

JUVENILE INTERROGATION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marsha Judkins

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses the questioning of minors who are taken into custody for an offense.

Highlighted Provisions:

This bill:

- ▶ addresses the rights of minors who are taken into custody;
- ▶ addresses the waiver of certain rights by minors;
- ▶ addresses the knowingness and voluntariness of waivers by minors;
- ▶ clarifies a minor's waiver to the right to counsel for court proceedings; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-22-204, as enacted by Laws of Utah 2019, Chapter 326

ENACTS:

78A-6-112.5, Utah Code Annotated 1953

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



28 Section 1. Section 78A-6-112.5 is enacted to read:

29 78A-6-112.5. Rights of a minor in custody for an offense -- Waiver of rights --

30 **Interview of a minor in a detention facility -- Presumption.**

31 (1) If a minor is taken into custody under this chapter for an offense, the minor has a
32 right to:

33 (a) remain silent;

34 (b) be advised that any statement or admission by the minor can be used against the
35 minor in a court proceeding;

36 (c) be represented by an attorney during any questioning of the minor;

37 (d) be appointed an attorney in accordance with Title 78B, Chapter 22, Part 2,

38 Appointment of Counsel; and

39 (e) if the minor is a child, have the minor's parent or guardian present during any
40 questioning of the minor.

41 (2) (a) If a minor who is 18 years old or older is taken into custody for an offense, the
42 minor may not be questioned unless:

43 (i) the minor is advised of the minor's rights under Subsection (1);

44 (ii) the minor waives the minor's rights in accordance with Subsection (3); and

45 (iii) if the minor does not waive the minor's right under Subsections (1)(c) and (d), the
46 minor's appointed or retained attorney is present for the questioning of the minor.

47 (b) If a child is taken into custody for an offense, the child may not be questioned
48 unless:

49 (i) the child is advised of the child's rights under Subsection (1);

50 (ii) the child waives the child's rights in accordance with Subsection (4);

51 (iii) if the child does not waive the child's rights under Subsections (1)(c) and (d), the
52 child's appointed or retained attorney is present for the questioning of the child; and

53 (iv) if the child does not waive the child's right to have the child's parent or guardian
54 present during questioning under Subsection (1)(e), the child's parent or guardian is present for
55 the questioning of the child.

56 (3) A minor who is 18 years old or older may only waive the minor's rights under
57 Subsection (1) if the minor knowingly and voluntarily waives the minor's rights.

58 (4) A child may only waive a child's rights under Subsection (1) if:

- 59 (a) the child knowingly and voluntarily waives the child's rights; and
60 (b) (i) (A) the child is given an opportunity to consult with the child's parent or
61 guardian;
62 (B) the child's parent or guardian knowingly and voluntarily consents to the child's
63 waiver; and
64 (C) the child's parent or guardian has no interest adverse to the child, including that the
65 parent or guardian is not a victim or a codefendant of any offense alleged to have been
66 committed by the child;
67 (ii) if the child is appointed or retains an attorney, the child is given an opportunity to
68 consult with the child's attorney;
69 (iii) if a guardian ad litem has been appointed to the child:
70 (A) the child is given an opportunity to consult with the child's guardian ad litem; and
71 (B) the guardian ad litem consents to any questioning of the child;
72 (iv) the child is emancipated as described in Section [78A-6-805](#);
73 (v) the child has misrepresented the child's age as being 18 years old or older and a
74 peace officer has relied on that misrepresentation in good faith; or
75 (vi) a peace officer or a law enforcement agency is unable to contact the child's parent
76 or guardian within two hours after the time in which the child is taken into custody.
77 (5) A waiver under Subsection (4) shall be in writing and signed by the child and the
78 child's parent or guardian if the child's parent or guardian consents to the waiver.
79 (6) If a minor is admitted to a detention facility under Section [78A-6-112](#):
80 (a) the minor has a right to confer in private with the minor's counsel, the minor's
81 parent or guardian, or a member of the clergy; and
82 (b) the minor may not be interviewed about an offense alleged to have been committed
83 by the minor, unless:
84 (i) the minor has waived the minor's rights under Subsection (1) in accordance with
85 this section;
86 (ii) if the minor has been appointed a guardian ad litem, the minor's guardian ad litem
87 has consented to an interview of the minor as described in Section [62A-4a-415](#); and
88 (iii) if the minor has appointed or retained an attorney, the minor's attorney has
89 consented to an interview of the minor.

90 (7) (a) If a child waives the child's rights under Subsection (1) in accordance with
91 Subsection (4)(b)(iv), (v), or (vi), the child is presumed to:

92 (i) not be adequately mature and experienced to knowingly and voluntarily waive the
93 child's rights under Subsection (1); and

94 (ii) be unable to understand the child's rights under Subsection (1).

95 (b) The presumption under Subsection (7)(a) may only be overcome by a
96 preponderance of the evidence showing that the child had the ability to comprehend and waive
97 the child's rights under Subsection (1).

98 (8) A minor may only waive a minor's right to be represented by counsel at all stages of
99 court proceedings in accordance with Section [78B-22-204](#).

100 Section 2. Section **78B-22-204** is amended to read:

101 **78B-22-204. Waiver by a minor.**

102 A minor may not waive the right to [~~counsel before~~] be represented by counsel at all
103 stages of court proceedings unless:

104 (1) the minor has consulted with counsel; and

105 (2) the court is satisfied that in light of the minor's unique circumstances and attributes:

106 (a) the minor's waiver is knowing and voluntary; and

107 (b) the minor understands the consequences of the waiver.