

? Approved for Filing: ECM ?
? 01-25-01 2:59 PM ?

NONCUSTODIAL VISITATION

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Parley Hellewell

This act changes the term "visitation" to "parent-time" throughout the code as it applies to the right of a noncustodial parent to spend time with their child.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

26-2-22, as last amended by Chapter 84, Laws of Utah 1998

30-1-17.2, as last amended by Chapter 245, Laws of Utah 1990

30-3-3, as repealed and reenacted by Chapter 137, Laws of Utah 1993

30-3-5, as last amended by Chapters 168 and 277, Laws of Utah 1999

30-3-5.2, as last amended by Chapter 164, Laws of Utah 1999

30-3-10, as last amended by Chapter 6, Laws of Utah 1999

30-3-10.4, as last amended by Chapter 112, Laws of Utah 1990

30-3-32, as enacted by Chapter 131, Laws of Utah 1993

30-3-33, as last amended by Chapter 80, Laws of Utah 1997

30-3-34, as last amended by Chapter 80, Laws of Utah 1997

30-3-35, as last amended by Chapter 97, Laws of Utah 2000

30-3-35.5, as last amended by Chapter 13, Laws of Utah 1998

30-3-36, as enacted by Chapter 131, Laws of Utah 1993

30-3-37, as enacted by Chapter 131, Laws of Utah 1993

30-3-38, as last amended by Chapters 1 and 245, Laws of Utah 2000

30-6-4.2, as last amended by Chapter 10, Laws of Utah 1997

62A-4a-205, as last amended by Chapter 274, Laws of Utah 2000

63-63a-8, as last amended by Chapter 133, Laws of Utah 2000

76-5-303, as last amended by Chapter 18, Laws of Utah 1984

28 **78-2a-3**, as last amended by Chapters 159 and 198, Laws of Utah 1996
29 **78-3a-103**, as last amended by Chapter 99, Laws of Utah 1999
30 **78-3a-104**, as last amended by Chapter 149, Laws of Utah 2000
31 **78-3a-105**, as last amended by Chapter 149, Laws of Utah 2000
32 **78-3a-118**, as last amended by Chapter 149, Laws of Utah 2000
33 **78-3a-307**, as last amended by Chapter 285, Laws of Utah 2000
34 **78-3a-409**, as last amended by Chapter 329, Laws of Utah 1997
35 **78-7-32**, as enacted by Chapter 47, Laws of Utah 1997
36 **78-30-4.16**, as enacted by Chapter 168, Laws of Utah 1995
37 **78-32-12.1**, as last amended by Chapter 94, Laws of Utah 1998
38 **78-32-12.2**, as last amended by Chapter 94, Laws of Utah 1998
39 **78-32-17**, as last amended by Chapter 161, Laws of Utah 2000
40 **78-45-7.7**, as last amended by Chapter 161, Laws of Utah 2000
41 **78-45-7.11**, as last amended by Chapter 186, Laws of Utah 2000
42 **78-45-7.17**, as last amended by Chapter 118, Laws of Utah 1994
43 **78-45a-10.5**, as enacted by Chapter 29, Laws of Utah 1994
44 **78-45c-102**, as enacted by Chapter 247, Laws of Utah 2000
45 **78-45c-209**, as enacted by Chapter 247, Laws of Utah 2000
46 **78-45c-304**, as enacted by Chapter 247, Laws of Utah 2000
47 **78-45c-305**, as enacted by Chapter 247, Laws of Utah 2000
48 **78-45f-305**, as renumbered and amended by Chapter 232, Laws of Utah 1997

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

50 Section 1. Section **26-2-22** is amended to read:

51 **26-2-22. Inspection of vital records.**

52 (1) (a) The vital records shall be open to inspection, but only in compliance with the
53 provisions of this chapter, department rules, and Section 78-30-18. It is unlawful for any state or
54 local officer or employee to disclose data contained in vital records contrary to this chapter or
55 department rule.

56 (b) A custodian of vital records may permit inspection of a vital record or issue a certified
57 copy of a record or a part of it when the custodian is satisfied the applicant has demonstrated a
58 direct, tangible, and legitimate interest.

(2) A direct, tangible, and legitimate interest in a vital record is present only if:

(a) the request is from the subject, a member of the subject's immediate family, the guardian of the subject, or a designated legal representative;

(b) the request involves a personal or property right of the subject of the record;

(c) the request is for official purposes of a state, local, or federal governmental agency;

(d) the request is for a statistical or medical research program and prior consent has been obtained from the state registrar; or

(e) the request is a certified copy of an order of a court of record specifying the record to be examined or copied.

(3) For purposes of Subsection (2):

(a) "immediate family member" means a spouse, child, parent, sibling, grandparent, or grandchild;

(b) a designated legal representative means an attorney, physician, funeral director, genealogist, or other agent of the subject or the subject's immediate family who has been delegated the authority to access vital records;

(c) except as provided in Title 78, Chapter 30, Adoption, a parent, or the immediate family member of a parent, who does not have legal or physical custody of or visitation or parent-time rights for a child because of the termination of parental rights pursuant to Title 78, Chapter 3a, Juvenile Courts, or by virtue of consenting to or relinquishing a child for adoption pursuant to Title 78, Chapter 30, Adoption, may not be considered as having a direct, tangible, and legitimate interest; and

(d) a commercial firm or agency requesting names, addresses, or similar information may not be considered as having a direct, tangible, and legitimate interest.

(4) Upon payment of a fee established in accordance with Section 63-38-3.2, the following records shall be available to the public:

(a) except as provided in Subsection 26-2-10(4)(b), a birth record, excluding confidential information collected for medical and health use, if 100 years or more have passed since the date of birth;

(b) a death record if 50 years or more have passed since the date of death; and

(c) a vital record not subject to Subsection (4)(a) or (b) if 75 years or more have passed since the date of the event upon which the record is based.

Section 2. Section **30-1-17.2** is amended to read:

30-1-17.2. Action to determine validity of marriage -- Orders relating to parties, property, and children -- Legitimacy of children.

(1) If the parties have accumulated any property or acquired any obligations subsequent to the marriage, if there is a genuine need arising from an economic change of circumstances due to the marriage, or if there are children born or expected, the court may make temporary and final orders, and subsequently modify the orders, relating to the parties, their property and obligations, the children and their custody and [~~visitation~~] parent-time, and the support and maintenance of the parties and children, as may be equitable.

(2) Except as provided in Section 78-45a-1, children born to the parties after the date of their marriage shall be deemed the legitimate children of both of the parties.

Section 3. Section **30-3-3** is amended to read:

30-3-3. Award of costs, attorney and witness fees -- Temporary alimony.

(1) In any action filed under Title 30, Chapter 3, 4, or 6, and in any action to establish an order of custody, [~~visitation~~] parent-time, child support, alimony, or division of property in a domestic case, the court may order a party to pay the costs, attorney fees, and witness fees, including expert witness fees, of the other party to enable the other party to prosecute or defend the action. The order may include provision for costs of the action.

(2) In any action to enforce an order of custody, [~~visitation~~] parent-time, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense. The court, in its discretion, may award no fees or limited fees against a party if the court finds the party is impecunious or enters in the record the reason for not awarding fees.

(3) In any action listed in Subsection (1), the court may order a party to provide money, during the pendency of the action, for the separate support and maintenance of the other party and of any children in the custody of the other party.

(4) Orders entered under this section prior to entry of the final order or judgment may be amended during the course of the action or in the final order or judgment.

Section 4. Section **30-3-5** is amended to read:

30-3-5. Disposition of property -- Maintenance and health care of parties and children -- Division of debts -- Court to have continuing jurisdiction -- Custody and

parent-time -- Determination of alimony -- Nonmeritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

(b) if coverage is or becomes available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children;

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders; and

(d) provisions for income withholding in accordance with Title 62A, Chapter 11, Recovery Services.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide child care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, and for distribution of the property and obligations for debts as is reasonable and necessary.

(4) (a) In determining ~~[visitation]~~ parent-time rights of parents[;] and visitation rights of grandparents[;] and other members of the immediate family, the court shall consider the best interest of the child.

(b) Upon a specific finding by the court of the need for peace officer enforcement, the

152 court may include in an order establishing a parent-time or visitation schedule a provision, among
153 other things, authorizing any peace officer to enforce a court-ordered parent-time or visitation
154 schedule entered under this chapter.

155 (5) If a petition for modification of child custody or ~~[visitation]~~ parent-time provisions of
156 a court order is made and denied, the court shall order the petitioner to pay the reasonable
157 attorneys' fees expended by the prevailing party in that action, if the court determines that the
158 petition was without merit and not asserted or defended against in good faith.

159 (6) If a petition alleges substantial noncompliance with a ~~[visitation]~~ parent-time order by
160 a parent, or a visitation order by a grandparent[;] or other member of the immediate family
161 pursuant to Section 78-32-12.2 where a visitation or parent-time right has been previously granted
162 by the court, the court may award to the prevailing party costs, including actual attorney fees and
163 court costs incurred by the prevailing party because of the other party's failure to provide or
164 exercise court-ordered visitation or parent-time.

165 (7) (a) The court shall consider at least the following factors in determining alimony:

166 (i) the financial condition and needs of the recipient spouse;

167 (ii) the recipient's earning capacity or ability to produce income;

168 (iii) the ability of the payor spouse to provide support;

169 (iv) the length of the marriage;

170 (v) whether the recipient spouse has custody of minor children requiring support;

171 (vi) whether the recipient spouse worked in a business owned or operated by the payor
172 spouse; and

173 (vii) whether the recipient spouse directly contributed to any increase in the payor spouse's
174 skill by paying for education received by the payor spouse or allowing the payor spouse to attend
175 school during the marriage.

176 (b) The court may consider the fault of the parties in determining alimony.

177 (c) As a general rule, the court should look to the standard of living, existing at the time
178 of separation, in determining alimony in accordance with Subsection (7)(a). However, the court
179 shall consider all relevant facts and equitable principles and may, in its discretion, base alimony
180 on the standard of living that existed at the time of trial. In marriages of short duration, when no
181 children have been conceived or born during the marriage, the court may consider the standard of
182 living that existed at the time of the marriage.

(d) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.

(e) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.

(f) In determining alimony when a marriage of short duration dissolves, and no children have been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage.

(g) (i) The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.

(ii) The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.

(iii) In determining alimony, the income of any subsequent spouse of the payor may not be considered, except as provided in this Subsection (7).

(A) The court may consider the subsequent spouse's financial ability to share living expenses.

(B) The court may consider the income of a subsequent spouse if the court finds that the payor's improper conduct justifies that consideration.

(h) Alimony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time.

(8) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage or death of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.

(9) Any order of the court that a party pay alimony to a former spouse terminates upon

establishment by the party paying alimony that the former spouse is cohabitating with another person.

Section 5. Section **30-3-5.2** is amended to read:

30-3-5.2. Allegations of child abuse or child sexual abuse -- Investigation.

When, in any divorce proceeding or upon a request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court, after making an inquiry, may order that an investigation be conducted by the Division of Child and Family Services within the Department of Human Services in accordance with Title 62A, Chapter 4a. A final award of custody or [~~visitation~~] parent-time may not be rendered until a report on that investigation, consistent with Section 62A-4a-412, is received by the court. That investigation shall be conducted by the Division of Child and Family Services within 30 days of the court's notice and request for an investigation. In reviewing this report, the court shall comply with Section 78-7-9.

Section 6. Section **30-3-10** is amended to read:

30-3-10. Custody of children in case of separation or divorce -- Custody consideration.

(1) If a husband and wife having minor children are separated, or their marriage is declared void or dissolved, the court shall make an order for the future care and custody of the minor children as it considers appropriate. In determining custody, the court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties. The court may inquire of the children and take into consideration the children's desires regarding future custody or [~~visitation~~] parent-time schedules, but the expressed desires are not controlling and the court may determine the children's custody or [~~visitation~~] parent-time otherwise. Interviews with the children may be conducted by the judge in camera only with the prior consent of the parties.

(2) In awarding custody, the court shall consider, among other factors the court finds relevant, which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the noncustodial parent as the court finds appropriate.

(3) If the court finds that one parent does not desire custody of the child, or has attempted to permanently relinquish custody to a third party, it shall take that evidence into consideration in determining whether to award custody to the other parent.

(4) (a) A court may not discriminate against a parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.

(b) If a court takes a parent's disability into account in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody, the parent with a disability may rebut any evidence, presumption, or inference arising therefrom by showing that:

(i) the disability does not significantly or substantially inhibit the parent's ability to provide for the physical and emotional needs of the child at issue; or

(ii) the parent with a disability has sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of the child at issue.

(c) Nothing in this section may be construed to apply to:

(i) abuse, neglect, or dependency proceedings under Title 62A, Chapter 4a, Child and Family Services, or Title 78, Chapter 3a, Juvenile Courts; or

(ii) adoption proceedings under Title 78, Chapter 30, Adoption.

Section 7. Section **30-3-10.4** is amended to read:

30-3-10.4. Modification or termination of order.

(1) On the motion of one or both of the joint legal custodians the court may, after a hearing, modify an order that established joint legal custody if:

(a) the circumstances of the child or one or both custodians have materially and substantially changed since the entry of the order to be modified, or the order has become unworkable or inappropriate under existing circumstances; and

(b) a modification of the terms and conditions of the decree would be an improvement for and in the best interest of the child.

(2) The order of joint legal custody shall be terminated by order of the court if both parents file a motion for termination. At the time of entry of an order terminating joint legal custody, the court shall enter an order of sole legal custody under Section 30-3-10. All related issues, including ~~visitation~~ parent-time and child support, shall also be determined and ordered by the court.

(3) If the court finds that an action under this section is filed or answered frivolously and

in a manner designed to harass the other party, the court shall assess attorney's fees as costs against the offending party.

Section 8. Section **30-3-32** is amended to read:

30-3-32. Parent-time -- Intent -- Policy -- Definitions.

(1) It is the intent of the Legislature to promote ~~[visitation]~~ parent-time at a level consistent with all parties' interests.

(2) Absent a showing by a preponderance of evidence of real harm or substantiated potential harm to the child:

(a) it is in the best interests of the child of divorcing, divorced, or adjudicated parents to have frequent, meaningful, and continuing access to each parent following separation or divorce;

(b) each divorcing, separating, or adjudicated parent is entitled to and responsible for frequent, meaningful, and continuing access with his child consistent with the child's best interests; and

(c) it is in the best interests of the child to have both parents actively involved in parenting the child.

(3) For purposes of Sections 30-3-32 through 30-3-37:

(a) "Child" means the child or children of divorcing, separating, or adjudicated parents.

(b) "Christmas school vacation" means the time period beginning on the evening the child gets out of school for the Christmas or winter school break until the evening before the child returns to school, except for Christmas Eve, Christmas Day, and New Year's Day.

(c) "Extended ~~[visitation]~~ parent-time" means a period of ~~[visitation]~~ parent-time other than a weekend, holiday as provided in Subsections 30-3-35(2)(f) and (2)(g), religious holidays as provided in Subsections 30-3-33(4) and (16), and "Christmas school vacation."

Section 9. Section **30-3-33** is amended to read:

30-3-33. Advisory guidelines.

In addition to the ~~[visitation]~~ parent-time schedules provided in ~~[Section]~~ Sections 30-3-35 and ~~[Section]~~ 30-3-35.5, advisory guidelines are suggested to govern all ~~[visitation]~~ parent-time arrangements between parents. These advisory guidelines include:

(1) ~~[visitation]~~ parent-time schedules mutually agreed upon by both parents are preferable to a court-imposed solution;

(2) the ~~[visitation]~~ parent-time schedule shall be utilized to maximize the continuity and

307 stability of the child's life;

308 (3) special consideration shall be given by each parent to make the child available to attend
309 family functions including funerals, weddings, family reunions, religious holidays, important
310 ceremonies, and other significant events in the life of the child or in the life of either parent which
311 may inadvertently conflict with the ~~[visitation]~~ parent-time schedule;

312 (4) the noncustodial parent shall pick up the child at the times specified and return the
313 child at the times specified, and the child's regular school hours shall not be interrupted;

314 (5) the custodial parent shall have the child ready for ~~[visitation]~~ parent-time at the time
315 he is to be picked up and shall be present at the custodial home or shall make reasonable alternate
316 arrangements to receive the child at the time he is returned;

317 (6) the court may make alterations in the ~~[visitation]~~ parent-time schedule to reasonably
318 accommodate the work schedule of both parents and may increase the ~~[visitation]~~ parent-time
319 allowed to the noncustodial parent but shall not diminish the standardized ~~[visitation]~~ parent-time
320 provided in ~~[Section]~~ Sections 30-3-35 and ~~[Section]~~ 30-3-35.5;

321 (7) the court may make alterations in the ~~[visitation]~~ parent-time schedule to reasonably
322 accommodate the distance between the parties and the expense of exercising ~~[visitation]~~
323 parent-time;

324 (8) neither ~~[visitation]~~ parent-time nor child support is to be withheld due to either parent's
325 failure to comply with a court-ordered ~~[visitation]~~ parent-time schedule;

326 (9) the custodial parent shall notify the noncustodial parent within 24 hours of receiving
327 notice of all significant school, social, sports, and community functions in which the child is
328 participating or being honored, and the noncustodial parent shall be entitled to attend and
329 participate fully;

330 (10) the noncustodial parent shall have access directly to all school reports including
331 preschool and daycare reports and medical records and shall be notified immediately by the
332 custodial parent in the event of a medical emergency;

333 (11) each parent shall provide the other with his current address and telephone number
334 within 24 hours of any change;

335 (12) each parent shall permit and encourage liberal telephone contact during reasonable
336 hours and uncensored mail privileges with the child;

337 (13) parental care shall be presumed to be better care for the child than surrogate care and

the court shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able, to provide child care;

(14) each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the noncustodial parent with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise; and

(15) each parent shall be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.

Section 10. Section **30-3-34** is amended to read:

30-3-34. Best interests -- Rebuttable presumption.

(1) If the parties are unable to agree on a [visitation] parent-time schedule, the court may establish a [visitation] parent-time schedule consistent with the best interests of the child.

(2) The advisory guidelines as provided in Section 30-3-33 and the [visitation] parent-time schedule as provided in [Section] Sections 30-3-35 and [Section] 30-3-35.5 shall be presumed to be in the best interests of the child. The [visitation] parent-time schedule shall be considered the minimum [visitation] parent-time to which the noncustodial parent and the child shall be entitled unless a parent can establish otherwise by a preponderance of the evidence that more or less [visitation] parent-time should be awarded based upon any of the following criteria:

(a) [visitation] parent-time would endanger the child's physical health or significantly impair the child's emotional development;

(b) the distance between the residency of the child and the noncustodial parent;

(c) a substantiated or unfounded allegation of child abuse has been made;

(d) the lack of demonstrated parenting skills without safeguards to ensure the child's well-being during [visitation] parent-time;

(e) the financial inability of the noncustodial parent to provide adequate food and shelter for the child during periods of [visitation] parent-time;

(f) the preference of the child if the court determines the child to be of sufficient maturity;

(g) the incarceration of the noncustodial parent in a county jail, secure youth corrections facility, or an adult corrections facility;

(h) shared interests between the child and the noncustodial parent;

(i) the involvement of the noncustodial parent in the school, community, religious, or other related activities of the child;

(j) the availability of the noncustodial parent to care for the child when the custodial parent is unavailable to do so because of work or other circumstances;

(k) a substantial and chronic pattern of missing, canceling, or denying regularly scheduled ~~[visitation]~~ parent-time;

(l) the minimal duration of and lack of significant bonding in the parents' relationship prior to the conception of the child;

(m) the ~~[visitation]~~ parent-time schedule of siblings;

(n) the lack of reasonable alternatives to the needs of a nursing child; and

(o) any other criteria the court determines relevant to the best interests of the child.

(3) The court shall enter the reasons underlying its order for ~~[visitation]~~ parent-time that:

(a) incorporates a ~~[visitation]~~ parent-time schedule provided in Section 30-3-35 or ~~[Section]~~ 30-3-35.5; or

(b) provides more or less ~~[visitation]~~ parent-time than a ~~[visitation]~~ parent-time schedule provided in Section 30-3-35 or ~~[Section]~~ 30-3-35.5.

(4) Once the ~~[visitation]~~ parent-time schedule has been established, the parties may not alter the schedule except by mutual consent of the parties or a court order.

Section 11. Section **30-3-35** is amended to read:

30-3-35. Minimum schedule for parent-time for children 5 to 18 years of age.

(1) The ~~[visitation]~~ parent-time schedule in this section applies to children 5 to 18 years of age.

(2) If the parties do not agree to a ~~[visitation]~~ parent-time schedule, the following schedule shall be considered the minimum ~~[visitation]~~ parent-time to which the noncustodial parent and the child shall be entitled:

(a) (i) one weekday evening to be specified by the noncustodial parent or the court from 5:30 p.m. until 8:30 p.m.; or

(ii) at the election of the noncustodial parent, one weekday from the time the child's school is regularly dismissed until 8:30 p.m., unless the court directs the application of Subsection

(2)(a)(i);

(b) (i) alternating weekends beginning on the first weekend after the entry of the decree

from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year; or

(ii) at the election of the noncustodial parent, from the time the child's school is regularly dismissed on Friday until 7 p.m. on Sunday, unless the court directs the application of Subsection (2)(b)(i);

(c) holidays take precedence over the weekend ~~[visitation]~~ parent-time, and changes shall not be made to the regular rotation of the alternating weekend ~~[visitation]~~ parent-time schedule;

(d) if a holiday falls on a regularly scheduled school day, the noncustodial parent shall be responsible for the child's attendance at school for that school day;

(e) (i) if a holiday falls on a weekend or on a Friday or Monday and the total holiday period extends beyond that time so that the child is free from school and the parent is free from work, the noncustodial parent shall be entitled to this lengthier holiday period; or

(ii) at the election of the noncustodial parent, ~~[visitation]~~ parent-time over a scheduled holiday weekend may begin from the time the child's school is regularly dismissed at the beginning of the holiday weekend until 7 p.m. on the last day of the holiday weekend;

(f) in years ending in an odd number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on the day before or after the actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) Human Rights Day beginning 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) spring break or Easter holiday beginning at 6 p.m. on the day school lets out for the holiday until 7 p.m. on the Sunday before school resumes;

(iv) Memorial Day beginning 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(v) July 24th beginning 6 p.m. on the day before the holiday until 11 p.m. on the holiday;

(vi) Veteran's Day holiday beginning 6 p.m. the day before the holiday until 7 p.m. on the holiday; and

(vii) the first portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b) plus Christmas Eve and Christmas Day until 1 p.m., so long as the entire holiday is

equally divided;

(g) in years ending in an even number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) President's Day beginning at 6 p.m. on Friday until 7 p.m. on Monday unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) July 4th beginning at 6 p.m. the day before the holiday until 11 p.m. on the holiday;

(iv) Labor Day beginning at 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(v) the fall school break, if applicable, commonly known as U.E.A. weekend beginning at 6 p.m. on Wednesday until Sunday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(vi) Columbus Day beginning at 6 p.m. the day before the holiday until 7 p.m. on the holiday;

(vii) Thanksgiving holiday beginning Wednesday at 7 p.m. until Sunday at 7 p.m.; and

(viii) the second portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b) plus Christmas day beginning at 1 p.m. until 9 p.m., so long as the entire Christmas holiday is equally divided;

(h) Father's Day shall be spent with the natural or adoptive father every year beginning at 9 a.m. until 7 p.m. on the holiday;

(i) Mother's Day shall be spent with the natural or adoptive mother every year beginning at 9 a.m. until 7 p.m. on the holiday;

(j) extended ~~[visitation]~~ parent-time with the noncustodial parent may be:

(i) up to four weeks consecutive at the option of the noncustodial parent;

(ii) two weeks shall be uninterrupted time for the noncustodial parent; and

(iii) the remaining two weeks shall be subject to ~~[visitation]~~ parent-time for the custodial parent consistent with these guidelines;

(k) the custodial parent shall have an identical two-week period of uninterrupted time during the children's summer vacation from school for purposes of vacation;

(l) if the child is enrolled in year-round school, the noncustodial parent's extended [visitation] parent-time shall be 1/2 of the vacation time for year-round school breaks, provided the custodial parent has holiday and phone visits;

(m) notification of extended [visitation] parent-time or vacation weeks with the child shall be provided at least 30 days in advance to the other parent; and

(n) telephone contact shall be at reasonable hours and for reasonable duration.

(3) Any elections required to be made in accordance with this section by either parent concerning [visitation] parent-time shall be made a part of the decree and made a part of the [visitation] parent-time order.

Section 12. Section **30-3-35.5** is amended to read:

30-3-35.5. Minimum schedule for parent-time for children under five years of age.

(1) The [visitation] parent-time schedule in this section applies to children under five years old.

(2) If the parties do not agree to a [visitation] parent-time schedule, the following schedule shall be considered the minimum [visitation] parent-time to which the noncustodial parent and the child shall be entitled:

(a) for children under five months of age:

(i) six hours of [visitation] parent-time per week to be specified by the court or the noncustodial parent preferably:

(A) divided into three [visitation] parent-time periods; and

(B) in the custodial home, established child care setting, or other environment familiar to the child;

(ii) two hours on holidays and in the years specified in Subsections 30-3-35(2)(f) through (i) preferably in the custodial home, the established child care setting, or other environment familiar to the child;

(b) for children five months of age or older, but younger than ~~[10]~~ ten months of age:

(i) nine hours of [visitation] parent-time per week to be specified by the court or the noncustodial parent preferably:

(A) divided into three [visitation] parent-time periods; and

(B) in the custodial home, established child care setting, or other environment familiar to the child;

(ii) two hours on the holidays and in the years specified in Subsections 30-3-35(2)(f) through (i) preferably in the custodial home, the established child care setting, or other environment familiar to the child;

(c) for children ~~[10]~~ ten months of age or older, but younger than 18 months of age:

(i) one eight-hour visit per week to be specified by the noncustodial parent or court;

(ii) one three-hour visit per week to be specified by the noncustodial parent or court;

(iii) eight hours on the holidays and in the years specified in Subsections 30-3-5(2)(f) through (i); and

(iv) brief phone contact with the noncustodial parent at least two times per week;

(d) for children 18 months of age or older, but younger than three years of age:

(i) one weekday evening for two hours between 5:30 p.m. and 8:30 p.m. to be specified by the noncustodial parent or court;

(ii) alternative weekends beginning on the first weekend after the entry of the decree from ~~[6:00]~~ 6 p.m. on Friday until ~~[7:00]~~ 7 p.m. on Sunday continuing each year;

(iii) ~~[visitation]~~ parent-time on holidays as specified in Subsections 30-3-35(2)(c) through (i);

(iv) extended ~~[visitation]~~ parent-time may be:

(A) two one-week periods, separated by at least four weeks, at the option of the noncustodial parent;

(B) one week shall be uninterrupted time for the noncustodial parent;

(C) the remaining week shall be subject to ~~[visitation]~~ parent-time for the custodial parent consistent with these guidelines; and

(D) the custodial parent shall have an identical one-week period of uninterrupted time for vacation; and

(v) brief phone contact with the noncustodial parent at least two times per week;

(e) for children three years of age or older, but younger than five years of age:

(i) one weekday evening between 5:30 p.m. and 8:30 p.m. to be specified by the noncustodial parent or court;

(ii) alternative weekends beginning on the first weekend after the entry of the decree from ~~[6:00]~~ 6 p.m. on Friday until ~~[7:00]~~ 7 p.m. on Sunday continuing each year;

(iii) ~~[visitation]~~ parent-time on holidays as specified in Subsections 30-3-35(2)(c) through

- 524 (i);
- 525 (iv) extended [~~visitation~~] parent-time with the noncustodial parent may be:
- 526 (A) two two-week periods, separated by at least four weeks, at the option of the
- 527 noncustodial parent;
- 528 (B) one two-week period shall be uninterrupted time for the noncustodial parent;
- 529 (C) the remaining two-week period shall be subject to [~~visitation~~] parent-time for the
- 530 custodial parent consistent with these guidelines; and
- 531 (D) the custodial parent shall have an identical two-week period of uninterrupted time for
- 532 vacation; and
- 533 (v) brief phone contact with the noncustodial parent at least two times per week.
- 534 (3) A parent shall notify the other parent at least 30 days in advance of extended
- 535 [~~visitation~~] parent-time or vacation weeks.

536 (4) Telephone contact shall be at reasonable hours and for reasonable duration.

537 Section 13. Section **30-3-36** is amended to read:

538 **30-3-36. Special circumstances.**

539 (1) When [~~visitation~~] parent-time has not taken place for an extended period of time and

540 the child lacks an appropriate bond with the noncustodial parent, both parents shall consider the

541 possible adverse effects upon the child and gradually reintroduce an appropriate [~~visitation~~]

542 parent-time plan for the noncustodial parent.

543 (2) For emergency purposes, whenever the child travels with either parent, all of the

544 following will be provided to the other parent:

- 545 (a) an itinerary of travel dates;
- 546 (b) destinations;
- 547 (c) places where the child or traveling parent can be reached; and
- 548 (d) the name and telephone number of an available third person who would be
- 549 knowledgeable of the child's location.

550 (3) Unchaperoned travel of a child under the age of five years is not recommended.

551 Section 14. Section **30-3-37** is amended to read:

552 **30-3-37. Relocation.**

553 (1) When either parent decides to move from the state of Utah or 150 miles or more from

554 the residence specified in the court's decree, that parent shall provide reasonable advance written

notice of the intended relocation to the other parent.

(2) The court may, upon motion of any party or upon the court's own motion, schedule a hearing with notice to review the ~~[visitation]~~ parent-time schedule as provided in Section 30-3-35 and make appropriate orders regarding the ~~[visitation]~~ parent-time and costs for ~~[visitation]~~ parent-time transportation.

(3) In determining the ~~[visitation]~~ parent-time schedule and allocating the transportation costs, the court shall consider:

- (a) the reason for the parent's relocation;
- (b) the additional costs or difficulty to both parents in exercising ~~[visitation]~~ parent-time;
- (c) the economic resources of both parents; and
- (d) other factors the court considers necessary and relevant.

(4) Upon the motion of any party, the court may order the parent intending to move to pay the costs of transportation for:

- (a) at least one visit per year with the other parent; and
- (b) any number of additional visits as determined equitable by the court.

(5) Upon the motion of any party, the court may order uninterrupted ~~[visitation]~~ parent-time with the noncustodial parent for a minimum of 30 days during extended ~~[visitation]~~ parent-time, except if the court finds it is not in the best interests of the child.

Section 15. Section **30-3-38** is amended to read:

30-3-38. Pilot Program for Expedited Parent-time Enforcement.

(1) There is established an Expedited ~~[Visitation]~~ Parent-time Enforcement Pilot Program in the third judicial district to be administered by the Administrative Office of the Courts from July 1, 1996, to July 1, 2003.

(2) As used in this section:

(a) "Mediator" means a person who:
(i) is qualified to mediate ~~[visitation]~~ parent-time disputes under criteria established by the Administrative Office of the Courts; and

(ii) agrees to follow billing guidelines established by the Administrative Office of the Courts and this section.

(b) "Services to facilitate ~~[visitation]~~ parent-time" or "services" means services designed to assist families in resolving ~~[visitation]~~ parent-time problems through:

- (i) counseling;
- (ii) supervised [~~visitation~~] parent-time;
- (iii) neutral drop-off and pick-up;
- (iv) educational classes; and
- (v) other related activities.

(3) (a) Under this pilot program, if a parent files a motion in the third district court alleging that court-ordered [~~visitation~~] parent-time rights are being violated, the clerk of the court, after assigning the case to a judge, shall refer the case to the administrator of this pilot program for assignment to a mediator.

(b) Upon receipt of a case, the mediator shall:

- (i) meet with the parents to address [~~visitation~~] parent-time issues within 15 days of the motion being filed;
- (ii) assess the situation;
- (iii) facilitate an agreement on [~~visitation~~] parent-time between the parents; and
- (iv) determine whether a referral to a service provider under Subsection (3)(c) is warranted.

(c) While a case is in mediation, a mediator may refer the parents to a service provider designated by the Department of Human Services for services to facilitate [~~visitation~~] parent-time if:

- (i) the services may be of significant benefit to the parents; or
- (ii) (A) a mediated agreement between the parents is unlikely; and
- (B) the services may facilitate an agreement.

(d) At any time during mediation, a mediator shall terminate mediation and transfer the case to the administrator of the pilot program for referral to the judge or court commissioner to whom the case was assigned under Subsection (3)(a) if:

- (i) a written agreement between the parents is reached; or
- (ii) the parents are unable to reach an agreement through mediation; and
- (A) the parents have received services to facilitate [~~visitation~~] parent-time;
- (B) both parents object to receiving services to facilitate [~~visitation~~] parent-time; or
- (C) the parents are unlikely to benefit from receiving services to facilitate [~~visitation~~] parent-time.

(e) Upon receiving a case from the administrator of the pilot program, a judge or court commissioner may:

- (i) review the agreement of the parents and, if acceptable, sign it as an order;
- (ii) order the parents to receive services to facilitate ~~[visitation]~~ parent-time;
- (iii) proceed with the case; or
- (iv) take other appropriate action.

(4) (a) If a parent makes a particularized allegation of physical or sexual abuse of a child who is the subject of a ~~[visitation]~~ parent-time order against the other parent or a member of the other parent's household to a mediator or service provider, the mediator or service provider shall immediately report that information to:

(i) the judge assigned to the case who may immediately issue orders and take other appropriate action to resolve the allegation and protect the child; and

(ii) the Division of Child and Family Services within the Department of Human Services in the manner required by Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements.

(b) If an allegation under Subsection (4)(a) is made against a parent with ~~[visitation]~~ parent-time rights or a member of that parent's household, ~~[visitation]~~ parent-time by that parent shall, pursuant to an order of the court, be supervised until:

- (i) the allegation has been resolved; or
- (ii) a court orders otherwise.

(c) Notwithstanding an allegation under Subsection (4)(a), a mediator may continue to mediate ~~[visitation]~~ parent-time problems and a service provider may continue to provide services to facilitate ~~[visitation]~~ parent-time unless otherwise ordered by a court.

(5) (a) The Department of Human Services may contract with one or more entities in accordance with Title 63, Chapter 56, Utah Procurement Code, to provide:

- (i) services to facilitate ~~[visitation]~~ parent-time;
- (ii) case management services; and
- (iii) administrative services.

(b) An entity who contracts with the Department of Human Services under Subsection (5)(a) shall:

- (i) be qualified to provide one or more of the services listed in Subsection (5)(a); and

(ii) agree to follow billing guidelines established by the Department of Human Services and this section.

(6) (a) Except as provided in Subsection (6)(b), the cost of mediation shall be:

(i) reduced to a sum certain;

(ii) divided equally between the parents; and

(iii) charged against each parent taking into account the ability of that parent to pay under billing guidelines adopted in accordance with this section.

(b) A judge may order a parent to pay an amount in excess of that provided for in Subsection (6)(a) if the parent:

(i) failed to participate in good faith in mediation or services to facilitate ~~visitation~~ parent-time; or

(ii) made an unfounded assertion or claim of physical or sexual abuse of a child.

(c) (i) The cost of mediation and services to facilitate ~~visitation~~ parent-time may be charged to parents at periodic intervals.

(ii) Mediation and services to facilitate ~~visitation~~ parent-time may only be terminated on the ground of nonpayment if both parents are delinquent.

(7) If a parent fails to cooperate in good faith in mediation or services to facilitate ~~visitation~~ parent-time, a court may order, in subsequent proceedings, a temporary change in custody or ~~visitation~~ parent-time.

(8) (a) The Judicial Council may make rules to implement and administer the provisions of this pilot program related to mediation.

(b) The Department of Human Services may make rules to implement and administer the provisions of this pilot program related to services to facilitate ~~visitation~~ parent-time.

(9) (a) The Administrative Office of the Courts shall adopt outcome measures to evaluate the effectiveness of the mediation component of this pilot program. Progress reports shall be provided to the Judiciary Interim Committee as requested by the committee. At least once during this pilot program, the Administrative Office of the Courts shall present to the committee the results of a survey that measures the effectiveness of the program in terms of increased compliance with ~~visitation~~ parent-time orders and the responses of interested persons.

(b) The Department of Human Services shall adopt outcome measures to evaluate the effectiveness of the services component of this pilot program. Progress reports shall be provided

to the Judiciary Interim Committee as requested by the committee.

(c) The Administrative Office of the Courts and the Department of Human Services may adopt joint outcome measures and file joint reports to satisfy the requirements of Subsections (8)(a) and (b).

(10) (a) The Department of Human Services shall apply for federal funds as available.

(b) This pilot program shall be funded through funds received under Subsection (10)(a).

Section 16. Section **30-6-4.2** is amended to read:

30-6-4.2. Protective orders -- Ex parte protective orders -- Modification of orders -- Service of process -- Duties of the court.

(1) If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic violence or abuse has occurred or a modification of an order for protection is required, a court may:

(a) without notice, immediately issue an order for protection ex parte or modify an order for protection ex parte as it considers necessary to protect the petitioner and all parties named to be protected in the petition; or

(b) upon notice, issue an order for protection or modify an order after a hearing, whether or not the respondent appears.

(2) A court may grant the following relief without notice in an order for protection or a modification issued ex parte:

(a) enjoin the respondent from threatening to commit or committing domestic violence or abuse against the petitioner and any designated family or household member;

(b) prohibit the respondent from harassing, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;

(c) order that the respondent is excluded from the petitioner's residence and its premises, and order the respondent to stay away from the residence, school, or place of employment of the petitioner, and the premises of any of these, or any specified place frequented by the petitioner and any designated family or household member;

(d) upon finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or possessing a firearm or other weapon specified by the court;

(e) order possession and use of an automobile and other essential personal effects, and

direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

(f) grant temporary custody of any minor children to the petitioner;

(g) order any further relief that the court considers necessary to provide for the safety and welfare of the petitioner and any designated family or household member; and

(h) if the petition requests child support or spousal support, at the hearing on the petition order both parties to provide verification of current income, including year-to-date pay stubs or employer statements of year-to-date or other period of earnings, as specified by the court, and complete copies of tax returns from at least the most recent year.

(3) A court may grant the following relief in an order for protection or a modification of an order after notice and hearing, whether or not the respondent appears:

(a) grant the relief described in Subsection (2); and

(b) specify arrangements for [~~visitation~~] parent-time of any minor child by the respondent and require supervision of that [~~visitation~~] parent-time by a third party or deny [~~visitation~~] parent-time if necessary to protect the safety of the petitioner or child.

(4) Following the protective order hearing, the court shall:

(a) as soon as possible, deliver the order to the county sheriff for service of process;

(b) make reasonable efforts to ensure that the order for protection is understood by the petitioner, and the respondent, if present;

(c) transmit, by the end of the next business day after the order is issued, a copy of the order for protection to the local law enforcement agency or agencies designated by the petitioner; and

(d) transmit a copy of the order to the statewide domestic violence network described in Section 30-6-8.

(5) (a) Each protective order shall include two separate portions, one for provisions, the violation of which are criminal offenses, and one for provisions, the violation of which are civil violations, as follows:

(i) criminal offenses are those under Subsections 30-6-4.2(2)(a) through (e), and under Subsection 30-6-4.2(3)(a) as it refers to Subsections 30-6-4.2(2)(a) through (e); and

(ii) civil offenses are those under Subsections 30-6-4.2(2)(f) through (h), and Subsection 30-6-4.2(3)(a) as it refers to Subsections 30-6-4.2(2)(f) through (h).

(b) The criminal provision portion shall include a statement that violation of any criminal provision is a class A misdemeanor.

(c) The civil provision portion shall include a notice that violation of or failure to comply with a civil provision is subject to contempt proceedings.

(6) The protective order shall include:

(a) a designation of a specific date, determined by the court, when the civil portion of the protective order either expires or is scheduled for review by the court, which date may not exceed 150 days after the date the order is issued, unless the court indicates on the record the reason for setting a date beyond 150 days;

(b) information the petitioner is able to provide to facilitate identification of the respondent, such as social security number, driver license number, date of birth, address, telephone number, and physical description; and

(c) a statement advising the petitioner that:

(i) after three years from the date of issuance of the protective order, a hearing may be held to dismiss the criminal portion of the protective order;

(ii) the petitioner should, within the 30 days prior to the end of the three-year period, advise the court of the petitioner's current address for notice of any hearing; and

(iii) the address provided by the petitioner will not be made available to the respondent.

(7) Child support and spouse support orders issued as part of a protective order are subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, ~~[Universal]~~ Income Withholding ~~[=]~~ in Non IV-D [Obligees] Cases, except when the protective order is issued ex parte.

(8) (a) The county sheriff that receives the order from the court, pursuant to Subsection (5)(a), shall provide expedited service for orders for protection issued in accordance with this chapter, and shall transmit verification of service of process, when the order has been served, to the statewide domestic violence network described in Section 30-6-8.

(b) This section does not prohibit any law enforcement agency from providing service of process if that law enforcement agency:

(i) has contact with the respondent and service by that law enforcement agency is possible;

or

(ii) determines that under the circumstances, providing service of process on the respondent is in the best interests of the petitioner.

(9) (a) When an order is served on a respondent in a jail or other holding facility, the law enforcement agency managing the facility shall make a reasonable effort to provide notice to the petitioner at the time the respondent is released from incarceration.

(b) Notification of the petitioner shall consist of a good faith reasonable effort to provide notification, including mailing a copy of the notification to the last-known address of the victim.

(10) (a) A court may modify or vacate an order of protection or any provisions in the order after notice and hearing, except as limited under Subsection (10)(b).

(b) Criminal provisions of a protective order may not be vacated within three years of issuance unless the petitioner:

(i) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah Rules of Civil Procedure, and the petitioner personally appears before the court and gives specific consent to the vacation of the criminal provisions of the protective order; or

(ii) submits a verified affidavit, stating agreement to the vacation of the criminal provisions of the protective order.

(11) A protective order may be modified without a showing of substantial and material change in circumstances.

(12) Insofar as the provisions of this chapter are more specific than the Utah Rules of Civil Procedure, regarding protective orders, the provisions of this chapter govern.

Section 17. Section **62A-4a-205** is amended to read:

62A-4a-205. Treatment plans.

(1) No more than 45 days after a child enters the temporary custody of the division, the child's treatment plan shall be finalized.

(2) The division shall use an interdisciplinary team approach in developing each treatment plan. An interdisciplinary team shall include, but is not limited to, representatives from mental health, education, and, where appropriate, a representative of law enforcement.

(3) (a) The division shall involve all of the following in the development of a child's treatment plan:

(i) both of the child's natural parents, unless the whereabouts of a parent are unknown;

- (ii) the child;
- (iii) the child's foster parents; and
- (iv) where appropriate, the child's stepparent.

(b) In relation to all information considered by the division in developing a treatment plan, additional weight and attention shall be given to the input of the child's natural and foster parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

(4) A copy of the treatment plan shall be provided to the guardian ad litem, and to the child's natural parents and foster parents immediately upon completion, or as soon as is reasonably possible thereafter.

(5) Each treatment plan shall specifically provide for the safety of the child, in accordance with federal law, and clearly define what actions or precautions will, or may be, necessary to provide for the health, safety, protection, and welfare of the child.

(6) The plan shall set forth, with specificity, at least the following:

(a) the reason the child entered Division of Child and Family Services custody, and documentation of the reasonable efforts made to prevent placement, or documentation of the emergency situation that existed and that prevented reasonable efforts;

(b) the primary permanency goal for the child and the reason for selection of that goal;

(c) the concurrent permanency goal for the child and the reason for the selection of that goal;

(d) if the plan is for the child to return to his family, specifically what the parents must do in order to enable the child to be returned home, specifically how those requirements may be accomplished, and how those requirements will be measured;

(e) the specific services needed to reduce the problems that necessitated placement in the division's custody, and who will provide for and be responsible for case management;

(f) a ~~[visitation]~~ parent-time schedule between the natural parent and the child;

(g) the health care to be provided to the child, and the mental health care to be provided to address any known or diagnosed mental health needs of the child. If residential treatment, rather than a foster home, is the proposed placement, a specialized assessment of the child's health needs shall be conducted, including an assessment of mental illness and behavior and conduct disorders; and

(h) social summaries that include case history information pertinent to case planning.

(7) (a) Each treatment plan shall be specific to each child and his family, rather than general. The division shall train its workers to develop treatment plans that comply with federal mandates and the specific needs of the particular child and his family.

(b) All treatment plans and expectations shall be individualized and contain specific time frames.

(c) Treatment plans shall address problems that keep children in placement and keep them from achieving permanence in their lives.

(d) The child's natural parents, foster parents, and where appropriate, stepparents, shall be kept informed of and supported to participate in important meetings and procedures related to the child's placement.

(8) With regard to a child who is three years of age or younger, if the goal is not to return the child home, the permanency plan for that child shall be adoption unless there are documented extenuating circumstances that justify long-term foster care or guardianship.

Section 18. Section **63-63a-8** is amended to read:

63-63a-8. Children's Legal Defense Account.

(1) There is created a restricted account within the General Fund known as the Children's Legal Defense Account.

(2) The purpose of the Children's Legal Defense Account is to provide for programs that protect and defend the rights, safety, and quality of life of children.

(3) The Legislature shall appropriate money from the account for the administrative and related costs of the following programs:

(a) implementing the Mandatory Educational Course on Children's Needs for Divorcing Parents relating to the effects of divorce on children as provided in Sections 30-3-4, 30-3-7, 30-3-10.3, 30-3-11.3, 30-3-15.3, and 30-3-18, and the Mediation Pilot Program - Child Custody or ~~[Visitation]~~ Parent-time as provided in Sections 30-3-15.3 and 30-3-18;

(b) implementing the use of guardians ad litem as provided in Sections 30-3-5.2, 78-3a-318, 78-3a-912, 78-11-6, and 78-7-9; the training of guardian ad litem and volunteers as provided in Section 78-3a-912; and termination of parental rights as provided in Sections 78-3a-118, 78-3a-119, 78-3a-903, and Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act. This account may not be used to supplant funding for the guardian ad litem program in the juvenile court as provided in Section 78-3a-912; and

(c) implementing and administering the Expedited [~~Visitation~~] Parent-time Enforcement Pilot Program as provided in Section 30-3-38.

(4) The following withheld fees shall be allocated only to the Children's Legal Defense Account and used only for the purposes provided in Subsections (3)(a) through (c):

(a) the additional \$10 fee withheld on every marriage license issued in the state of Utah as provided in Section 21-2-8; and

(b) a fee of \$2 shall be withheld from the existing civil filing fee collected on any complaint, affidavit, or petition in a civil, probate, or adoption matter in every court of record.

(5) The Division of Finance shall allocate the monies described in Subsection (4) from the General Fund to the Children's Legal Defense Account.

(6) Any funds in excess of \$200,000 remaining in the restricted account as of June 30 of any fiscal year shall lapse into the General Fund.

Section 19. Section **76-5-303** is amended to read:

76-5-303. Custodial interference.

(1) A person, whether a parent or other, is guilty of custodial interference if, without good cause, the actor takes, entices, conceals, or detains a child under the age of 16 from its parent, guardian, or other lawful custodian:

(a) knowing the actor has no legal right to do so; and

(b) with intent to hold the child for a period substantially longer than the [~~visitation~~] parent-time or custody period previously awarded by a court of competent jurisdiction.

(2) A person, whether a parent or other, is guilty of custodial interference if, having actual physical custody of a child under the age of 16 pursuant to a judicial award of any court of competent jurisdiction which grants to another person parent-time, visitation, or custody rights, and without good cause the actor conceals or detains the child with intent to deprive the other person of lawful parent-time, visitation, or custody rights.

(3) Custodial interference is a class A misdemeanor unless the child is removed and taken from one state to another, in which case it is a felony of the third degree.

Section 20. Section **78-2a-3** is amended to read:

78-2a-3. Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

(a) to carry into effect its judgments, orders, and decrees; or

(b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;

(b) appeals from the district court review of:

(i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and

(ii) a challenge to agency action under Section 63-46a-12.1;

(c) appeals from the juvenile courts;

(d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(e) appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, parent-time, adoption, and paternity;

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter

over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

Section 21. Section **78-3a-103** is amended to read:

78-3a-103. Definitions.

(1) As used in this chapter:

(a) "Abused child" includes a minor less than 18 years of age who:

(i) has suffered or been threatened with nonaccidental physical or mental harm, negligent treatment, or sexual exploitation; or

(ii) has been the victim of any sexual abuse.

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

(c) "Adult" means a person 18 years of age or over, except that persons 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall be referred to as minors.

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

(e) "Child placement agency" means:

(i) a private agency licensed to receive minors for placement or adoption under this code; or

(ii) a private agency receiving minors for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

(f) "Commit" means to transfer legal custody.

(g) "Court" means the juvenile court.

(h) "Dependent child" includes a minor who is homeless or without proper care through no fault of his parent, guardian, or custodian.

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

(j) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of minors who require secure custody in physically restricting facilities:

(i) pending court disposition or transfer to another jurisdiction; or

(ii) while under the continuing jurisdiction of the court.

(k) "Formal referral" means a written report from a peace officer or other person informing the court that a minor is or appears to be within the court's jurisdiction and that a petition may be filed.

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

(m) "Guardianship of the person" includes the authority to consent to marriage, to enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal custody, if legal custody is not vested in another person, agency, or institution.

(n) "Habitual truant" is a school-age minor who has received more than two truancy citations within one school year from the school in which the minor is or should be enrolled and eight absences without a legitimate or valid excuse or who, in defiance of efforts on the part of school authorities as required under Section 53A-11-103, refuses to regularly attend school or any scheduled period of the school day.

(o) "Legal custody" means a relationship embodying the following rights and duties:

(i) the right to physical custody of the minor;

(ii) the right and duty to protect, train, and discipline the minor;

(iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;

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

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

(p) "Minor" means a person under the age of 18 years. It includes the term "child" as used in other parts of this chapter.

(q) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

(r) (i) "Neglected child" means a minor:

(A) whose parent, guardian, or custodian has abandoned or subjected the minor to mistreatment or abuse;

(B) who lacks proper parental care by reason of the fault or habits of the parent, guardian, or custodian;

(C) whose parent, guardian, or custodian fails or refuses to provide proper or necessary

989 subsistence, education, or medical care, including surgery or psychiatric services when required,
990 or any other care necessary for health, safety, morals, or well-being; or

991 (D) who is at risk of being a neglected or abused child as defined in this chapter because
992 another minor in the same home is a neglected or abused child as defined in this chapter.

993 (ii) The aspect of neglect related to education, described in Subsection (1)(r)(i)(C), means
994 that, after receiving notice that a minor has been frequently absent from school without good cause,
995 or that the minor has failed to cooperate with school authorities in a reasonable manner, a parent
996 or guardian fails to make a good faith effort to ensure that the minor receives an appropriate
997 education.

998 (iii) A parent or guardian legitimately practicing religious beliefs and who, for that reason,
999 does not provide specified medical treatment for a minor, is not guilty of neglect.

1000 (s) "Nonjudicial adjustment" means closure of the case by the assigned probation officer
1001 without judicial determination upon the consent in writing of the minor, the parent, legal guardian
1002 or custodian, and the assigned probation officer.

1003 (t) "Probation" means a legal status created by court order following an adjudication on
1004 the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted to
1005 remain in his home under prescribed conditions and under supervision by the probation department
1006 or other agency designated by the court, subject to return to the court for violation of any of the
1007 conditions prescribed.

1008 (u) "Protective supervision" means a legal status created by court order following an
1009 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
1010 remain in his home, and supervision and assistance to correct the abuse, neglect, or dependency
1011 is provided by the probation department or other agency designated by the court.

1012 (v) "Residual parental rights and duties" means those rights and duties remaining with the
1013 parent after legal custody or guardianship, or both, have been vested in another person or agency,
1014 including the responsibility for support, the right to consent to adoption, the right to determine the
1015 child's religious affiliation, and the right to reasonable ~~[visitation]~~ parent-time unless restricted by
1016 the court. If no guardian has been appointed, "residual parental rights and duties" also include the
1017 right to consent to marriage, to enlistment, and to major medical, surgical, or psychiatric treatment.

1018 (w) "Secure facility" means any facility operated by or under contract with the Division
1019 of Youth Corrections, that provides 24-hour supervision and confinement for youth offenders

committed to the division for custody and rehabilitation.

(x) "Shelter" means the temporary care of minors in physically unrestricted facilities pending court disposition or transfer to another jurisdiction.

(y) "State supervision" means a disposition which provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Youth Corrections.

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

(aa) "Therapist" means a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody, or any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the Division of Child and Family Services:

(a) "Custody" means the custody of a minor in the Division of Child and Family Services as of the date of disposition.

(b) "Protective custody" means the shelter of a minor by the Division of Child and Family Services from the time the minor is removed from home until the shelter hearing, or the minor's return home, whichever occurs earlier.

(c) "Temporary custody" means the custody of a minor in the Division of Child and Family Services from the date of the shelter hearing until disposition.

Section 22. Section **78-3a-104** is amended to read:

78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.

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

(a) a minor 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 traffic laws and ordinances;

(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 prior to the person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing

1051 orders;

1052 (c) a minor who is an abused child, neglected child, or dependent child, as those terms are
1053 defined in Section 78-3a-103;

1054 (d) a protective order for a minor who is alleged to be an abused child or neglected child,
1055 except as provided in Section 78-3a-105, and unless the petition is filed by a natural parent or
1056 stepparent of the minor against a natural parent or stepparent of the minor;

1057 (e) the determination of the custody of a minor or to appoint a guardian of the person or
1058 other guardian of a minor who comes within the court's jurisdiction under other provisions of this
1059 section;

1060 (f) the termination of the legal parent-child relationship in accordance with Part 4,
1061 Termination of Parental Rights Act, including termination of residual parental rights and duties;

1062 (g) the treatment or commitment of a mentally retarded minor;

1063 (h) a minor who is a habitual truant from school;

1064 (i) the judicial consent to the marriage of a minor under age 16 upon a determination of
1065 voluntariness or where otherwise required by law, employment, or enlistment of a minor when
1066 consent is required by law;

1067 (j) any parent or parents of a minor committed to a secure youth corrections facility, to
1068 order, at the discretion of the court and on the recommendation of a secure youth corrections
1069 facility, the parent or parents of a minor committed to a secure youth corrections facility for a
1070 custodial term, to undergo group rehabilitation therapy under the direction of a secure youth
1071 corrections facility therapist, who has supervision of that parent's or parents' minor, or any other
1072 therapist the court may direct, for a period directed by the court as recommended by a secure youth
1073 corrections facility;

1074 (k) a minor under Title 55, Chapter 12, Interstate Compact on Juveniles;

1075 (l) the treatment or commitment of a mentally ill child. The court may commit a child to
1076 the physical custody of a local mental health authority or to the legal custody of the Division of
1077 Mental Health in accordance with the procedures and requirements of Title 62A, Chapter 12, Part
1078 2A, Commitment of Persons Under Age 18 to Division of Mental Health. The court may not
1079 commit a child directly to the Utah State Hospital;

1080 (m) the commitment of a minor in accordance with Section 62A-8-501; and

1081 (n) de novo review of final agency actions resulting from an informal adjudicative

proceeding as provided in Section 63-46b-15.

(2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive jurisdiction over any traffic offense committed by a minor under 16 years of age and concurrent jurisdiction over all other traffic offenses committed by a minor 16 years of age or older, except that the court shall have exclusive jurisdiction over the following traffic offenses committed by a minor under 18 years of age:

(a) Section 76-5-207, automobile homicide;

(b) Section 41-6-44, operating a vehicle while under the influence of alcohol or drugs;

(c) Section 41-6-45, reckless driving;

(d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or semitrailer for an extended period of time; and

(e) Section 41-6-13.5, fleeing a peace officer.

(3) The court also has jurisdiction over traffic offenses that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

(4) The juvenile court has jurisdiction over questions of custody, support, parent-time, and visitation certified to it by the district court pursuant to Section 78-3a-105.

(5) The juvenile court has jurisdiction over an ungovernable or runaway minor 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 minor where, despite earnest and persistent efforts by the division or agency, the minor has demonstrated that he:

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

(b) has run away from home.

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

(7) The juvenile court has jurisdiction of all magistrate functions relative to cases arising under Section 78-3a-602.

Section 23. Section **78-3a-105** is amended to read:

78-3a-105. Concurrent jurisdiction -- District court and juvenile court.

(1) The district court or other court has concurrent jurisdiction with the juvenile court as follows:

(a) when a person who is 18 years of age or older and who is under the continuing jurisdiction of the juvenile court under Section 78-3a-118 violates any federal, state, or local law or municipal ordinance;

(b) in adoption proceedings, 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 minor; adoption proceedings under this section shall be conducted in accordance with the procedures described in Title 78, Chapter 30, Adoption;

(c) in establishing paternity and ordering testing for the purposes of establishing paternity, in accordance with Title 78, Chapter 45a, Uniform Act on Paternity, with regard to proceedings initiated under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 4, Termination of Parental Rights Act; and

(d) in proceedings brought on behalf of a minor pursuant to Title 30, Chapter 6, Cohabitant Abuse Act, unless the petition is filed by a natural parent or stepparent of the minor against a natural parent or stepparent of the minor.

(2) The juvenile court has jurisdiction over petitions to modify a minor's birth certificate if the court otherwise has jurisdiction over the minor.

(3) (a) This section does not deprive the district court of jurisdiction to appoint a guardian for a minor, or to determine the support, custody, and ~~[visitation]~~ parent-time of a minor upon writ of habeas corpus or when the question of support, custody, and ~~[visitation]~~ parent-time is incidental to the determination of a cause in the district court.

(b) However, if a petition involving the same minor is pending in the juvenile court or the juvenile court has previously acquired continuing jurisdiction over the same minor, the district court shall certify the question of support, custody, and ~~[visitation]~~ parent-time to the juvenile court for determination.

(4) When a question is certified to the juvenile court under Subsection (3), the findings and order of the juvenile court judge are the order of the district court.

(5) (a) Where a support, custody, or ~~[visitation]~~ parent-time award has been made by a district court in a divorce action or other proceeding, and the jurisdiction of the district court in the case is continuing, the juvenile court may acquire jurisdiction in a case involving the same minor if the minor is dependent, abused, neglected, or otherwise comes within the jurisdiction of the juvenile court under Section 78-3a-104.

(b) The juvenile court may, by order, change the custody, support, parent-time, and visitation rights previously ordered in the district court as necessary to implement the order of the juvenile court for the safety and welfare of the minor. The juvenile court order remains in effect so long as the jurisdiction of the juvenile court continues.

(6) When a copy of the findings and order of the juvenile court has been filed with the district court, the findings and order of the juvenile court are binding on the parties to the divorce action as though entered in the district court.

Section 24. Section **78-3a-118** is amended to read:

78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court.

(1) (a) When a minor is found to come within the provisions of Section 78-3a-104, 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 78-3a-104(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 and shall include the specific offenses for which the minor was adjudicated.

(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 Section 78-11-20.7.

(ii) The court may place the minor in state supervision with the probation department of the court, under the legal custody of his parent or guardian, the Division of Youth Corrections, or 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, which 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 which the minor

1175 attends who discloses the court's order of probation is not:

1176 (A) civilly liable except when the disclosure constitutes fraud or malice as provided in
1177 Section 63-30-4; and

1178 (B) civilly or criminally liable except when the disclosure constitutes a knowing violation
1179 of Section 63-2-801.

1180 (b) The court may place the minor in the legal custody of a relative or other suitable
1181 person, with or without probation or protective supervision, but the juvenile court may not assume
1182 the function of developing foster home services.

1183 (c) (i) The court may vest legal custody of the minor in the Division of Child and Family
1184 Services, Division of Youth Corrections, or the Division of Mental Health, and may order the
1185 Department of Human Services to provide dispositional recommendations and services.

1186 (ii) For minors who may qualify for services from two or more divisions within the
1187 Department of Human Services, the court may vest legal custody with the department.

1188 (iii) Minors who are committed to the custody of the Division of Child and Family
1189 Services on grounds other than abuse or neglect are subject to the provisions of Title 78, Chapter
1190 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A, Chapter
1191 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect. Prior to making a
1192 recommendation that the court place a minor in the custody of the Division of Child and Family
1193 Services on grounds other than abuse or neglect, the probation department shall provide the
1194 division adequate with notice for the division to attend the hearing.

1195 (d) (i) The court may commit the minor to the Division of Youth Corrections for secure
1196 confinement.

1197 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or
1198 dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of Youth
1199 Corrections.

1200 (e) The court may commit the minor, subject to the court retaining continuing jurisdiction
1201 over him, to the temporary custody of the Division of Youth Corrections for observation and
1202 evaluation for a period not to exceed 45 days, which may be extended up to 15 days at the request
1203 of the director.

1204 (f) (i) The court may commit the minor to a place of detention or an alternative to
1205 detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction

1206 over the minor.

1207 (ii) Subsection (2)(f) applies only to those minors adjudicated for an act which if
1208 committed by an adult would be a criminal offense or for contempt of court under Section
1209 78-3a-901. This commitment may be stayed or suspended upon conditions ordered by the court.

1210 (g) The court may vest legal custody of an abused, neglected, or dependent minor in the
1211 Division of Child and Family Services or any other appropriate person in accordance with the
1212 requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency
1213 Proceedings.

1214 (h) The court may place the minor on a ranch or forestry camp, or similar facility for care
1215 and also for work, if possible, if the person, agency, or association operating the facility has been
1216 approved or has otherwise complied with all applicable state and local laws. A minor placed in
1217 a forestry camp or similar facility may be required to work on fire prevention, forestation and
1218 reforestation, recreational works, forest roads, and on other works on or off the grounds of the
1219 facility and may be paid wages, subject to the approval of and under conditions set by the court.

1220 (i) The court may order that the minor be required to repair, replace, or otherwise make
1221 restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as
1222 stated in Section 78-3a-318, and may impose fines in limited amounts.

1223 (j) The court may issue orders necessary for the collection of restitution and fines ordered
1224 by the court, including garnishments, wage withholdings, and executions.

1225 (k) (i) The court may through its probation department encourage the development of
1226 employment or work programs to enable minors to fulfill their obligations under Subsection (2)(i)
1227 and for other purposes considered desirable by the court.

1228 (ii) Consistent with the order of the court, the probation officer may permit the minor
1229 found to be within the jurisdiction of the court to participate in a program of work restitution or
1230 compensatory service in lieu of paying part or all of the fine imposed by the court.

1231 (l) In violations of traffic laws within the court's jurisdiction, the court may, in addition
1232 to any other disposition, restrain the minor from driving for periods of time the court considers
1233 necessary and take possession of the minor's driver license. However, proceedings involving an
1234 offense under Section 78-3a-506 are governed by that section regarding suspension of driving
1235 privileges.

1236 (m) (i) When a minor is found within the jurisdiction of the juvenile court under Section

1237 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia
1238 Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to
1239 any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no
1240 more than 100 hours, of compensatory service. Satisfactory completion of an approved substance
1241 abuse prevention or treatment program may be credited by the court as compensatory service
1242 hours.

1243 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
1244 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may,
1245 upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the
1246 minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in
1247 addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance
1248 abuse prevention or treatment program may be credited by the court as compensatory service
1249 hours.

1250 (n) The court may order that the minor be examined or treated by a physician, surgeon,
1251 psychiatrist, or psychologist or that he receive other special care. For these purposes the court may
1252 place the minor in a hospital or other suitable facility.

1253 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest
1254 of the minor, and may appoint a public or private institution or agency as guardian in which legal
1255 custody of the minor is vested.

1256 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
1257 private agency or institution, the court shall give primary consideration to the welfare of the minor.
1258 When practicable, the court may take into consideration the religious preferences of the minor and
1259 of the minor's parents.

1260 (p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable
1261 conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or any
1262 other person who has been made a party to the proceedings. Conditions may include:

1263 (A) [~~visitation~~] parent-time by the parents or one parent;

1264 (B) restrictions on the minor's associates;

1265 (C) restrictions on the minor's occupation and other activities; and

1266 (D) requirements to be observed by the parents or custodian.

1267 (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 minor to be placed in the legal custody of the Division of Mental Health or committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 12, Part 2A, Commitment of Persons Under Age 18 to Division of Mental Health.

(r) The court may make an order committing a minor within its jurisdiction to the Utah State Developmental Center if the minor has been found mentally retarded in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility. The procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center shall be followed by the juvenile court in these cases.

(s) The court may terminate all parental rights upon a finding of compliance with the provisions of Title 78, Chapter 3a, Part 4, 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 person younger than 18 years of age may not be committed to jail or prison, and offenses under Section 78-3a-506 are governed by that section regarding suspension of driving privileges.

(u) The court may combine several of the above-listed modes of disposition if they are compatible.

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their minors. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78, Chapter 3a, 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 minors available for adoption without delay.

(y) (i) The juvenile court may enter an order of permanent custody and guardianship with a relative or individual of a minor where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency, excluding cases arising under Subsection 78-3a-105(4).

(ii) Such orders remain in effect until the minor reaches majority and are not subject to review under Section 78-3a-119, but may be modified by petition or motion as provided in Section 78-3a-903.

(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 above, when a minor comes within the court's jurisdiction he may be given a choice by the judge 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, Controlled Substances; or

(iii) was committed with a weapon; and

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

Section 25. Section **78-3a-307** is amended to read:

78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative -- DCFS custody.

(1) (a) At the shelter hearing, when the court orders that a child be removed from the custody of his parent in accordance with the requirements of Section 78-3a-306, the court shall first determine whether there is another natural parent as defined in Subsection (1)(b), with whom the child was not residing at the time the events or conditions that brought him within the court's jurisdiction occurred, who desires to assume custody of the child. If that parent requests custody, the court shall place the minor with that parent unless it finds that the placement would be unsafe or otherwise detrimental to the child. The provisions of this Subsection (1) are limited by the provisions of Subsection (8)(b).

(b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section "natural parent" includes only a biological or adoptive mother, an adoptive father, or a biological father who was married to the child's biological mother at the time the child was conceived or

born, or who has strictly complied with the provisions of Section 78-30-4.14 prior to removal of the child or voluntary surrender of the child by the custodial parent. This definition applies regardless of whether the child has been or will be placed with adoptive parents or whether adoption has been or will be considered as a long-term goal for the child.

(c) (i) The court shall make a specific finding regarding the fitness of that parent to assume custody, and the safety and appropriateness of the placement.

(ii) The court shall, at a minimum, order the division to visit the parent's home, perform criminal background checks described in Sections 78-3a-307.1 and 62A-4a-202.4, and check the division's management information system for any previous reports of abuse or neglect received by the division regarding the parent at issue.

(iii) The court may order the Division of Child and Family Services to conduct any further investigation regarding the safety and appropriateness of the placement.

(iv) The division shall report its findings in writing to the court.

(v) The court may place the child in the temporary custody of the division, pending its determination regarding that placement.

(2) If the court orders placement with a parent under Subsection (1), the child and the parent are under the continuing jurisdiction of the court. The court may order that the parent assume custody subject to the supervision of the court, and order that services be provided to the parent from whose custody the child was removed, the parent who has assumed custody, or both. The court may also provide for reasonable ~~[visitation]~~ parent-time with the parent from whose custody the child was removed, if that is in the best interest of the child. The court's order shall be periodically reviewed to determine whether:

(a) placement with the parent continues to be in the child's best interest;

(b) the child should be returned to the original custodial parent;

(c) the child should be placed with a relative, pursuant to Subsection (5); or

(d) the child should be placed in the custody of the division.

(3) The time limitations described in Section 78-3a-311 with regard to reunification efforts, apply to children placed with a previously noncustodial parent in accordance with Subsection (1).

(4) Legal custody of the child is not affected by an order entered under Subsection (1) or (2). In order to affect a previous court order regarding legal custody, the party must petition that

1361 court for modification of the order.

1362 (5) (a) If, at the time of the shelter hearing, a child is removed from the custody of his
1363 parent and is not placed in the custody of his other parent, the court shall, at that time, determine
1364 whether there is a relative who is able and willing to care for the child. The court may order the
1365 Division of Child and Family Services to conduct a reasonable search to determine whether there
1366 are relatives of the child who are willing and appropriate, in accordance with the requirements of
1367 this part and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child. The
1368 court shall order the parents to cooperate with the division, within five working days, to provide
1369 information regarding relatives who may be able and willing to care for the child. The child may
1370 be placed in the temporary custody of the division pending that determination. This section may
1371 not be construed as a guarantee that an identified relative will receive custody of the child.
1372 However, preferential consideration may be given to a relative's request for placement of the child,
1373 if it is in the best interest of the child, and the provisions of this section are satisfied.

1374 (b) (i) If a willing relative is identified pursuant to Subsection (5)(a), the court shall make
1375 a specific finding regarding the fitness of that relative to assume custody, and the safety and
1376 appropriateness of placement with that relative. In order to be considered a "willing relative"
1377 under this section, the relative shall be willing to cooperate if the child's permanency goal is
1378 reunification with his parent or parents, and be willing to adopt or take permanent custody of the
1379 child if that is determined to be in the best interest of the child.

1380 (ii) The court shall, at a minimum, order the division to conduct criminal background
1381 checks described in Sections 78-3a-307.1 and 62A-4a-202.4, visit the relative's home, check the
1382 division's management information system for any previous reports of abuse or neglect regarding
1383 the relative at issue, report its findings in writing to the court, and provide sufficient information
1384 so that the court may determine whether:

1385 (A) the relative has any history of abusive or neglectful behavior toward other children that
1386 may indicate or present a danger to this child;

1387 (B) the child is comfortable with the relative;

1388 (C) the relative recognizes the parent's history of abuse and is determined to protect the
1389 child;

1390 (D) the relative is strong enough to resist inappropriate requests by the parent for access
1391 to the child, in accordance with court orders;

- 1392 (E) the relative is committed to caring for the child as long as necessary; and
1393 (F) the relative can provide a secure and stable environment for the child.
- 1394 (iii) The court may order the Division of Child and Family Services to conduct any further
1395 investigation regarding the safety and appropriateness of the placement.
- 1396 (iv) The division shall complete and file its assessment regarding placement with a relative
1397 as soon as practicable, in an effort to facilitate placement of the child with a relative.
- 1398 (c) The court may place the child in the temporary custody of the division, pending the
1399 division's investigation pursuant to Subsection (5)(b), and the court's determination regarding that
1400 placement. The court shall ultimately base its determination regarding placement with a relative
1401 on the best interest of the child.
- 1402 (d) For purposes of this section, "relative" means an adult who is a grandparent, great
1403 grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first
1404 cousin, stepsibling, or sibling of the child. In the case of a child defined as an "Indian" under the
1405 Indian Child Welfare Act, 25 U.S.C. Section 1903, "relative" also means an "extended family
1406 member" as defined by that statute.
- 1407 (6) (a) When the court vests physical custody of a child with a relative pursuant to
1408 Subsection (5), it shall order that the relative assume custody subject to the continuing supervision
1409 of the court, and shall order that any necessary services be provided to the minor and the relative.
1410 That child is not within the temporary custody or custody of the Division of Child and Family
1411 Services. The child and any relative with whom the child is placed are under the continuing
1412 jurisdiction of the court. The court may enter any order that it considers necessary for the
1413 protection and best interest of the child.
- 1414 (b) (i) Placement with a relative pursuant to Subsection (5) shall be periodically reviewed
1415 by the court, no less often than every six months, to determine whether:
- 1416 (A) placement with the relative continues to be in the child's best interest;
1417 (B) the child should be returned home; or
1418 (C) the child should be placed in the custody of the division.
- 1419 (ii) No later than 12 months after placement with a relative the court shall schedule a
1420 hearing for the purpose of entering a permanent order in accordance with the best interest of the
1421 child.
- 1422 (iii) The time limitations described in Section 78-3a-311, with regard to reunification

efforts, apply to children placed with a relative pursuant to Subsection (5).

(7) When the court orders that a child be removed from the custody of his parent and does not vest custody in another parent or relative under this section, the court shall order that the child be placed in the temporary custody of the Division of Child and Family Services, to proceed to adjudication and disposition and to be provided with care and services in accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.

(8) (a) Any preferential consideration that a relative may be initially granted pursuant to Subsection (5) expires 120 days from the date of the shelter hearing. After that time period has expired, a relative who has not obtained custody or asserted an interest in a child, may not be granted preferential consideration by the division or the court.

(b) When the time period described in Subsection (8)(a) has expired, the preferential consideration which may initially be granted to a natural parent in accordance with Subsection (1), is limited. After that time the court shall base its custody decision on the best interest of the child.

Section 26. Section **78-3a-409** is amended to read:

78-3a-409. Specific considerations where child is not in physical custody of parent.

(1) If a child is not in the physical custody of the parent or parents, the court, in determining whether parental rights should be terminated shall consider, but is not limited to, the following:

(a) the physical, mental, or emotional condition and needs of the child and his desires regarding the termination, if the court determines he is of sufficient capacity to express his desires; and

(b) the effort the parent or parents have made to adjust their circumstances, conduct, or conditions to make it in the child's best interest to return him to his home after a reasonable length of time, including but not limited to:

(i) payment of a reasonable portion of substitute physical care and maintenance, if financially able;

(ii) maintenance of regular ~~[visitation]~~ parent-time or other contact with the child that was designed and carried out in a plan to reunite the child with the parent or parents; and

(iii) maintenance of regular contact and communication with the custodian of the child.

(2) For purposes of this section, the court shall disregard incidental conduct, contributions, contacts, and communications.

Section 27. Section **78-7-32** is amended to read:

78-7-32. Domestic relations cases -- Party designation.

Parties in domestic relations cases, including divorce, annulment, property division, child custody, support, ~~[visitation]~~ parent-time, adoption, and paternity, shall be designated as petitioner and respondent.

Section 28. Section **78-30-4.16** is amended to read:

78-30-4.16. Contested adoptions -- Rights of parties -- Determination of custody.

(1) Whenever any party contests an adoption, the court shall first determine whether the provisions of this chapter have been complied with. If a party who was entitled to notice and consent under the provisions of this chapter, was denied that right, and did not otherwise waive or forfeit that right under the terms of this chapter, the court may:

(a) enjoin the adoption, or dismiss the adoption petition, and proceed in accordance with Subsection (2); or

(b) determine whether proper grounds for termination of that parent's rights exist and, if so, order that the parent's rights be terminated in accordance with the provisions of this chapter or Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

(2) (a) In any case, and under any circumstance, if a court determines that a petition for adoption may not be granted, the court may not automatically grant custody of a child to a challenging biological parent, but shall conduct an evidentiary hearing in each case, in order to determine who should have custody of the child, in accordance with the child's best interest.

(b) Evidence considered at that hearing may include, but is not limited to, evidence of psychological or emotional bonds that the child had formed with third parties and any detriment that a change in custody may cause to the child. The fact that a person relinquished a child to a licensed child placing agency or executed a consent for adoption may not be considered by the court as evidence of neglect or abandonment.

(c) Any custody order entered pursuant to this section may also include provisions for ~~[visitation]~~ parent-time by a biological parent or visitation by an interested third party, and provide for the financial support of the child.

(3) An adoption may not be contested after the final decree of adoption is entered.

Section 29. Section **78-32-12.1** is amended to read:

78-32-12.1. Compensatory service for violation of parent-time order or failure to

1485 **pay child support.**

1486 (1) If a court finds by a preponderance of the evidence that a parent has refused to comply
1487 with the minimum amount of [~~visitation~~] parent-time ordered in a decree of divorce, the court shall
1488 order the parent to:

1489 (a) perform a minimum of ten hours of compensatory service; and

1490 (b) participate in workshops, classes, or individual counseling to educate the parent about
1491 the importance of complying with the court order and providing a child a continuing relationship
1492 with both parents.

1493 (2) If a custodial parent is ordered to perform compensatory service or undergo
1494 court-ordered education, there is a rebuttable presumption that the noncustodial parent be granted
1495 [~~visitation~~] parent-time by the court to provide child care during the time the custodial parent is
1496 complying with compensatory service or education in order to recompense him for [~~visitation-time~~]
1497 parent-time wrongfully denied by the custodial parent under the divorce decree.

1498 (3) If a noncustodial parent is ordered to perform compensatory service or undergo
1499 court-ordered education, the court shall attempt to schedule the compensatory service or education
1500 at times that will not interfere with the noncustodial parent's [~~visitation~~] parent-time with the child.

1501 (4) The person ordered to participate in court-ordered education is responsible for
1502 expenses of workshops, classes, and individual counseling.

1503 (5) If a court finds by a preponderance of the evidence that an obligor, as defined in
1504 Section 78-45-2, has refused to pay child support as ordered by a court in accordance with Title
1505 78, Chapter 45, Uniform Civil Liability for Support Act, the court shall order the obligor to:

1506 (a) perform a minimum of ten hours of compensatory service; and

1507 (b) participate in workshops, classes, or individual counseling to educate the obligor about
1508 the importance of complying with the court order and providing the children with a regular and
1509 stable source of support.

1510 (6) The obligor is responsible for the expenses of workshops, classes, and individual
1511 counseling ordered by the court.

1512 (7) If a court orders an obligor to perform compensatory service or undergo court-ordered
1513 education, the court shall attempt to schedule the compensatory service or education at times that
1514 will not interfere with the obligor's [~~visitation~~] parent-time with the child.

1515 (8) The sanctions that the court shall impose under this section do not prevent the court

from imposing other sanctions as provided in Section 78-32-12.2 or other provisions in this chapter, or prevent any person from bringing a cause of action allowed under state or federal law.

(9) The Legislature shall allocate the money from the Children's Legal Defense Account to the judiciary to defray the cost of enforcing and administering this section.

Section 30. Section **78-32-12.2** is amended to read:

78-32-12.2. Definitions -- Sanctions.

(1) For purposes of this section:

(a) "Make up [~~visitation~~] parent-time" means [~~visitation~~] parent-time which is:

(i) of the same type and duration of [~~visitation~~] parent-time as that which was denied, including [~~visitation~~] parent-time during weekdays, weekends, holidays, and during extended [~~visitation~~] parent-time periods;

(ii) to be made up within one year after the court has entered its order of make up [~~visitation~~] parent-time; and

(iii) in the manner chosen by the aggrieved parent if it is in the best interest of the child.

~~[(d)]~~ (b) "[~~Visitation~~] Parent-time enforcement order" means an order to enforce compliance with an original [~~visitation~~] parent-time order through the use of sanctions.

~~[(b)]~~ (c) "Petition" means a petition brought by a parent, a grandparent as provided in Section 30-5-2, by other immediate family members, or upon the court's own motion alleging that a parent is not complying with a [~~visitation~~] parent-time order in a decree of divorce or a subsequent [~~visitation~~] parent-time enforcement order which may be brought at different stages in the alleged pattern of noncompliance:

(i) a first petition is a petition to enforce an original order of [~~visitation~~] parent-time or a petition filed after three years from the last [~~visitation~~] parent-time enforcement order;

(ii) a second petition is a petition filed within three years following entry of the first [~~visitation~~] parent-time enforcement order; and

(iii) a third petition is a petition filed within three years following entry of the second [~~visitation~~] parent-time enforcement order.

~~[(c)]~~ (d) "Substantial noncompliance" means conduct which:

(i) substantially interferes with a court-ordered [~~visitation~~] parent-time schedule; or

(ii) interferes with parent's right to frequent, meaningful, and continuing access with his child and which substantially impairs that parent-child relationship.

- 1547 (2) Upon a first petition, the court shall order:
- 1548 (a) if the first petition is uncontested, by default:
- 1549 (i) a permanent injunction enjoining the noncompliance with the court's [~~visitation~~]
- 1550 parent-time order;
- 1551 (ii) make up [~~visitation~~] parent-time for the aggrieved parent and child; and
- 1552 (iii) participation in workshops, classes, or individual counseling to educate the parent
- 1553 about the importance of complying with the court order and providing the child with a continuing
- 1554 relationship with both parents as provided in Subsection 78-32-12.1(1)(b); or
- 1555 (b) if the first petition is contested, the court shall hold a hearing to determine by a
- 1556 preponderance of the evidence whether there has been a substantial noncompliance with the
- 1557 [~~visitation~~] parent-time order.
- 1558 (3) Upon a finding of substantial noncompliance, the court shall order:
- 1559 (a) actual costs including actual attorney fees and court costs to the prevailing party;
- 1560 (b) make up [~~visitation~~] parent-time for the aggrieved parent and child;
- 1561 (c) a minimum of ten hours of compensatory service as provided in Subsection
- 1562 78-32-12.1(1)(a); and
- 1563 (d) a permanent injunction enjoining the noncompliance with the court's [~~visitation~~]
- 1564 parent-time order.
- 1565 (4) Upon a finding of substantial noncompliance, the court may order:
- 1566 (a) mediation with the requirement to report back to the court on the results of mediation
- 1567 within 30 days;
- 1568 (b) participation in workshops, classes, or individual counseling to educate the parent
- 1569 about the importance of complying with the court order and providing the child with a continuing
- 1570 relationship with both parents as provided in Subsection 78-32-12.1(1)(b); or
- 1571 (c) a fine or jail sentence or other appropriate sanctions as provided under contempt of
- 1572 court in Section 78-32-10.
- 1573 (5) Upon a second petition, the court shall order:
- 1574 (a) if the second petition is uncontested, by default:
- 1575 (i) actual costs including actual attorney fees and court costs;
- 1576 (ii) make up [~~visitation~~] parent-time to be provided for the aggrieved parent and child;
- 1577 (iii) a minimum of ten hours of compensatory service as provided in Subsection

1578 78-32-12.1(1)(a); and
1579 (iv) impose a fine or jail sentence or other appropriate sanctions as provided under
1580 contempt of court in Section 78-32-10; or
1581 (b) if the second petition is contested, the court shall hold a hearing to determine by a
1582 preponderance of the evidence whether there has been a substantial noncompliance with the
1583 [~~visitation~~] parent-time orders.
1584 (6) Upon a finding of a substantial noncompliance, the court shall order:
1585 (a) actual costs including actual attorney fees and court costs to the prevailing party;
1586 (b) make up [~~visitation~~] parent-time to be provided for the aggrieved party and child at
1587 twice the amount of time previously wrongfully denied and under the same conditions as provided
1588 in Subsections 78-32-12.2(3)(a) through (c);
1589 (c) a minimum of 20 hours of compensatory service as provided in Subsection
1590 78-32-12.1(1)(a);
1591 (d) a contempt order which imposes a fine or jail sentence as provided in Section
1592 78-32-10; and
1593 (e) the violator to post bond or security in the amount determined by the court to insure
1594 future compliance.
1595 (7) The court may impose additional sanctions which may include any additional remedies,
1596 terms, or conditions which are consistent with the court's previous order.
1597 (8) Upon a third petition, the court shall order:
1598 (a) if the third petition is uncontested, by default:
1599 (i) actual costs including actual attorney fees and court costs;
1600 (ii) make up [~~visitation~~] parent-time to be provided for the aggrieved party and child at
1601 twice the amount of time previously denied and under the same conditions as provided in
1602 Subsections 78-32-12.2(3)(a) through (c);
1603 (iii) a minimum of ten hours of compensatory service as provided in Subsection
1604 78-32-12.1(1)(a); and
1605 (iv) impose a fine or jail sentence or other appropriate sanctions as provided under
1606 contempt of court in Section 78-32-10; or
1607 (b) if the third petition is contested, the court shall hold a hearing to determine by a
1608 preponderance of the evidence whether there has been a substantial noncompliance with the

1609 [~~visitation~~] parent-time orders.

1610 (9) Upon a finding of substantial noncompliance, the court shall order:

1611 (a) actual costs including actual attorney fees and court costs to the prevailing party;

1612 (b) a finding that there has been a prima facie showing of a substantial change of
1613 circumstances which is against the best interest of the child for purposes of modification of custody
1614 and order a temporary change of custody for a duration to be determined by the court; and

1615 (c) a finding that there has been a probable cause showing of custodial interference as
1616 provided in Section 76-5-303 and order the case to be referred to the county attorney for
1617 prosecution.

1618 (10) The court may decline to issue an order with the alternative sanctions as provided in
1619 Subsections 78-32-12.2(2) through (9) although the petitioner has met his burden of proof if the
1620 court provides findings on the record explaining why a sanction or sanctions were not imposed.

1621 (11) The noncustodial parent shall give the court and the custodial parent written notice
1622 of his intention to exercise the make up [~~visitation~~] parent-time at least seven days before the
1623 proposed visit if it is to be on a weekday or weekend, and at least 30 days before the proposed visit
1624 if it is to be on a holiday or an extended [~~visitation~~] parent-time period.

1625 (12) The court shall suspend any proceedings under Section 78-32-12.2 if substantial
1626 allegations of child abuse or child sexual abuse are under investigation or a case is pending in the
1627 courts on the allegations.

1628 (13) The filing of any petition under this section which is found to be without merit and
1629 not asserted or defended against in good faith shall be subject to sanctions as determined by the
1630 court.

1631 (14) This section shall be implemented only as a pilot program in the first judicial district
1632 as provided in Section 78-32-12.3.

1633 Section 31. Section **78-32-17** is amended to read:

1634 **78-32-17. Noncompliance with child support order.**

1635 (1) When a court of competent jurisdiction, or the Office of Recovery Services pursuant
1636 to an action under Title 63, Chapter 46b, Administrative Procedures Act, makes an order requiring
1637 a parent to furnish support or necessary food, clothing, shelter, medical care, or other remedial care
1638 for his child, and the parent fails to do so, proof of noncompliance shall be prima facie evidence
1639 of contempt of court.

1640 (2) Proof of noncompliance may be demonstrated by showing that:
1641 (a) the order was made, and filed with the district court; and
1642 (b) the parent knew of the order because:
1643 (i) the order was mailed to the parent at his last-known address as shown on the court
1644 records;
1645 (ii) the parent was present in court at the time the order was pronounced;
1646 (iii) the parent entered into a written stipulation and the parent or counsel for the parent
1647 was sent a copy of the order;
1648 (iv) counsel was present in court and entered into a stipulation which was accepted and
1649 the order based upon the stipulation was then sent to counsel for the parent; or
1650 (v) the parent was properly served and failed to answer.
1651 (3) Upon establishment of a prima facie case of contempt under Subsection (2), the obligor
1652 under the child support order has the burden of proving inability to comply with the child support
1653 order.
1654 (4) A court may, in addition to other available sanctions, withhold, suspend, or restrict the
1655 use of driver's licenses, professional and occupational licenses, and recreational licenses and
1656 impose conditions for reinstatement upon a finding that:
1657 (a) an obligor has:
1658 (i) made no payment for 60 days on a current obligation of support as set forth in an
1659 administrative or court order and, thereafter, has failed to make a good faith effort under the
1660 circumstances to make payment on the support obligation in accordance with the order; or
1661 (ii) made no payment for 60 days on an arrearage obligation of support as set forth in a
1662 payment schedule, written agreement with the Office of Recovery Services, or an administrative
1663 or judicial order and, thereafter, has failed to make a good faith effort under the circumstances to
1664 make payment on the arrearage obligation in accordance with the payment schedule, agreement,
1665 or order; and
1666 (iii) not obtained a judicial order staying enforcement of the support or arrearage obligation
1667 for which the obligor would be otherwise delinquent;
1668 (b) a custodial parent has:
1669 (i) violated a [~~child-visitation~~] parent-time order by denying contact for 60 days between
1670 a noncustodial parent and a child and, thereafter, has failed to make a good faith effort under the

circumstances to comply with a [~~visitation~~] parent-time order; and

(ii) not obtained a judicial order staying enforcement of the [~~visitation~~] parent-time order;

or

(c) an obligor or obligee, after receiving appropriate notice, has failed to comply with a subpoena or order relating to a paternity or child support proceeding.

Section 32. Section **78-45-7.7** is amended to read:

78-45-7.7. Calculation of obligations.

(1) Each parent's child support obligation shall be established in proportion to their adjusted gross incomes, unless the low income table is applicable. Except during periods of court-ordered [~~visitation~~] parent-time as set forth in Section 78-45-7.11, the parents are obligated to pay their proportionate shares of the base combined child support obligation. If physical custody of the child changes from that assumed in the original order, modification of the order is not necessary, even if only one parent is specifically ordered to pay in the order.

(2) Except in cases of joint physical custody and split custody as defined in Section 78-45-2 and in cases where the obligor's adjusted gross income is \$1,050 or less monthly, the base child support award shall be determined as follows:

(a) combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base combined child support obligation table; and

(b) calculate each parent's proportionate share of the base combined child support obligation by multiplying the combined child support obligation by each parent's percentage of combined adjusted gross income.

(3) In the case of an incapacitated adult child, any amount that the incapacitated adult child can contribute to his or her support may be considered in the determination of child support and may be used to justify a reduction in the amount of support ordered, except that in the case of orders involving multiple children, the reduction shall not be greater than the effect of reducing the total number of children by one in the child support table calculation.

(4) In cases where the monthly adjusted gross income of the obligor is between \$650 and \$1,050, the base child support award shall be the lesser of the amount calculated in accordance with Subsection (2) and the amount calculated using the low income table. If the income and number of children is found in an area of the low income table in which no amount is shown, the base combined child support obligation table is to be used.

(5) The base combined child support obligation table provides combined child support obligations for up to six children. For more than six children, additional amounts may be added to the base child support obligation shown. Unless rebutted by Subsection 78-45-7.2(3), the amount ordered shall not be less than the amount which would be ordered for up to six children.

(6) If the monthly adjusted gross income of the obligor is \$649 or less, the tribunal shall determine the amount of the child support obligation on a case-by-case basis, but the base child support award shall not be less than \$20.

(7) The amount shown on the table is the support amount for the total number of children, not an amount per child.

Section 33. Section **78-45-7.11** is amended to read:

78-45-7.11. Reduction for extended parent-time.

(1) The child support order shall provide that the base child support award be reduced by 50% for each child for time periods during which the child is with the noncustodial parent by order of the court or by written agreement of the parties for at least 25 of any 30 consecutive days. If the dependent child is a client of cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment Program, any agreement by the parties for reduction of child support during extended ~~[visitation]~~ parent-time shall be approved by the administrative agency. However, normal ~~[visitation]~~ parent-time and holiday visits to the custodial parent shall not be considered an interruption of the consecutive day requirement.

(2) For purposes of this section the per child amount to which the abatement applies shall be calculated by dividing the base child support award by the number of children included in the award.

(3) The reduction in this section does not apply to parents with joint physical custody obligations calculated in accordance with Section 78-45-7.9.

Section 34. Section **78-45-7.17** is amended to read:

78-45-7.17. Child care costs.

(1) The need to include child care costs in the child support order is presumed, if the custodial parent or the noncustodial parent, during extended ~~[visitation]~~ parent-time, is working and actually incurring the child care costs.

(2) The need to include child care costs is not presumed, but may be awarded on a case-by-case basis, if the costs are related to the career or occupational training of the custodial

1733 parent, or if otherwise ordered by the court in the interest of justice.

1734 Section 35. Section **78-45a-10.5** is amended to read:

1735 **78-45a-10.5. Parent-time rights of father.**

1736 (1) If the court determines that the alleged father is the father, it may upon its own motion
1737 or upon motion of the father, order ~~[visitation]~~ parent-time rights in accordance with Sections
1738 30-3-32 through 30-3-37 as it considers appropriate under the circumstances.

1739 (2) ~~[Visitation]~~ Parent-time rights may not be granted to a father if the child has been
1740 subsequently adopted.

1741 Section 36. Section **78-45c-102** is amended to read:

1742 **78-45c-102. Definitions.**

1743 As used in this chapter:

1744 (1) "Abandoned" means left without provision for reasonable and necessary care or
1745 supervision.

1746 (2) "Child" means an individual under 18 years of age and not married.

1747 (3) "Child custody determination" means a judgment, decree, or other order of a court
1748 providing for the legal custody, physical custody, or ~~[visitation]~~ parent-time with respect to a child.
1749 The term includes a permanent, temporary, initial, and modification order. The term does not
1750 include an order relating to child support or other monetary obligation of an individual.

1751 (4) "Child custody proceeding" means a proceeding in which legal custody, physical
1752 custody, or ~~[visitation]~~ parent-time with respect to a child is an issue. The term includes a
1753 proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity,
1754 termination of parental rights, and protection from domestic violence, in which the issue may
1755 appear. The term does not include a proceeding involving juvenile delinquency, contractual
1756 emancipation, or enforcement under Part 3, Enforcement.

1757 (5) "Commencement" means the filing of the first pleading in a proceeding.

1758 (6) "Court" means an entity authorized under the law of a state to establish, enforce, or
1759 modify a child custody determination.

1760 (7) "Home state" means the state in which a child lived with a parent or a person acting
1761 as a parent for at least six consecutive months immediately before the commencement of a child
1762 custody proceeding. In the case of a child less than six months of age, the term means the state in
1763 which the child lived from birth with any of the persons mentioned. A period of temporary

absence of any of the mentioned persons is part of the period.

(8) "Initial determination" means the first child custody determination concerning a particular child.

(9) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

(10) "Issuing state" means the state in which a child custody determination is made.

(11) "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) "Person" includes government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Person acting as a parent" means a person, other than a parent, who:

(a) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

(b) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(14) "Physical custody" means the physical care and supervision of a child.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Tribe" means an Indian tribe, or band, or Alaskan Native village which is recognized by federal law or formally acknowledged by a state.

(17) "Writ of assistance" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

Section 37. Section **78-45c-209** is amended to read:

78-45c-209. Information to be submitted to court.

(1) In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or

1795 affidavit shall state whether the party:

1796 (a) has participated, as a party or witness or in any other capacity, in any other proceeding
1797 concerning the custody of or [~~visitation~~] parent-time with the child and, if so, identify the court,
1798 the case number of the proceeding, and the date of the child custody determination, if any;

1799 (b) knows of any proceeding that could affect the current proceeding, including
1800 proceedings for enforcement and proceedings relating to domestic violence, protective orders,
1801 termination of parental rights, and adoptions and, if so, identify the court and the case number and
1802 the nature of the proceeding; and

1803 (c) knows the names and addresses of any person not a party to the proceeding who has
1804 physical custody of the child or claims rights of legal custody or physical custody of, or [~~visitation~~]
1805 parent-time with, the child and, if so, the names and addresses of those persons.

1806 (2) If the information required by Subsection (1) is not furnished, the court, upon its own
1807 motion or that of a party, may stay the proceeding until the information is furnished.

1808 (3) If the declaration as to any of the items described in Subsection (1) is in the affirmative,
1809 the declarant shall give additional information under oath as required by the court. The court may
1810 examine the parties under oath as to details of the information furnished and other matters
1811 pertinent to the court's jurisdiction and the disposition of the case.

1812 (4) Each party has a continuing duty to inform the court of any proceeding in this or any
1813 other state that could affect the current proceeding.

1814 (5) If a party alleges in an affidavit or a pleading under oath that the health, safety, or
1815 liberty of a party or child would be put at risk by the disclosure of identifying information, that
1816 information shall be sealed and not disclosed to the other party or the public unless the court orders
1817 the disclosure to be made after a hearing in which the court takes into consideration the health,
1818 safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

1819 Section 38. Section **78-45c-304** is amended to read:

1820 **78-45c-304. Temporary parent-time.**

1821 (1) A court of this state which does not have jurisdiction to modify a child custody
1822 determination may issue a temporary order enforcing:

1823 (a) a [~~visitation~~] parent-time schedule made by a court of another state; or

1824 (b) the [~~visitation~~] parent-time provisions of a child custody determination of another state
1825 that does not provide for a specific [~~visitation~~] parent-time schedule.

(2) If a court of this state makes an order under Subsection (1)(b), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Part 2, Jurisdiction. The order remains in effect until an order is obtained from the other court or the period expires.

Section 39. Section **78-45c-305** is amended to read:

78-45c-305. Registration of child custody determination.

(1) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the district court in this state:

(a) a letter or other document requesting registration;

(b) two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(c) except as otherwise provided in Section 78-45c-209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or ~~[visitation]~~ parent-time in the child custody determination sought to be registered.

(2) On receipt of the documents required by Subsection (1), the registering court shall:

(a) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(b) serve notice upon the persons named pursuant to Subsection (1)(c) and provide them with an opportunity to contest the registration in accordance with this section.

(3) The notice required by Subsection (2)(b) shall state:

(a) that a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(b) that a hearing to contest the validity of the registered determination shall be requested within 20 days after service of notice; and

(c) that failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(4) A person seeking to contest the validity of a registered order shall request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered

1857 order unless the person contesting registration establishes that:

1858 (a) the issuing court did not have jurisdiction under Part 2, Jurisdiction;

1859 (b) the child custody determination sought to be registered has been vacated, stayed, or
1860 modified by a court of a state having jurisdiction to do so under Part 2, Jurisdiction; or

1861 (c) the person contesting registration was entitled to notice, but notice was not given in
1862 accordance with the standards of Section 78-45c-108 in the proceedings before the court that
1863 issued the order for which registration is sought.

1864 (5) If a timely request for a hearing to contest the validity of the registration is not made,
1865 the registration is confirmed as a matter of law and the person requesting registration and all
1866 persons served shall be notified of the confirmation.

1867 (6) Confirmation of a registered order, whether by operation of law or after notice and
1868 hearing, precludes further contest of the order with respect to any matter which could have been
1869 asserted at the time of registration.

1870 Section 40. Section **78-45f-305** is amended to read:

1871 **78-45f-305. Duties and powers of responding tribunal.**

1872 (1) When a responding tribunal of this state receives a petition or comparable pleading
1873 from an initiating tribunal or directly pursuant to Subsection 78-45f-301(2)(c), it shall cause the
1874 petition or pleading to be filed and notify the petitioner where and when it was filed.

1875 (2) A responding tribunal of this state, to the extent otherwise authorized by law, may do
1876 one or more of the following:

1877 (a) issue or enforce a support order, modify a child support order, or render a judgment to
1878 determine parentage;

1879 (b) order an obligor to comply with a support order, specifying the amount and the manner
1880 of compliance;

1881 (c) order income withholding;

1882 (d) determine the amount of any arrearages and specify a method of payment;

1883 (e) enforce orders by civil or criminal contempt, or both;

1884 (f) set aside property for satisfaction of the support order;

1885 (g) place liens and order execution on the obligor's property;

1886 (h) order an obligor to keep the tribunal informed of the obligor's current residential

1887 address, telephone number, employer, address of employment, and telephone number at the place

1888 of employment;

1889 (i) issue a bench warrant for an obligor who has failed after proper notice to appear at a
1890 hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems
1891 for criminal warrants;

1892 (j) order the obligor to seek appropriate employment by specified methods;

1893 (k) award reasonable attorneys' fees and other fees and costs; and

1894 (l) grant any other available remedy.

1895 (3) A responding tribunal of this state shall include in a support order issued under this
1896 chapter, or in the documents accompanying the order, the calculations on which the support order
1897 is based.

1898 (4) A responding tribunal of this state may not condition the payment of a support order
1899 issued under this chapter upon compliance by a party with provisions for [~~visitation~~] parent-time.

1900 (5) If a responding tribunal of this state issues an order under this chapter, the tribunal shall
1901 send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

Legislative Review Note
as of 1-24-01 3:37 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel