

Senator Todd D. Weiler proposes the following substitute bill:

JUVENILE JUSTICE AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Jon Hawkins

LONG TITLE

General Description:

This bill amends provisions related to juvenile justice.

Highlighted Provisions:

This bill:

- ▶ modifies the duties of the Commission on Criminal and Juvenile Justice regarding the statewide sliding scale for the assessment of fines for minors;
- ▶ amends provisions relating to the financial penalties for nonjudicial adjustments;
- ▶ prohibits the charge of a filing fee for a juvenile expungement; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63M-7-208, as last amended by Laws of Utah 2021, Chapter 262

80-6-304, as renumbered and amended by Laws of Utah 2021, Chapter 261

80-6-1007, as renumbered and amended by Laws of Utah 2021, Chapter 261



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

Section 1. Section **63M-7-208** is amended to read:

63M-7-208. Juvenile justice oversight -- Delegation -- Effective dates.

(1) The Commission on Criminal and Juvenile Justice shall:

(a) support implementation and expansion of evidence-based juvenile justice programs and practices, including assistance regarding implementation fidelity, quality assurance, and ongoing evaluation;

(b) examine and make recommendations on the use of third-party entities or an intermediary organization to assist with implementation and to support the performance-based contracting system authorized in Subsection (1)(m);

(c) oversee the development of performance measures to track juvenile justice reforms, and ensure early and ongoing stakeholder engagement in identifying the relevant performance measures;

(d) evaluate currently collected data elements throughout the juvenile justice system and contract reporting requirements to streamline reporting, reduce redundancies, eliminate inefficiencies, and ensure a focus on recidivism reduction;

(e) review averted costs from reductions in out-of-home placements for juvenile justice youth placed with the Division of Juvenile Justice Services and the Division of Child and Family Services, and make recommendations to prioritize the reinvestment and realignment of resources into community-based programs for youth living at home, including the following:

(i) statewide expansion of:

(A) juvenile receiving centers, as defined in Section [80-1-102](#);

(B) mobile crisis outreach teams, as defined in Section [62A-15-102](#);

(C) youth courts; and

(D) victim-offender mediation;

(ii) statewide implementation of nonresidential diagnostic assessment;

(iii) statewide availability of evidence-based programs and practices including cognitive behavioral and family therapy programs for minors assessed by a validated risk and needs assessment as moderate or high risk;

(iv) implementation and infrastructure to support the sustainability and fidelity of

57 evidence-based juvenile justice programs, including resources for staffing, transportation, and
58 flexible funds; and

59 (v) early intervention programs such as family strengthening programs, family
60 wraparound services, and proven truancy interventions;

61 (f) assist the Administrative Office of the Courts in the development of a statewide
62 sliding scale for the assessment of [~~fin~~es, ~~fe~~es, ~~and~~ ~~restitution~~; fees and restitution that is based
63 on the ability of the minor's family to pay;

64 (g) analyze the alignment of resources and the roles and responsibilities of agencies,
65 such as the operation of early intervention services, receiving centers, and diversion, and make
66 recommendations to reallocate functions as appropriate, in accordance with Section 80-5-401;

67 (h) ensure that data reporting is expanded and routinely review data in additional areas,
68 including:

69 (i) referral and disposition data by judicial district;

70 (ii) data on the length of time minors spend in the juvenile justice system, including the
71 total time spent under court jurisdiction, on community supervision, and in each out-of-home
72 placement;

73 (iii) recidivism data for minors who are diverted to a nonjudicial adjustment under
74 Section 80-6-304 and minors for whom dispositions are ordered under Section 80-6-701,
75 including tracking minors into the adult corrections system;

76 (iv) change in aggregate risk levels from the time minors receive services, are under
77 supervision, and are in out-of-home placement; and

78 (v) dosage of programming;

79 (i) develop a reasonable timeline within which all programming delivered to minors in
80 the juvenile justice system must be evidence-based or consist of practices that are rated as
81 effective for reducing recidivism by a standardized program evaluation tool;

82 (j) provide guidelines to be considered by the Administrative Office of the Courts and
83 the Division of Juvenile Justice Services in developing tools considered by the Administrative
84 Office of the Courts and the Division of Juvenile Justice Services in developing or selecting
85 tools to be used for the evaluation of juvenile justice programs;

86 (k) develop a timeline to support improvements to juvenile justice programs to achieve
87 reductions in recidivism and review reports from relevant state agencies on progress toward

88 reaching that timeline;

89 (l) subject to Subsection (2), assist in the development of training for juvenile justice
90 stakeholders, including educators, law enforcement officers, probation staff, judges, Division
91 of Juvenile Justice Services staff, Division of Child and Family Services staff, and program
92 providers;

93 (m) subject to Subsection (3), assist in the development of a performance-based
94 contracting system, which shall be developed by the Administrative Office of the Courts and
95 the Division of Juvenile Justice Services for contracted services in the community and
96 contracted out-of-home placement providers;

97 (n) assist in the development of a validated detention risk assessment tool that shall be
98 developed or adopted and validated by the Administrative Office of the Courts and the
99 Division of Juvenile Justice Services as provided in Section [80-5-203](#) on and after July 1,
100 2018; and

101 (o) annually issue and make public a report to the governor, president of the Senate,
102 speaker of the House of Representatives, and chief justice of the Utah Supreme Court on the
103 progress of the reforms and any additional areas in need of review.

104 (2) Training described in Subsection (1)(l) should include instruction on
105 evidence-based programs and principles of juvenile justice, such as risk, needs, responsivity,
106 and fidelity, and shall be supplemented by the following topics:

- 107 (a) adolescent development;
- 108 (b) identifying and using local behavioral health resources;
- 109 (c) implicit bias;
- 110 (d) cultural competency;
- 111 (e) graduated responses;
- 112 (f) Utah juvenile justice system data and outcomes; and
- 113 (g) gangs.

114 (3) The system described in Subsection (1)(m) shall provide incentives for:

- 115 (a) the use of evidence-based juvenile justice programs and practices rated as effective
116 by the tools selected in accordance with Subsection (1)(j);
- 117 (b) the use of three-month timelines for program completion; and
- 118 (c) evidence-based programs and practices for minors living at home in rural areas.

119 (4) The Commission on Criminal and Juvenile Justice may delegate the duties imposed
120 under this section to a subcommittee or board established by the Commission on Criminal and
121 Juvenile Justice in accordance with Subsection 63M-7-204(2).

122 (5) Subsections (1)(a) through (c) take effect August 1, 2017. The remainder of this
123 section takes effect July 1, 2018.

124 Section 2. Section 80-6-304 is amended to read:

125 **80-6-304. Nonjudicial adjustments.**

126 (1) If the juvenile court receives a referral for an offense committed by a minor that is,
127 or appears to be, within the juvenile court's jurisdiction, a juvenile probation officer shall make
128 a preliminary inquiry in accordance with Subsections (3), (4), and (5) to determine whether the
129 minor is eligible to enter into a nonjudicial adjustment.

130 (2) If a minor is referred to the juvenile court for multiple offenses arising from a
131 single criminal episode, and the minor is eligible under this section for a nonjudicial
132 adjustment, the juvenile probation officer shall offer the minor one nonjudicial adjustment for
133 all offenses arising from the single criminal episode.

134 (3) (a) The juvenile probation officer may:

135 (i) conduct a validated risk and needs assessment; and

136 (ii) request that a prosecuting attorney review a referral in accordance with Subsection

137 (9) if:

138 (A) the results of the validated risk and needs assessment indicate the minor is high
139 risk; or

140 (B) the results of the validated risk and needs assessment indicate the minor is
141 moderate risk and the referral is for a class A misdemeanor violation under Title 76, Chapter 5,
142 Offenses Against the Person, or Title 76, Chapter 9, Part 7, Miscellaneous Provisions.

143 (b) If a minor violates Section 41-6a-502, the minor shall:

144 (i) undergo a drug and alcohol screening;

145 (ii) if found appropriate by the screening, participate in an assessment; and

146 (iii) if warranted by the screening and assessment, follow the recommendations of the
147 assessment.

148 (4) Except as provided in Subsection (5)(b), the juvenile probation officer shall request
149 that a prosecuting attorney review a referral in accordance with Subsection (9) if:

- 150 (a) the referral involves:
- 151 (i) a felony offense; or
- 152 (ii) a violation of:
- 153 (A) Section 41-6a-502, driving under the influence;
- 154 (B) Section 76-5-112, reckless endangerment creating a substantial risk of death or
- 155 serious bodily injury;
- 156 (C) Section 76-5-206, negligent homicide;
- 157 (D) Section 76-9-702.1, sexual battery;
- 158 (E) Section 76-10-505.5, possession of a dangerous weapon, firearm, or short barreled
- 159 shotgun on or about school premises; or
- 160 (F) Section 76-10-509, possession of a dangerous weapon by minor, but only if the
- 161 dangerous weapon is a firearm;
- 162 (b) the minor has a current suspended order for custody under Section 80-6-711; or
- 163 (c) the referral involves an offense alleged to have occurred before an individual was
- 164 12 years old and the offense is a felony violation of:
- 165 (i) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;
- 166 (ii) Section 76-5-202, aggravated murder or attempted aggravated murder;
- 167 (iii) Section 76-5-203, murder or attempted murder;
- 168 (iv) Section 76-5-302, aggravated kidnapping;
- 169 (v) Section 76-5-405, aggravated sexual assault;
- 170 (vi) Section 76-6-103, aggravated arson;
- 171 (vii) Section 76-6-203, aggravated burglary;
- 172 (viii) Section 76-6-302, aggravated robbery; or
- 173 (ix) Section 76-10-508.1, felony discharge of a firearm.
- 174 (5) (a) Except as provided in Subsections (3) and (4), the juvenile probation officer
- 175 shall offer a nonjudicial adjustment to a minor if the minor:
- 176 (i) is referred for an offense that is a misdemeanor, infraction, or status offense;
- 177 (ii) has no more than two prior adjudications; and
- 178 (iii) has no more than three prior unsuccessful nonjudicial adjustment attempts.
- 179 (b) If the juvenile court receives a referral for an offense that is alleged to have
- 180 occurred before an individual was 12 years old, the juvenile probation officer shall offer a

181 nonjudicial adjustment to the individual, unless the referral includes an offense described in
182 Subsection (4)(c).

183 (c) (i) For purposes of determining a minor's eligibility for a nonjudicial adjustment
184 under this Subsection (5), the juvenile probation officer shall treat all offenses arising out of a
185 single criminal episode that resulted in a nonjudicial adjustment as one prior nonjudicial
186 adjustment.

187 (ii) For purposes of determining a minor's eligibility for a nonjudicial adjustment under
188 this Subsection (5), the juvenile probation officer shall treat all offenses arising out of a single
189 criminal episode that resulted in one or more prior adjudications as a single adjudication.

190 (d) Except as provided in Subsection (4), the juvenile probation officer may offer a
191 nonjudicial adjustment to a minor who does not meet the criteria provided in Subsection (5)(a).

192 (6) For a nonjudicial adjustment, the juvenile probation officer may require a minor to:

193 (a) pay a financial penalty of no more than [~~\$250~~] \$70 to the juvenile court[, subject to
194 the terms established under Subsection (8)(c)];

195 (b) pay restitution to any victim;

196 (c) complete community or compensatory service;

197 (d) attend counseling or treatment with an appropriate provider;

198 (e) attend substance abuse treatment or counseling;

199 (f) comply with specified restrictions on activities or associations;

200 (g) attend victim-offender mediation if requested by the victim; and

201 (h) comply with any other reasonable action that is in the interest of the minor, the
202 community, or the victim.

203 (7) (a) Within seven days of receiving a referral that appears to be eligible for a
204 nonjudicial adjustment in accordance with Subsection (5), the juvenile probation officer shall
205 provide an initial notice to reasonably identifiable and locatable victims of the offense
206 contained in the referral.

207 (b) The victim shall be responsible to provide to the juvenile probation officer upon
208 request:

209 (i) invoices, bills, receipts, and any other evidence of injury, loss of earnings, and
210 out-of-pocket loss;

211 (ii) documentation and evidence of compensation or reimbursement from an insurance

212 company or an agency of the state, any other state, or the federal government received as a
213 direct result of the crime for injury, loss of earnings, or out-of-pocket loss; and

214 (iii) proof of identification, including home and work address and telephone numbers.

215 (c) The inability, failure, or refusal of the victim to provide all or part of the requested
216 information shall result in the juvenile probation officer determining restitution based on the
217 best information available.

218 (8) (a) The juvenile probation officer may not predicate acceptance of an offer of a
219 nonjudicial adjustment on an admission of guilt.

220 (b) The juvenile probation officer may not deny a minor an offer of a nonjudicial
221 adjustment due to a minor's inability to pay a financial penalty under Subsection (6).

222 (c) The juvenile probation officer shall base [~~a fee, fine, or the~~] restitution for a
223 nonjudicial adjustment under Subsection (6) upon the ability of the minor's family to pay as
224 determined by a statewide sliding scale developed in accordance with Section [63M-7-208](#).

225 (d) A nonjudicial adjustment may not extend for more than 90 days, unless a juvenile
226 court judge extends the nonjudicial adjustment for an additional 90 days.

227 (e) (i) Notwithstanding Subsection (8)(d), a juvenile court judge may extend a
228 nonjudicial adjustment beyond the 180 days permitted under Subsection (8)(d) for a minor who
229 is offered a nonjudicial adjustment under Subsection (5)(b) for a sexual offense under Title 76,
230 Chapter 5, Part 4, Sexual Offenses, or is referred under Subsection (9)(b)(ii) for a sexual
231 offense under Title 76, Chapter 5, Part 4, Sexual Offenses, that the minor committed before the
232 minor was 12 years old, if the judge determines that:

233 (A) the nonjudicial adjustment requires specific treatment for the sexual offense;

234 (B) the treatment cannot be completed within 180 days after the day on which the
235 minor entered into the nonjudicial adjustment; and

236 (C) the treatment is necessary based on a clinical assessment that is developmentally
237 appropriate for the minor.

238 (ii) If a juvenile court judge extends a minor's nonjudicial adjustment under Subsection
239 (8)(e)(i), the judge may extend the nonjudicial adjustment until the minor completes the
240 treatment under this Subsection (8)(e), but the judge may only grant each extension for 90 days
241 at a time.

242 (f) If a minor violates Section [76-10-105](#), the minor may be required to pay a [~~fine or~~]

243 financial penalty and participate in a court-approved tobacco education program with a
244 participation fee.

245 (9) If a prosecuting attorney is requested to review a referral in accordance with
246 Subsection (3) or (4), a minor fails to substantially comply with a condition agreed upon as part
247 of the nonjudicial adjustment, or a minor is not offered or declines a nonjudicial adjustment in
248 accordance with Subsection (5), the prosecuting attorney shall:

249 (a) review the case; and

250 (b) (i) dismiss the case;

251 (ii) refer the case back to the juvenile probation officer for a new attempt at nonjudicial
252 adjustment; or

253 (iii) except as provided in Subsections (10)(b), (11), and 80-6-305(2), file a petition
254 with the juvenile court.

255 (10) (a) A prosecuting attorney may file a petition only upon reasonable belief that:

256 (i) the charges are supported by probable cause;

257 (ii) admissible evidence will be sufficient to support adjudication beyond a reasonable
258 doubt; and

259 (iii) the decision to charge is in the interests of justice.

260 (b) Failure to pay a [~~fine or fee~~] financial penalty may not serve as a basis for filing of a
261 petition under Subsection (9)(b)(iii) if the minor has substantially complied with the other
262 conditions agreed upon in accordance with Subsection (6) or conditions imposed through any
263 other court diversion program.

264 (11) A prosecuting attorney may not file a petition against a minor unless:

265 (a) the prosecuting attorney has statutory authority to file the petition under Section
266 80-6-305; and

267 (b) (i) the minor does not qualify for a nonjudicial adjustment under Subsection (5);

268 (ii) the minor declines a nonjudicial adjustment;

269 (iii) the minor fails to substantially comply with the conditions agreed upon as part of
270 the nonjudicial adjustment;

271 (iv) the minor fails to respond to the juvenile probation officer's inquiry regarding
272 eligibility for or an offer of a nonjudicial adjustment after being provided with notice for
273 preliminary inquiry; or

274 (v) the prosecuting attorney is acting under Subsection (9).

275 (12) If the prosecuting attorney files a petition in a juvenile court, or a proceeding is
276 commenced against a minor under Section [80-6-302](#), the juvenile court may refer the case to
277 the juvenile probation officer for another offer of nonjudicial adjustment.

278 Section 3. Section **80-6-1007** is amended to read:

279 **80-6-1007. Fees.**

280 (1) [~~Except for a filing fee for a petition under this part, the~~] The juvenile court may
281 not charge a fee for:

282 (a) notwithstanding Section [78A-2-301](#), filing a petition of expungement under this
283 part;

284 [~~(a)~~] (b) an issuance of an expungement order under this part; or

285 [~~(b)~~] (c) an expungement of a record under this part.

286 (2) An agency may not charge a fee for the expungement of a record under this part.