

**CHILD SUPPORT AND PATERNITY
AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

This act modifies provisions relating to paternity and child support. It provides definitions for "declarant father" and "presumptive father" and allows for a declaration of paternity by a declarant father even if a presumptive father exists, allows for registration of the declaration, and provides for the modification of a divorce decree or child support order after paternity is determined. The act modifies provisions for reimbursement by a child's parents if the child is removed from a home and the Juvenile Court finds that the allegations were insufficient. This act also modifies child support and parent-time provisions by clarifying provisions relating to deviations from the child support guidelines, and allowing for reductions in child support for extended parent-time.

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

AMENDS:

26-2-2, as last amended by Chapter 202, Laws of Utah 1995

26-2-5, as last amended by Chapter 188, Laws of Utah 1998

30-3-5, as last amended by Chapter 255, Laws of Utah 2001

30-3-10.2, as last amended by Chapter 126, Laws of Utah 2001

30-3-35.5, as last amended by Chapters 130 and 255, Laws of Utah 2001

62A-4a-114, as last amended by Chapter 207, Laws of Utah 2000

62A-11-104, as last amended by Chapter 147, Laws of Utah 2002

62A-11-304.4, as last amended by Chapter 59, Laws of Utah 2002

62A-11-312.5, as last amended by Chapter 161, Laws of Utah 2000

70A-3-311, as enacted by Chapter 237, Laws of Utah 1993

78-3a-118, as last amended by Chapters 2 and 8, Laws of Utah 2002, Fifth Special

Session

78-3a-906, as last amended by Chapter 300, Laws of Utah 2001
78-22-1, as last amended by Chapter 370, Laws of Utah 2001
78-45-7.2, as last amended by Chapter 232, Laws of Utah 1997
78-45-7.10, as last amended by Chapter 161, Laws of Utah 2000
78-45-7.11, as last amended by Chapter 255, Laws of Utah 2001
78-45-7.15, as last amended by Chapter 258, Laws of Utah 1995
78-45-9, as last amended by Chapter 258, Laws of Utah 1995
78-45-9.3, as renumbered and amended by Chapter 161, Laws of Utah 2000
78-45a-7, as last amended by Chapter 232, Laws of Utah 1997
78-45e-2, as last amended by Chapter 232, Laws of Utah 1997
78-45e-3, as last amended by Chapter 188, Laws of Utah 1998
78-45e-4, as last amended by Chapter 232, Laws of Utah 1997

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

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

26-2-2. Definitions.

As used in this chapter:

(1) "Dead body" or "decedent" means a human body or parts of the human body from the condition of which it reasonably may be concluded that death occurred.

(2) "Dead fetus" means a product of human conception:

(a) of 20 weeks' gestation or more, calculated from the date the last normal menstrual period began to the date of delivery; and

(b) that was not born alive.

(3) "Declarant father" means a male who, with the biological mother, declares that he is the father of a child conceived as a result of sexual intercourse with the mother.

~~[(3)]~~ (4) "File" means the submission of a completed certificate or other similar document, record, or report as provided under this chapter for registration by the state registrar or a local registrar.

~~[(4)]~~ (5) "Funeral director" or "person acting as the funeral director" means the person

who takes possession of a dead body or dead fetus, prepares the dead body or dead fetus and arranges for its final disposition, and includes:

- (a) a licensed funeral director;
- (b) a representative of a hospital which is making final disposition; or
- (c) another person assuming responsibility for the final disposition of the remains.

~~[(5)]~~ (6) "Health care facility" has the same definition as in Section 26-21-2.

~~[(6)]~~ (7) "Live birth" means the birth of a child who shows evidence of life after it is entirely outside of the mother.

~~[(7)]~~ (8) "Local registrar" means a person appointed under Subsection 26-2-3(2)(b).

~~[(8)]~~ (9) "Physician" means a person licensed to practice as a physician or osteopath in this state under Title 58, Chapter ~~[12, Part 1 or Part 5]~~ 67 or Chapter 68.

(10) "Presumptive father" means the father of a child conceived or born during a marriage as defined in Section 30-1-17.2.

~~[(9)]~~ (11) "Registration" or "register" means acceptance by the local or state registrar of a certificate and incorporation of it into the permanent records of the state.

~~[(10)]~~ (12) "State registrar" means the state registrar of vital records appointed under Subsection 26-2-3(1)(e).

~~[(11)]~~ (13) "Vital records" means registered certificates or reports of birth, death, fetal death, marriage, divorce, dissolution of marriage, or annulment, amendments to any of these registered certificates or reports, and other similar documents.

~~[(12)]~~ (14) "Vital statistics" means the data derived from registered certificates and reports of birth, death, fetal death, induced termination of pregnancy, marriage, divorce, dissolution of marriage, or annulment.

Section 2. Section **26-2-5** is amended to read:

26-2-5. Birth certificates -- Execution and registration requirements.

(1) As used in this section, "birthing facility" means a general acute hospital or birthing center as defined in Section 26-21-2.

(2) For each live birth occurring in the state, a certificate shall be filed with the local

registrar for the district in which the birth occurred within ten days following the birth. The certificate shall be registered if it is completed and filed in accordance with this chapter.

(3) (a) For each live birth that occurs in a birthing facility, the administrator of the birthing facility, or his designee, shall obtain and enter the information required under this chapter on the certificate, securing the required signatures, and filing the certificate.

(b) (i) The date, time, place of birth, and required medical information shall be certified by the birthing facility administrator or his designee.

(ii) The attending physician or nurse midwife may sign the certificate, but if the attending physician or nurse midwife has not signed the certificate within seven days of the date of birth, the birthing facility administrator or his designee shall enter the attending physician's or nurse midwife's name and transmit the certificate to the local registrar.

(iii) The information on the certificate about the parents shall be provided and certified by the mother or father or, in their incapacity or absence, by a person with knowledge of the facts.

(4) (a) For live births that occur outside a birthing facility, the birth certificate shall be completed and filed by the physician, nurse, midwife, or other person primarily responsible for providing assistance to the mother at the birth. If there is no such person, either the presumptive or declarant father shall complete and file the certificate. In his absence, the mother shall complete and file the certificate, and in the event of her death or disability, the owner or operator of the premises where the birth occurred shall do so.

(b) The certificate shall be completed as fully as possible and shall include the date, time, and place of birth, the mother's name, and the signature of the person completing the certificate.

~~[(4)]~~ (5) (a) For each live birth to an unmarried mother that occurs in a birthing facility, the administrator or director of that facility, or his designee, shall:

(i) provide the birth mother and ~~[biological]~~ declarant father, if present, with:

(A) a voluntary declaration of paternity form published by the state registrar;

(B) oral and written notice to the birth mother and ~~[biological]~~ declarant father of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from

signing the declaration; and

(C) the opportunity to sign the declaration;

(ii) witness the signature of a birth mother or ~~[biological]~~ declarant father in accordance with Section 78-45e-3 if the signature occurs at the hospital;

(iii) enter the ~~[biological]~~ declarant father's information on the original birth certificate, but only if the mother and biological father have signed a voluntary declaration of paternity or a court or administrative agency has issued an adjudication of paternity; and

(iv) file the completed declaration with the original birth certificate.

(b) If there is a presumptive father, the voluntary declaration will only be valid if the presumptive father also signs the voluntary declaration.

~~[(b)]~~ (c) The state registrar shall file the information provided on the voluntary declaration of paternity form with the original birth certificate and may provide certified copies of the declaration of paternity as otherwise provided under Title 78, Chapter 45e, Voluntary Declaration of Paternity ~~[Act]~~.

~~[(5) (a) For live births that occur outside a birthing facility, the certificate shall be completed and filed by the physician, nurse, midwife, or other person primarily responsible for providing assistance to the mother at the birth. If there is no such person, the father shall complete and file the certificate. In his absence, the mother shall complete and file the certificate, and in the event of her death or disability, the owner or operator of the premises where the birth occurred shall do so.]~~

~~[(b) The certificate shall be completed as fully as possible and shall include the date, time, and place of birth, the mother's name, and the signature of the person completing the certificate.]~~

(6) (a) The state registrar shall publish a form for the voluntary declaration of paternity, a description of the process for filing a voluntary declaration of paternity, and of the rights and responsibilities established or effected by that filing, in accordance with Title 78, Chapter 45e, Voluntary Declaration of Paternity ~~[Act]~~.

(b) Information regarding the form and services related to voluntary paternity

establishment shall be made available to birthing facilities and to any other entity or individual upon request.

(7) The name of a declarant father may only be included on the birth certificate of a child of unmarried parents if:

- (a) the mother and declarant father have signed a voluntary declaration of paternity; or
- (b) a court or administrative agency has issued an adjudication of paternity.

(8) Voluntary declarations of paternity [~~and~~], adjudications of paternity by judicial or administrative agencies, and voluntary rescissions of paternity shall be filed with and maintained by the state [~~registry~~] registrar for the purpose of comparing information with the state case registry maintained by the Office of Recovery Services pursuant to Section 62A-11-104.

Section 3. 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) Child support, custody, visitation, and other matters related to children born to the mother and father after entry of the decree of divorce may be added to the decree by modification.

~~[(4)]~~ (5) (a) In determining 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 court may include in an order establishing a parent-time or visitation schedule a provision, among other things, authorizing any peace officer to enforce a court-ordered parent-time or visitation schedule entered under this chapter.

~~[(5)]~~ (6) If a petition for modification of child custody or parent-time provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorneys' fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.

~~[(6)]~~ (7) If a petition alleges substantial noncompliance with a parent-time order by a

parent, or a visitation order by a grandparent or other member of the immediate family pursuant to Section 78-32-12.2 where a visitation or parent-time right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation or parent-time.

[~~(7)~~] (8) (a) The court shall consider at least the following factors in determining alimony:

- (i) the financial condition and needs of the recipient spouse;
- (ii) the recipient's earning capacity or ability to produce income;
- (iii) the ability of the payor spouse to provide support;
- (iv) the length of the marriage;
- (v) whether the recipient spouse has custody of minor children requiring support;
- (vi) whether the recipient spouse worked in a business owned or operated by the payor spouse; and

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

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

(c) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection [~~(7)~~] (8)(a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of 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)~~] (8).

(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)~~] (9) 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)~~] (10) 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 4. Section **30-3-10.2** is amended to read:

30-3-10.2. Joint legal or physical custody order -- Factors for court determination -- Public assistance.

(1) The court may order joint legal custody or joint physical custody or both if the parents have filed a parenting plan in accordance with Section 30-3-10.8 and it determines that joint legal custody or joint physical custody or both is in the best interest of the child.

(2) In determining whether the best interest of a child will be served by ordering joint legal or physical custody, the court shall consider the following factors:

(a) whether the physical, psychological, and emotional needs and development of the child will benefit from joint legal or physical custody;

(b) the ability of the parents to give first priority to the welfare of the child and reach shared decisions in the child's best interest;

(c) whether each parent is capable of encouraging and accepting a positive relationship between the child and the other parent;

(d) whether both parents participated in raising the child before the divorce;

(e) the geographical proximity of the homes of the parents;

(f) the preference of the child if the child is of sufficient age and capacity to reason so as to form an intelligent preference as to joint legal custody;

(g) the maturity of the parents and their willingness and ability to protect the child from conflict that may arise between the parents; and

(h) any other factors the court finds relevant.

(3) The determination of the best interest of the child shall be by a preponderance of the evidence.

(4) The court shall inform both parties that~~[-(a)]~~ an order for joint [~~legal~~] physical custody may preclude eligibility for cash assistance provided under Title 35A, Chapter 3, Employment Support Act~~[-and]~~.

~~[(b) if cash assistance is required for the support of children of the parties at any time subsequent to an order of joint legal custody, the order may be terminated under Section 30-3-10.4.]~~

(5) The court may order that where possible the parties attempt to settle future disputes by a dispute resolution method before seeking enforcement or modification of the terms and conditions of the order of joint legal custody or joint physical custody through litigation, except in emergency situations requiring ex parte orders to protect the child.

Section 5. 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 parent-time schedule in this section applies to children under five years old.

(2) If the parties do not agree to a parent-time schedule, the following schedule shall be considered the minimum 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 parent-time per week to be specified by the court or the noncustodial parent preferably:

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

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

(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 ten months of age:

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

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

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

(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 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]~~ 30-3-35(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 between 5:30 p.m. and 8:30 p.m. to be specified by the noncustodial parent or court; however, if the child is being cared for during the day outside his regular place of residence, the noncustodial parent may, with advance notice to the custodial parent, pick up the child from the caregiver at an earlier time and return him to the custodial parent by 8:30 p.m.;

(ii) alternative 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;

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

(iv) extended 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 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; however, if the child is being cared for during the day outside his regular place of residence, the noncustodial parent may, with advance notice to the custodial parent, pick up the child from the caregiver at an earlier time and return him to the custodial parent by 8:30 p.m.;

(ii) alternative 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;

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

(iv) extended parent-time with the noncustodial parent may be:

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

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

(C) the remaining two-week period shall be subject to parent-time for the custodial parent consistent with these guidelines; and

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

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

(3) A parent shall notify the other parent at least 30 days in advance of extended parent-time or vacation weeks.

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

Section 6. Section **62A-4a-114** is amended to read:

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

(1) 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 78-3a-906.

~~[(2) The parent or legal guardian is only responsible for child support with regard to a case involving allegations of abuse or neglect against the parent or legal guardian if those allegations are substantiated.]~~

(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 parent, parents, or legal guardians.

~~(3)~~ (4) The attorney general shall represent the division in any legal action taken to enforce this section.

Section 7. Section **62A-11-104** is amended to read:

62A-11-104. Duties of office.

The office has the following duties:

- (1) to provide child support services if:
 - (a) the office has received an application for child support services;
 - (b) the state has provided public assistance; or
 - (c) a child lives out of the home in the protective custody, temporary custody, or custody or care of the state ~~[or another party for at least 30 days]~~;
- (2) to carry out the obligations of the department contained in this chapter and in Title 78, Chapters 45, Uniform Civil Liability for Support Act, Chapter 45a, Uniform Act on Paternity, and Chapter 45f, Uniform Interstate Family Support Act, for the purpose of collecting child support;
- (3) to recover public assistance provided to persons for which they were ineligible;
- (4) to collect money due the department which could act to offset expenditures by the state;
- (5) to cooperate with the federal government in programs designed to recover health and social service funds;

(6) to collect civil or criminal assessments, fines, fees, amounts awarded as restitution, and reimbursable expenses owed to the state or any of its political subdivisions, if the office has contracted to provide collection services;

(7) to implement income withholding for collection of child support in accordance with Part 4, Income Withholding in IV-D Cases, of this chapter;

(8) to enter into agreements with financial institutions doing business in the state to develop and operate, in coordination with such financial institutions, a data match system in the manner provided for in Section 62A-11-304.5;

(9) to establish and maintain the state case registry in the manner required by the Social Security Act, 42 U.S.C. Sec. 654a, which shall include a record in each case of:

(a) the amount of monthly or other periodic support owed under the order, and other amounts, including arrearages, interest, late payment penalties, or fees, due or overdue under the order;

(b) any amount described in Subsection (9)(a) that has been collected;

(c) the distribution of collected amounts;

(d) the birth date of any child for whom the order requires the provision of support; and

(e) the amount of any lien imposed with respect to the order pursuant to this part;

(10) to contract with the Department of Workforce Services to establish and maintain the new hire registry created under Section 35A-7-103;

(11) to determine whether an individual who has applied for or is receiving cash assistance or Medicaid is cooperating in good faith with the office as required by Section 62A-11-307.2;

(12) to finance any costs incurred from collections, fees, General Fund appropriation, contracts, and federal financial participation; and

(13) to provide notice to a noncustodial parent in accordance with Section 62A-11-304.4 of the opportunity to contest the accuracy of allegations by a custodial parent of nonpayment of past-due child support, prior to taking action against a noncustodial parent to collect the alleged past-due support.

Section 8. Section **62A-11-304.4** is amended to read:

62A-11-304.4. Filing of location information -- Service of process.

(1) (a) Upon the entry of an order in a proceeding to establish paternity or to establish, modify, or enforce a support order, each party shall file identifying information and shall update that information as changes occur:

- (i) with the court or administrative agency that conducted the proceeding; and
- (ii) after October 1, 1998, with the state case registry.

(b) The identifying information required under Subsection (1)(a) shall include the person's social security number, driver's license number, residential and mailing addresses, telephone numbers, the name, address, and telephone number of employers, and any other data required by the United States Secretary of Health and Human Services.

(c) In any subsequent child support action involving the office or between the parties, state due process requirements for notice and service of process shall be satisfied as to a party upon:

- (i) a sufficient showing that diligent effort has been made to ascertain the location of the party; and
- (ii) delivery of notice to the most recent residential or employer address filed with the court, administrative agency, or state case registry under Subsection (1)(a).

(2) (a) The office shall provide individuals who are applying for or receiving services under this chapter or who are parties to cases in which services are being provided under this chapter:

- (i) with notice of all proceedings in which support obligations might be established or modified; and
- (ii) with a copy of any order establishing or modifying a child support obligation, or in the case of a petition for modification, a notice of determination that there should be no change in the amount of the child support award, within 14 days after issuance of such order or determination.

(b) Notwithstanding Subsection (2)(a)(ii), notice in the case of an interstate order shall be

provided in accordance with Section 78-45f-614.

(3) Service of all notices and orders under this part shall be made in accordance with Title 63, Chapter 46b, Administrative Procedures Act, the Utah Rules of Civil Procedure, or this section.

(4) Consistent with Title 63, Chapter 2, Government Records Access and Management Act, the office shall adopt procedures to classify records to prohibit the unauthorized use or disclosure of information relating to a proceeding to:

- (a) establish paternity; or
- (b) establish or enforce support.

(5) (a) The office shall, upon written request, provide location information available in its files on a custodial or noncustodial parent to the other party or the other party's legal counsel provided that:

(i) the party seeking the information produces a copy of the parent-time order signed by the court;

(ii) the information has not been safeguarded in accordance with Section 454 of the Social Security Act;

(iii) the party whose location is being sought has been afforded notice in accordance with this section [~~62A-11-304.4~~] of the opportunity to contest release of the information;

(iv) the party whose location is being sought has not provided the office with a copy of a protective order, a current court order prohibiting disclosure, a current court order limiting or prohibiting the requesting person's contact with the party or child whose location is being sought, a criminal order, an administrative order pursuant to Section 62A-4a-116.5, or documentation of a pending proceeding for any of the above; and

(v) there is no other state or federal law that would prohibit disclosure.

(b) "Location information" shall consist of the current residential address of the custodial or noncustodial parent and, if different and known to the office, the current residence of any children who are the subject of the parent-time order. If there is no current residential address available, the person's place of employment and any other location information shall be

disclosed.

(c) For the purposes of this section, "reason to believe" under Section 454 of the Social Security Act means that the person seeking to safeguard information has provided to the office a copy of a protective order, current court order prohibiting disclosure, current court order prohibiting or limiting the requesting person's contact with the party or child whose location is being sought, or criminal order signed by a court of competent jurisdiction, an administrative order pursuant to Section 62A-4a-116.5, or documentation of a pending proceeding for any of the above.

(d) Neither the state, the department, the office nor its employees shall be liable for any information released in accordance with this section.

Section 9. Section **62A-11-312.5** is amended to read:

62A-11-312.5. Liens by operation of law and writs of garnishment.

(1) Each payment or installment of child support is, on and after the date it is due, a judgment with the same attributes and effect of any judgment of a district court in accordance with Section 78-45-9.3 and for purposes of Section 78-22-1.

(2) (a) A judgment under Subsection (1) or final administrative order shall constitute a lien against the real property of the obligor upon the filing of a notice of judgment-lien in the district court where the obligor's real property is located if the notice:

~~[(i) identifies this section;]~~

~~[(ii)]~~ (i) specifies the amount of past-due support; and

~~[(iii)]~~ (ii) complies with the procedural requirements of Section 78-22-1.

(b) Rule 69, Utah Rules of Civil Procedure, shall apply to any action brought to execute a judgment or final administrative order under this section against real or personal property in the obligor's possession.

~~[(c) A lien under this Subsection (2) shall continue for a period of eight years from the time of docketing unless previously satisfied.]~~

(3) (a) The office may issue a writ of garnishment against the obligor's personal property in the possession of a third party for a judgment under Subsection (1) or a final administrative

order in the same manner and with the same effect as if the writ were issued on a judgment of a district court if:

(i) the judgment or final administrative order is recorded on the office's automated case registry; and

(ii) the writ is signed by the director or the director's designee and served by certified mail, return receipt requested, or as prescribed by Rule 4, Utah Rules of Civil Procedure.

(b) A writ of garnishment issued under Subsection (3)(a) is subject to the procedures and due process protections provided by Rule 64D, Utah Rules of Civil Procedure, except as provided by Section 62A-11-316.

Section 10. Section **70A-3-311** is amended to read:

70A-3-311. Accord and satisfaction by use of instrument.

(1) If a person against whom a claim is asserted proves that that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, the amount of the claim was unliquidated or subject to a bona fide dispute, and the claimant obtained payment of the instrument, the following subsections apply.

(2) Unless Subsection (3) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(3) Subject to Subsection (4), a claim is not discharged under Subsection (2) if either of the following applies:

(a) The claimant, if an organization, proves that:

(i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted, which states that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place; and

(ii) the instrument or accompanying communication was not received by that designated person, office, or place.

(b) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This Subsection (3)(b) does not apply if the claimant is an organization that sent a statement complying with Subsection (3)(a)(i).

(4) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

(5) Merely writing a statement on a check which declares that a child support obligation is paid in full is not sufficient to bind the recipient who endorses the check. Child support obligations are considered owing unless paid in full or otherwise ordered by a tribunal.

Section 11. 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 -- Obtaining DNA sample.

(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 of the adjudication 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:

- (A) his parent or guardian;
- (B) the Division of Youth Corrections; or
- (C) the Division of Child and Family Services.

(iii) If the court orders probation or state supervision, the court shall direct that notice of its order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, 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 attends who discloses the court's order of probation is not:

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

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

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

(c) (i) The court may:

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

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

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

(iii) (A) Minors who are committed to the custody of the Division of Child and Family Services on grounds other than abuse or neglect are subject to the provisions of Title 78, Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

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

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

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

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

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

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

(ii) This Subsection (2)(f) applies only to those minors adjudicated for:

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

(B) contempt of court under Section 78-3a-901.

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

(h) The court may place the minor on a ranch or forestry camp, or similar facility for care

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

(i) The court may order the minor to repair, replace, or otherwise make restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section 78-3a-318 and impose fines in limited amounts. If a minor has been returned to this state under the Interstate Compact on Juveniles, the court may order the minor to make restitution for costs expended by any governmental entity for the return.

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

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

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

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

- (A) restrain the minor from driving for periods of time the court considers necessary; and
- (B) take possession of the minor's driver license.

(ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the suspension of driving privileges for an offense under Section 78-3a-506 are governed only by Section 78-3a-506.

(m) (i) When a minor is found within the jurisdiction of the juvenile court under Section 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to

any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

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

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

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

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

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

- (A) parent-time by the parents or one parent;
- (B) restrictions on the minor's associates;
- (C) restrictions on the minor's occupation and other activities; and
- (D) requirements to be observed by the parents or custodian.

(ii) A minor whose parents or guardians successfully complete a family or other counseling program may be credited by the court for detention, confinement, or probation time.

(q) The court may order the minor to be placed in the legal custody of the Division of Substance Abuse and 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 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(r) (i) The court may make an order committing a minor within its jurisdiction to the Utah State Developmental Center if the minor has mental retardation in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

(ii) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center when ordering a commitment under Subsection (2)(r)(i).

(s) The court may terminate all parental rights upon a finding of compliance with the provisions of Title 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.

(u) The court may combine the dispositions listed in this section if they are compatible.

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their minor. 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). The juvenile court may enter an order for child support on behalf of the minor child against the natural or adoptive parents of the child.

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

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

(B) are not subject to review under Section 78-3a-119; and

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

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

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

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

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

(iii) was committed with a weapon; and

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

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

(b) The responsible agency shall ensure that employees designated to collect the saliva

DNA specimens receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

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

(d) Payment of the reimbursement is second in priority to payments the minor is ordered to make for restitution under this section and treatment under Section 78-3a-318.

Section 12. Section **78-3a-906** is amended to read:

78-3a-906. Child support obligation when custody of a minor is vested in an individual or institution.

(1) When legal custody of a minor is vested by the court in a secure youth corrections facility or any other state department, division, or agency other than his 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 78, Chapter 45, Uniform Civil Liability for Support Act.

(2) If legal custody of a minor 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 78, Chapter 45, Uniform Civil Liability for Support Act.

(3) If referred to the Office of Recovery Services pursuant to Subsection (2) [applies], 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 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 parents, the liability for support shall accrue from the date the minor 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 minor, such as Social Security payments or railroad retirement payments made in the name of or for the benefit of the minor.

(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 minor 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 [~~(2)~~] (3) through (9) shall not apply if legal custody of a minor is vested by the court in an individual.

(b) If legal custody of a minor 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 78, Chapter 45, Uniform Civil Liability for Support Act.

Section 13. Section **78-22-1** is amended to read:

78-22-1. Duration of judgment -- Judgment as a lien upon real property -- Abstract of judgment -- Small claims judgment not a lien -- Appeal of judgment -- Child support orders.

(1) [~~Except as provided in Subsection (6), judgments~~] Judgments shall continue for eight years from the date of entry in a court unless previously satisfied or unless enforcement of the judgment is stayed in accordance with law.

(2) Prior to July 1, 1997, except as limited by Subsections (4) and (5), the entry of judgment by a district court creates a lien upon the real property of the judgment debtor, not exempt from execution, owned or acquired during the existence of the judgment, located in the county in which the judgment is entered.

(3) An abstract of judgment issued by the court in which the judgment is entered may be filed in any court of this state and shall have the same force and effect as a judgment entered in that court.

(4) Prior to July 1, 1997, and after May 15, 1998, a judgment entered in the small claims division of any court shall not qualify as a lien upon real property unless abstracted to the civil division of the district court and recorded in accordance with Subsection (3).

(5) (a) If any judgment is appealed, upon deposit, with the court where the notice of appeal is filed, of cash or other security in a form and amount considered sufficient by the court that rendered the judgment to secure the full amount of the judgment, together with ongoing interest and any other anticipated damages or costs, including attorney's fees and costs on appeal, the lien created by the judgment shall be terminated as provided in Subsection (5)(b).

(b) Upon the deposit of sufficient security as provided in Subsection (5)(a), the court shall enter an order terminating the lien created by the judgment and granting the judgment creditor a perfected lien in the deposited security as of the date of the original judgment.

(6) (a) [~~Enforcement of a~~] A child support order [~~may be pursued at any time~~] or a sum certain judgment for past due support may be enforced:

(i) within four years after the date the youngest child reaches majority[-]; or

(ii) eight years from the date of entry of the sum certain judgment entered by a tribunal.

(b) The longer period of duration shall apply in every order.

(c) A sum certain judgment may be renewed to extend the duration.

(7) (a) After July 1, 2002, a judgment entered by a district court or a justice court in the state becomes a lien upon real property if:

(i) the judgment or an abstract of the judgment containing the information identifying the judgment debtor as described in Subsection 78-22-1.5(4) is recorded in the office of the county recorder; or

(ii) the judgment or an abstract of the judgment and a separate information statement of the judgment creditor as described in Subsection 78-22-1.5(5) is recorded in the office of the county recorder.

(b) The judgment shall run from the date of entry by the district court or justice court.

(c) The real property subject to the lien includes all the real property of the judgment debtor:

(i) in the county in which the recording under Subsection (7)(a)(i) or (ii) occurs; and

(ii) owned or acquired at any time by the judgment debtor during the time the judgment is effective.

(d) State agencies are exempt from the recording requirement of Subsection (7)(a).

(8) (a) A judgment referred to in Subsection (7) shall be entered under the name of the judgment debtor in the judgment index in the office of the county recorder as required in Section 17-21-6.

(b) A judgment containing a legal description shall also be abstracted in the appropriate tract index in the office of the county recorder.

Section 14. Section **78-45-7.2** is amended to read:

78-45-7.2. Application of guidelines -- Rebuttal.

(1) The guidelines apply to any judicial or administrative order establishing or modifying an award of child support entered on or after July 1, 1989.

(2) (a) The child support guidelines shall be applied as a rebuttable presumption in establishing or modifying the amount of temporary or permanent child support.

(b) The rebuttable presumption means the provisions and considerations required by the guidelines, the award amounts resulting from the application of the guidelines, and the use of worksheets consistent with these guidelines are presumed to be correct, unless rebutted under the provisions of this section.

(3) A written finding or specific finding on the record supporting the conclusion that complying with a provision of the guidelines or ordering an award amount resulting from use of the guidelines would be unjust, inappropriate, or not in the best interest of a child in a particular case is sufficient to rebut the presumption in that case. If an order rebuts the presumption through findings, it is considered a deviated order.

(4) The following shall be considered deviations from the guidelines, if:

(a) the order includes a written finding that it is a nonguidelines order;

(b) the guidelines worksheet has the box checked for a deviation and has an explanation as to the reason; or

(c) the deviation was made because there were more children than provided for in the guidelines table.

(5) If the amount in the order and the amount on the guidelines worksheet differ, but the difference is less than \$10, the order shall not be considered deviated and the incomes listed on the worksheet may be used in adjusting support for emancipation.

~~[(4)]~~ (6) (a) Natural or adoptive children of either parent who live in the home of that parent and are not children in common to both parties may at the option of either party be taken into account under the guidelines in setting or modifying a child support award, as provided in Subsection ~~[(5)-]~~ (7). Credit may not be given if:

(i) by giving credit to the obligor, children for whom a prior support order exists would have their child support reduced; or

(ii) by giving credit to the obligee for a present family, the obligation of the obligor would increase.

(b) Additional worksheets shall be prepared that compute the obligations of the respective parents for the additional children. The obligations shall then be subtracted from the appropriate parent's income before determining the award in the instant case.

~~[(5)]~~ (7) In a proceeding to modify an existing award, consideration of natural or adoptive children ~~[other than those]~~ born after entry of the order and who are not in common to both parties may be applied to mitigate an increase in the award but may ~~[not be applied to justify a decrease in the award-]~~ not be applied:

(a) for the benefit of the obligee if the credit would increase the support obligation of the obligor from the most recent order; or

(b) for the benefit of the obligor if the amount of support received by the obligee would be decreased from the most recent order.

~~[(6)]~~ (8) (a) If a child support order has not been issued or modified within the previous

three years, a parent, legal guardian, or the office may petition the court to adjust the amount of a child support order.

(b) Upon receiving a petition under Subsection [~~(6)~~] (8)(a), the court shall, taking into account the best interests of the child, determine whether there is a difference between the amount ordered and the amount that would be required under the guidelines. If there is a difference of 10% or more and the difference is not of a temporary nature, the court shall adjust the amount to that which is provided for in the guidelines.

(c) A showing of a substantial change in circumstances is not necessary for an adjustment under Subsection [~~(6)~~] (8)(b).

[~~(7)~~] (9) (a) A parent, legal guardian, or the office may at any time petition the court to adjust the amount of a child support order if there has been a substantial change in circumstances.

(b) For purposes of Subsection [~~(7)~~] (9)(a), a substantial change in circumstances may include:

- (i) material changes in custody;
- (ii) material changes in the relative wealth or assets of the parties;
- (iii) material changes of 30% or more in the income of a parent;
- (iv) material changes in the ability of a parent to earn;
- (v) material changes in the medical needs of the child; and
- (vi) material changes in the legal responsibilities of either parent for the support of

others.

(c) Upon receiving a petition under Subsection [~~(7)~~] (9)(a), the court shall, taking into account the best interests of the child, determine whether a substantial change has occurred. If it has, the court shall then determine whether the change results in a difference of 15% or more between the amount of child support ordered and the amount that would be required under the guidelines. If there is such a difference and the difference is not of a temporary nature, the court shall adjust the amount of child support ordered to that which is provided for in the guidelines.

[~~(8)~~] (10) Notice of the opportunity to adjust a support order under Subsections [~~(6)~~] (8) and [~~(7)~~] (9) shall be included in each child support order issued or modified after July 1, 1997.

Section 15. Section **78-45-7.10** is amended to read:

78-45-7.10. Adjustment when child becomes emancipated.

(1) When a child becomes 18 years of age, or has graduated from high school during the child's normal and expected year of graduation, whichever occurs later, the base child support award is automatically adjusted to reflect the base combined child support obligation shown in the table for the remaining number of children due child support, unless otherwise provided in the child support order.

(2) The award may not be reduced by a per child amount derived from the base child support award originally ordered.

~~[(3) The income used for purposes of adjusting the support shall be the income of the parties at the time of the entry of the original order. If income was not listed in the findings or order and worksheets were not submitted, the parties may submit tax returns or other verification of the income.]~~

(3) If the incomes of the parties are not specified in the last order or the worksheets, the information regarding the incomes is not consistent, or the order deviates from the guidelines, automatic adjustment of the order does not apply and the order will continue until modified by the issuing tribunal. If the order is deviated and the parties subsequently obtain a judicial order that adjusts the support back to the date of the emancipation of the child, the Office of Recovery Services may not be required to repay any difference in the support collected during the interim.

Section 16. 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 shall be:
(a) 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~~[-]~~ of extended parent-time; or

(b) 25% 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 12 of any 30 consecutive days of extended parent-time.

(2) 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 parent-time shall be approved by the administrative agency. [~~However, normal~~]

(3) Normal parent-time and holiday visits to the custodial parent shall not be considered [~~an interruption of the consecutive day requirement~~] extended parent-time.

(4) For cases receiving IV-D child support services in accordance with Title 62A, Chapter 11, Parts 1, 3, and 4, to receive the adjustment the noncustodial parent shall provide written documentation of the extended parent-time schedule, including the beginning and ending dates, to the Office of Recovery Services in the form of either a court order or a voluntary written agreement between the parties.

(5) If the noncustodial parent complies with Subsection (4), owes no past-due support, and pays the full, unadjusted amount of current child support due for the month of scheduled extended parent-time and the following month, the Office of Recovery Services shall refund the difference from the child support due to the custodial parent or the state, between the full amount of current child support received during the month of extended parent-time and the adjusted amount of current child support due:

(a) from current support received in the month following the month of scheduled extended parent-time; or

(b) from current support received in the month following the month written documentation of the scheduled extended parent-time is provided to the office, whichever occurs later.

(6) If the noncustodial parent complies with Subsection (4), owes past-due support, and pays the full, unadjusted amount of current child support due for the month of scheduled extended parent-time, the Office of Recovery Services shall apply the difference, from the child support due to the custodial parent or the state, between the full amount of current child support received during the month of extended parent-time and the adjusted amount of current child support due, to the past-due support obligation in the case.

(7) For cases not receiving IV-D child support services in accordance with Title 62A, Chapter 11, Parts 1, 3, and 4, any potential adjustment of the support payment during the month of extended visitation or any refund that may be due to the noncustodial parent from the custodial parent, shall be resolved between the parents or through the court without involvement by the Office of Recovery Services.

~~[(2)]~~ (8) 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)]~~ (9) 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 17. Section **78-45-7.15** is amended to read:

78-45-7.15. Medical expenses.

(1) The court shall order that insurance for the medical expenses of the minor children be provided by a parent if it is available at a reasonable cost.

(2) In determining which parent shall be ordered to maintain insurance for medical expenses, the court or administrative agency may consider the:

- (a) reasonableness of the cost;
- (b) availability of a group insurance policy;
- (c) coverage of the policy; and
- (d) preference of the custodial parent.

(3) The order shall require each parent to share equally the out-of-pocket costs of the premium actually paid by a parent for the children's portion of insurance.

(4) The parent who provides the insurance coverage may receive credit against the base child support award or recover the other parent's share of the children's portion of the premium. In cases in which the parent does not have insurance but another member of the parent's household provides insurance coverage for the children, the parent may receive credit against the base child support award or recover the other parent's share of the children's portion of the premium.

~~[(4)]~~ (5) The children's portion of the premium is a per capita share of the premium actually paid. The premium expense for the children shall be calculated by dividing the premium amount by the number of persons covered under the policy and multiplying the result by the number of children in the instant case.

~~[(5)]~~ (6) The order shall require each parent to share equally all reasonable and necessary uninsured medical expenses, including deductibles and copayments, incurred for the dependent children.

~~[(6)]~~ (7) The parent ordered to maintain insurance shall provide verification of coverage to the other parent, or to the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., upon initial enrollment of the dependent children, and thereafter on or before January 2 of each calendar year. The parent shall notify the other parent, or the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., of any change of insurance carrier, premium, or benefits within 30 calendar days of the date he first knew or should have known of the change.

~~[(7)]~~ (8) A parent who incurs medical expenses shall provide written verification of the cost and payment of medical expenses to the other parent within 30 days of payment.

~~[(8)]~~ (9) In addition to any other sanctions provided by the court, a parent incurring medical expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if that parent fails to comply with Subsections ~~[(6)]~~ (7) and ~~[(7)]~~ (8).

Section 18. Section **78-45-9** is amended to read:

78-45-9. Enforcement of right of support.

(1) (a) The obligee may enforce his right of support against the obligor. The office may proceed pursuant to this chapter or any other applicable statute on behalf of:

- (i) the Department of Human Services;
- (ii) any other department or agency of this state that provides public assistance, as defined by Subsection 62A-11-303 (3), to enforce the right to recover public assistance; or
- (iii) the obligee, to enforce the obligee's right of support against the obligor.

(b) Whenever any court action is commenced by the office to enforce payment of the obligor's support obligation, the attorney general or the county attorney of the county of residence of the obligee shall represent the office.

(2) (a) A person may not commence an action, file a pleading, or submit a written stipulation to the court, without complying with Subsection (2)(b), if the purpose or effect of the action, pleading, or stipulation is to:

- (i) establish paternity;
- (ii) establish or modify a support obligation;
- (iii) change the court-ordered manner of payment of support; ~~[or]~~
- (iv) recover support due or owing~~[-]; or~~
- (v) appeal issues regarding child support laws.

(b) (i) When taking an action described in Subsection (2)(a), a person must file an affidavit with the court at the time the action is commenced, the pleading is filed, or the stipulation is submitted stating whether child support services have been or are being provided under Part IV of the Social Security Act, 42 U.S.C., Section 601 et seq., on behalf of a child who is a subject of the action, pleading, or stipulation.

(ii) If child support services have been or are being provided, under Part IV of the Social Security Act, 42 U.S.C., Section 601 et seq., the person shall mail a copy of the affidavit and a copy of the pleading or stipulation to the Office of the Attorney General, Child Support Division.

(iii) If notice is not given in accordance with this Subsection (2), the office is not bound by any decision, judgment, agreement, or compromise rendered in the action. For purposes of appeals, service must be made on the Office of the Director for the Office of Recovery Services.

(c) If IV-D services have been or are being provided, that person shall join the office as a party to the action, or mail or deliver a written request to the Office of the Attorney General, Child Support Division asking the office to join as a party to the action. A copy of that request, along with proof of service, shall be filed with the court. The office shall be represented as provided in Subsection (1)(b).

(3) Neither the attorney general nor the county attorney represents or has an

attorney-client relationship with the obligee or the obligor in carrying out the duties under this chapter.

Section 19. Section **78-45-9.3** is amended to read:

78-45-9.3. Payment under child support order -- Judgment.

(1) All monthly payments of child support shall be due on the 1st day of each month for purposes of child support services pursuant to Title 62A, Chapter 11, Part 3, income withholding services pursuant to Part 4, and income withholding procedures pursuant to Part 5.

(2) For purposes of child support services and income withholding pursuant to Title 62A, Chapter 11, Part 3 and Part 4, child support is not considered past due until the 1st day of the following month. For purposes other than those specified in Subsection (1) support shall be payable 1/2 by the 5th day of each month and 1/2 by the 20th day of that month, unless the order or decree provides for a different time for payment.

(3) Each payment or installment of child or spousal support under any child support order, as defined by Section 78-45-2, is, on and after the date it is due:

(a) a judgment with the same attributes and effect of any judgment of a district court, except as provided in Subsection (4);

(b) entitled, as a judgment, to full faith and credit in this and in any other jurisdiction; and

(c) not subject to retroactive modification by this or any other jurisdiction, except as provided in Subsection (4).

(4) A child or spousal support payment under a child support order may be modified with respect to any period during which a modification is pending, but only from the date of service of the pleading on the obligee, if the obligor is the petitioner, or on the obligor, if the obligee is the petitioner. [The] If the tribunal orders that the support should be modified, the effective date of the modification shall be the month following service on the parent whose support is affected. Once the tribunal determines that a modification is appropriate, the tribunal shall order a judgment to be entered for any difference in the original order and the modified amount for the period from the service of the pleading until the final order of modification is entered [for any

~~difference in the original order and the modified amount].~~

(5) For purposes of this section, "jurisdiction" means a state or political subdivision, a territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, Native American Tribe, or other comparable domestic or foreign jurisdiction.

(6) The judgment provided for in Subsection (3)(a), to be effective and enforceable as a lien against the real property interest of any third party relying on the public record, shall be docketed in the district court in accordance with Sections 78-22-1 and 62A-11-312.5.

Section 20. Section **78-45a-7** is amended to read:

78-45a-7. Authority for genetic testing.

(1) Upon motion of any party to the action, made at a time so as not to delay the proceedings unduly, the court shall order the mother, the child, and the alleged father to submit to genetic testing if the request is supported by a sworn statement by the requesting party:

(a) alleging paternity and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

(b) denying paternity and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(2) The court may, upon its own initiative, order the mother, the child, and the alleged father to submit to genetic testing.

(3) (a) The court shall order genetic testing:

(i) of a type generally acknowledged as reliable by accreditation bodies designated by the federal Secretary of Health and Human Services; ~~and~~

(ii) to be performed by a laboratory approved by such an accreditation body~~[-]; and~~

(iii) to be performed by a laboratory that follows strict guidelines regarding chain of custody of evidence which includes obtaining photographs of the parties at the time samples are taken.

(b) Except as provided in Subsection ~~[(6)] (7)~~, the cost of genetic testing shall be paid by the party who requested it or shared between the parties if requested by the court, subject to recoupment against the party who challenges the existence or nonexistence of paternity if the

result of the genetic test is contrary to the position of the challenger.

(4) Upon request by a party, a court may order a second genetic test that complies with Subsection (3) if paid for in advance by the requesting party and requested within 15 days of the result of the first genetic test being sent to the last-known address on file under Section 78-45a-2.

(5) If the court orders a second genetic test in accordance with Subsection (4), the additional testing must be completed within no more than 45 days of the court's order or the requesting party's objection to the first test will be automatically denied. If failure to complete the test occurs because of noncooperation of the mother or unavailability of the child, the time will be tolled.

~~[(5)]~~ (6) If any party refuses to submit to genetic testing, the court may resolve the question of paternity against that party, or may enforce its order if the rights of others and the interests of justice so require.

~~[(6)]~~ (7) The office may request genetic testing under this section and shall pay for genetic testing it requests subject to recoupment as provided in Section 62A-11-304.1.

Section 21. Section **78-45e-2** is amended to read:

78-45e-2. Voluntary declaration of paternity.

(1) As used in this part:

(a) "Birth mother" means the biological mother of a child.

(b) "Declarant father" means a male who, with the biological mother, declares that he is the father of a child conceived as the result of sexual intercourse with the mother.

(c) "Pregnancy and confinement" means the costs of care for the biological mother during her pregnancy and delivery.

(d) "Presumptive father" means the father of a child conceived or born during a marriage.

(2) The mother of a child and a man who declares that he is the father of the child and that the child was conceived as a result of sexual intercourse with the mother may sign a declaration of paternity with the intent to establish the paternity of the child.

~~[(4)]~~ (3) (a) A voluntary declaration of paternity filed in compliance with this chapter establishes a father-child relationship identical to the relationship established when a child is

born to persons married to each other.

(b) When a voluntary declaration of paternity is filed, the liabilities of the father include, but are not limited to, the reasonable expense of the mother's pregnancy and confinement and for the education, necessary support, and any funeral expenses for the child.

(c) When a father voluntarily declares paternity, his liability for past amounts due is limited to a period of four years immediately preceding the date that the voluntary declaration of paternity was filed.

~~[(2)]~~ (4) When a voluntary declaration of paternity is filed it shall be recognized as a basis for a child support order without any further requirement or proceeding regarding the establishment of paternity.

~~[(3)]~~ (5) The voluntary declaration of paternity may be completed and signed any time after the birth of the child. A voluntary declaration of paternity may not be executed or filed after consent to or relinquishment for adoption has been signed.

~~[(4)]~~ (6) The voluntary declaration of paternity shall become an amendment to the original birth certificate. The original certificate and the declaration shall be marked so as to be distinguishable. The declaration may be included as part of subsequently issued certified copies of the birth certificate. Alternatively, electronically issued copies of a certificate may reflect the amended information and the date of amendment only.

~~[(5)]~~ (7) The voluntary declaration of paternity shall be in the form prescribed by the state registrar of vital statistics and shall be accompanied with an explanation of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from signing the declaration.

~~[(6)]~~ (8) The social security number of any person who is subject to a voluntary declaration of paternity shall be placed in the records relating to the matter.

Section 22. Section **78-45e-3** is amended to read:

78-45e-3. Requirements for filing.

(1) A voluntary declaration of paternity may not be filed with the state registrar unless the declaration:

(a) states whether there has been genetic testing, and, if yes, that the declarant father's declaration of paternity is consistent with the results of the testing;

~~[(1)]~~ (b) is signed by the birth mother and ~~[biological father, and by the legal guardian or a parent of a biological father who is under 18 years of age,]~~ declarant father in the presence of two witnesses who are not related ~~[by blood or marriage];~~ and

~~[(2)]~~ (c) the mother and ~~[alleged]~~ declarant father have been given notice, orally and in writing, of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from signing the declaration.

(2) In circumstances in which the birth mother was married at the time of the conception or birth of the child and a presumptive father exists, a voluntary declaration may not be finalized without the signature of the presumptive father.

(3) If either the birth mother or the declarant father is a minor, the voluntary declaration must also be signed by the minor's parent.

Section 23. Section **78-45e-4** is amended to read:

78-45e-4. Rescission of the declaration.

(1) A signed voluntary declaration of paternity is a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of:

- (a) 60 days of signing; or
- (b) the date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.

(2) (a) Within the 60-day period, a voluntary declaration of paternity may be rescinded by filing a voluntary rescission document with the Office of Vital Records.

~~[(2)]~~ ~~(a)]~~ (b) After the period referred to in Subsection (1), a signed voluntary declaration of paternity may be challenged in court only on the grounds of fraud, duress, or material mistake of fact, with the burden of proof on the challenger.

~~[(b)]~~ (c) The legal responsibilities, including child support, of any signatory arising from the declaration may not be suspended during a challenge under Subsection (2)~~[(a)]~~(b), except for good cause shown.

(3) In determining whether to rescind the declaration the court has the same authority and obligation with regard to genetic testing as is provided in Section 78-45a-7.

(4) A child support order based on the voluntary declaration of paternity remains in effect during the pendency of any proceeding under this section, and until a final order of the court rescinding the voluntary declaration.

(5) If the declaration is rescinded, the declarant father may not recover any child support he provided for the child before entry of the order of rescission.