

HB0330S01 compared with HB0330

~~{deleted text}~~ shows text that was in HB0330 but was deleted in HB0330S01.

Inserted text shows text that was not in HB0330 but was inserted into HB0330S01.

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Representative Jon Hawkins proposes the following substitute bill:

JUVENILE JUSTICE COMPETENCY REVISIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon Hawkins

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to evaluations of competency of juveniles.

Highlighted Provisions:

This bill:

- ▶ amends definitions and defines terms related to competency evaluations of minors;
- ▶ amends procedures and requirements for an evaluation of a minor for competency;
- ▶ provides instructions to forensic evaluators, courts, and others involved with the prosecution, evaluation, and adjudication of matters related to minors;
- ▶ amends provisions related to an evaluation to determine likelihood of attaining competency; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-201, as last amended by Laws of Utah 2017, Chapter 330

62A-4a-711, as enacted by Laws of Utah 2017, Chapter 401

78A-6-105, as last amended by Laws of Utah 2018, Chapters 45, 91, 192, 235, 285, and 415

78A-6-302, as last amended by Laws of Utah 2018, Chapter 91

78A-6-312, as last amended by Laws of Utah 2018, Chapter 91

78A-6-1301, as enacted by Laws of Utah 2012, Chapter 316

78A-6-1302, as last amended by Laws of Utah 2017, Chapter 330

78A-6-1303, as enacted by Laws of Utah 2012, Chapter 316

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

Section 1. Section **62A-4a-201** is amended to read:

62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of state.

(1) (a) Under both the United States Constitution and the constitution of this state, a parent possesses a fundamental liberty interest in the care, custody, and management of the parent's children. A fundamentally fair process must be provided to parents if the state moves to challenge or interfere with parental rights. A governmental entity must support any actions or allegations made in opposition to the rights and desires of a parent regarding the parent's children by sufficient evidence to satisfy a parent's constitutional entitlement to heightened protection against government interference with the parent's fundamental rights and liberty interests and, concomitantly, the right of the child to be reared by the child's natural parent.

(b) The fundamental liberty interest of a parent concerning the care, custody, and management of the parent's children is recognized, protected, and does not cease to exist simply because a parent may fail to be a model parent or because the parent's child is placed in the temporary custody of the state. At all times, a parent retains a vital interest in preventing

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the irretrievable destruction of family life. Prior to an adjudication of unfitness, government action in relation to parents and their children may not exceed the least restrictive means or alternatives available to accomplish a compelling state interest. Until the state proves parental unfitness, and the child suffers, or is substantially likely to suffer, serious detriment as a result, the child and the child's parents share a vital interest in preventing erroneous termination of their natural relationship and the state cannot presume that a child and the child's parents are adversaries.

(c) It is in the best interest and welfare of a child to be raised under the care and supervision of the child's natural parents. A child's need for a normal family life in a permanent home, and for positive, nurturing family relationships is usually best met by the child's natural parents. Additionally, the integrity of the family unit and the right of parents to conceive and raise their children are constitutionally protected. The right of a fit, competent parent to raise the parent's child without undue government interference is a fundamental liberty interest that has long been protected by the laws and Constitution and is a fundamental public policy of this state.

(d) The state recognizes that:

(i) a parent has the right, obligation, responsibility, and authority to raise, manage, train, educate, provide and care for, and reasonably discipline the parent's children; and

(ii) the state's role is secondary and supportive to the primary role of a parent.

(e) It is the public policy of this state that parents retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of their children.

(f) Subsections (2) through (7) shall be interpreted and applied consistent with this Subsection (1).

(2) It is also the public policy of this state that children have the right to protection from abuse and neglect, and that the state retains a compelling interest in investigating, prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78A, Chapter 6, Juvenile Court Act. Therefore, the state, as *parens patriae*, has an interest in and responsibility to protect children whose parents abuse them or do not adequately provide for their welfare. There may be circumstances where a parent's conduct or condition is a substantial departure from the norm and the parent is unable or unwilling to render safe and

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proper parental care and protection. Under those circumstances, the state may take action for the welfare and protection of the parent's children.

(3) When the division intervenes on behalf of an abused, neglected, or dependent child, it shall take into account the child's need for protection from immediate harm and the extent to which the child's extended family may provide needed protection. Throughout its involvement, the division shall utilize the least intrusive and least restrictive means available to protect a child, in an effort to ensure that children are brought up in stable, permanent families, rather than in temporary foster placements under the supervision of the state.

(4) When circumstances within the family pose a threat to the child's immediate safety or welfare, the division may seek custody of the child for a planned, temporary period and place the child in a safe environment, subject to the requirements of this section and in accordance with the requirements of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and:

- (a) when safe and appropriate, return the child to the child's parent; or
- (b) as a last resort, pursue another permanency plan.

(5) In determining and making "reasonable efforts" with regard to a child, pursuant to the provisions of Section 62A-4a-203, both the division's and the court's paramount concern shall be the child's health, safety, and welfare. The desires of a parent for the parent's child, and the constitutionally protected rights of a parent, as described in this section, shall be given full and serious consideration by the division and the court.

(6) In cases where actual sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are established, the state has no duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, provide reunification services, or to attempt to rehabilitate the offending parent or parents. This Subsection (6) does not exempt the division from providing court-ordered services.

(7) (a) In accordance with Subsection (1), the division shall strive to achieve appropriate permanency for children who are abused, neglected, or dependent. The division shall provide in-home services, where appropriate and safe, in an effort to help a parent to correct the behavior that resulted in abuse, neglect, or dependency of the parent's child. The division may pursue a foster placement only if in-home services fail or are otherwise insufficient or inappropriate, kinship placement is not safe or appropriate, or in-home services

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and kinship placement fail and cannot be corrected. The division shall also seek qualified extended family support or a kinship placement to maintain a sense of security and stability for the child.

(b) If the use or continuation of "reasonable efforts," as described in Subsections (5) and (6), is determined to be inconsistent with the permanency plan for a child, then measures shall be taken, in a timely manner, to place the child in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(c) Subject to the parental rights recognized and protected under this section, if, because of a parent's conduct or condition, the parent is determined to be unfit or incompetent based on the grounds for termination of parental rights described in Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, the continuing welfare and best interest of the child is of paramount importance, and shall be protected in determining whether that parent's rights should be terminated.

(8) The state's right to direct or intervene in the provision of medical or mental health care for a child is subject to Subsections 78A-6-105[(35)(d)](39) and 78A-6-117(2) and Section 78A-6-301.5.

Section 2. Section **62A-4a-711** is amended to read:

62A-4a-711. Penalty.

An individual or entity that knowingly engages in an unregulated custody transfer, as defined in [Subsection] Section 78A-6-105[(56)], is guilty of a class B misdemeanor.

Section 3. 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

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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

(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 an individual 18 years of age or over, except that an individual 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 an individual 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:

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(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) "Department" means the Department of Human Services created in Section 62A-1-102.

~~(13)~~ (14) "Dependent child" includes a child who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

~~(14)~~ (15) "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)~~ (16) "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)~~ (17) "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.

(18) "Developmental immaturity" means incomplete development in one or more domains which manifests as a functional limitation in the minor's present ability to consult with counsel with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings.

~~(17)~~ (19) "Division" means the Division of Child and Family Services.

~~(18)~~ (20) "Educational neglect" means that, after receiving a notice of compulsory education violation under Section 53G-6-202, the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

~~(19)~~ (21) "Evidence-based" means a program or practice that has had multiple

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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.

~~(22)~~ (22) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.

~~(20)~~ (23) "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.

~~(21)~~ (24) "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.

~~(22)~~ (25) "Group rehabilitation therapy" means psychological and social counseling of one or more individuals in the group, depending upon the recommendation of the therapist.

~~(23)~~ (26) "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 individual, agency, or institution.

~~(24)~~ (27) "Habitual truant" means the same as that term is defined in Section 53G-6-201.

~~(25)~~ (28) "Harm" means:

- (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.

~~(26)~~ (29) (a) "Incest" means engaging in sexual intercourse with an individual 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 ~~(26)~~ (29)(a) include:

- (i) blood relationships of the whole or half blood, without regard to legitimacy;

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(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.

~~[(27)]~~ (30) "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.

~~[(28) "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, regarding the individual's effectiveness in meeting the standards expected for the individual's age by the individual'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 individual reaches the age of 18 years.]~~

(31) "Intellectual disability" means a significant subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior that

~~(a) originated before the age of 22; and~~

~~(b) } constitutes a substantial limitation to the individual's ability to function in society.~~

~~[(29)]~~ (32) "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;

(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.

~~[(30)]~~ (33) "Material loss" means an uninsured:

(a) property loss;

(b) out-of-pocket monetary loss;

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(c) lost wages; or

(d) medical expenses.

~~[(31) "Mental disorder" means a serious emotional and mental disturbance that severely limits a minor's development and welfare over a significant period of time.]~~

(34) "Mental illness" means:

(a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or related functioning; or

(b) the same as that term is defined in:

(i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or

(ii) the current edition of the International Statistical Classification of Diseases and Related Health Problems.

~~[(32)]~~ (35) "Minor" means:

(a) a child; or

(b) an individual 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.

~~[(33)]~~ (36) "Mobile crisis outreach team" means a crisis intervention service for minors or families of minors experiencing behavioral health or psychiatric emergencies.

~~[(34)]~~ (37) "Molestation" means that an individual, with the intent to arouse or gratify the sexual desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child, or the breast of a female child, or takes indecent liberties with a child as defined in Section 76-5-416.

~~[(35)]~~ (38) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

~~[(36)]~~ (39) (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

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subsistence or medical care, or any other care necessary for the child's health, safety, morals, or well-being;

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

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

(vi) educational neglect.

(b) "Neglect" does not include:

(i) a parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child;

(ii) a health care decision made for a child by the child's parent or guardian, unless the state or other party to a proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed;

(iii) a parent or guardian exercising the right described in Section 78A-6-301.5; or

(iv) permitting a child, whose basic needs are met and who is of sufficient age and maturity to avoid harm or unreasonable risk of harm, to engage in independent activities, including:

(A) traveling to and from school, including by walking, running, or bicycling;

(B) traveling to and from nearby commercial or recreational facilities;

(C) engaging in outdoor play;

(D) remaining in a vehicle unattended, except under the conditions described in Subsection 76-10-2202(2);

(E) remaining at home unattended; or

(F) engaging in a similar independent activity.

~~[(37)]~~ (40) "Neglected child" means a child who has been subjected to neglect.

~~[(38)]~~ (41) "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.

~~[(39)]~~ (42) "Not competent to proceed" means that a minor, due to a mental ~~[disorder]~~ illness, intellectual disability~~[, or related condition as defined]~~ or related condition, or

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developmental immaturity, 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.

~~[(40)]~~ (43) "Physical abuse" means abuse that results in physical injury or damage to a child.

~~[(41)]~~ (44) "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 permitted to remain in the minor's home under prescribed conditions.

~~[(42)]~~ (45) "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.

~~[(43) "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.]~~

(46) (a) "Related condition" means a condition that:

(i) is found to be closely related to intellectual disability;

(ii) results in impairment of general intellectual functioning or adaptive behavior similar to that of an intellectually disabled individual;

~~{~~ ~~—~~ (iii) manifests before the age of 22;

~~—~~ (iv) is diagnosed by a licensed physician;

~~‡~~ (~~v~~) ~~iii~~) is likely to continue indefinitely; and

(~~vi~~) ~~iv~~) constitutes a substantial limitation to the individual's ability to function in society.

(b) "Related condition" does not include mental illness, psychiatric impairment, or serious emotional or behavioral disturbance.

~~[(44)]~~ (47) (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

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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.

~~[(45)]~~ (48) "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).

~~[(46)]~~ (49) "Severe abuse" means abuse [that causes or threatens to cause serious harm to a child.

~~[(47)]~~ (50) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.

~~[(48)]~~ (51) "Sexual abuse" means:

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

(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 ~~[(26)]~~ (29), including siblings by marriage while the marriage exists or by adoption;
- (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;

(c) engaging in any conduct with a child that would constitute an offense under any of

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the following, regardless of whether the individual 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) subjecting a child to participate in or threatening to subject a child to participate in a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural marriage.

~~[(49)]~~ (52) "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 individual; 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 individual; or

(ii) engaging in sexual or simulated sexual conduct; or

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

~~[(50)]~~ (53) "Shelter" means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.

~~[(51)]~~ (54) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

~~[(52)]~~ (55) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.

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~~[(53)]~~ (56) "Substantiated" means the same as that term is defined in Section 62A-4a-101.

~~[(54)]~~ (57) "Supported" means the same as that term is defined in Section 62A-4a-101.

~~[(55)]~~ (58) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

~~[(56)]~~ (59) "Therapist" means:

(a) an individual 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 individual licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

~~[(57)]~~ (60) "Unregulated custody transfer" means the placement of a child:

(a) with an individual 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 individual taking custody of the child.

~~[(58)]~~ (61) "Unsubstantiated" means the same as that term is defined in Section 62A-4a-101.

~~[(59)]~~ (62) "Validated risk and needs assessment" means an evidence-based tool that assesses a minor's risk of reoffending and a minor's criminogenic needs.

~~[(60)]~~ (63) "Without merit" means the same as that term is defined in Section 62A-4a-101.

Section 4. Section **78A-6-302** is amended to read:

78A-6-302. Court-ordered protective custody of a child following petition filing -- Grounds.

(1) After a petition has been filed under Section 78A-6-304, if the child who is the

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subject of the petition is not in the protective custody of the division, a court may order that the child be removed from the child's home or otherwise taken into protective custody if the court finds, by a preponderance of the evidence, that any one or more of the following circumstances exist:

- (a) (i) there is an imminent danger to the physical health or safety of the child; and
- (ii) the child's physical health or safety may not be protected without removing the child from the custody of the child's parent or guardian;
- (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct that causes the child to suffer harm; and
- (ii) there are no less restrictive means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;
- (c) the child or another child residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a parent or guardian, a member of the parent's or guardian's household, or other person known to the parent or guardian;
- (d) the parent or guardian is unwilling to have physical custody of the child;
- (e) the child is abandoned or left without any provision for the child's support;
- (f) a parent or guardian who has been incarcerated or institutionalized has not arranged or cannot arrange for safe and appropriate care for the child;
- (g) (i) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;
- (ii) the whereabouts of the parent or guardian are unknown; and
- (iii) reasonable efforts to locate the parent or guardian are unsuccessful;
- (h) subject to Subsections 78A-6-105[(35)(c)(i) through (iii)](39) and 78A-6-117(2) and Section 78A-6-301.5, the child is in immediate need of medical care;
- (i) (i) a parent's or guardian's actions, omissions, or habitual action create an environment that poses a serious risk to the child's health or safety for which immediate remedial or preventive action is necessary; or
- (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose a threat to the child's health or safety;
- (j) the child or another child residing in the same household has been neglected;

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(k) the child's natural parent:

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

(ii) 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

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

(l) an infant has been abandoned, as defined in Section 78A-6-316;

(m) (i) the parent or guardian, or an adult residing in the same household as the parent or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act; and

(ii) any clandestine laboratory operation was located in the residence or on the property where the child resided; or

(n) the child's welfare is otherwise endangered.

(2) (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency occurs involving the same substantiated abuser or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of the child's parent.

(b) For purposes of Subsection (1)(c):

(i) another child residing in the same household may not be removed from the home unless that child is considered to be at substantial risk of being physically abused, sexually abused, or sexually exploited as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

(ii) if a parent or guardian has received actual notice that physical abuse, sexual abuse, or sexual exploitation by a person known to the parent has occurred, and there is evidence that the parent or guardian failed to protect the child, after having received the notice, by allowing the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically abused, sexually abused, or sexually exploited.

(3) (a) For purposes of Subsection (1), if the division files a petition under Section 78A-6-304, the court shall consider the division's safety and risk assessments described in

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Section 62A-4a-203.1 to determine whether a child should be removed from the custody of the child's parent or guardian or should otherwise be taken into protective custody.

(b) The division shall make a diligent effort to provide the safety and risk assessments described in Section 62A-4a-203.1 to the court, guardian ad litem, and counsel for the parent or guardian, as soon as practicable before the shelter hearing described in Section 78A-6-306.

(4) In the absence of one of the factors described in Subsection (1), a court may not remove a child from the parent's or guardian's custody on the basis of:

(a) educational neglect, truancy, or failure to comply with a court order to attend school;

(b) mental illness or poverty of the parent or guardian; or

(c) disability of the parent or guardian, as defined in Section 57-21-2.

(5) A child removed from the custody of the child's parent or guardian under this section may not be placed or kept in a secure detention facility pending further court proceedings unless the child is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

(6) This section does not preclude removal of a child from the child's home without a warrant or court order under Section 62A-4a-202.1.

(7) (a) Except as provided in Subsection (7)(b), a court or the Division of Child and Family Services may not remove a child from the custody of the child's parent or guardian on the sole or primary basis that the parent or guardian refuses to consent to:

(i) the administration of a psychotropic medication to a child;

(ii) a psychiatric, psychological, or behavioral treatment for a child; or

(iii) a psychiatric or behavioral health evaluation of a child.

(b) Notwithstanding Subsection (7)(a), a court or the Division of Child and Family Services may remove a child under conditions that would otherwise be prohibited under Subsection (7)(a) if failure to take an action described under Subsection (7)(a) would present a serious, imminent risk to the child's physical safety or the physical safety of others.

Section 5. Section **78A-6-312** is amended to read:

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

(1) The court may:

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

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

(i) individual; or

(ii) public or private entity or agency; or

(c) order:

(i) protective supervision;

(ii) family preservation;

(iii) subject to Subsections (12)(b), 78A-6-105[(35)(c)(i) through (iii)](39), and

78A-6-117(2) and Section 78A-6-301.5, medical or mental health treatment;

(iv) sibling visitation; or

(v) other services.

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

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

(b) determine whether, in view of the primary permanency plan, reunification services are appropriate for the minor and the minor's family, pursuant to Subsections (21) through (23).

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

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

(5) In all cases, the minor's health, safety, and welfare shall be the court's paramount concern in determining whether reasonable efforts to reunify should be made.

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

(a) protect the physical safety of the minor;

(b) protect the life of the minor; or

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

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

- (a) prove that the parent has not used legal or illegal substances; or
- (b) comply with an aspect of the child and family plan that is ordered by the court.

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

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

(ii) an explanation of the effect of abandoning or modifying the primary permanency plan.

(b) In determining the primary permanency plan and concurrent permanency plan, the court shall consider:

(i) the preference for kinship placement over nonkinship placement;

(ii) the potential for a guardianship placement if the parent-child relationship is legally terminated and no appropriate adoption placement is available; and

(iii) the use of an individualized permanency plan, only as a last resort.

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

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

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

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

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

(ii) the day on which the provision of reunification services, described in Section 78A-6-314, ends.

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

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

(12) (a) The court shall:

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

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

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

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

(i) the court may order the parent to submit to supplementary drug or alcohol testing in addition to the testing recommended by the parent's substance use disorder program based on a finding of reasonable suspicion that the parent is abusing drugs or alcohol; and

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

(13) (a) The time period for reunification services may not exceed 12 months from the date that the minor was initially removed from the minor's home, unless the time period is extended under Subsection 78A-6-314(7).

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

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

(b) If, at any time, continuation of reasonable efforts to reunify a minor is determined to be inconsistent with the final permanency plan for the minor established pursuant to Section

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78A-6-314, then measures shall be taken, in a timely manner, to:

- (i) place the minor in accordance with the permanency plan; and
- (ii) complete whatever steps are necessary to finalize the permanent placement of the

minor.

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

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

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

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

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

- (a) the court shall terminate reunification services; and
- (b) the division shall petition the court for termination of parental rights.

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

- (a) practicable; and
- (b) in accordance with the best interest of the minor.

(19) When a child is under the custody of the division and has been separated from a sibling due to foster care or adoptive placement, a court may order sibling visitation, subject to the division obtaining consent from the sibling's legal guardian, according to the court's determination of the best interests of the child for whom the hearing is held.

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

- (b) The court may determine that:

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

(ii) reunification services should not be provided.

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

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

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

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

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

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

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

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

(d) the parent:

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

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

(A) murder or manslaughter of a child; or

(B) child abuse homicide;

(iii) committed sexual abuse against the child;

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

(v) (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

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recklessly causing the death of another parent of the child;

(e) the minor suffered severe abuse by the parent or by any person known by the parent, if the parent knew or reasonably should have known that the person was abusing the minor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The time limits described in Subsections (2) through (18) are not tolled by the parent's absence.

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

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

(i) the age of the minor;

(ii) the degree of parent-child bonding;

(iii) the length of the sentence;

(iv) the nature of the treatment;

(v) the nature of the crime or illness;

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

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

(viii) any other appropriate factors.

(c) Reunification services for an incarcerated parent are subject to the time limitations

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imposed in Subsections (2) through (18).

(d) Reunification services for an institutionalized parent are subject to the time limitations imposed in Subsections (2) through (18), unless the court determines that continued reunification services would be in the minor's best interest.

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

Section 6. Section **78A-6-1301** is amended to read:

78A-6-1301. Competency to proceed.

~~[(1) Whenever a petition is filed alleging that a minor has committed an act that would be a crime if committed by an adult, a motion for an inquiry into the minor's competency may be filed. The motion shall be filed in the juvenile court where the petition is pending.]~~

(1) In a case alleging that a minor has violated any federal, state, or local law, a written motion may be filed alleging reasonable grounds to believe the minor is not competent to proceed.

(2) The written motion shall contain:

(a) a certificate that it is filed in good faith and on reasonable grounds to believe the minor is not competent to proceed[;] due to:

(i) a mental illness;

(ii) intellectual disability or a related condition; or

(iii) developmental immaturity;

(b) a recital of the facts, observations, and conversations with the minor that have formed the basis for the motion; and

(c) if filed by defense counsel, the motion shall contain information that can be revealed without invading the lawyer-client privilege.

(3) The motion may be based upon knowledge or information and belief and may be filed by:

(a) the minor alleged not competent to proceed;

(b) any person acting on the minor's behalf;

(c) the prosecuting attorney;

(d) the guardian ad litem; or

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(e) any person having custody or supervision over the minor.

(4) (a) The court in which a petition is pending may raise the issue of a minor's competency at any time.

(b) If raised by the court, counsel for each party shall be permitted to address the issue of competency[-], and the court shall state the basis for the finding that there are reasonable grounds to believe the minor is not competent to proceed.

Section 7. Section **78A-6-1302** is amended to read:

78A-6-1302. Procedure -- Standard.

(1) When a written motion is filed pursuant to Section 78A-6-1301 raising the issue of a minor's competency to proceed, or when the court raises the issue of a minor's competency to proceed, the juvenile court in which proceedings are pending shall stay all delinquency proceedings.

(2) (a) If a motion for inquiry is opposed by either party, the court shall, prior to granting or denying the motion, hold a limited hearing solely for the purpose of determining the sufficiency of the motion.

(b) If the court finds that the allegations of incompetency raise a bona fide doubt as to the minor's competency to proceed, it shall enter an order for an evaluation of the minor's competency to proceed, and shall set a date for a hearing on the issue of the minor's competency.

(3) After the granting of a motion, and prior to a full competency hearing, the court may order the Department of Human Services to evaluate the minor and to report to the court concerning the minor's mental condition.

(4) (a) The minor shall be evaluated by a [~~mental health examiner~~] forensic evaluator with experience in juvenile forensic evaluations and juvenile brain development, who is not involved in the current treatment of the minor.

(b) If it becomes apparent that the minor may be not competent due to an intellectual disability or related condition, the [~~examiner~~] forensic evaluator shall be experienced in intellectual disability or related condition evaluations of minors.

(5) The petitioner or other party, as directed by the court ~~{ or requested by the department }~~, shall provide all information and materials [~~to the examiners relevant to a determination of the minor's competency including~~] relevant to a determination of the minor's

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competency to the department within seven days of the court's order, including:

- (a) the motion;
- (b) the arrest or incident reports pertaining to the charged offense;
- (c) the minor's known delinquency history information;
- (d) the minor's probation record relevant to competency;
- ~~[(d)]~~ (e) known prior mental health evaluations and treatments; and
- ~~[(e)]~~ (f) consistent with 20 U.S.C. Sec. 1232g (b)(1)(E)(ii)(I), records pertaining to the minor's education.

(6) The minor's parents or guardian, the prosecutor, defense attorney, and guardian ad litem, shall cooperate, by executing releases of information when necessary, in providing the relevant information and materials to the ~~[examiners:]~~ forensic evaluator, including:

~~[(7) In conducting the evaluation and in the report determining if a minor is competent to proceed as defined in Subsection 78A-6-105(38), the examiner shall consider the impact of a mental disorder, intellectual disability, or related condition on a minor's present capacity to:]~~

- ~~[(a) comprehend and appreciate the charges or allegations;]~~
- ~~[(b) disclose to counsel pertinent facts, events, or states of mind;]~~
- ~~[(c) comprehend and appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the minor;]~~
- ~~[(d) engage in reasoned choice of legal strategies and options;]~~
- ~~[(e) understand the adversarial nature of the proceedings;]~~
- ~~[(f) manifest appropriate courtroom behavior; and]~~
- ~~[(g) testify relevantly, if applicable.]~~

~~[(8) In addition to the requirements of Subsection (7), the examiner's written report shall:]~~

- ~~[(a) identify the specific matters referred for evaluation;]~~
- ~~[(b) describe the procedures, techniques, and tests used in the evaluation and the purpose or purposes for each;]~~
- ~~[(c) state the examiner's clinical observations, findings, and opinions on each issue referred for evaluation by the court, and indicate specifically those issues, if any, on which the examiner could not give an opinion;]~~
- ~~[(d) state the likelihood that the minor will attain competency and the amount of time~~

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~~estimated to achieve it; and]~~

~~[(e) identify the sources of information used by the examiner and present the basis for the examiner's clinical findings and opinions.]~~

(a) medical records;

(b) prior mental evaluations; or

(c) records of diagnosis or treatment of substance abuse disorders.

(7) (a) In conducting the evaluation and in the report determining if a minor is competent to proceed, the forensic evaluator shall inform the court of the forensic evaluator's opinion whether the minor has a present ability to consult with counsel with a reasonable degree of rational understanding and whether the minor has a rational as well as factual understanding of the proceedings.

(b) In evaluating the minor, the forensic evaluator shall consider the minor's present ability to:

(i) understand the charges or allegations against the minor;

(ii) communicate facts, events, and states of mind;

(iii) understand the range of possible penalties associated with the allegations against the minor;

(iv) engage in reasoned choice of legal strategies and options;

(v) understand the adversarial nature of the proceedings against the minor;

(vi) manifest behavior sufficient to allow the court to proceed;

(vii) testify relevantly; and

(viii) any other factor determined to be relevant to the forensic evaluator.

~~[(9)] (8) (a) The [examiner] forensic evaluator shall provide an initial report to the court, the prosecuting and defense attorneys, and the guardian ad litem, if applicable, within 30 days of the receipt of the court's order. [If the examiner]~~

(b) If the forensic evaluator informs the court that additional time is needed, the court may grant, taking into consideration the custody status of the minor, up to an additional [30] 15 days to provide the report to the court and counsel. [The examiner]

(c) The forensic evaluator must provide the report within [60] 45 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the evaluation and provide the report. [The report shall inform the court of the

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~~examiner's opinion concerning the competency and the likelihood of the minor to attain competency within a year. In the alternative, the examiner may inform the court in writing that additional time is needed to complete the report.]~~

(d) The report shall inform the court of the forensic evaluator's opinion concerning the minor's competency.

(9) If the forensic evaluator's opinion is that the minor is not competent to proceed, the report shall indicate:

(a) the nature of the minor's:

(i) mental illness;

(ii) intellectual disability or related condition; or

(iii) developmental immaturity;

(b) the relationship of the minor's mental illness, intellectual disability, related condition, or developmental immaturity to the minor's incompetence;

(c) whether there is a substantial likelihood that the minor ~~will~~ may attain competency in the foreseeable future;

(d) the amount of time estimated for the minor to achieve competency if the minor undergoes competency attainment treatment, including medication;

(e) the sources of information used by the forensic evaluator; and

(f) the basis for clinical findings and opinions.

(10) Any statement made by the minor in the course of any competency evaluation, whether the evaluation is with or without the consent of the minor, any testimony by the ~~examiner~~ forensic evaluator based upon any statement, and any other fruits of the statement:

(a) may not be admitted in evidence against the minor in any delinquency or criminal proceeding except on an issue respecting the mental condition on which the minor has introduced evidence[. ~~The evidence~~]; and

(b) may be admitted[~~, however,~~] where relevant to a determination of the minor's competency.

(11) Before evaluating the minor, ~~examiners~~ a forensic evaluator shall specifically advise the minor ~~[and]~~, and, if reasonably available, the parents or guardian, of the limits of confidentiality as provided under Subsection (10).

(12) When the report is received, the court shall set a date for a competency hearing

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that shall be held in not less than five and not more than 15 days, unless the court enlarges the time for good cause.

(13) A minor shall be presumed competent unless the court, by a preponderance of the evidence, finds the minor not competent to proceed. The burden of proof is upon the proponent of incompetency to proceed.

(14) (a) Following the hearing, the court shall determine by a preponderance of evidence whether the minor is:

(i) competent to proceed;

(ii) not competent to proceed with a substantial probability that the minor may attain competency in the foreseeable future; or

(iii) not competent to proceed without a substantial probability that the minor may attain competency in the foreseeable future.

(b) If the court enters a finding pursuant to Subsection (14)(a)(i), the court shall proceed with the delinquency proceedings.

(c) If the court enters a finding pursuant to Subsection (14)(a)(ii), the court shall proceed consistent with Section 78A-6-1303.

(d) (i) If the court enters a finding pursuant to Subsection (14)(a)(iii), the court shall terminate the competency proceeding, dismiss the delinquency charges without prejudice, and release the minor from any custody order related to the pending delinquency proceeding, unless the prosecutor informs the court that commitment proceedings [~~pursuant to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated. These commitment proceedings~~] will be initiated pursuant to Title 62A:

(A) Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability; or

(B) Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(ii) The commitment proceedings described in Subsection (14)(d)(i) shall be initiated within seven days after the court's order, unless the court enlarges the time for good cause shown. [The minor may be ordered]

(iii) The court may order the minor to remain in custody until the commitment

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proceedings have been concluded.

(15) If the court finds the minor not competent to proceed, ~~[its]~~ the court's order shall contain findings addressing each of the factors in Subsection (7)(~~b~~).

Section 8. Section **78A-6-1303** is amended to read:

78A-6-1303. Disposition on finding of not competent to proceed -- Subsequent hearings -- Notice to prosecuting attorneys.

(1) If the court determines that the minor is not competent to proceed, and there is a substantial likelihood that the minor may attain competency in the foreseeable future, the court shall notify the ~~[Department of Human Services]~~ department of the finding, and allow the department 30 days to develop ~~[a six-month]~~ an attainment plan for the minor.

(2) The attainment plan shall include:

(a) any services or treatment the minor has been or is currently receiving that are necessary to attain competency;

(b) any additional services or treatment the minor may require to attain competency ~~[within the six-month time period]~~;

(c) an assessment of the parent, custodian, or guardian's ability to access or provide any recommended treatment or services;

(d) any special conditions or supervision that may be necessary for the safety of the minor or others during the attainment period; and

(e) the likelihood that the minor will attain competency ~~[in a six-month period]~~ and the amount of time likely required for the minor to attain competency.

(3) The department shall provide the attainment plan to the court, prosecutor, defense attorney, and guardian ad litem at least three days prior to the competency disposition hearing.

(4) (a) During the attainment period, the minor shall remain in the least restrictive appropriate setting.

~~[(a)]~~ (b) A finding of not competent to proceed does not grant authority for a court to place a minor in the custody of a division of the department ~~[or any of its divisions]~~, or create eligibility for services from the Division of Services for People With Disabilities.

~~[(b)]~~ (c) If the court orders the minor to be held in detention ~~[or placed outside of the home of the parent or guardian]~~ during the attainment period, the court shall make the following findings on the record:

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- (i) the placement is the least restrictive appropriate setting;
- (ii) the placement is in the best interest of the minor;
- (iii) the minor will have access to the services and treatment required by the attainment plan in the placement; and
- (iv) the placement is necessary for the safety of the minor or others.

~~[(5) If the minor is held in detention pending placement in a less restrictive setting, the department shall locate and transfer the minor to the alternative placement within 14 days.]~~

~~[(6) The court shall review the case at least once every three months to determine whether the placement is still the least restrictive appropriate placement.]~~

(d) A court shall terminate an order of detention related to the pending delinquency proceeding for a minor who is not competent to proceed in that matter if:

(i) the most severe allegation against the minor if committed by an adult is a class B misdemeanor;

(ii) more than 60 days have passed after the day on which the juvenile court adjudicated the minor not competent to proceed; and

(iii) the minor has not attained competency.

~~[(7) (5) (a) At any time that the minor becomes competent to proceed during the attainment period, [the executive director of the Department of Human Services, or its designee,] the department shall notify the court, prosecutor, defense attorney, and guardian ad litem.~~

(b) The court shall hold a hearing with 15 business days of notice from the [executive director] department described in Subsection (5)(a).

~~[(8) (6) (a) If at any time during the attainment period the court finds that there is not a substantial probability that the minor will attain competency in the foreseeable future, the court shall terminate the competency proceeding, dismiss the delinquency charges without prejudice, and release the minor from any custody order related to the pending delinquency proceeding, unless the prosecutor or any other individual informs the court that commitment proceedings [pursuant to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated. These commitment proceedings shall be initiated] will be initiated pursuant to Title 62A:~~

(i) Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an

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Intellectual Disability; or

(ii) Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(b) The prosecutor shall initiate the proceedings described in Subsection (6)(a) within seven days after the court's order, unless the court enlarges the time for good cause shown.

~~[The minor may be ordered to remain in custody until the commitment proceedings have been concluded.]~~

~~[(9)] (7) During the attainment period, the court may order a hearing or rehearing at anytime on its own motion or upon recommendation of any interested party or the [executive director of the Department of Human Services] department.~~

~~[(10)] (8) (a) [At the conclusion of the attainment period] Within three months of the court's approval of the attainment plan, the department shall provide a report on the minor's progress towards competence.~~

(b) The report described in Subsection (8)(a) shall address the minor's:

~~[(a)] (i) compliance with the attainment plan;~~

~~[(b)] (ii) progress towards competency based on the issues identified in the original competency evaluation; and~~

~~[(c)] (iii) current mental [~~disorder~~] illness, intellectual disability[;] or related condition, or developmental immaturity, and need for treatment, if any[;], and ~~[(d)] whether [the minor has attained competency, or the]~~ there is substantial likelihood of the minor attaining competency [and the amount of time necessary to attain it] within six months.~~

~~[(11) The court on its own motion, or upon motion by either party or by the executive director, may order an updated juvenile competency evaluation to examine the minor and advise the court on the minor's current competency status and progress toward competency restoration.]~~

~~[(12)] (9) (a) Within 30 days of receipt of the report, the court shall hold a hearing to determine the minor's current status.~~

(b) At the hearing, the burden of proving the minor is competent is on the proponent of competency.

(c) The court shall determine by a preponderance of the evidence whether the minor is competent to proceed.

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~~[(13)]~~ (10) If the minor has not attained competency after the initial ~~[six]~~ three month attainment period but is showing reasonable progress towards attainment of competency, the court may extend the attainment period up to an additional ~~[six]~~ three months.

(11) The department shall provide an updated juvenile competency evaluation at the conclusion of the six month attainment period to advise the court on the minor's current competency status.

~~[(14)]~~ (12) If the minor does not attain competency within ~~[one year]~~ six months after the court initially finds the minor not competent to proceed, the court shall terminate the competency proceedings and dismiss the delinquency charges without prejudice[-], unless good cause is shown that there is a substantial likelihood the minor will attain competency within one year from the initial finding of not competent to proceed.

(13) In the event a minor has an unauthorized leave lasting more than 24 hours, the attainment period shall toll until the minor returns.