

## SB0088S01 compared with SB0088

~~{deleted text}~~ shows text that was in SB0088 but was deleted in SB0088S01.

inserted text shows text that was not in SB0088 but was inserted into SB0088S01.

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Senator Stephanie Pitcher proposes the following substitute bill:

### JUVENILE JUSTICE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: {}Stephanie Pitcher**

House Sponsor: {}\_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill amends provisions related to juvenile justice.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ clarifies requirements regarding the collection of a DNA specimen from a minor adjudicated by the juvenile court;
- ▶ allows the Division of Juvenile Justice Services to manage accounts and finances for minors in the custody of the Division of Juvenile Justice Services;
- ▶ provides that a minor may not be placed in a correctional facility that is intended to hold adults accused or convicted of offenses as an alternative to detention;
- ▶ provides a time period in which an agency is required to send an affidavit to an

## SB0088S01 compared with SB0088

individual who is the subject of an expungement order by the juvenile court; and

- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**53-10-403**, as last amended by Laws of Utah 2023, Chapters 328, 457

**53-10-403.5**, as last amended by Laws of Utah 2023, Chapters 184, 500

**53-10-404**, as last amended by Laws of Utah 2021, Chapter 262

**53-10-406**, as last amended by Laws of Utah 2022, Chapter 113

**78A-6-353**, as renumbered and amended by Laws of Utah 2021, Chapter 261

**80-1-102**, as last amended by Laws of Utah 2023, Chapter 330

**80-5-202**, as last amended by Laws of Utah 2023, Chapter 139

**80-6-205**, as last amended by Laws of Utah 2022, Chapter 155

**80-6-608**, as last amended by Laws of Utah 2023, Chapter 330

**80-6-704**, as enacted by Laws of Utah 2021, Chapter 261

**80-6-1006.1**, as enacted by Laws of Utah 2023, Chapter 115

#### ENACTS:

**80-5-304, Utah Code Annotated 1953**

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

Section 1. Section **53-10-403** is amended to read:

**53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

(1) Sections 53-10-403.6, 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406 apply to  
[any person who]:

(a) a person who has pled guilty to or has been convicted of any of the offenses under Subsection (2)(a) or (b) on or after July 1, 2002;

(b) a person who has pled guilty to or has been convicted by any other state or by the United States government of an offense which if committed in this state would be punishable

## SB0088S01 compared with SB0088

as one or more of the offenses listed in Subsection (2)(a) or (b) on or after July 1, 2003;

(c) a person who has been booked on or after January 1, 2011, through December 31, 2014, for any offense under Subsection (2)(c);

(d) a person who has been booked:

(i) by a law enforcement agency that is obtaining a DNA specimen on or after May 13, 2014, through December 31, 2014, under Subsection 53-10-404(4)(b) for any felony offense; or

(ii) on or after January 1, 2015, for any felony offense; or

(e) a minor:

(i) (A) who is adjudicated by the juvenile court for an offense described in Subsection (2) that is within the jurisdiction of the juvenile court on or after July 1, 2002; or

(B) who is adjudicated by the juvenile court for an offense described in Subsection (2) and is in the legal custody of the Division of Juvenile Justice Services for the offense on or after July 1, 2002; and

(ii) who is 14 years old or older at the time of the commission of the offense described in Subsection (2).

~~[(e) is a minor under Subsection (3):]~~

(2) Offenses referred to in Subsection (1) are:

(a) any felony or class A misdemeanor under the Utah Code;

(b) any offense under Subsection (2)(a):

(i) for which the court enters a judgment for conviction to a lower degree of offense under Section 76-3-402; or

(ii) regarding which the court allows the defendant to enter a plea in abeyance as defined in Section 77-2a-1; or

(c) (i) any violent felony as defined in Section 53-10-403.5;

(ii) sale or use of body parts, Section 26B-8-315;

(iii) failure to stop at an accident that resulted in death, Section 41-6a-401.5;

(iv) operating a motor vehicle with any amount of a controlled substance in an individual's body and causing serious bodily injury or death, as codified before May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);

(v) a felony violation of enticing a minor, Section 76-4-401;

(vi) negligently operating a vehicle resulting in injury, Subsection 76-5-102.1(2)(b);

## **SB0088S01 compared with SB0088**

(vii) a felony violation of propelling a substance or object at a correctional officer, a peace officer, or an employee or a volunteer, including health care providers, Section 76-5-102.6;

(viii) negligently operating a vehicle resulting in death, Subsection 76-5-207(2)(b);

(ix) aggravated human trafficking, Section 76-5-310, and aggravated human smuggling, Section 76-5-310.1;

(x) a felony violation of unlawful sexual activity with a minor, Section 76-5-401;

(xi) a felony violation of sexual abuse of a minor, Section 76-5-401.1;

(xii) unlawful sexual contact with a 16 or 17-year old, Section 76-5-401.2;

(xiii) sale of a child, Section 76-7-203;

(xiv) aggravated escape, Subsection 76-8-309(2);

(xv) a felony violation of assault on an elected official, Section 76-8-315;

(xvi) influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole, Section 76-8-316;

(xvii) advocating criminal syndicalism or sabotage, Section 76-8-902;

(xviii) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;

(xix) a felony violation of sexual battery, Section 76-9-702.1;

(xx) a felony violation of lewdness involving a child, Section 76-9-702.5;

(xxi) a felony violation of abuse or desecration of a dead human body, Section 76-9-704;

(xxii) manufacture, possession, sale, or use of a weapon of mass destruction, Section 76-10-402;

(xxiii) manufacture, possession, sale, or use of a hoax weapon of mass destruction, Section 76-10-403;

(xxiv) possession of a concealed firearm in the commission of a violent felony, Subsection 76-10-504(4);

(xxv) assault with the intent to commit bus hijacking with a dangerous weapon, Subsection 76-10-1504(3);

(xxvi) commercial obstruction, Subsection 76-10-2402(2);

(xxvii) a felony violation of failure to register as a sex or kidnap offender, Section 77-41-107;

## SB0088S01 compared with SB0088

(xxviii) repeat violation of a protective order, Subsection 77-36-1.1(4); or

(xxix) violation of condition for release after arrest under Section 78B-7-802.

~~[(3) A minor under Subsection (1) is a minor 14 years old or older who is adjudicated by the juvenile court due to the commission of any offense described in Subsection (2), and who:]~~

~~[(a) committed an offense under Subsection (2) within the jurisdiction of the juvenile court on or after July 1, 2002; or]~~

~~[(b) is in the legal custody of the Division of Juvenile Justice and Youth Services on or after July 1, 2002, for an offense under Subsection (2).]~~

Section 2. Section **53-10-403.5** is amended to read:

### **53-10-403.5. Definitions.**

As used in this section and Sections 53-10-403, 53-10-403.7, 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406:

(1) "Adjudication" means the same as that term is defined in Section 80-1-102.

~~[(1)]~~ (2) "Bureau" means the Bureau of Forensic Services.

~~[(2)]~~ (3) "Combined DNA Index System" or "CODIS" means the program operated by the Federal Bureau of Investigation to support criminal justice DNA databases and the software used to run the databases.

~~[(3)]~~ (4) "Conviction" means:

(a) a verdict or conviction;

(b) a plea of guilty or guilty with a mental condition;

(c) a plea of no contest; or

(d) the acceptance by the court of a plea in abeyance.

~~[(4)]~~ (5) "DNA" means deoxyribonucleic acid.

~~[(5)]~~ (6) "DNA profile" means the patterns of fragments of DNA used to identify an individual.

~~[(6)]~~ (7) "DNA specimen" or "specimen" means a biological sample collected from an individual or a crime scene, or that is collected as part of an investigation.

~~[(7)]~~ (8) "Final judgment" means a judgment, including any supporting opinion, concerning which all appellate remedies have been exhausted or the time for appeal has expired.

## SB0088S01 compared with SB0088

(9) "Minor" means the same as that term is defined in Section 80-1-102.

[(8)] (10) "Rapid DNA" means the fully automated process of developing a DNA profile.

[(9)] (11) "Violent felony" means any offense under Section 76-3-203.5.

Section 3. Section **53-10-404** is amended to read:

### **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

(1) As used in this section, "person" [~~refers to any person as described under Section 53-10-403~~] means a person or minor described in Section 53-10-403.

(2) (a) A person under Section 53-10-403 or any person required to register as a sex offender under Title 77, Chapter 41, Sex and Kidnap Offender Registry, shall provide a DNA specimen and shall reimburse the agency responsible for obtaining the DNA specimen \$150 for the cost of obtaining the DNA specimen unless:

(i) the person was booked under Section 53-10-403 and is not required to reimburse the agency under Section 53-10-404.5; or

(ii) the agency determines the person lacks the ability to pay.

(b) (i) (A) The responsible agencies shall establish guidelines and procedures for determining if the person is able to pay the fee.

(B) An agency's implementation of Subsection (2)(b)(i) meets an agency's obligation to determine an inmate's ability to pay.

(ii) An agency's guidelines and procedures may provide for the assessment of \$150 on the inmate's county trust fund account and may allow a negative balance in the account until the \$150 is paid in full.

(3) (a) (i) All fees collected under Subsection (2) shall be deposited in the DNA Specimen Restricted Account created in Section 53-10-407, except that the agency collecting the fee may retain not more than \$25 per individual specimen for the costs of obtaining the saliva DNA specimen.

(ii) The agency collecting the \$150 fee may not retain from each separate fee more than \$25, and no amount of the \$150 fee may be credited to any other fee or agency obligation.

(b) The responsible agency shall determine the method of collecting the DNA specimen. Unless the responsible agency determines there are substantial reasons for using a different method of collection or the person refuses to cooperate with the collection, the

## **SB0088S01 compared with SB0088**

preferred method of collection shall be obtaining a saliva specimen.

(c) The responsible agency may use reasonable force, as established by its guidelines and procedures, to collect the DNA sample if the person refuses to cooperate with the collection.

(d) If the judgment places the person on probation, the person shall submit to the obtaining of a DNA specimen as a condition of the probation.

(e) (i) Under this section a person is required to provide one DNA specimen and pay the collection fee as required under this section.

(ii) The person shall provide an additional DNA specimen only if the DNA specimen previously provided is not adequate for analysis.

(iii) The collection fee is not imposed for a second or subsequent DNA specimen collected under this section.

(f) Any agency that is authorized to obtain a DNA specimen under this part may collect any outstanding amount of a fee due under this section from any person who owes any portion of the fee and deposit the amount in the DNA Specimen Restricted Account created in Section 53-10-407.

(4) (a) The responsible agency shall cause a DNA specimen to be obtained as soon as possible and transferred to the Department of Public Safety:

(i) after a conviction or [~~a finding of jurisdiction~~] an adjudication by the juvenile court;

(ii) on and after January 1, 2011, through December 31, 2014, after the booking of a person for any offense under Subsection 53-10-403(1)(c); and

(iii) on and after January 1, 2015, after the booking of a person for any felony offense, as provided under Subsection 53-10-403(1)(d)(ii).

(b) On and after May 13, 2014, through December 31, 2014, the responsible agency may cause a DNA specimen to be obtained and transferred to the Department of Public Safety after the booking of a person for any felony offense, as provided under Subsection 53-10-403(1)(d)(i).

(c) If notified by the Department of Public Safety that a DNA specimen is not adequate for analysis, the agency shall, as soon as possible:

(i) obtain and transmit an additional DNA specimen; or

(ii) request that another agency that has direct access to the person and that is

## SB0088S01 compared with SB0088

authorized to collect DNA specimens under this section collect the necessary second DNA specimen and transmit it to the Department of Public Safety.

(d) Each agency that is responsible for collecting DNA specimens under this section shall establish:

(i) a tracking procedure to record the handling and transfer of each DNA specimen it obtains; and

(ii) a procedure to account for the management of all fees it collects under this section.

(5) (a) The Department of Corrections is the responsible agency whenever the person is committed to the custody of or is under the supervision of the Department of Corrections.

~~[(b) The juvenile court is the responsible agency regarding a minor under Subsection 53-10-403(3), but 53-10-403(1)(c) if the minor has been committed to the legal custody of the Division of Juvenile Justice Services, that division is the responsible agency if and a DNA specimen of the minor has not previously been obtained by the juvenile court under Section 80-6-608.]~~

~~—(c)]~~

(b) If a minor described in Subsection 53-10-403(3) is not committed to the legal custody of the Division of Juvenile Justice Services upon an adjudication, the juvenile court is the responsible agency regarding the collection of a DNA specimen from the minor.

(c) If a minor described in Subsection 53-10-403(3) is committed to the legal custody of the Division of Juvenile Justice Services upon an adjudication, the Division of Juvenile Justice Services is the responsible agency regarding the collection of a DNA specimen from the minor.

[(c)] (d) The sheriff operating a county jail is the responsible agency regarding the collection of DNA specimens from persons who:

(i) have pled guilty to or have been convicted of an offense listed under Subsection 53-10-403(2) but who have not been committed to the custody of or are not under the supervision of the Department of Corrections;

(ii) are incarcerated in the county jail:

(A) as a condition of probation for a felony offense; or

(B) for a misdemeanor offense for which collection of a DNA specimen is required;

(iii) on and after January 1, 2011, through May 12, 2014, are booked at the county jail



## SB0088S01 compared with SB0088

for any offense under Subsection 53-10-403(1)(c)[~~;~~]; and

(iv) are booked at the county jail:

(A) by a law enforcement agency that is obtaining a DNA specimen for any felony offense on or after May 13, 2014, through December 31, 2014, under Subsection 53-10-404(4)(b); or

(B) on or after January 1, 2015, for any felony offense.

~~(d)~~ (e) Each agency required to collect a DNA specimen under this section shall:

(i) designate employees to obtain the saliva DNA specimens required under this section; and

(ii) ensure that employees designated to collect the DNA specimens receive appropriate training and that the specimens are obtained in accordance with generally accepted protocol.

(6) (a) As used in this Subsection (6), "department" means the Department of Corrections.

(b) Priority of obtaining DNA specimens by the department is:

(i) first, to obtain DNA specimens of persons who as of July 1, 2002, are in the custody of or under the supervision of the department before these persons are released from incarceration, parole, or probation, if their release date is prior to that of persons under Subsection (6)(b)(ii), but in no case later than July 1, 2004; and

(ii) second, the department shall obtain DNA specimens from persons who are committed to the custody of the department or who are placed under the supervision of the department after July 1, 2002, within 120 days after the commitment, if possible, but not later than prior to release from incarceration if the person is imprisoned, or prior to the termination of probation if the person is placed on probation.

(c) The priority for obtaining DNA specimens from persons under Subsection (6)(b)(ii) is:

(i) first, persons on probation;

(ii) second, persons on parole; and

(iii) third, incarcerated persons.

(d) Implementation of the schedule of priority under Subsection (6)(c) is subject to the priority of Subsection (6)(b)(i), to ensure that the Department of Corrections obtains DNA specimens from persons in the custody of or under the supervision of the Department of

## **SB0088S01 compared with SB0088**

Corrections as of July 1, 2002, prior to their release.

(7) (a) As used in this Subsection (7):

(i) "Court" means the juvenile court.

(ii) "Division" means the Division of Juvenile Justice Services.

(b) Priority of obtaining DNA specimens by the court from minors under Section 53-10-403 whose cases are under the jurisdiction of the court but who are not in the legal custody of the division shall be:

(i) first, to obtain specimens from minors whose cases, as of July 1, 2002, are under the court's jurisdiction, before the court's jurisdiction over the minors' cases terminates; and

(ii) second, to obtain specimens from minors whose cases are under the jurisdiction of the court after July 1, 2002, within 120 days of the minor's case being found to be within the court's jurisdiction, if possible, but no later than before the court's jurisdiction over the minor's case terminates.

(c) Priority of obtaining DNA specimens by the division from minors under Section 53-10-403 who are committed to the legal custody of the division shall be:

(i) first, to obtain specimens from minors who as of July 1, 2002, are within the division's legal custody and who have not previously provided a DNA specimen under this section, before termination of the division's legal custody of these minors; and

(ii) second, to obtain specimens from minors who are placed in the legal custody of the division after July 1, 2002, within 120 days of the minor's being placed in the custody of the division, if possible, but no later than before the termination of the court's jurisdiction over the minor's case.

(8) (a) The Department of Corrections, the juvenile court, the Division of Juvenile Justice Services, and all law enforcement agencies in the state shall by policy establish procedures for obtaining saliva DNA specimens, and shall provide training for employees designated to collect saliva DNA specimens.

(b) (i) The department may designate correctional officers, including those employed by the adult probation and parole section of the department, to obtain the saliva DNA specimens required under this section.

(ii) The department shall ensure that the designated employees receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

## **SB0088S01 compared with SB0088**

(c) Blood DNA specimens shall be obtained in accordance with Section 53-10-405.

Section 4. Section **53-10-406** is amended to read:

### **53-10-406. DNA specimen analysis -- Bureau responsibilities.**

(1) The bureau shall:

(a) administer and oversee the DNA specimen collection process;

(b) store each DNA specimen and associated records received;

(c) analyze each specimen, or contract with a qualified public or private laboratory to analyze the specimen, to establish the genetic profile of the donor or to otherwise determine the identity of the person;

(d) maintain a criminal identification database containing information derived from DNA analysis;

(e) ensure that the DNA identification system does not provide information allowing prediction of genetic disease or predisposition to illness;

(f) ensure that only DNA markers routinely used or accepted in the field of forensic science are used to establish the gender and unique individual identification of the donor;

(g) utilize only those DNA analysis procedures that are consistent with, and do not exceed, procedures established and used by the Federal Bureau of Investigation for the forensic analysis of DNA;

(h) destroy a DNA specimen obtained under this part if criminal charges have not been filed within 90 days after booking for an alleged offense under Subsection 53-10-403(2)(c); and

(i) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing procedures for obtaining, transmitting, and analyzing DNA specimens and for storing and destroying DNA specimens and associated records, and criminal identification information obtained from the analysis.

(2) Procedures for DNA analysis may include all techniques which the department determines are accurate and reliable in establishing identity.

(3) (a) In accordance with Section 63G-2-305, each DNA specimen and associated record is classified as protected.

(b) The department may not transfer or disclose any DNA specimen, associated record, or criminal identification information obtained, stored, or maintained under this section, except

## **SB0088S01 compared with SB0088**

under the provisions of this section.

(4) Notwithstanding Subsection 63G-2-202(1), the department may deny inspection if the department determines that there is a reasonable likelihood that the inspection would prejudice a pending criminal investigation.

(5) The department shall adopt procedures governing the inspection of records, DNA specimens, and challenges to the accuracy of records. The procedures shall accommodate the need to preserve the materials from contamination and destruction.

(6) A person whose DNA specimen is obtained under this part may, personally or through a legal representative, submit:

(a) to the court a motion for a court order requiring the destruction of the person's DNA specimen, associated record, and any criminal identification record created in connection with that specimen, and removal of the person's DNA record from the database described in Subsection (1)(d) if:

(i) a final judgment reverses the conviction, judgment, or order that created an obligation to provide a DNA specimen; or

(ii) all charges arising from the same criminal episode for which the DNA specimen was obtained under Subsection 53-10-404.5(1)(a) have been resolved by a final judgment of dismissal with prejudice or acquittal; or

(b) to the department a request for the destruction of the person's DNA specimen, and associated record, and removal of the person's DNA record from the database described in Subsection (1)(d) if:

(i) no charge arising from the same criminal episode for which the DNA specimen was obtained under Subsection 53-10-404.5(1)(a) is filed against the person within one year after the day on which the person is booked; or

(ii) all charges arising from the same criminal episode for which the DNA specimen was obtained under Subsection 53-10-404.5(1)(a) have been resolved by a final judgment of dismissal with prejudice or acquittal.

(7) A court order issued under Subsection (6)(a) may be accompanied by a written notice to the person advising that state law provides for expungement of criminal charges if the charge is resolved by a final judgment of dismissal or acquittal.

(8) The department shall destroy the person's DNA specimen, and associated record,

## **SB0088S01 compared with SB0088**

and remove the person's DNA record from the database described in Subsection (1)(d), if:

(a) the person provides the department with:

(i) a court order for destruction described in Subsection (6)(a), and a certified copy of:

(A) the court order reversing the conviction, judgment, or order;

(B) a court order to set aside the conviction; or

(C) the dismissal or acquittal of the charge regarding which the person was arrested; or

(ii) a written request for destruction of the DNA specimen, and associated record, and

removal of the DNA record from the database described in Subsection (6)(b), and a certified copy of:

(A) a declination to prosecute from the prosecutor; or

(B) a court document that indicates all charges have been resolved by a final judgment of dismissal with prejudice or acquittal; and

(b) the department determines that the person is not obligated to submit a DNA specimen as a result of a separate conviction or [juvenile] adjudication for an offense listed in Subsection 53-10-403(2).

(9) The department may not destroy a person's DNA specimen or remove a person's DNA record from the database described in Subsection (1)(d) if the person has a prior conviction or a pending charge for which collection of a sample is authorized in accordance with Section 53-10-404.

(10) A DNA specimen, associated record, or criminal identification record created in connection with that specimen may not be affected by an order to set aside a conviction, except under the provisions of this section.

(11) If funding is not available for analysis of any of the DNA specimens collected under this part, the bureau shall store the collected specimens until funding is made available for analysis through state or federal funds.

(12) (a) (i) A person who, due to the person's employment or authority, has possession of or access to individually identifiable DNA information contained in the state criminal identification database or the state DNA specimen repository may not willfully disclose the information in any manner to any individual, agency, or entity that is not entitled under this part to receive the information.

(ii) A person may not willfully obtain individually identifiable DNA information from

## SB0088S01 compared with SB0088

the state criminal identification database or the state DNA repository other than as authorized by this part.

(iii) A person may not willfully analyze a DNA specimen for any purpose, or to obtain any information other than as required under this part.

(iv) A person may not willfully fail to destroy or fail to ensure the destruction of a DNA specimen when destruction is required by this part or by court order.

(b) (i) A person who violates Subsection (12)(a)(i), (ii), or (iii) is guilty of a third degree felony.

(ii) A person who violates Subsection (12)(a)(iv) is guilty of a class B misdemeanor.

Section 5. Section **78A-6-353** is amended to read:

### **78A-6-353. Contempt -- Penalty -- Enforcement of fine, fee, or restitution.**

(1) An individual who willfully violates or refuses to obey any order of the juvenile court may be proceeded against for contempt of court.

(2) If a juvenile court finds an individual who is 18 years old or older in contempt of court, the juvenile court may impose sanctions on the individual in accordance with Title 78B, Chapter 6, Part 3, Contempt.

(3) ~~[(a)]~~ Except as otherwise provided in ~~[this Subsection (3)]~~ Subsection (4), if a juvenile court finds a child in contempt of court, the juvenile court may:

~~[(i)]~~ (a) place the child on probation in accordance with Section 80-6-702;

~~[(ii)]~~ (b) order the child to detention, or an alternative to detention, in accordance with Section 80-6-704; or

~~[(iii)]~~ (c) require the child to pay a fine or fee in accordance with Section 80-6-709.

~~[(b)]~~ (4) (a) The juvenile court may only order a child to secure detention under Subsection ~~[(3)(a)(ii)]~~ (3)(b) for no longer than 72 hours, excluding weekends and legal holidays.

~~[(c)]~~ (b) The juvenile court may not suspend all or part of an order to secure detention upon compliance with conditions imposed by the juvenile court.

~~[(d)]~~ (c) The juvenile court may not enforce a disposition under Subsection ~~[(3)(a)(iii)]~~ (3)(c) through an order for detention, a community-based program, or secure care.

~~[(4)]~~ (5) On the sole basis of a child's absence from placement, a juvenile court may not hold a child in contempt under this section if the child:

## SB0088S01 compared with SB0088

- (a) is in the legal custody of the Division of Child and Family Services; and
- (b) is missing, has been abducted, or has run away.

Section 6. Section **80-1-102** is amended to read:

### **80-1-102. Juvenile Code definitions.**

Except as provided in Section 80-6-1103, as used in this title:

(1) (a) "Abuse" means:

- (i) (A) nonaccidental harm of a child;
- (B) threatened harm of a child;
- (C) sexual exploitation;
- (D) sexual abuse; or
- (E) human trafficking of a child in violation of Section 76-5-308.5; or
- (ii) that a child's natural parent:
  - (A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.

(b) "Abuse" does not include:

- (i) reasonable discipline or management of a child, including withholding privileges;
- (ii) conduct described in Section 76-2-401; or
- (iii) the use of reasonable and necessary physical restraint or force on a child:

- (A) in self-defense;
- (B) in defense of others;
- (C) to protect the child; or
- (D) to remove a weapon in the possession of a child for any of the reasons described in

Subsections (1)(b)(iii)(A) through (C).

(2) "Abused child" means a child who has been subjected to abuse.

~~[(3)(a) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved.]~~

~~[(b) "Adjudication" does not mean a finding of not competent to proceed in accordance~~

## SB0088S01 compared with SB0088

~~with Section 80-6-402.]~~

(3) (a) "Adjudication" means, except as provided in Subsection (3)(b):

(i) for a delinquency petition or criminal information under Chapter 6, Juvenile Justice:

(A) a finding by the juvenile court that the facts alleged in a delinquency petition or criminal information alleging that a minor committed an offense have been proved;

(B) an admission by a minor in the juvenile court as described in Section 80-6-306; or

(C) a plea of no contest by minor in the juvenile court; or

(ii) for all other proceedings under this title, a finding by the juvenile court that the facts alleged in the petition have been proved.

(b) "Adjudication" does not include:

(i) an admission by a minor described in Section 80-6-306 until the juvenile court enters the minor's admission; or

(ii) a finding of not competent to proceed in accordance with Section 80-6-402.

(4) (a) "Adult" means an individual who is 18 years old or older.

(b) "Adult" does not include an individual:

(i) who is 18 years old or older; and

(ii) who is a minor.

(5) "Attorney guardian ad litem" means the same as that term is defined in Section 78A-2-801.

(6) "Board" means the Board of Juvenile Court Judges.

(7) "Child" means, except as provided in Section 80-2-905, an individual who is under 18 years old.

(8) "Child and family plan" means a written agreement between a child's parents or guardian and the Division of Child and Family Services as described in Section 80-3-307.

(9) "Child placing" means the same as that term is defined in Section 26B-2-101.

(10) "Child-placing agency" means the same as that term is defined in Section 26B-2-101.

(11) "Child protection team" means a team consisting of:

(a) the child welfare caseworker assigned to the case;

(b) if applicable, the child welfare caseworker who made the decision to remove the child;



## SB0088S01 compared with SB0088

- (c) a representative of the school or school district where the child attends school;
- (d) if applicable, the law enforcement officer who removed the child from the home;
- (e) a representative of the appropriate Children's Justice Center, if one is established within the county where the child resides;
- (f) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances;
- (g) if appropriate, a representative of law enforcement selected by the chief of police or sheriff in the city or county where the child resides; and
- (h) any other individuals determined appropriate and necessary by the team coordinator and chair.

(12) (a) "Chronic abuse" means repeated or patterned abuse.

(b) "Chronic abuse" does not mean an isolated incident of abuse.

(13) (a) "Chronic neglect" means repeated or patterned neglect.

(b) "Chronic neglect" does not mean an isolated incident of neglect.

(14) "Clandestine laboratory operation" means the same as that term is defined in Section 58-37d-3.

(15) "Commit" or "committed" means, unless specified otherwise:

(a) with respect to a child, to transfer legal custody; and

(b) with respect to a minor who is at least 18 years old, to transfer custody.

(16) "Community-based program" means a nonsecure residential or nonresidential program, designated to supervise and rehabilitate juvenile offenders, that prioritizes the least restrictive setting, consistent with public safety, and operated by or under contract with the Division of Juvenile Justice and Youth Services.

(17) "Community placement" means placement of a minor in a community-based program described in Section 80-5-402.

(18) ~~(a)~~ "Correctional facility" means:

~~(a)(i)~~ a county jail; or

~~(b)(ii)~~ a secure correctional facility as defined in Section 64-13-1.

~~(b) "Correctional facility" does not include:~~

~~(i) a detention facility; or~~

~~(ii) a secure care facility.~~

## **SB0088S01 compared with SB0088**

‡ (19) "Criminogenic risk factors" means evidence-based factors that are associated with a minor's likelihood of reoffending.

(20) "Department" means the Department of Health and Human Services created in Section 26B-1-201.

(21) "Dependent child" or "dependency" means a child who is without proper care through no fault of the child's parent, guardian, or custodian.

(22) "Deprivation of custody" means transfer of legal custody by the juvenile court from a parent or a previous custodian to another person, agency, or institution.

(23) "Detention" means home detention or secure detention.

(24) "Detention facility" means a facility, established by the Division of Juvenile Justice and Youth Services in accordance with Section 80-5-501, for minors held in detention.

(25) "Detention risk assessment tool" means an evidence-based tool established under Section 80-5-203 that:

(a) assesses a minor's risk of failing to appear in court or reoffending before adjudication; and

(b) is designed to assist in making a determination of whether a minor shall be held in detention.

(26) "Developmental immaturity" means incomplete development in one or more domains that manifests as a functional limitation in the minor's present ability to:

(a) consult with counsel with a reasonable degree of rational understanding; and

(b) have a rational as well as factual understanding of the proceedings.

(27) "Disposition" means an order by a juvenile court, after the adjudication of a minor, under Section 80-3-405 or 80-4-305 or Chapter 6, Part 7, Adjudication and Disposition.

(28) "Educational neglect" means that, after receiving a notice of compulsory education violation under Section 53G-6-202, the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(29) "Educational series" means an evidence-based instructional series:

(a) obtained at a substance abuse program that is approved by the Division of Integrated Healthcare in accordance with Section 26B-5-104; and

(b) designed to prevent substance use or the onset of a mental health disorder.

(30) "Emancipated" means the same as that term is defined in Section 80-7-102.

## **SB0088S01 compared with SB0088**

(31) "Evidence-based" means a program or practice that has had multiple randomized control studies or a meta-analysis demonstrating that the program or practice is effective for a specific population or has been rated as effective by a standardized program evaluation tool.

(32) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.

(33) "Formal probation" means a minor is:

(a) supervised in the community by, and reports to, a juvenile probation officer or an agency designated by the juvenile court; and

(b) subject to return to the juvenile court in accordance with Section 80-6-607.

(34) "Group rehabilitation therapy" means psychological and social counseling of one or more individuals in the group, depending upon the recommendation of the therapist.

(35) "Guardian" means a person appointed by a court to make decisions regarding a minor, including the authority to consent to:

(a) marriage;

(b) enlistment in the armed forces;

(c) major medical, surgical, or psychiatric treatment; or

(d) legal custody, if legal custody is not vested in another individual, agency, or institution.

(36) "Guardian ad litem" means the same as that term is defined in Section 78A-2-801.

(37) "Harm" means:

(a) physical or developmental injury or damage;

(b) emotional damage that results in a serious impairment in the child's growth, development, behavior, or psychological functioning;

(c) sexual abuse; or

(d) sexual exploitation.

(38) "Home detention" means placement of a minor:

(a) if prior to a disposition, in the minor's home, or in a surrogate home with the consent of the minor's parent, guardian, or custodian, under terms and conditions established by the Division of Juvenile Justice and Youth Services or the juvenile court; or

(b) if after a disposition, and in accordance with Section 78A-6-353 or 80-6-704, in the minor's home, or in a surrogate home with the consent of the minor's parent, guardian, or custodian, under terms and conditions established by the Division of Juvenile Justice and

## **SB0088S01 compared with SB0088**

Youth Services or the juvenile court.

(39) (a) "Incest" means engaging in sexual intercourse with an individual whom the perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.

(b) "Incest" includes:

(i) blood relationships of the whole or half blood, regardless of whether the relationship is legally recognized;

(ii) relationships of parent and child by adoption; and

(iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.

(40) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.

(41) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.

(42) "Indigent defense service provider" means the same as that term is defined in Section 78B-22-102.

(43) "Indigent defense services" means the same as that term is defined in Section 78B-22-102.

(44) "Indigent individual" means the same as that term is defined in Section 78B-22-102.

(45) (a) "Intake probation" means a minor is:

(i) monitored by a juvenile probation officer; and

(ii) subject to return to the juvenile court in accordance with Section 80-6-607.

(b) "Intake probation" does not include formal probation.

(46) "Intellectual disability" means a significant subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior that constitutes a substantial limitation to the individual's ability to function in society.

(47) "Juvenile offender" means:

(a) a serious youth offender; or

(b) a youth offender.

(48) "Juvenile probation officer" means a probation officer appointed under Section 78A-6-205.

(49) "Juvenile receiving center" means a nonsecure, nonresidential program established

## **SB0088S01 compared with SB0088**

by the Division of Juvenile Justice and Youth Services, or under contract with the Division of Juvenile Justice and Youth Services, that is responsible for minors taken into temporary custody under Section 80-6-201.

(50) "Legal custody" means a relationship embodying:

- (a) the right to physical custody of the minor;
- (b) the right and duty to protect, train, and discipline the minor;
- (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;

(d) the right to determine where and with whom the minor shall live; and

(e) the right, in an emergency, to authorize surgery or other extraordinary care.

(51) "Licensing Information System" means the Licensing Information System maintained by the Division of Child and Family Services under Section 80-2-1002.

(52) "Management Information System" means the Management Information System developed by the Division of Child and Family Services under Section 80-2-1001.

(53) "Mental illness" means:

(a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or related functioning; or

(b) the same as that term is defined in:

(i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or

(ii) the current edition of the International Statistical Classification of Diseases and Related Health Problems.

(54) "Minor" means, except as provided in Sections 80-6-501, 80-6-901, and 80-7-102:

(a) a child; or

(b) an individual:

(i) (A) who is at least 18 years old and younger than 21 years old; and

(B) for whom the Division of Child and Family Services has been specifically ordered by the juvenile court to provide services because the individual was an abused, neglected, or dependent child or because the individual was adjudicated for an offense;

(ii) (A) who is at least 18 years old and younger than 25 years old; and

(B) whose case is under the jurisdiction of the juvenile court in accordance with

## **SB0088S01 compared with SB0088**

Subsection 78A-6-103(1)(b); or

- (iii) (A) who is at least 18 years old and younger than 21 years old; and
- (B) whose case is under the jurisdiction of the juvenile court in accordance with

Subsection 78A-6-103(1)(c).

(55) "Mobile crisis outreach team" means the same as that term is defined in Section 26B-5-101.

(56) "Molestation" means that an individual, with the intent to arouse or gratify the sexual desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child, or the breast of a female child, or takes indecent liberties with a child as defined in Section 76-5-401.1.

(57) (a) "Natural parent" means, except as provided in Section 80-3-302, a minor's biological or adoptive parent.

- (b) "Natural parent" includes the minor's noncustodial parent.

(58) (a) "Neglect" means action or inaction causing:

(i) abandonment of a child, except as provided in Chapter 4, Part 5, Safe Relinquishment of a Newborn Child;

(ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;

(iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence or medical care, or any other care necessary for the child's health, safety, morals, or well-being;

(iv) a child to be at risk of being neglected or abused because another child in the same home is neglected or abused;

(v) abandonment of a child through an unregulated child custody transfer under Section 78B-24-203; or

- (vi) educational neglect.

(b) "Neglect" does not include:

(i) a parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child;

(ii) a health care decision made for a child by the child's parent or guardian, unless the state or other party to a proceeding shows, by clear and convincing evidence, that the health

## SB0088S01 compared with SB0088

care decision is not reasonable and informed;

(iii) a parent or guardian exercising the right described in Section 80-3-304; or

(iv) permitting a child, whose basic needs are met and who is of sufficient age and maturity to avoid harm or unreasonable risk of harm, to engage in independent activities, including:

(A) traveling to and from school, including by walking, running, or bicycling;

(B) traveling to and from nearby commercial or recreational facilities;

(C) engaging in outdoor play;

(D) remaining in a vehicle unattended, except under the conditions described in Subsection 76-10-2202(2);

(E) remaining at home unattended; or

(F) engaging in a similar independent activity.

(59) "Neglected child" means a child who has been subjected to neglect.

(60) "Nonjudicial adjustment" means closure of the case by the assigned juvenile probation officer, without an adjudication of the minor's case under Section 80-6-701, upon the consent in writing of:

(a) the assigned juvenile probation officer; and

(b) (i) the minor; or

(ii) the minor and the minor's parent, guardian, or custodian.

(61) "Not competent to proceed" means that a minor, due to a mental illness, intellectual disability or related condition, or developmental immaturity, lacks the ability to:

(a) understand the nature of the proceedings against the minor or of the potential disposition for the offense charged; or

(b) consult with counsel and participate in the proceedings against the minor with a reasonable degree of rational understanding.

(62) "Parole" means a conditional release of a juvenile offender from residency in secure care to live outside of secure care under the supervision of the Division of Juvenile Justice and Youth Services, or another person designated by the Division of Juvenile Justice and Youth Services.

(63) "Physical abuse" means abuse that results in physical injury or damage to a child.

(64) (a) "Probation" means a legal status created by court order, following an

## SB0088S01 compared with SB0088

adjudication under Section 80-6-701, whereby the minor is permitted to remain in the minor's home under prescribed conditions.

(b) "Probation" includes intake probation or formal probation.

(65) "Prosecuting attorney" means:

(a) the attorney general and any assistant attorney general;

(b) any district attorney or deputy district attorney;

(c) any county attorney or assistant county attorney; and

(d) any other attorney authorized to commence an action on behalf of the state.

(66) "Protective custody" means the shelter of a child by the Division of Child and Family Services from the time the child is removed from the home until the earlier of:

(a) the day on which the shelter hearing is held under Section 80-3-301; or

(b) the day on which the child is returned home.

(67) "Protective services" means expedited services that are provided:

(a) in response to evidence of neglect, abuse, or dependency of a child;

(b) to a cohabitant who is neglecting or abusing a child, in order to:

(i) help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse; and

(ii) strengthen the cohabitant's ability to provide safe and acceptable care; and

(c) in cases where the child's welfare is endangered:

(i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;

(ii) to cause a protective order to be issued for the protection of the child, when appropriate; and

(iii) to protect the child from the circumstances that endanger the child's welfare including, when appropriate:

(A) removal from the child's home;

(B) placement in substitute care; and

(C) petitioning the court for termination of parental rights.

(68) "Protective supervision" means a legal status created by court order, following an adjudication on the ground of abuse, neglect, or dependency, whereby:

(a) the minor is permitted to remain in the minor's home; and



## **SB0088S01 compared with SB0088**

(b) supervision and assistance to correct the abuse, neglect, or dependency is provided by an agency designated by the juvenile court.

(69) (a) "Related condition" means a condition that:

(i) is found to be closely related to intellectual disability;

(ii) results in impairment of general intellectual functioning or adaptive behavior similar to that of an intellectually disabled individual;

(iii) is likely to continue indefinitely; and

(iv) constitutes a substantial limitation to the individual's ability to function in society.

(b) "Related condition" does not include mental illness, psychiatric impairment, or serious emotional or behavioral disturbance.

(70) (a) "Residual parental rights and duties" means the rights and duties remaining with a parent after legal custody or guardianship, or both, have been vested in another person or agency, including:

(i) the responsibility for support;

(ii) the right to consent to adoption;

(iii) the right to determine the child's religious affiliation; and

(iv) the right to reasonable parent-time unless restricted by the court.

(b) If no guardian has been appointed, "residual parental rights and duties" includes the right to consent to:

(i) marriage;

(ii) enlistment; and

(iii) major medical, surgical, or psychiatric treatment.

(71) "Runaway" means a child, other than an emancipated child, who willfully leaves the home of the child's parent or guardian, or the lawfully prescribed residence of the child, without permission.

(72) "Secure care" means placement of a minor, who is committed to the Division of Juvenile Justice and Youth Services for rehabilitation, in a facility operated by, or under contract with, the Division of Juvenile Justice and Youth Services, that provides 24-hour supervision and confinement of the minor.

(73) "Secure care facility" means a facility, established in accordance with Section 80-5-503, for juvenile offenders in secure care.

## **SB0088S01 compared with SB0088**

(74) "Secure detention" means temporary care of a minor who requires secure custody in a physically restricting facility operated by, or under contract with, the Division of Juvenile Justice and Youth Services:

(a) before disposition of an offense that is alleged to have been committed by the minor; or

(b) under Section 80-6-704.

(75) "Serious youth offender" means an individual who:

(a) is at least 14 years old, but under 25 years old;

(b) committed a felony listed in Subsection 80-6-503(1) and the continuing jurisdiction of the juvenile court was extended over the individual's case until the individual was 25 years old in accordance with Section 80-6-605; and

(c) is committed by the juvenile court to the Division of Juvenile Justice and Youth Services for secure care under Sections 80-6-703 and 80-6-705.

(76) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.

(77) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.

(78) (a) "Severe type of child abuse or neglect" means, except as provided in Subsection (78)(b):

(i) if committed by an individual who is 18 years old or older:

(A) chronic abuse;

(B) severe abuse;

(C) sexual abuse;

(D) sexual exploitation;

(E) abandonment;

(F) chronic neglect; or

(G) severe neglect; or

(ii) if committed by an individual who is under 18 years old:

(A) causing serious physical injury, as defined in Subsection 76-5-109(1), to another child that indicates a significant risk to other children; or

(B) sexual behavior with or upon another child that indicates a significant risk to other

## SB0088S01 compared with SB0088

children.

(b) "Severe type of child abuse or neglect" does not include:

(i) the use of reasonable and necessary physical restraint by an educator in accordance with Subsection 53G-8-302(2) or Section 76-2-401;

(ii) an individual's conduct that is justified under Section 76-2-401 or constitutes the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the possession or under the control of a child or to protect the child or another individual from physical injury; or

(iii) a health care decision made for a child by a child's parent or guardian, unless, subject to Subsection (78)(c), the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(c) Subsection (78)(b)(iii) does not prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

(79) "Sexual abuse" means:

(a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an adult directed towards a child;

(b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation committed by a child towards another child if:

(i) there is an indication of force or coercion;

(ii) the children are related, as described in Subsection (39), including siblings by marriage while the marriage exists or by adoption;

(iii) there have been repeated incidents of sexual contact between the two children, unless the children are 14 years old or older; or

(iv) there is a disparity in chronological age of four or more years between the two children;

(c) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the individual who engages in the conduct is actually charged with, or convicted of, the offense:

(i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the alleged perpetrator of an offense described in Section 76-5-401 is a minor;

## **SB0088S01 compared with SB0088**

- (ii) child bigamy, Section 76-7-101.5;
- (iii) incest, Section 76-7-102;
- (iv) lewdness, Section 76-9-702;
- (v) sexual battery, Section 76-9-702.1;
- (vi) lewdness involving a child, Section 76-9-702.5; or
- (vii) voyeurism, Section 76-9-702.7; or

(d) subjecting a child to participate in or threatening to subject a child to participate in a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural marriage.

(80) "Sexual exploitation" means knowingly:

(a) employing, using, persuading, inducing, enticing, or coercing any child to:

(i) pose in the nude for the purpose of sexual arousal of any individual; or

(ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;

(b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:

(i) in the nude, for the purpose of sexual arousal of any individual; or

(ii) engaging in sexual or simulated sexual conduct; or

(c) engaging in any conduct that would constitute an offense under Section 76-5b-201, sexual exploitation of a minor, or Section 76-5b-201.1, aggravated sexual exploitation of a minor, regardless of whether the individual who engages in the conduct is actually charged with, or convicted of, the offense.

(81) "Shelter" means the temporary care of a child in a physically unrestricted facility pending a disposition or transfer to another jurisdiction.

(82) "Shelter facility" means a nonsecure facility that provides shelter for a minor.

(83) "Significant risk" means a risk of harm that is determined to be significant in accordance with risk assessment tools and rules established by the Division of Child and Family Services in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that focus on:

(a) age;

(b) social factors;

## **SB0088S01 compared with SB0088**

- (c) emotional factors;
- (d) sexual factors;
- (e) intellectual factors;
- (f) family risk factors; and
- (g) other related considerations.

(84) "Single criminal episode" means the same as that term is defined in Section 76-1-401.

(85) "Status offense" means an offense that would not be an offense but for the age of the offender.

(86) "Substance abuse" means, except as provided in Section 80-2-603, the misuse or excessive use of alcohol or other drugs or substances.

(87) "Substantiated" or "substantiation" means a judicial finding based on a preponderance of the evidence, and separate consideration of each allegation made or identified in the case, that abuse, neglect, or dependency occurred.

(88) "Substitute care" means:

(a) the placement of a minor in a family home, group care facility, or other placement outside the minor's own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the minor's own home would be contrary to the minor's welfare;

(b) services provided for a minor in the protective custody of the Division of Child and Family Services, or a minor in the temporary custody or custody of the Division of Child and Family Services, as those terms are defined in Section 80-2-102; or

(c) the licensing and supervision of a substitute care facility.

(89) "Supported" means a finding by the Division of Child and Family Services based on the evidence available at the completion of an investigation, and separate consideration of each allegation made or identified during the investigation, that there is a reasonable basis to conclude that abuse, neglect, or dependency occurred.

(90) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

(91) "Therapist" means:

(a) an individual employed by a state division or agency for the purpose of conducting

## SB0088S01 compared with SB0088

psychological treatment and counseling of a minor in the division's or agency's custody; or

(b) any other individual licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(92) "Threatened harm" means actions, inactions, or credible verbal threats, indicating that the child is at an unreasonable risk of harm or neglect.

(93) "Ungovernable" means a child in conflict with a parent or guardian, and the conflict:

(a) results in behavior that is beyond the control or ability of the child, or the parent or guardian, to manage effectively;

(b) poses a threat to the safety or well-being of the child, the child's family, or others;  
or

(c) results in the situations described in Subsections (93)(a) and (b).

(94) "Unsubstantiated" means a judicial finding that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.

(95) "Unsupported" means a finding by the Division of Child and Family Services at the completion of an investigation, after the day on which the Division of Child and Family Services concludes the alleged abuse, neglect, or dependency is not without merit, that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.

(96) "Validated risk and needs assessment" means an evidence-based tool that assesses a minor's risk of reoffending and a minor's criminogenic needs.

(97) "Without merit" means a finding at the completion of an investigation by the Division of Child and Family Services, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

(98) "Youth offender" means an individual who is:

(a) at least 12 years old, but under 21 years old; and

(b) committed by the juvenile court to the Division of Juvenile Justice and Youth Services for secure care under Sections 80-6-703 and 80-6-705.

Section 7. Section **80-5-202** is amended to read:

### **80-5-202. Division rulemaking authority -- Reports on sexual assault.**

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

## SB0088S01 compared with SB0088

division shall make rules to:

(a) establish standards for the admission of a minor to detention;

(b) describe good behavior for which credit may be earned under Subsection

~~[80-6-704(4)]~~ 80-6-704(5);

(c) establish a formula, in consultation with the Office of the Legislative Fiscal Analyst, to calculate savings from General Fund appropriations under 2017 Laws of Utah, Chapter 330, resulting from the reduction in out-of-home placements for juvenile offenders with the division;

(d) establish policies and procedures regarding sexual assaults that occur in detention and secure care facilities; and

(e) establish the qualifications and conditions for services provided by the division under Section 80-6-809.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules:

(a) that govern the operation of prevention and early intervention programs, youth service programs, juvenile receiving centers, and other programs described in Section 80-5-401; and

(b) that govern the operation of detention and secure care facilities.

(3) A rule made by the division under Subsection (1)(a):

(a) may not permit secure detention based solely on the existence of multiple status offenses, misdemeanors, or infractions arising out of a single criminal episode; and

(b) shall prioritize use of home detention for a minor who might otherwise be held in secure detention.

(4) The rules described in Subsection (1)(d) shall:

(a) require education and training, including:

(i) providing to minors detained in secure care and detention facilities, at intake and periodically, easy-to-understand information, which is developed and approved by the division, on sexual assault prevention, treatment, reporting, and counseling in consultation with community groups with expertise in sexual assault prevention, treatment, reporting, and counseling; and

(ii) providing training specific to sexual assault to division mental health professionals

## **SB0088S01 compared with SB0088**

and all division employees who have direct contact with minors regarding treatment and methods of prevention and investigation;

(b) require reporting of any incident of sexual assault, including:

(i) ensuring the confidentiality of sexual assault reports from minors and the protection of minors who report sexual assault; and

(ii) prohibiting retaliation and disincentives for reporting sexual assault;

(c) require safety and care for minors who report sexual assault, including:

(i) providing, in situations in which there is reason to believe that a sexual assault has occurred, reasonable and appropriate measures to ensure the minor's safety by separating the minor from the minor's assailant, if known;

(ii) providing acute trauma care for minors who report sexual assault, including treatment of injuries, HIV prophylaxis measures, and testing for sexually transmitted infections;

(iii) providing confidential mental health counseling for minors who report sexual assault, including:

(A) access to outside community groups or victim advocates that have expertise in sexual assault counseling; and

(B) enabling confidential communication between minors and community groups and victim advocates; and

(iv) monitoring minors who report sexual assault for suicidal impulses, post-traumatic stress disorder, depression, and other mental health consequences resulting from the sexual assault;

(d) require staff reporting of sexual assault and staff discipline for failure to report or for violating sexual assault policies, including:

(i) requiring all division employees to report any knowledge, suspicion, or information regarding an incident of sexual assault to the director or the director's designee;

(ii) requiring disciplinary action for a division employee who fails to report as required; and

(iii) requiring division employees to be subject to disciplinary sanctions up to and including termination for violating agency sexual assault policies, with termination the presumptive disciplinary sanction for division employees who have engaged in sexual assault,



## SB0088S01 compared with SB0088

consistent with constitutional due process protections and state personnel laws and rules;

(e) require that any report of an incident of sexual assault be referred to the Division of Child and Family Services or a law enforcement agency with jurisdiction over the detention or secure care facility in which the alleged sexual assault occurred; and

(f) require data collection and reporting of all incidents of sexual assault from each detention and secure care facility.

(5) The division shall annually report the data described in Section (4)(f) to the Law Enforcement and Criminal Justice Interim Committee.

Section 8. Section ~~{80-6-205}~~ 80-5-304 is ~~{amended to read:~~  
enacted to read:

### 80-5-304. Income and finances for minors in the custody of the division.

(1) If a minor is committed to the custody of the division, the division may establish:

(a) an account for the minor that is administered by the division; or

(b) a joint account for the minor and the division at a federally insured financial institution.

(2) The division may:

(a) collect funds earned or received by a minor; and

(b) place the funds earned or received by the minor into an account described in

Subsection (1).

(3) The division may:

(a) only use funds placed in an account described in Subsection (1) for the minor, including using the funds to pay restitution, reparations, fines, alimony, support payments, cost of care, or similar court-ordered payments owed by the minor; and

(b) provide the minor with any funds remaining in an account described in Subsection (1) upon the minor's transition and termination from the custody of the division.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules to establish the administration of accounts and finances for minors in the custody of the division.

Section 9. Section 80-6-205 is amended to read:

**80-6-205. Admission to detention -- Alternative to detention -- Rights of a minor in detention.**

## SB0088S01 compared with SB0088

(1) If a minor is taken to a detention facility under Section 80-6-203, a designated staff member of the detention facility shall immediately review the form and determine, based on the results of the detention risk assessment tool and Subsection (2), whether to:

(a) admit the minor to secure detention;

(b) admit the minor to home detention;

(c) place the minor in [~~another~~] an alternative to detention, except that the staff member may not place the minor in a correctional facility that is intended to hold adults accused or convicted of offenses as an alternative to detention; or

(d) if the minor is a child, return the minor home upon a written promise by the minor's parent, guardian, or custodian to bring the minor to the juvenile court at a time set or without restriction.

(2) [~~A minor may not be admitted to detention~~] The designated staff member may not admit a minor to detention under Subsection (1) unless:

(a) the minor is detainable based on the detention guidelines; or

(b) the minor has been brought to detention in accordance with:

(i) a court order;

(ii) a warrant [~~in accordance with~~] described in Section 80-6-202; or

(iii) a division warrant [~~in accordance with~~] described in Section 80-6-806.

(3) If the designated staff member determines to admit a minor to home detention, the staff member shall notify the juvenile court of that determination.

(4) Even if a minor is eligible for secure detention, a peace officer or other person who takes a minor to a detention facility, or the designated staff member of the detention facility, may release a minor to a less restrictive alternative than secure detention.

(5) (a) If a minor taken to a detention facility does not qualify for admission under detention guidelines or this section, a designated staff member of the detention facility shall arrange an appropriate alternative, including admitting a minor to a juvenile receiving center or a shelter facility.

(b) (i) Except as otherwise provided by this section, a minor may not be placed or kept in secure detention while court proceedings are pending.

(ii) A child may not be placed or kept in a shelter facility while court proceedings are pending, unless the child is in protective custody in accordance with Chapter 3, Abuse,

## SB0088S01 compared with SB0088

Neglect, and Dependency Proceedings.

(6) If a minor is taken into temporary custody and admitted to a secure detention, or another alternative to detention, a designated staff member of the detention facility shall:

- (a) immediately notify the minor's parent, guardian, or custodian; and
- (b) promptly notify the juvenile court of the placement.

(7) If a minor is admitted to secure detention, or another alternative to detention, outside the county of the minor's residence and a juvenile court determines, in a detention hearing, that secure detention, or an alternative to detention, of the minor shall continue, the juvenile court shall direct the sheriff of the county of the minor's residence to transport the minor to secure detention or another alternative to detention in that county.

(8) (a) Subject to Subsection (8)(b), a minor admitted to detention has a right to:

(i) phone the minor's parent, guardian, or attorney immediately after the minor is admitted to detention; and

(ii) confer in private, at any time, with an attorney, cleric, parent, guardian, or custodian.

(b) The division may:

(i) establish a schedule for which a minor in detention may visit or phone a person described in Subsection (8)(a);

(ii) allow a minor in detention to visit or call persons described in Subsection (8)(a) in special circumstances;

(iii) limit the number and length of calls and visits for a minor in detention to persons described in Subsection (8)(a) on account of scheduling, facility, or personnel constraints; or

(iv) limit the minor's rights ~~[under]~~ described in Subsection (8)(a) if a compelling reason exists to limit the minor's rights.

(c) A minor admitted to detention shall be immediately advised of the minor's rights described in this Subsection (8).

Section ~~9~~10. Section **80-6-608** is amended to read:

**80-6-608. When photographs, fingerprints, or HIV infection tests may be taken -- Distribution -- DNA collection -- Reimbursement.**

(1) The division shall take a photograph and fingerprints of a minor who is:

(a) 14 years old or older at the time of the alleged commission of an offense that would

## **SB0088S01 compared with SB0088**

be a felony if the minor were 18 years old or older; and

(b) admitted to a detention facility for the alleged commission of the offense.

(2) The juvenile court shall order a minor who is 14 years old or older at the time that the minor is alleged to have committed an offense described in Subsection (2)(a) or (b) to have the minor's fingerprints taken at a detention facility or a local law enforcement agency if the minor is:

(a) adjudicated for an offense that would be a class A misdemeanor if the minor were 18 years old or older; or

(b) adjudicated for an offense that would be a felony if the minor were 18 years old or older and the minor was not admitted to a detention facility.

(3) The juvenile court shall take a photograph of a minor who is:

(a) 14 years old or older at the time the minor was alleged to have committed an offense that would be a felony or a class A misdemeanor if the minor were 18 years old or older; and

(b) adjudicated for the offense described in Subsection (3)(a).

(4) If a minor's fingerprints are taken under this section, the minor's fingerprints shall be forwarded to the Bureau of Criminal Identification and may be stored by electronic medium.

(5) HIV testing shall be conducted on a minor who is taken into custody after having been adjudicated for a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, upon the request of:

(a) the victim;

(b) the parent or guardian of a victim who is younger than 14 years old; or

(c) the guardian of the alleged victim if the victim is a vulnerable adult as defined in Section 26B-6-201.

(6) HIV testing shall be conducted on a minor against whom a petition has been filed or a pickup order has been issued for the commission of any offense under Title 76, Chapter 5, Part 4, Sexual Offenses:

(a) upon the request of:

(i) the victim;

(ii) the parent or guardian of a victim who is younger than 14 years old; or

(iii) the guardian of the alleged victim if the victim is a vulnerable adult as defined in

## SB0088S01 compared with SB0088

Section 26B-6-201; and

(b) in which:

(i) the juvenile court has signed an accompanying arrest warrant, pickup order, or any other order based upon probable cause regarding the alleged offense; and

(ii) the juvenile court has found probable cause to believe that the alleged victim has been exposed to HIV infection as a result of the alleged offense.

(7) HIV tests, photographs, and fingerprints may not be taken of a child who is younger than 14 years old without the consent of the juvenile court.

(8) (a) Photographs taken under this section may be distributed or disbursed to:

(i) state and local law enforcement agencies;

(ii) the judiciary; and

(iii) the division.

(b) Fingerprints may be distributed or disbursed to:

(i) state and local law enforcement agencies;

(ii) the judiciary;

(iii) the division; and

(iv) agencies participating in the Western Identification Network.

(9) (a) A DNA specimen shall be obtained from a minor who is [~~under the jurisdiction of the juvenile court as described in Subsection 53-10-403(3)~~] adjudicated by the juvenile court as described in Subsection 53-10-403(1)(e).

(b) The DNA specimen shall be obtained, in accordance with Subsection 53-10-404(4), by:

(i) designated employees of the juvenile court; or

(ii) if the minor is committed to the division, designated employees of the division.

(c) The responsible agency under Subsection (9)(b) shall ensure that an employee designated to collect the saliva DNA specimens receives appropriate training and that the specimens are obtained in accordance with accepted protocol.

(d) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA Specimen Restricted Account created in Section 53-10-407.

(e) Payment of the reimbursement is second in priority to payments the minor is ordered to make for restitution under Section 80-6-710 and for treatment ordered under Section

## SB0088S01 compared with SB0088

80-3-403.

Section ~~{10}~~11. Section **80-6-704** is amended to read:

### **80-6-704. Detention or alternative to detention -- Limitations.**

(1) (a) The juvenile court may order a minor to detention, or an alternative to detention, if the minor is adjudicated for:

- (i) an offense under Section 80-6-701; or
- (ii) contempt of court under Section 78A-6-353.

(b) Except as provided in Subsection [~~78A-6-353(3)~~] 78A-6-353(4), and subject to the juvenile court retaining continuing jurisdiction over a minor's case, the juvenile court may order a minor to detention, or an alternative to detention, under Subsection [~~(1)~~] (1)(a) for a period not to exceed 30 cumulative days for an adjudication.

(c) If a minor is held in detention before an adjudication, the time spent in detention before the adjudication shall be credited toward the 30 cumulative days eligible as a disposition under Subsection [~~(1)(a)~~] (1)(b).

(d) If a minor spent more than 30 days in detention before a disposition [~~under Subsection (1)~~], the juvenile court may not order the minor to detention under this section.

(2) An order for detention under Subsection (1) may not be suspended upon conditions ordered by the juvenile court.

(3) A juvenile court may not order a minor to detention for:

- (a) contempt of court, except to the extent permitted under Section 78A-6-353;
- (b) a violation of probation;
- (c) failure to pay a fine, fee, restitution, or other financial obligation;
- (d) unfinished compensatory or community service hours;
- (e) an infraction; or
- (f) a status offense.

(4) A juvenile court may not order a minor be placed in a correctional facility **that is intended to hold adults accused or convicted of offenses** as an alternative to detention under Subsection (1).

[~~(4)~~] (5) (a) If a minor is held in detention under this section, the minor is eligible to receive credit for good behavior against the period of detention.

(b) The rate of credit is one day of credit for good behavior for every three days spent

## SB0088S01 compared with SB0088

in detention.

~~[(5)]~~ (6) (a) A minor may not be held in secure detention following a disposition by the juvenile court:

- (i) under Chapter 3, Abuse, Neglect, and Dependency Proceedings; or
- (ii) except as provided in Subsection ~~[(5)(b)]~~ (6)(b), for a community-based program.

(b) If a minor is awaiting placement by the division under Section 80-6-703, a minor may not be held in secure detention for longer than 72 hours, excluding weekends and holidays.

(c) The period of detention under Subsection ~~[(5)(b)]~~ (6)(b) may be extended by the juvenile court for a cumulative total of seven calendar days if:

- (i) the division, or another agency responsible for placement, files a written petition with the juvenile court requesting the extension and setting forth good cause; and
- (ii) the juvenile court enters a written finding that it is in the best interests of both the minor and the community to extend the period of detention.

(d) The juvenile court may extend the period of detention beyond the seven calendar days if the juvenile court finds, by clear and convincing evidence, that:

- (i) the division, or another agency responsible for placement, does not have space for the minor; and
- (ii) the safety of the minor and community requires an extension of the period of detention.

(e) The division, or the agency with custody of the minor, shall report to the juvenile court every 48 hours, excluding weekends and holidays, regarding whether the division, or another agency responsible for placement, has space for the minor.

(f) The division, or agency, requesting an extension shall promptly notify the detention facility that a written petition has been filed.

(g) The juvenile court shall promptly notify the detention facility regarding the juvenile court's initial disposition and any ruling on a petition for an extension, whether granted or denied.

Section ~~11~~12. Section **80-6-1006.1** is amended to read:

**80-6-1006.1. Exceptions to expungement order -- Distribution of expungement order -- Agency duties -- Effect of expungement -- Access to expunged record.**

## SB0088S01 compared with SB0088

(1) This section applies to an expungement order under Section 80-6-1004.1, 80-6-1004.2, 80-6-1004.3, 80-6-1004.4, or 80-6-1004.5.

(2) The juvenile court may not order:

(a) the Board of Pardons and Parole and the Department of Corrections to seal a record in the possession of the Board of Pardons and Parole or the Department of Corrections, except that the juvenile court may order the Board of Pardons and Parole and the Department of Corrections to restrict access to a record if the record is specifically identified in the expungement order as a record in the possession of the Board of Pardons and Parole or the Department of Corrections; or

(b) the Division of Child and Family Services to expunge a record in an individual's juvenile record that is contained in the Management Information System or the Licensing Information System unless:

(i) the record is unsupported; or

(ii) after notice and an opportunity to be heard, the Division of Child and Family Services stipulates in writing to expunging the record.

(3) (a) If the juvenile court issues an expungement order, the juvenile court shall send a copy of the expungement order to any affected agency or official identified in the juvenile record.

(b) An individual who is the subject of an expungement order may deliver copies of the expungement order to all agencies and officials affected by the expungement order.

(4) (a) Upon receipt of an expungement order, an agency shall:

(i) to avoid destruction or expungement of records in whole or in part, expunge only the references to the individual's name in the records relating to the individual's adjudication, nonjudicial adjustment, petition, arrest, investigation, or detention for which expungement is ordered; and

(ii) destroy all photographs and records created under Section 80-6-608, except that a record of a minor's fingerprints may not be destroyed by an agency.

(b) ~~[An agency that]~~ Within 60 days after the day on which an agency receives a copy of an expungement order, the agency shall mail an affidavit to the individual who is the subject of the expungement order, or the individual's attorney, that the agency has complied with the expungement order.



## SB0088S01 compared with SB0088

(5) Notwithstanding Subsection (4), the Board of Pardons and Parole and the Department of Corrections:

(a) may not disclose records expunged in an expungement order unless required by law;

(b) are not required to destroy any photograph or record created under Section 80-6-608;

(c) may use an expunged record for purposes related to incarceration and supervision of an individual under the jurisdiction of the Board of Pardons and Parole, including for the purpose of making decisions about:

(i) the treatment and programming of the individual;

(ii) housing of the individual;

(iii) applicable guidelines regarding the individual; or

(iv) supervision conditions for the individual;

(d) are not prohibited from disclosing or sharing any information in an expunged record with another agency that uses the same record management system as the Board of Pardons and Parole or the Department of Corrections; and

(e) are not required to mail an affidavit under Subsection (4)(b).

(6) Upon entry of an expungement order:

(a) an adjudication, a nonjudicial adjustment, a petition, an arrest, an investigation, or a detention for which the record is expunged is considered to have never occurred; and

(b) the individual, who is the subject of the expungement order, may reply to an inquiry on the matter as though there never was an adjudication, a nonjudicial adjustment, a petition, an arrest, an investigation, or a detention.

(7) A record expunged under Section 80-6-1004.1, 80-6-1004.2, 80-6-1004.3, 80-6-1004.4, or 80-6-1004.5 may be released to, or viewed by, the individual who is the subject of the record.

Section ~~{12}~~13. **Effective date.**

This bill takes effect on May 1, 2024.