in this Subsection (5) until the juvenile offender is:

(A) if the juvenile offender is a youth offender, 21 years old; or

(B) if the juvenile offender is a serious youth offender, 25 years old.

(f) The division and the juvenile offender may terminate an agreement for services under this Subsection (5) at any time.