

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: Marsha Judkins

LONG TITLE

General Description:

This bill addresses the custodial interrogation of a child.

Highlighted Provisions:

This bill:

- ▶ modifies the 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

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



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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 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

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

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

59 (i) identification;

60 (ii) notification of a juvenile court official;

61 (iii) processing; and

62 (iv) allowance of adequate time for evaluation of needs and circumstances regarding

63 the release or transfer of the child to a shelter or detention facility.

64 (d) This Subsection (3) does not apply to a child held in a correctional facility in

65 accordance with Subsection (2)(a).

66 (4) ~~[(a) If a child is alleged to have committed an act that would be a criminal offense~~

67 ~~if committed by an adult, the child may be detained in a holding room in a local law~~

68 ~~enforcement agency facility:]~~

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

70 ~~[(ii) (A) for identification or interrogation; or]~~

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

72 (a) If a child is alleged to have committed an act that would be a criminal offense if

73 committed by an adult, a law enforcement officer or agency may detain the child in a holding

74 room in a local law enforcement agency facility for no longer than four hours:

75 (i) for identification or interrogation; or

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

77 (b) A holding room described in Subsection (4)(a) shall be certified by the commission

78 in accordance with the commission's rules.

79 (c) The commission's rules shall include provisions for constant supervision and for

80 sight and sound separation from adult inmates.

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

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

83 (i) a child who requires detention before trial or examination, or is placed in secure

84 detention after an adjudication under Section 80-6-704; and

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

86 (b) Subsection (6)(a) does not apply to a child held in a correctional facility in

87 accordance with Subsection (2)(a).

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

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

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

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

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

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

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

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

105 **80-6-206. Interrogation of a child -- Presence of a parent, legal guardian, or other**
106 **adult -- Interrogation of a minor in a facility -- Prohibition on false information or**
107 **unauthorized statement.**

108 (1) As used in this section:

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

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

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

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

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

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

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

119 custody.

120 (2) If a child is subject to a custodial interrogation for an offense, the child has the
121 right:

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

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

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

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

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

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

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

135 (c) except as provided in Subsection [~~(4)~~] (6), the child's parent or guardian, or the
136 friendly adult if applicable under Subsection (2)(b), was present during the child's waiver under
137 Subsection (3)(b) and has given permission for the child to be interrogated; and

138 (d) if the child is in the custody of the Division of Child and Family Services and a
139 guardian ad litem has been appointed for the child, the child's guardian ad litem has given
140 consent to an interview of the child as described in Section 80-2-705.

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

144 (a) You have the right to remain silent.

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

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

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

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

150 tell me.

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

153 (g) You have the right to a lawyer.

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

156 (i) If you want to talk to a lawyer, a lawyer will be provided to you for free.

157 (j) These are your rights.

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

159 (l) Do you want to talk to me?

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

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

165 ~~[(4)]~~ (6) A child's parent or guardian, or a friendly adult if applicable under Subsection
166 (2)(b), is not required to be present during the child's waiver under Subsection (3) or to give
167 permission to the interrogation of the child if:

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

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

172 (c) a peace officer ~~[or]~~, a juvenile probation officer, or a law enforcement agency:

173 (i) has made reasonable efforts to contact the child's parent or legal guardian~~[-]~~ or a
174 friendly adult if applicable under Subsection (2)(b); and

175 (ii) has been unable to make contact within one hour after the time at which the child is
176 taken into temporary custody.

177 ~~[(5)]~~ (7) (a) If an individual is admitted to a detention facility under Section [80-6-205](#),
178 committed to a secure care facility under Section [80-6-705](#), or housed in a secure care facility
179 under Section [80-6-507](#), and the individual is subject to a custodial interrogation for an offense,
180 the individual may not be interrogated unless:

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

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

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

186 (b) Subsection ~~[(5)(a)]~~ (7)(a) does not apply to a juvenile probation officer[;] or a staff
187 member of a detention facility, unless the juvenile probation officer or the staff member is
188 interrogating the individual on behalf of a peace officer or a law enforcement agency.

189 ~~[(6) A minor may only waive the minor's right to be represented by counsel at all stages
190 of court proceedings as described in Section [78B-22-204](#).]~~

191 ~~[(7)]~~ (8) If a child is subject to a custodial interrogation for an offense, a peace officer,
192 or an individual interrogating a child on behalf of a peace officer or a law enforcement agency,
193 may not knowingly:

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

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

197 (9) A minor may only waive the minor's right to be represented by counsel at all stages
198 of court proceedings as described in Section [78B-22-204](#).