

**CUSTODY AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gregory S. Bell**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill changes the term "custody" to "parental responsibility."

**Highlighted Provisions:**

This bill:

- changes the term "custody" within the context of divorce to "parental responsibility"; and
- makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

**AMENDS:**

- 30-1-9**, as last amended by Chapter 1, Laws of Utah 2000
- 30-1-17.2**, as last amended by Chapter 150, Laws of Utah 2005
- 30-2-10**, as last amended by Chapter 122, Laws of Utah 1977
- 30-3-1**, as last amended by Chapter 47, Laws of Utah 1997
- 30-3-3**, as last amended by Chapter 255, Laws of Utah 2001
- 30-3-5**, as last amended by Chapter 129, Laws of Utah 2005
- 30-3-5.2**, as last amended by Chapter 255, Laws of Utah 2001



28       **30-3-10**, as last amended by Chapter 314, Laws of Utah 2006  
29       **30-3-10.1**, as last amended by Chapter 269, Laws of Utah 2003  
30       **30-3-10.2**, as last amended by Chapter 142, Laws of Utah 2005  
31       **30-3-10.3**, as last amended by Chapter 126, Laws of Utah 2001  
32       **30-3-10.4**, as last amended by Chapter 142, Laws of Utah 2005  
33       **30-3-10.8**, as enacted by Chapter 126, Laws of Utah 2001  
34       **30-3-11.2**, as enacted by Chapter 72, Laws of Utah 1969  
35       **30-3-11.3**, as last amended by Chapter 173, Laws of Utah 2006  
36       **30-3-12**, as last amended by Chapter 72, Laws of Utah 1969  
37       **30-3-32**, as last amended by Chapter 287, Laws of Utah 2006  
38       **30-3-33**, as last amended by Chapters 132 and 321, Laws of Utah 2004  
39       **30-3-34**, as last amended by Chapter 255, Laws of Utah 2001  
40       **30-3-35**, as last amended by Chapter 321, Laws of Utah 2004  
41       **30-3-35.5**, as last amended by Chapter 321, Laws of Utah 2004  
42       **30-3-38**, as last amended by Chapter 352, Laws of Utah 2004  
43       **30-4-3**, as last amended by Chapter 257, Laws of Utah 1991  
44       **30-5-2**, as last amended by Chapter 129, Laws of Utah 2005  
45       **30-6-4**, as last amended by Chapter 157, Laws of Utah 2006  
46       **30-6-4.2**, as last amended by Chapter 156, Laws of Utah 2005  
47       **30-6a-103**, as enacted by Chapter 157, Laws of Utah 2006  
48       **31A-22-610.5**, as last amended by Chapters 108 and 185, Laws of Utah 2004  
49       **53A-2-201**, as last amended by Chapter 282, Laws of Utah 1995  
50       **53A-11-101**, as last amended by Chapter 99, Laws of Utah 1999  
51       **53A-13-101.2**, as last amended by Chapter 10, Laws of Utah 1996, Second Special  
52 Session  
53       **62A-4a-119**, as enacted by Chapter 274, Laws of Utah 2000  
54       **62A-4a-412**, as last amended by Chapters 77 and 281, Laws of Utah 2006  
55       **62A-11-320.6**, as enacted by Chapter 232, Laws of Utah 1997  
56       **76-5-303**, as last amended by Chapter 255, Laws of Utah 2001  
57       **78-2a-3**, as last amended by Chapters 255 and 302, Laws of Utah 2001  
58       **78-3a-103**, as last amended by Chapters 75, 97 and 281, Laws of Utah 2006

59        **78-3a-104**, as last amended by Chapters 55, 132 and 281, Laws of Utah 2006  
60        **78-3a-105**, as last amended by Chapters 55 and 281, Laws of Utah 2006  
61        **78-3a-106**, as last amended by Chapters 13 and 281, Laws of Utah 2006  
62        **78-3a-112**, as last amended by Chapter 281, Laws of Utah 2006  
63        **78-3a-1001**, as enacted by Chapter 132, Laws of Utah 2006  
64        **78-30-4.14**, as repealed and reenacted by Chapter 186, Laws of Utah 2006  
65        **78-32-12.1**, as last amended by Chapter 129, Laws of Utah 2005  
66        **78-32-17**, as last amended by Chapter 255, Laws of Utah 2001  
67        **78-45-2**, as last amended by Chapters 161 and 186, Laws of Utah 2000  
68        **78-45-4.4**, as enacted by Chapter 161, Laws of Utah 2000  
69        **78-45-4.5**, as enacted by Chapter 161, Laws of Utah 2000  
70        **78-45-7.2**, as last amended by Chapter 176, Laws of Utah 2003  
71        **78-45-7.7**, as last amended by Chapter 255, Laws of Utah 2001  
72        **78-45-7.8**, as last amended by Chapter 118, Laws of Utah 1994  
73        **78-45-7.9**, as last amended by Chapter 186, Laws of Utah 2000  
74        **78-45-7.11**, as last amended by Chapter 176, Laws of Utah 2003  
75        **78-45-7.13**, as last amended by Chapter 246, Laws of Utah 2003  
76        **78-45-7.15**, as last amended by Chapter 176, Laws of Utah 2003  
77        **78-45-7.17**, as last amended by Chapter 255, Laws of Utah 2001  
78        **78-45c-102**, as last amended by Chapter 255, Laws of Utah 2001  
79        **78-45f-103**, as last amended by Chapter 78, Laws of Utah 2004  
80        **78-45g-610**, as enacted by Chapter 150, Laws of Utah 2005  
81        **78-45g-616**, as enacted by Chapter 150, Laws of Utah 2005

82        ENACTS:

83        **30-3-2.5**, Utah Code Annotated 1953

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

86        Section 1. Section **30-1-9** is amended to read:

87        **30-1-9. Marriage by minors -- Consent of parent or guardian -- Juvenile court**  
88        **authorization.**

89        (1) For purposes of this section, "minor" means a male or female under 18 years of age.

(2) (a) If at the time of applying for a license the applicant is a minor, and not before married, a license may not be issued without the signed consent of the minor's father, mother, or guardian given in person to the clerk; however:

(i) if the parents of the minor are divorced, consent shall be given by the parent having ~~[legal custody of]~~ parental responsibility for the minor as evidenced by an oath of affirmation to the clerk;

(ii) if the parents of the minor are divorced and have been awarded joint ~~[custody of]~~ parental responsibilities concerning the minor, consent shall be given by the parent ~~[having physical custody of]~~ with whom the minor resides the majority of the time as evidenced by an oath of affirmation to the clerk; or

(iii) if the minor is not ~~[in the custody of a parent]~~ residing with a parent, the legal guardian shall provide the consent and provide proof of guardianship by court order as well as an oath of affirmation.

(b) If the male or female is 15 years of age, the minor and the parent or guardian of the minor shall obtain a written authorization to marry from:

(i) a judge of the court exercising juvenile jurisdiction in the county where either party to the marriage resides; or

(ii) a court commissioner as permitted by rule of the Judicial Council.

(3) (a) Before issuing written authorization for a minor to marry, the judge or court commissioner shall determine:

(i) that the minor is entering into the marriage voluntarily; and

(ii) the marriage is in the best interests of the minor under the circumstances.

(b) The judge or court commissioner shall require that both parties to the marriage complete premarital counseling. This requirement may be waived if premarital counseling is not reasonably available.

(c) The judge or court commissioner may require:

(i) that the person continue to attend school, unless excused under Section 53A-11-102; and

(ii) any other conditions that the court deems reasonable under the circumstances.

(4) The determination required in Subsection (3) shall be made on the record. Any inquiry conducted by the judge or commissioner may be conducted in chambers.

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

**30-1-17.2. Action to determine validity of marriage -- Orders relating to parties, property, and children -- Presumption of paternity in marriage.**

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

(2) A man is presumed to be the father of a child if:

(a) he and the mother of the child are married to each other and the child is born during the marriage;

(b) he and the mother of the child were married to each other and the child is born within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation;

(c) before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is, or could be, declared invalid and the child is born during the invalid marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce, or after a decree of separation; or

(d) after the birth of the child, he and the mother of the child have married each other in apparent compliance with law, whether or not the marriage is, or could be declared, invalid, he voluntarily asserted his paternity of the child, and there is no other presumptive father of the child, and:

(i) the assertion is in a record filed with the state registrar;

(ii) he agreed to be and is named as the child's father on the child's birth certificate; or

(iii) he promised in a record to support the child as his own.

(3) If the child was born at the time of entry of a divorce decree, other children are named as children of the marriage, but that child is specifically not named, the husband is not presumed to be the father of the child not named in the order.

(4) A presumption of paternity established under this section may only be rebutted in

accordance with Section 78-45g-607.

(5) A final order or decree issued by a tribunal in which paternity is adjudicated may not be set aside unless the court finds that one of the parties perpetrated a fraud in the establishment of the paternity and another party did not know or could not reasonably have known of the fraud at the time of the entry of the order. The party who committed the fraud may not bring the action.

Section 3. Section **30-2-10** is amended to read:

**30-2-10. Homestead rights -- Custody of children.**

Neither the husband nor wife can remove the other or their children from the homestead without the consent of the other, unless the owner of the property shall in good faith provide another homestead suitable to the condition in life of the family; and if a husband or wife abandons his or her spouse, that spouse is entitled to the ~~[custody of]~~ sole parental responsibility for the minor children, unless a court of competent jurisdiction shall otherwise direct.

Section 4. Section **30-3-1** is amended to read:

**30-3-1. Procedure -- Residence -- Grounds.**

(1) Proceedings in divorce are commenced and conducted as provided by law for proceedings in civil causes, except as provided in this chapter.

(2) The court may decree a dissolution of the marriage contract between the petitioner and respondent on the grounds specified in Subsection (3) in all cases where the petitioner or respondent has been an actual and bona fide resident of this state and of the county where the action is brought, or if members of the armed forces of the United States who are not legal residents of this state, where the petitioner has been stationed in this state under military orders, for three months next prior to the commencement of the action.

(3) Grounds for divorce:

- (a) impotency of the respondent at the time of marriage;
- (b) adultery committed by the respondent subsequent to marriage;
- (c) willful desertion of the petitioner by the respondent for more than one year;
- (d) willful neglect of the respondent to provide for the petitioner the common necessities of life;
- (e) habitual drunkenness of the respondent;

(f) conviction of the respondent for a felony;

(g) cruel treatment of the petitioner by the respondent to the extent of causing bodily injury or great mental distress to the petitioner;

(h) irreconcilable differences of the marriage;

(i) incurable insanity; or

(j) when the husband and wife have lived separately under a decree of separate maintenance of any state for three consecutive years without cohabitation.

(4) A decree of divorce granted under Subsection (3)(j) does not affect the liability of either party under any provision for separate maintenance previously granted.

(5) (a) A divorce may not be granted on the grounds of insanity unless:

(i) the respondent has been adjudged insane by the appropriate authorities of this or another state prior to the commencement of the action; and

(ii) the court finds by the testimony of competent witnesses that the insanity of the respondent is incurable.

(b) The court shall appoint for the respondent a guardian ad litem who shall protect the interests of the respondent. A copy of the summons and complaint shall be served on the respondent in person or by publication, as provided by the laws of this state in other actions for divorce, or upon his guardian ad litem, and upon the county attorney for the county where the action is prosecuted.

(c) The county attorney shall investigate the merits of the case and if the respondent resides out of this state, take depositions as necessary, attend the proceedings, and make a defense as is just to protect the rights of the respondent and the interests of the state.

(d) In all actions the court and judge have jurisdiction over the payment of alimony, the distribution of property, and the ~~[custody]~~ allocation of parental responsibilities for and maintenance of minor children, as the courts and judges possess in other actions for divorce.

(e) The petitioner or respondent may, if the respondent resides in this state, upon notice, have the respondent brought into the court at trial, or have an examination of the respondent by two or more competent physicians, to determine the mental condition of the respondent. For this purpose either party may have leave from the court to enter any asylum or institution where the respondent may be confined. The costs of court in this action shall be apportioned by the court.

Section 5. Section **30-3-2.5** is enacted to read:

**30-3-2.5. Legislative intent regarding the terms "custody," "custodial," and "noncustodial."**

(1) The Legislature recognizes that both parents are responsible for their minor children. The Legislature further recognizes that when circumstances force parents to live apart, the children must be accounted for and a nomenclature of reference terms created.

(2) It is the intent of the Legislature that the term "custody" in reference to children who reside with and are under the legal and physical care of a parent due to a separation or divorce be changed throughout this code to "parental responsibility" whenever practicable. If, due to the context of the word "custody" it is not practicable to change the term to "parental responsibility," it shall, if applicable, nevertheless, be inferred from the context.

(3) The term "custodial parent" shall be interchangeable with "the parent with whom a child regularly resides" whenever practicable throughout this code.

(4) The term "noncustodial parent" shall be interchangeable with "the parent with whom a child does not regularly reside" whenever practicable throughout this code.

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

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

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

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

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



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

Section 7. 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 with whom the child does not regularly reside to provide child care for the dependent children, necessitated by the employment or training of the ~~[custodial]~~ parent with whom the child regularly resides.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for

the ~~[custody]~~ allocation of parental responsibilities 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]~~ parental responsibilities, 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.

(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.

(6) If a petition for modification of ~~[child custody]~~ the allocation of parental responsibilities 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.

(7) If a petition alleges noncompliance with a parent-time order by a parent, or a visitation order by a grandparent or other member of the immediate family 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.

(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]~~ been allocated the parental responsibilities for 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 (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 (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.

(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 or her rights are determined.

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

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

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

Section 9. Section **30-3-10** is amended to read:

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

(1) If a husband and wife having minor children are separated, or their marriage is declared void or dissolved, the court shall make an order for the future care and ~~[custody of]~~

allocation of parental responsibilities for the minor children as it considers appropriate.

(a) In determining [~~any form of custody~~] the allocation of parental responsibilities, the court shall consider the best interests of the child and, among other factors the court finds relevant, the following:

(i) the past conduct and demonstrated moral standards of each of the parties;

(ii) which parent is most likely to act in the best interest of the child, including allowing the child frequent and continuing contact with the [~~noncustodial~~] parent with whom the child does not regularly reside;

(iii) the extent of bonding between the parent and child, meaning the depth, quality, and nature of the relationship between a parent and child; and

(iv) those factors outlined in Section 30-3-10.2.

(b) The court shall, in every case, consider joint [~~custody~~] allocation of parental responsibilities but may award any form of [~~custody~~] parental responsibility which is determined to be in the best interest of the child.

(c) The children may not be required by either party to testify unless the trier of fact determines that extenuating circumstances exist that would necessitate the testimony of the children be heard and there is no other reasonable method to present their testimony.

(d) The court may inquire of the children and take into consideration the children's desires regarding future [~~custody~~] allocation of parental responsibilities or parent-time schedules, but the expressed desires are not controlling and the court may determine the [~~children's custody~~] allocation of parental responsibilities or parent-time otherwise. The desires of a child 16 years of age or older shall be given added weight, but is not the single controlling factor.

(e) If interviews with the children are conducted by the court pursuant to Subsection (1)(d), they shall be conducted by the judge in camera. The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with the children is the only method to ascertain the child's desires regarding [~~custody~~] the allocation of parental responsibilities.

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

parent with whom the child does not regularly reside as the court finds appropriate.

(3) If the court finds that one parent does not desire ~~[custody of]~~ any parental responsibility for the child, or has attempted to permanently relinquish ~~[custody]~~ his or her parental responsibilities to a third party, it shall take that evidence into consideration in determining whether to award ~~[custody]~~ sole parental responsibility to the other parent.

(4) (a) Except as provided in Subsection (4)(b), a court may not discriminate against a parent due to a disability, as defined in Section 57-21-2, in ~~[awarding custody]~~ allocating parental responsibilities or determining whether a substantial change has occurred for the purpose of modifying an ~~[award of custody]~~ allocation of parental responsibilities.

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

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

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

(c) Nothing in this section may be construed to apply to adoption proceedings under Title 78, Chapter 30, Adoption.

(5) This section establishes neither a preference nor a presumption for or against ~~[joint legal custody, joint physical custody, or sole custody,]~~ any form of parental responsibility but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.

Section 10. Section **30-3-10.1** is amended to read:

**30-3-10.1. Definitions -- Joint legal custody -- Joint physical custody.**

As used in this chapter:

(1) "Joint legal ~~[custody]~~ parental responsibility":

(a) means the sharing of the rights, privileges, duties, and powers of a parent by both parents, where specified;

(b) may include an award of exclusive authority by the court to one parent to make specific decisions;

(c) does not affect the physical ~~[custody]~~ residence of the child except as specified in the order ~~[of]~~ allocating joint legal [custody] parental responsibilities;

(d) is not based on awarding equal or nearly equal periods of physical ~~[custody of]~~ parental responsibility for and access to the child to each of the parents, as the best interest of the child often requires that a primary physical residence for the child be designated; and

(e) does not prohibit the court from specifying one parent as the primary caretaker and one home as the primary residence of the child.

(2) "Joint physical ~~[custody]~~ parental responsibility":

(a) means the child stays with each parent overnight for more than 30% of the year, and both parents contribute to the expenses of the child in addition to paying child support;

(b) can mean equal or nearly equal periods of parental responsibility for the child in a specific physical ~~[custody of]~~ location and access to the child by each of the parents, as required to meet the best interest of the child;

(c) may require that a primary physical residence for the child be designated; and

(d) does not prohibit the court from specifying one parent as the primary caretaker and one home as the primary residence of the child.

Section 11. Section **30-3-10.2** is amended to read:

**30-3-10.2. Joint custody order -- Factors for court determination -- Public assistance.**

(1) The court may order joint legal ~~[custody]~~ parental responsibility or joint physical ~~[custody]~~ parental responsibility or both if one or both 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]~~ allocating parental responsibilities jointly 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]~~ allocating parental responsibilities jointly, 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, including the sharing of love, affection, and contact 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 or physical custody]~~ the allocation of joint parental responsibilities;

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

(h) the past and present ability of the parents to cooperate with each other and make decisions jointly;

(i) any history of, or potential for, child abuse, spouse abuse, or kidnaping; and

(j) 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 an order ~~[for joint physical custody]~~ allocating joint parental responsibility for the residence of the child may preclude eligibility for cash assistance provided under Title 35A, Chapter 3, Employment Support Act.

(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]~~ allocating joint parental responsibilities through litigation, except in emergency situations requiring ex parte orders to protect the child.

Section 12. Section **30-3-10.3** is amended to read:

**30-3-10.3. Terms of joint legal custody order.**

(1) Unless the court orders otherwise, before a final order ~~[of]~~ allocating joint legal [custody] parental responsibilities is entered both parties shall attend the mandatory course for divorcing parents, as provided in Section 30-3-11.3, and present a certificate of completion from the course to the court.



493 (2) An order for allocation of joint legal ~~[custody]~~ parental responsibilities shall  
494 provide terms the court determines appropriate, which may include specifying:

495 (a) either the county of residence of the child, until altered by further order of the court,  
496 or the ~~[custodian]~~ person allocated parental responsibility for a child who has the sole legal  
497 right to determine the child's residence ~~[of the child]~~;

498 (b) that the parents shall exchange information concerning the health, education, and  
499 welfare of the child, and where possible, confer before making decisions concerning any of  
500 these areas;

501 (c) the rights and duties of each parent regarding the child's present and future physical  
502 care, support, and education;

503 (d) provisions to minimize disruption of the child's attendance at school and other  
504 activities, his daily routine, and his association with friends; and

505 (e) as necessary, the remaining parental rights, privileges, duties, and powers to be  
506 exercised by the parents solely, concurrently, or jointly.

507 (3) The court shall, where possible, include in the order the terms of the parenting plan  
508 provided in accordance with Section 30-3-10.8.

509 (4) Any parental rights not specifically addressed by the court order may be exercised  
510 by the parent ~~[having physical custody of]~~ with the allocation of physical parental  
511 responsibility for the child the majority of the time.

512 (5) (a) The ~~[appointment]~~ allocation to both parents of joint legal ~~[custodians]~~ parental  
513 responsibility does not impair or limit the authority of the court to order support ~~[of]~~ for the  
514 child, including payments by one ~~[custodian]~~ parent to the other.

515 (b) An order of joint legal ~~[custody]~~ parental responsibility, in itself, is not grounds for  
516 modifying a support order.

517 (c) The agreement shall contain a dispute resolution procedure the parties agree to use  
518 before seeking enforcement or modification of the terms and conditions of the order ~~[of]~~  
519 allocating joint legal [custody] parental responsibility through litigation, except in emergency  
520 situations requiring ex parte orders to protect the child.

521 Section 13. Section **30-3-10.4** is amended to read:

522 **30-3-10.4. Modification or termination of order.**

523 (1) On the motion of one or both of the parents, or the joint legal custodians if they are

not the parents, the court may, after a hearing, modify an order that ~~[established custody]~~  
allocated parental responsibilities if:

(a) the circumstances of the child or one or both custodians have materially and  
substantially changed since the entry of the order to be modified; and

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

(2) A parent requesting a modification from sole ~~[custody to joint legal custody or joint  
physical custody or both,]~~ parental responsibility to any form of joint parental responsibility or  
any other type of shared parenting arrangement, shall file and serve a proposed parenting plan  
with the petition to modify in accordance with Section 30-3-10.8.

(3) The order ~~[of]~~ allocating joint legal [custody] parental responsibility may be  
terminated by order of the court if one or both parents file a motion for termination and the  
court determines that the allocation of joint legal [custody order] parental responsibility is  
unworkable or inappropriate under existing circumstances. At the time of entry of an order  
terminating the allocation of joint legal [custody] parental responsibility, the court shall enter  
an order of sole legal ~~[custody]~~ parental responsibility under Section 30-3-10. All related  
issues, including parent-time and child support, shall also be determined and ordered by the  
court.

(4) If the court finds that an action under this section is filed or answered frivolously  
and in a manner designed to harass the other party, the court shall assess attorney's fees as costs  
against the offending party.

Section 14. Section **30-3-10.8** is amended to read:

**30-3-10.8. Parenting plan -- Filing -- Modifications.**

(1) In any proceeding under this chapter, including actions for paternity, any party  
requesting ~~[joint custody, joint legal or physical custody,]~~ allocation of any form of joint  
parental responsibility or any other type of shared parenting arrangement, shall file and serve a  
proposed parenting plan at the time of the filing of their original petition or at the time of filing  
their answer or counterclaim.

(2) In proceedings for a modification of ~~[custody]~~ the allocation of parental  
responsibilities provisions or modification of a parenting plan, a proposed parenting plan shall  
be filed and served with the petition to modify, or the answer or counterclaim to the petition to

555 modify.

556 (3) A party who files a proposed parenting plan in compliance with this section may  
557 move the court for an order of default to adopt the plan if the other party fails to file a proposed  
558 parenting plan as required by this section.

559 (4) Either party may file and serve an amended proposed parenting plan according to  
560 the rules for amending pleadings.

561 (5) The parent submitting a proposed parenting plan shall attach a verified statement  
562 that the plan is proposed by that parent in good faith.

563 (6) Both parents may submit a parenting plan which has been agreed upon. A verified  
564 statement, signed by both parents, shall be attached.

565 (7) If the parents file inconsistent parenting plans, the court may appoint a guardian ad  
566 litem to represent the best interests of the child, who may, if necessary, file a separate parenting  
567 plan reflecting the best interests of the child.

568 Section 15. Section **30-3-11.2** is amended to read:

569 **30-3-11.2. Appointment of counsel for child.**

570 If, in any action before any court of this state involving the [~~custody~~] allocation of  
571 parental responsibilities or support of a child, it shall appear in the best interests of the child to  
572 have a separate exposition of the issues and personal representation for the child, the court may  
573 appoint counsel to represent the child throughout the action, and the attorney's fee for such  
574 representation may be taxed as a cost of the action.

575 Section 16. Section **30-3-11.3** is amended to read:

576 **30-3-11.3. Mandatory educational course for divorcing parents -- Purpose --**  
577 **Curriculum -- Exceptions.**

578 (1) There is established a mandatory course for divorcing parents as a pilot program in  
579 the third and fourth judicial districts to be administered by the Administrative Office of the  
580 Courts from July 1, 1992, to June 30, 1994. On July 1, 1994, an approved course shall be  
581 implemented in all judicial districts. The mandatory course is designed to educate and  
582 sensitize divorcing parties to their children's needs both during and after the divorce process.

583 (2) The Judicial Council shall adopt rules to implement and administer this program.

584 (3) As a prerequisite to receiving a divorce decree, both parties are required to attend a  
585 mandatory course on their children's needs after filing a complaint for divorce and receiving a

docket number, unless waived under Section 30-3-4. If that requirement is waived, the court may permit the divorce action to proceed.

(4) The court may require unmarried parents to attend this educational course when those parents are involved in a ~~[visitation or custody]~~ parent-time dispute or proceeding before the court to allocate parental responsibilities.

(5) The mandatory course shall instruct both parties about divorce and its impacts on:

(a) their child or children;

(b) their family relationship;

(c) their financial responsibilities for their child or children; and

(d) that domestic violence has a harmful effect on children and family relationships.

(6) The Administrative Office of the Courts shall administer the course pursuant to Title 63, Chapter 56, Utah Procurement Code, through private or public contracts and organize the program in each of Utah's judicial districts. The contracts shall provide for the recoupment of administrative expenses through the costs charged to individual parties, pursuant to Subsection (8).

(7) A certificate of completion constitutes evidence to the court of course completion by the parties.

(8) (a) Each party shall pay the costs of the course to the independent contractor providing the course at the time and place of the course. A fee of \$8 shall be collected, as part of the course fee paid by each participant, and deposited in the Children's Legal Defense Account, described in Section 63-63a-8.

(b) Each party who is unable to pay the costs of the course may attend the course without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of impecuniosity filed in the district court. In those situations, the independent contractor shall be reimbursed for its costs from the appropriation to the Administrative Office of the Courts for "Mandatory Educational Course for Divorcing Parents Program." Before a decree of divorce may be entered, the court shall make a final review and determination of impecuniosity and may order the payment of the costs if so determined.

(9) Appropriations from the General Fund to the Administrative Office of the Courts for the "Mandatory Educational Course for Divorcing Parents Program" shall be used to pay the costs of an indigent parent who makes a showing as provided in Subsection (8)(b).

(10) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory educational course. Progress reports shall be provided annually to the Judiciary Interim Committee.

Section 17. Section **30-3-12** is amended to read:

**30-3-12. Courts to exercise family counseling powers.**

Each district court of the respective judicial districts, while sitting in matters of divorce, annulment, separate maintenance, ~~[child custody]~~ allocation of parental responsibilities, alimony and support in connection therewith, ~~[child custody]~~ allocation of parental responsibilities in habeas corpus proceedings, and adoptions, shall exercise the family counseling powers conferred by this ~~[act]~~ chapter.

Section 18. Section **30-3-32** is amended to read:

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

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

(2) (a) A court shall consider as primary the safety and well-being of the child and the parent who is the victim of domestic or family violence.

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

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

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

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

(c) An order issued by a court pursuant to Title 30, Chapter 6, Cohabitant Abuse Act shall be considered evidence of real harm or substantiated potential harm to the child.

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

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

(b) "Christmas school vacation" means the time period beginning on the evening the

child gets out of school for the Christmas or winter school break until the evening before the child returns to school, except for Christmas Eve and Christmas Day.

(c) "Extended parent-time" means a period of parent-time other than a weekend, holiday as provided in Subsections 30-3-35(2)(f) and (2)(g), religious holidays as provided in Subsections 30-3-33(3) and ~~[(15)]~~ (17), and "Christmas school vacation."

(d) "Virtual parent-time" means parent-time facilitated by tools such as telephone, email, instant messaging, video conferencing, and other wired or wireless technologies over the Internet or other communication media to supplement in-person ~~[visits]~~ parent-time between a ~~[noncustodial parent and a child or between a child and the custodial]~~ parent and child when the child is ~~[staying]~~ residing with the ~~[noncustodial]~~ other parent. Virtual parent-time is designed to supplement, not replace, in-person parent-time.

(4) If a parent relocates because of an act of domestic violence or family violence by the other parent, the court shall make specific findings and orders with regards to the application of Section 30-3-37.

Section 19. Section **30-3-33** is amended to read:

**30-3-33. Advisory guidelines.**

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

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

(2) the parent-time schedule shall be utilized to maximize the continuity and stability of the child's life;

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

(4) the responsibility for the pick up, delivery, and return of the child shall be determined by the court when the parent-time order is entered, and may be changed at any time a subsequent modification is made to the parent-time order;

(5) if the ~~[noncustodial]~~ parent with whom the child does not regularly reside will be

679 providing transportation, the ~~[custodial]~~ parent with whom the child regularly resides shall  
680 have the child ready for parent-time at the time the child is to be picked up and shall be present  
681 at the ~~[custodial]~~ child's home or ~~[shall]~~ make reasonable alternate arrangements to receive the  
682 child at the time the child is returned;

683 (6) if the ~~[custodial]~~ parent with whom the child regularly resides will be transporting  
684 the child, the ~~[noncustodial]~~ other parent shall be at the appointed place at the time ~~[the~~  
685 ~~noncustodial parent]~~ he or she is to receive the child, and have the child ready to be picked up  
686 at the appointed time and place, or have made reasonable alternate arrangements for the  
687 ~~[custodial]~~ parent with whom the child regularly resides to pick up the child;

688 (7) regular school hours may not be interrupted for a school-age child for the exercise  
689 of parent-time by either parent;

690 (8) the court may make alterations in the parent-time schedule to reasonably  
691 accommodate the work schedule of both parents and may increase the parent-time allowed to  
692 the ~~[noncustodial]~~ parent with whom the child does not regularly reside but shall not diminish  
693 the standardized parent-time provided in Sections 30-3-35 and 30-3-35.5;

694 (9) the court may make alterations in the parent-time schedule to reasonably  
695 accommodate the distance between the parties and the expense of exercising parent-time;

696 (10) neither parent-time nor child support is to be withheld due to either parent's failure  
697 to comply with a court-ordered parent-time schedule;

698 (11) the ~~[custodial]~~ parent with whom the child regularly resides shall notify the  
699 ~~[noncustodial]~~ other parent within 24 hours of receiving notice of all significant school, social,  
700 sports, and community functions in which the child is participating or being honored, and the  
701 ~~[noncustodial]~~ parent with whom the child does not regularly reside shall be entitled to attend  
702 and participate fully;

703 (12) the ~~[noncustodial]~~ parent with whom the child does not regularly reside shall have  
704 access directly to all school reports including preschool and daycare reports and medical  
705 records and shall be notified immediately by the ~~[custodial]~~ parent with whom the child  
706 regularly resides in the event of a medical emergency;

707 (13) each parent shall provide the other with his current address and telephone number,  
708 email address, and other virtual parent-time access information within 24 hours of any change;

709 (14) each parent shall permit and encourage, during reasonable hours, reasonable and

uncensored communications with the child, in the form of mail privileges and virtual parent-time if the equipment is reasonably available, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(a) the best interests of the child;

(b) each parent's ability to handle any additional expenses for virtual parent-time; and

(c) any other factors the court considers material;

(15) parental care shall be presumed to be better care for the child than surrogate care and the court shall encourage the parties to cooperate in allowing the ~~[noncustodial]~~ parent with whom the child does not regularly reside, if willing and able, to provide child care;

(16) each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the ~~[noncustodial]~~ parent with whom the child does not regularly reside with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise; and

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

Section 20. Section **30-3-34** is amended to read:

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

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

(2) The advisory guidelines as provided in Section 30-3-33 and the parent-time schedule as provided in Sections 30-3-35 and 30-3-35.5 shall be presumed to be in the best interests of the child. The parent-time schedule shall be considered the minimum parent-time to which the ~~[noncustodial]~~ parent with whom the child does not regularly reside and the child shall be entitled unless a parent can establish otherwise by a preponderance of the evidence that more or less parent-time should be awarded based upon any of the following criteria:

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

(b) the distance between the ~~[residency]~~ residence of the child and the ~~[noncustodial]~~ parent with whom the child does not regularly reside;



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

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

(e) the financial inability of the [noncustodial] parent with whom the child does not regularly reside to provide adequate food and shelter for the child during periods of parent-time;

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

(g) the incarceration of the [noncustodial] parent with whom the child does not regularly reside in a county jail, secure youth corrections facility, or an adult corrections facility;

(h) shared interests between the child and the [noncustodial] parent with whom the child does not regularly reside;

(i) the involvement of the [noncustodial] parent with whom the child does not regularly reside in the school, community, religious, or other related activities of the child;

(j) the availability of the [noncustodial] parent with whom the child does not regularly reside to care for the child when the [custodial] parent with whom the child regularly resides is unavailable to do so because of work or other circumstances;

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

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

(m) the parent-time schedule of siblings;

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

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

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

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

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

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

Section 21. Section **30-3-35** is amended to read:

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

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

(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 with whom the child does not regularly reside and the child shall be entitled:

(a) (i) one weekday evening to be specified by the [~~noncustodial~~] parent with whom the child does not regularly reside or the court from 5:30 p.m. until 8:30 p.m.; or

(ii) at the election of the [~~noncustodial~~] parent with whom the child does not regularly reside, one weekday from the time the child's school is regularly dismissed until 8:30 p.m., unless the court directs the application of Subsection (2)(a)(i);

(b) (i) alternating weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year; or

(ii) at the election of the [~~noncustodial~~] parent with whom the child does not regularly reside, from the time the child's school is regularly dismissed on Friday until 7 p.m. on Sunday, unless the court directs the application of Subsection (2)(b)(i);

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

(d) if a holiday falls on a regularly scheduled school day, the [~~noncustodial~~] parent with whom the child does not regularly reside shall be responsible for the child's attendance at school for that school day;

(e) (i) if a holiday falls on a weekend or on a Friday or Monday and the total holiday period extends beyond that time so that the child is free from school and the parent is free from work, the [~~noncustodial~~] parent with whom the child does not regularly reside shall be entitled to this lengthier holiday period; or

(ii) at the election of the [~~noncustodial~~] parent with whom the child does not regularly reside, parent-time over a scheduled holiday weekend may begin from the time the child's school is regularly dismissed at the beginning of the holiday weekend until 7 p.m. on the last day of the holiday weekend;

(f) in years ending in an odd number, the [~~noncustodial~~] parent with whom the child does not regularly reside is entitled to the following holidays:

(i) child's birthday on the day before or after the actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the [~~noncustodial~~] parent with whom the child does not regularly reside, he may take other siblings along for the birthday;

(ii) Martin Luther King, Jr. beginning 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the [~~noncustodial~~] parent with whom the child does not regularly reside is completely entitled;

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

(iv) Memorial Day beginning 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the [~~noncustodial~~] parent with whom the child does not regularly reside is completely entitled;

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

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

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

(g) in years ending in an even number, the [~~noncustodial~~] parent with whom the child does not regularly reside is entitled to the following holidays:

(i) child's birthday on actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the [~~noncustodial~~] parent with whom the child does not regularly reside, he may take other siblings along for the birthday;

(ii) Washington and Lincoln Day beginning at 6 p.m. on Friday until 7 p.m. on Monday unless the holiday extends for a lengthier period of time to which the [~~noncustodial~~] parent with whom the child does not regularly reside is completely entitled;

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

(iv) Labor Day beginning at 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the [~~noncustodial~~] parent with whom the child does not regularly reside is completely entitled;

(v) the fall school break, if applicable, commonly known as U.E.A. weekend beginning at 6 p.m. on Wednesday until Sunday at 7 p.m. unless the holiday extends for a lengthier period of time to which the ~~[noncustodial]~~ parent with whom the child does not regularly reside is completely entitled;

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

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

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

(h) the ~~[custodial]~~ parent with whom the child regularly resides is entitled to the odd year holidays in even years and the even year holidays in odd years;

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

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

(k) extended parent-time with the ~~[noncustodial]~~ parent with whom the child does not regularly reside may be:

(i) up to four weeks consecutive at the option of the ~~[noncustodial]~~ parent with whom the child does not regularly reside;

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

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

(l) the ~~[custodial]~~ parent with whom the child regularly resides shall have an identical two-week period of uninterrupted time during the children's summer vacation from school for purposes of vacation;

(m) if the child is enrolled in year-round school, the ~~[noncustodial parent's]~~ extended parent-time for the parent with whom the child does not regularly reside shall be 1/2 of the vacation time for year-round school breaks, provided the ~~[custodial]~~ parent with whom the child regularly resides has holiday and phone visits;

(n) notification of extended parent-time or vacation weeks with the child shall be

provided at least 30 days in advance to the other parent; and

(o) telephone contact and other virtual parent-time, if the equipment is reasonably available, shall be at reasonable hours and for reasonable duration, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(i) the best interests of the child;

(ii) each parent's ability to handle any additional expenses for virtual parent-time; and

(iii) any other factors the court considers material.

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

Section 22. 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 with whom the child does not regularly reside 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 with whom the child does not regularly reside preferably:

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

(B) in the ~~[custodial]~~ child's 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]~~ child's 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 with whom the child does not regularly reside preferably:

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

(B) in the ~~[custodial]~~ child's 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]~~ child's 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 with whom the child does not regularly reside or court;

(ii) one three hour visit per week to be specified by the ~~[noncustodial]~~ parent with whom the child does not regularly reside or court;

(iii) eight hours on the holidays and in the years specified in Subsections 30-3-35(2)(f) through (i); and

(iv) brief telephone contact and other virtual parent-time, if the equipment is reasonably available, with the ~~[noncustodial]~~ parent with whom the child does not regularly reside at least two times per week, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(A) the best interests of the child;

(B) each parent's ability to handle any additional expenses for virtual parent-time; and

(C) any other factors the court considers material;

(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 with whom the child does not regularly reside or court; however, if the child is being cared for during the day outside ~~[his]~~ the child's regular place of residence, the ~~[noncustodial]~~ parent with whom the child does not regularly reside may, with advance notice to the ~~[custodial]~~ parent with whom the child regularly resides, pick up the child from the caregiver at an earlier time and return ~~[him]~~ the child to the ~~[custodial parent]~~ child's home 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 with whom the child does not regularly reside;

(B) one week shall be uninterrupted time for the [noncustodial] parent with whom the child does not regularly reside;

(C) the remaining week shall be subject to parent-time for the [custodial] parent with whom the child regularly resides consistent with these guidelines; and

(D) the [custodial] parent with whom the child regularly resides shall have an identical one-week period of uninterrupted time for vacation; and

(v) brief telephone contact and virtual parent-time, if the equipment is reasonably available, with the [noncustodial] parent with whom the child does not regularly reside at least two times per week, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(A) the best interests of the child;

(B) each parent's ability to handle any additional expenses for virtual parent-time; and

(C) any other factors the court considers material;

(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 with whom the child does not regularly reside or court; however, if the child is being cared for during the day outside [his] the child's regular place of residence, the [noncustodial] parent with whom the child does not regularly reside may, with advance notice to the [custodial] parent with whom the child regularly resides, pick up the child from the caregiver at an earlier time and return [him] the child to the [custodial parent] child's home 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 with whom the child does not regularly reside may be:

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

958 ~~[noncustodial]~~ parent with whom the child does not regularly reside;

959 (B) one two-week period shall be uninterrupted time for the ~~[noncustodial]~~ parent with  
960 whom the child does not regularly reside;

961 (C) the remaining two-week period shall be subject to parent-time for the ~~[custodial]~~  
962 parent with whom the child regularly resides consistent with these guidelines; and

963 (D) the ~~[custodial]~~ parent with whom the child regularly resides shall have an identical  
964 two-week period of uninterrupted time for vacation; and

965 (v) brief telephone contact and virtual parent-time, if the equipment is reasonably  
966 available, with the ~~[noncustodial]~~ parent with whom the child does not regularly reside at least  
967 two times per week, provided that if the parties cannot agree on whether the equipment is  
968 reasonably available, the court shall decide whether the equipment for virtual parent-time is  
969 reasonably available, taking into consideration:

970 (A) the best interests of the child;

971 (B) each parent's ability to handle any additional expenses for virtual parent-time; and

972 (C) any other factors the court considers material.

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

975 (4) Virtual parent-time shall be at reasonable hours and for reasonable duration.

976 Section 23. Section **30-3-38** is amended to read:

977 **30-3-38. Pilot Program for Expedited Parent-time Enforcement.**

978 (1) There is established an Expedited Parent-time Enforcement Pilot Program in the  
979 third judicial district to be administered by the Administrative Office of the Courts from July 1,  
980 2003, to July 1, 2007.

981 (2) As used in this section:

982 (a) "Mediator" means a person who:

983 (i) is qualified to mediate parent-time disputes under criteria established by the  
984 Administrative Office of the Courts; and

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

987 (b) "Services to facilitate parent-time" or "services" means services designed to assist  
988 families in resolving parent-time problems through:



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

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

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

(i) meet with the parents to address parent-time issues within 15 days of the motion being filed;

(ii) assess the situation;

(iii) facilitate an agreement on parent-time between the parents; and

(iv) determine whether a referral to a service provider under Subsection (3)(c) is warranted.

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

(i) the services may be of significant benefit to the parents; or

(ii) (A) a mediated agreement between the parents is unlikely; and

(B) the services may facilitate an agreement.

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

(i) a written agreement between the parents is reached; or

(ii) the parents are unable to reach an agreement through mediation and:

(A) the parents have received services to facilitate parent-time;

(B) both parents object to receiving services to facilitate parent-time; or

(C) the parents are unlikely to benefit from receiving services to facilitate parent-time.

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

1020 (i) review the agreement of the parents and, if acceptable, sign it as an order;  
1021 (ii) order the parents to receive services to facilitate parent-time;  
1022 (iii) proceed with the case; or  
1023 (iv) take other appropriate action.

1024 (4) (a) If a parent makes a particularized allegation of physical or sexual abuse of a  
1025 child who is the subject of a parent-time order against the other parent or a member of the other  
1026 parent's household to a mediator or service provider, the mediator or service provider shall  
1027 immediately report that information to:

1028 (i) the judge assigned to the case who may immediately issue orders and take other  
1029 appropriate action to resolve the allegation and protect the child; and

1030 (ii) the Division of Child and Family Services within the Department of Human  
1031 Services in the manner required by Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect  
1032 Reporting Requirements.

1033 (b) If an allegation under Subsection (4)(a) is made against a parent with parent-time  
1034 rights or a member of that parent's household, parent-time by that parent shall, pursuant to an  
1035 order of the court, be supervised until:

1036 (i) the allegation has been resolved; or  
1037 (ii) a court orders otherwise.

1038 (c) Notwithstanding an allegation under Subsection (4)(a), a mediator may continue to  
1039 mediate parent-time problems and a service provider may continue to provide services to  
1040 facilitate parent-time unless otherwise ordered by a court.

1041 (5) (a) The Department of Human Services may contract with one or more entities in  
1042 accordance with Title 63, Chapter 56, Utah Procurement Code, to provide:

1043 (i) services to facilitate parent-time;  
1044 (ii) case management services; and  
1045 (iii) administrative services.

1046 (b) An entity who contracts with the Department of Human Services under Subsection  
1047 (5)(a) shall:

1048 (i) be qualified to provide one or more of the services listed in Subsection (5)(a); and  
1049 (ii) agree to follow billing guidelines established by the Department of Human Services  
1050 and this section.

- 1051 (6) (a) Except as provided in Subsection (6)(b), the cost of mediation shall be:
- 1052 (i) reduced to a sum certain;
- 1053 (ii) divided equally between the parents; and
- 1054 (iii) charged against each parent taking into account the ability of that parent to pay
- 1055 under billing guidelines adopted in accordance with this section.
- 1056 (b) A judge may order a parent to pay an amount in excess of that provided for in
- 1057 Subsection (6)(a) if the parent:
- 1058 (i) failed to participate in good faith in mediation or services to facilitate parent-time;
- 1059 or
- 1060 (ii) made an unfounded assertion or claim of physical or sexual abuse of a child.
- 1061 (c) (i) The cost of mediation and services to facilitate parent-time may be charged to
- 1062 parents at periodic intervals.
- 1063 (ii) Mediation and services to facilitate parent-time may only be terminated on the
- 1064 ground of nonpayment if both parents are delinquent.
- 1065 (7) If a parent fails to cooperate in good faith in mediation or services to facilitate
- 1066 parent-time, a court may order, in subsequent proceedings, a temporary change in [~~custody~~] the
- 1067 allocation of parental responsibilities or parent-time.
- 1068 (8) (a) The Judicial Council may make rules to implement and administer the
- 1069 provisions of this pilot program related to mediation.
- 1070 (b) The Department of Human Services may make rules to implement and administer
- 1071 the provisions of this pilot program related to services to facilitate parent-time.
- 1072 (9) (a) The Administrative Office of the Courts shall adopt outcome measures to
- 1073 evaluate the effectiveness of the mediation component of this pilot program. Progress reports
- 1074 shall be provided to the Judiciary Interim Committee as requested by the committee. At least
- 1075 once during this pilot program, the Administrative Office of the Courts shall present to the
- 1076 committee the results of a survey that measures the effectiveness of the program in terms of
- 1077 increased compliance with parent-time orders and the responses of interested persons.
- 1078 (b) The Department of Human Services shall adopt outcome measures to evaluate the
- 1079 effectiveness of the services component of this pilot program. Progress reports shall be
- 1080 provided to the Judiciary Interim Committee as requested by the committee.
- 1081 (c) The Administrative Office of the Courts and the Department of Human Services

may adopt joint outcome measures and file joint reports to satisfy the requirements of Subsections (8)(a) and (b).

(10) (a) The Department of Human Services shall, by following the procedures and requirements of Title 63, Chapter 38e, Federal Funds Procedures, apply for federal funds as available.

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

Section 24. Section **30-4-3** is amended to read:

**30-4-3. Custody and maintenance of children -- Property and debt division -- Support payments.**

(1) In all actions brought under this chapter the court may by order or decree:

(a) provide for the care, ~~[custody]~~ allocation of parental responsibilities, and maintenance of the minor children of the parties and may determine with which of the parties the children or any of them shall remain;

(b) (i) provide for support of either spouse and the support of the minor children remaining with that spouse;

(ii) provide how and when support payments shall be made; and

(iii) provide that either spouse have a lien upon the property of the other to secure payment of the support or maintenance obligation;

(c) award to either spouse the possession of any real or personal property of the other spouse or acquired by the spouses during the marriage; or

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

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

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

(iii) provide for the enforcement of these orders.

(2) The orders and decrees under this section may be enforced by sale of any property of the spouse or by contempt proceedings or otherwise as may be necessary.

(3) The court may change the support or maintenance of a party from time to time

according to circumstances, and may terminate altogether any obligation upon satisfactory proof of voluntary and permanent reconciliation. An order or decree of support or maintenance shall in every case be valid only during the joint lives of the husband and wife.

Section 25. Section **30-5-2** is amended to read:

**30-5-2. Visitation rights of grandparents.**

(1) Grandparents have standing to bring an action in district court by petition, requesting visitation in accordance with the provisions and requirements of this section. Grandparents may also file a petition for visitation rights in a pending divorce proceeding or other proceeding involving ~~[custody]~~ the allocation of parental responsibilities and visitation issues.

(2) There is a rebuttable presumption that a parent's decision with regard to grandparent visitation is in the grandchild's best interests. However, the court may override the parent's decision and grant the petitioner reasonable rights of visitation if the court finds that the petitioner has rebutted the presumption based upon factors which the court considers to be relevant, such as whether:

(a) the petitioner is a fit and proper person to have visitation with the grandchild;

(b) visitation with the grandchild has been denied or unreasonably limited;

(c) the parent is unfit or incompetent;

(d) the petitioner has acted as the ~~[grandchild's custodian]~~ person allocated parental responsibility for the grandchild or caregiver, or otherwise has had a substantial relationship with the grandchild, and the loss or cessation of that relationship is likely to cause harm to the grandchild;

(e) the petitioner's child, who is a parent of the grandchild, has died, or has become a ~~[noncustodial]~~ parent with whom the child does not regularly reside through divorce or legal separation;

(f) the petitioner's child, who is a parent of the grandchild, has been missing for an extended period of time; or

(g) visitation is in the best interest of the grandchild.

(3) The adoption of a grandchild by the grandchild's stepparent does not diminish or alter visitation rights previously ordered under this section.

(4) Subject to the provisions of Subsections (2) and (3), the court may inquire of the

grandchild and take into account the grandchild's desires regarding visitation.

(5) On the petition of a grandparent or the person allocated legal [custodian-of] parental responsibility for a grandchild the court may, after a hearing, modify an order regarding grandparent visitation if:

(a) the circumstances of the grandchild, the grandparent, or the [custodian] person allocated parental responsibility for a child have materially and substantially changed since the entry of the order to be modified, or the order has become unworkable or inappropriate under existing circumstances; and

(b) the court determines that a modification is appropriate based upon the factors set forth in Subsection (2).

(6) Grandparents may petition the court to remedy a parent's wrongful noncompliance with a visitation order.

Section 26. Section **30-6-4** is amended to read:

**30-6-4. Forms for petitions and protective orders -- Assistance.**

(1) (a) The offices of the court clerk shall provide forms and nonlegal assistance to persons seeking to proceed under this chapter.

(b) The Administrative Office of the Courts shall develop and adopt uniform forms for petitions and orders for protection in accordance with the provisions of this chapter on or before September 1, 1995. That office shall provide the forms to the clerk of each court authorized to issue protective orders. The forms shall include:

(i) a statement notifying the petitioner for an ex parte protective order that knowing falsification of any statement or information provided for the purpose of obtaining a protective order may subject the petitioner to felony prosecution;

(ii) a separate portion of the form for those provisions, the violation of which is a criminal offense, and a separate portion for those provisions, the violation of which is a civil violation, as provided in Subsection 30-6-4.2(5);

(iii) language in the criminal provision portion stating violation of any criminal provision is a class A misdemeanor, and language in the civil portion stating violation of or failure to comply with a civil provision is subject to contempt proceedings;

(iv) a space for 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,

1175 telephone number, and physical description;

1176 (v) a space for the petitioner to request a specific period of time for the civil provisions  
1177 to be in effect, not to exceed 150 days, unless the petitioner provides in writing the reason for  
1178 the requested extension of the length of time beyond 150 days;

1179 (vi) a statement advising the petitioner that when a minor child is included in an ex  
1180 parte protective order or a protective order, as part of either the criminal or the civil portion of  
1181 the order, the petitioner may provide a copy of the order to the principal of the school where the  
1182 child attends; and

1183 (vii) a statement advising the petitioner that if the respondent fails to return [~~custody~~  
1184 ~~of~~] a minor child to the petitioner as ordered in a protective order, the petitioner may obtain  
1185 from the court a writ of assistance.

1186 (2) If the person seeking to proceed under this chapter is not represented by an  
1187 attorney, it is the responsibility of the court clerk's office to provide:

1188 (a) the forms adopted pursuant to Subsection (1);

1189 (b) all other forms required to petition for an order for protection including, but not  
1190 limited to, forms for service;

1191 (c) clerical assistance in filling out the forms and filing the petition, in accordance with  
1192 Subsection (1)(a). A court clerk's office may designate any other entity, agency, or person to  
1193 provide that service, but the court clerk's office is responsible to see that the service is  
1194 provided;

1195 (d) information regarding the means available for the service of process;

1196 (e) a list of legal service organizations that may represent the petitioner in an action  
1197 brought under this chapter, together with the telephone numbers of those organizations; and

1198 (f) written information regarding the procedure for transporting a jailed or imprisoned  
1199 respondent to the protective order hearing, including an explanation of the use of transportation  
1200 order forms when necessary.

1201 (3) No charges may be imposed by a court clerk, constable, or law enforcement agency  
1202 for:

1203 (a) filing a petition under this chapter;

1204 (b) obtaining an ex parte protective order;

1205 (c) obtaining copies, either certified or not certified, necessary for service or delivery to

1206 law enforcement officials; or

1207 (d) fees for service of a petition, ex parte protective order, or protective order.

1208 (4) A petition for an order of protection shall be in writing and verified.

1209 (5) (a) All orders for protection shall be issued in the form adopted by the

1210 Administrative Office of the Courts pursuant to Subsection (1).

1211 (b) Each protective order issued, except orders issued ex parte, shall include the

1212 following language:

1213 "Respondent was afforded both notice and opportunity to be heard in the hearing that

1214 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,

1215 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of

1216 Columbia, tribal lands, and United States territories. This order complies with the Uniform

1217 Interstate Enforcement of Domestic Violence Protection Orders Act."

1218 Section 27. Section **30-6-4.2** is amended to read:

1219 **30-6-4.2. Protective orders -- Ex parte protective orders -- Modification of orders**

1220 **-- Service of process -- Duties of the court.**

1221 (1) If it appears from a petition for an order for protection or a petition to modify an

1222 order for protection that domestic violence or abuse has occurred or a modification of an order

1223 for protection is required, a court may:

1224 (a) without notice, immediately issue an order for protection ex parte or modify an

1225 order for protection ex parte as it considers necessary to protect the petitioner and all parties

1226 named to be protected in the petition; or

1227 (b) upon notice, issue an order for protection or modify an order after a hearing,

1228 whether or not the respondent appears.

1229 (2) A court may grant the following relief without notice in an order for protection or a

1230 modification issued ex parte:

1231 (a) enjoin the respondent from threatening to commit or committing domestic violence

1232 or abuse against the petitioner and any designated family or household member;

1233 (b) prohibit the respondent from harassing, telephoning, contacting, or otherwise

1234 communicating with the petitioner, directly or indirectly;

1235 (c) order that the respondent is excluded from the petitioner's residence and its

1236 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]~~ allocate to the petitioner temporary ~~[custody of]~~ sole parental responsibility for any minor children of the parties;

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

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

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

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

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

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

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

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

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

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

(6) The protective order shall include:

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

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

(c) a statement advising the petitioner that:

(i) after 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 30-6-8.

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

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

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

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

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

(10) A 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 28. Section **30-6a-103** is amended to read:

**30-6a-103. Judicial enforcement of order.**

(1) A person authorized by the law of this state to seek enforcement of a protection

order may seek enforcement of a valid foreign protection order in a tribunal of this state. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this state for the enforcement of protection orders.

(2) A tribunal of this state may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

(3) A tribunal of this state shall enforce the provisions of a valid foreign protection order which govern ~~[custody and visitation]~~ the allocation of parental responsibility and parent-time, if the order was issued in accordance with the jurisdictional requirements governing the issuance of ~~[custody and visitation]~~ parental responsibility and parent-time orders in the issuing state.

(4) A foreign protection order is valid if it:

(a) identifies the protected individual and the respondent;

(b) is currently in effect;

(c) was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

(d) was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the rights of the respondent to due process.

(5) A foreign protection order valid on its face is prima facie evidence of its validity.

(6) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(7) A tribunal of this state may enforce provisions of a mutual foreign protection order which favor a respondent only if:

(a) the respondent filed a written pleading seeking a protection order from the tribunal

of the issuing state; and

(b) the tribunal of the issuing state made specific findings in favor of the respondent.

(8) (a) The juvenile court has jurisdiction to enforce foreign protection orders under this section over which the juvenile court would have had jurisdiction if the order had been originally sought in this state.

(b) The district court has jurisdiction to enforce foreign protection orders under this section:

(i) over which the district court would have had jurisdiction if the order had been originally sought in this state; or

(ii) that are not under the jurisdiction of the juvenile court under Subsection (8)(a).

Section 29. Section **31A-22-610.5** is amended to read:

**31A-22-610.5. Dependent coverage.**

(1) As used in this section, "child" has the same meaning as defined in Section 78-45-2.

(2) (a) Any individual or group accident and health insurance policy or health maintenance organization contract that provides coverage for a policyholder's or certificate holder's dependent shall not terminate coverage of an unmarried dependent by reason of the dependent's age before the dependent's 26th birthday and shall, upon application, provide coverage for all unmarried dependents up to age 26.

(b) The cost of coverage for unmarried dependents 19 to 26 years of age shall be included in the premium on the same basis as other dependent coverage.

(c) This section does not prohibit the employer from requiring the employee to pay all or part of the cost of coverage for unmarried dependents.

(3) An individual or group accident and health insurance policy or health maintenance organization contract shall reinstate dependent coverage, and for purposes of all exclusions and limitations, shall treat the dependent as if the coverage had been in force since it was terminated; if:

(a) the dependent has not reached the age of 26 by July 1, 1995;

(b) the dependent had coverage prior to July 1, 1994;

(c) prior to July 1, 1994, the dependent's coverage was terminated solely due to the age of the dependent; and

1392 (d) the policy has not been terminated since the dependent's coverage was terminated.

1393 (4) (a) When a parent is required by a court or administrative order to provide health  
1394 insurance coverage for a child, an accident and health insurer may not deny enrollment of a  
1395 child under the accident and health insurance plan of the child's parent on the grounds the  
1396 child:

1397 (i) was born out of wedlock and is entitled to coverage under Subsection (5);

1398 (ii) was born out of wedlock and the ~~[custodial]~~ parent with whom the child regularly  
1399 resides seeks enrollment for the child under ~~[the custodial parent's]~~ his or her policy;

1400 (iii) is not claimed as a dependent on the parent's federal tax return; or

1401 (iv) does not reside with the parent or in the insurer's service area.

1402 (b) A child enrolled as required under Subsection (4)(a)(iv) is subject to the terms of  
1403 the accident and health insurance plan contract pertaining to services received outside of an  
1404 insurer's service area. A health maintenance organization must comply with Section  
1405 31A-8-502.

1406 (5) When a child has accident and health coverage through an insurer of a  
1407 ~~[noncustodial]~~ parent with whom the child does not regularly reside, and when requested by  
1408 ~~[the noncustodial or custodial]~~ either parent, the insurer shall:

1409 (a) provide information to the ~~[custodial]~~ parent with whom the child regularly resides  
1410 as necessary for the child to obtain benefits through that coverage, but the insurer or employer,  
1411 or the agents or employees of either of them, are not civilly or criminally liable for providing  
1412 information in compliance with this Subsection (5)(a), whether the information is provided  
1413 pursuant to a verbal or written request;

1414 (b) permit the ~~[custodial]~~ parent with whom the child regularly resides or the service  
1415 provider, with ~~[the custodial]~~ that parent's approval, to submit claims for covered services  
1416 without the approval of the ~~[noncustodial]~~ parent with whom the child does not regularly  
1417 reside; and

1418 (c) make payments on claims submitted in accordance with Subsection (5)(b) directly  
1419 to the ~~[custodial]~~ parent with whom the child regularly resides, the child who obtained benefits,  
1420 the provider, or the state Medicaid agency.

1421 (6) When a parent is required by a court or administrative order to provide health  
1422 coverage for a child, and the parent is eligible for family health coverage, the insurer shall:

1423 (a) permit the parent to enroll, under the family coverage, a child who is otherwise  
1424 eligible for the coverage without regard to an enrollment season restrictions;

1425 (b) if the parent is enrolled but fails to make application to obtain coverage for the  
1426 child, enroll the child under family coverage upon application of the child's other parent, the  
1427 state agency administering the Medicaid program, or the state agency administering 42 U.S.C.  
1428 651 through 669, the child support enforcement program; and

1429 (c) (i) when the child is covered by an individual policy, not disenroll or eliminate  
1430 coverage of the child unless the insurer is provided satisfactory written evidence that:

1431 (A) the court or administrative order is no longer in effect; or

1432 (B) the child is or will be enrolled in comparable accident and health coverage through  
1433 another insurer which will take effect not later than the effective date of disenrollment; or

1434 (ii) when the child is covered by a group policy, not disenroll or eliminate coverage of  
1435 the child unless the employer is provided with satisfactory written evidence, which evidence is  
1436 also provided to the insurer, that Subsection (9)(c)(i), (ii) or (iii) has happened.

1437 (7) An insurer may not impose requirements on a state agency that has been assigned  
1438 the rights of an individual eligible for medical assistance under Medicaid and covered for  
1439 accident and health benefits from the insurer that are different from requirements applicable to  
1440 an agent or assignee of any other individual so covered.

1441 (8) Insurers may not reduce their coverage of pediatric vaccines below the benefit level  
1442 in effect on May 1, 1993.

1443 (9) When a parent is required by a court or administrative order to provide health  
1444 coverage, which is available through an employer doing business in this state, the employer  
1445 shall:

1446 (a) permit the parent to enroll under family coverage any child who is otherwise  
1447 eligible for coverage without regard to any enrollment season restrictions;

1448 (b) if the parent is enrolled but fails to make application to obtain coverage of the child,  
1449 enroll the child under family coverage upon application by the child's other parent, by the state  
1450 agency administering the Medicaid program, or the state agency administering 42 U.S.C. 651  
1451 through 669, the child support enforcement program;

1452 (c) not disenroll or eliminate coverage of the child unless the employer is provided  
1453 satisfactory written evidence that:

1454 (i) the court order is no longer in effect;  
1455 (ii) the child is or will be enrolled in comparable coverage which will take effect no  
1456 later than the effective date of disenrollment; or  
1457 (iii) the employer has eliminated family health coverage for all of its employees; and  
1458 (d) withhold from the employee's compensation the employee's share, if any, of  
1459 premiums for health coverage and to pay this amount to the insurer.

1460 (10) An order issued under Section 62A-11-326.1 may be considered a "qualified  
1461 medical support order" for the purpose of enrolling a dependent child in a group accident and  
1462 health insurance plan as defined in Section 609(a), Federal Employee Retirement Income  
1463 Security Act of 1974.

1464 (11) This section does not affect any insurer's ability to require as a precondition of any  
1465 child being covered under any policy of insurance that:

1466 (a) the parent continues to be eligible for coverage;  
1467 (b) the child shall be identified to the insurer with adequate information to comply with  
1468 this section; and  
1469 (c) the premium shall be paid when due.

1470 (12) The provisions of this section apply to employee welfare benefit plans as defined  
1471 in Section 26-19-2.

1472 (13) The commissioner shall adopt rules interpreting and implementing this section  
1473 with regard to out-of-area court ordered dependent coverage.

1474 Section 30. Section **53A-2-201** is amended to read:

1475 **53A-2-201. Child's school district of residence -- Determination -- Responsibility**  
1476 **for providing educational services.**

1477 (1) The school district of residence of a minor child whose ~~custodial~~ parent or legal  
1478 guardian resides within Utah is:

1479 (a) the school district in which the ~~custodial~~ parent or legal guardian resides; or  
1480 (b) the school district in which the child regularly resides:

1481 (i) while in the custody or under the supervision of a Utah state agency;  
1482 (ii) while under the supervision of a private or public agency which is in compliance  
1483 with Section 62A-4a-606 and is authorized to provide child placement services by the state;  
1484 (iii) while living with a responsible adult resident of the district, if a determination has



1485 been made in accordance with rules of the district board of education that:

1486 (A) the child's physical, mental, moral, or emotional health would best be served by  
1487 considering the child to be a resident for school purposes;

1488 (B) exigent circumstances exist which would not permit the case to be appropriately  
1489 addressed under Section 53A-2-207; and

1490 (C) considering the child to be a resident of the district under this subsection would not  
1491 violate any other law or rule of the State Board of Education; or

1492 (iv) if the child is married or has been determined to be an emancipated minor by a  
1493 court of law or by a state administrative agency authorized to make that determination.

1494 (2) A minor child whose ~~[custodial]~~ parent or legal guardian does not reside in the state  
1495 is considered to be a resident of the district in which the child regularly lives, unless that  
1496 designation violates any other law or rule of the State Board of Education, if:

1497 (a) the child is married or an emancipated minor under Subsection (1)(b)(iv); or

1498 (b) the child lives with a resident of the district who is a responsible adult and whom  
1499 the district agrees to designate as the child's legal guardian under Section 53A-2-202; or

1500 (c) if permissible under policies adopted by the local school board, it is established to  
1501 the satisfaction of the local school board that:

1502 (i) the child lives with a responsible adult who is a resident of the district and is the  
1503 child's ~~[noncustodial]~~ parent, grandparent, brother, sister, uncle, or aunt;

1504 (ii) the child's presence in the district is not for the primary purpose of attending the  
1505 public schools;

1506 (iii) the child's physical, mental, moral, or emotional health would best be served by  
1507 considering the child to be a resident for school purposes; and

1508 (iv) the child is prepared to abide by the rules and policies of the school and school  
1509 district in which attendance is sought.

1510 (3) (a) If admission is sought under Subsection (1)(b)(iii), or (2)(c), then the district  
1511 may require the person with whom the child lives to be designated as ~~[the child's custodian]~~  
1512 having parental responsibility for the child in a durable power of attorney, issued by the party  
1513 who has been allocated legal ~~[custody of]~~ parental responsibility for the child, granting the  
1514 ~~[custodian]~~ person full authority to take any appropriate action, including authorization for  
1515 educational or medical services, in the interests of the child.

1516 (b) Both the party granting and the party empowered by the power of attorney shall  
1517 agree to:

1518 (i) assume responsibility for any fees or other charges relating to the child's education  
1519 in the district; and

1520 (ii) if eligibility for fee waivers is claimed under Section 53A-12-103, provide the  
1521 school district with all financial information requested by the district for purposes of  
1522 determining eligibility for fee waivers.

1523 (c) Notwithstanding Section 75-5-103, a power of attorney meeting the requirements of  
1524 this section and accepted by the school district shall remain in force until the earliest of the  
1525 following occurs:

1526 (i) the child reaches the age of 18, marries, or becomes emancipated;

1527 (ii) the expiration date stated in the document; or

1528 (iii) the power of attorney is revoked or rendered inoperative by the grantor or grantee,  
1529 or by order of a court of competent jurisdiction.

1530 (4) A power of attorney does not confer legal guardianship.

1531 (5) Each school district is responsible for providing educational services for all  
1532 children of school age who are residents of the district.

1533 (6) Students who were enrolled in a Utah public school by October 1, 1992, and would,  
1534 but for this part, have been allowed to attend public schools without payment of tuition shall be  
1535 permitted to continue their attendance until graduation or termination of enrollment on the  
1536 same basis as Utah resident students.

1537 Section 31. Section **53A-11-101** is amended to read:

1538 **53A-11-101. Responsibility for minor required to attend school -- Penalty for**  
1539 **violation.**

1540 (1) For purposes of this part:

1541 (a) "Habitual truant" is a school-age minor who has received more than two truancy  
1542 citations within one school year from the school in which the minor is or should be enrolled  
1543 and eight absences without a legitimate or valid excuse or who, in defiance of efforts on the  
1544 part of school authorities to resolve a student's attendance problem as required under Section  
1545 53A-11-103, refuses to regularly attend school or any scheduled period of the school day.

1546 (b) "Minor" means a person under the age of 18 years.

- 1547 (c) "Parent" includes:
- 1548 (i) a ~~[custodial]~~ parent ~~[of]~~ with whom the minor regularly resides;
- 1549 (ii) a legally appointed guardian of a minor; or
- 1550 (iii) any other person purporting to exercise any authority over the minor which could
- 1551 be exercised by persons listed under Subsections (1)(c)(i) and (ii) above.
- 1552 (d) "School-age minor" means a minor who has reached the age of six years but has not
- 1553 reached the age of eighteen years, but does not include a minor emancipated by marriage.
- 1554 (e) "Truancy citation" is an administrative notice to a truant minor requiring an
- 1555 appearance before the school truancy control officer or body from which the minor is truant.
- 1556 (f) "Truant minor" is any school-age minor who is subject to the state's compulsory
- 1557 education law and who is absent from school without a legitimate or valid excuse.
- 1558 (2) A parent shall enroll and send a school-age minor to a public or regularly
- 1559 established private school during the school year of the district in which the minor resides.
- 1560 (3) It is a class B misdemeanor for a parent to knowingly:
- 1561 (a) fail to enroll a school-age minor in school; or
- 1562 (b) refuse to respond to a written request which is delivered to the parent pursuant to
- 1563 the provisions of Subsection 53A-11-103(1)(b) by a local school board or school district.
- 1564 (4) The provisions of this section do not apply to a parent of a school-age minor who
- 1565 has been declared by the local school board to be exempt from school attendance in conformity
- 1566 with Section 53A-11-102.
- 1567 (5) A local board of education or school district shall report violations of Subsection
- 1568 (3) to the appropriate city, county, or district attorney.
- 1569 Section 32. Section **53A-13-101.2** is amended to read:
- 1570 **53A-13-101.2. Waivers of participation -- Parental permission for student clubs.**
- 1571 (1) If a parent with legal ~~[custody]~~ parental responsibility or other legal guardian of a
- 1572 student, or a secondary student, determines that the student's participation in a portion of the
- 1573 curriculum or in an activity would require the student to affirm or deny a religious belief or
- 1574 right of conscience, or engage or refrain from engaging in a practice forbidden or required in
- 1575 the exercise of a religious right or right of conscience, the parent, guardian, or student may
- 1576 request:
- 1577 (a) a waiver of the requirement to participate; or

(b) a reasonable alternative that requires reasonably equivalent performance by the student of the secular objectives of the curriculum or activity in question.

(2) The school shall promptly notify a student's parent or guardian if the student makes a request under Subsection (1).

(3) If a request is made under Subsection (1), the school shall:

(a) waive the participation requirement;

(b) provide a reasonable alternative to the requirement; or

(c) notify the requesting party that participation is required.

(4) The school shall ensure that the provisions of Subsection 53A-13-101.3(3) are met in connection with any required participation under Subsection (3)(c).

(5) A student's academic or citizenship performance may not be penalized by school officials for the exercise of a religious right or right of conscience in accordance with the provisions of this section.

(6) (a) As a condition for participation in a student club or organization that meets on school premises, regardless of the organization's relationship to school curriculum, a local school district may require every student to obtain written permission from either a parent with legal ~~[custody]~~ parental responsibility or other legal guardian.

(b) If a local school district requires written permission under Subsection (6)(a), that school district shall require written permission for:

(i) every club or organization that meets on school premises in that school district; and

(ii) every student participating in a club or organization described in Subsection (6)(b)(i).

(c) The local school district shall supply the permission form, and all completed forms shall be filed with the school's principal or the principal's designee.

Section 33. Section **62A-4a-119** is amended to read:

**62A-4a-119. Division required to produce "family impact statement" with regard to policies and rules.**

Beginning May 1, 2000, whenever the division establishes a rule, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, or the board establishes any policy in accordance with its statutory authority, those processes shall include an assessment of the impact of that rule or policy on families. Those assessments shall determine the impact of

the rule or policy on the authority of parents to oversee the care, supervision, upbringing, and education of children [~~in the parents' custody~~] for which the parents are responsible. The division shall publish a family impact statement describing those assessments and determinations, within 90 days of the establishment of each rule or policy.

Section 34. Section **62A-4a-412** is amended to read:

**62A-4a-412. Reports and information confidential.**

(1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well as any other information in the possession of the division obtained as the result of a report are private, protected, or controlled records under Title 63, Chapter 2, Government Records Access and Management Act, and may only be made available to:

(a) a police or law enforcement agency investigating a report of known or suspected child abuse or neglect;

(b) a physician who reasonably believes that a child may be the subject of abuse or neglect;

(c) an agency that has responsibility or authority to care for, treat, or supervise a minor who is the subject of a report;

(d) a contract provider that has a written contract with the division to render services to a minor who is the subject of a report;

(e) any subject of the report, the natural parents of the child, and the guardian ad litem;

(f) a court, upon a finding that access to the records may be necessary for the determination of an issue before the court, provided that in a divorce, [~~custody~~] parental responsibility, or related proceeding between private parties, the record alone is:

(i) limited to objective or undisputed facts that were verified at the time of the investigation; and

(ii) devoid of conclusions drawn by the division or any of the division's workers on the ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or neglect of another person;

(g) an office of the public prosecutor or its deputies in performing an official duty;

(h) a person authorized by a Children's Justice Center, for the purposes described in Section 67-5b-102;

(i) a person engaged in bona fide research, when approved by the director of the

division, if the information does not include names and addresses;

(j) the State Office of Education, acting on behalf of itself or on behalf of a school district, for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, limited to information with substantiated findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment;

(k) any person identified in the report as a perpetrator or possible perpetrator of child abuse or neglect, after being advised of the screening prohibition in Subsection (2);

(l) a person filing a petition for a child protective order on behalf of a child who is the subject of the report; and

(m) a licensed child-placing agency or person who is performing a preplacement adoptive evaluation in accordance with the requirements of Section 78-30-3.5.

(2) (a) A person, unless listed in Subsection (1), may not request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (1)(k) to screen for potential perpetrators of child abuse or neglect.

(b) A person who requests information knowing that it is a violation of Subsection (2)(a) to do so is subject to the criminal penalty in Subsection (4).

(3) (a) Except as provided in Section 62A-4a-1007 and Subsection (3)(b), the division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in its subsequent investigation.

(b) Notwithstanding any other provision of law, excluding Section 78-3a-314, but including this chapter and Title 63, Chapter 2, Government Records Access and Management Act, when the division makes a report or other information in its possession available under Subsection (1)(e) to a subject of the report or a parent of a child, the division shall remove from the report or other information only the names, addresses, and telephone numbers of individuals or specific information that could:

(i) identify the referent;

(ii) impede a criminal investigation; or

(iii) endanger a person's safety.

(4) Any person who wilfully permits, or aides and abets the release of data or information obtained as a result of this part, in the possession of the division or contained on any part of the Management Information System, in violation of this part or Sections 62A-4a-1003 through 62A-4a-1007, is guilty of a class C misdemeanor.

(5) The physician-patient privilege is not a ground for excluding evidence regarding a child's injuries or the cause of those injuries, in any proceeding resulting from a report made in good faith pursuant to this part.

(6) A child-placing agency or person who receives a report in connection with a preplacement adoptive evaluation pursuant to Section 78-30-3.5:

(a) may provide this report to the person who is the subject of the report; and

(b) may provide this report to a person who is performing a preplacement adoptive evaluation in accordance with the requirement of Section 78-30-3.5, or to a licensed child-placing agency or to an attorney seeking to facilitate an adoption.

Section 35. Section **62A-11-320.6** is amended to read:

**62A-11-320.6. Review and adjustment of support order for substantial change in circumstances outside three-year cycle.**

(1) (a) A parent or legal guardian involved in a case receiving IV-D services or the office, if there has been an assignment under Section 35A-3-108, may at any time request the office to review a child support order if there has been a substantial change in circumstances.

(b) For purposes of Subsection (1)(a), a substantial change in circumstances may include:

(i) material changes in ~~custody~~ parental responsibilities;

(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.

(2) Upon receiving a request under Subsection (1), the office shall review the order,

taking into account the best interests of the child involved, to determine whether the substantial change in circumstance has occurred, and if so, whether the change resulted in a difference of 15% or more between the amount of child support ordered and the amount that would be required under the child support guidelines. If there is such a difference and the difference is not of a temporary nature, the office shall:

(a) with respect to a support order issued or modified by the office, adjust the amount in accordance with the guidelines; or

(b) with respect to a support order issued or modified by a court, file a petition with the court to adjust the amount in accordance with the guidelines.

(3) The office may use automated methods to collect information for a review conducted under Subsection (2).

(4) (a) A parent or legal guardian who requests a review under Subsection (1) shall provide notice of the request to the other parent within five days and in accordance with Section 62A-11-304.4.

(b) If the office initiates and conducts a review under Subsection (1), the office shall provide notice of the request to any parent or legal guardian within five days and in accordance with Section 62A-11-304.4.

(5) Within 30 days of notice being sent under Subsection (4), a parent or legal guardian may file a response to a request for review with the office.

Section 36. Section **76-5-303** is amended to read:

**76-5-303. Custodial interference.**

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

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

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

(2) A person, whether a parent or other, is guilty of custodial interference if, having actual physical ~~[custody of]~~ parental responsibility for a child under the age of 16 pursuant to a



judicial award of any court of competent jurisdiction which grants to another person parent-time, visitation, or [~~custody~~] parental responsibility rights, and without good cause the actor conceals or detains the child with intent to deprive the other person of lawful parent-time, visitation, or [~~custody~~] parental responsibility rights.

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

Section 37. Section **78-2a-3** is amended to read:

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

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

- (a) to carry into effect its judgments, orders, and decrees; or
- (b) in aid of its jurisdiction.

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

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

(b) appeals from the district court review of:

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

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

(c) appeals from the juvenile courts;

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

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

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to

1764 a conviction of or the sentence for a first degree or capital felony;

1765 (g) appeals from the orders on petitions for extraordinary writs challenging the  
1766 decisions of the Board of Pardons and Parole except in cases involving a first degree or capital  
1767 felony;

1768 (h) appeals from district court involving domestic relations cases, including, but not  
1769 limited to, divorce, annulment, property division, ~~[child custody]~~ allocation of parental  
1770 responsibility, support, parent-time, visitation, adoption, and paternity;

1771 (i) appeals from the Utah Military Court; and

1772 (j) cases transferred to the Court of Appeals from the Supreme Court.

1773 (3) The Court of Appeals upon its own motion only and by the vote of four judges of  
1774 the court may certify to the Supreme Court for original appellate review and determination any  
1775 matter over which the Court of Appeals has original appellate jurisdiction.

1776 (4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b,  
1777 Administrative Procedures Act, in its review of agency adjudicative proceedings.

1778 Section 38. Section **78-3a-103** is amended to read:

1779 **78-3a-103. Definitions.**

1780 (1) As used in this chapter:

1781 (a) "Abused child" includes a child who:

1782 (i) has suffered or been threatened with nonaccidental physical or mental harm,  
1783 negligent treatment, or sexual exploitation; or

1784 (ii) has been the victim of any sexual abuse.

1785 (b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts  
1786 alleged in the petition have been proved.

1787 (c) "Adult" means a person 18 years of age or over, except that a person 18 years or  
1788 over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall  
1789 be referred to as a minor.

1790 (d) "Board" means the Board of Juvenile Court Judges.

1791 (e) "Child" means a person under 18 years of age.

1792 (f) "Child placement agency" means:

1793 (i) a private agency licensed to receive a child for placement or adoption under this  
1794 code; or

- 1795 (ii) a private agency that receives a child for placement or adoption in another state,  
1796 which agency is licensed or approved where such license or approval is required by law.
- 1797 (g) "Clandestine laboratory operation" is as defined in Section 58-37d-3.
- 1798 (h) "Commit" means, unless specified otherwise:
- 1799 (i) with respect to a child, to transfer legal custody; and
- 1800 (ii) with respect to a minor who is at least 18 years of age, to transfer custody.
- 1801 (i) "Court" means the juvenile court.
- 1802 (j) "Dependent child" includes a child who is homeless or without proper care through  
1803 no fault of the child's parent, guardian, or custodian.
- 1804 (k) "Deprivation of custody" means transfer of legal custody or parental responsibility  
1805 by the court from a parent or the parents or a previous person with legal [~~custodian~~] parental  
1806 responsibility to another person, agency, or institution.
- 1807 (l) "Detention" means home detention and secure detention as defined in Section  
1808 62A-7-101 for the temporary care of a minor who requires secure custody in a physically  
1809 restricting facility:
- 1810 (i) pending court disposition or transfer to another jurisdiction; or
- 1811 (ii) while under the continuing jurisdiction of the court.
- 1812 (m) "Division" means the Division of Child and Family Services.
- 1813 (n) "Formal referral" means a written report from a peace officer or other person  
1814 informing the court that a minor is or appears to be within the court's jurisdiction and that a  
1815 petition may be filed.
- 1816 (o) "Group rehabilitation therapy" means psychological and social counseling of one or  
1817 more persons in the group, depending upon the recommendation of the therapist.
- 1818 (p) "Guardianship of the person" includes the authority to consent to:
- 1819 (i) marriage;
- 1820 (ii) enlistment in the armed forces;
- 1821 (iii) major medical, surgical, or psychiatric treatment; or
- 1822 (iv) legal custody, if legal custody is not vested in another person, agency, or  
1823 institution.
- 1824 (q) "Habitual truant" is as defined in Section 53A-11-101.
- 1825 (r) "Legal custody" means a relationship embodying the following parental

1826 responsibilities, rights, and duties:

1827 (i) the right to determine the physical [~~custody~~] residence of the minor;

1828 (ii) the right and duty to protect, train, and discipline the minor;

1829 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary

1830 medical care;

1831 (iv) the right to determine where and with whom the minor shall live; and

1832 (v) the right, in an emergency, to authorize surgery or other extraordinary care.

1833 (s) "Minor" means:

1834 (i) a child; or

1835 (ii) a person who is:

1836 (A) at least 18 years of age and younger than 21 years of age; and

1837 (B) under the jurisdiction of the juvenile court.

1838 (t) "Natural parent" means a minor's biological or adoptive parent, and includes the

1839 minor's [~~noncustodial~~] parent with whom the child does not regularly reside.

1840 (u) (i) "Neglected child" means a child:

1841 (A) whose parent, guardian, or custodian has abandoned the child, except as provided

1842 in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

1843 (B) whose parent, guardian, or custodian has subjected the child to mistreatment or

1844 abuse;

1845 (C) who lacks proper parental care by reason of the fault or habits of the parent,

1846 guardian, or custodian;

1847 (D) whose parent, guardian, or custodian fails or refuses to provide proper or necessary

1848 subsistence, education, or medical care, including surgery or psychiatric services when

1849 required, or any other care necessary for health, safety, morals, or well-being;

1850 (E) who is at risk of being a neglected or abused child as defined in this chapter

1851 because another child in the same home is a neglected or abused child as defined in this

1852 chapter; or

1853 (F) whose parent permits the minor to reside, on a permanent or temporary basis, at the

1854 location of a clandestine laboratory operation.

1855 (ii) The aspect of neglect related to education, described in Subsection (1)(u)(i)(D),

1856 means that, after receiving notice that a child has been frequently absent from school without

good cause, or that the child has failed to cooperate with school authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

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

(iv) Notwithstanding Subsection (1)(u)(i), a health care decision made for a child by the child's parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(v) Nothing in Subsection (1)(u)(iv) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

(v) "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of:

(i) the assigned probation officer; and

(ii) (A) the minor; or

(B) the minor and the minor's parent, legal guardian, or custodian.

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

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

(y) (i) "Residual parental rights and duties" means those parental responsibilities, rights, and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including:

(A) the responsibility for support;

(B) the right to consent to adoption;

(C) the right to determine the child's religious affiliation; and

1888 (D) the right to reasonable parent-time unless restricted by the court.

1889 (ii) If no guardian has been appointed, "residual parental rights and duties" also include

1890 the right to consent to:

1891 (A) marriage;

1892 (B) enlistment; and

1893 (C) major medical, surgical, or psychiatric treatment.

1894 (z) "Secure facility" means any facility operated by or under contract with the Division

1895 of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth

1896 offenders committed to the division for custody and rehabilitation.

1897 (aa) "Shelter" means the temporary care of a child in a physically unrestricted facility

1898 pending court disposition or transfer to another jurisdiction.

1899 (bb) "State supervision" means a disposition that provides a more intensive level of

1900 intervention than standard probation but is less intensive or restrictive than a community

1901 placement with the Division of Juvenile Justice Services.

1902 (cc) "Substantiated" is as defined in Section 62A-4a-101.

1903 (dd) "Supported" is as defined in Section 62A-4a-101.

1904 (ee) "Termination of parental rights" means the permanent elimination of all parental

1905 rights and duties, including residual parental rights and duties, by court order.

1906 (ff) "Therapist" means:

1907 (i) a person employed by a state division or agency for the purpose of conducting

1908 psychological treatment and counseling of a minor in its custody; or

1909 (ii) any other person licensed or approved by the state for the purpose of conducting

1910 psychological treatment and counseling.

1911 (gg) "Unsubstantiated" is as defined in Section 62A-4a-101.

1912 (hh) "Without merit" is as defined in Section 62A-4a-101.

1913 (2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the

1914 Division of Child and Family Services:

1915 (a) "Custody" means the custody of a minor in the Division of Child and Family

1916 Services as of the date of disposition.

1917 (b) "Protective custody" means the shelter of a child by the Division of Child and

1918 Family Services from the time the child is removed from home until the earlier of:

- 1919 (i) the shelter hearing; or  
1920 (ii) the child's return home.  
1921 (c) "Temporary custody" means the custody of a child in the Division of Child and  
1922 Family Services from the date of the shelter hearing until disposition.  
1923 Section 39. Section **78-3a-104** is amended to read:  
1924 **78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.**  
1925 (1) Except as otherwise provided by law, the juvenile court has exclusive original  
1926 jurisdiction in proceedings concerning:  
1927 (a) a child who has violated any federal, state, or local law or municipal ordinance or a  
1928 person younger than 21 years of age who has violated any law or ordinance before becoming  
1929 18 years of age, regardless of where the violation occurred, excluding traffic laws and boating  
1930 and ordinances;  
1931 (b) a person 21 years of age or older who has failed or refused to comply with an order  
1932 of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's  
1933 21st birthday; however, the continuing jurisdiction is limited to causing compliance with  
1934 existing orders;  
1935 (c) a child who is an abused child, neglected child, or dependent child, as those terms  
1936 are defined in Section 78-3a-103;  
1937 (d) a protective order for a child pursuant to the provisions of Title 78, Chapter 3h,  
1938 Child Protective Orders, which the juvenile court may transfer to the district court if the  
1939 juvenile court has entered an ex parte protective order and finds that:  
1940 (i) the petitioner and the respondent are the natural parent, adoptive parent, or step  
1941 parent of the child who is the object of the petition;  
1942 (ii) the district court has a petition pending or an order related to ~~[custody]~~ parental  
1943 responsibility or parent-time entered under Title 30, Chapter 3, Divorce, Title 30, Chapter 6,  
1944 Cohabitant Abuse Act, or Title 78, Chapter 45g, Utah Uniform Parentage Act, in which the  
1945 petitioner and the respondent are parties; and  
1946 (iii) the best interests of the child will be better served in the district court;  
1947 (e) appointment of a guardian of the person or other guardian of a minor who comes  
1948 within the court's jurisdiction under other provisions of this section;  
1949 (f) the emancipation of a minor in accordance with Part 10, Emancipation;

1950 (g) the termination of the legal parent-child relationship in accordance with Part 4,  
1951 Termination of Parental Rights Act, including termination of residual parental rights and  
1952 duties;

1953 (h) the treatment or commitment of a mentally retarded minor;

1954 (i) a minor who is a habitual truant from school;

1955 (j) the judicial consent to the marriage of a child under age 16 upon a determination of  
1956 voluntariness or where otherwise required by law, employment, or enlistment of a child when  
1957 consent is required by law;

1958 (k) any parent or parents of a child committed to a secure youth corrections facility, to  
1959 order, at the discretion of the court and on the recommendation of a secure facility, the parent  
1960 or parents of a child committed to a secure facility for a custodial term, to undergo group  
1961 rehabilitation therapy under the direction of a secure facility therapist, who has supervision of  
1962 that parent's or parents' child, or any other therapist the court may direct, for a period directed  
1963 by the court as recommended by a secure facility;

1964 (l) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;

1965 (m) the treatment or commitment of a mentally ill child. The court may commit a child  
1966 to the physical custody of a local mental health authority in accordance with the procedures and  
1967 requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to  
1968 Division of Substance Abuse and Mental Health. The court may not commit a child directly to  
1969 the Utah State Hospital;

1970 (n) the commitment of a child in accordance with Section 62A-15-301;

1971 (o) de novo review of final agency actions resulting from an informal adjudicative  
1972 proceeding as provided in Section 63-46b-15; and

1973 (p) adoptions conducted in accordance with the procedures described in Title 78,  
1974 Chapter 30, Adoption, when the juvenile court has previously entered an order terminating the  
1975 rights of a parent and finds that adoption is in the best interest of the child.

1976 (2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive  
1977 jurisdiction over any traffic or boating offense committed by a person under 16 years of age  
1978 and concurrent jurisdiction over all other traffic or boating offenses committed by a person 16  
1979 years of age or older, except that the court shall have exclusive jurisdiction over the following  
1980 offenses committed by a child:



- 1981 (a) Section 76-5-207, automobile homicide;  
1982 (b) Section 41-6a-502, operating a vehicle while under the influence of alcohol or  
1983 drugs;  
1984 (c) Section 41-6a-528, reckless driving or Section 73-18-12, reckless operation;  
1985 (d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or  
1986 semitrailer for an extended period of time; and  
1987 (e) Section 41-6a-210 or 73-18-20, fleeing a peace officer.  
1988 (3) The court also has jurisdiction over traffic and boating offenses that are part of a  
1989 single criminal episode filed in a petition that contains an offense over which the court has  
1990 jurisdiction.  
1991 (4) The juvenile court has jurisdiction over an ungovernable or runaway child who is  
1992 referred to it by the Division of Child and Family Services or by public or private agencies that  
1993 contract with the division to provide services to that child where, despite earnest and persistent  
1994 efforts by the division or agency, the child has demonstrated that the child:  
1995 (a) is beyond the control of the child's parent, guardian, lawful custodian, or school  
1996 authorities to the extent that the child's behavior or condition endangers the child's own welfare  
1997 or the welfare of others; or  
1998 (b) has run away from home.  
1999 (5) This section does not restrict the right of access to the juvenile court by private  
2000 agencies or other persons.  
2001 (6) The juvenile court has jurisdiction of all magistrate functions relative to cases  
2002 arising under Section 78-3a-602.  
2003 (7) The juvenile court has jurisdiction to make a finding of substantiated,  
2004 unsubstantiated, or without merit, in accordance with Section 78-3a-320.  
2005 Section 40. Section **78-3a-105** is amended to read:  
2006 **78-3a-105. Concurrent jurisdiction -- District court and juvenile court.**  
2007 (1) The district court or other court has concurrent jurisdiction with the juvenile court  
2008 as follows:  
2009 (a) when a person who is 18 years of age or older and who is under the continuing  
2010 jurisdiction of the juvenile court under Section 78-3a-118 violates any federal, state, or local  
2011 law or municipal ordinance; and

(b) in establishing paternity and ordering testing for the purposes of establishing paternity, in accordance with Title 78, Chapter 45g, Utah Uniform Parentage Act, with regard to proceedings initiated under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 4, Termination of Parental Rights Act.

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

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

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

(b) The juvenile court may, by order, change the ~~[custody]~~ allocation of parental responsibility, subject to Subsection 30-3-10(4), support, parent-time, and visitation rights previously ordered in the district court as necessary to implement the order of the juvenile court for the safety and welfare of the child. The juvenile court order remains in effect so long as the jurisdiction of the juvenile court continues.

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

(5) The juvenile court has jurisdiction over questions of ~~[custody]~~ parental responsibility, support, and parent-time, of a minor who comes within the court's jurisdiction under this section or Section 78-3a-104.

Section 41. Section **78-3a-106** is amended to read:

**78-3a-106. Search warrants and subpoenas -- Authority to issue -- Protective custody -- Expedited hearing.**

(1) The court has authority to issue search warrants, subpoenas, or investigative

subpoenas in criminal cases, delinquency, and abuse, neglect, and dependency proceedings for the same purposes, in the same manner and pursuant to the same procedures set forth in the code of criminal procedure for the issuance of search warrants, subpoenas, or investigative subpoenas in other trial courts in the state.

(2) A peace officer or child welfare worker may not enter the home of a child who is not under the jurisdiction of the court, remove a child from the child's home or school, or take a child into protective custody unless:

(a) there exist exigent circumstances sufficient to relieve the peace officer or child welfare worker of the requirement to obtain a warrant;

(b) the peace officer or child welfare worker obtains a search warrant under Subsection (3);

(c) the peace officer or child welfare worker obtains a court order after the parent or guardian of the child is given notice and an opportunity to be heard; or

(d) the peace officer or child welfare worker obtains the consent of the child's parent or guardian.

(3) (a) The court may issue a warrant authorizing a child protective services worker or peace officer to search for a child and take the child into protective custody if it appears to the court upon a verified petition, recorded sworn testimony or an affidavit sworn to by a peace officer or any other person, and upon the examination of other witnesses, if required by the judge, that there is probable cause to believe that:

(i) there is a threat of substantial harm to the child's health or safety;

(ii) it is necessary to take the child into protective custody to avoid the harm described in Subsection (3)(a)(i); and

(iii) it is likely that the child will suffer substantial harm if the parent or guardian of the child is given notice and an opportunity to be heard before the child is taken into protective custody.

(b) Pursuant to Section 77-23-210, a peace officer making the search may enter a house or premises by force, if necessary, in order to remove the child.

(c) The person executing the warrant shall then take the child to the place of shelter designated by the court or the division.

(4) (a) Consistent with Subsection (5), the court shall hold an expedited hearing to

2074 determine whether a child should be placed in protective custody if:

2075       (i) a person files a petition under Section 78-3a-305;

2076       (ii) a party to the proceeding files a "Motion for Expedited Placement in Temporary

2077 Custody"; and

2078       (iii) notice of the hearing described in this Subsection (4)(a) is served consistent with

2079 the requirements for notice of a shelter hearing under Section 78-3a-306.

2080       (b) The hearing described in Subsection (4)(a):

2081       (i) shall be held within 72 hours, excluding weekends and holidays, of the filing of the

2082 motion described in Subsection (4)(a)(ii); and

2083       (ii) shall be considered a shelter hearing under Section 78-3a-306 and Utah Rules of

2084 Juvenile Procedure, Rule 13.

2085       (5) (a) The hearing and notice described in Subsection (4) are subject to:

2086       (i) Section 78-3a-306;

2087       (ii) Section 78-3a-307; and

2088       (iii) the Utah Rules of Juvenile Procedure.

2089       (b) After the hearing described in Subsection (4), a court may order a child placed in

2090 the temporary custody of the division.

2091       (6) When notice to a parent or guardian is required by this section:

2092       (a) the parent or guardian to be notified must be:

2093       (i) the child's primary caregiver; or

2094       (ii) the parent or guardian who has ~~[custody of]~~ parental responsibility for the child,

2095 when the order is sought; and

2096       (b) the person required to provide notice shall make a good faith effort to provide

2097 notice to a parent or guardian who:

2098       (i) is not required to be notified under Subsection (6)(a); and

2099       (ii) has the right to parent-time with the child.

2100       Section 42. Section **78-3a-112** is amended to read:

2101       **78-3a-112. Appearances -- Parents, guardian, or legal custodian to appear with**

2102 **minor or child -- Failure to appear -- Contempt -- Warrant of arrest, when authorized --**

2103 **Parent's employer to grant time off -- Appointment of guardian ad litem.**

2104       (1) Any person required to appear who, without reasonable cause, fails to appear may

be proceeded against for contempt of court, and the court may cause a bench warrant to issue to produce the person in court.

(2) In all cases when a minor is required to appear in court, the parents, guardian, or other person ~~[with legal custody of]~~ who has been allocated the legal parental responsibility for the minor shall appear with the minor unless excused by the judge.

(a) An employee may request permission to leave the workplace for the purpose of attending court if the employee has been notified by the juvenile court that his minor is required to appear before the court.

(b) An employer must grant permission to leave the workplace with or without pay if the employee has requested permission at least seven days in advance or within 24 hours of the employee receiving notice of the hearing.

(3) If a parent or other person who signed a written promise to appear and bring the child to court under Section 78-3a-113 or 78-3a-114 fails to appear and bring the child to court on the date set in the promise, or, if the date was to be set, after notification by the court, a warrant may be issued for the apprehension of that person or the child, or both.

(4) Willful failure to perform the promise is a misdemeanor if, at the time of the execution of the promise, the promisor is given a copy of the promise which clearly states that failure to appear and have the child appear as promised is a misdemeanor. The juvenile court shall have jurisdiction to proceed against the promisor in adult proceedings pursuant to Part 8, Adult Offenses.

(5) The court shall endeavor, through use of the warrant of arrest if necessary, as provided in Subsection (6), or by other means, to ensure the presence at all hearings of one or both parents or of the guardian of a child. If neither a parent nor guardian is present at the court proceedings, the court may appoint a guardian ad litem to protect the interest of a minor. A guardian ad litem may also be appointed whenever necessary for the welfare of a minor, whether or not a parent or guardian is present.

(6) A warrant may be issued for a parent, a guardian, a ~~[custodian]~~ person with whom the minor regularly resides, or a minor if:

(a) a summons is issued but cannot be served;

(b) it is made to appear to the court that the person to be served will not obey the summons;

(c) serving the summons will be ineffectual; or  
(d) the welfare of the minor requires that he be brought immediately into the custody of the court.

Section 43. Section **78-3a-1001** is amended to read:

**78-3a-1001. Purpose.**

(1) The purpose of this part is to provide a means by which a minor who has demonstrated the ability and capacity to manage his or her own affairs and to live independent of his or her parents or guardian, may obtain the legal status of an emancipated person with the power to enter into valid legal contracts.

(2) This part is not intended to interfere with the integrity of the family or to minimize the rights of parents or children. As provided in Section 62A-4a-201, a parent is responsible for and possesses a fundamental liberty interest in the care~~[-custody,]~~ and management of their children.

Section 44. Section **78-30-4.14** is amended to read:

**78-30-4.14. Necessary consent to adoption or relinquishment for adoption.**

(1) Except as provided in Subsection (2), consent to adoption of a child, or relinquishment of a child for adoption, is required from:

(a) the adoptee, if the adoptee is more than 12 years of age, unless the adoptee does not have the mental capacity to consent;

(b) both parents or the surviving parent of an adoptee who was conceived or born within a marriage;

(c) the mother of an adoptee born outside of marriage;

(d) any biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;

(e) consistent with Subsection (3), any biological parent who has executed and filed a voluntary declaration of paternity with the state registrar of vital statistics within the Department of Health in accordance with Title 78, Chapter 45e, Voluntary Declaration of Paternity Act, prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;

(f) an unmarried biological father of an adoptee, only if he strictly complies with the

2167 requirements of Subsections (4) through (8) and (10); and

2168 (g) the person or agency to whom an adoptee has been relinquished and that is placing  
2169 the child for adoption.

2170 (2) (a) The consent of a person described in Subsections (1)(b) through (g) is not  
2171 required if the adoptee is 18 years of age or older.

2172 (b) The consent of a person described in Subsections (1)(b) through (f) is not required  
2173 if the person's parental rights relating to the adoptee have been terminated.

2174 (3) For purposes of Subsection (1)(e), a voluntary declaration of paternity is considered  
2175 filed when it is entered into a database that:

2176 (a) can be accessed by the Department of Health; and

2177 (b) is designated by the state registrar of vital statistics as the official database for  
2178 voluntary declarations of paternity.

2179 (4) Except as provided in Subsections (5)(a) and (10), and subject to Subsection (8),  
2180 with regard to a child who is placed with adoptive parents more than six months after birth,  
2181 consent of an unmarried biological father is not required unless the unmarried biological father:

2182 (a) (i) developed a substantial relationship with the child by:

2183 (A) visiting the child monthly, unless the unmarried biological father was physically or  
2184 financially unable to visit the child on a monthly basis; or

2185 (B) engaging in regular communication with the child or with the person or authorized  
2186 agency that has lawful custody of the child;

2187 (ii) took some measure of responsibility for the child and the child's future; and

2188 (iii) demonstrated a full commitment to the responsibilities of parenthood by financial  
2189 support of the child of a fair and reasonable sum in accordance with the father's ability; or

2190 (b) (i) openly lived with the child:

2191 (A) (I) for a period of at least six months during the one-year period immediately  
2192 preceding the day on which the child is placed with adoptive parents; or

2193 (II) if the child is less than one year old, for a period of at least six months during the  
2194 period of time beginning on the day on which the child is born and ending on the day on which  
2195 the child is placed with adoptive parents; and

2196 (B) immediately preceding placement of the child with adoptive parents; and

2197 (ii) openly held himself out to be the father of the child during the six-month period

2198 described in Subsection (4)(b)(i)(A).

2199 (5) (a) If an unmarried biological father was prevented from complying with a  
2200 requirement of Subsection (4) by the person or authorized agency having lawful custody of the  
2201 child, the unmarried biological father is not required to comply with that requirement.

2202 (b) The subjective intent of an unmarried biological father, whether expressed or  
2203 otherwise, that is unsupported by evidence that the requirements in Subsection (4) have been  
2204 met, shall not preclude a determination that the father failed to meet the requirements of  
2205 Subsection (4).

2206 (6) Except as provided in Subsection (10), and subject to Subsection (8), with regard to  
2207 a child who is six months of age or less at the time the child is placed with adoptive parents,  
2208 consent of an unmarried biological father is not required unless, prior to the time the mother  
2209 executes her consent for adoption or relinquishes the child for adoption, the unmarried  
2210 biological father:

2211 (a) initiates proceedings to establish paternity under Title 78, Chapter 45g, Utah  
2212 Uniform Parentage Act;

2213 (b) files with the court that is presiding over the paternity proceeding a sworn affidavit:

2214 (i) stating that he is fully able and willing to ~~[have full custody of]~~ assume sole parental  
2215 responsibility for the child;

2216 (ii) setting forth his plans for care of the child; and

2217 (iii) agreeing to a court order of child support and the payment of expenses incurred in  
2218 connection with the mother's pregnancy and the child's birth;

2219 (c) consistent with Subsection (7), files notice of the commencement of paternity  
2220 proceedings with the state registrar of vital statistics within the Department of Health, in a  
2221 confidential registry established by the department for that purpose; and

2222 (d) offered to pay and paid a fair and reasonable amount of the expenses incurred in  
2223 connection with the mother's pregnancy and the child's birth, in accordance with his financial  
2224 ability, unless:

2225 (i) he did not have actual knowledge of the pregnancy;

2226 (ii) he was prevented from paying the expenses by the person or authorized agency  
2227 having lawful custody of the child; or

2228 (iii) the mother refuses to accept the unmarried biological father's offer to pay the



2229 expenses described in this Subsection (6)(d).

2230 (7) The notice described in Subsection (6)(c) is considered filed when it is entered into  
2231 the registry described in Subsection (6)(c).

2232 (8) Consent of an unmarried biological father is not required under this section if:

2233 (a) the court determines, in accordance with the requirements and procedures of Title  
2234 78, Chapter 3a, Part 4, Termination of Parental Rights Act, that the unmarried biological  
2235 father's rights should be terminated, based on the petition of any interested party; or

2236 (b) (i) a declaration of paternity declaring the unmarried biological father to be the  
2237 father of the child is rescinded under Section 78-45g-306; and

2238 (ii) the unmarried biological father fails to comply with Subsection (6) within ten  
2239 business days after the day that notice of the rescission described in Subsection (8)(b)(i) is  
2240 mailed by the Office of Vital Records within the Department of Health as provided in Section  
2241 78-45g-306.

2242 (9) Unless the adoptee is conceived or born within a marriage, the petitioner in an  
2243 adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a  
2244 certificate from the state registrar of vital statistics within the Department of Health, stating:

2245 (a) that a diligent search has been made of the registry of notices from unmarried  
2246 biological fathers described in Subsection (6)(c); and

2247 (b) (i) that no filing has been found pertaining to the father of the child in question; or

2248 (ii) if a filing is found, the name of the putative father and the time and date of filing.

2249 (10) (a) For purposes of this Subsection (10), "qualifying circumstance" means that, at  
2250 any point during the time period beginning at the conception of the child and ending at the time  
2251 the mother executed a consent to adoption or relinquishment of the child for adoption:

2252 (i) the child or the child's mother resided, on a permanent or temporary basis, in the  
2253 state of Utah;

2254 (ii) the mother intended to give birth to the child in the state of Utah;

2255 (iii) the child was born in the state of Utah; or

2256 (iv) the mother intended to execute a consent to adoption or relinquishment of the child  
2257 for adoption:

2258 (A) in the state of Utah; or

2259 (B) under the laws of the state of Utah.

(b) Notwithstanding the provisions of Subsections (4) and (6), the consent of an unmarried biological father is required with respect to an adoptee who is under the age of 18 if:

(i) (A) the unmarried biological father did not know, and through the exercise of reasonable diligence could not have known, before the time the mother executed a consent to adoption or relinquishment of the child for adoption, that a qualifying circumstance existed; and

(B) before the mother executed a consent to adoption or relinquishment of the child for adoption, the unmarried biological father fully complied with the requirements to establish parental rights in the child, and to preserve the right to notice of a proceeding in connection with the adoption of the child, imposed by:

(I) the last state where the unmarried biological father knew, or through the exercise of reasonable diligence should have known, that the mother resided in before the mother executed the consent to adoption or relinquishment of the child for adoption; or

(II) the state where the child was conceived; or

(ii) (A) the unmarried biological father knew, or through the exercise of reasonable diligence should have known, before the time the mother executed a consent to adoption or relinquishment of the child for adoption, that a qualifying circumstance existed; and

(B) the unmarried biological father complied with the requirements of Subsection (4) or (6) before the later of:

(I) 20 days after the day that the unmarried biological father knew, or through the exercise of reasonable diligence should have known, that a qualifying circumstance existed; or

(II) the time that the mother executed a consent to adoption or relinquishment of the child for adoption.

(11) An unmarried biological father who does not fully and strictly comply with the requirements of this section is considered to have waived and surrendered any right in relation to the child, including the right to:

(a) notice of any judicial proceeding in connection with the adoption of the child; and

(b) consent, or refuse to consent, to the adoption of the child.

Section 45. Section **78-32-12.1** is amended to read:

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

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

- (a) perform a minimum of ten hours of compensatory service; and
- (b) participate in workshops, classes, or individual counseling to educate the parent about the importance of complying with the court order and providing a child a continuing relationship with both parents.

(2) If a ~~[custodial]~~ parent with whom the child regularly resides is ordered to perform compensatory service or undergo court-ordered education, there is a rebuttable presumption that the ~~[noncustodial]~~ parent with whom the child does not regularly reside be granted parent-time by the court to provide child care during the time the ~~[custodial]~~ other parent is complying with compensatory service or education in order to recompense ~~[him]~~ the parent for parent-time wrongfully denied by the ~~[custodial]~~ other parent under the divorce decree.

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

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

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

- (a) perform a minimum of ten hours of compensatory service; and
- (b) participate in workshops, classes, or individual counseling to educate the obligor about the importance of complying with the court order and providing the children with a regular and stable source of support.

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

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

(8) The sanctions that the court shall impose under this section do not prevent the court from imposing other sanctions or prevent any person from bringing a cause of action allowed under state or federal law.

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

Section 46. Section **78-32-17** is amended to read:

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

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

(2) Proof of noncompliance may be demonstrated by showing that:

(a) the order was made, and filed with the district court; and

(b) the parent knew of the order because:

(i) the order was mailed to the parent at his last-known address as shown on the court records;

(ii) the parent was present in court at the time the order was pronounced;

(iii) the parent entered into a written stipulation and the parent or counsel for the parent was sent a copy of the order;

(iv) counsel was present in court and entered into a stipulation which was accepted and the order based upon the stipulation was then sent to counsel for the parent; or

(v) the parent was properly served and failed to answer.

(3) Upon establishment of a prima facie case of contempt under Subsection (2), the obligor under the child support order has the burden of proving inability to comply with the child support order.

(4) A court may, in addition to other available sanctions, withhold, suspend, or restrict the use of driver's licenses, professional and occupational licenses, and recreational licenses and impose conditions for reinstatement upon a finding that:

(a) an obligor has:

(i) made no payment for 60 days on a current obligation of support as set forth in an

administrative or court order and, thereafter, has failed to make a good faith effort under the circumstances to make payment on the support obligation in accordance with the order; or

(ii) made no payment for 60 days on an arrearage obligation of support as set forth in a payment schedule, written agreement with the Office of Recovery Services, or an administrative or judicial order and, thereafter, has failed to make a good faith effort under the circumstances to make payment on the arrearage obligation in accordance with the payment schedule, agreement, or order; and

(iii) not obtained a judicial order staying enforcement of the support or arrearage obligation for which the obligor would be otherwise delinquent;

(b) a ~~custodial~~ parent has with whom the child regularly resides:

(i) violated a parent-time order by denying contact for 60 days between a ~~noncustodial~~ parent with whom the child does not regularly reside and a child and, thereafter, has failed to make a good faith effort under the circumstances to comply with a parent-time order; and

(ii) not obtained a judicial order staying enforcement of the parent-time order; or

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

Section 47. Section **78-45-2** is amended to read:

**78-45-2. Definitions.**

As used in this chapter:

(1) "Adjusted gross income" means income calculated under Subsection 78-45-7.6(1).

(2) "Administrative agency" means the Office of Recovery Services or the Department of Human Services.

(3) "Administrative order" means an order that has been issued by the Office of Recovery Services, the Department of Human Services, or an administrative agency of another state or other comparable jurisdiction with similar authority to that of the office.

(4) "Base child support award" means the award that may be ordered and is calculated using the guidelines before additions for medical expenses and work-related child care costs.

(5) "Base combined child support obligation table," "child support table," "base child support obligation table," "low income table," or "table" means the appropriate table in Section 78-45-7.14.

2384 (6) "Child" means:

2385 (a) a son or daughter under the age of 18 years who is not otherwise emancipated,  
2386 self-supporting, married, or a member of the armed forces of the United States;

2387 (b) a son or daughter over the age of 18 years, while enrolled in high school during the  
2388 normal and expected year of graduation and not otherwise emancipated, self-supporting,  
2389 married, or a member of the armed forces of the United States; or

2390 (c) a son or daughter of any age who is incapacitated from earning a living and, if able  
2391 to provide some financial resources to the family, is not able to support self by own means.

2392 (7) "Child support" means a base child support award as defined in Section 78-45-2, or  
2393 a monthly financial award for uninsured medical expenses, ordered by a tribunal for the  
2394 support of a child, including current periodic payments, all arrearages which accrue under an  
2395 order for current periodic payments, and sum certain judgments awarded for arrearages,  
2396 medical expenses, and child care costs.

2397 (8) "Child support order" or "support order" means a judgment, decree, or order of a  
2398 tribunal whether interlocutory or final, whether or not prospectively or retroactively modifiable,  
2399 whether incidental to a proceeding for divorce, judicial or legal separation, separate  
2400 maintenance, paternity, guardianship, civil protection, or otherwise which:

2401 (a) establishes or modifies child support;

2402 (b) reduces child support arrearages to judgment; or

2403 (c) establishes child support or registers a child support order under Title 78, Chapter  
2404 45f, Uniform Interstate Family Support Act.

2405 (9) "Child support services" or "IV-D child support services" means services provided  
2406 pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. Section 651 et seq.

2407 (10) "Court" means the district court or juvenile court.

2408 (11) "Guidelines" means the child support guidelines in Sections 78-45-7.2 through  
2409 78-45-7.21.

2410 (12) "Income" means earnings, compensation, or other payment due to an individual,  
2411 regardless of source, whether denominated as wages, salary, commission, bonus, pay,  
2412 allowances, contract payment, or otherwise, including severance pay, sick pay, and incentive  
2413 pay. "Income" includes:

2414 (a) all gain derived from capital assets, labor, or both, including profit gained through

2415 sale or conversion of capital assets;  
2416 (b) interest and dividends;  
2417 (c) periodic payments made under pension or retirement programs or insurance policies  
2418 of any type;  
2419 (d) unemployment compensation benefits;  
2420 (e) workers' compensation benefits; and  
2421 (f) disability benefits.

2422 (13) "Joint physical [~~custody~~] parental responsibility" means the child stays with each  
2423 parent overnight for more than 30% of the year, and both parents contribute to the expenses of  
2424 the child in addition to paying child support.

2425 (14) "Medical expenses" means health and dental expenses and related insurance costs.

2426 (15) "Obligee" means an individual, this state, another state, or another comparable  
2427 jurisdiction to whom child support is owed or who is entitled to reimbursement of child  
2428 support or public assistance.

2429 (16) "Obligor" means any person owing a duty of support.

2430 (17) "Office" means the Office of Recovery Services within the Department of Human  
2431 Services.

2432 (18) "Parent" includes a natural parent, or an adoptive parent.

2433 (19) "Split [~~custody~~] parental responsibility" means that each parent has physical  
2434 custody of at least one of the children residing with them.

2435 (20) "State" includes any state, territory, possession of the United States, the District of  
2436 Columbia, the Commonwealth of Puerto Rico, Native American Tribe, or other comparable  
2437 domestic or foreign jurisdiction.

2438 (21) "Third party" means an agency or a person other than the biological or adoptive  
2439 parent or a child who provides care, maintenance, and support to a child.

2440 (22) "Tribunal" means the district court, the Department of Human Services, Office of  
2441 Recovery Services, or court or administrative agency of any state, territory, possession of the  
2442 United States, the District of Columbia, the Commonwealth of Puerto Rico, Native American  
2443 Tribe, or other comparable domestic or foreign jurisdiction.

2444 (23) "Work-related child care costs" means reasonable child care costs for up to a  
2445 full-time work week or training schedule as necessitated by the employment or training of a

2446 parent under Section 78-45-7.17.

2447 (24) "Worksheets" means the forms used to aid in calculating the base child support  
2448 award.

2449 Section 48. Section **78-45-4.4** is amended to read:

2450 **78-45-4.4. Support follows the child.**

2451 (1) Obligations ordered for child support and medical expenses are for the use and  
2452 benefit of the child and shall follow the child.

2453 (2) Except in cases of joint physical ~~[custody]~~ parental responsibility and split  
2454 ~~[custody]~~ parental responsibility as defined in Section 78-45-2, when the allocation of physical  
2455 ~~[custody]~~ parental responsibility changes from that assumed in the original order, the parent  
2456 without physical ~~[custody of]~~ parental responsibility for a child shall be required to pay the  
2457 amount of support determined in accordance with Sections 78-45-7.7 and 78-45-7.15, without  
2458 the need to modify the order for:

2459 (a) the parent who has physical ~~[custody of]~~ parental responsibility for the child;

2460 (b) a relative to whom physical ~~[custody of]~~ parental responsibility for the child has  
2461 been voluntarily given; or

2462 (c) the state when the child is residing outside of the home in the protective custody,  
2463 temporary custody, or custody or care of the state or a state-licensed facility for at least 30 days.

2464 Section 49. Section **78-45-4.5** is amended to read:

2465 **78-45-4.5. Waiver and estoppel.**

2466 (1) Waiver and estoppel shall apply only to the ~~[custodial]~~ parent with whom the child  
2467 regularly resides when there is no order already established by a tribunal if ~~[the custodial]~~ that  
2468 parent freely and voluntarily waives support specifically and in writing.

2469 (2) Waiver and estoppel may not be applied against any third party or public entity that  
2470 may provide support for the child.

2471 (3) A ~~[noncustodial]~~ parent with whom the child does not regularly reside, or alleged  
2472 biological father in a paternity action, may not rely on statements made by the ~~[custodial]~~ other  
2473 parent of the child concerning child support unless the statements are reduced to writing and  
2474 signed by both parties.

2475 Section 50. Section **78-45-7.2** is amended to read:

2476 **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.

(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 (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

2508 respective parents for the additional children. The obligations shall then be subtracted from the  
2509 appropriate parent's income before determining the award in the instant case.

2510 (7) In a proceeding to modify an existing award, consideration of natural or adoptive  
2511 children born after entry of the order and who are not in common to both parties may be  
2512 applied to mitigate an increase in the award but may not be applied:

2513 (a) for the benefit of the obligee if the credit would increase the support obligation of  
2514 the obligor from the most recent order; or

2515 (b) for the benefit of the obligor if the amount of support received by the obligee would  
2516 be decreased from the most recent order.

2517 (8) (a) If a child support order has not been issued or modified within the previous  
2518 three years, a parent, legal guardian, or the office may petition the court to adjust the amount of  
2519 a child support order.

2520 (b) Upon receiving a petition under Subsection (8)(a), the court shall, taking into  
2521 account the best interests of the child, determine whether there is a difference between the  
2522 amount ordered and the amount that would be required under the guidelines. If there is a  
2523 difference of 10% or more and the difference is not of a temporary nature, the court shall adjust  
2524 the amount to that which is provided for in the guidelines.

2525 (c) A showing of a substantial change in circumstances is not necessary for an  
2526 adjustment under Subsection (8)(b).

2527 (9) (a) A parent, legal guardian, or the office may at any time petition the court to  
2528 adjust the amount of a child support order if there has been a substantial change in  
2529 circumstances.

2530 (b) For purposes of Subsection (9)(a), a substantial change in circumstances may  
2531 include:

2532 (i) material changes in ~~custody~~ the allocation of parental responsibilities;

2533 (ii) material changes in the relative wealth or assets of the parties;

2534 (iii) material changes of 30% or more in the income of a parent;

2535 (iv) material changes in the ability of a parent to earn;

2536 (v) material changes in the medical needs of the child; and

2537 (vi) material changes in the legal responsibilities of either parent for the support of  
2538 others.

(c) Upon receiving a petition under Subsection (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.

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

Section 51. Section **78-45-7.7** is amended to read:

**78-45-7.7. Calculation of obligations.**

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

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

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

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

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

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

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

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

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

Section 52. Section **78-45-7.8** is amended to read:

**78-45-7.8. Split custody -- Obligation calculations.**

In cases of split ~~custody~~ parental responsibilities, the base child support award shall be determined as follows:

(1) Combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base combined child support obligation table. Allocate a portion of the calculated amount between the parents in proportion to the number of children for whom each parent has physical ~~custody~~ parental responsibility. The amounts so calculated are a tentative base child support obligation due each parent from the other parent for support of the child or children for whom each parent has physical ~~custody~~ parental responsibility.

(2) Multiply the tentative base child support obligation due each parent by the percentage that the other parent's adjusted gross income bears to the total combined adjusted gross income of both parents.

(3) Subtract the lesser amount in Subsection (2) from the larger amount to determine the base child support award to be paid by the parent with the greater financial obligation.

2601 Section 53. Section **78-45-7.9** is amended to read:

2602 **78-45-7.9. Joint physical custody -- Obligation calculations.**

2603 In cases of joint physical [~~custody~~] parental responsibilities, the base child support  
2604 award shall be determined as follows:

2605 (1) Combine the adjusted gross incomes of the parents and determine the base  
2606 combined child support obligation using the base combined child support obligation table.

2607 (2) Calculate each parent's proportionate share of the base combined child support  
2608 obligation by multiplying the base combined child support obligation by each parent's  
2609 percentage of combined adjusted gross income. The amounts so calculated are the base child  
2610 support obligation due from each parent for support of the children.

2611 (3) If the obligor's time with the children exceeds 110 overnights, the obligation shall  
2612 be calculated further as follows:

2613 (a) if the amount of time to be spent with the children is between 110 and 131  
2614 overnights, multiply the number of overnights over 110 by .0027, then multiply the result by  
2615 the base combined child support obligation, and then subtract the result from the obligor's  
2616 payment as determined by Subsection (2) to arrive at the obligor's payment; or

2617 (b) if the amount of time to be spent with the children is 131 overnights or more,  
2618 multiply the number of overnights over 130 by .0084, then multiply the result by the base  
2619 combined child support obligation, and then subtract the result from the obligor's payment as  
2620 determined in Subsection (3)(a) to arrive at the obligor's payment.

2621 Section 54. Section **78-45-7.11** is amended to read:

2622 **78-45-7.11. Reduction for extended parent-time.**

2623 (1) The base child support award shall be:

2624 (a) reduced by 50% for each child for time periods during which the child is with the  
2625 [~~noncustodial~~] parent with whom the child does not regularly reside by order of the court or by  
2626 written agreement of the parties for at least 25 of any 30 consecutive days of extended  
2627 parent-time; or

2628 (b) 25% for each child for time periods during which the child is with the  
2629 [~~noncustodial~~] parent with whom the child does not regularly reside by order of the court, or by  
2630 written agreement of the parties for at least 12 of any 30 consecutive days of extended  
2631 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.

(3) Normal parent-time and holiday visits to the ~~[custodial]~~ parent ~~[shall]~~ with whom the child regularly resides may not be considered 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 with whom the child does not regularly reside 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 with whom the child does not regularly reside 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 with whom the child regularly resides 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 with whom the child does not regularly reside 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 with whom the child regularly resides 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 with whom the child does not regularly reside from the parent with whom the child regularly resides, shall be resolved between the parents or through the court without involvement by the Office of Recovery Services.

(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.

(9) The reduction in this section does not apply to parents with joint physical ~~[custody obligations]~~ parental responsibilities calculated in accordance with Section 78-45-7.9.

Section 55. Section ~~78-45-7.13~~ is amended to read:

**78-45-7.13. Advisory committee -- Membership and functions.**

(1) On or before March 1, 2007 and then on or before March 1 of every fourth year subsequently, the governor shall appoint an advisory committee consisting of:

(a) one representative recommended by the Office of Recovery Services;

(b) one representative recommended by the Judicial Council;

(c) two representatives recommended by the Utah State Bar Association;

(d) two representatives of ~~[noncustodial]~~ parents with children who do not regularly reside with them;

(e) two representatives of ~~[custodial]~~ parents whose children regularly reside with them;

(f) one representative with expertise in economics; and

(g) two representatives from diverse interests related to child support issues, as the governor may consider appropriate. However, none of the individuals appointed under this subsection may be members of the Utah State Bar Association.

(2) The term of the committee members expires one month after the report of the committee is submitted to the Legislature under Subsection (4).

(3) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) (a) The advisory committee shall review the child support guidelines to ensure their application results in the determination of appropriate child support award amounts.

(b) The committee shall report to the Legislative Judiciary Interim Committee on or before October 1 in 2007 and then on or before October 1 of every fourth year subsequently.

(c) The committee's report shall include recommendations of the majority of the committee, as well as specific recommendations of individual members of the committee.

(5) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(6) Staff for the committee shall be provided from the existing budgets of the Department of Human Services.

(7) The committee ceases to exist no later than November 1, 2003 and then on November 1 of every fourth year subsequently.

(8) Any committee appointed by the governor prior to October 1, 2003 ceases to exist on November 1, 2003.

Section 56. 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 with whom the child regularly resides.



(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.

(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.

(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.

(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.

(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.

(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 (7) and (8).

Section 57. Section **78-45-7.17** is amended to read:

**78-45-7.17. Child care costs.**

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

2756 actually incurring the child care costs.

2757 (2) The need to include child care costs is not presumed, but may be awarded on a  
2758 case-by-case basis, if the costs are related to the career or occupational training of the  
2759 ~~[custodial]~~ parent with whom the child regularly resides, or if otherwise ordered by the court in  
2760 the interest of justice.

2761 Section 58. Section **78-45c-102** is amended to read:

2762 **78-45c-102. Definitions.**

2763 As used in this chapter:

2764 (1) "Abandoned" means left without provision for reasonable and necessary care or  
2765 supervision.

2766 (2) "Child" means an individual under 18 years of age and not married.

2767 (3) "Child custody determination" means a judgment, decree, or other order of a court  
2768 providing for the ~~[legal custody, physical custody,]~~ allocation of parental responsibilities or  
2769 parent-time with respect to a child. The term includes a permanent, temporary, initial, and  
2770 modification order. The term does not include an order relating to child support or other  
2771 monetary obligation of an individual.

2772 (4) "Child custody proceeding" means a proceeding in which ~~[legal custody, physical~~  
2773 ~~custody,]~~ the allocation of parental responsibility or parent-time with respect to a child is an  
2774 issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency,  
2775 guardianship, paternity, termination of parental rights, and protection from domestic violence,  
2776 in which the issue may appear. The term does not include a proceeding involving juvenile  
2777 delinquency, contractual emancipation, or enforcement under Part 3, Enforcement.

2778 (5) "Commencement" means the filing of the first pleading in a proceeding.

2779 (6) "Court" means an entity authorized under the law of a state to establish, enforce, or  
2780 modify a ~~[child custody]~~ parental responsibility determination.

2781 (7) "Home state" means the state in which a child lived with a parent or a person acting  
2782 as a parent for at least six consecutive months immediately before the commencement of a  
2783 child custody proceeding. In the case of a child less than six months of age, the term means the  
2784 state in which the child lived from birth with any of the persons mentioned. A period of  
2785 temporary absence of any of the mentioned persons is part of the period.

2786 (8) "Initial determination" means the first ~~[child custody]~~ determination of parental

2787 responsibility concerning a particular child.

2788 (9) "Issuing court" means the court that makes a [~~child custody~~] determination of  
2789 parental responsibility for which enforcement is sought under this chapter.

2790 (10) "Issuing state" means the state in which a [~~child custody~~] determination of  
2791 parental responsibility is made.

2792 (11) "Modification" means a [~~child custody~~] determination of parental responsibility  
2793 that changes, replaces, supersedes, or is otherwise made after a previous determination  
2794 concerning the same child, whether or not it is made by the court that made the previous  
2795 determination.

2796 (12) "Person" includes government, governmental subdivision, agency, or  
2797 instrumentality, or any other legal or commercial entity.

2798 (13) "Person acting as a parent" means a person, other than a parent[~~, who~~]:

2799 (a) [~~has physical custody of the child or has had physical custody~~] with whom the child  
2800 regularly resides or with whom the child has resided for a period of six consecutive months,  
2801 including any temporary absence, within one year immediately before the commencement of a  
2802 child custody proceeding; and

2803 (b) who has been awarded legal [~~custody~~] parental responsibilities by a court or claims  
2804 a right to [~~legal custody~~] exercise legal parental responsibilities under the law of this state.

2805 (14) "Physical custody" means [~~the physical~~] a regular residence with an adult who has  
2806 been allocated the parental responsibility for the care and supervision of a child.

2807 (15) "State" means a state of the United States, the District of Columbia, Puerto Rico,  
2808 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction  
2809 of the United States.

2810 (16) "Tribe" means an Indian tribe, or band, or Alaskan Native village which is  
2811 recognized by federal law or formally acknowledged by a state.

2812 (17) "Writ of assistance" means an order issued by a court authorizing law enforcement  
2813 officers to take physical custody of a child.

2814 Section 59. Section **78-45f-103** is amended to read:

2815 **78-45f-103. Remedies cumulative.**

2816 (1) Remedies provided by this chapter are cumulative and do not affect the availability  
2817 of remedies under other law, including the recognition of a support order of a foreign country

or political subdivision on the basis of comity.

(2) This chapter does not:

(a) provide the exclusive method of establishing or enforcing a support order under the law of this state; or

(b) grant a tribunal of this state jurisdiction to render judgment or issue an order relating to ~~[child custody]~~ the allocation of parental responsibilities or parent-time in a proceeding under this chapter.

Section 60. Section **78-45g-610** is amended to read:

**78-45g-610. Joinder of judicial proceedings.**

(1) Except as otherwise provided in Subsection (2), a judicial proceeding to adjudicate parentage may be joined with a proceeding for adoption, termination of parental rights, ~~[child custody or]~~ the allocation of parental responsibilities, parent-time, visitation, child support, divorce, annulment, legal separation or separate maintenance, probate or administration of an estate, or other appropriate proceeding.

(2) A respondent may not join a proceeding described in Subsection (1) with a proceeding to adjudicate parentage brought under Title 78, Chapter 45f, Uniform Interstate Family Support Act.

Section 61. Section **78-45g-616** is amended to read:

**78-45g-616. Temporary order.**

(1) In a proceeding under this part, the tribunal shall issue a temporary order for support of a child if the order is appropriate and the individual ordered to pay support is:

(a) a presumed father of the child;

(b) petitioning to have his paternity adjudicated;

(c) identified as the father through genetic testing under Section 78-45g-505;

(d) an alleged father who has failed to submit to genetic testing;

(e) shown by clear and convincing evidence to be the father of the child; or

(f) the mother of the child.

(2) A temporary tribunal order may include provisions for ~~[custody]~~ the allocation of parental responsibilities, parent-time, and visitation as provided by other laws of this state.

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**Legislative Review Note**  
**as of 1-31-07 2:48 PM**

**Office of Legislative Research and General Counsel**

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**S.B. 178 - Custody Amendments**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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