

## HB0343S01 compared with HB0343

~~{deleted text}~~ shows text that was in HB0343 but was deleted in HB0343S01.

Inserted text shows text that was not in HB0343 but was inserted into HB0343S01.

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Representative Walt Brooks proposes the following substitute bill:

### YOUTH AND CHILD WELFARE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Walt Brooks**

Senate Sponsor: ~~{ }~~ David G. Buxton

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#### LONG TITLE

##### General Description:

This bill amends provisions relating to the welfare of children and minors.

##### Highlighted Provisions:

This bill:

- ▶ amends and defines terms;
- ▶ amends the definition of sexual abuse;
- ▶ amends provisions related to runaway children;
- ▶ ~~{allows}~~ requires a court ~~{to grant temporary emancipation pending an emancipation adjudication}~~ or the Division of Child and Family Services to take into consideration a child's wishes for placement; and
- ▶ makes technical changes.

##### Money Appropriated in this Bill:

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None

### Other Special Clauses:

~~{ This bill provides a special effective date. }~~ None

### Utah Code Sections Affected:

AMENDS:

62A-4a-209, as last amended by Laws of Utah 2017, Chapter 181

62A-4a-501, as last amended by Laws of Utah 2014, Chapter 312

~~{ 78A-6-103 (Superseded 07/01/18), as last amended by Laws of Utah 2012, Chapter 316~~

~~78A-6-103 (Effective 07/01/18), as last amended by Laws of Utah 2017, Chapter 330~~

~~78A-6-105~~, as last amended by Laws of Utah 2017, Chapters 181, 330, and 401

~~{ 78A-6-801 }~~ 78A-6-307, as ~~{ renumbered and }~~ last amended by Laws of Utah ~~{ 2008 }~~ 2015, Chapter ~~{ 3 }~~ 142

~~{ 78A-6-802 }~~ 78A-6-307.5, as ~~{ renumbered and amended }~~ enacted by Laws of Utah 2008, Chapter ~~{ 3 }~~ 17

~~{ 78A-6-803, as renumbered and amended by Laws of Utah 2008, Chapter 3~~

~~78A-6-804, as last amended by Laws of Utah 2010, Chapter 259~~

ENACTS:

~~78A-6-804.5, Utah Code Annotated 1953~~

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

Section 1. Section 62A-4a-209 is amended to read:

**62A-4a-209. Emergency placement.**

(1) As used in this section:

- (a) "Friend" means the same as that term is defined in Subsection 78A-6-307(1)(a).
- (b) "Nonrelative" means an individual, other than a noncustodial parent or a relative.
- (c) "Relative" means the same as that term is defined in Subsection 78A-6-307(1)(c).

(2) The division may use an emergency placement under Subsection

62A-4a-202.1(4)(b)(ii) when:

- (a) the case worker has made the determination that:
  - (i) the child's home is unsafe;

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

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

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

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

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

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

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

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

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

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

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

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

(vii) the child is comfortable with the person.

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

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

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

(ii) are there any other relatives or friends to consider as a possible emergency or

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long-term placement for the child;

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

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

(ii) if the emergency placement will be with a person other than a noncustodial parent or a relative, shall comply with the background check provisions described in Subsection (8) for adults living in the household where the child will be placed;

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

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

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

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

(ii) a relative ~~[of the child]~~;

(iii) subject to Subsection (4)(b), a friend designated by the custodial parent ~~[or]~~ guardian ~~[of the child]~~, or the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement; and

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

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

(b) In determining whether a friend is a willing and appropriate temporary emergency placement for a child, the division:

(i) is required to consider no more than one friend designated by each parent or legal guardian of the child and one friend designated by the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement;

(ii) may limit the number of designated friends to two, one of whom shall be a friend designated by the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement; and

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(iii) shall give preference to a friend designated by the child, if:

(A) the child is of sufficient maturity to articulate the child's wishes; and

(B) the division's basis for removing the child under Section 62A-4a-202.1 is sexual abuse of the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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completion of:

- (i) a name-based, Utah Bureau of Criminal Identification background check; and
- (ii) a search of the Management Information System described in Section

62A-4a-1003.

(b) The division shall determine whether a person passes the background check described in this Subsection (7) pursuant to the provisions of Subsection 62A-2-120(14).

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

(8) (a) The background check described in Subsection (3)(c)(ii) shall include completion of:

- (i) a name-based, Utah Bureau of Criminal Identification background check;
- (ii) a federal name-based criminal background check; and
- (iii) a search of the Management Information System described in Section

62A-4a-1003.

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

(c) If the division denies placement of a child as a result of a name-based criminal background check described in Subsection (8)(a), and the person contests that denial, the person shall submit a complete set of fingerprints with written permission to the Utah Bureau of Criminal Identification for submission to the Federal Bureau of Investigation for a fingerprint-based criminal background check.

(d) (i) Within 15 calendar days of the name-based background checks, the division shall require a person to provide a complete set of fingerprints with written permission to the Utah Bureau of Criminal Identification for submission to the Federal Bureau of Investigation for a fingerprint-based criminal background check.

(ii) If a person fails to provide the fingerprints and written permission described in Subsection (8)(d)(i), the child shall immediately be removed from the home.

Section ~~44~~2. Section **62A-4a-501** is amended to read:

**62A-4a-501. Harboring a runaway -- Reporting requirements -- Division to provide assistance -- Affirmative defense -- Providing shelter after notice.**

(1) As used in this section:

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(a) "Harbor" means to provide shelter in:

- (i) the home of the person who is providing the shelter; or
- (ii) any structure over which the person providing the shelter has any control.

(b) "Receiving center" ~~is as~~ means the same as that term is defined in Section 62A-7-101.

(c) "Runaway" means a [minor] child, other than an emancipated minor, who is absent from the home or lawfully prescribed residence of the parent or legal guardian of the [minor] child without the permission of the parent or legal guardian.

(d) "Temporary homeless youth shelter" means a facility that:

- (i) provides temporary shelter to a runaway; and
- (ii) is licensed by the Office of Licensing, created in Section 62A-1-105, as a residential support program.

(e) "Youth services center" means a center established by, or under contract with, the Division of Juvenile Justice Services, created in Section 62A-1-105, to provide youth services, as defined in Section 62A-7-101.

(2) Except as provided in Subsection (3), a person, including a temporary homeless youth shelter, is guilty of a class B misdemeanor if the person:

- (a) knowingly and intentionally harbors a [minor] child;
- (b) knows at the time of harboring the [minor] child that the [minor] child is a runaway;

(c) fails to notify one of the following, by telephone or other reasonable means, of the location of the [minor] child:

- (i) the parent or legal guardian of the [minor] child;
- (ii) the division; ~~{}~~or~~}~~
- (iii) a youth services center; ~~{}~~and~~}~~ or

~~(iv) a peace officer or the nearest detention center, as defined in Section 62A-7-101, if a court order is issued authorizing a peace officer to take the minor into custody; and}~~

(d) fails to notify a person described in Subsection (2)(c) within eight hours after the later of:

- (i) the time that the person becomes aware that the [minor] child is a runaway; or
- (ii) the time that the person begins harboring the [minor] child.

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(3) A person described in Subsection (2), including a temporary homeless youth shelter, is not guilty of a violation of Subsection (2) and is not required to comply with Subsections (2)(c) and (d), if:

(a) a court order is issued authorizing a peace officer to take the [minor] child into custody; and

(b) the person notifies a peace officer or the nearest detention center, as defined in Section 62A-7-101, by telephone or other reasonable means, of the location of the [minor] child, within eight hours after the later of:

(i) the time that the person becomes aware that the [minor] child is a runaway; or

(ii) the time that the person begins harboring the [minor] child.

~~[(4) Nothing in this section limits the obligation of a person to report child abuse or neglect in accordance with Section 62A-4a-403.]~~

~~[(5) Except as provided in Subsection (6), a temporary homeless youth shelter shall notify:]~~

~~[(a) the parent or legal guardian of a minor within eight hours after the later of:]~~

~~[(i) the time that the temporary homeless youth shelter becomes aware that the minor is a runaway; or]~~

~~[(ii) the time that the temporary homeless youth shelter begins harboring the minor; and]~~

~~[(b) the division or a youth services center, within 48 hours after the later of:]~~

~~[(i) the time that the temporary homeless youth shelter becomes aware that a minor is a runaway; or]~~

~~[(ii) the time that the temporary homeless youth shelter begins harboring the minor.]~~

~~[(6) A temporary homeless youth shelter is not required to comply with Subsection (5) if:]~~

~~[(a) a court order is issued authorizing a peace officer to take the minor into custody; and]~~

~~[(b) the temporary homeless youth shelter notifies a peace officer or the nearest detention center, as defined in Section 62A-7-101, by telephone or other reasonable means, of the location of the minor, within eight hours after the later of:]~~

~~[(i) the time that the person becomes aware that the minor is a runaway; or]~~



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~~[(ii)]~~ the time that the person begins harboring the minor.]

(4) A person described in Subsection (2), including a temporary homeless youth shelter, shall provide a report to the division:

(a) if the person has an obligation under Section 62A-4a-403 to report child abuse or neglect; or

(b) if, within 48 hours after the person begins harboring the child:

(i) the person continues to harbor the child; and

(ii) the person does not make direct contact with:

(A) a parent or legal guardian of the child;

(B) the division;

(C) a youth services center; or

(D) a peace officer or the nearest detention center, as defined in Section 62A-7-101, if a court order is issued authorizing a peace officer to take the minor into custody.

~~[(7)]~~ (5) It is an affirmative defense to the crime described in Subsection (2) that:

(a) the person failed to provide notice as described in Subsection (2) or (3) due to circumstances beyond the control of the person providing the shelter; and

(b) the person provided the notice described in Subsection (2) or (3) as soon as it was reasonably practicable to provide the notice.

~~[(8)]~~ (6) Upon receipt of a report that a runaway is being harbored by a person:

(a) a youth services center shall:

(i) notify the parent or legal guardian that a report has been made; and

(ii) inform the parent or legal guardian of assistance available from the youth services center; or

(b) the division shall:

(i) determine whether the runaway is abused, neglected, or dependent; and

(ii) if appropriate, make a referral for services for the runaway.

~~[(9)]~~ (7) A parent or legal guardian of a runaway who is aware that the runaway is being harbored may notify a law enforcement agency and request assistance in retrieving the runaway. The local law enforcement agency may assist the parent or legal guardian in retrieving the runaway.

~~[(10)]~~ (8) Nothing in this section prohibits a person ~~[or]~~, including a temporary

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homeless youth shelter, from continuing to provide shelter to a runaway, after giving the notice described in Subsections (2) through ~~[(6)]~~ (4), if:

(a) a parent or legal guardian of the [minor] child consents to the continued provision of shelter; or

(b) a peace officer or a parent or legal guardian of the [minor] child fails to retrieve the runaway.

~~[(11)]~~ (9) Nothing in this section prohibits a person or a temporary homeless youth shelter from providing shelter to a [non-emancipated minor] child whose parents or legal guardians have intentionally:

(a) ceased to maintain physical custody of the [minor] child;

(b) failed to make reasonable arrangements for the safety, care, and physical custody of the [minor] child; and

(c) failed to provide the [minor] child with food, shelter, or clothing.

~~[(12)]~~ (10) Nothing in this section prohibits:

(a) a receiving center or a youth services center from providing shelter to a runaway in accordance with the requirements of Title 62A, Chapter 7, Juvenile Justice Services, and the rules relating to a receiving center or a youth services center; or

(b) a government agency from taking custody of a [minor] child as otherwise provided by law.

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

~~———— (1) As used in this section:~~

~~———— (a) "Friend" means an adult the child knows and is comfortable with.~~

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

~~———— (A) a biological or adoptive mother;~~

~~———— (B) an adoptive father; or~~

~~———— (C) a biological father who:~~

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

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

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~~—— (i) The definition of "natural parent" described in Subsection (1)(b)(i) applies regardless of whether the child has been or will be placed with adoptive parents or whether adoption has been or will be considered as a long-term goal for the child.~~

~~—— (c) "Relative" means:~~

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

~~—— (ii) an adult who is an adoptive parent of the child's sibling; or~~

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

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

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

~~—— (c) The provisions of this Subsection (2) are limited by the provisions of Subsection (18)(b):~~

~~—— (d) (i) The court shall make a specific finding regarding the fitness of the parent described in Subsection (2)(b) to assume custody, and the safety and appropriateness of the placement:~~

~~—— (ii) The court shall, at a minimum, order the division to visit the parent's home, comply with the criminal background check provisions described in Section 78A-6-308, and check the division's management information system for any previous reports of abuse or neglect received by the division regarding the parent at issue.~~

~~—— (iii) The court may order the division to conduct any further investigation regarding the safety and appropriateness of the placement.~~

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

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

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

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

~~—— (b) the court may order:~~

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

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

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

~~—— (4) The court shall periodically review an order described in Subsection (3) to determine whether:~~

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

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

~~—— (c) the child should be placed in the custody of a relative, pursuant to Subsections (7) through (12); or~~

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

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

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

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

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

~~—— (b) may order the division to conduct a reasonable search to determine whether, subject to Subsections (18)(c) through (e), there are relatives of the child or friends of a parent of the child who are willing and appropriate, in accordance with the requirements of this part and~~

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~~Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child;~~

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

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

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

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

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

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

~~—— (ii) the safety and appropriateness of placement with that relative or friend:~~

~~—— (b) In order to be considered a "willing relative or friend" under this section, the relative or friend shall be willing to cooperate with the child's permanency goal:~~

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

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

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

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

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

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

~~—— (A) the background check requirements applicable to an emergency placement with a~~

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~~noncustodial parent that are described in Subsections 62A-4a-209(5) and (7);~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~—— (12) (a) The court may place a child described in Subsection (2)(a) in the temporary custody of the division, pending the division's investigation pursuant to Subsections (10) and~~

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~~(11), and the court's determination regarding the appropriateness of that placement.~~

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

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

~~—— (a) the court shall order that:~~

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

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

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

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

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

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

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

~~—— (ii) the child should be returned home; or~~

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

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

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

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

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

~~—— (ii) if the results of the criminal background check described in Subsection (16)(a)(i)~~

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~~would prohibit the relative from having direct access to the child under Section 62A-2-120, the division shall:~~

~~—— (A) take the child into physical custody; and~~

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

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

~~—— (17) When the court orders that a child be removed from the custody of the child's parent and does not award custody and guardianship to another parent, relative, or friend under this section, the court shall order that the child be placed in the temporary custody of the Division of Child and Family Services, to proceed to adjudication and disposition and to be provided with care and services in accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services:~~

~~—— (18) (a) Any preferential consideration that a relative or friend is initially granted pursuant to Subsection (9) expires 120 days from the date of the shelter hearing. After that time period has expired, a relative or friend who has not obtained custody or asserted an interest in a child, may not be granted preferential consideration by the division or the court.~~

~~—— (b) When the time period described in Subsection (18)(a) has expired, the preferential consideration, which is initially granted to a natural parent in accordance with Subsection (2), is limited. After that time the court shall base its custody decision on the best interest of the child.~~

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

~~—— (i) a noncustodial parent of the child;~~

~~—— (ii) a relative of the child;~~

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

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



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

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

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

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

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

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

~~—— **78A-6-307.5. Post-shelter hearing placement of a child who is in division custody.**~~

~~—— (1) If the court awards custody of a child to the division under Section 78A-6-307, or as otherwise permitted by law, the division shall determine ongoing placement of the child.~~

~~—— (2) In placing a child under Subsection (1), the division:~~

~~—— (a) except as provided in Subsections (2)(b) and (d), shall comply with the applicable background check provisions described in Section 78A-6-307;~~

~~—— (b) is not required to receive approval from the court prior to making the placement;~~

~~—— (c) shall, within three days, excluding weekends and holidays, after making the placement, give written notice to the court, and all parties to the proceedings, that the placement has been made; and~~

~~—— (d) may place the child with a noncustodial parent or relative of the child, using the~~

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same criteria established for an emergency placement under Section 62A-4a-209, pending the results of:

- ~~—— (i) the background check described in Subsection 78A-6-307(16)(a); and~~
- ~~—— (ii) evaluation with the noncustodial parent or relative to determine the noncustodial parent's or relative's capacity to provide ongoing care to the child.~~

~~—— Section 2. Section 78A-6-103 (Superseded 07/01/18) is amended to read:~~

~~—— 78A-6-103 (Superseded 07/01/18). Jurisdiction of juvenile court == Original ==~~  
**Exclusive:**

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

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

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

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

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

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

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

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

~~—— (e) appointment of a guardian of the person or other guardian of a minor who comes~~

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~~within the court's jurisdiction under other provisions of this section;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~———— (b) has run away from home.~~

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

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

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

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

~~———— } Section 3. { Section 78A-6-103 (Effective 07/01/18) is amended to read:~~

~~———— 78A-6-103 (Effective 07/01/18). **Jurisdiction of juvenile court -- Original -- Exclusive.**~~

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

~~———— (a) a child who has violated any federal, state, or local law or municipal ordinance or [a person] an individual younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding~~

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offenses:

~~—— (i) in Section 53A-11-911 until such time that the child is referred to the courts under Section 53A-11-911; and~~

~~—— (ii) in Subsection 78A-7-106(2);~~

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

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

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

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

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

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

~~—— (e) the emancipation or temporary emancipation of a minor in accordance with Part 8, Emancipation;~~

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

~~—— (g) the treatment or commitment of a minor who has an intellectual disability;~~

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

~~—— (i) any parent or parents of a child committed to a secure youth facility, to order, at the discretion of the court and on the recommendation of a secure facility, the parent or parents of a child committed to a secure facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure facility therapist, who has supervision of that parent's or~~

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~~parents' child, or any other therapist the court may direct, for a period directed by the court as recommended by a secure facility;~~

~~—— (j) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;~~

~~—— (k) subject to Subsection (8), the treatment or commitment of a child with a mental illness;~~

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

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

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

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

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

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

~~—— (ii) Section 73-18-12, reckless operation; and~~

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

~~—— (b) A juvenile court may only order substance use disorder treatment or an educational series if the minor has an assessed need for the intervention on the basis of the results of a validated assessment.~~

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

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

~~—— (b) has run away from home.~~

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

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

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

~~——(7) The juvenile court has jurisdiction of matters transferred to it by another trial court pursuant to Subsection 78A-7-106(5) and subject to Section 53A-11-911.~~

~~——(8) The court may commit a child to the physical custody of a local mental health authority in accordance with Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, but not directly to the Utah State Hospital.~~

~~——Section 4.} Section 78A-6-105 is amended to read:~~

### **78A-6-105. Definitions.**

As used in this chapter:

(1) (a) "Abuse" means:

(i) (A) nonaccidental harm of a child;

(B) threatened harm of a child;

(C) sexual exploitation;

(D) sexual abuse; or

(E) human trafficking of a child in violation of Section 76-5-308.5; or

(ii) that a child's natural parent:

(A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.

(b) "Abuse" does not include:

(i) reasonable discipline or management of a child, including withholding privileges;

(ii) conduct described in Section 76-2-401; or

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(iii) the use of reasonable and necessary physical restraint or force on a child:

(A) in self-defense;

(B) in defense of others;

(C) to protect the child; or

(D) to remove a weapon in the possession of a child for any of the reasons described in

Subsections (1)(b)(iii)(A) through (C).

(2) "Abused child" means a child who has been subjected to abuse.

(3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved. A finding of not competent to proceed pursuant to Section 78A-6-1302 is not an adjudication.

(4) "Adult" means a person 18 years of age or over, except that a person 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall be referred to as a minor.

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

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

(7) "Child placement agency" means:

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

(b) a private agency that receives a child for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

(8) "Clandestine laboratory operation" means the same as that term is defined in Section 58-37d-3.

(9) "Commit" means, unless specified otherwise:

(a) with respect to a child, to transfer legal custody; and

(b) with respect to a minor who is at least 18 years of age, to transfer custody.

(10) "Court" means the juvenile court.

(11) "Criminogenic risk factors" means evidence-based factors that are associated with a minor's likelihood of reoffending.

(12) "Delinquent act" means an act that would constitute a felony or misdemeanor if committed by an adult.

(13) "Dependent child" includes a child who is homeless or without proper care



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through no fault of the child's parent, guardian, or custodian.

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

(15) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of a minor who requires secure custody in a physically restricting facility:

- (a) pending court disposition or transfer to another jurisdiction; or
- (b) while under the continuing jurisdiction of the court.

(16) "Detention risk assessment tool" means an evidence-based tool established under Section 78A-6-124, on and after July 1, 2018, that assesses a minor's risk of failing to appear in court or reoffending pre-adjudication and designed to assist in making detention determinations.

(17) "Division" means the Division of Child and Family Services.

(18) "Evidence-based" means a program or practice that has had multiple randomized control studies or a meta-analysis demonstrating that the program or practice is effective for a specific population or has been rated as effective by a standardized program evaluation tool.

(19) "Formal probation" means a minor is under field supervision by the probation department or other agency designated by the court and subject to return to the court in accordance with Section 78A-6-123 on and after July 1, 2018.

(20) "Formal referral" means a written report from a peace officer or other person informing the court that a minor is or appears to be within the court's jurisdiction and that a case must be reviewed.

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

(22) "Guardianship of the person" includes the authority to consent to:

- (a) marriage;
- (b) enlistment in the armed forces;
- (c) major medical, surgical, or psychiatric treatment; or
- (d) legal custody, if legal custody is not vested in another person, agency, or institution.

(23) "Habitual truant" means the same as that term is defined in Section 53A-11-101.

(24) "Harm" means:

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- (a) physical or developmental injury or damage;
  - (b) emotional damage that results in a serious impairment in the child's growth, development, behavior, or psychological functioning;
  - (c) sexual abuse; or
  - (d) sexual exploitation.
- (25) (a) "Incest" means engaging in sexual intercourse with a person whom the perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.

- (b) The relationships described in Subsection (25)(a) include:
  - (i) blood relationships of the whole or half blood, without regard to legitimacy;
  - (ii) relationships of parent and child by adoption; and
  - (iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.

(26) "Intake probation" means a period of court monitoring that does not include field supervision, but is overseen by a juvenile probation officer, during which a minor is subject to return to the court in accordance with Section 78A-6-123 on and after July 1, 2018.

- (27) "Intellectual disability" means:
- (a) significantly subaverage intellectual functioning, an IQ of approximately 70 or below on an individually administered IQ test, for infants, a clinical judgment of significantly subaverage intellectual functioning;
  - (b) concurrent deficits or impairments in present adaptive functioning, the person's effectiveness in meeting the standards expected for the person's age by the person's cultural group, in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety; and

- (c) the onset is before the person reaches the age of 18 years.
- (28) "Legal custody" means a relationship embodying the following rights and duties:
- (a) the right to physical custody of the minor;
  - (b) the right and duty to protect, train, and discipline the minor;
  - (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;

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- (d) the right to determine where and with whom the minor shall live; and
- (e) the right, in an emergency, to authorize surgery or other extraordinary care.

(29) "Material loss" means an uninsured:

- (a) property loss;
- (b) out-of-pocket monetary loss;
- (c) lost wages; or
- (d) medical expenses.

(30) "Mental disorder" means a serious emotional and mental disturbance that severely limits a minor's development and welfare over a significant period of time.

(31) "Minor" means:

- (a) a child; or
- (b) a person who is:
  - (i) at least 18 years of age and younger than 21 years of age; and
  - (ii) under the jurisdiction of the juvenile court.

(32) "Mobile crisis outreach team" means a crisis intervention service for minors or families of minors experiencing behavioral health or psychiatric emergencies.

(33) "Molestation" means that a person, with the intent to arouse or gratify the sexual desire of any person:

- (a) touches the anus or any part of the genitals of a child;
- (b) takes indecent liberties with a child; or
- (c) causes a child to take indecent liberties with the perpetrator or another.

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

(35) (a) "Neglect" means action or inaction causing:

- (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;
- (ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;
- (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, or any other care necessary for the child's health, safety, morals, or well-being;

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(iv) a child to be at risk of being neglected or abused because another child in the same home is neglected or abused; or

(v) abandonment of a child through an unregulated custody transfer.

(b) The aspect of neglect relating to education, described in Subsection (35)(a)(iii), means that, after receiving a notice of compulsory education violation under Section 53A-11-101.5, the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(c) 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.

(d) (i) Notwithstanding Subsection (35)(a), 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.

(ii) Nothing in Subsection (35)(d)(i) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion and from pursuing care and treatment pursuant to the second health care opinion, as described in Section 78A-6-301.5.

(36) "Neglected child" means a child who has been subjected to neglect.

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

(a) the assigned probation officer; and

(b) (i) the minor; or

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

(38) "Not competent to proceed" means that a minor, due to a mental disorder, intellectual disability, or related condition as defined, lacks the ability to:

(a) understand the nature of the proceedings against them or of the potential disposition for the offense charged; or

(b) consult with counsel and participate in the proceedings against them with a reasonable degree of rational understanding.

(39) "Physical abuse" means abuse that results in physical injury or damage to a child.

(40) "Probation" means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78A-6-103, whereby the minor is

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permitted to remain in the minor's home under prescribed conditions.

(41) "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.

(42) "Related condition" means a condition closely related to intellectual disability in accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah Administrative Code.

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

- (i) the responsibility for support;
- (ii) the right to consent to adoption;
- (iii) the right to determine the child's religious affiliation; and
- (iv) the right to reasonable parent-time unless restricted by the court.

(b) If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to:

- (i) marriage;
- (ii) enlistment; and
- (iii) major medical, surgical, or psychiatric treatment.

(44) "Secure facility" means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation pursuant to Subsection 78A-6-117(2)(d).

(45) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.

(46) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.

(47) "Sexual abuse" means:

(a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an adult directed towards a child;

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(b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation committed by a child towards another child if:

- (i) there is an indication of force or coercion;
- (ii) the children are related, as described in Subsection (25);
- (iii) there have been repeated incidents of sexual contact between the two children,

unless the children are 14 years of age or older; or

(iv) there is a disparity in chronological age of four or more years between the two children; ~~[or]~~

(c) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense:

(i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the alleged perpetrator of an offense described in Section 76-5-401 is a minor;

- (ii) child bigamy, Section 76-7-101.5;
- (iii) incest, Section 76-7-102;
- (iv) lewdness, Section 76-9-702;
- (v) sexual battery, Section 76-9-702.1;
- (vi) lewdness involving a child, Section 76-9-702.5; or
- (vii) voyeurism, Section 76-9-702.7~~[-];~~ or

(d) ~~{a parent or legal guardian subjecting a minor to}~~ subjecting a child to participate in or threatening to subject a child to participate in a sexual relationship ~~{against the minor's will}~~, regardless of whether that sexual relationship is part of a legal or cultural marriage.

(48) "Sexual exploitation" means knowingly:

(a) employing, using, persuading, inducing, enticing, or coercing any child to:

- (i) pose in the nude for the purpose of sexual arousal of any person; or
- (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;

(b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:

- (i) in the nude, for the purpose of sexual arousal of any person; or
- (ii) engaging in sexual or simulated sexual conduct; or

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(c) engaging in any conduct that would constitute an offense under Section 76-5b-201, sexual exploitation of a minor, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense.

(49) "Shelter" means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.

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

(51) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.

(52) "Substantiated" means the same as that term is defined in Section 62A-4a-101.

(53) "Supported" means the same as that term is defined in Section 62A-4a-101.

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

(55) "Therapist" means:

(a) a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody; or

(b) any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(56) "Unregulated custody transfer" means the placement of a child:

(a) with a person who is not the child's parent, step-parent, grandparent, adult sibling, adult uncle or aunt, or legal guardian, or a friend of the family who is an adult and with whom the child is familiar, or a member of the child's federally recognized tribe;

(b) with the intent of severing the child's existing parent-child or guardian-child relationship; and

(c) without taking:

(i) reasonable steps to ensure the safety of the child and permanency of the placement; and

(ii) the necessary steps to transfer the legal rights and responsibilities of parenthood or guardianship to the person taking custody of the child.

(57) "Unsubstantiated" means the same as that term is defined in Section 62A-4a-101.

(58) "Validated risk and needs assessment" means an evidence-based tool that assesses

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a minor's risk of reoffending and a minor's criminogenic needs.

(59) "Without merit" means the same as that term is defined in Section 62A-4a-101.

Section ~~{5}~~4. Section ~~{78A-6-801}~~78A-6-307 is amended to read:

~~{78A-6-801. Purpose of emancipation.~~

~~———— (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] the minor's own affairs and to live independent of [his or her] the minor's parents or guardian, may obtain the legal status of an emancipated [person] individual 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 possesses a fundamental liberty interest in the care, custody, and management of their children.~~

~~———— Section 6}~~78A-6-307. Shelter hearing -- Placement -- DCFS custody.

(1) As used in this section:

(a) "Friend" means an adult the child knows and is comfortable with.

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

(A) a biological or adoptive mother of the child;

(B) an adoptive father of the child; or

(C) a biological father of the child who:

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

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

(ii) The definition of "natural parent" described in Subsection (1)(b)(i) applies regardless of whether the child has been or will be placed with adoptive parents or whether adoption has been or will be considered as a long-term goal for the child.

(c) "Relative" means:

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

(ii) a first cousin of the child's parent;



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[(iii)] (iii) an adult who is an adoptive parent of the child's sibling; or

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

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

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

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

(d) (i) The court shall make a specific finding regarding the fitness of the parent described in Subsection (2)(b) to assume custody, and the safety and appropriateness of the placement.

(ii) The court shall, at a minimum, order the division to visit the parent's home, comply with the criminal background check provisions described in Section 78A-6-308, and check the division's management information system for any previous reports of abuse or neglect received by the division regarding the parent at issue.

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

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

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

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

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

(b) the court may order:

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

(ii) that services be provided to the parent from whose custody the child was removed,

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the parent who has assumed custody, or both; and

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

(4) The court shall periodically review an order described in Subsection (3) to determine whether:

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

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

(c) the child should be placed in the custody of a relative, pursuant to Subsections (7) through (12); or

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

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

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

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

(a) shall, at that time, determine whether, subject to Subsections (18)(c) through (e), there is a relative [of the child] or a friend [of a parent of the child] who is able and willing to care for the child, which may include asking a child, who is of sufficient maturity to articulate the child's wishes in relation to a placement, if there is a relative or friend with whom the child would prefer to reside;

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

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

(d) may order that the child be placed in the custody of the division pending the

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determination under Subsection (7)(a).

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

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

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

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

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

(b) In order to be considered a "willing relative or friend" under this section, the relative or friend shall be willing to cooperate with the child's permanency goal.

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

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

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

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

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

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

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

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

(C) a background check that complies with the criminal background check provisions described in Section 78A-6-308, of each nonrelative, as defined in Subsection

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62A-4a-209(1)(b), of the child who resides in the household where the child may be placed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(a) the court shall order that:

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

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

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

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

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

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

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

(ii) the child should be returned home; or

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

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

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

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

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

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

(A) take the child into physical custody; and

(B) within three days, excluding weekends and holidays, after taking the child into physical custody under Subsection (16)(a)(ii)(A), give written notice to the court, and all

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parties to the proceedings, of the division's action.

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

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

(18) (a) Any preferential consideration that a relative or friend is initially granted pursuant to Subsection (9) expires 120 days from the date of the shelter hearing. After that time period has expired, a relative or friend who has not obtained custody or asserted an interest in a child, may not be granted preferential consideration by the division or the court.

(b) When the time period described in Subsection (18)(a) has expired, the preferential consideration, which is initially granted to a natural parent in accordance with Subsection (2), is limited. After that time the court shall base its custody decision on the best interest of the child.

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

(i) a noncustodial parent of the child;

(ii) a relative of the child;

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

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

(d) (i) In determining whether a friend is a willing and appropriate placement for a child, neither the court, nor the division, is required to consider more than one friend designated by each parent of the child[-] and one friend designated by the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement.

(ii) The court or the division may limit the number of designated friends to two, one of

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whom shall be a friend designated by the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement.

(iii) The court and the division shall give preference to a friend designated by the child,  
if:

(A) the child is of sufficient maturity to articulate the child's wishes; and

(B) the basis for removing the child under Section 78A-6-306 is sexual abuse of the child.

(e) If a parent of the child or the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement, is not able to designate a friend who is a licensed foster parent for placement of the child, but is able to identify a friend who is willing to become licensed as a foster parent:

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

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

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

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

Section 5. Section ~~{78A-6-802}~~78A-6-307.5 is amended to read:

~~{78A-6-802}~~78A-6-307.5. ~~{Definitions-~~

~~As used in this part:~~

~~(1) "Guardian" has the same meaning as in Section 75-1-201.~~

~~(2) "Minor" means a person 16 years of age or older.~~

~~(3) "Parent" means a natural parent as defined;~~Post-shelter hearing placement of

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### a child who is in division custody.

(1) If the court awards custody of a child to the division under Section 78A-6-307, or as otherwise permitted by law, the division shall determine ongoing placement of the child.

(2) In placing a child under Subsection (1), the division:

(a) except as provided in Subsections (2)(b) and (d), shall comply with the applicable background check provisions described in Section ~~{78A-6-105:~~

~~— (4) "Suspension of parental rights" means that a parent:~~

~~— (a) temporarily loses physical and legal custody; and~~

~~— (b) retains residual parental rights;~~

~~— (5) "Temporary emancipation" means that a minor:~~

~~— (a) is not in the custody of a person;~~

~~— (b) has the rights described in Subsections 78A-6-805(1)(d) and (f); and~~

~~— (c) does not have the rights} 78A-6-307;~~

(b) is not required to receive approval from the court prior to making the placement;

(c) shall, within three days, excluding weekends and holidays, after making the placement, give written notice to the court, and all parties to the proceedings, that the placement has been made; [and]

(d) may place the child with a noncustodial parent [or], relative [of the child], or friend, using the same criteria established for an emergency placement under Section 62A-4a-209, pending the results of:

(i) the background check described in Subsection ~~{78A-6-805(1)(a), (b), (c), or (e):~~

~~— Section 7. Section 78A-6-803 is amended to read:~~

~~— 78A-6-803. **Petition for emancipation.**~~

~~— (1) A minor may petition the juvenile court on [his or her] the minor's own behalf in the district in which [he or she] the minor resides for a declaration of emancipation. The petition shall be on a form provided by the clerk of the court, and state that the minor is:~~

~~— (a) 16 years of age or older;~~

~~— (b) capable of living independently of [his or her] the minor's parents or guardian; and~~

~~— (c) capable of managing [his or her] the minor's own financial affairs.~~

~~— (2) Notice of the petition shall be served on the minor's parents, guardian, any other person [or agency] with custody of the minor, and the Child and Family Support Division of~~



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~~the Office of the Attorney General, unless the court determines that service is impractical.~~

~~Section 8. Section 78A-6-804 is amended to read:~~

~~78A-6-804. Court procedure.~~

~~(1) Upon the filing of a petition in accordance with Section 78A-6-803, the court shall review the petition for completeness and whether the petitioner meets the age requirement for filing the petition.~~

~~(a) If the petition is incomplete or the petitioner does not meet the age requirement, the court may dismiss the action immediately.~~

~~(b) If the petition is complete and the petitioner meets the age requirement, the court shall:~~

~~(i) schedule a pretrial hearing on the matter within 30 days; 78A-6-307(16)(a); and~~

~~(ii) evaluation with the noncustodial parent [or], relative, or friend to determine the [noncustodial parent's or relative's] individual's capacity to provide ongoing care to the child[-];~~

~~and~~

~~(iii) determine whether temporary emancipation, described in Section 78A-6-804.5, is appropriate, pending the court's final determination of the emancipation petition.~~

~~(2) The court may appoint a guardian ad litem in accordance with Section 78A-6-902 to represent the minor.~~

~~(3) At the hearing, the court shall consider the best interests of the minor according to the following:~~

~~(a) whether the minor is capable of assuming adult responsibilities;~~

~~(b) whether the minor is capable of living independently of his or her parents, guardian, or custodian;~~

~~(c) opinions and recommendations from the guardian ad litem, parents, guardian, or custodian, and any other evidence; and~~

~~(d) whether emancipation will create a risk of harm to the minor.~~

~~(4) If the court determines by clear and convincing evidence that emancipation is in the best interests of the minor, it shall issue a declaration of emancipation.~~

~~Section 9. Section 78A-6-804.5 is enacted to read:~~

~~78A-6-804.5. Temporary emancipation.~~

~~(1) A court may grant temporary emancipation, if:~~

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- ~~— (a) a minor files a complete emancipation petition;~~
- ~~— (b) the petitioner meets the age requirement;~~
- ~~— (c) the petition describes extraordinary circumstances that warrant the suspension of parental rights pending the court's final determination of the emancipation petition; and~~
- ~~— (d) the petition describes a place of residence where the petitioner may reside:~~
  - ~~— (i) during the pendency of the emancipation petition; and~~
  - ~~— (ii) at a location different from the petitioner's parents or guardian.~~
- ~~— (2) Extraordinary circumstances include specific allegations of abuse, neglect, or threatened abuse or neglect.~~
- ~~— (3) A court may grant temporary emancipation ex parte.~~
- ~~— (4) Temporary emancipation ends the earlier of when:~~
  - ~~— (a) a court makes a final determination on an emancipation petition; or~~
  - ~~— (b) a court finds that a child's best interests warrant an end to temporary emancipation.~~
- ~~— (5) An order of temporary emancipation prospectively terminates parental responsibilities, including parental tort liability for the acts of the minor, that accrue:~~
  - ~~— (a) while the order is in place; and~~
  - ~~— (b) based on the minor's status as a minor under the custody and control of a parent, guardian, or custodian.~~
- ~~— Section 10. **Effective date.**~~
- ~~— This bill takes effect on May 8, 2018, except that the amendments to Section 78A-6-103 (Effective 07/01/18) take effect on July 1, 2018.~~

### **Legislative Review Note**

~~**Office of Legislative Research and General Counsel**~~ e) shall take into consideration the will of the child, if the child is of sufficient maturity to articulate the child's wishes in relation to the child's placement.