

2014

State of Utah, in the Interest of b.l.d., (Dob: 6/28/1999), a Person Under 18 Years of Age

Utah Court of Appeals

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IN THE
UTAH COURT OF APPEALS

STATE OF UTAH, in the interest of

B.L.D., (DOB: 06/28/1999)

a person under 18 years of age.

APPEAL NO. 20140494--CA

BRIEF OF APPELLANT

Appeal from a dispositional order entered after an adjudication for one count of curfew violation, a juvenile status offense, see Davis County Code § 9.08.010, entered in the Third District Juvenile Court, in and for Salt Lake County, State of Utah, the Honorable C. Dane Nolan presiding.

Sean Reyes

Utah Attorney General

Appellate Division

160 East 300 South, 6th Floor

Salt Lake City, Utah 84114

Telephone: (801) 366-0180

Attorneys for Appellee

Monica Maio [11277]

William Russell [2833]

Utah Juvenile Defender Attorneys

8 East Broadway, Suite 500

Salt Lake City, Utah 84111

Telephone: (801) 521-5225

Fax: (801) 521-5268

Attorneys for Juvenile/Appellant

NO ORAL ARGUMENT REQUESTED

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Sean Reyes
Utah Attorney General
Appellate Division
160 East 300 South, 6th Floor
Salt Lake City, Utah 84114
Telephone: (801) 366-0180

Attorneys for Appellee

Monica Maio [11277]
William Russell [2833]
Utah Juvenile Defender Attorneys
8 East Broadway, Suite 500
Salt Lake City, Utah 84111
Telephone: (801) 521-5225
Fax: (801) 521-5268

Attorneys for Juvenile/Appellant

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	2
STATEMENT OF JURISDICTION.....	3
QUESTION PRESENTED FOR REVIEW.....	4
DETERMINATIVE LAW.....	5
STATEMENT OF THE CASE.....	5
STATEMENT OF THE FACTS.....	5
SUMMARY OF ARGUMENT.....	6
ARGUMENT.....	7
CONCLUSION.....	14
CERTIFICATE OF COMPLIANCE.....	16
ADDENDUM.....	17

TABLE OF AUTHORITIES

Cases

<u>In re A.B.</u> , 936 P.2d 1091 (Utah 1997).....	8
<u>Johansen v. Johansen</u> , 2002 UT App 75, 45 P.3d 520.....	9, 10
<u>Salt Lake Child & Family Therapy Clinic, Inc. v. Frederick</u> , 890 P.2d 1017 (Utah 1995).....	9

<u>Salt Lake City v. Ohms</u> , 881 P.2d 844 (Utah 1994)	9
<u>State v. Graham</u> , 2011 UT App 332, 263 P.3d 569	4
<u>State v. Hunt</u> , 996 P.2d 311 (Utah 1995)	8

Secondary Sources

73 Am. Jur. 2d <i>Statutes</i> § 114	9
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Statutes

Utah Administrative Code R547-13-4	6, 10
Utah Code § 78A-6-1109	3, 4
Utah Code § 78A-4-103	7, 8
Utah Code § 78A-6-117	3, 4, 5, 6, 7, 8, 9, 10, 13, 14
Utah Code § 78A-6-1101	4, 6, 10
Davis County Code § 9.08.010	3, 5, 7, 8, 13

STATEMENT OF JURISDICTION

This appeal is taken from a dispositional order of the juvenile court of the Third Judicial District. The court of appeals has jurisdiction pursuant to Utah Code § 78A-6-1109 and Utah Code § 78A-4-103(2). See Utah Code § 78A-6-1109 (“An appeal to the Court of Appeals may be taken from any order, decree, or

judgment of the juvenile court”). See also id. § 78A-4-103(2)(c) (“The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over . . . appeals from juvenile courts”).

QUESTION PRESENTED FOR REVIEW

ISSUE: Whether the juvenile court erred in entering a dispositional order for thirty days of detention on an adjudication for curfew violation, a juvenile status offense.

STANDARD OF REVIEW: Whether the juvenile court correctly interpreted Utah Code section 78A-6-117(2)(f) presents a question of law, which this Court reviews for correctness. See State v. Graham, 2011 UT App 332, ¶ 14, 263 P.3d 569 (“Questions of statutory interpretation are matters of law, which [appellate courts] review for correctness.”).

PRESERVATION: This issue was preserved when trial counsel made an oral objection to the imposition of thirty days of stayed detention on the grounds that a curfew violation is a juvenile status offense and therefore ineligible for detention time. See Transcript p. 13:2-6.

DETERMINATIVE LAW

Davis County Code § 9.08.010

Utah Code § 78A-6-117 (2012)

STATEMENT OF THE CASE

The State filed a petition on or about May 12, 2014, alleging that B.L.D. was in violation of a Davis County curfew ordinance (Allegation 16). At the adjudication hearing, B.L.D. entered an admission to Allegation 16. Proceeding to disposition, the court ordered, among other things, thirty days of suspended detention. Counsel for B.L.D. objected on the basis that a curfew violation is a status offense that is ineligible for detention. The court noted counsel's objection.

STATEMENT OF THE FACTS

On or about May 12, 2014, the State filed a petition alleging that B.L.D. was in or on a public place after the established curfew in violation of Davis County Ordinance 9.08.010, see Davis County Code § 9.08.010. **[R. 145]** At the adjudication hearing, B.L.D. entered an admission to Allegation 16. Proceeding to disposition, the court ordered, among other things, thirty days of suspended detention. **[R. 158]** Counsel for B.L.D. objected to the imposition of detention on

the basis that a curfew violation is a juvenile status offense¹ and is therefore ineligible for detention time. [Transcript p. 13:2-5] The court considered counsel's objection but nonetheless ordered detention time. B.L.D. now appeals.

SUMMARY OF ARGUMENT

The juvenile court erred when it entered a dispositional order for thirty days of detention on an adjudication for a curfew violation, a juvenile status offense not eligible for detention time. More specifically, Utah Code section 78A-6-117(f) provides that "[t]he [juvenile] court may commit a minor to a place of detention . . . not to exceed 30 days . . . [which commitment] may be stayed or suspended upon conditions ordered by the court." Utah Code § 78A-6-117(f) (2012). However, that same provision limits the circumstances under which the juvenile court may order a juvenile to detention to those situations where the juvenile has been adjudicated for "an act which if committed by an adult would be a criminal offense; or contempt of court under Section 78A-6-1101 [.]" Id.

In this case, B.L.D. has been adjudicated for curfew violation, which is not "an act which if committed by an adult would be a criminal offense." Id. Rather,

¹ Juvenile status offenses are defined as those "violation[s] of the law that would not be... violation[s] but for the age of the offender," Utah Admin. Code R547-13-3(2), such as curfew violations, consumption of alcohol, and tobacco use.

it is a juvenile status offense that applies only to “any minor under the age of sixteen (16) years.” See Davis County Code § 9.08.010 (“It is unlawful for any minor under the age of sixteen (16) years to be in or on any public street, park, square or any public place between the hours of eleven p.m. and daylight.”). Because a curfew violation is a juvenile status offense which can only be committed by a minor under the age of 16, and because detention may only be ordered after adjudication for an act which would be a crime if committed by an adult, the juvenile court erred in ordering thirty days of detention.

ARGUMENT

It is well settled that the juvenile court has exclusive jurisdiction in certain enumerated proceedings involving minors. See generally Utah Code § 78A-6-103 (2012) (outlining the juvenile court's jurisdiction over proceedings including, but not limited to, those involving a child who has violated a state or federal law; a child who is abused or neglected; the commitment of a minor who has an intellectual disability; and a minor who is found incompetent to proceed). Once a minor is found to "come within the provisions of Section 78A-6-103, the court shall so adjudicate." Id. § 78A-6-117. Once a petition has been adjudicated, Utah Code section 78A-6-117 sets forth the dispositional orders available to the juvenile

court. See id.

In this case, the State alleged that B.L.D. had violated the Davis County curfew ordinance. See Davis County Code § 9.08.010. See also Utah Code § 78A-6-103(1)(a) (providing that juvenile court's exclusive jurisdiction extends to proceedings concerning "a child who has violated any . . . local law or municipal ordinance"). After B.L.D. entered an admission to Allegation 16, the juvenile court adjudicated the petition as true and correct beyond a reasonable doubt. Proceeding to disposition, the juvenile court ordered suspended detention time despite the plain statutory language limiting detention to those minors adjudicated for acts which constitute a criminal offense if committed by an adult. In so ordering, the juvenile court misapplied section 78A-6-117 and its dispositional order should now be reversed.

The first principle of statutory construction is that "[w]here statutory language is plain and unambiguous . . . a statute should generally be construed according to its plain language." In re A.B., 936 P.2d 1091, 1097 (Utah 1997) (first alteration in original) (internal quotation marks and citation omitted). See also State v. Hunt, 906 P.2d 311, 312 (Utah 1995) ("The best evidence of the true intent and purpose of the Legislature in enacting the Act is the plain language of

the Act" (internal quotation marks and citation omitted)); Salt Lake City V; Ohms, 881 P.2d 844, 850 n. 14 (Utah 1994) (stating that the first principle of statutory interpretation is the plain language: "The reason for such a rule is clear. It prevents judges from finding an ambiguity . . . in an attempt to justify an interpretation they prefer."). Stated another way, when the language of a statute is clear and not ambiguous, the statute "must be held to mean what it expresses." Salt Lake Child & Family Therapy Clinic, Inc. v. Frederick, 890 P.2d 1917, 1020 (Utah 1995). It is equally true that courts may not read language or terms into statutes that the legislature has not otherwise included. "[O]missions in statutory language should 'be taken note of and given effect.'" Johansen v. Johansen, 2002 UT App 75, ¶ 8, 45 P.3d 520 (quoting Biddle v. Washington Terrace City, 1999 UT 110, ¶ 14, 993 P.3d 875) (alteration in original). See also 73 Am. Jur. 2d Statutes § 114 (2014) ("[C]ourts may not, by construction, insert words or phrases in a statute. . . . and . . . courts ordinarily resist reading words or elements into a statute that do not appear on its face[.] . . . [I]t is not the office of the court to insert in a statute that which has been omitted and that which the legislature omits, the courts cannot supply.").

The plain language of Utah Code section 78A-6-117(f) provides that the juvenile court may, upon adjudication, "commit a minor to a place of detention . . .

not to exceed 30 days . . . [which commitment] may be stayed or suspended upon conditions ordered by the court." Id. § 78A-6-117(f)(i). While the juvenile court has the dispositional authority to order detention, the plain language of the statute is clear that this section "applies only to a minor adjudicated for . . . an act which if committed by an adult would be a criminal offense; or contempt of court under Section 78A-6-1101." Id. § 78A-6-117(f)(ii).

While the juvenile court may order detention if the juvenile has been adjudicated for certain criminal acts, detention for juvenile status offenses is expressly omitted from the statute. See Johansen, 2002 UT App 75, ¶ 8. In fact, Utah Code section 78A-6-117 provides approximately twenty-five detailed dispositional options available to the court upon adjudication of a petition. See Utah Code § 78A-6-117 (2)(a)-(y) (listing all dispositional options available to the juvenile court). Had the Utah Legislature intended to make status offenses eligible for detention, it could have easily done so but it did not.²

Public policy rationales also support an interpretation of the statute that

² Administrative rules promulgated to provide guidance on the issue of curfew violation and detention also support this interpretation. See Utah Admin. Code R547-13-4(2) (providing guidelines for the Department of Juvenile Justice Services regarding detention, including that "[a] youth not otherwise qualified for detention . . . shall not be detained for . . . (c) status offenses").

limits detention to those circumstances where a juvenile has been adjudicated for an act which would be a crime if committed by an adult. Indeed, the Coalition for Juvenile Justice, a non-profit organization that promulgates national standards for juvenile justice issues (the Coalition), specifically the SOS Project,³ provides insight on the issue:

Research and evidence-based approaches have proven that secure detention of status offenders is ineffective and frequently dangerous. Specifically, research has shown that:

- Detention facilities are often ill-equipped to address the underlying causes of status offenses.
- Detention does not serve as a deterrent to subsequent status-offending and/or delinquent behavior.
- Detained youth are often held in overcrowded, understaffed facilities--environments that can breed violence and exacerbate unmet needs.
- Almost 20 percent of detained status offenders and other non-offenders (e.g., youth involved with the child welfare system) are placed in

³ In 2009, the Coalition conducted a national survey of various state responses to delinquency status offenses. An extension of that survey, the SOS Project, "Safety, Opportunity, & Success (SOS): Standards of Care for Non-Delinquent Youth," is a multi-year partnership that engages State Advisory Group (SAG) members, judicial leaders, practitioners, service providers, policymakers and advocates to guide states in implementing policy and practices that eliminate the use of secure confinement for status offenders and offer them diversion and early intervention services to avoid court involvement.

living quarters with youth who have committed murder or manslaughter and 25 percent are placed in units with felony sex offenders.

- Placing youth who commit status offenses in locked detention facilities jeopardizes their safety and well-being, and may increase the likelihood of delinquent or criminal behavior.
- Removing youth from their families and communities prohibits them from developing the strong social networks and support systems necessary to transition successfully from adolescence to adulthood.⁴

The Coalition also provides the following guidelines with respect to secure confinement for juvenile status offenses:

. . . The National Standards [issued by the Coalition] recognize that status offense behaviors are often symptomatic of larger issues the child faces in the home, school, or community and may be less a reflection of the child's risky behavior and more an indication of his or her unmet health, mental health, educational, or family needs.

Research indicates that formal justice system processing . . . can have a negative impact on youth, increasing the likelihood of future justice system

⁴ See National Standards for the Care of Youth Charged with Status Offenses, Coalition for Juvenile Justice, SOS Project, available at www.juvjustice.org/sites/default/files/resourcefiles/National%20Standards%20for%20the%20Care%20of%20Youth%20Charged%20with%20Status%20Offenses%20FINAL_O.pdf, last visited Feb. 5, 2015.

involvement. Studies also indicate that the best outcomes for public safety occur when the least restrictive interventions are offered.⁵

In this case, the only adjudicated offense is a curfew violation, see Davis County Code § 9.08.010. The elements of that offense are that a child (1) under the age of 16; (2) be in or on any public street, park, square, or any public place; (3) between the hours of eleven p.m. and daylight. By definition, then, an adult cannot commit a curfew violation under that specific ordinance. Rather, the ordinance only applies to juveniles under age sixteen. See id. Accordingly, violation of a curfew ordinance is not "an act which if committed by an adult would be a criminal offense." Utah Code § 78A-6-117(f). Rather, it is a juvenile status offense that is, according to the plain language of the statute, ineligible for a dispositional order of detention. See id.

In light of the plain language of section 78A-6-117(f), as well as the policy rationales discouraging the use of detention as a consequence for juvenile status offenses, the juvenile court erred when it ordered thirty days of suspended detention for an adjudication solely for violation of a county curfew

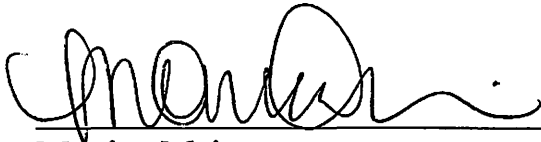
⁵ See id. n.5, available at, <http://www.juvjustice.org/sites/default/files/ckfinder/files/SOS%20Proiect%20Guidance%20For%20Juvenile%20Defenders%20Final.pdf>, last visited Apr.16, 2014.

ordinance.

CONCLUSION

The juvenile court erred in ordering detention on an adjudication for violation of a curfew ordinance because it is a juvenile status offense which does not trigger the court's dispositional authority under Utah Code section 78A-6-117(2)(f). Accordingly, this Court should reverse the juvenile court's dispositional order and remand for further proceedings.

DATED this 10th day of February, 2015.

A handwritten signature in black ink, appearing to read 'Monica Maio', is written over a horizontal line.

Monica Maio
William Russell
Attorneys for Juvenile/Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused to be hand-delivered an original and seven (7) copies, plus one digital courtesy copy per Utah Supreme Court Standing Order No. 8, of the foregoing instrument to the Utah Court of Appeals, 450 South State Street, 5th Floor, Salt Lake City, Utah, 84111; and that I have caused two (2) true and correct copies, plus one digital courtesy copy, of the foregoing instrument to be delivered as indicated below, on this 24th day of April, 2014, to the following:

Utah Court of Appeals
450 South State Street, 5th Floor
Salt Lake City, Utah 84111

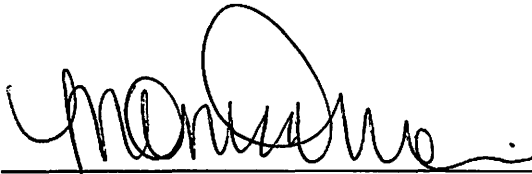
Sean P. Reyes
Utah Attorney General's Office, Appellate Division
Heber M. Wells Building
160 East 300 South, 6th Floor
Salt Lake City, Utah 84114



Bobbi Lewis

CERTIFICATE OF COMPLIANCE WITH RULE 24(f)(1)

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(f)(1) because it contains 2756 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B).
2. This brief complies with the typeface requirements of Utah R. App. P. 27(b) because it has been prepared in a proportionally spaced typeface using Microsoft Word, Times New Roman, 14.




Attorney for Juvenile/Appellant

Addenda

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 Davis County

■ Code of Ordinances

■ Title 9. Public Peace, Morals And Welfare

■ Chapter 9.08. Curfew

§ 9.08.010. Imposed

Latest version.

It is unlawful for any minor under the age of sixteen (16) years to be in or on any public street, park, square or any public place between the hours of eleven p.m. and daylight immediately following, except where the minor is accompanied by a parent, legal guardian or other adult person having the legal care and custody of the minor or where the presence of the minor in the place or places is connected with or required by some legitimate trade, business, profession or occupation by reason of employment, inclusive of time necessary for going to and returning from such place of business in which the minor is engaged.

(Ord. 232-1971 § 1)

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Utah Administrative Code Currentness Human Services R547. Juvenile Justice Services.
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U.A.C. R547-13

R547-13. Guidelines for Admission to Secure Youth Detention Facilities.

R547-13-1. Authority.

Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules.

R547-13-2. Purpose and Scope.

(1) This rule establishes guidelines for admission to secure detention to meet the requirements of Section 62A-7-202.

(2) This rule shall be applied to youth candidates for placement in all secure detention facilities operated by the Division of Juvenile Justice Services.

R547-13-3. Definitions.

(1) Terms used in this rule are defined in Sections 62A-7-101 and 78A-6-105.

(2) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

(3) "Youth" means a person age 10 or over and under the age of 21.

R547-13-4. General Rules.

(1) A youth may be detained in a secure detention facility if:

(a) A youth is charged with any of the following State or Federal offenses:

(i) Any felony offense

(ii) Any attempt, conspiracy, or solicitation to commit a felony offense

(iii) A class A misdemeanor of Section 58-37-8 (1) (b) (iii), distribution of a controlled substance violation

- (iv) Domestic violence 77-66-1 (Cohabitant)
 - (v) Section 76-5-104(1)(C) Assault, only when the assault is against an individual with whom the youth lives if efforts by law enforcement, in conjunction with the youth's parent or guardian, to safely place the youth with a family member living outside the youth's home are unsuccessful
 - (vi) Section 76-5-102 (3), assault causing substantial bodily injury
 - (vii) Section 76-5-104.4, assault on a police officer
 - (viii) Section 76-6-104 (a), reckless burning which endangers human life
 - (ix) A class A misdemeanor violation of Section 76-6-105, causing a catastrophe
 - (x) Section 76-6-106 (2) (b) (i) (a), criminal mischief involving tampering with property that endangers human life
 - (xi) A class A misdemeanor violation of Section 76-6-406, theft by extortion
 - (xii) A class A or B misdemeanor violation of Section 76-10-504, carrying a concealed dangerous weapon
 - (xiii) Section 76-10-505, carrying a loaded firearm
 - (xiv) Section 76-10-506, threatening with or using a dangerous weapon in a fight or quarrel
 - (xv) Section 76-10-507, possession of deadly weapon with intent to assault
 - (xvi) Section 76-10-509, possession of a dangerous weapon by minor
 - (xvii) Section Violation of Section 76-10-509.4, prohibition of possession of certain weapons by minors
 - (xviii) A class A or B misdemeanor violation of Section 76-10-509.5, providing certain weapons to a minor
 - (xix) Section 76-10-1302, prostitution.
- (b) None of the alleged offenses are listed in paragraphs R547-13-4 (1) (a), but three or more non-status criminal offenses are currently alleged in a single criminal episode;

West's Utah Code Annotated

Title 78a. Judiciary and Judicial Administration (Refs & Annos)

Chapter 6. Juvenile Court Act (Refs & Annos)

Part 1. General Provisions (Refs & Annos)

U.C.A. 1953 § 78A-6-103

Formerly cited as UT ST § 78-3a-104

§ 78A-6-103. Jurisdiction of juvenile court--Original--Exclusive

Currentness

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a child who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding offenses in Subsection 78A-7-106(2);

(b) a person 21 years of age or older who has failed or refused to comply with an order of the juvenile court to pay a fine or restitution, if the order was imposed before the person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing orders;

(c) a child who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78A-6-105;

(d) a protective order for a child pursuant to the provisions of Title 78B, Chapter 7, Part 2, Child Protective Orders, which the juvenile court may transfer to the district court if the juvenile court has entered an ex parte protective order and finds that:

(i) the petitioner and the respondent are the natural parent, adoptive parent, or step parent of the child who is the object of the petition;

(ii) the district court has a petition pending or an order related to custody or parent-time entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the petitioner and the respondent are parties; and

(iii) the best interests of the child will be better served in the district court;

(e) appointment of a guardian of the person or other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

(f) the emancipation of a minor in accordance with Part 8, Emancipation;

(g) the termination of the legal parent-child relationship in accordance with Part 5, Termination of Parental Rights Act, including termination of residual parental rights and duties;

(h) the treatment or commitment of a minor who has an intellectual disability;

(i) a minor who is a habitual truant from school;

(j) the judicial consent to the marriage of a child under age 16 upon a determination of voluntariness or where otherwise required by law, employment, or enlistment of a child when consent is required by law;

(k) any parent or parents of a child committed to a secure youth corrections facility, to order, at the discretion of the court and on the recommendation of a secure facility, the parent or parents of a child committed to a secure facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure facility therapist, who has supervision of that parent's or parents' child, or any other therapist the court may direct, for a period directed by the court as recommended by a secure facility;

(l) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;

(m) the treatment or commitment of a child with a mental illness. The court may commit a child to the physical custody of a local mental health authority in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, but not directly to the Utah State Hospital;

(n) the commitment of a child to a secure drug or alcohol facility in accordance with Section 62A-15-301;

(o) a minor found not competent to proceed pursuant to Section 78A-6-1301;

(p) de novo review of final agency actions resulting from an informal adjudicative proceeding as provided in Section 63G-4-402; and

(q) adoptions conducted in accordance with the procedures described in Title 78B, Chapter 6, Part 1, Utah Adoption Act, when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the child.

(2) Notwithstanding Section 78A-7-106 and Subsection 78A-5-102(9), the juvenile court has exclusive jurisdiction over the following offenses committed by a child:

(a) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(b) Section 73-18-12, reckless operation; and

(c) class B and C misdemeanors, infractions, or violations of ordinances that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

(3) The juvenile court has jurisdiction over an ungovernable or runaway child who is referred to it by the Division of Child and Family Services or by public or private agencies that contract with the division to provide services to that child where, despite earnest and persistent efforts by the division or agency, the child has demonstrated that the child:

(a) is beyond the control of the child's parent, guardian, lawful custodian, or school authorities to the extent that the child's behavior or condition endangers the child's own welfare or the welfare of others; or

(b) has run away from home.

(4) This section does not restrict the right of access to the juvenile court by private agencies or other persons.

(5) The juvenile court has jurisdiction of all magistrate functions relative to cases arising under Section 78A-6-702.

(6) The juvenile court has jurisdiction to make a finding of substantiated, unsubstantiated, or without merit, in accordance with Section 78A-6-323.

(7) The juvenile court has jurisdiction of matters transferred to it by another trial court pursuant to Subsection 78A-7-106(7).

Credits

Laws 2008, c. 3, § 369, eff. Feb. 7, 2008; Laws 2008, c. 115, § 9, eff. May 5, 2008; Laws 2008, c. 382, § 2214, eff. May 5, 2008; Laws 2009, c. 146, § 4, eff. May 12, 2009; Laws 2011, c. 366, § 186, eff. May 10, 2011; Laws 2012, c. 316, § 4, eff. May 8, 2012.

Notes of Decisions (99)

U.C.A. 1953 § 78A-6-103, UT ST § 78A-6-103

Current through 2014 General Session.

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West's Utah Code Annotated

Title 78a. Judiciary and Judicial Administration (Refs & Annos)

Chapter 6. Juvenile Court Act (Refs & Annos)

Part 1. General Provisions (Refs & Annos)

U.C.A. 1953 § 78A-6-117

Formerly cited as UT ST § 78-3a-118

§ 78A-6-117. Adjudication of jurisdiction of juvenile court--Disposition of cases--
Enumeration of possible court orders--Considerations of court--Obtaining DNA sample

Currentness

(1)(a) When a minor is found to come within the provisions of Section 78A-6-103, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over the minor. However, in cases within the provisions of Subsection 78A-6-103(1), findings of fact are not necessary.

(b) If the court adjudicates a minor for a crime of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days of the adjudication and shall include:

(i) the specific offenses for which the minor was adjudicated; and

(ii) if available, if the victim:

(A) resides in the same school district as the minor; or

(B) attends the same school as the minor.

(2) Upon adjudication the court may make the following dispositions by court order:

(a)(i) The court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including compensatory service as provided in Subsection (2)(m)(iii).

(ii) The court may place the minor in state supervision with the probation department of the court, under the legal custody of:

(A) the minor's parent or guardian;

(B) the Division of Juvenile Justice Services; or

(C) the Division of Child and Family Services.

(iii) If the court orders probation or state supervision, the court shall direct that notice of its order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, that the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iv) Any employee of the local law enforcement agency and the school that the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202; and

(B) civilly or criminally liable except when the disclosure constitutes a knowing violation of Section 63G-2-801.

(b) The court may place the minor in the legal custody of a relative or other suitable person, with or without probation or protective supervision, but the juvenile court may not assume the function of developing foster home services.

(c)(i) The court may:

(A) vest legal custody of the minor in the Division of Child and Family Services, Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health; and

(B) order the Department of Human Services to provide dispositional recommendations and services.

(ii) For minors who may qualify for services from two or more divisions within the Department of Human Services, the court may vest legal custody with the department.

(iii)(A) A minor who is committed to the custody of the Division of Child and Family Services on grounds other than abuse or neglect is subject to the provisions of Title 78A, Chapter 6, Part 4, Minors in Custody on Grounds Other than Abuse or Neglect, and Title 62A, Chapter 4a, Part 2a, Minors in Custody on Grounds other than Abuse or Neglect.

(B) Before the court entering an order to place a minor in the custody of the Division of Child and Family Services on grounds other than abuse or neglect, the court shall provide the division with notice of the hearing no later than five days before the time specified for the hearing so the division may attend the hearing.

(C) Before committing a child to the custody of the Division of Child and Family Services, the court shall make a finding as to what reasonable efforts have been attempted to prevent the child's removal from the child's home.

(d)(i) The court may commit a minor to the Division of Juvenile Justice Services for secure confinement.

(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection 78A-6-103(1)(c) may not be committed to the Division of Juvenile Justice Services.

(e) The court may commit a minor, subject to the court retaining continuing jurisdiction over the minor, to the temporary custody of the Division of Juvenile Justice Services for observation and evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at the request of the director of the Division of Juvenile Justice Services.

(f)(i) The court may commit a minor to a place of detention or an alternative to detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction over the minor. This commitment may be stayed or suspended upon conditions ordered by the court.

(ii) This Subsection (2)(f) applies only to a minor adjudicated for:

(A) an act which if committed by an adult would be a criminal offense; or

(B) contempt of court under Section 78A-6-1101.

(g) The court may vest legal custody of an abused, neglected, or dependent minor in the Division of Child and Family Services or any other appropriate person in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

(h) The court may place a minor on a ranch or forestry camp, or similar facility for care and also for work, if possible, if the person, agency, or association operating the facility has been approved or has otherwise complied with all applicable state and local laws. A minor placed in a forestry camp or similar facility may be required to work on fire prevention, forestation and reforestation, recreational works, forest roads, and on other works on or off the grounds of the facility and may be paid wages, subject to the approval of and under conditions set by the court.

(i)(i) The court may order a minor to repair, replace, or otherwise make restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section 78A-6-321 and impose fines in limited amounts.

(ii) The court may also require a minor to reimburse an individual, entity, or governmental agency who offered and paid a reward to a person or persons for providing information resulting in a court adjudication that the minor is within the jurisdiction of the juvenile court due to the commission of a criminal offense.

(iii) If a minor is returned to this state under the Interstate Compact on Juveniles, the court may order the minor to make restitution for costs expended by any governmental entity for the return.

(j) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions.

(k)(i) The court may through its probation department encourage the development of employment or work programs to enable minors to fulfill their obligations under Subsection (2)(i) and for other purposes considered desirable by the court.

(ii) Consistent with the order of the court, the probation officer may permit a minor found to be within the jurisdiction of the court to participate in a program of work restitution or compensatory service in lieu of paying part or all of the fine imposed by the court.

(l)(i) In violations of traffic laws within the court's jurisdiction, the court may, in addition to any other disposition authorized by this section:

(A) restrain the minor from driving for periods of time the court considers necessary; and

(B) take possession of the minor's driver license.

(ii) The court may enter any other disposition under Subsection (2)(l)(i). However, the suspension of driving privileges for an offense under Section 78A-6-606 is governed only by Section 78A-6-606.

(m)(i) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(ii) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of a violation of Section 32B-4-409 or Subsection 76-9-701(1), the court may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(iii) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may order the minor to clean up graffiti created by the minor or any other person at a time and place within the jurisdiction of the court. Compensatory service required under this section may be performed in the presence and under the direct supervision of the minor's parent or legal guardian. The parent or legal guardian shall report completion of the order to the court. The minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal costs as determined under Section 76-6-107, unless waived by the court for good cause. The court may also require the minor to perform other alternative forms of restitution or repair to the damaged property pursuant to Subsection 77-18-1(8).

(A) For a first adjudication, the court may require the minor to clean up graffiti for not less than eight hours.

(B) For a second adjudication, the court may require the minor to clean up graffiti for not less than 16 hours.

(C) For a third adjudication, the court may require the minor to clean up graffiti for not less than 24 hours.

(n)(i) Subject to Subsection (2)(n)(iii), the court may order that a minor:

(A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

(B) receive other special care.

(ii) For purposes of receiving the examination, treatment, or care described in Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.

(iii) In determining whether to order the examination, treatment, or care described in Subsection (2)(n)(i), the court shall consider:

(A) the desires of the minor;

(B) if the minor is under the age of 18, the desires of the parents or guardian of the minor; and

(C) whether the potential benefits of the examination, treatment, or care outweigh the potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain function impairment, or emotional or physical harm resulting from the compulsory nature of the examination, treatment, or care.

(o)(i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint as guardian a public or private institution or agency in which legal custody of the minor is vested.

(ii) In placing a minor under the guardianship or legal custody of an individual or of a private agency or institution, the court shall give primary consideration to the welfare of the minor. When practicable, the court may take into consideration the religious preferences of the minor and of a child's parents.

(p)(i) In support of a decree under Section 78A-6-103, the court may order reasonable conditions to be complied with by a minor's parents or guardian, a minor, a minor's custodian, or any other person who has been made a party to the proceedings. Conditions may include:

(A) parent-time by the parents or one parent;

(B) restrictions on the minor's associates;

- (C) restrictions on the minor's occupation and other activities; and
 - (D) requirements to be observed by the parents or custodian.
- (ii) A minor whose parents or guardians successfully complete a family or other counseling program may be credited by the court for detention, confinement, or probation time.
- (q) The court may order the child to be committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.
- (r)(i) The court may make an order committing a minor within the court's jurisdiction to the Utah State Developmental Center if the minor has an intellectual disability in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability.
- (ii) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center when ordering a commitment under Subsection (2)(r)(i).
- (s) The court may terminate all parental rights upon a finding of compliance with the provisions of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.
- (t) The court may make any other reasonable orders for the best interest of the minor or as required for the protection of the public, except that a child may not be committed to jail or prison.
- (u) The court may combine the dispositions listed in this section if they are compatible.
- (v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their child. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.
- (w) Except as provided in Subsection (2)(y)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review of the case by the court. A new date shall be set upon each review.
- (x) In reviewing foster home placements, special attention shall be given to making adoptable children available for adoption without delay.
- (y)(i) The juvenile court may enter an order of permanent custody and guardianship with an individual or relative of a child where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an order for child support on behalf of the child against the natural or adoptive parents of the child.

(ii) Orders under Subsection (2)(y)(i):

(A) shall remain in effect until the child reaches majority;

(B) are not subject to review under Section 78A-6-118; and

(C) may be modified by petition or motion as provided in Section 78A-6-1103.

(iii) Orders permanently terminating the rights of a parent, guardian, or custodian and permanent orders of custody and guardianship do not expire with a termination of jurisdiction of the juvenile court.

(3) In addition to the dispositions described in Subsection (2), when a minor comes within the court's jurisdiction, the minor may be given a choice by the court to serve in the National Guard in lieu of other sanctions, provided:

(a) the minor meets the current entrance qualifications for service in the National Guard as determined by a recruiter, whose determination is final;

(b) the minor is not under the jurisdiction of the court for any act that:

(i) would be a felony if committed by an adult;

(ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

(iii) was committed with a weapon; and

(c) the court retains jurisdiction over the minor under conditions set by the court and agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

(4)(a) A DNA specimen shall be obtained from a minor who is under the jurisdiction of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by designated employees of the court or, if the minor is in the legal custody of the Division of Juvenile Justice Services, then by designated employees of the division under Subsection 53-10-404(5)(b).

(b) The responsible agency shall ensure that employees designated to collect the saliva DNA specimens receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

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

(d) Payment of the reimbursement is second in priority to payments the minor is ordered to make for restitution under this section and treatment under Section 78A-6-321.

Credits

Laws 2008, c. 3, § 383, eff. Feb. 7, 2008; Laws 2008, c. 382, § 2218, eff. May 5, 2008; Laws 2010, c. 276, § 378, eff. July 1, 2011; Laws 2011, c. 366, § 188, eff. May 10, 2011.

Notes of Decisions (48)

U.C.A. 1953 § 78A-6-117, UT ST § 78A-6-117

Current through 2014 General Session.

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West's Utah Code Annotated

Title 78a. Judiciary and Judicial Administration (Refs & Annos)

Chapter 6. Juvenile Court Act (Refs & Annos)

Part 11. Miscellaneous Provisions

U.C.A. 1953 § 78A-6-1101

Formerly cited as UT ST § 78-3a-901

§ 78A-6-1101. Violation of order of court--Contempt--Penalty

Currentness

- (1) Any person who willfully violates or refuses to obey any order of the court may be proceeded against for contempt of court.
- (2) Any person 18 years of age or older found in contempt of court may be punished in accordance with Section 78B-6-310.
- (3)(a) Any person younger than 18 years of age found in contempt of court may be punished by any disposition permitted under Section 78A-6-117, except for commitment to a secure facility.
- (b) The court may stay or suspend all or part of the punishment upon compliance with conditions imposed by the court.
- (4) The court may enforce orders of fines, fees, or restitution through garnishments, wage withholdings, supplementary proceedings, or executions.

Credits

Laws 1996, c. 1, § 76, eff. Jan. 31, 1996; Laws 1997, c. 358, § 2, eff. May 5, 1997; Laws 2008, c. 3, § 459, eff. Feb. 7, 2008.

U.C.A. 1953 § 78A-6-1101, UT ST § 78A-6-1101

Current through 2014 General Session.

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