

SB0049S02 compared with SB0049

~~text~~ shows text that was in SB0049 but was deleted in SB0049S02.

text shows text that was not in SB0049 but was inserted into SB0049S02.

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Senator Kathleen A. Riebe proposes the following substitute bill:

JUVENILE CUSTODIAL INTERROGATION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kathleen A. Riebe

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses the custodial interrogation of a child.

Highlighted Provisions:

This bill:

- ▶ ~~provides an exception to~~modifies the ~~two-hour~~time period requirement for the custodial interrogation of a child;
- ▶ addresses disclosures made to a child before the custodial interrogation of the child;
- ▶ addresses compliance with required disclosures for the custodial interrogation of a child; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

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Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

80-6-204, as renumbered and amended by Laws of Utah 2021, Chapter 261

80-6-206, as last amended by Laws of Utah 2022, Chapters 155, 312 and 335 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 155

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

Section 1. Section **80-6-204** is amended to read:

80-6-204. Detention or confinement of a minor -- Restrictions.

(1) Except as provided in Subsection (2) or this chapter, if a child is apprehended by a peace officer, or brought before a court for examination under state law, the child may not be confined:

(a) in a jail, lockup, or cell used for an adult who is charged with a crime; or

(b) in secure care.

(2) (a) The division shall detain a child in accordance with Sections 80-6-502, 80-6-504, and 80-6-505 if:

(i) the child is charged with an offense under Section 80-6-502 or 80-6-503;

(ii) the district court has obtained jurisdiction over the offense because the child is bound over to the district court under Section 80-6-504; and

(iii) the juvenile or district court orders the detention of the child.

(b) (i) If a child is detained before a detention hearing, or a preliminary hearing under Section 80-6-504 if a criminal information is filed for the child under Section 80-6-503, the child may only be held in certified juvenile detention accommodations in accordance with rules made by the commission.

(ii) The commission's rules shall include rules for acceptable sight and sound separation from adult inmates.

(iii) The commission shall certify that a correctional facility is in compliance with the commission's rules.

(iv) This Subsection (2)(b) does not apply to a child held in a correctional facility in

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accordance with Subsection (2)(a).

(3) (a) In an area of low density population, the commission may, by rule, approve a juvenile detention accommodation within a correctional facility that has acceptable sight and sound separation.

(b) An accommodation described in Subsection (3)(a) shall be used only:

(i) for short-term holding of a child who is alleged to have committed an act that would be a criminal offense if committed by an adult; and

(ii) for a maximum confinement period of six hours.

(c) A child may only be held in an accommodation described in Subsection (3)(a) for:

(i) identification;

(ii) notification of a juvenile court official;

(iii) processing; and

(iv) allowance of adequate time for evaluation of needs and circumstances regarding the release or transfer of the child to a shelter or detention facility.

(d) This Subsection (3) does not apply to a child held in a correctional facility in accordance with Subsection (2)(a).

~~(4) (a) If Except as provided in Subsection (4)(b), if a child is alleged to have committed an act that would be a criminal offense if committed by an adult, the child may be detained in a holding room in a local law enforcement agency facility:~~

~~(i) for a maximum of two hours; and~~

~~(ii) (A)~~

~~(ii) (A) for identification or interrogation; or~~

~~(B) while awaiting release to a parent or other responsible adult.]~~

(a) Except as provided in Subsection (4)(b), if a child is alleged to have committed an act that would be a criminal offense if committed by an adult, a law enforcement officer or agency may detain the child in a holding room in a local law enforcement agency facility for no longer than four hours:

(i) for identification or interrogation; or

(~~B~~) (ii) while awaiting release to a parent or other responsible adult.

(b) A law enforcement officer or agency may detain a child beyond the ~~two-hour~~ four-hour limit described in Subsection (4)(a) to complete an interrogation that the

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law enforcement officer initiated before the ~~two-hour~~ four-hour time limit expired.

~~[(b)]~~ (c) A holding room described in Subsection (4)(a) shall be certified by the commission in accordance with the commission's rules.

~~[(c)]~~ (d) The commission's rules shall include provisions for constant supervision and for sight and sound separation from adult inmates.

(5) Willful failure to comply with this section is a class B misdemeanor.

(6) (a) The division is responsible for the custody and detention of:

(i) a child who requires detention before trial or examination, or is placed in secure detention after an adjudication under Section 80-6-704; and

(ii) a juvenile offender under Subsection 80-6-806(7).

(b) Subsection (6)(a) does not apply to a child held in a correctional facility in accordance with Subsection (2)(a).

(c) (i) The commission shall provide standards for custody or detention under Subsections (2)(b), (3), and (4).

(ii) The division shall determine and set standards for conditions of care and confinement of children in detention facilities.

(d) (i) The division, or a public or private agency willing to undertake temporary custody or detention upon agreed terms in a contract with the division, shall provide all other custody or detention in suitable premises distinct and separate from the general jails, lockups, or cells used in law enforcement and corrections systems.

(ii) This Subsection (6)(d) does not apply to a child held in a correctional facility in accordance with Subsection (2)(a).

(7) Except as otherwise provided by this chapter, if an individual who is, or appears to be, under 18 years old is received at a correctional facility, the sheriff, warden, or other official, in charge of the correctional facility shall:

(a) immediately notify the juvenile court of the individual; and

(b) make arrangements for the transfer of the individual to a detention facility, unless otherwise ordered by the juvenile court.

Section 2. Section **80-6-206** is amended to read:

80-6-206. Interrogation of a child -- Presence of a parent, legal guardian, or other adult -- Interrogation of a minor in a facility -- Prohibition on false information or

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unauthorized statement.

(1) As used in this section:

(a) "Custodial interrogation" means any interrogation of a minor while the individual is in custody.

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

(A) who 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

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

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

(c) (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 subject to a custodial interrogation for an offense, the child has the right:

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

(b) to have a friendly adult present during an interrogation of the child if:

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

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

(3) If a child is subject to a custodial interrogation for an offense, the child may not be interrogated unless:

(a) the child has been advised, in accordance with Subsection (4), of the child's constitutional rights and the child's right to have a parent or guardian, or a friendly adult if applicable under Subsection (2)(b), present during the interrogation;

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

(c) except as provided in Subsection [(4)] ~~(4)~~, the child's parent or 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 interrogated; and

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(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 80-2-705.

(4) Before the custodial interrogation of a child by a peace officer or a juvenile probation officer, the peace officer or juvenile probation officer shall disclose the following to the child:

(a) You have the right to remain silent.

(b) If you do not want to talk to me, you do not have **to** talk to me.

(c) If you decide to talk to me, you have the right to stop answering my questions or talking to me at any time.

(d) Anything you say can and will be used against you in court.

(e) If you talk to me, I can tell a judge and everyone else in court everything that you tell me.

(f) You have the right to have a parent or guardian, or a friendly adult if applicable, with you while I ask you questions.

(g) You have the right to a lawyer.

(h) You can talk to a lawyer before I ask you any questions and you can have that lawyer with you while I ask you questions.

(i) If you ~~for your family cannot pay for~~**want to talk to** a lawyer, ~~you will get~~ a lawyer **will be provided to you** for free.

(j) These are your rights.

(k) Do you understand the rights that I have just told you?

(l) Do you want to talk to me?

(5) (a) A peace officer's, or a juvenile probation officer's, compliance with Subsection (4) is determined by examining the entirety of the officer's disclosures to the child.

(b) A peace officer's, or a juvenile probation officer's, failure to strictly comply with, or state the exact language of, Subsection (4) is not grounds by itself for finding the officer has not complied with Subsection (4).

~~(4)~~ (5)(6) A child's parent or 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 interrogation of the child if:

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(a) the child is emancipated as described in Section 80-7-105;

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

or

(c) a peace officer ~~[or]~~, a juvenile probation 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 at which the child is taken into temporary custody.

~~[(5)]~~ ~~(6)(7)~~ (a) If an individual is admitted to a detention facility under Section 80-6-205, committed to a secure care facility under Section 80-6-705, or housed in a secure care facility under Section 80-6-507, and the individual is subject to a custodial interrogation for an offense, the individual may not be interrogated unless:

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

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

(iii) the individual's appointed or retained attorney is present for the interrogation.

(b) Subsection ~~[(5)]~~ ~~(6)(a)~~ (7)(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 interrogating the individual 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.]~~

~~[(7)]~~ (8) If a child is subject to a custodial interrogation for an offense, a peace officer, or an individual interrogating a child on behalf of a peace officer or a law enforcement agency, may not knowingly:

(a) provide false information about evidence that is reasonably likely to elicit an incriminating response from the child; or

(b) make an unauthorized statement about leniency for the offense.

~~[(8)]~~ (9) 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.

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