SB0049S01 compared with SB0049

~~{deleted text}~~ shows text that was in SB0049 but was deleted in SB0049S01.

inserted text shows text that was not in SB0049 but was inserted into SB0049S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Wayne A. Harper proposes the following substitute bill:

CHILD WELFARE MODIFICATIONS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies Title 62A, Chapter 4a, Child and Family Services, and Title 78A, Chapter 6, Juvenile Court Act, by amending procedures relating to child welfare, and ~~{delays the effective date of}~~making clarifying changes to uncodified laws of Utah relating to the Office of the Guardian ad Litem.

Highlighted Provisions:

This bill:

- prohibits the division from requiring a parent to pay for some or all of the cost of mandatory drug testing;
- states that a parent is not required to provide child support to the Division of Child and Family Services for a child in the protective custody, temporary custody, or custody of the division if the parent's only form of income is a government-issued

disability benefit;

- permits a parent or guardian to name two friends as potential emergency placements, if the division removes the child from the parent or guardian's home;
- prohibits the court from ordering additional drug or alcohol testing beyond what is recommended by a parent's substance abuse treatment program;
- modifies the definition of a "relative" to include the first cousin of the child's parent;
- beginning July 1, 2014, permits a parent whose rights were terminated, or a relative of the child, to petition for guardianship of the parent's child if the child is not adopted within a year of termination, and no adoption is likely to occur, or if the child's adoptive parents return the child to the custody of the division;
- requires the division to study options for creating a posttermination of parental rights system and report the findings to the 2013 Health and Human Services Interim Committee.
- delays the effective date of Uncodified Section 10, Laws of Utah 2012, Chapter 223; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides ~~{revisor instructions}~~effective dates.

Utah Code Sections Affected:

AMENDS:

62A-4a-105, as last amended by Laws of Utah 2012, Chapters 49 and 200

62A-4a-114, as last amended by Laws of Utah 2008, Chapter 3

62A-4a-209, as last amended by Laws of Utah 2008, Chapters 3 and 17

78A-2-228 (Effective 07/01/13), as last amended by Laws of Utah 2012, Chapter 223

78A-6-307, as last amended by Laws of Utah 2008, Chapter 17 and renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-312, as last amended by Laws of Utah 2012, Chapter 293

78A-6-511, as last amended by Laws of Utah 2012, Chapter 293

78A-6-513, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-1106, as renumbered and amended by Laws of Utah 2008, Chapter 3

~~{Uncodified Material Affected:~~

~~AMENDS UNCODIFIED MATERIAL:~~

~~Uncodified Section 10,}~~ **78B-7-106 (Effective 07/01/13)**, as last amended by Laws of Utah 2012, Chapters 120 and 223

78B-7-202 (Effective 07/01/13), as last amended by Laws of Utah 2012, Chapter 223~~{~~

~~This uncodified section affects Sections 30-3-5.2, 51-9-408, 78A-2-227, 78A-2-228, 78B-3-102, 78B-7-106, 78B-7-202, and 78B-15-612.}~~

ENACTS:

78A-2-227.1, Utah Code Annotated 1953

78A-6-511.1, Utah Code Annotated 1953

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

Section 1. Section **62A-4a-105** is amended to read:

62A-4a-105. Division responsibilities.

(1) The division shall:

(a) administer services to minors and families, including:

(i) child welfare services;

(ii) domestic violence services; and

(iii) all other responsibilities that the Legislature or the executive director may assign to the division;

(b) provide the following services:

(i) financial and other assistance to an individual adopting a child with special needs under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the child as a legal ward of the state;

(ii) non-custodial and in-home preventative services, including:

(A) services designed to prevent family break-up; and

(B) family preservation services;

(iii) reunification services to families whose children are in substitute care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act of 1996;

(iv) protective supervision of a family, upon court order, in an effort to eliminate abuse or neglect of a child in that family;

(v) shelter care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act of 1996;

(vi) domestic violence services, in accordance with the requirements of federal law;

(vii) protective services to victims of domestic violence, as defined in Section 77-36-1, and their children, in accordance with the provisions of this chapter and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;

(viii) substitute care for dependent, abused, neglected, and delinquent children;

(ix) programs and services for minors who have been placed in the custody of the division for reasons other than abuse or neglect, under Section 62A-4a-250; and

(x) training for staff and providers involved in the administration and delivery of services offered by the division in accordance with this chapter;

(c) establish standards for all:

(i) contract providers of out-of-home care for minors and families;

(ii) facilities that provide substitute care for dependent, abused, neglected, and delinquent children placed in the custody of the division; and

(iii) direct or contract providers of domestic violence services described in Subsection (1)(b)(vi);

(d) have authority to:

(i) contract with a private, nonprofit organization to recruit and train foster care families and child welfare volunteers in accordance with Section 62A-4a-107.5; and

(ii) approve facilities that meet the standards established under Subsection (1)(c) to provide substitute care for dependent, abused, neglected, and delinquent children placed in the custody of the division;

(e) cooperate with the federal government in the administration of child welfare and domestic violence programs and other human service activities assigned by the department;

(f) in accordance with Subsection (2)(a), promote and enforce state and federal laws enacted for the protection of abused, neglected, dependent, delinquent, ungovernable, and runaway children, and status offenders, in accordance with the requirements of this chapter, unless administration is expressly vested in another division or department of the state;

(g) cooperate with the Employment Development Division in the Department of Workforce Services in meeting the social and economic needs of an individual who is eligible for public assistance;

(h) compile relevant information, statistics, and reports on child and family service matters in the state;

(i) prepare and submit to the department, the governor, and the Legislature reports of the operation and administration of the division in accordance with the requirements of Sections 62A-4a-117 and 62A-4a-118;

(j) provide social studies and reports for the juvenile court in accordance with Section 78A-6-605;

(k) within appropriations from the Legislature, provide or contract for a variety of domestic violence services and treatment methods;

(l) ensure regular, periodic publication, including electronic publication, regarding the number of children in the custody of the division who:

(i) have a permanency goal of adoption; or

(ii) have a final plan of termination of parental rights, pursuant to Section 78A-6-314, and promote adoption of those children;

(m) subject to Subsection (2)(b), refer an individual receiving services from the division to the local substance abuse authority or other private or public resource for a court-ordered drug screening test; and

(n) perform other duties and functions required by law.

(2) (a) In carrying out the requirements of Subsection (1)(f), the division shall:

(i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and with all public and private licensed child welfare agencies and institutions, to develop and administer a broad range of services and support;

(ii) take the initiative in all matters involving the protection of abused or neglected children, if adequate provisions have not been made or are not likely to be made; and

(iii) make expenditures necessary for the care and protection of the children described in this Subsection (2)(a), within the division's budget.

(b) When an individual is referred to a local substance abuse authority or other private or public resource for court-ordered drug screening under Subsection (1)(n), the court shall

order the individual to pay all costs of the tests unless:

(i) the cost of the drug screening is specifically funded or provided for by other federal or state programs;

(ii) the individual is a participant in a drug court; or

(iii) the court finds that the individual is impecunious.

(3) Except to the extent provided by rule, the division is not responsible for investigating domestic violence in the presence of a child, as described in Section 76-5-109.1.

(4) The division may not require a parent who has a child in the custody of the division to pay for some or all of the cost of any drug testing the parent is required to undergo.

Section ~~(1)~~2. Section **62A-4a-114** is amended to read:

62A-4a-114. Financial reimbursement by parent or legal guardian.

(1) [~~The~~] Except as provided in Subsection (5), the division shall seek reimbursement of funds it has expended on behalf of a child in the protective custody, temporary custody, or custody of the division, from the child's parents or legal guardians in accordance with an order for child support under Section 78A-6-1106.

(2) A parent or any other obligated person is not responsible for support for periods of time that a child is removed upon a finding by the juvenile court that there were insufficient grounds for that removal and that child is returned to the home of the parent, parents, or legal guardians based upon that finding.

(3) In the event that the juvenile court finds that there were insufficient grounds for the initial removal, but that the child is to remain in the custody of the state, the juvenile court shall order that the parents or any other obligated persons are responsible for support from the point at which it became improper to return the child to the home of [~~his or her~~] the child's parent, parents, or legal guardians.

(4) The attorney general shall represent the division in any legal action taken to enforce this section.

(5) (a) A parent or any other obligated person is not responsible for support if:

(i) the parent or other obligated person's only source of income is a government-issued disability benefit; and

(ii) the benefit described in Subsection (5)(a)(i) is issued because of the parent or other person's disability, and not the child's disability.

(b) A person who seeks to be excused from providing support under Subsection (5)(a) shall provide the division and the Office of Recovery Services with evidence that the person meets the requirements of Subsection (5)(a).

Section ~~{2}~~3. Section **62A-4a-209** is amended to read:

62A-4a-209. Emergency placement.

(1) As used in this section:

(a) "Nonrelative" means an individual, other than a noncustodial parent or a relative.

(b) "Relative" is as defined in Subsection 78A-6-307(1)(b).

(2) The division may use an emergency placement under Subsection 62A-4a-202.1(4)(b)(ii) when:

(a) the case worker has made the determination that:

(i) the child's home is unsafe;

(ii) removal is necessary under the provisions of Section 62A-4a-202.1; and

(iii) the child's custodial parent or guardian will agree to not remove the child from the home of the person that serves as the placement and not have any contact with the child until after the shelter hearing required by Section 78A-6-306;

(b) a person, with preference being given in accordance with Subsection (4), can be identified who has the ability and is willing to provide care for the child who would otherwise be placed in shelter care, including:

(i) taking the child to medical, mental health, dental, and educational appointments at the request of the division; and

(ii) making the child available to division services and the guardian ad litem; and

(c) the person described in Subsection (2)(b) agrees to care for the child on an emergency basis under the following conditions:

(i) the person meets the criteria for an emergency placement under Subsection (3);

(ii) the person agrees to not allow the custodial parent or guardian to have any contact with the child until after the shelter hearing unless authorized by the division in writing;

(iii) the person agrees to contact law enforcement and the division if the custodial parent or guardian attempts to make unauthorized contact with the child;

(iv) the person agrees to allow the division and the child's guardian ad litem to have access to the child;

(v) the person has been informed and understands that the division may continue to search for other possible placements for long-term care, if needed;

(vi) the person is willing to assist the custodial parent or guardian in reunification efforts at the request of the division, and to follow all court orders; and

(vii) the child is comfortable with the person.

(3) Except as otherwise provided in Subsection (5), before the division places a child in an emergency placement, the division:

(a) may request the name of a reference and may contact the reference to determine the answer to the following questions:

(i) would the person identified as a reference place a child in the home of the emergency placement; and

(ii) are there any other relatives or friends to consider as a possible emergency or long-term placement for the child;

(b) shall have the custodial parent or guardian sign an emergency placement agreement form during the investigation;

(c) (i) if the emergency placement will be with a relative of the child, shall comply with the background check provisions described in Subsection (7); or

(ii) if the emergency placement will be with a person other than a noncustodial parent or a relative, shall comply with the criminal background check provisions described in Section 78A-6-308 for adults living in the household where the child will be placed;

(d) shall complete a limited home inspection of the home where the emergency placement is made; and

(e) shall have the emergency placement approved by a family service specialist.

(4) (a) The following order of preference shall be applied when determining the person with whom a child will be placed in an emergency placement described in this section, provided that the person is willing, and has the ability, to care for the child:

(i) a noncustodial parent of the child in accordance with Section 78A-6-307;

(ii) a relative of the child;

(iii) subject to Subsection (4)(b), a friend designated by the custodial parent or guardian of the child, if the friend is a licensed foster parent; and

(iv) a shelter facility, former foster placement, or other foster placement designated by

the division.

(b) Unless the division agrees otherwise, the custodial parent or guardian described in Subsection (4)(a)(iii) may [~~only~~] designate [~~one friend~~] up to two friends as a potential emergency placement.

(5) (a) The division may, pending the outcome of the investigation described in Subsections (5)(b) and (c), place a child in emergency placement with the child's noncustodial parent if, based on a limited investigation, prior to making the emergency placement, the division:

(i) determines that the noncustodial parent has regular, unsupervised visitation with the child that is not prohibited by law or court order;

(ii) determines that there is not reason to believe that the child's health or safety will be endangered during the emergency placement; and

(iii) has the custodial parent or guardian sign an emergency placement agreement.

(b) Either before or after making an emergency placement with the noncustodial parent of the child, the division may conduct the investigation described in Subsection (3)(a) in relation to the noncustodial parent.

(c) Before, or within one day, excluding weekends and holidays, after a child is placed in an emergency placement with the noncustodial parent of the child, the division shall conduct a limited:

(i) background check of the noncustodial parent, pursuant to Subsection (7); and

(ii) inspection of the home where the emergency placement is made.

(6) After an emergency placement, the division caseworker must:

(a) respond to the emergency placement's calls within one hour if the custodial parents or guardians attempt to make unauthorized contact with the child or attempt to remove the child;

(b) complete all removal paperwork, including the notice provided to the custodial parents and guardians under Section 78A-6-306;

(c) contact the attorney general to schedule a shelter hearing;

(d) complete the placement procedures required in Section 78A-6-307; and

(e) continue to search for other relatives as a possible long-term placement, if needed.

(7) (a) The background check described in Subsection (3)(c)(i) shall include:

(i) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification background check; and

(ii) a completed search of the Management Information System described in Section 62A-4a-1003.

(b) The division shall determine whether a person passes the background check described in this Subsection (7) pursuant to the provisions of Subsections 62A-2-120(2), (3), and (8).

(c) Notwithstanding Subsection (7)(b), the division may not place a child with an individual who is prohibited by court order from having access to that child.

Section ~~(3)~~4. Section **78A-2-227.1** is enacted to read:

78A-2-227.1. Appointment of attorney guardian ad litem in district court matters.

A district court may appoint the Office of Guardian ad Litem to represent the best interests of a minor in the following district court matters:

(1) protective order proceedings; and

(2) district court actions when:

(a) child abuse, child sexual abuse, or neglect is alleged in a formal complaint, petition, or counterclaim;

(b) the child abuse, child sexual abuse, or neglect described in Subsection (2)(a) has been reported to Child Protective Services; and

(c) the court makes a finding that the adult parties to the case are indigent, as defined in Section 77-32-202.

(3) (a) A court may not appoint an attorney guardian ad litem in a criminal case.

(b) Subsection (3)(a) does not prohibit the appointment of an attorney guardian ad litem in a case where a court is determining whether to adjudicate a minor for committing an act that would be a crime if committed by an adult.

(c) Subsection (3)(a) does not prohibit an attorney guardian ad litem from entering an appearance, filing motions, or taking other action in a criminal case on behalf of a minor, if:

(i) the attorney guardian ad litem is appointed to represent the minor in a case that is not a criminal case; and

(ii) the interests of the minor may be impacted by:

(A) an order that has been, or may be, issued in the criminal case; or

(B) other proceedings that have occurred, or may occur, in the criminal case.

(4) If a court appoints an attorney guardian ad litem in a divorce or child custody case, the court shall:

(a) specify in the order appointing the attorney guardian ad litem the specific issues in the proceeding that the attorney guardian ad litem is required to be involved in resolving, which may include issues relating to the custody of children and parent-time schedules;

(b) to the extent possible, bifurcate the issues specified in the order described in Subsection (4)(a) from the other issues in the case, in order to minimize the time constraints placed upon the attorney guardian ad litem in the case; and

(c) except as provided in Subsection (6), within one year after the day on which the attorney guardian ad litem is appointed in the case, issue a final order:

(i) resolving the issues described in the order described in Subsection (4)(a); and

(ii) terminating the appointment of the attorney guardian ad litem in the case.

(5) The court shall issue an order terminating the appointment of an attorney guardian ad litem made under this section, if:

(a) the court determines that the allegations of abuse or neglect are unfounded;

(b) after receiving input from the attorney guardian ad litem, the court determines that the children are no longer at risk of abuse or neglect; or

(c) there has been no activity in the case for which the attorney guardian ad litem is appointed for a period of six consecutive months.

(6) A court may issue a written order extending the one-year period described in Subsection (4)(c) for a time-certain, if the court makes a written finding that there is a compelling reason that the court cannot comply with the requirements described in Subsection (4)(c) within the one-year period.

(7) When appointing an attorney guardian ad litem for a minor under this section, a court may appoint the same attorney guardian ad litem who represents the minor in another proceeding, or who has represented the minor in a previous proceeding, if that attorney guardian ad litem is available.

(8) The court is responsible for all costs resulting from the appointment of an attorney guardian ad litem and shall use funds appropriated by the Legislature for the guardian ad litem program to cover those costs.

(9) (a) If the court appoints the Office of Guardian Ad Litem in a civil case pursuant to this section, the court may assess all or part of those attorney fees, court costs, paralegal, staff, and volunteer expenses against the minor's parent, parents, or legal guardian in an amount that the court determines to be just and appropriate.

(b) The court may not assess those fees or costs against a legal guardian, when that guardian is the state, or against a parent, parents, or legal guardian who is found to be impecunious. If a person claims to be impecunious, the court shall require of that person an affidavit of impecuniosity as provided in Section 78A-2-302 and the court shall follow the procedures and make the determinations as provided in Section 78A-2-302.

(10) An attorney guardian ad litem appointed in accordance with the requirements of this section and Chapter 6, Part 9, Guardian Ad Litem, is, when serving in the scope of duties of an attorney guardian ad litem, considered an employee of this state for purposes of indemnification under the Governmental Immunity Act.

Section 5. Section **78A-2-228 (Effective 07/01/13)** is amended to read:

78A-2-228 (Effective 07/01/13). Private attorney guardian ad litem -- Appointment -- Costs and fees -- Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum qualifications.

(1) The court may appoint a private attorney as guardian ad litem to represent the best interests of the minor in any district court action when:

(a) child abuse, child sexual abuse, or neglect is alleged in any proceeding, and the court has made a finding that an adult party is not indigent, as defined by Section 77-32-202; or

(b) the custody of, or parent-time with, a child is at issue.

(2) (a) The court shall consider the limited number of eligible private attorneys guardian ad litem, as well as the limited time and resources available to a private attorney guardian ad litem, when making an appointment under Subsection (1) and prioritize case assignments accordingly.

(b) The court shall make findings regarding the need and basis for the appointment of a private guardian ad litem.

(c) A court may not appoint a private guardian ad litem in a criminal case.

(3) When appointing a private attorney guardian ad litem, the court shall:

(a) state in its order that the court is appointing a private attorney guardian ad litem, to

be assigned by the Office of Guardian ad Litem, to represent the best interests of the child in the matter; and

(b) send the order described in Subsection (3)(a) to the Director of the Office of Guardian ad Litem, in care of the Private Attorney Guardian ad Litem program.

(4) The court shall:

(a) specify in the order appointing a private attorney guardian ad litem the specific issues in the proceeding that the private attorney guardian ad litem shall be involved in resolving, which may include issues relating to the custody of the child and a parent-time schedule;

(b) to the extent possible, bifurcate the issues described in Subsection (3)(a) from the other issues in the case in order to minimize the time constraints placed upon the private attorney guardian ad litem; and

(c) except as provided in Subsection (6), issue a final order within one year after the day on which the private attorney guardian ad litem is appointed in the case:

(i) resolving the issues described in Subsection (4)(a); and

(ii) terminating the private attorney guardian ad litem from the appointment to the case.

(5) The court shall issue an order terminating the appointment of a private guardian ad litem made under this section if:

(a) after receiving input from the private attorney guardian ad litem, the court determines that the minor no longer requires the services of the private attorney guardian ad litem; or

(b) there has been no activity in the case for a period of six consecutive months.

(6) A court may issue an order extending the one-year period described in Subsection (4)(c) for a specified amount of time if the court makes a written finding that there is a compelling reason that the court cannot comply with the requirements described in Subsection (4)(c) within the one-year period.

(7) When appointing a private attorney guardian ad litem under this section, a court may appoint the same private attorney guardian ad litem who represents the minor in another proceeding, or who has represented the minor in a previous proceeding, if that private attorney guardian ad litem is available.

(8) Upon receipt of the court's order, described in Subsection (3), the director or the

director's designee shall assign the case to an eligible private attorney guardian ad litem, if available and as established by rule under Subsection (17).

(9) (a) When appointing a private attorney guardian ad litem, the court shall:

(i) assess all or part of the attorney guardian ad litem fees, courts costs, and paralegal, staff, and volunteer expenses against the parties in a proportion the court determines to be just; and

(ii) designate in the order whether the private attorney guardian ad litem shall, as established by rule under Subsection (17):

(A) be paid a set fee and initial retainer;

(B) not be paid and serve pro bono; or

(C) be paid at a rate less than the set fee established by court rule.

(b) If a party claims to be impecunious, the court shall follow the procedure and make a determination, described in Section 78A-2-302, to set the amount that the party is required to pay, if any, toward the private attorney guardian ad litem's fees and expenses.

(c) The private attorney guardian ad litem may adjust the court-ordered fees or retainer to an amount less than what was ordered by the court at any time before being released from representation by the court.

(10) Upon accepting the court's appointment, the assigned attorney shall:

(a) file a notice of appearance with the court within five business days of the day on which the attorney was assigned; and

(b) represent the best interests of the minor until released by the court.

(11) The private attorney guardian ad litem:

(a) shall be certified by the director of the Office of Guardian ad Litem as meeting the minimum qualifications for appointment; and

(b) may not be employed by, or under contract with, the Office of Guardian ad Litem unless under contract as a conflict guardian ad litem in an unrelated case.

(12) The private attorney guardian ad litem appointed under the provisions of this section shall:

(a) represent the best interests of the minor from the date of the appointment until released by the court;

(b) conduct or supervise an ongoing, independent investigation in order to obtain,

first-hand, a clear understanding of the situation and needs of the minor;

(c) interview witnesses and review relevant records pertaining to the minor and the minor's family, including medical, psychological, and school records;

(d) (i) personally meet with the minor, unless:

(A) the minor is outside of the state; or

(B) meeting with the minor would be detrimental to the minor;

(ii) personally interview the minor, unless:

(A) the minor is not old enough to communicate;

(B) the minor lacks the capacity to participate in a meaningful interview; or

(C) the interview would be detrimental to the minor;

(iii) to the extent possible, determine the minor's goals and concerns regarding custody or visitation; and

(iv) to the extent possible, and unless it would be detrimental to the minor, keep the minor advised of:

(A) the status of the minor's case;

(B) all court and administrative proceedings;

(C) discussions with, and proposals made by, other parties;

(D) court action; and

(E) the psychiatric, medical, or other treatment or diagnostic services that are to be provided to the minor;

(e) unless excused by the court, prepare for and attend all mediation hearings and all court conferences and hearings, and present witnesses and exhibits as necessary to protect the best interests of the minor;

(f) identify community resources to protect the best interests of the minor and advocate for those resources; and

(g) participate in all appeals unless excused by the court.

(13) (a) The private attorney guardian ad litem shall represent the best interests of a minor.

(b) If the minor's intent and desires differ from the attorney's determination of the minor's best interests, the attorney guardian ad litem shall communicate to the court the minor's intent and desires and the attorney's determination of the minor's best interests.

(c) A difference between the minor's intent and desires and the attorney's determination of best interests is not sufficient to create a conflict of interest.

(d) The private attorney guardian ad litem shall disclose the intent and desires of the minor unless the minor:

(i) instructs the private attorney guardian ad litem to not disclose the minor's intent and desires; or

(ii) has not expressed an intent and desire.

(e) The court may appoint one attorney guardian ad litem to represent the best interests of more than one child of a marriage.

(14) In every court hearing where the private attorney guardian ad litem makes a recommendation regarding the best interest of the minor, the court shall require the private attorney guardian ad litem to disclose the factors that form the basis of the recommendation.

(15) An attorney guardian ad litem appointed under this section is immune from any civil liability that might result by reason of acts performed within the scope of duties of the attorney guardian ad litem.

(16) The Office of Guardian ad Litem and the Guardian Ad Litem Oversight Committee shall compile a list of attorneys willing to accept an appointment as a private attorney guardian ad litem.

(17) Upon the advice of the director of the Office of Guardian ad Litem and the Guardian Ad Litem Oversight Committee, the Judicial Council shall establish by rule:

(a) the minimum qualifications and requirements for appointment by the court as an attorney guardian ad litem;

(b) the standard fee rate and retainer amount for a private attorney guardian ad litem;

(c) the percentage of cases a private attorney guardian ad litem may be expected to take on pro bono;

(d) a system to:

(i) select a private attorney guardian ad litem for a given appointment; and

(ii) determine when a private attorney guardian ad litem shall be expected to accept an appointment pro bono; and

(e) the process for handling a complaint relating to the eligibility status of a private attorney guardian ad litem.

(18) Any savings that result from assigning a private attorney guardian ad litem in a district court case, instead of a guardian ad litem from the Office of Guardian ad Litem, shall be applied to the Office of Guardian ad Litem to reduce caseloads and improve current practices.

Section 6. Section **78A-6-307** is amended to read:

78A-6-307. Shelter hearing -- Placement -- DCFS custody.

(1) As used in this section:

(a) (i) "Natural parent," notwithstanding the provisions of Section 78A-6-105, means:

(A) a biological or adoptive mother;

(B) an adoptive father; or

(C) a biological father who:

(I) was married to the child's biological mother at the time the child was conceived or born; or

(II) has strictly complied with the provisions of Sections 78B-6-120 through 78B-6-122, prior to removal of the child or voluntary surrender of the child by the custodial parent.

(ii) The definition of "natural parent" described in Subsection (1)(a)(i) 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.

(b) "Relative" means:

(i) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, [~~or~~] sibling of a child, or a first cousin of the child's parent; and

(ii) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that statute.

(2) (a) At the shelter hearing, when the court orders that a child be removed from the custody of the child's parent in accordance with the requirements of Section 78A-6-306, the court shall first determine whether there is another natural parent with whom the child was not residing at the time the events or conditions that brought the child within the court's jurisdiction occurred, who desires to assume custody of the child.

(b) If another natural parent requests custody under Subsection (2)(a), the court shall place the child with that parent unless it finds that the placement would be unsafe or otherwise detrimental to the child.

(c) The provisions of this Subsection (2) are limited by the provisions of Subsection (18)(b).

(d) (i) The court shall make a specific finding regarding the fitness of the parent described in Subsection (2)(b) 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, comply with the criminal background check provisions described in Section 78A-6-308, 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 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.

(3) If the court orders placement with a parent under Subsection (2):

(a) the child and the parent are under the continuing jurisdiction of the court;

(b) the court may order:

(i) that the parent assume custody subject to the supervision of the court; and

(ii) that services be provided to the parent from whose custody the child was removed, the parent who has assumed custody, or both; and

(c) the court shall order reasonable parent-time with the parent from whose custody the child was removed, unless parent-time is not in the best interest of the child.

(4) The court shall periodically review an order described in Subsection (3) 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 in the custody of a relative, pursuant to Subsections (7) through (12); or

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

(5) The time limitations described in Section 78A-6-312 with regard to reunification efforts, apply to children placed with a previously noncustodial parent in accordance with Subsection (2).

(6) Legal custody of the child is not affected by an order entered under Subsection (2) or (3). In order to affect a previous court order regarding legal custody, the party must petition that court for modification of the order.

(7) If, at the time of the shelter hearing, a child is removed from the custody of the child's parent and is not placed in the custody of the child's other parent, the court:

(a) shall, at that time, determine whether, subject to Subsections (18)(c) through (e), there is a relative of the child or a friend of a parent of the child who is able and willing to care for the child;

(b) may order the division to conduct a reasonable search to determine whether, subject to Subsections (18)(c) through (e), there are relatives of the child or friends of a parent of the child who are willing and appropriate, in accordance with the requirements of this part and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child;

(c) shall order the parents to cooperate with the division, within five working days, to, subject to Subsections (18)(c) through (e), provide information regarding relatives of the child or friends who may be able and willing to care for the child; and

(d) may order that the child be placed in the custody of the division pending the determination under Subsection (7)(a).

(8) This section may not be construed as a guarantee that an identified relative or friend will receive custody of the child.

(9) Subject to Subsections (18)(c) through (e), preferential consideration shall be given to a relative's or a friend's request for placement of the child, if it is in the best interest of the child, and the provisions of this section are satisfied.

(10) (a) If a willing relative or friend is identified under Subsection (7)(a), the court shall make a specific finding regarding:

(i) the fitness of that relative or friend as a placement for the child; and

(ii) the safety and appropriateness of placement with that relative or friend.

(b) In order to be considered a "willing relative or friend" under this section, the

relative or friend shall be willing to cooperate with the child's permanency goal.

(11) (a) In making the finding described in Subsection (10)(a), the court shall, at a minimum, order the division to:

(i) if the child may be placed with a relative of the child, conduct a background check that includes:

(A) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification background check of the relative;

(B) a completed search, relating to the relative, of the Management Information System described in Section 62A-4a-1003; and

(C) a background check that complies with the criminal background check provisions described in Section 78A-6-308, of each nonrelative, as defined in Subsection 62A-4a-209(1)(a), of the child who resides in the household where the child may be placed;

(ii) if the child will be placed with a noncustodial parent of the child, complete a background check that includes:

(A) the background check requirements applicable to an emergency placement with a noncustodial parent that are described in Subsections 62A-4a-209(5) and (7);

(B) a completed search, relating to the noncustodial parent of the child, of the Management Information System described in Section 62A-4a-1003; and

(C) a background check that complies with the criminal background check provisions described in Section 78A-6-308, of each nonrelative, as defined in Subsection 62A-4a-209(1)(a), of the child who resides in the household where the child may be placed;

(iii) if the child may be placed with an individual other than a noncustodial parent or a relative of the child, conduct a criminal background check of the individual, and each adult that resides in the household where the child may be placed, that complies with the criminal background check provisions described in Section 78A-6-308;

(iv) visit the relative's or friend's home;

(v) check the division's management information system for any previous reports of abuse or neglect regarding the relative or friend at issue;

(vi) report the division's findings in writing to the court; and

(vii) provide sufficient information so that the court may determine whether:

(A) the relative or friend has any history of abusive or neglectful behavior toward other

children that may indicate or present a danger to this child;

(B) the child is comfortable with the relative or friend;

(C) the relative or friend recognizes the parent's history of abuse and is committed to protect the child;

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

(E) the relative or friend is committed to caring for the child as long as necessary; and

(F) the relative or friend can provide a secure and stable environment for the child.

(b) The division may determine to conduct, or the court may order the division to conduct, any further investigation regarding the safety and appropriateness of the placement.

(c) The division shall complete and file its assessment regarding placement with a relative or friend as soon as practicable, in an effort to facilitate placement of the child with a relative or friend.

(12) (a) The court may place a child described in Subsection (2)(a) in the temporary custody of the division, pending the division's investigation pursuant to Subsections (10) and (11), and the court's determination regarding the appropriateness of that placement.

(b) The court shall ultimately base its determination regarding the appropriateness of a placement with a relative or friend on the best interest of the child.

(13) When the court awards custody and guardianship of a child with a relative or friend:

(a) the court shall order that:

(i) the relative or friend assume custody, subject to the continuing supervision of the court; and

(ii) any necessary services be provided to the child and the relative or friend;

(b) the child and any relative or friend with whom the child is placed are under the continuing jurisdiction of the court;

(c) the court may enter any order that it considers necessary for the protection and best interest of the child;

(d) the court shall provide for reasonable parent-time with the parent or parents from whose custody the child was removed, unless parent-time is not in the best interest of the child; and

(e) the court shall conduct a periodic review no less often than every six months, to determine whether:

(i) placement with the relative or friend continues to be in the child's best interest;

(ii) the child should be returned home; or

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

(14) No later than 12 months after placement with a relative or friend, the court shall schedule a hearing for the purpose of entering a permanent order in accordance with the best interest of the child.

(15) The time limitations described in Section 78A-6-312, with regard to reunification efforts, apply to children placed with a relative or friend pursuant to Subsection (7).

(16) (a) If the court awards custody of a child to the division, and the division places the child with a relative, the division shall:

(i) conduct a criminal background check of the relative that complies with the criminal background check provisions described in Section 78A-6-308; and

(ii) if the results of the criminal background check described in Subsection (16)(a)(i) would prohibit the relative from having direct access to the child under Section 62A-2-120, the division shall:

(A) take the child into physical custody; and

(B) within three days, excluding weekends and holidays, after taking the child into physical custody under Subsection (16)(a)(ii)(A), give written notice to the court, and all parties to the proceedings, of the division's action.

(b) Nothing in Subsection (16)(a) prohibits the division from placing a child with a relative, pending the results of the background check described in Subsection (16)(a) on the relative.

(17) When the court orders that a child be removed from the custody of the child's parent and does not award custody and guardianship to another parent, relative, or friend 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.

(18) (a) Any preferential consideration that a relative or friend is initially granted

pursuant to Subsection (9) expires 120 days from the date of the shelter hearing. After that time period has expired, a relative or friend 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 (18)(a) has expired, the preferential consideration, which is initially granted to a natural parent in accordance with Subsection (2), is limited. After that time the court shall base its custody decision on the best interest of the child.

(c) Prior to the expiration of the 120-day period described in Subsection (18)(a), the following order of preference shall be applied when determining the person with whom a child will be placed, provided that the person is willing, and has the ability, to care for the child:

(i) a noncustodial parent of the child;

(ii) a relative of the child;

(iii) subject to Subsection (18)(d), a friend of a parent of the child, if the friend is a licensed foster parent; and

(iv) other placements that are consistent with the requirements of law.

(d) In determining whether a friend is a willing and appropriate placement for a child, neither the court, nor the division, is required to consider more than one friend designated by each parent of the child.

(e) If a parent of the child is not able to designate a friend who is a licensed foster parent for placement of the child, but is able to identify a friend who is willing to become licensed as a foster parent:

(i) the department shall fully cooperate to expedite the licensing process for the friend; and

(ii) if the friend becomes licensed as a foster parent within the time frame described in Subsection (18)(a), the court shall determine whether it is in the best interests of the child to place the child with the friend.

(19) If, following the shelter hearing, the child is placed with a person who is not a parent of the child, a relative of the child, a friend of a parent of the child, or a former foster parent of the child, priority shall be given to a foster placement with a man and a woman who are married to each other, unless it is in the best interests of the child to place the child with a single foster parent.

(20) In determining the placement of a child, neither the court, nor the division, may take into account, or discriminate against, the religion of a person with whom the child may be placed, unless the purpose of taking religion into account is to place the child with a person or family of the same religion as the child.

Section ~~{4}~~7. Section **78A-6-312** is amended to read:

78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.

(1) The court may:

(a) make any of the dispositions described in Section 78A-6-117;

(b) place the minor in the custody or guardianship of any:

(i) individual; or

(ii) public or private entity or agency; or

(c) order:

(i) protective supervision;

(ii) family preservation;

(iii) subject to [~~Subsection~~] Subsections (12)(b) and 78A-6-117(2)(n)(iii), medical or mental health treatment; or

(iv) other services.

(2) Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the division, the court shall first:

(a) establish a primary permanency goal for the minor; and

(b) determine whether, in view of the primary permanency goal, reunification services are appropriate for the minor and the minor's family, pursuant to Subsections (20) through (22).

(3) Subject to Subsections (6) and (7), if the court determines that reunification services are appropriate for the minor and the minor's family, the court shall provide for reasonable parent-time with the parent or parents from whose custody the minor was removed, unless parent-time is not in the best interest of the minor.

(4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the offending parent or parents.

(5) In all cases, the minor's health, safety, and welfare shall be the court's paramount

concern in determining whether reasonable efforts to reunify should be made.

(6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless the court makes a finding that it is necessary to deny parent-time in order to:

(a) protect the physical safety of the minor;

(b) protect the life of the minor; or

(c) prevent the minor from being traumatized by contact with the parent due to the minor's fear of the parent in light of the nature of the alleged abuse or neglect.

(7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a parent's failure to:

(a) prove that the parent has not used legal or illegal substances; or

(b) comply with an aspect of the child and family plan that is ordered by the court.

(8) In addition to the primary permanency goal, the court shall establish a concurrent permanency goal that shall include:

(a) a representative list of the conditions under which the primary permanency goal will be abandoned in favor of the concurrent permanency goal; and

(b) an explanation of the effect of abandoning or modifying the primary permanency goal.

(9) A permanency hearing shall be conducted in accordance with Subsection 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if something other than reunification is initially established as a minor's primary permanency goal.

(10) (a) The court may amend a minor's primary permanency goal before the establishment of a final permanency plan under Section 78A-6-314.

(b) The court is not limited to the terms of the concurrent permanency goal in the event that the primary permanency goal is abandoned.

(c) If, at any time, the court determines that reunification is no longer a minor's primary permanency goal, the court shall conduct a permanency hearing in accordance with Section 78A-6-314 on or before the earlier of:

(i) 30 days after the day on which the court makes the determination described in this Subsection (10)(c); or

(ii) the day on which the provision of reunification services, described in Section

78A-6-314, ends.

(11) (a) If the court determines that reunification services are appropriate, it shall order that the division make reasonable efforts to provide services to the minor and the minor's parent for the purpose of facilitating reunification of the family, for a specified period of time.

(b) In providing the services described in Subsection (11)(a), the minor's health, safety, and welfare shall be the division's paramount concern, and the court shall so order.

(12) (a) The court shall:

[~~(a)~~] (i) determine whether the services offered or provided by the division under the child and family plan constitute "reasonable efforts" on the part of the division;

[~~(b)~~] (ii) determine and define the responsibilities of the parent under the child and family plan in accordance with Subsection 62A-4a-205(6)(e); and

[~~(c)~~] (iii) identify verbally on the record, or in a written document provided to the parties, the responsibilities described in Subsection (12)[~~(b)~~](a)(ii), for the purpose of assisting in any future determination regarding the provision of reasonable efforts, in accordance with state and federal law.

(b) If the parent is in a substance abuse treatment program, other than a certified drug court program:

(i) the court may ~~{not }~~order the parent to submit to supplementary drug or alcohol testing in addition to the testing recommended by the parent's substance abuse program ~~{as}~~based on a ~~{condition}~~finding of ~~{reunification or maintaining custody of}~~reasonable suspicion that the ~~{parent's child}~~parent is abusing drugs or alcohol; and

(ii) the court may order the parent to provide the results of drug or alcohol testing recommended by the substance abuse program to the court or division.

(13) (a) The time period for reunification services may not exceed 12 months from the date that the minor was initially removed from the minor's home, unless the time period is extended under Subsection 78A-6-314(8).

(b) Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services.

(14) (a) If reunification services are ordered, the court may terminate those services at any time.

(b) If, at any time, continuation of reasonable efforts to reunify a minor is determined

to be inconsistent with the final permanency plan for the minor established pursuant to Section 78A-6-314, then measures shall be taken, in a timely manner, to:

(i) place the minor in accordance with the permanency plan; and

(ii) complete whatever steps are necessary to finalize the permanent placement of the minor.

(15) Any physical custody of the minor by the parent or a relative during the period described in Subsections (11) through (14) does not interrupt the running of the period.

(16) (a) If reunification services are ordered, a permanency hearing shall be conducted by the court in accordance with Section 78A-6-314 at the expiration of the time period for reunification services.

(b) The permanency hearing shall be held no later than 12 months after the original removal of the minor.

(c) If reunification services are not ordered, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

(17) With regard to a minor who is 36 months of age or younger at the time the minor is initially removed from the home, the court shall:

(a) hold a permanency hearing eight months after the date of the initial removal, pursuant to Section 78A-6-314; and

(b) order the discontinuance of those services after eight months from the initial removal of the minor from the home if the parent or parents have not made substantial efforts to comply with the child and family plan.

(18) With regard to a minor in the custody of the division whose parent or parents are ordered to receive reunification services but who have abandoned that minor for a period of six months from the date that reunification services were ordered:

(a) the court shall terminate reunification services; and

(b) the division shall petition the court for termination of parental rights.

(19) When a court conducts a permanency hearing for a minor under Section 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the sibling group together is:

(a) practicable; and

(b) in accordance with the best interest of the minor.

(20) (a) Because of the state's interest in and responsibility to protect and provide permanency for minors who are abused, neglected, or dependent, the Legislature finds that a parent's interest in receiving reunification services is limited.

(b) The court may determine that:

(i) efforts to reunify a minor with the minor's family are not reasonable or appropriate, based on the individual circumstances; and

(ii) reunification services should not be provided.

(c) In determining "reasonable efforts" to be made with respect to a minor, and in making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount concern.

(21) There is a presumption that reunification services should not be provided to a parent if the court finds, by clear and convincing evidence, that any of the following circumstances exist:

(a) the whereabouts of the parents are unknown, based upon a verified affidavit indicating that a reasonably diligent search has failed to locate the parent;

(b) subject to Subsection (22)(a), the parent is suffering from a mental illness of such magnitude that it renders the parent incapable of utilizing reunification services;

(c) the minor was previously adjudicated as an abused child due to physical abuse, sexual abuse, or sexual exploitation, and following the adjudication the minor:

(i) was removed from the custody of the minor's parent;

(ii) was subsequently returned to the custody of the parent; and

(iii) is being removed due to additional physical abuse, sexual abuse, or sexual exploitation;

(d) the parent:

(i) caused the death of another minor through abuse or neglect;

(ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

(A) murder or manslaughter of a child; or

(B) child abuse homicide;

(iii) committed sexual abuse against the child; or

(iv) is a registered sex offender or required to register as a sex offender;

(e) the minor suffered severe abuse by the parent or by any person known by the

parent, if the parent knew or reasonably should have known that the person was abusing the minor;

(f) the minor is adjudicated an abused child as a result of severe abuse by the parent, and the court finds that it would not benefit the minor to pursue reunification services with the offending parent;

(g) the parent's rights are terminated with regard to any other minor;

(h) the minor [~~is~~] was removed from the minor's home on at least two previous occasions and reunification services were offered or provided to the family at those times;

(i) the parent has abandoned the minor for a period of six months or longer;

(j) the parent permitted the child to reside, on a permanent or temporary basis, at a location where the parent knew or should have known that a clandestine laboratory operation was located;

(k) except as provided in Subsection (22)(b), with respect to a parent who is the child's birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was exposed to an illegal or prescription drug that was abused by the child's mother while the child was in utero, if the child was taken into division custody for that reason, unless the mother agrees to enroll in, is currently enrolled in, or has recently and successfully completed a substance abuse treatment program approved by the department; or

(l) any other circumstance that the court determines should preclude reunification efforts or services.

(22) (a) The finding under Subsection (21)(b) shall be based on competent evidence from at least two medical or mental health professionals, who are not associates, establishing that, even with the provision of services, the parent is not likely to be capable of adequately caring for the minor within 12 months after the day on which the court finding is made.

(b) A judge may disregard the provisions of Subsection (21)(k) if the court finds, under the circumstances of the case, that the substance abuse treatment described in Subsection (21)(k) is not warranted.

(23) In determining whether reunification services are appropriate, the court shall take into consideration:

(a) failure of the parent to respond to previous services or comply with a previous child and family plan;

(b) the fact that the minor was abused while the parent was under the influence of drugs or alcohol;

(c) any history of violent behavior directed at the child or an immediate family member;

(d) whether a parent continues to live with an individual who abused the minor;

(e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

(f) testimony by a competent professional that the parent's behavior is unlikely to be successful; and

(g) whether the parent has expressed an interest in reunification with the minor.

(24) (a) If reunification services are not ordered pursuant to Subsections (20) through (22), and the whereabouts of a parent become known within six months after the day on which the out-of-home placement of the minor is made, the court may order the division to provide reunification services.

(b) The time limits described in Subsections (2) through (19) are not tolled by the parent's absence.

(25) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless it determines that those services would be detrimental to the minor.

(b) In making the determination described in Subsection (25)(a), the court shall consider:

(i) the age of the minor;

(ii) the degree of parent-child bonding;

(iii) the length of the sentence;

(iv) the nature of the treatment;

(v) the nature of the crime or illness;

(vi) the degree of detriment to the minor if services are not offered;

(vii) for a minor 10 years of age or older, the minor's attitude toward the implementation of family reunification services; and

(viii) any other appropriate factors.

(c) Reunification services for an incarcerated parent are subject to the time limitations imposed in Subsections (2) through (19).

(d) Reunification services for an institutionalized parent are subject to the time

limitations imposed in Subsections (2) through (19), unless the court determines that continued reunification services would be in the minor's best interest.

(26) If, pursuant to Subsections (21)(b) through (l), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

Section ~~{5}~~8. Section **78A-6-511** is amended to read:

78A-6-511. Court disposition of child upon termination -- Posttermination reunification.

(1) As used in this section, "relative" means:

(a) an adult who is a grandparent, great-grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, sibling, or stepsibling of a child; and

(b) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that statute.

(2) Upon entry of an order under this part the court may:

(a) place the child in the legal custody and guardianship of a licensed child placement agency or the division for adoption; or

(b) make any other disposition of the child authorized under Section 78A-6-117.

(3) Subject to the requirements of Subsections (4) and (5), all adoptable children placed in the custody of the division shall be placed for adoption.

(4) If the parental rights of all parents of an adoptable child placed in the custody of the division have been terminated and a suitable adoptive placement is not already available, the court:

(a) shall determine whether there is a relative who desires to adopt the child;

(b) may order the division to conduct a reasonable search to determine whether there are relatives who are willing to adopt the child; and

(c) shall, if a relative desires to adopt the child:

(i) make a specific finding regarding the fitness of the relative to adopt the child; and

(ii) place the child for adoption with that relative unless it finds that adoption by the relative is not in the best interest of the child.

(5) This section does not guarantee that a relative will be permitted to adopt the child.

(6) A parent whose rights were terminated under this part, or a relative of the child, as defined by Section 78A-6-307, may petition for guardianship of the~~{ parent's}~~ child if:

(a) (i) following an adoptive placement, the child's adoptive parent returns the child to the custody of the division; or

(ii) the child is in the custody of the division for one year following the day on which the parent's rights were terminated, and no permanent placement has been found or is likely to be found; and

(b) reunification with the child's parent, or guardianship by the child's relative, is in the best interest of the child.

Section 9. Section **78A-6-511.1** is enacted to read:

78A-6-511.1. Posttermination reunification study item.

(1) The division shall study the potential of creating a posttermination of parental rights reunification system, and present any viable proposals to the Health and Human Service Interim Committee during the 2013 interim.

(2) In creating the proposals described in Subsection(1), the division shall consider the best interest of the child standard and the fundamental rights of parents.

Section ~~{6}~~10. Section **78A-6-513** is amended to read:

78A-6-513. Effect of decree.

(1) [~~An~~] Except as provided in Subsection 78A-6-511(6), an order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due [~~him~~] the child from any third person, including, but not limited to, any Indian tribe, agency, state, or the United States.

(3) [~~After~~] Except as provided in Subsection 78A-6-511(6), after the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any other placement proceedings.

Section ~~{7}~~11. Section **78A-6-1106** is amended to read:

78A-6-1106. Child support obligation when custody of a child is vested in an individual or institution.

(1) [~~When~~] Except as provided in Subsection (11), when legal custody of a child is vested by the court in a secure youth corrections facility or any other state department, division, or agency other than the child's parents, or if the guardianship of the child has been granted to another party and an agreement for a guardianship subsidy has been signed by the guardian, the court shall order the parents, a parent, or any other obligated person to pay child support for each month the child is in custody. In the same proceeding the court shall inform the parents, a parent, or any other obligated person, verbally and in writing, of the requirement to pay child support in accordance with Title 78B, Chapter 12, Utah Child Support Act.

(2) If legal custody of a child is vested by the court in a secure youth corrections facility, or any other state department, division, or agency, the court may refer the establishment of a child support order to the Office of Recovery Services. The referral shall be sent to the Office of Recovery Services within three working days of the hearing. Support obligation amounts shall be set by the Office of Recovery Services in accordance with Title 78B, Chapter 12, Utah Child Support Act.

(3) If referred to the Office of Recovery Services pursuant to Subsection (2), the court shall also inform the parties that they are required to contact the Office of Recovery Services within 30 days of the date of the hearing to establish a child support order and the penalty in Subsection (5) for failing to do so. If there is no existing child support order for the child, the liability for support shall accrue beginning on the 61st day following the hearing that occurs the first time the court vests custody of the child in a secure youth corrections facility, or any other state department, division, or agency other than [~~his~~] the child's parents.

(4) If a child is returned home and legal custody is subsequently vested by the court in a secure youth corrections facility or any other state department, division, or agency other than [~~his~~] the child's parents, the liability for support shall accrue from the date the child is subsequently removed from the home, including time spent in detention or sheltered care.

(5) (a) If the parents, parent, or other obligated person meets with the Office of Recovery Services within 30 days of the date of the hearing, the child support order may not include a judgment for past due support for more than two months.

(b) Notwithstanding Subsection (5)(a), the court may order the liability of support to

begin to accrue from the date of the proceeding referenced in Subsection (1) if:

(i) the parents, parent, or any other person obligated fails to meet with the Office of Recovery Services within 30 days after being informed orally and in writing by the court of that requirement; and

(ii) the Office of Recovery Services took reasonable steps under the circumstances to contact the parents, parent, or other person obligated within the subsequent 30-day period to facilitate the establishment of the child support order.

(c) For purposes of Subsection (5)(b)(ii), the Office of Recovery Services shall be presumed to have taken reasonable steps if the office:

(i) has a signed, returned receipt for a certified letter mailed to the address of the parents, parent, or other obligated person regarding the requirement that a child support order be established; or

(ii) has had a documented conversation, whether by telephone or in person, with the parents, parent, or other obligated person regarding the requirement that a child support order be established.

(6) In collecting arrears, the Office of Recovery Services shall comply with Section 62A-11-320 in setting a payment schedule or demanding payment in full.

(7) Unless otherwise ordered, the parents or other person shall pay the child support to the Office of Recovery Services. The clerk of the court, the Office of Recovery Services, or the Department of Human Services and its divisions shall have authority to receive periodic payments for the care and maintenance of the child, such as Social Security payments or railroad retirement payments made in the name of or for the benefit of the child.

(8) No court order under this section against a parent or other person shall be entered, unless notice of hearing has been served within the state, a voluntary appearance is made, or a waiver of service given. The notice shall specify that a hearing with respect to the financial support of the child will be held.

(9) An existing child support order payable to a parent or other obligated person shall be assigned to the Department of Human Services as provided in Section 62A-1-117.

(10) (a) Subsections (3) through (9) shall not apply if legal custody of a child is vested by the court in an individual.

(b) If legal custody of a child is vested by the court in an individual, the court may

order the parents, a parent, or any other obligated person to pay child support to the individual. In the same proceeding the court shall inform the parents, a parent, or any other obligated person, verbally and in writing, of the requirement to pay child support in accordance with Title 78B, Chapter 12, Utah Child Support Act.

(11) (a) The court may not order the parent or any other obligated person to pay child support for a child in state custody if:

(i) the parent or other obligated person's only form of income is a government-issued disability benefit; and

(ii) the benefit described in Subsection (11)(a)(i) is issued because of the parent or other person's disability, and not the child's disability.

(b) If a person seeks to be excused from providing support under Subsection (11)(a), the person shall provide the court and the Office of Recovery Services with evidence that the person meets the requirements of Subsection (11)(a).

Section ~~{8}~~12. ~~{ **Uncodified** }~~ Section ~~{10, Laws of Utah 2012, Chapter 223}~~**78B-7-106 (Effective 07/01/13)** is amended to read:

~~{Section 10.}~~**78B-7-106 (Effective 07/01/13). 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 to the petitioner temporary custody of any minor children of the parties;

(g) order the appointment of a [~~private attorney~~] guardian ad litem under Section [~~78A-2-228~~] 78A-2-227.1, if appropriate;

(h) 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

(i) 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 parent-time of any minor child by the respondent and require supervision of that parent-time by a third party or deny 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 electronically, 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 78B-7-113.

(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 (2)(a) through (e), and under Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and

(ii) civil offenses are those under Subsections (2)(f), (h), and (i), and Subsection (3)(a) as it refers to Subsections (2)(f), (h), and (i).

(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 two 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 two-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, Income Withholding in Non IV-D 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 78B-7-113.

(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 court may modify or vacate an order of protection or any provisions in the order after notice and hearing, except that the criminal provisions of a protective order may not be vacated within two years of issuance unless the petitioner:

(a) 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

(b) 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 13. Section **78B-7-202 (Effective 07/01/13)** is amended to read:

78B-7-202 (Effective 07/01/13). Petition -- Ex parte determination -- Guardian ad litem -- Referral to division.

(1) Any interested person may file a petition for a protective order on behalf of a child who is being abused or is in imminent danger of being abused. The petitioner shall first make a referral to the division.

(2) Upon the filing of a petition, the clerk of the court shall:

(a) review the records of the juvenile court, the district court, and the management information system of the division to find any petitions, orders, or investigations related to the child or the parties to the case;

(b) request the records of any law enforcement agency identified by the petitioner as having investigated abuse of the child; and

(c) identify and obtain any other background information that may be of assistance to the court.

(3) Upon the filing of a petition, the court shall immediately determine, based on the evidence and information presented, whether the minor is being abused or is in imminent danger of being abused. If so, the court shall enter an ex parte child protective order.

(4) The court may appoint a [~~private~~] attorney guardian ad litem under Section [~~78A-2-228~~] 78A-2-227.1 for district court cases, or the Office of Guardian ad Litem for juvenile court cases under Section 78A-6-902, for the child who is the subject of the petition.

Section 14. **Effective date.**

(1) Except as provided in ~~{~~Subsection~~}~~Subsections (2) and (3), this bill takes effect on May ~~{~~8~~}~~14, ~~{~~2012~~}~~2013.

(2) The actions affecting the following sections take effect on July 1, ~~{[2013] 2014:~~

~~(a) Section 30-3-5.2;~~

~~(b) Section 51-9-408;~~

~~(c) Section 78A-2-227;~~

~~(d) Section 78A-2-228;~~

~~(e) Section 78B-3-102;~~

~~(f)~~2013:

(a) Section 78A-6-227.1;

(b) Section 78B-7-106; and

({g}c) Section {78B-7-202; and

(h) Section 78B-15-612.

Section 9. **Revisor instructions.**

The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, change the effective date in Sections 30-3-5.2, 51-9-408, 78A-2-227, 78A-2-228, 78B-3-102, 78B-7-106, 78B-7-202, and 78B-15-612 from July 1, 2013 to July 1, 2014.

Legislative Review Note

as of 1-17-13 9:08 AM

Office of Legislative Research and General Counsel};78A-7-202.

(3) The actions affecting the following sections take effect on July 1, 2014:

(a) Section 78A-6-511; and

(b) Section 78A-6-513.