

SB0128S02 compared with SB0128S01

~~deleted text~~ shows text that was in SB0128S01 but was deleted in SB0128S02.

Inserted text shows text that was not in SB0128S01 but was inserted into SB0128S02.

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

Senator Wayne A. Harper proposes the following substitute bill:

CHILD WELFARE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: _____

LONG TITLE

General Description:

This bill makes amendments to child welfare provisions.

Highlighted Provisions:

This bill:

- ▶ clarifies that the division may support a finding of child abuse or neglect and that a judge may substantiate a finding;
- ▶ clarifies language regarding policies and rules;
- ▶ clarifies procedures for the Department of Human Services regarding child pornography;
- ▶ requires the Office of Licensing, within the Department of Human Services, to run a background check on employees of congregate care settings where a child may be placed by the Division of Child and Family Services;

SB0128S02 compared with SB0128S01

- ▶ defines "threatened harm";
- ▶ outlines requirements for a juvenile court to follow when a child is placed in a residential treatment program;
- ▶ ~~{limits}~~clarifies who may be involved in the development of a child and family plan;
- ▶ ~~{requires}~~clarifies that ~~{an attorney guardian ad litem only interview a child in the presence of the child's parent if the parent consents or the parent's legal counsel is present}~~parties may attend a team meeting with their counsel in accordance with the Utah Rules of Professional Conduct;
- ▶ clarifies when a court may order the division to provide protective supervision services;
- ▶ modifies provisions relating to who may adopt a child and with whom the division may place a child who is in foster care;
- ▶ modifies provisions relating to a court's consideration of multiple petitions for adoption;
- ▶ clarifies that termination of a parent's rights does not prevent a relative of the parent from seeking adoption of the parent's child; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

51-9-405, as last amended by Laws of Utah 2016, Chapter 144

62A-1-118, as last amended by Laws of Utah 2015, Chapter 255

62A-1-122, as enacted by Laws of Utah 2018, Chapter 285

62A-2-120, as last amended by Laws of Utah 2017, Chapters 78, 181, and 400

62A-4a-101, as last amended by Laws of Utah 2017, Chapters 209, 323, and 459

62A-4a-102, as last amended by Laws of Utah 2015, Chapter 258

62A-4a-105.5, as enacted by Laws of Utah 1994, Chapter 260

SB0128S02 compared with SB0128S01

62A-4a-110, as last amended by Laws of Utah 2009, Chapter 75
62A-4a-112, as last amended by Laws of Utah 2009, Chapter 75
62A-4a-117, as last amended by Laws of Utah 2016, Chapter 231
62A-4a-118, as last amended by Laws of Utah 2017, Chapter 478
62A-4a-201, as last amended by Laws of Utah 2017, Chapter 330
62A-4a-202.6, as last amended by Laws of Utah 2018, Chapter 415
62A-4a-205, as last amended by Laws of Utah 2017, Chapter 323
62A-4a-412, as last amended by Laws of Utah 2017, Chapters 209 and 459
62A-4a-602, as last amended by Laws of Utah 2017, Chapter 148
62A-4a-711, as enacted by Laws of Utah 2017, Chapter 401
62A-4a-905, as last amended by Laws of Utah 2009, Chapter 75
62A-4a-1003, as last amended by Laws of Utah 2017, Chapter 209
63G-4-402, as last amended by Laws of Utah 2011, Chapter 208
76-5-110, as last amended by Laws of Utah 2011, Chapter 366
78A-6-105, as last amended by Laws of Utah 2018, Chapters 45, 91, 192, 235, 285, and 415
78A-6-117, as last amended by Laws of Utah 2018, Chapters 117 and 285
78A-6-302, as last amended by Laws of Utah 2018, Chapter 91
78A-6-306, as last amended by Laws of Utah 2018, Chapter 91
78A-6-312, as last amended by Laws of Utah 2018, Chapter 91
78A-6-317, as last amended by Laws of Utah 2014, Chapters 90 and 275
78A-6-902, as last amended by Laws of Utah 2018, Chapter 359
78A-6-1103, as last amended by Laws of Utah 2014, Chapter 265
78A-6-1302, as last amended by Laws of Utah 2017, Chapter 330
78B-6-102, as renumbered and amended by Laws of Utah 2008, Chapter 3
78B-6-103, as last amended by Laws of Utah 2017, Chapters 110, 280, and 417
78B-6-117, as last amended by Laws of Utah 2018, Chapter 43 and further amended by Revisor Instructions, Laws of Utah 2018, Chapter 446
78B-6-133, as last amended by Laws of Utah 2015, Chapter 194

ENACTS:

78A-6-311.5, Utah Code Annotated 1953

SB0128S02 compared with SB0128S01

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

Section 1. Section **51-9-405** is amended to read:

51-9-405. Substance Abuse Prevention Account established -- Funding -- Uses.

(1) There is created a restricted account within the General Fund known as the Substance Abuse Prevention Account.

(2) (a) The Division of Finance shall allocate to the Substance Abuse Prevention Account from the collected surcharge established in Section 51-9-401:

(i) 2.5% for the juvenile court, but not to exceed the amount appropriated by the Legislature; and

(ii) 2.5% for the State Board of Education, but not to exceed the amount appropriated by the Legislature.

(b) The juvenile court shall use the allocation to pay for compensatory service programs required by [~~Subsection~~] Section 78A-6-117[(2)(m)].

(c) The State Board of Education shall use the allocation in public school programs for:

(i) substance abuse prevention and education;

(ii) substance abuse prevention training for teachers and administrators; and

(iii) district and school programs to supplement, not supplant, existing local prevention efforts in cooperation with local substance abuse authorities.

Section 2. Section **62A-1-118** is amended to read:

62A-1-118. Access to abuse and neglect information to screen employees and volunteers.

(1) The department may conduct a background check, pursuant to Subsections 62A-2-120(1) through (4), of department employees and volunteers who have direct access, as defined in Section 62A-2-101, to a child or a vulnerable adult.

(2) In addition to conducting a background check described in Subsection (1), and subject to the requirements of this section, the department may search the Division of Child and Family Services' Management Information System described in Section 62A-4a-1003.

(3) With respect to department employees and volunteers, the department may only access information in the systems and databases described in Subsection 62A-2-120(3) and in the Division of Child and Family Services' Management Information System for the purpose of

SB0128S02 compared with SB0128S01

determining at the time of hire and each year thereafter whether a department employee or volunteer has a criminal history, an adjudication of abuse or neglect, or ~~[, since January 1, 1994,]~~ a substantiated or supported finding of abuse, neglect, or exploitation ~~[after notice and an opportunity for a hearing consistent with Title 63G, Chapter 4, Administrative Procedures Act, but only if a criminal history or identification as a possible perpetrator of abuse or neglect is directly relevant to the employment or volunteer activities of that person].~~

(4) A department employee or volunteer to whom Subsection (1) applies shall submit to the department the employee or volunteer's name, other personal identifying information, and consent for the background check on a form specified by the department.

(5) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, defining permissible and impermissible work-related activities for a department employee or volunteer with a criminal history or with one or more substantiated or supported findings of abuse, neglect, or exploitation.

Section 3. Section **62A-1-122** is amended to read:

62A-1-122. Child pornography.

(1) As used in this section:

(a) "Child pornography" means the same as that term is defined in Section 76-5b-103.

(b) "Secure" means to prevent and prohibit access, electronic upload, transmission, or transfer of an image.

(2) The department or a division within the department may not retain child pornography longer than is necessary to comply with the requirements of this section.

(3) When the department or a division within the department obtains child pornography as a result of an employee unlawfully viewing child pornography, the department or division shall consult with and follow the guidance of the Department of Human Resource Management regarding personnel action and local law enforcement regarding retention of the child pornography.

(4) When the department or a division within the department obtains child pornography as a result of a report or an investigation, the department or division shall ~~[(a) document a written description of the child pornography in the appropriate case file; and (b) securely transfer]~~ immediately secure the child pornography [to], or the electronic device if the child pornography is digital, and contact the law enforcement office that has jurisdiction over

SB0128S02 compared with SB0128S01

the area where the division's case is located.

~~[(5) When the department or a division within the department transfers child pornography to law enforcement, the law enforcement office shall:]~~

~~[(a) seize and retain the child pornography as evidence, in accordance with Section 24-2-103;]~~

~~[(b) prohibit the distribution, release, or display of the child pornography, except to the following:]~~

~~[(i) an individual to whom a court has granted access by court order, as described in Subsection (6);]~~

~~[(ii) a department or division investigator, a supervisor of a department, or division investigator or an investigator authorized under Section 62A-4a-202.6, if necessary for the investigation;]~~

~~[(iii) an administrative law judge employed by the Department of Human Services, if necessary for an adjudication;]~~

~~[(iv) an office of the city attorney, county attorney, district attorney, or attorney general, if necessary for prosecution;]~~

~~[(v) a law enforcement agency, if necessary for an investigation; or]~~

~~[(vi) the guardian ad litem for the child who is the subject of the child pornography; and]~~

~~[(c) when the department determines that the child pornography no longer needs to be held as evidence, dispose of the child pornography under Subsection 24-3-103(6)(a)(iii).]~~

~~[(6) A court order described in Subsection (5)(b)(i).]~~

~~[(a) shall describe with particularity the individual to whom the child pornography may be released; and]~~

~~[(b) may impose reasonable restrictions on access to the child pornography to protect the privacy of the child victim.]~~

Section 4. Section **62A-2-120** is amended to read:

62A-2-120. Background check -- Direct access to children or vulnerable adults.

(1) As used in this section:

(a) (i) "Applicant" means:

~~[(i) a person described]~~ (A) the same as that term is defined in Section 62A-2-101;

SB0128S02 compared with SB0128S01

~~[(ii)]~~ (B) an individual who ~~[-(A)]~~ is associated with a licensee~~[-]~~ and ~~[(B)]~~ has or will likely have direct access to a child or a vulnerable adult;

~~[(iii)]~~ (C) an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion;

~~[(iv)]~~ (D) a department contractor; ~~[or]~~

~~[(v)]~~ (E) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual is 12 years of age or older and ~~[-(A)]~~ resides in a home, that is licensed or certified by the office, with the child or vulnerable adult who is receiving services; or

~~[(B) is a person or individual described in Subsection (1)(a)(i), (ii), (iii), or (iv).]~~

(F) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual is 12 years of age or older and is a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).

(ii) "Applicant" does not mean an individual, including an adult, who is in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services.

(b) "Application" means a background screening application to the office.

(c) "Bureau" means the Bureau of Criminal Identification within the Department of Public Safety, created in Section 53-10-201.

(d) "Incidental care" means occasional care, not in excess of five hours per week and never overnight, for a foster child.

(e) "Personal identifying information" means:

(i) current name, former names, nicknames, and aliases;

(ii) date of birth;

(iii) physical address and email address;

(iv) telephone number;

(v) driver license or other government-issued identification;

(vi) social security number;

(vii) only for applicants who are 18 years of age or older, fingerprints, in a form specified by the office; and

(viii) other information specified by the office by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

SB0128S02 compared with SB0128S01

(2) (a) Except as provided in Subsection [~~13~~] (13), an applicant shall submit the following to the office:

- (i) personal identifying information;
- (ii) a fee established by the office under Section 63J-1-504; and
- (iii) a form, specified by the office, for consent for:

(A) an initial background check upon submission of the information described under this Subsection (2)(a);

(B) a background check at the applicant's annual renewal;

(C) a background check when the office determines that reasonable cause exists; and

(D) retention of personal identifying information, including fingerprints, for monitoring and notification as described in Subsections (3)(d) and (4).

(b) In addition to the requirements described in Subsection (2)(a), if an applicant spent time outside of the United States and its territories during the five years immediately preceding the day on which the information described in Subsection (2)(a) is submitted to the office, the office may require the applicant to submit documentation establishing whether the applicant was convicted of a crime during the time that the applicant spent outside of the United States or its territories.

(3) The office:

(a) shall perform the following duties as part of a background check of an applicant:

(i) check state and regional criminal background databases for the applicant's criminal history by:

(A) submitting personal identifying information to the [~~Bureau~~] bureau for a search; or

(B) using the applicant's personal identifying information to search state and regional criminal background databases as authorized under Section 53-10-108;

(ii) submit the applicant's personal identifying information and fingerprints to the [~~Bureau~~] bureau for a criminal history search of applicable national criminal background databases;

(iii) search the Department of Human Services, Division of Child and Family Services' Licensing Information System described in Section 62A-4a-1006;

(iv) search the Department of Human Services, Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

SB0128S02 compared with SB0128S01

(v) search the juvenile court records for substantiated findings of severe child abuse or neglect described in Section 78A-6-323; and

(vi) search the juvenile court arrest, adjudication, and disposition records, as provided under Section 78A-6-209;

(b) shall conduct a background check of an applicant for an initial background check upon submission of the information described under Subsection (2)(a);

(c) may conduct all or portions of a background check of an applicant, as provided by rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) for an annual renewal; or

(ii) when the office determines that reasonable cause exists;

(d) may submit an applicant's personal identifying information, including fingerprints, to the [~~Bureau~~] bureau for checking, retaining, and monitoring of state and national criminal background databases and for notifying the office of new criminal activity associated with the applicant;

(e) shall track the status of an approved applicant under this section to ensure that an approved applicant is not required to duplicate the submission of the applicant's fingerprints if the applicant applies for:

(i) more than one license;

(ii) direct access to a child or a vulnerable adult in more than one human services program; or

(iii) direct access to a child or a vulnerable adult under a contract with the department;

(f) shall track the status of each license and each individual with direct access to a child or a vulnerable adult and notify the [~~Bureau~~] bureau when the license has expired or the individual's direct access to a child or a vulnerable adult has ceased;

(g) shall adopt measures to strictly limit access to personal identifying information solely to the office employees responsible for processing the applications for background checks and to protect the security of the personal identifying information the office reviews under this Subsection (3); [~~and~~]

(h) as necessary to comply with the federal requirement to check a state's child abuse and neglect registry regarding any individual working in a program under this section that

SB0128S02 compared with SB0128S01

serves children, shall:

(i) search the Department of Human Services, Division of Child and Family Services' Licensing Information System described in Section 62A-4a-1006; and

(ii) require the child abuse and neglect registry be checked in each state where an applicant resided at any time during the five years immediately preceding the day on which the applicant submits the information described in Subsection (2)(a) to the office; and

~~[(h)]~~ (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this Subsection (3) relating to background checks.

(4) (a) With the personal identifying information the office submits to the [~~Bureau~~] bureau under Subsection (3), the [~~Bureau~~] bureau shall check against state and regional criminal background databases for the applicant's criminal history.

(b) With the personal identifying information and fingerprints the office submits to the [~~Bureau~~] bureau under Subsection (3), the [~~Bureau~~] bureau shall check against national criminal background databases for the applicant's criminal history.

(c) Upon direction from the office, and with the personal identifying information and fingerprints the office submits to the [~~Bureau~~] bureau under Subsection (3)(d), the [~~Bureau~~] bureau shall:

(i) maintain a separate file of the fingerprints for search by future submissions to the local and regional criminal records databases, including latent prints; and

(ii) monitor state and regional criminal background databases and identify criminal activity associated with the applicant.

(d) The [~~Bureau~~] bureau is authorized to submit the fingerprints to the Federal Bureau of Investigation Next Generation Identification System, to be retained in the Federal Bureau of Investigation Next Generation Identification System for the purpose of:

(i) being searched by future submissions to the national criminal records databases, including the Federal Bureau of Investigation Next Generation Identification System and latent prints; and

(ii) monitoring national criminal background databases and identifying criminal activity associated with the applicant.

(e) The Bureau shall notify and release to the office all information of criminal activity

SB0128S02 compared with SB0128S01

associated with the applicant.

(f) Upon notice from the office that a license has expired or an individual's direct access to a child or a vulnerable adult has ceased, the [~~Bureau~~] bureau shall:

- (i) discard and destroy any retained fingerprints; and
- (ii) notify the Federal Bureau of Investigation when the license has expired or an individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of Investigation Next Generation Identification System.

(5) (a) After conducting the background check described in Subsections (3) and (4), the office shall deny an application to an applicant who, within three years before the day on which the applicant submits information to the office under Subsection (2) for a background check, has been convicted of any of the following, regardless of whether the offense is a felony, a misdemeanor, or an infraction:

(i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to animals, or bestiality;

(ii) a violation of any pornography law, including sexual exploitation of a minor;

(iii) prostitution;

(iv) an offense included in:

(A) Title 76, Chapter 5, Offenses Against the Person;

(B) Section 76-5b-201, Sexual Exploitation of a Minor; or

(C) Title 76, Chapter 7, Offenses Against the Family;

(v) aggravated arson, as described in Section 76-6-103;

(vi) aggravated burglary, as described in Section 76-6-203;

(vii) aggravated robbery, as described in Section 76-6-302;

(viii) identity fraud crime, as described in Section 76-6-1102; or

(ix) a conviction for a felony or misdemeanor offense committed outside of the state that, if committed in the state, would constitute a violation of an offense described in Subsections (5)(a)(i) through (viii).

(b) If the office denies an application to an applicant based on a conviction described in Subsection (5)(a), the applicant is not entitled to a comprehensive review described in Subsection (6).

SB0128S02 compared with SB0128S01

(6) (a) The office shall conduct a comprehensive review of an applicant's background check if the applicant:

(i) has a conviction for any felony offense, not described in Subsection (5)(a), regardless of the date of the conviction;

(ii) has a conviction for a misdemeanor offense, not described in Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the conviction is within five years before the day on which the applicant submits information to the office under Subsection (2) for a background check;

(iii) has a conviction for any offense described in Subsection (5)(a) that occurred more than three years before the day on which the applicant submitted information under Subsection (2)(a);

(iv) is currently subject to a plea in abeyance or diversion agreement for any offense described in Subsection (5)(a);

(v) has a listing in the Department of Human Services, Division of Child and Family Services' Licensing Information System described in Section 62A-4a-1006;

(vi) has a listing in the Department of Human Services, Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(vii) has a record in the juvenile court of a substantiated finding of severe child abuse or neglect described in Section 78A-6-323;

(viii) has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or misdemeanor, if the applicant is:

(A) under 28 years of age; or

(B) 28 years of age or older and has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor offense described in Subsection (5)(a); or

(ix) has a pending charge for an offense described in Subsection (5)(a).

(b) The comprehensive review described in Subsection (6)(a) shall include an examination of:

(i) the date of the offense or incident;

(ii) the nature and seriousness of the offense or incident;

SB0128S02 compared with SB0128S01

- (iii) the circumstances under which the offense or incident occurred;
 - (iv) the age of the perpetrator when the offense or incident occurred;
 - (v) whether the offense or incident was an isolated or repeated incident;
 - (vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:
 - (A) actual or threatened, nonaccidental physical or mental harm;
 - (B) sexual abuse;
 - (C) sexual exploitation; or
 - (D) negligent treatment;
 - (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed; and
 - (viii) any other pertinent information.
- (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the office shall deny an application to an applicant if the office finds that approval would likely create a risk of harm to a child or a vulnerable adult.
- (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules, consistent with this chapter, to establish procedures for the comprehensive review described in this Subsection (6).
- (7) Subject to Subsection (10), the office shall approve an application to an applicant who is not denied under Subsection (5), (6), or (13).
- (8) (a) The office may conditionally approve an application of an applicant, for a maximum of 60 days after the day on which the office sends written notice to the applicant under Subsection (12), without requiring that the applicant be directly supervised, if the office:
- (i) is awaiting the results of the criminal history search of national criminal background databases; and
 - (ii) would otherwise approve an application of the applicant under Subsection (7).
- (b) Upon receiving the results of the criminal history search of national criminal background databases, the office shall approve or deny the application of the applicant in accordance with Subsections (5) through (7).
- (9) A licensee or department contractor may not permit an individual to have direct access to a child or a vulnerable adult unless, subject to Subsection (10):

SB0128S02 compared with SB0128S01

- (a) the individual is associated with the licensee or department contractor and:
 - (i) the individual's application is approved by the office under this section;
 - (ii) the individual's application is conditionally approved by the office under

Subsection (8); or

(iii) (A) the individual has submitted the background check information described in Subsection (2) to the office;

(B) the office has not determined whether to approve the applicant's application; and

(C) the individual is directly supervised by an individual who has a current background screening approval issued by the office under this section and is associated with the licensee or department contractor;

(b) (i) the individual is associated with the licensee or department contractor;

(ii) the individual has a current background screening approval issued by the office under this section;

(iii) one of the following circumstances, that the office has not yet reviewed under Subsection (6), applies to the individual:

(A) the individual was charged with an offense described in Subsection (5)(a);

(B) the individual is listed in the Licensing Information System, described in Section 62A-4a-1006;

(C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation database, described in Section 62A-3-311.1;

(D) the individual has a record in the juvenile court of a substantiated finding of severe child abuse or neglect, described in Section 78A-6-323; or

(E) the individual has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or a misdemeanor; and

(iv) the individual is directly supervised by an individual who:

(A) has a current background screening approval issued by the office under this

section; and

(B) is associated with the licensee or department contractor;

(c) the individual:

(i) is not associated with the licensee or department contractor; and

(ii) is directly supervised by an individual who:

SB0128S02 compared with SB0128S01

(A) has a current background screening approval issued by the office under this section; and

(B) is associated with the licensee or department contractor;

(d) the individual is the parent or guardian of the child, or the guardian of the vulnerable adult;

(e) the individual is approved by the parent or guardian of the child, or the guardian of the vulnerable adult, to have direct access to the child or the vulnerable adult;

(f) the individual is only permitted to have direct access to a vulnerable adult who voluntarily invites the individual to visit; or

(g) the individual only provides incidental care for a foster child on behalf of a foster parent who has used reasonable and prudent judgment to select the individual to provide the incidental care for the foster child.

(10) An individual may not have direct access to a child or a vulnerable adult if the individual is prohibited by court order from having that access.

(11) Notwithstanding any other provision of this section, an individual for whom the office denies an application may not have supervised or unsupervised direct access to a child or vulnerable adult unless the office approves a subsequent application by the individual.

(12) (a) Within 30 days after the day on which the office receives the background check information for an applicant, the office shall give written notice to:

(i) the applicant, and the licensee or department contractor, of the office's decision regarding the background check and findings; and

(ii) the applicant of any convictions and potentially disqualifying charges and adjudications found in the search.

(b) With the notice described in Subsection (12)(a), the office shall also give the applicant the details of any comprehensive review conducted under Subsection (6).

(c) If the notice under Subsection (12)(a) states that the applicant's application is denied, the notice shall further advise the applicant that the applicant may, under Subsection 62A-2-111(2), request a hearing in the department's Office of Administrative Hearings, to challenge the office's decision.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules, consistent with this chapter:

SB0128S02 compared with SB0128S01

(i) defining procedures for the challenge of its background check decision described in Subsection (12)(c); and

(ii) expediting the process for renewal of a license under the requirements of this section and other applicable sections.

(13) An individual or a department contractor who provides services in an adults only substance use disorder program, as defined by rule, is exempt from this section. This exemption does not extend to a program director or a member, as defined by Section 62A-2-108, of the program.

(14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements of this section, if the background check of an applicant is being conducted for the purpose of licensing a prospective foster home or approving a prospective adoptive placement of a child in state custody, the office shall:

(i) check the child abuse and neglect registry in each state where each applicant resided in the five years immediately preceding the day on which the applicant applied to be a foster parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and

(ii) check the child abuse and neglect registry in each state where each adult living in the home of the applicant described in Subsection (14)(a)(i) resided in the five years immediately preceding the day on which the applicant applied to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect.

(b) The requirements described in Subsection (14)(a) do not apply to the extent that:

(i) federal law or rule permits otherwise; or

(ii) the requirements would prohibit the Division of Child and Family Services or a court from placing a child with:

(A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

(B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending completion of the background check described in Subsection (5).

(c) Notwithstanding Subsections (5) through (9), the office shall deny a license or a license renewal to a prospective foster parent or a prospective adoptive parent if the applicant

SB0128S02 compared with SB0128S01

has been convicted of:

(i) a felony involving conduct that constitutes any of the following:

(A) child abuse, as described in Section 76-5-109;

(B) commission of domestic violence in the presence of a child, as described in Section 76-5-109.1;

(C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

(D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;

(E) aggravated murder, as described in Section 76-5-202;

(F) murder, as described in Section 76-5-203;

(G) manslaughter, as described in Section 76-5-205;

(H) child abuse homicide, as described in Section 76-5-208;

(I) homicide by assault, as described in Section 76-5-209;

(J) kidnapping, as described in Section 76-5-301;

(K) child kidnapping, as described in Section 76-5-301.1;

(L) aggravated kidnapping, as described in Section 76-5-302;

(M) human trafficking of a child, as described in Section 76-5-308.5;

(N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

(O) sexual exploitation of a minor, as described in Section 76-5b-201;

(P) aggravated arson, as described in Section 76-6-103;

(Q) aggravated burglary, as described in Section 76-6-203;

(R) aggravated robbery, as described in Section 76-6-302; or

(S) domestic violence, as described in Section 77-36-1; or

(ii) an offense committed outside the state that, if committed in the state, would constitute a violation of an offense described in Subsection (14)(c)(i).

(d) Notwithstanding Subsections (5) through (9), the office shall deny a license or license renewal to a prospective foster parent or a prospective adoptive parent if, within the five years immediately preceding the day on which the individual's application or license would otherwise be approved, the applicant was convicted of a felony involving conduct that constitutes a violation of any of the following:

(i) aggravated assault, as described in Section 76-5-103;

(ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;

SB0128S02 compared with SB0128S01

- (iii) mayhem, as described in Section 76-5-105;
 - (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
 - (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
 - (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;
 - (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or
 - (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- (e) In addition to the circumstances described in Subsection (6)(a), the office shall conduct the comprehensive review of an applicant's background check pursuant to this section if the registry check described in Subsection (14)(a) indicates that the individual is listed in a child abuse and neglect registry of another state as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

Section 5. Section **62A-4a-101** is amended to read:

62A-4a-101. Definitions.

As used in this chapter:

- (1) "Abuse" means the same as that term is defined in Section 78A-6-105.
- (2) "Adoption services" means:
 - (a) placing children for adoption;
 - (b) subsidizing adoptions under Section 62A-4a-105;
 - (c) supervising adoption placements until the adoption is finalized by the court;
 - (d) conducting adoption studies;
 - (e) preparing adoption reports upon request of the court; and
 - (f) providing postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible disruptive placement.
- (3) "Child" means, except as provided in Part 7, Interstate Compact on Placement of Children, a person under 18 years of age.
- (4) "Child protection team" means a team consisting of:
 - (a) the caseworker assigned to the case;
 - (b) the caseworker who made the decision to remove the child;
 - (c) a representative of the school or school district where the child attends school;

SB0128S02 compared with SB0128S01

- (d) the peace officer who removed the child from the home;
 - (e) a representative of the appropriate Children's Justice Center, if one is established within the county where the child resides;
 - (f) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances;
 - (g) members of a child protection unit; and
 - (h) any other individuals determined appropriate and necessary by the team coordinator and chair.
- (5) "Child protection unit" means any unit created by a chief of police or a sheriff of a city, town, metro township, or county that is composed of at least the following individuals who are trained in the prevention, identification, and treatment of abuse or neglect:
- (a) a law enforcement officer, as defined in Section 53-13-103; and
 - (b) a child advocate selected by the chief of police or a sheriff.
- (6) "Chronic abuse" means repeated or patterned abuse.
- (7) "Chronic neglect" means repeated or patterned neglect.
- (8) "Consult" means an interaction between two persons in which the initiating person:
- (a) provides information to another person;
 - (b) provides the other person an opportunity to respond; and
 - (c) takes the other person's response, if any, into consideration.
- (9) "Consumer" means a person who receives services offered by the division in accordance with this chapter.
- (10) "Custody," with regard to the division, means the custody of a minor in the division as of the date of disposition.
- (11) "Day-care services" means care of a child for a portion of the day which is less than 24 hours:
- (a) in the child's own home by a responsible person; or
 - (b) outside of the child's home in a:
 - (i) day-care center;
 - (ii) family group home; or
 - (iii) family child care home.
- (12) "Dependent child" or "dependency" means a child, or the condition of a child, who

SB0128S02 compared with SB0128S01

is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

(13) "Director" means the director of the Division of Child and Family Services.

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

(15) "Domestic violence services" means:

(a) temporary shelter, treatment, and related services to:

(i) a person who is a victim of abuse, as defined in Section 78B-7-102; and

(ii) the dependent children of a person [~~described in Subsection (12)(a)(i)~~] who is a victim of abuse, as defined in Section 78B-7-102; and

(b) treatment services for a person who is alleged to have committed, has been convicted of, or has pled guilty to, an act of domestic violence as defined in Section 77-36-1.

(16) "Harm" means the same as that term is defined in Section 78A-6-105.

(17) "Homemaking service" means the care of individuals in their domiciles, and help given to individual caretaker relatives to achieve improved household and family management through the services of a trained homemaker.

(18) "Incest" means the same as that term is defined in Section 78A-6-105.

(19) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.

(20) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.

(21) "Minor" means, except as provided in Part 7, Interstate Compact on Placement of Children:

(a) a child; or

(b) a person:

(i) who is at least 18 years of age and younger than 21 years of age; and

(ii) for whom the division has been specifically ordered by the juvenile court to provide services.

(22) "Molestation" means the same as that term is defined in Section 78A-6-105.

(23) "Mutual case" means a case that has been:

(a) opened by the division under the division's discretion and procedures;

(b) opened by the law enforcement agency with jurisdiction over the case; and

(c) accepted for investigation by the child protection unit established by the chief of police or sheriff, as applicable.

(24) "Natural parent" means a minor's biological or adoptive parent, and includes a

SB0128S02 compared with SB0128S01

minor's noncustodial parent.

(25) "Neglect" means the same as that term is defined in Section 78A-6-105.

(26) "Protective custody," with regard to the division, means the shelter of a child by the division from the time the child is removed from the child's home until the earlier of:

- (a) the shelter hearing; or
- (b) the child's return home.

(27) "Protective services" means expedited services that are provided:

- (a) in response to evidence of neglect, abuse, or dependency of a child;
- (b) to a cohabitant who is neglecting or abusing a child, in order to:
 - (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse; and
 - (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and
 - (c) in cases where the child's welfare is endangered:
 - (i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;
 - (ii) to cause a protective order to be issued for the protection of the child, when appropriate; and
 - (iii) to protect the child from the circumstances that endanger the child's welfare including, when appropriate:
 - (A) removal from the child's home;
 - (B) placement in substitute care; and
 - (C) petitioning the court for termination of parental rights.

(28) "Severe abuse" means the same as that term is defined in Section 78A-6-105.

(29) "Severe neglect" means the same as that term is defined in Section 78A-6-105.

(30) "Sexual abuse" means the same as that term is defined in Section 78A-6-105.

(31) "Sexual exploitation" means the same as that term is defined in Section 78A-6-105.

(32) "Shelter care" means the temporary care of a minor in a nonsecure facility.

(33) "Sibling" means a child who shares or has shared at least one parent in common either by blood or adoption.

(34) "Sibling visitation" means services provided by the division to facilitate the

SB0128S02 compared with SB0128S01

interaction between a child in division custody with a sibling of that child.

(35) "State" means:

- (a) a state of the United States;
- (b) the District of Columbia;
- (c) the Commonwealth of Puerto Rico;
- (d) the Virgin Islands;
- (e) Guam;
- (f) the Commonwealth of the Northern Mariana Islands; or
- (g) a territory or possession administered by the United States.

(36) "State plan" means the written description of the programs for children, youth, and family services administered by the division in accordance with federal law.

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

(38) "Substance abuse" means the same as that term is defined in Section 78A-6-105.

(39) "Substantiated" or "substantiation" means a judicial finding based on a preponderance of the evidence that abuse or neglect occurred. Each allegation made or identified in a given case shall be considered separately in determining whether there should be a finding of substantiated.

(40) "Substitute care" means:

(a) the placement of a minor in a family home, group care facility, or other placement outside the minor's own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the minor's own home would be contrary to the minor's welfare;

- (b) services provided for a minor awaiting placement; and
- (c) the licensing and supervision of a substitute care facility.

(41) "Supported" means a finding by the division based on the evidence available at the completion of an investigation that there is a reasonable basis to conclude that abuse, neglect, or dependency occurred. Each allegation made or identified during the course of the investigation shall be considered separately in determining whether there should be a finding of supported.

(42) "Temporary custody," with regard to the division, means the custody of a child in

SB0128S02 compared with SB0128S01

the division from the date of the shelter hearing until disposition.

(43) "Threatened harm" means the same as that term is defined in Section 78A-6-105.

~~[(43)]~~ (44) "Transportation services" means travel assistance given to an individual with escort service, if necessary, to and from community facilities and resources as part of a service plan.

~~[(44)]~~ (45) "Unsubstantiated" means a judicial finding that there is insufficient evidence to conclude that abuse or neglect occurred.

~~[(45)]~~ (46) "Unsupported" means a finding by the division at the completion of an investigation that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a finding of unsupported means also that the division ~~[worker]~~ did not conclude that the allegation was without merit.

~~[(46)]~~ (47) "Without merit" means a finding at the completion of an investigation by the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

Section 6. Section **62A-4a-102** is amended to read:

62A-4a-102. Rulemaking responsibilities of division.

(1) The Division of Child and Family Services, created in Section 62A-4a-103, is responsible for establishing ~~[policies for the]~~ division~~[-by rule;]~~ rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act, regarding abuse, neglect, and dependency proceedings, and domestic violence services. The division is responsible to see that the legislative purposes for the division are carried out.

(2) The division shall:

(a) approve fee schedules for programs within the division;

(b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish~~[-by rule, policies]~~ rules to ensure that private citizens, consumers, foster parents, private contract providers, allied state and local agencies, and others are provided with an opportunity to comment and provide input regarding any new ~~[policy]~~ rule or proposed revision of an existing ~~[policy]~~ rule; and

(c) provide a mechanism for:

(i) systematic and regular review of existing ~~[policies]~~ rules, including an annual

SB0128S02 compared with SB0128S01

review of all division [~~policies~~] rules to ensure that [~~policies~~] rules comply with the Utah Code; and

(ii) consideration of [~~policy~~] rule changes proposed by the persons and agencies described in Subsection (2)(b).

(3) (a) The division shall establish rules for the determination of eligibility for services offered by the division in accordance with this chapter.

(b) The division may, by rule, establish eligibility standards for consumers.

(4) The division shall adopt and maintain rules regarding placement for adoption or foster care that are consistent with, and no more restrictive than, applicable statutory provisions.

Section 7. Section **62A-4a-105.5** is amended to read:

62A-4a-105.5. Employees -- Failure to comply with division policy --

Termination.

(1) The director shall ensure that all employees are fully trained to comply with state [~~and~~] law, federal law, administrative rules, and division policy in order to effectively carry out their assigned duties and functions.

(2) If, after training and supervision, the employee consistently fails to comply with those laws, rules, [~~and policies, his~~] or policies, the individual's employment with the division shall be terminated.

Section 8. Section **62A-4a-110** is amended to read:

62A-4a-110. Receipt of gifts -- Volunteer services.

(1) The division may receive gifts, grants, devises, and donations. These gifts, grants, devises, donations, or their proceeds shall be credited to the program which the donor designates and may be used for the purposes requested by the donor, if the request conforms to state and federal [~~policy~~] law. If a donor makes no specific request, the division may use the gift, grant, devise, or donation for the best interest of the division.

(2) The division may:

(a) accept and use volunteer labor or services of applicants, recipients, and other members of the community. The division may reimburse volunteers for necessary expenses, including transportation, and provide recognition awards and recognition meals for services rendered. The division may cooperate with volunteer organizations in collecting funds to be

SB0128S02 compared with SB0128S01

used in the volunteer program. Those donated funds shall be considered as private, nonlapsing funds until used by the division, and may be invested under guidelines established by the state treasurer;

(b) encourage merchants and providers of services to donate goods and services or to provide them at a nominal price or below cost;

(c) distribute goods to applicants or consumers free or for a nominal charge and tax free; and

(d) appeal to the public for funds to meet applicants' and consumers' needs which are not otherwise provided for by law. Those appeals may include Sub-for-Santa Programs, recreational programs for minors, and requests for household appliances and home repairs, under rules established by the division.

Section 9. Section **62A-4a-112** is amended to read:

62A-4a-112. Request to examine family services payment.

(1) An individual who is a taxpayer and resident of this state and who desires to examine a payment for services offered by the division in accordance with this chapter, shall sign a statement using a form prescribed by the division. That statement shall include the assertion that the individual is a taxpayer and a resident, and shall include a commitment that any information obtained will not be used for commercial or political purposes. No partial or complete list of names, addresses, or amounts of payment may be made by any individual under this subsection, and none of that information may be removed from the offices of the division.

(2) The division shall, after due consideration of the public interest, define the nature of confidential information to be safeguarded by the division and shall establish [~~policies and~~] rules to govern the custody and disclosure of confidential information, as well as to provide access to information regarding payments for services offered by the division.

(3) This section does not prohibit the division or its agents, or individuals, commissions, or agencies duly authorized for the purpose, from making special studies or from issuing or publishing statistical material and reports of a general character. This section does not prohibit the division or its representatives or employees from conveying or providing to local, state, or federal governmental agencies written information that would affect an individual's eligibility or ineligibility for financial service, or other beneficial programs offered

SB0128S02 compared with SB0128S01

by that governmental agency. Access to the division's program plans, policies, and records, as well as consumer records and data, is governed by Title 63G, Chapter 2, Government Records Access and Management Act.

(4) Violation of this section is a class B misdemeanor.

Section 10. Section **62A-4a-117** is amended to read:

62A-4a-117. Performance monitoring system -- Annual report.

(1) As used in this section:

(a) "Council" means the Child Welfare Improvement Council established under Section 62A-4a-311.

(b) "Performance indicators" means actual performance in a program, activity, or other function for which there is a performance standard.

(c) (i) "Performance standards" means the targeted or expected level of performance of each area in the child welfare system, including:

- (A) child protection services;
- (B) adoption;
- (C) foster care; and
- (D) other substitute care.

(ii) "Performance standards" includes the performance goals and measures in effect in 2008 that the division was subject to under federal court oversight, as amended pursuant to Subsection (2), including:

- (A) the qualitative case review; and
- (B) the case process review.

(2) (a) The division may not amend the performance standards unless the amendment is:

- (i) necessary and proper for the effective administration of the division; or
- (ii) necessary to comply with, or implement changes in, the law.

(b) Before amending the performance standards, the division shall provide written notice of the proposed amendment to the council.

(c) The notice described in Subsection (2)(b) shall include:

- (i) the proposed amendment;
- (ii) a summary of the reason for the proposed amendment; and

SB0128S02 compared with SB0128S01

(iii) the proposed effective date of the amendment.

(d) Within 45 days after the day on which the division provides the notice described in Subsection (2)(b) to the council, the council shall provide to the division written comments on the proposed amendment.

(e) The division may not implement a proposed amendment to the performance standards until the earlier of:

(i) seven days after the day on which the division receives the written comments regarding the proposed change described in Subsection (2)(d); or

(ii) 52 days after the day on which the division provides the notice described in Subsection (2)(b) to the council.

(f) The division shall:

(i) give full, fair, and good faith consideration to all comments and objections received from the council;

(ii) notify the council in writing of:

(A) the division's decision regarding the proposed amendment; and

(B) the reasons that support the decision;

(iii) include complete information on all amendments to the performance standards in the report described in Subsection (4); and

(iv) post the changes on the division's website.

(3) The division shall maintain a performance monitoring system to regularly:

(a) collect information on performance indicators; and

(b) compare performance indicators to performance standards.

(4) Before January 1 each year, the director shall submit a written report to the Child Welfare Legislative Oversight Panel and the Social Services Appropriations Subcommittee that includes:

(a) a comparison between the performance indicators for the prior fiscal year and the performance standards;

(b) for each performance indicator that does not meet the performance standard:

(i) the reason the standard was not met;

(ii) the measures that need to be taken to meet the standard; and

(iii) the division's plan to comply with the standard for the current fiscal year;

SB0128S02 compared with SB0128S01

(c) data on the extent to which new and experienced division employees have received training pursuant to statute, administrative rule, and division policy; and

(d) an analysis of the use and efficacy of in-home services, both before and after removal of a child from the child's home.

Section 11. Section **62A-4a-118** is amended to read:

62A-4a-118. Annual review of child welfare referrals and cases by executive director -- Accountability to the Legislature -- Review by legislative auditor general.

(1) The division shall use principles of quality management systems, including statistical measures of processes of service, and the routine reporting of performance data to employees.

(2) (a) In addition to development of quantifiable outcome measures and performance measures in accordance with Section 62A-4a-117, the executive director, or ~~[his]~~ the executive director's designee, shall annually review a randomly selected sample of child welfare referrals to and cases handled by the division. The purpose of that review shall be to assess whether the division is adequately protecting children and providing appropriate services to families, in accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination of Parental Rights Act. The review shall focus directly on the outcome of cases to children and families, and not simply on procedural compliance with specified criteria.

(b) The executive director shall report~~[, regarding his review of those cases,]~~ on the executive director's review to the legislative auditor general and the Child Welfare Legislative Oversight Panel.

(c) Information obtained as a result of the review shall be provided to caseworkers, supervisors, and division personnel involved in the respective cases, for purposes of education, training, and performance evaluation.

(3) The executive director's review and report to the ~~[Legislature]~~ legislative auditor general and the Child Welfare Legislative Oversight Panel shall include:

(a) the criteria used by the executive director, or ~~[his]~~ the executive director's designee, in making the evaluation;

(b) findings regarding whether state statutes, division ~~[policy, and]~~ rule, legislative policy, and division policy were followed in each sample case;

SB0128S02 compared with SB0128S01

(c) findings regarding whether, in each sample case, referrals, removals, or cases were appropriately handled by the division and its employees, and whether children were adequately and appropriately protected and appropriate services provided to families, in accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination of Parental Rights Act, and division [~~policy~~] rule;

(d) an assessment of the division's intake procedures and decisions, including an assessment of the appropriateness of decisions not to accept referrals; and

(e) an assessment of the appropriateness of the division's assignment of priority.

(4) (a) In addition to the executive director's review under Subsection (2), the legislative auditor general shall audit, subject to the prioritization of the Legislative Audit Subcommittee, a sample of child welfare referrals to and cases handled by the division and report the findings to the Child Welfare Legislative Oversight Panel.

(b) An audit under Subsection (4)(a) may be initiated by:

(i) the Audit Subcommittee of the Legislative Management Committee;

(ii) the Child Welfare Legislative Oversight Panel; or

(iii) the legislative auditor general, based on the results of the executive director's review under Subsection (2).

(c) With regard to the sample of referrals, removals, and cases, the Legislative Auditor General's report may include:

(i) findings regarding whether state statutes, division [~~policy, and~~] rule, legislative policy, and division policy were followed by the division and its employees;

(ii) a determination regarding whether referrals, removals, and cases were appropriately handled by the division and its employees, and whether children were adequately and appropriately protected and appropriate services provided for families, in accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination of Parental Rights Act, and division [~~policy~~] rule;

(iii) an assessment of the division's intake procedures and decisions, including an assessment of the appropriateness of decisions not to accept referrals;

(iv) an assessment of the appropriateness of the division's assignment of priority;

SB0128S02 compared with SB0128S01

(v) a determination regarding whether the department's review process is effecting beneficial change within the division and accomplishing the mission established by the Legislature and the department for that review process; and

(vi) findings regarding any other issues identified by the auditor or others under this Subsection (4).

Section 12. 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 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

SB0128S02 compared with SB0128S01

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 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

SB0128S02 compared with SB0128S01

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 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

SB0128S02 compared with SB0128S01

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)](36) and 78A-6-117(2) and Section 78A-6-301.5.

Section 13. Section **62A-4a-202.6** is amended to read:

62A-4a-202.6. Conflict child protective services investigations -- Authority of investigators.

(1) (a) The division shall contract with an independent child protective service investigator from the private sector to investigate reports of abuse or neglect of a child that occur while the child is in the custody of the division.

(b) The executive director shall designate an entity within the department, other than the division, to monitor the contract for the investigators described in Subsection (1)(a).

(c) Subject to Subsection (4), when a report is made that a child is abused or neglected while in the custody of the division:

(i) the attorney general may, in accordance with Section 67-5-16, and with the consent of the division, employ a child protective services investigator to conduct a conflict investigation of the report; or

(ii) a law enforcement officer, as defined in Section 53-13-103, may, with the consent of the division, conduct a conflict investigation of the report.

(d) Subsection (1)(c)(ii) does not prevent a law enforcement officer from, without the consent of the division, conducting a criminal investigation of abuse or neglect under Title 53, Public Safety Code.

(2) The investigators described in Subsections (1)(c) and (d) may also investigate allegations of abuse or neglect of a child by a department employee or a licensed substitute care provider.

(3) The investigators described in Subsection (1), if not [~~peace officers~~] law enforcement officers, shall have the same rights, duties, and authority of a child protective services investigator employed by the division to:

(a) make a thorough investigation upon receiving either an oral or written report of alleged abuse or neglect of a child, with the primary purpose of that investigation being the

SB0128S02 compared with SB0128S01

protection of the child;

(b) make an inquiry into the child's home environment, emotional, or mental health, the nature and extent of the child's injuries, and the child's physical safety;

(c) make a written report of their investigation, including determination regarding whether the alleged abuse or neglect was [~~substantiated, unsubstantiated~~] supported, unsupported, or without merit, and forward a copy of that report to the division within the time mandates for investigations established by the division; and

(d) immediately consult with school authorities to verify the child's status in accordance with Sections 53G-6-201 through 53G-6-206 when a report is based upon or includes an allegation of educational neglect.

(4) If there is a lapse in the contract with a private child protective service investigator and no other investigator is available under Subsection (1)(a) or (c), the department may conduct an independent investigation.

Section 14. Section **62A-4a-205** is amended to read:

62A-4a-205. Child and family plan -- Parent-time and relative visitation.

(1) No more than 45 days after a child enters the temporary custody of the division, the child's child and family plan shall be finalized.

(2) (a) The division may use an interdisciplinary team approach in developing each child and family plan.

(b) The interdisciplinary team described in Subsection (2)(a) may include representatives from the following fields:

- (i) mental health;
- (ii) education; and
- (iii) if appropriate, law enforcement.

(3) (a) The division shall involve all of the following in the development of a child's child and family plan:

- (i) both of the child's natural parents, unless the whereabouts of a parent are unknown;
- (ii) the child;
- (iii) the child's foster parents; ~~and~~
- (iv) if appropriate, the child's stepparent~~{};~~ and~~{};~~
- ~~{}(v)~~ the child's guardian ad litem, if one has been appointed by the court.~~{};~~

SB0128S02 compared with SB0128S01

(b) A parent or guardian's legal counsel may be present during the development of the child's child and family plan if legal counsel for the division is present.

~~[(b)]~~ (c) In relation to all information considered by the division in developing a child and family plan, additional weight and attention shall be given to the input of the child's natural and foster parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

~~[(c)]~~ (d) (i) The division shall make a substantial effort to develop a child and family plan with which the child's parents agree.

(ii) If a parent does not agree with a child and family plan:

(A) the division shall strive to resolve the disagreement between the division and the parent; and

(B) if the disagreement is not resolved, the division shall inform the court of the disagreement.

~~{ (d) Subsection (3)(a) does not prohibit the child's guardian ad litem from meeting with the child about the child's child and family plan at a time other than the time at which the parties described in Subsection (3)(a) meet to discuss the development of the child's child and family plan.~~

+ (4) A copy of the child and family plan shall, immediately upon completion, or as soon as reasonably possible thereafter, be provided to the:

(a) guardian ad litem;

(b) child's natural parents; and

(c) child's foster parents.

(5) Each child and family plan shall:

(a) specifically provide for the safety of the child, in accordance with federal law; and

(b) clearly define what actions or precautions will, or may be, necessary to provide for the health, safety, protection, and welfare of the child.

(6) The child and family plan shall set forth, with specificity, at least the following:

(a) the reason the child entered into the custody of the division;

(b) documentation of the:

(i) reasonable efforts made to prevent placement of the child in the custody of the division; or

(ii) emergency situation that existed and that prevented the reasonable efforts described

SB0128S02 compared with SB0128S01

in Subsection (6)(b)(i), from being made;

(c) the primary permanency plan for the child and the reason for selection of that plan;

(d) the concurrent permanency plan for the child and the reason for the selection of that plan;

(e) if the plan is for the child to return to the child's family:

(i) specifically what the parents must do in order to enable the child to be returned home;

(ii) specifically how the requirements described in Subsection (6)(e)(i) may be accomplished; and

(iii) how the requirements described in Subsection (6)(e)(i) will be measured;

(f) the specific services needed to reduce the problems that necessitated placing the child in the division's custody;

(g) the name of the person who will provide for and be responsible for case management;

(h) subject to Subsection (10), a parent-time schedule between the natural parent and the child;

(i) subject to Subsection (7), the health and mental health care to be provided to address any known or diagnosed mental health needs of the child;

(j) if residential treatment rather than a foster home is the proposed placement, a requirement for a specialized assessment of the child's health needs including an assessment of mental illness and behavior and conduct disorders;

(k) social summaries that include case history information pertinent to case planning; and

(l) subject to Subsection (12), a sibling visitation schedule.

(7) (a) Subject to Subsection (7)(b), in addition to the information required under Subsection (6)(i), the plan shall include a specialized assessment of the medical and mental health needs of a child, if the child:

(i) is placed in residential treatment; and

(ii) has medical or mental health issues that need to be addressed.

(b) Notwithstanding Subsection (7)(a), a parent shall retain the right to seek a separate medical or mental health diagnosis of the parent's child from a licensed practitioner of the

SB0128S02 compared with SB0128S01

parent's choice.

(8) (a) Each child and family plan shall be specific to each child and the child's family, rather than general.

(b) The division shall train its workers to develop child and family plans that comply with:

(i) federal mandates; and

(ii) the specific needs of the particular child and the child's family.

(c) All child and family plans and expectations shall be individualized and contain specific time frames.

(d) Subject to Subsection (8)(h), child and family plans shall address problems that:

(i) keep a child in placement; and

(ii) keep a child from achieving permanence in the child's life.

(e) Each child and family plan shall be designed to minimize disruption to the normal activities of the child's family, including employment and school.

(f) In particular, the time, place, and amount of services, hearings, and other requirements ordered by the court in the child and family plan shall be designed, as much as practicable, to help the child's parents maintain or obtain employment.

(g) The child's natural parents, foster parents, and where appropriate, stepparents, shall be kept informed of and supported to participate in important meetings and procedures related to the child's placement.

(h) For purposes of Subsection (8)(d), a child and family plan may only include requirements that:

(i) address findings made by the court; or

(ii) (A) are requested or consented to by a parent or guardian of the child; and

(B) are agreed to by the division and the guardian ad litem.

(9) (a) Except as provided in Subsection (9)(b), with regard to a child who is three years of age or younger, if the plan is not to return the child home, the primary permanency plan for that child shall be adoption.

(b) Notwithstanding Subsection (9)(a), if the division documents to the court that there is a compelling reason that adoption, reunification, guardianship, and a placement described in Subsection 78A-6-306(6)(e) are not in the child's best interest, the court may order another

SB0128S02 compared with SB0128S01

planned permanent living arrangement in accordance with federal law.

(10) (a) Except as provided in Subsection (10)(b), parent-time may only be denied by a court order issued pursuant to Subsections 78A-6-312(3), (6), and (7).

(b) Notwithstanding Subsection (10)(a), the person designated by the division or a court to supervise a parent-time session may deny parent-time for that session if the supervising person determines that, based on the parent's condition, it is necessary to deny parent-time in order to:

- (i) protect the physical safety of the child;
- (ii) protect the life of the child; or
- (iii) consistent with Subsection (10)(c), prevent the child from being traumatized by contact with the parent.

(c) In determining whether the condition of the parent described in Subsection (10)(b) will traumatize a child, the person supervising the parent-time session shall consider the impact that the parent's condition will have on the child in light of:

- (i) the child's fear of the parent; and
- (ii) the nature of the alleged abuse or neglect.

(11) The division shall consider visitation with their grandparents for children in state custody if the division determines visitation to be in the best interest of the child and:

- (a) there are no safety concerns regarding the behavior or criminal background of the grandparents;
- (b) allowing visitation would not compete with or undermine the reunification plan;
- (c) there is a substantial relationship between the grandparents and children; and
- (d) the visitation will not unduly burden the foster parents.

(12) The child and family plan shall incorporate reasonable efforts to:

- (a) provide sibling visitation when:
 - (i) siblings are separated due to foster care or adoptive placement;
 - (ii) visitation is in the best interest of the child for whom the plan is developed; and
 - (iii) the division has consent for sibling visitation from the legal guardian of the sibling; and

- (b) obtain consent for sibling visitation from the sibling's legal guardian when the criteria of Subsections (12)(a)(i) and (ii) are met.

SB0128S02 compared with SB0128S01

Section 15. Section **62A-4a-412** is amended to read:

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

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

- (a) a police or law enforcement agency investigating a report of known or suspected abuse or neglect, including members of a child protection unit;
- (b) a physician who reasonably believes that a child may be the subject of abuse or neglect;
- (c) an agency that has responsibility or authority to care for, treat, or supervise a minor who is the subject of a report;
- (d) a contract provider that has a written contract with the division to render services to a minor who is the subject of a report;
- (e) except as provided in Subsection 63G-2-202(10), a subject of the report, the natural parents of the child, and the guardian ad litem;
- (f) a court, upon a finding that access to the records may be necessary for the determination of an issue before the court, provided that in a divorce, custody, or related proceeding between private parties, the record alone is:
 - (i) limited to objective or undisputed facts that were verified at the time of the investigation; and
 - (ii) devoid of conclusions drawn by the division or any of the division's workers on the ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or neglect of another person;
- (g) an office of the public prosecutor or its deputies in performing an official duty;
- (h) a person authorized by a Children's Justice Center, for the purposes described in Section 67-5b-102;
- (i) a person engaged in bona fide research, when approved by the director of the division, if the information does not include names and addresses;
- (j) the State Board of Education, acting on behalf of itself or on behalf of a school district, for the purpose of evaluating whether an individual should be permitted to obtain or

SB0128S02 compared with SB0128S01

retain a license as an educator or serve as an employee or volunteer in a school, limited to information with substantiated or supported findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment;

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

(l) except as provided in Subsection 63G-2-202(10), a person filing a petition for a child protective order on behalf of a child who is the subject of the report;

(m) a licensed child-placing agency or person who is performing a preplacement adoptive evaluation in accordance with the requirements of Sections 78B-6-128 and 78B-6-130; or

(n) an Indian tribe to:

(i) certify or license a foster home;

(ii) render services to a subject of a report; or

(iii) investigate an allegation of abuse, neglect, or dependency.

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

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

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

(b) Notwithstanding any other provision of law, excluding Section 78A-6-317, but including this chapter and Title 63G, Chapter 2, Government Records Access and Management Act, when the division makes a report or other information in its possession available under Subsection (1)(e) to a subject of the report or a parent of a child, the division shall remove from

SB0128S02 compared with SB0128S01

the report or other information only the names, addresses, and telephone numbers of individuals or specific information that could:

- (i) identify the referent;
- (ii) impede a criminal investigation; or
- (iii) endanger a person's safety.

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

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

(6) A child-placing agency or person who receives a report in connection with a preplacement adoptive evaluation pursuant to Sections 78B-6-128 and 78B-6-130:

- (a) may provide this report to the person who is the subject of the report; and
- (b) may provide this report to a person who is performing a preplacement adoptive evaluation in accordance with the requirement of Sections 78B-6-128 and 78B-6-130, or to a licensed child-placing agency or to an attorney seeking to facilitate an adoption.

Section 16. Section **62A-4a-602** is amended to read:

62A-4a-602. Licensure requirements -- Prohibited acts.

(1) No person may engage in child placing, or solicit money or other assistance for child placing, without a valid license issued by the Office of Licensing, in accordance with Chapter 2, Licensure of Programs and Facilities. When a child-placing agency's license is suspended or revoked in accordance with that chapter, the care, control, or custody of any child who has been in the care, control, or custody of that agency shall be transferred to the division.

(2) (a) An attorney, physician, or other person may assist a parent in identifying or locating a person interested in adopting the parent's child, or in identifying or locating a child to be adopted. However, no payment, charge, fee, reimbursement of expense, or exchange of value of any kind, or promise or agreement to make the same, may be made for that assistance.

(b) An attorney, physician, or other person may not:

- (i) issue or cause to be issued to any person a card, sign, or device indicating that he is

SB0128S02 compared with SB0128S01

available to provide that assistance;

(ii) cause, permit, or allow any sign or marking indicating that he is available to provide that assistance, on or in any building or structure;

(iii) announce or cause, permit, or allow an announcement indicating that he is available to provide that assistance, to appear in any newspaper, magazine, directory, or on radio or television; or

(iv) advertise by any other means that he is available to provide that assistance.

(3) Nothing in this part precludes payment of fees for medical, legal, or other lawful services rendered in connection with the care of a mother, delivery and care of a child, or lawful adoption proceedings; and no provision of this part abrogates the right of procedures for independent adoption as provided by law.

(4) In accordance with federal law, only agents or employees of the division and of licensed child placing agencies may certify to the United States Immigration and Naturalization Service that a family meets the division's preadoption requirements.

(5) (a) [~~Beginning May 1, 2000, neither~~] Neither a licensed child-placing agency nor any attorney practicing in this state may place a child for adoption, either temporarily or permanently, with any individual or individuals that would not be qualified for adoptive placement pursuant to the provisions of Sections 78B-6-117, 78B-6-102, and 78B-6-137.

(b) [~~Beginning May 1, 2000, the~~] The division, as a licensed child-placing agency, may not place a child in foster care with any individual or individuals that would not be qualified for adoptive placement pursuant to the provisions of Sections 78B-6-117, 78B-6-102, and 78B-6-137. However, nothing in this Subsection (5)(b) limits the placement of a child in foster care with the child's biological or adoptive parent.

(c) [~~Beginning May 1, 2000, with~~] With regard to children who are in the custody of the state, the division shall establish a [~~policy~~] rule providing that priority for [~~foster care and adoptive~~] placement shall be provided to families in which both a man and a woman are legally married under the laws of this state. However, nothing in this Subsection (5)(c) limits the placement of a child with the child's biological or adoptive parent.

Section 17. 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

SB0128S02 compared with SB0128S01

defined in ~~[Subsection]~~ Section 78A-6-105~~(56)~~, is guilty of a class B misdemeanor.

Section 18. Section **62A-4a-905** is amended to read:

62A-4a-905. Supplemental adoption assistance.

(1) The division may, based upon annual legislative appropriations for adoption assistance and division rules, provide supplemental adoption assistance for ~~[children who have]~~ a child who has a special need. Supplemental adoption assistance shall be provided only after all other resources for which a child is eligible have been exhausted.

(2) (a) The department shall, by rule, establish in each region at least one advisory committee to review and make recommendations to the division on individual requests for supplemental adoption assistance. The committee shall be comprised of ~~[the following members]~~:

- (i) an adoption expert;
- (ii) an adoptive parent;
- (iii) a division representative;
- (iv) a foster parent; and
- (v) an adoption caseworker.

(b) The division ~~[policy]~~ rule required in Subsection (1) shall include a provision ~~[which]~~ that establishes a threshold amount for requests for supplemental adoption assistance that require review by the committee established in this Subsection (2).

Section 19. Section **62A-4a-1003** is amended to read:

62A-4a-1003. Management Information System -- Requirements -- Contents --

Purpose -- Access.

(1) (a) The division shall develop and implement a Management Information System that meets the requirements of this section and the requirements of federal law and regulation.

(b) The information and records contained in the Management Information System:

(i) are protected records under Title 63G, Chapter 2, Government Records Access and Management Act; and

(ii) except as provided in Subsections (1)(c) and (d), are available only to a person with statutory authorization under Title 63G, Chapter 2, Government Records Access and Management Act, to review the information and records described in this Subsection (1)(b).

(c) Notwithstanding Subsection (1)(b)(ii), the information and records described in

SB0128S02 compared with SB0128S01

Subsection (1)(b) are available to a person:

- (i) as provided under Subsection (6) or Section 62A-4a-1006; or

- (ii) who has specific statutory authorization to access the information or records for the purpose of assisting the state with state and federal requirements to maintain information solely for the purpose of protecting minors and providing services to families in need.

(d) Notwithstanding Subsection (1)(b)(ii), the information and records described in Subsection (1)(b) may, to the extent required by Title IV-B or IV-E of the Social Security Act, be provided by the division:

- (i) to comply with abuse and neglect registry checks requested by other states; and

- (ii) to the United States Department of Health and Human Services for purposes of maintaining an electronic national registry of supported or substantiated cases of abuse and neglect.

(2) With regard to all child welfare cases, the Management Information System shall provide each caseworker and the department's office of licensing, exclusively for the purposes of foster parent licensure and monitoring, with a complete history of each child in that worker's caseload, including:

- (a) a record of all past action taken by the division with regard to that child and the child's siblings;

- (b) the complete case history and all reports and information in the control or keeping of the division regarding that child and the child's siblings;

- (c) the number of times the child has been in the custody of the division;

- (d) the cumulative period of time the child has been in the custody of the division;

- (e) a record of all reports of abuse or neglect received by the division with regard to that child's parent, parents, or guardian including:

- (i) for each report, documentation of the:

- (A) latest status; or

- (B) final outcome or determination; and

- (ii) information that indicates whether each report was found to be:

- (A) supported;

- (B) unsupported;

- (C) substantiated [~~by a juvenile court~~];

SB0128S02 compared with SB0128S01

(D) unsubstantiated [~~by a juvenile court~~]; or

(E) without merit;

(f) the number of times the child's parent or parents failed any child and family plan;

and

(g) the number of different caseworkers who have been assigned to that child in the

past.

(3) The division's Management Information System shall:

(a) contain all key elements of each family's current child and family plan, including:

(i) the dates and number of times the plan has been administratively or judicially

reviewed;

(ii) the number of times the parent or parents have failed that child and family plan;

and

(iii) the exact length of time the child and family plan has been in effect; and

(b) alert caseworkers regarding deadlines for completion of and compliance with

policy, including child and family plans.

(4) With regard to all child protective services cases, the Management Information System shall:

(a) monitor the compliance of each case with:

(i) division rule [~~and policy~~];

(ii) state law; and

(iii) federal law and regulation; and

(b) include the age and date of birth of the alleged perpetrator at the time the abuse or neglect is alleged to have occurred, in order to ensure accuracy regarding the identification of the alleged perpetrator.

(5) Except as provided in Subsection (6) regarding contract providers and Section 62A-4a-1006 regarding limited access to the Licensing Information System, all information contained in the division's Management Information System is available to the department, upon the approval of the executive director, on a need-to-know basis.

(6) (a) Subject to this Subsection (6), the division may allow the division's contract providers, court clerks designated by the Administrative Office of the Courts, the Office of Guardian Ad Litem, or an Indian tribe to have limited access to the Management Information

SB0128S02 compared with SB0128S01

System.

(b) A division contract provider or Indian tribe has access only to information about a person who is currently receiving services from that specific contract provider or Indian tribe.

(c) (i) Designated court clerks may only have access to information necessary to comply with Subsection 78B-7-202(2).

(ii) The Office of Guardian Ad Litem may access only the information that:

(A) relates to children and families where the Office of Guardian Ad Litem is appointed by a court to represent the interests of the children; and

(B) except as provided in Subsection (6)(d), is entered into the Management Information System on or after July 1, 2004.

(d) Notwithstanding Subsection (6)(c)(ii)(B), the Office of Guardian Ad Litem shall have access to all abuse and neglect referrals about children and families where the office has been appointed by a court to represent the interests of the children, regardless of the date that the information is entered into the Management Information System.

(e) Each contract provider, designated representative of the Office of Guardian Ad Litem, and Indian tribe who requests access to information contained in the Management Information System shall:

(i) take all necessary precautions to safeguard the security of the information contained in the Management Information System;

(ii) train its employees regarding:

(A) requirements for protecting the information contained in the Management Information System as required by this chapter and under Title 63G, Chapter 2, Government Records Access and Management Act; and

(B) the criminal penalties under Sections 62A-4a-412 and 63G-2-801 for improper release of information; and

(iii) monitor its employees to ensure that they protect the information contained in the Management Information System as required by law.

(f) The division shall take reasonable precautions to ensure that its contract providers comply with the requirements of this Subsection (6).

(7) The division shall take all necessary precautions, including password protection and other appropriate and available technological techniques, to prevent unauthorized access to or

SB0128S02 compared with SB0128S01

release of information contained in the Management Information System.

Section 20. Section **63G-4-402** is amended to read:

63G-4-402. Judicial review -- Informal adjudicative proceedings.

(1) (a) The district courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, except that the juvenile courts have jurisdiction over all [~~state~~] final agency actions relating to:

(i) the removal or placement of children in state custody;

(ii) the support of children under Subsection (1)(a)(i) as determined administratively under Section 78A-6-1106; and

(iii) [~~substantiated~~] supported findings of abuse or neglect made by the Division of Child and Family Services[~~, after an evidentiary hearing~~].

(b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the petitioner resides or maintains the petitioner's principal place of business.

(2) (a) The petition for judicial review of informal adjudicative proceedings shall be a complaint governed by the Utah Rules of Civil Procedure and shall include:

(i) the name and mailing address of the party seeking judicial review;

(ii) the name and mailing address of the respondent agency;

(iii) the title and date of the final agency action to be reviewed, together with a copy, summary, or brief description of the agency action;

(iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action;

(v) a copy of the written agency order from the informal proceeding;

(vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review;

(vii) a request for relief, specifying the type and extent of relief requested; and

(viii) a statement of the reasons why the petitioner is entitled to relief.

(b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

(3) (a) The court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.

SB0128S02 compared with SB0128S01

(b) The Utah Rules of Evidence apply in judicial proceedings under this section.

Section 21. Section **76-5-110** is amended to read:

76-5-110. Abuse or neglect of a child with a disability.

(1) As used in this section:

(a) "Abuse" means:

(i) inflicting physical injury, as that term is defined in Section 76-5-109;

(ii) having the care or custody of a child with a disability, causing or permitting another to inflict physical injury, as that term is defined in Section 76-5-109; or

(iii) unreasonable confinement.

(b) "Caretaker" means:

(i) any parent, legal guardian, or other person having under that person's care and custody a child with a disability; or

(ii) any person, corporation, or public institution that has assumed by contract or court order the responsibility to provide food, shelter, clothing, medical, and other necessities to a child with a disability.

(c) "Child with a disability" means any person under 18 years of age who is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent that the person is unable to care for the person's own personal safety or to provide necessities such as food, shelter, clothing, and medical care.

(d) "Neglect" means failure by a caretaker to provide care, nutrition, clothing, shelter, supervision, or medical care.

(2) Any caretaker who intentionally, knowingly, or recklessly abuses or neglects a child with a disability is guilty of a third degree felony.

(3) (a) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be considered to be in violation under this section.

(b) Subject to Subsection 78A-6-117(2)[~~(m)(iii)~~](m), the exception under Subsection (3)(a) does not preclude a court from ordering medical services from a physician licensed to engage in the practice of medicine to be provided to the child where there is substantial risk of

SB0128S02 compared with SB0128S01

harm to the child's health or welfare if the treatment is not provided.

(c) A caretaker of a child with a disability does not violate this section by selecting a treatment option for a medical condition of a child with a disability, if the treatment option is one that a reasonable caretaker would believe to be in the best interest of the child with a disability.

Section 22. 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

(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.

SB0128S02 compared with SB0128S01

(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:

(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 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

SB0128S02 compared with SB0128S01

(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) "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) "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.

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

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

(25) "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;

SB0128S02 compared with SB0128S01

- (c) sexual abuse; or
- (d) sexual exploitation.

(26) (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)(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.

(27) "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.

(29) "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) "Material loss" means an uninsured:

SB0128S02 compared with SB0128S01

- (a) property loss;
- (b) out-of-pocket monetary loss;
- (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.

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

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

(36) (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 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.

SB0128S02 compared with SB0128S01

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

(38) "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) "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.

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

(41) "Probation" means a legal status created by court order following an adjudication

SB0128S02 compared with SB0128S01

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) "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.

(44) (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.

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

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

(48) "Sexual abuse" means:

- (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an

SB0128S02 compared with SB0128S01

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), 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 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) "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:

SB0128S02 compared with SB0128S01

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

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

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

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

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

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

(56) "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) "Threatened harm" means actions, inactions, or credible verbal threats, indicating that the child is at an unreasonable risk of harm or neglect.

~~[(57)]~~ (58) "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

SB0128S02 compared with SB0128S01

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

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

~~[(58)]~~ (60) "Unsubstantiated" means the same as that term is defined in Section 62A-4a-101.

~~[(59)]~~ (61) "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)]~~ (62) "Without merit" means the same as that term is defined in Section 62A-4a-101.

Section 23. Section **78A-6-117** is amended to read:

78A-6-117. Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court.

(1) (a) When a minor is found to come within Section 78A-6-103, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over the minor. However, in cases within Subsection 78A-6-103(1), findings of fact are not necessary.

(b) If the court adjudicates a minor for a crime of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days of the adjudication and shall include:

(i) the specific offenses for which the minor was adjudicated; and

(ii) if available, if the victim:

(A) resides in the same school district as the minor; or

(B) attends the same school as the minor.

(c) An adjudicated minor shall undergo a risk screening or, if indicated, a validated risk and needs assessment. Results of the screening or assessment shall be used to inform disposition decisions and case planning. Assessment results, if available, may not be shared with the court before adjudication.

(2) Upon adjudication the court may make the following dispositions by court order:

(a) (i) the court may place the minor on probation or under protective supervision in

SB0128S02 compared with SB0128S01

the minor's own home and upon conditions determined by the court, including community or compensatory service;

(ii) a condition ordered by the court under Subsection (2)(a)(i):

(A) shall be individualized and address a specific risk or need;

(B) shall be based on information provided to the court, including the results of a validated risk and needs assessment conducted under Subsection (1)(c); ~~and~~

(C) if the court orders treatment, shall be based on a validated risk and needs assessment conducted under Subsection (1)(c); and

(D) if the court orders protective supervision, may not designate the division as the provider of protective supervision unless there is a petition regarding abuse, neglect, or dependency before the court ~~from the division or the guardian ad litem~~ requesting that the division provide protective supervision;

(iii) a court may not issue a standard order that contains control-oriented conditions;

(iv) prohibitions on weapon possession, where appropriate, shall be specific to the minor and not the minor's family;

(v) if the court orders probation, the court may direct that notice of the court's order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, that the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety; and

(vi) an employee of the local law enforcement agency and the school that the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202; and

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

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

(c) (i) The court shall only vest legal custody of the minor in the Division of Juvenile Justice Services and order the Division of Juvenile Justice Services to provide dispositional recommendations and services if:

SB0128S02 compared with SB0128S01

(A) nonresidential treatment options have been exhausted or nonresidential treatment options are not appropriate; and

(B) the minor is adjudicated under this section for a felony offense, a misdemeanor when the minor has five prior misdemeanors or felony adjudications arising from separate criminal episodes, or a misdemeanor involving the use of a dangerous weapon as defined in Section 76-1-601.

(ii) The court may not vest legal custody of a minor in the Division of Juvenile Justice Services for:

(A) contempt of court except to the extent permitted under Section 78A-6-1101;

(B) a violation of probation;

(C) failure to pay a fine, fee, restitution, or other financial obligation;

(D) unfinished compensatory or community service hours;

(E) an infraction; or

(F) a status offense.

(iii) (A) A minor who is 18 years old or older, but younger than 21 years old, may petition the court to express the minor's desire to be removed from the jurisdiction of the juvenile court and from the custody of the Division of Child and Family Services if the minor is in the division's custody on grounds of abuse, neglect, or dependency.

(B) If the minor's parent's rights have not been terminated in accordance with Part 5, Termination of Parental Rights Act, the minor's petition shall contain a statement from the minor's parent or guardian agreeing that the minor should be removed from the custody of the Division of Child and Family Services.

(C) The minor and the minor's parent or guardian shall sign the petition.

(D) The court shall review the petition within 14 days.

(E) The court shall remove the minor from the custody of the Division of Child and Family Services if the minor and the minor's parent or guardian have met the requirements described in Subsections (2)(c)(iii)(B) and (C) and if the court finds, based on input from the Division of Child and Family Services, the minor's guardian ad litem, and the Office of the Attorney General, that the minor does not pose an imminent threat to self or others.

(F) A minor removed from custody under Subsection (2)(c)(iii)(E) may, within 90 days of the date of removal, petition the court to re-enter custody of the Division of Child and

SB0128S02 compared with SB0128S01

Family Services.

(G) Upon receiving a petition under Subsection (2)(c)(iii)(F), the court shall order the Division of Child and Family Services to take custody of the minor based on the findings the court entered when the court originally vested custody in the Division of Child and Family Services.

(d) (i) The court shall only commit a minor to the Division of Juvenile Justice Services for secure confinement if the court finds that the minor poses a risk of harm to others and is adjudicated under this section for:

(A) a felony offense;

(B) a misdemeanor if the minor has five prior misdemeanor or felony adjudications arising from separate criminal episodes; or

(C) a misdemeanor involving use of a dangerous weapon as defined in Section 76-1-601.

(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection 78A-6-103(1)(b) may not be committed to the Division of Juvenile Justice Services.

(iii) The court may not commit a minor to the Division of Juvenile Justice Services for secure confinement for:

(A) contempt of court;

(B) a violation of probation;

(C) failure to pay a fine, fee, restitution, or other financial obligation;

(D) unfinished compensatory or community service hours;

(E) an infraction; or

(F) a status offense.

(e) The court may order nonresidential, diagnostic assessment, including substance use disorder, mental health, psychological, or sexual behavior risk assessment.

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

(ii) This Subsection (2)(f) applies only to a minor adjudicated for:

SB0128S02 compared with SB0128S01

- (A) an act which if committed by an adult would be a criminal offense; or
- (B) contempt of court under Section 78A-6-1101.
- (iii) The court may not commit a minor to a place of detention for:
 - (A) contempt of court except to the extent allowed under Section 78A-6-1101;
 - (B) a violation of probation;
 - (C) failure to pay a fine, fee, restitution, or other financial obligation;
 - (D) unfinished compensatory or community service hours;
 - (E) an infraction; or
 - (F) a status offense.

(iv) (A) Time spent in detention pre-adjudication shall be credited toward the 30 cumulative days eligible as a disposition under Subsection (2)(f)(i). If the minor spent more than 30 days in a place of detention before disposition, the court may not commit a minor to detention under this section.

(B) Notwithstanding Subsection (2)(f)(iv)(A), the court may commit a minor for a maximum of seven days while a minor is awaiting placement under Subsection (2)(c)(i). Only the seven days under this Subsection (2)(f)(iv)(B) may be combined with a nonsecure placement.

(v) Notwithstanding Subsection (2)(t), no more than seven days of detention may be ordered in combination with an order under Subsection (2)(c)(i).

(g) The court may vest legal custody of an abused, neglected, or dependent minor in the Division of Child and Family Services or any other appropriate person in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

(h) (i) The court may order a minor to repair, replace, or otherwise make restitution for material loss caused by the minor's wrongful act or for conduct for which the minor agrees to make restitution.

(ii) A victim has the meaning defined under Subsection 77-38a-102(14). A victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the minor's delinquency conduct in the course of the scheme, conspiracy, or pattern.

(iii) If the victim and the minor agree to participate, the court may refer the case to a

SB0128S02 compared with SB0128S01

restorative justice program such as victim offender mediation to address how loss resulting from the adjudicated act may be addressed.

(iv) For the purpose of determining whether and how much restitution is appropriate, the court shall consider the following:

(A) restitution shall only be ordered for the victim's material loss;

(B) restitution may not be ordered if the court finds that the minor is unable to pay or acquire the means to pay; and

(C) any amount paid by the minor to the victim in civil penalty shall be credited against restitution owed.

(v) Any amount paid to the victim in restitution shall be credited against liability in a civil suit.

(vi) The court may also require a minor to reimburse an individual, entity, or governmental agency who offered and paid a reward to a person or persons for providing information resulting in a court adjudication that the minor is within the jurisdiction of the juvenile court due to the commission of a criminal offense.

(vii) If a minor is returned to this state under the Interstate Compact on Juveniles, the court may order the minor to make restitution for costs expended by any governmental entity for the return.

(viii) The prosecutor shall submit a request for restitution to the court at the time of disposition, if feasible, otherwise within three months after disposition.

(ix) A financial disposition ordered shall prioritize the payment of restitution.

(i) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions, except for an order that changes the custody of the minor, including detention or other secure or nonsecure residential placements.

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

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

SB0128S02 compared with SB0128S01

(iii) The court may order the minor to:

(A) pay a fine, fee, restitution, or other cost; or

(B) complete service hours.

(iv) If the court orders a minor to pay a fine, fee, restitution, or other cost, or to complete service hours, those dispositions shall be considered collectively to ensure that the order is reasonable and prioritizes restitution.

(v) If the court orders a minor to pay a fine, fee, or other cost, or complete service hours, the cumulative order shall be limited per criminal episode as follows:

(A) for children under age 16 at adjudication, the court may impose up to \$180 or up to 24 hours of service; and

(B) for minors 16 and older at adjudication, the court may impose up to \$270 or up to 36 hours of service.

(vi) The cumulative order under Subsection (2)(j)(v) does not include restitution.

(vii) If the court converts a fine, fee, or restitution amount to service hours, the rate of conversion shall be no less than the minimum wage.

(k) (i) In violations of traffic laws within the court's jurisdiction, when the court finds that as part of the commission of the violation the minor was in actual physical control of a motor vehicle, the court may, in addition to any other disposition authorized by this section:

(A) restrain the minor from driving for periods of time the court considers necessary; and

(B) take possession of the minor's driver license.

(ii) The court may enter any other eligible disposition under Subsection (2)(k)(i) except for a disposition under Subsection (2)(c), (d), or (f). However, the suspension of driving privileges for an offense under Section 78A-6-606 is governed only by Section 78A-6-606.

(l) (i) The court may order a minor to complete community or compensatory service hours in accordance with Subsections (2)(j)(iv) and (v).

(ii) When community service is ordered, the presumptive service order shall include between five and 10 hours of service.

(iii) Satisfactory completion of an approved substance use disorder prevention or treatment program or other court-ordered condition may be credited by the court as compensatory service hours.

SB0128S02 compared with SB0128S01

(iv) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may order the minor to clean up graffiti created by the minor or any other person at a time and place within the jurisdiction of the court. Compensatory service ordered under this section may be performed in the presence and under the direct supervision of the minor's parent or legal guardian. The parent or legal guardian shall report completion of the order to the court. The court may also require the minor to perform other alternative forms of restitution or repair to the damaged property pursuant to Subsection (2)(h).

(m) (i) Subject to Subsection (2)(m)(iii), the court may order that a minor:

(A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

(B) receive other special care.

(ii) For purposes of receiving the examination, treatment, or care described in Subsection (2)(m)(i), the court may place the minor in a hospital or other suitable facility that is not a secure facility or secure detention.

(iii) In determining whether to order the examination, treatment, or care described in Subsection (2)(m)(i), the court shall consider:

(A) the desires of the minor;

(B) if the minor is under the age of 18, the desires of the parents or guardian of the minor; and

(C) whether the potential benefits of the examination, treatment, or care outweigh the potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain function impairment, or emotional or physical harm resulting from the compulsory nature of the examination, treatment, or care.

(iv) The Division of Child and Family Services shall take reasonable measures to notify a parent or guardian of any non-emergency health treatment or care scheduled for a child, shall include the parent or guardian as fully as possible in making health care decisions for the child, and shall defer to the parent's or guardian's reasonable and informed decisions regarding the child's health care to the extent that the child's health and well being are not unreasonably compromised by the parent's or guardian's decision.

(v) The Division of Child and Family Services shall notify the parent or guardian of a child within five business days after a child in the custody of the Division of Child and Family

SB0128S02 compared with SB0128S01

Services receives emergency health care or treatment.

(vi) The Division of Child and Family Services shall use the least restrictive means to accomplish a compelling interest in the care and treatment of a child described in this Subsection (2)(m).

(n) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint as guardian a public or private institution or agency, but not a nonsecure residential placement provider, in which legal custody of the minor is vested.

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

(o) (i) In support of a decree under Section 78A-6-103, the court may order reasonable conditions to be complied with by a minor's parents or guardian, a minor's custodian, or any other person who has been made a party to the proceedings. Conditions may include:

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

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

(p) The court may order the child to be committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(q) (i) The court may make an order committing a minor within the court's jurisdiction to the Utah State Developmental Center if the minor has an intellectual disability in accordance with Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability.

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

SB0128S02 compared with SB0128S01

(r) The court may terminate all parental rights upon a finding of compliance with Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

(s) The court may make other reasonable orders for the best interest of the minor and as required for the protection of the public, except that a child may not be committed to jail, prison, secure detention, or the custody of the Division of Juvenile Justice Services under Subsections (2)(c) and (d).

(t) The court may combine the dispositions listed in this section if it is permissible and they are compatible.

(u) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their child. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

(v) Except as provided in Subsection (2)(x)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review and presumptive termination of the case by the court in accordance with Subsection (6) and Section 62A-7-404. A new date shall be set upon each review.

(w) In reviewing foster home placements, special attention shall be given to making adoptable children available for adoption without delay.

(x) (i) The juvenile court may enter an order of permanent custody and guardianship with an individual or relative of a child where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an order for child support on behalf of the child against the natural or adoptive parents of the child.

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

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

(B) are not subject to review under Section 78A-6-118; and

(C) may be modified by petition or motion as provided in Section 78A-6-1103.

(iii) Orders permanently terminating the rights of a parent, guardian, or custodian and permanent orders of custody and guardianship do not expire with a termination of jurisdiction of the juvenile court.

(3) In addition to the dispositions described in Subsection (2), when a minor comes

SB0128S02 compared with SB0128S01

within the court's jurisdiction, the minor may be given a choice by the court to serve in the National Guard in lieu of other sanctions, provided:

- (a) the minor meets the current entrance qualifications for service in the National Guard as determined by a recruiter, whose determination is final;
- (b) the minor is not under the jurisdiction of the court for any act that:
 - (i) would be a felony if committed by an adult;
 - (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or
 - (iii) was committed with a weapon; and
- (c) the court retains jurisdiction over the minor under conditions set by the court and agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

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

(b) The responsible agency shall ensure that employees designated to collect the saliva DNA specimens receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

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

(d) Payment of the reimbursement is second in priority to payments the minor is ordered to make for restitution under this section and treatment under Section 78A-6-321.

(5) (a) A disposition made by the court pursuant to this section may not be suspended, except for the following:

(i) If a minor qualifies for commitment to the Division of Juvenile Justice Services under Subsection (2)(c) or (d), the court may suspend a custody order pursuant to Subsection (2)(c) or (d) in lieu of immediate commitment, upon the condition that the minor commit no new misdemeanor or felony offense during the three months following the day of disposition.

(ii) The duration of a suspended custody order made under Subsection (5)(a)(i) may not exceed three months post-disposition and may not be extended under any circumstance.

(iii) The court may only impose a custody order suspended under Subsection (5)(a)(i)

SB0128S02 compared with SB0128S01

following adjudication of a new misdemeanor or felony offense committed by the minor during the period of suspension set out under Subsection (5)(a)(ii) or if a new assessment or evaluation has been completed and recommends that a higher level of care is needed and nonresidential treatment options have been exhausted or nonresidential treatment options are not appropriate.

(iv) A suspended custody order may not be imposed without notice to the minor, notice to counsel, and a hearing.

(b) The court pursuant to Subsection (5)(a) shall terminate jurisdiction over the minor at the end of the presumptive time frame unless at least one the following circumstances exists:

(i) termination pursuant to Subsection (6)(a)(ii) would interrupt the completion of a program determined to be necessary by the results of a validated risk and needs assessment with completion found by the court after considering the recommendation of a licensed service provider on the basis of the minor completing the goals of the necessary treatment program;

(ii) the minor commits a new misdemeanor or felony offense;

(iii) service hours have not been completed; or

(iv) there is an outstanding fine.

(6) When the court places a minor on probation under Subsection (2)(a) or vests legal custody of the minor in the Division of Juvenile Justice Services under Subsection (2)(c), the court shall do so for a defined period of time pursuant to this section.

(a) For the purposes of placing a minor on probation under Subsection (2)(a), the court shall establish a presumptive term of probation as specified in this Subsection (6):

(i) the presumptive maximum length of intake probation may not exceed three months; and

(ii) the presumptive maximum length of formal probation may not exceed four to six months.

(b) For the purposes of vesting legal custody of the minor in the Division of Juvenile Justice Services under Subsection (2)(c), the court shall establish a maximum term of custody and a maximum term of aftercare as specified in this Subsection (6):

(i) the presumptive maximum length of out-of-home placement may not exceed three to six months; and

(ii) the presumptive maximum length of aftercare supervision, for those previously

SB0128S02 compared with SB0128S01

placed out-of-home, may not exceed three to four months, and minors may serve the term of aftercare in the home of a qualifying relative or guardian or at an independent living program contracted or operated by the Division of Juvenile Justice Services.

(c) The court pursuant to Subsections (6)(a) and (b), and the Youth Parole Authority pursuant to Subsection (6)(b), shall terminate jurisdiction over the minor at the end of the presumptive time frame unless at least one of the following circumstances exists:

(i) termination pursuant to Subsection (6)(a)(ii) would interrupt the completion of a court ordered program determined to be necessary by the results of a validated assessment, with completion found by the court after considering the recommendations of a licensed service provider or facilitator of court ordered treatment or intervention program on the basis of the minor completing the goals of the necessary treatment program;

(ii) termination pursuant to Subsection (6)(a)(i) or (6)(b) would interrupt the completion of a program determined to be necessary by the results of a validated assessment, with completion determined on the basis of whether the minor has regularly and consistently attended the treatment program and completed the goals of the necessary treatment program as determined by the court or Youth Parole Authority after considering the recommendation of a licensed service provider or facilitator of court ordered treatment or intervention program;

(iii) the minor commits a new misdemeanor or felony offense;

(iv) service hours have not been completed; or

(v) there is an outstanding fine.

(d) (i) Subject to Subsection (6)(g), if one of the circumstances under Subsection (6)(c)(i), (ii), (iii), or (iv) exists, the court may extend jurisdiction for the time needed to address the specific circumstance.

(ii) Subject to Subsection (6)(g), if one of the circumstances under Subsection (6)(c)(i), (ii), (iii), or (iv) exists, and the Youth Parole Authority has jurisdiction, the Youth Parole Authority may extend jurisdiction for the time needed to address the specific circumstance.

(e) If the circumstance under Subsection (6)(c)(iv) exists, the court, or the Youth Parole Authority if the Youth Parole Authority has jurisdiction, may extend jurisdiction one time for up to three months.

(f) Grounds for extension of the presumptive length of supervision or placement and the length of any extension shall be recorded in the court record or records of the Youth Parole

SB0128S02 compared with SB0128S01

Authority if the Youth Parole Authority has jurisdiction, and tracked in the data system used by the Administrative Office of the Courts and the Division of Juvenile Justice Services.

(g) (i) For a minor who is under the supervision of the juvenile court and whose supervision is extended to complete service hours under Subsection (6)(c)(iv), jurisdiction may only be continued under the supervision of intake probation.

(ii) For a minor who is under the jurisdiction of the Youth Parole Authority whose supervision is extended to complete service hours under Subsection (6)(c)(iv), jurisdiction may only be continued on parole and not in secure confinement.

(h) In the event of an unauthorized leave lasting more than 24 hours, the supervision period shall toll until the minor returns.

(7) Subsection (6) does not apply to any minor adjudicated under this section for:

(a) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

(b) Section 76-5-202, attempted aggravated murder;

(c) Section 76-5-203, murder or attempted murder;

(d) Section 76-5-302, aggravated kidnapping;

(e) Section 76-5-405, aggravated sexual assault;

(f) a felony violation of Section 76-6-103, aggravated arson;

(g) Section 76-6-203, aggravated burglary;

(h) Section 76-6-302, aggravated robbery;

(i) Section 76-10-508.1, felony discharge of a firearm; or

(j) an offense other than those listed in Subsections (7)(a) through (i) involving the use of a dangerous weapon, as defined in Section 76-1-601, that is a felony, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon.

Section 24. 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 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:

SB0128S02 compared with SB0128S01

- (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)](36) 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;
- (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

SB0128S02 compared with SB0128S01

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 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

SB0128S02 compared with SB0128S01

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 25. Section **78A-6-306** is amended to read:

78A-6-306. Shelter hearing.

(1) A shelter hearing shall be held within 72 hours excluding weekends and holidays after any one or all of the following occur:

(a) removal of the child from the child's home by the division;

(b) placement of the child in the protective custody of the division;

(c) emergency placement under Subsection 62A-4a-202.1(4);

(d) as an alternative to removal of the child, a parent enters a domestic violence shelter

SB0128S02 compared with SB0128S01

at the request of the division; or

(e) a "Motion for Expedited Placement in Temporary Custody" is filed under Subsection 78A-6-106(4).

(2) If one of the circumstances described in Subsections (1)(a) through (e) occurs, the division shall issue a notice that contains all of the following:

- (a) the name and address of the person to whom the notice is directed;
- (b) the date, time, and place of the shelter hearing;
- (c) the name of the child on whose behalf a petition is being brought;
- (d) a concise statement regarding:
 - (i) the reasons for removal or other action of the division under Subsection (1); and
 - (ii) the allegations and code sections under which the proceeding has been instituted;
- (e) a statement that the parent or guardian to whom notice is given, and the child, are entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided in accordance with the provisions of Section 78A-6-1111; and

(f) a statement that the parent or guardian is liable for the cost of support of the child in the protective custody, temporary custody, and custody of the division, and the cost for legal counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial ability of the parent or guardian.

(3) The notice described in Subsection (2) shall be personally served as soon as possible, but no later than one business day after removal of the child from the child's home, or the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection 78A-6-106(4), on:

- (a) the appropriate guardian ad litem; and
- (b) both parents and any guardian of the child, unless the parents or guardians cannot be located.

(4) The following persons shall be present at the shelter hearing:

- (a) the child, unless it would be detrimental for the child;
- (b) the child's parents or guardian, unless the parents or guardian cannot be located, or fail to appear in response to the notice;
- (c) counsel for the parents, if one is requested;

SB0128S02 compared with SB0128S01

- (d) the child's guardian ad litem;
- (e) the caseworker from the division who is assigned to the case; and
- (f) the attorney from the attorney general's office who is representing the division.

(5) (a) At the shelter hearing, the court shall:

(i) provide an opportunity to provide relevant testimony to:

(A) the child's parent or guardian, if present; and

(B) any other person having relevant knowledge; and

(ii) subject to Section 78A-6-305, provide an opportunity for the child to testify.

(b) The court:

(i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile Procedure;

(ii) shall hear relevant evidence presented by the child, the child's parent or guardian, the requesting party, or their counsel; and

(iii) may in its discretion limit testimony and evidence to only that which goes to the issues of removal and the child's need for continued protection.

(6) If the child is in the protective custody of the division, the division shall report to the court:

(a) the reason why the child was removed from the parent's or guardian's custody;

(b) any services provided to the child and the child's family in an effort to prevent removal;

(c) the need, if any, for continued shelter;

(d) the available services that could facilitate the return of the child to the custody of the child's parent or guardian; and

(e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the child or friends of the child's parents may be able and willing to accept temporary placement of the child.

(7) The court shall consider all relevant evidence provided by persons or entities authorized to present relevant evidence pursuant to this section.

(8) (a) If necessary to protect the child, preserve the rights of a party, or for other good cause shown, the court may grant no more than one continuance, not to exceed five judicial days.

SB0128S02 compared with SB0128S01

(b) A court shall honor, as nearly as practicable, the request by a parent or guardian for a continuance under Subsection (8)(a).

(c) Notwithstanding Subsection (8)(a), if the division fails to provide the notice described in Subsection (2) within the time described in Subsection (3), the court may grant the request of a parent or guardian for a continuance, not to exceed five judicial days.

(9) (a) If the child is in the protective custody of the division, the court shall order that the child be returned to the custody of the parent or guardian unless it finds, by a preponderance of the evidence, consistent with the protections and requirements provided in Subsection 62A-4a-201(1), that any one of the following exists:

(i) subject to Subsection (9)(b)(i), there is a serious danger to the physical health or safety of the child and the child's physical health or safety may not be protected without removing the child from the custody of the child's parent;

(ii) (A) the child is suffering emotional damage that results in a serious impairment in the child's growth, development, behavior, or psychological functioning;

(B) the parent or guardian is unwilling or unable to make reasonable changes that would sufficiently prevent future damage; and

(C) there are no reasonable 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;

(iii) there is a substantial risk that the child will suffer abuse or neglect if the child is not removed from the custody of the child's parent or guardian;

(iv) subject to Subsection (9)(b)(ii), the child or a minor 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:

(A) parent or guardian;

(B) member of the parent's household or the guardian's household; or

(C) person known to the parent or guardian;

(v) the parent or guardian is unwilling to have physical custody of the child;

(vi) the child is without any provision for the child's support;

(vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the child;

(viii) (A) a relative or other adult custodian with whom the child is left by the parent or

SB0128S02 compared with SB0128S01

guardian is unwilling or unable to provide care or support for the child;

(B) the whereabouts of the parent or guardian are unknown; and

(C) reasonable efforts to locate the parent or guardian are unsuccessful;

(ix) subject to Subsections 78A-6-105[(35)(c)(i) through (iii)](36) and 78A-6-117(2)

and Section 78A-6-301.5, the child is in immediate need of medical care;

(x) (A) the physical environment or the fact that the child is left unattended beyond a reasonable period of time poses a threat to the child's health or safety; and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would remove the threat;

(xi) (A) the child or a minor residing in the same household has been neglected; and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would prevent the neglect;

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

(xiii) (A) the child's welfare is substantially endangered; and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would remove the danger; or

(xiv) the 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) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is established if:

(A) a court previously adjudicated that the child suffered abuse, neglect, or dependency involving the parent; and

(B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

SB0128S02 compared with SB0128S01

(ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly allowed the child to be in the physical care of a person after the parent received actual notice that the person physically abused, sexually abused, or sexually exploited the child, that fact constitutes prima facie evidence that there is a substantial risk that the child will be physically abused, sexually abused, or sexually exploited.

(10) (a) (i) The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from the child's home and whether there are available services that would prevent the need for continued removal.

(ii) If the court finds that the child can be safely returned to the custody of the child's parent or guardian through the provision of those services, the court shall place the child with the child's parent or guardian and order that those services be provided by the division.

(b) In making the determination described in Subsection (10)(a), and in ordering and providing services, the child's health, safety, and welfare shall be the paramount concern, in accordance with federal law.

(11) Where the division's first contact with the family occurred during an emergency situation in which the child could not safely remain at home, the court shall make a finding that any lack of preplacement preventive efforts was appropriate.

(12) In cases where actual 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 maintain a child in the child's home, return a child to the child's home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

(13) The court may not order continued removal of a child solely on the basis of educational neglect as [~~described in Subsection 78A-6-105(35)(b)~~] defined in Section 78A-6-105, truancy, or failure to comply with a court order to attend school.

(14) (a) Whenever a court orders continued removal of a child under this section, the court shall state the facts on which that decision is based.

(b) If no continued removal is ordered and the child is returned home, the court shall state the facts on which that decision is based.

(15) If the court finds that continued removal and temporary custody are necessary for

SB0128S02 compared with SB0128S01

the protection of a child pursuant to Subsection (9)(a), the court shall order continued removal regardless of:

- (a) any error in the initial removal of the child;
- (b) the failure of a party to comply with notice provisions; or
- (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

Section 26. Section **78A-6-311.5** is enacted to read:

78A-6-311.5. Placement in a qualified residential treatment program -- Review hearings.

(1) As used in this section:

(a) "Qualified individual" means the same as that term is defined in 42 U.S.C. Sec. 675a.

(b) "Qualified residential treatment program" means the same as that term is defined in 42 U.S.C. Sec. 672.

(2) Within 60 days of the date when a child is placed in a qualified residential treatment program, the court shall:

(a) review the assessment, determination, and documentation made by a qualified individual regarding the child;

(b) determine whether the needs of the child can be met through placement in a foster home;

(c) if the child's needs cannot be met through placement in a foster home, determine whether:

(i) placement of the child in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment; and

(ii) placement in a qualified residential treatment program is consistent with the short-term and long-term goals for the child, as specified in the permanency plan for the child; and

(d) approve or disapprove of the child's placement in a qualified residential treatment program.

(3) As long as a child remains placed in a qualified residential treatment program, the

SB0128S02 compared with SB0128S01

court shall review the placement decision at each subsequent hearing held with respect to the child.

(4) When the court conducts a review described in Subsection (3), the court shall review evidence submitted by the custodial division to:

(a) demonstrate an ongoing assessment of the strengths and needs of the child such that the child's needs cannot be met through placement in a foster home;

(b) demonstrate that placement in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment;

(c) demonstrate that placement in the qualified residential treatment program is consistent with the short-term and long-term goals for the child, as specified by the permanency plan for the child;

(d) document the specific treatment or service needs that will be met for the child in the placement;

(e) document the length of time the child is expected to need the treatment or services; and

(f) document the efforts made by the custodial division to prepare the child to return home or transition to another setting, such as with a relative, with a friend of the child, with a legal guardian, with an adoptive parent, a foster home, or independent living.

Section 27. Section **78A-6-312** is amended to read:

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

(1) The court may:

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

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

(i) individual; or

(ii) public or private entity or agency; or

(c) order:

(i) protective supervision;

(ii) family preservation;

(iii) subject to Subsections (12)(b), ~~[78A-6-105(35)(c)(i) through (iii)]~~ 78A-6-105(36), and 78A-6-117(2) and Section 78A-6-301.5, medical or mental health treatment;

SB0128S02 compared with SB0128S01

(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.

(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

SB0128S02 compared with SB0128S01

(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.

(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

SB0128S02 compared with SB0128S01

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 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

SB0128S02 compared with SB0128S01

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:

(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

SB0128S02 compared with SB0128S01

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 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;

SB0128S02 compared with SB0128S01

(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:

(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;

SB0128S02 compared with SB0128S01

(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 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 28. Section **78A-6-317** is amended to read:

SB0128S02 compared with SB0128S01

78A-6-317. All proceedings -- Persons entitled to be present -- Legal representation -- Records sharing.

(1) A child who is the subject of a juvenile court hearing, any person entitled to notice pursuant to Section 78A-6-306 or 78A-6-310, preadoptive parents, foster parents, and any relative providing care for the child, are:

(a) entitled to notice of, and to be present at, each hearing and proceeding held under this part, including administrative reviews; and

(b) have a right to be heard at each hearing and proceeding described in Subsection (1)(a).

(2) A child shall be represented at each hearing by the guardian ad litem appointed to the child's case by the court. The child has a right to be present at each hearing, subject to the discretion of the guardian ad litem or the court regarding any possible detriment to the child.

(3) (a) The parent or guardian of a child who is the subject of a petition under this part has the right to be represented by counsel, and to present evidence, at each hearing.

(b) When it appears to the court that a parent or guardian of the child desires counsel but is financially unable to afford and cannot for that reason employ counsel, the court shall appoint counsel as provided in Section 78A-6-1111.

(4) In every abuse, neglect, or dependency proceeding under this chapter, the court shall order that the child be represented by a guardian ad litem, in accordance with Section 78A-6-902. The guardian ad litem shall represent the best interest of the child, in accordance with the requirements of that section, at the shelter hearing and at all subsequent court and administrative proceedings, including any proceeding for termination of parental rights in accordance with Part 5, Termination of Parental Rights Act.

(5) (a) Except as provided in Subsection (5)(b), and notwithstanding any other provision of law:

(i) counsel for all parties to the action shall be given access to all records, maintained by the division or any other state or local public agency, that are relevant to the abuse, neglect, or dependency proceeding under this chapter; and

(ii) if the natural parent of a child is not represented by counsel, the natural parent shall have access to the records described in Subsection (5)(a)(i).

(b) The disclosures described in Subsection (5)(a) are not required in the following

SB0128S02 compared with SB0128S01

circumstances:

(i) subject to Subsection (5)(c), the division or other state or local public agency did not originally create the record being requested;

(ii) disclosure of the record would jeopardize the life or physical safety of a child who has been a victim of abuse or neglect, or any person who provided substitute care for the child;

(iii) disclosure of the record would jeopardize the anonymity of the person or persons making the initial report of abuse or neglect or any others involved in the subsequent investigation;

(iv) disclosure of the record would jeopardize the life or physical safety of [~~a person~~]
an individual who has been a victim of domestic violence;

(v) the record is a report maintained in the Management Information System, for which a finding of unsubstantiated, unsupported, or without merit has been made, unless the person requesting the information is the alleged perpetrator in the report or counsel for the alleged perpetrator in the report; or

(vi) the record is a Children's Justice Center interview, including a video or audio recording, and a transcript of the recording, the release of which is governed by Section 77-37-4.

(c) If a disclosure is denied under Subsection (5)(b)(i), the division shall inform the person making the request of the following:

(i) the existence of all records in the possession of the division or any other state or local public agency;

(ii) the name and address of the person or agency that originally created the record; and

(iii) that the requesting person must seek access to the record from the person or agency that originally created the record.

Section 29. Section **78A-6-902** is amended to read:

78A-6-902. Appointment of attorney guardian ad litem -- Duties and responsibilities -- Training -- Trained staff and court-appointed special advocate volunteers -- Costs -- Immunity -- Annual report.

(1) (a) The court:

(i) may appoint an attorney guardian ad litem to represent the best interest of a minor involved in any case before the court; and

SB0128S02 compared with SB0128S01

(ii) shall consider the best interest of a minor, consistent with the provisions of Section 62A-4a-201, in determining whether to appoint a guardian ad litem.

(b) In all cases where an attorney guardian ad litem is appointed, the court shall make a finding that establishes the necessity of the appointment.

(2) An attorney guardian ad litem shall represent the best interest of each child who may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of the day that:

- (a) the child is removed from the child's home by the division; or
- (b) the petition is filed.

(3) The director shall ensure that each attorney guardian ad litem employed by the office:

(a) represents the best interest of each client of the office in all venues, including:

- (i) court proceedings; and
- (ii) meetings to develop, review, or modify the child and family plan with the Division of Child and Family Services in accordance with Section 62A-4a-205;

(b) prior to representing any minor before the court, be trained in:

- (i) applicable statutory, regulatory, and case law; and
- (ii) nationally recognized standards for an attorney guardian ad litem;

(c) conducts or supervises an ongoing, independent investigation in order to obtain, first-hand, a clear understanding of the situation and needs of the minor;

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

- (A) the minor is outside of the state; or
- (B) meeting with the minor would be detrimental to the minor;

(ii) personally interviews the minor, unless:

- (A) the minor is not old enough to communicate;
- (B) the minor lacks the capacity to participate in a meaningful interview; or
- (C) the interview would be detrimental to the minor; and

(iii) if the minor is placed in an out-of-home placement, or is being considered for placement in an out-of-home placement, unless it would be detrimental to the minor:

(A) to the extent possible, determines the minor's goals and concerns regarding placement; and

SB0128S02 compared with SB0128S01

(B) personally assesses or supervises an assessment of the appropriateness and safety of the minor's environment in each placement;

(e) personally attends all review hearings pertaining to the minor's case;

(f) participates in all appeals, unless excused by order of the court;

(g) is familiar with local experts who can provide consultation and testimony regarding the reasonableness and appropriateness of efforts made by the Division of Child and Family Services to:

(i) maintain a minor in the minor's home; or

(ii) reunify a child with the child's parent;

(h) to the extent possible, and unless it would be detrimental to the minor, personally or through a trained volunteer, paralegal, or other trained staff, keeps the minor advised of:

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

(ii) all court and administrative proceedings;

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

(iv) court action; and

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

(i) in cases where a child and family plan is required, personally or through a trained volunteer, paralegal, or other trained staff, monitors implementation of a minor's child and family plan and any dispositional orders to:

(i) determine whether services ordered by the court:

(A) are actually provided; and

(B) are provided in a timely manner; and

(ii) attempt to assess whether services ordered by the court are accomplishing the intended goal of the services; and

(j) makes all necessary court filings to advance the guardian ad litem's position regarding the best interest of the child.

(4) (a) Consistent with this Subsection (4), an attorney guardian ad litem may use trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other trained staff to assist in investigation and preparation of information regarding the cases of individual minors before the court.

SB0128S02 compared with SB0128S01

(b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained in and follow, at a minimum, the guidelines established by the United States Department of Justice Court Appointed Special Advocate Association.

(5) The attorney guardian ad litem shall continue to represent the best interest of the minor until released from that duty by the court.

(6) (a) Consistent with Subsection (6)(b), the juvenile court is responsible for:

- (i) all costs resulting from the appointment of an attorney guardian ad litem; and
- (ii) the costs of volunteer, paralegal, and other staff appointment and training.

(b) The court shall use funds appropriated by the Legislature for the guardian ad litem program to cover the costs described in Subsection (6)(a).

(c) (i) When the court appoints an attorney guardian ad litem under this section, the court may assess all or part of the attorney fees, court costs, and paralegal, staff, and volunteer expenses against the child's parents, parent, or legal guardian in a proportion that the court determines to be just and appropriate, taking into consideration costs already borne by the parents, parent, or legal guardian, including:

- (A) private attorney fees;
- (B) counseling for the child;
- (C) counseling for the parent, if mandated by the court or recommended by the

Division of Child and Family Services; and

(D) any other cost the court determines to be relevant.

(ii) The court may not assess those fees or costs against:

- (A) a legal guardian, when that guardian is the state; or
- (B) consistent with Subsection (6)(d), a parent who is found to be impecunious.

(d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the court shall:

(i) require that person to submit an affidavit of impecuniosity as provided in Section 78A-2-302; and

(ii) follow the procedures and make the determinations as provided in Section 78A-2-304.

(e) The child's parents, parent, or legal guardian may appeal the court's determination, under Subsection (6)(c), of fees, costs, and expenses.

SB0128S02 compared with SB0128S01

(7) An attorney guardian ad litem appointed under this section, when serving in the scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee of the state for purposes of indemnification under Title 63G, Chapter 7, Governmental Immunity Act of Utah.

(8) (a) An attorney guardian ad litem shall represent the best interest of a minor.

(b) If the minor's wishes differ from the attorney's determination of the minor's best interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in addition to presenting the attorney's determination of the minor's best interest.

(c) A difference between the minor's wishes and the attorney's determination of best interest may not be considered a conflict of interest for the attorney.

(d) The guardian ad litem shall disclose the wishes of the child unless the child:

(i) instructs the guardian ad litem to not disclose the child's wishes; or

(ii) has not expressed any wishes.

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

(9) An attorney guardian ad litem shall be provided access to all Division of Child and Family Services records regarding the minor at issue and the minor's family.

(10) (a) An attorney guardian ad litem shall conduct an independent investigation regarding the minor at issue, the minor's family, and what constitutes the best interest of the minor.

(b) An attorney guardian ad litem may interview the minor's Division of Child and Family Services caseworker, but may not:

(i) rely exclusively on the conclusions and findings of the Division of Child and Family Services; or

(ii) except as provided in Subsection (10)(c), conduct a visit with the client in conjunction with the visit of a Division of Child and Family Services caseworker.

(c) (i) [A] An attorney guardian ad litem may meet with a client during a team meeting, court hearing, or similar venue when a Division of Child and Family Services caseworker is present for a purpose other than the attorney guardian ad litem's [visit] meeting with the client.

~~(d) Notwithstanding Subsections (10)(a) through (c), an attorney guardian ad litem may not meet with a client in the presence of a parent or guardian who is represented by legal~~

SB0128S02 compared with SB0128S01

counsel, unless:

~~— (i) the parent's or guardian's legal counsel is also present; or~~
~~— (ii) the parent or guardian waives the right to have legal counsel present;~~ (ii) All parties and their counsel may attend a team meeting in accordance with the Utah Rules of Professional Conduct.

(11) (a) An attorney guardian ad litem shall maintain current and accurate records regarding:

- (i) the number of times the attorney has had contact with each minor; and
- (ii) the actions the attorney has taken in representation of the minor's best interest.

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

(12) (a) Except as provided in Subsection (12)(b), all records of an attorney guardian ad litem are confidential and may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63G, Chapter 2, Government Records Access and Management Act.

(b) Consistent with Subsection (12)(d), all records of an attorney guardian ad litem:

(i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers; and

(ii) shall be released to the Legislature.

(c) (i) Except as provided in Subsection (12)(c)(ii), records released in accordance with Subsection (12)(b) shall be maintained as confidential by the Legislature.

(ii) Notwithstanding Subsection (12)(c)(i), the Office of the Legislative Auditor General may include summary data and nonidentifying information in its audits and reports to the Legislature.

(d) (i) Subsection (12)(b) constitutes an exception to Rules of Professional Conduct, Rule 1.6, as provided by Rule 1.6(b)(4), because of:

- (A) the unique role of an attorney guardian ad litem described in Subsection (8); and
- (B) the state's role and responsibility:
 - (I) to provide a guardian ad litem program; and
 - (II) as parens patriae, to protect minors.

SB0128S02 compared with SB0128S01

(ii) A claim of attorney-client privilege does not bar access to the records of an attorney guardian ad litem by the Legislature, through legislative subpoena.

Section 30. Section **78A-6-1103** is amended to read:

78A-6-1103. Modification or termination of custody order or decree -- Grounds -- Procedure.

(1) A parent or guardian of any child whose legal custody has been transferred by the court to an individual, agency, or institution, except a secure youth corrections facility, may petition the court for restoration of custody or other modification or revocation of the court's order, on the ground that a change of circumstances has occurred which requires such modification or revocation in the best interest of the child or the public.

(2) The court shall make a preliminary investigation. If the court finds that the alleged change of circumstances, if proved, would not affect the decree, it may dismiss the petition. If the court finds that a further examination of the facts is needed, or if the court on its own motion determines that the decree should be reviewed, it shall conduct a hearing. Notice shall be given to all persons concerned. At the hearing, the court may enter an order continuing, modifying, or terminating the decree.

(3) (a) A parent may not file a petition under this section after the parent's parental rights have been terminated in accordance with Part 5, Termination of Parental Rights Act.

(b) A parent may not file a petition for restoration of custody under this section during the existence of a permanent guardianship established for the child under Subsection 78A-6-117(2)[~~(y)~~](x).

(4) An individual, agency, or institution vested with legal custody of a child may petition the court for a modification of the custody order on the ground that the change is necessary for the welfare of the child or in the public interest. The court shall proceed upon the petition in accordance with Subsections (1) and (2).

Section 31. Section **78A-6-1302** is amended to read:

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

(1) When a 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.

SB0128S02 compared with SB0128S01

(2) 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. 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) The minor shall be evaluated by a mental health examiner with experience in juvenile forensic evaluations and juvenile brain development, who is not involved in the current treatment of the minor. If it becomes apparent that the minor may be not competent due to an intellectual disability or related condition, the examiner shall be experienced in intellectual disability or related condition evaluations of minors.

(5) The petitioner or other party, as directed by the court, shall provide all information and materials to the examiners relevant to a determination of the minor's competency including:

- (a) the motion;
- (b) the arrest or incident reports pertaining to the charged offense;
- (c) the minor's known delinquency history information;
- (d) known prior mental health evaluations and treatments; and
- (e) 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 in providing the relevant information and materials to the examiners.

(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)~~] Section 78A-6-105, 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;

SB0128S02 compared with SB0128S01

(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 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.

(9) The examiner 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 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 days to provide the report to the court and counsel. The examiner must provide the report within 60 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 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.

(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 based upon any statement, and any other fruits of the statement may not be admitted

SB0128S02 compared with SB0128S01

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 may be admitted, however, where relevant to a determination of the minor's competency.

(11) Before evaluating the minor, examiners shall specifically advise the minor and 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 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) 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 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 to remain in custody until the commitment proceedings have been concluded.

SB0128S02 compared with SB0128S01

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

Section 32. Section **78B-6-102** is amended to read:

78B-6-102. Legislative intent and findings -- Best interest of child -- Interests of each party.

(1) It is the intent and desire of the Legislature that in every adoption the best interest of the child should govern and be of foremost concern in the court's determination.

(2) The court shall make a specific finding regarding the best interest of the child, taking into consideration information provided to the court pursuant to the requirements of this chapter relating to the health, safety, and welfare of the child and the moral climate of the potential adoptive placement.

(3) The Legislature finds that the rights and interests of all parties affected by an adoption proceeding must be considered and balanced in determining what constitutional protections and processes are necessary and appropriate.

~~[(4) The Legislature specifically finds that it is not in a child's best interest to be adopted by a person or persons who are cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state. Nothing in this section limits or prohibits the court's placement of a child with a single adult who is not cohabiting as defined in this part.]~~

~~[(5)]~~ (4) The Legislature also finds that:

(a) the state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children;

(b) an unmarried mother, faced with the responsibility of making crucial decisions about the future of a newborn child, is entitled to privacy, and has the right to make timely and appropriate decisions regarding her future and the future of the child, and is entitled to assurance regarding the permanence of an adoptive placement;

(c) adoptive children have a right to permanence and stability in adoptive placements;

(d) adoptive parents have a constitutionally protected liberty and privacy interest in retaining custody of an adopted child;

(e) an unmarried biological father has an inchoate interest that acquires constitutional protection only when he demonstrates a timely and full commitment to the responsibilities of

SB0128S02 compared with SB0128S01

parenthood, both during pregnancy and upon the child's birth; and

(f) the state has a compelling interest in requiring unmarried biological fathers to demonstrate commitment by providing appropriate medical care and financial support and by establishing legal paternity, in accordance with the requirements of this chapter.

~~[(6)]~~ (5) (a) In enacting this chapter, the Legislature has prescribed the conditions for determining whether an unmarried biological father's action is sufficiently prompt and substantial to require constitutional protection.

(b) If an unmarried biological father fails to grasp the opportunities to establish a relationship with his child that are available to him, his biological parental interest may be lost entirely, or greatly diminished in constitutional significance by his failure to timely exercise it, or by his failure to strictly comply with the available legal steps to substantiate it.

(c) A certain degree of finality is necessary in order to facilitate the state's compelling interest. The Legislature finds that the interests of the state, the mother, the child, and the adoptive parents described in this section outweigh the interest of an unmarried biological father who does not timely grasp the opportunity to establish and demonstrate a relationship with his child in accordance with the requirements of this chapter.

(d) The Legislature finds no practical way to remove all risk of fraud or misrepresentation in adoption proceedings, and has provided a method for absolute protection of an unmarried biological father's rights by compliance with the provisions of this chapter. In balancing the rights and interests of the state, and of all parties affected by fraud, specifically the child, the adoptive parents, and the unmarried biological father, the Legislature has determined that the unmarried biological father is in the best position to prevent or ameliorate the effects of fraud and that, therefore, the burden of fraud shall be borne by him.

(e) An unmarried biological father has the primary responsibility to protect his rights.

(f) An unmarried biological father is presumed to know that the child may be adopted without his consent unless he strictly complies with the provisions of this chapter, manifests a prompt and full commitment to his parental responsibilities, and establishes paternity.

~~[(7)]~~ (6) The Legislature finds that an unmarried mother has a right of privacy with regard to her pregnancy and adoption plan, and therefore has no legal obligation to disclose the identity of an unmarried biological father prior to or during an adoption proceeding, and has no obligation to volunteer information to the court with respect to the father.

SB0128S02 compared with SB0128S01

Section 33. Section **78B-6-103** is amended to read:

78B-6-103. Definitions.

As used in this part:

(1) "Adoptee" means a person who:

- (a) is the subject of an adoption proceeding; or
- (b) has been legally adopted.

(2) "Adoption" means the judicial act that:

- (a) creates the relationship of parent and child where it did not previously exist; and
- (b) except as provided in Subsections 78B-6-138(2) and (4), terminates the parental rights of any other person with respect to the child.

(3) "Adoption document" means an adoption-related document filed with the office, a petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted in support of a supplementary birth certificate.

(4) "Adoption service provider" means:

- (a) a child-placing agency;
- (b) a licensed counselor who has at least one year of experience providing professional social work services to:

- (i) adoptive parents;
- (ii) prospective adoptive parents; or
- (iii) birth parents; or
- (c) the Office of Licensing within the Department of Human Services.

(5) "Adoptive parent" means an individual who has legally adopted an adoptee.

(6) "Adult" means an individual who is 18 years of age or older.

(7) "Adult adoptee" means an adoptee who is 18 years of age or older and was adopted as a minor.

(8) "Adult sibling" means an adoptee's brother or sister, who is 18 years of age or older and whose birth mother or father is the same as that of the adoptee.

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

(10) "Birth parent" means:

- (a) a birth mother;
- (b) a man whose paternity of a child is established;

SB0128S02 compared with SB0128S01

(c) a man who:

(i) has been identified as the father of a child by the child's birth mother; and

(ii) has not denied paternity; or

(d) an unmarried biological father.

(11) "Child-placing agency" means an agency licensed to place children for adoption under Title 62A, Chapter 4a, Part 6, Child Placing.

~~[(12) "Cohabiting" means residing with another person and being involved in a sexual relationship with that person.]~~

~~[(13)]~~ (12) "Division" means the Division of Child and Family Services, within the Department of Human Services, created in Section 62A-4a-103.

~~[(14)]~~ (13) "Extra-jurisdictional child-placing agency" means an agency licensed to place children for adoption by a district, territory, or state of the United States, other than Utah.

~~[(15)]~~ (14) "Genetic and social history" means a comprehensive report, when obtainable, that contains the following information on an adoptee's birth parents, aunts, uncles, and grandparents:

(a) medical history;

(b) health status;

(c) cause of and age at death;

(d) height, weight, and eye and hair color;

(e) ethnic origins;

(f) where appropriate, levels of education and professional achievement; and

(g) religion, if any.

~~[(16)]~~ (15) "Health history" means a comprehensive report of the adoptee's health status at the time of placement for adoption, and medical history, including neonatal, psychological, physiological, and medical care history.

~~[(17)]~~ (16) "Identifying information" means information that is in the possession of the office and that contains the name and address of a pre-existing parent or an adult adoptee, or other specific information that by itself or in reasonable conjunction with other information may be used to identify a pre-existing parent or an adult adoptee, including information on a birth certificate or in an adoption document.

~~[(18)]~~ (17) "Licensed counselor" means an individual who is licensed by the state, or

SB0128S02 compared with SB0128S01

another state, district, or territory of the United States as a:

- (a) certified social worker;
- (b) clinical social worker;
- (c) psychologist;
- (d) marriage and family therapist;
- (e) clinical mental health counselor; or
- (f) an equivalent licensed professional of another state, district, or territory of the

United States.

~~[(19)]~~ (18) "Man" means a male individual, regardless of age.

~~[(20)]~~ (19) "Mature adoptee" means an adoptee who is adopted when the adoptee is an adult.

~~[(21)]~~ (20) "Office" means the Office of Vital Records and Statistics within the Department of Health operating under Title 26, Chapter 2, Utah Vital Statistics Act.

~~[(22)]~~ (21) "Parent," for purposes of Section 78B-6-119, means any person described in Subsections 78B-6-120(1)(b) through (f) from whom consent for adoption or relinquishment for adoption is required under Sections 78B-6-120 through 78B-6-122.

~~[(23)]~~ (22) "Potential birth father" means a man who:

(a) is identified by a birth mother as a potential biological father of the birth mother's child, but whose genetic paternity has not been established; and

(b) was not married to the biological mother of the child described in Subsection (23)(a) at the time of the child's conception or birth.

~~[(24)]~~ (23) "Pre-existing parent" means:

(a) a birth parent; or

(b) an individual who, before an adoption decree is entered, is, due to an earlier adoption decree, legally the parent of the child being adopted.

~~[(25)]~~ (24) "Prospective adoptive parent" means an individual who seeks to adopt an adoptee.

~~[(26)]~~ (25) "Relative" means:

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

SB0128S02 compared with SB0128S01

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

~~[(27)]~~ (26) "Unmarried biological father" means a man who:

(a) is the biological father of a child; and

(b) was not married to the biological mother of the child described in Subsection ~~[(27)]~~

(26)(a) at the time of the child's conception or birth.

Section 34. Section **78B-6-117** is amended to read:

78B-6-117. Who may adopt -- Adoption of minor.

(1) A minor child may be adopted by an adult person, in accordance with this section and this part.

(2) A child may be adopted by:

(a) adults who are legally married to each other in accordance with the laws of this state, including adoption by a stepparent; or

(b) subject to Subsection ~~[(4)]~~ (3), a single adult~~[-except as provided in Subsection (3)].~~

~~[(3) A child may not be adopted by a person who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state.]~~

~~[(4)]~~ (3) To provide a child who is in the custody of the division with the most beneficial family structure, when a child in the custody of the division is placed for adoption, the division or child-placing agency shall place the child with a man and a woman who are married to each other, unless:

(a) there are no qualified married couples who:

(i) have applied to adopt a child;

(ii) are willing to adopt the child; and

(iii) are an appropriate placement for the child;

(b) the child is placed with a relative of the child;

(c) the child is placed with a person who has already developed a substantial relationship with the child;

(d) the child is placed with a person who:

(i) is selected by a parent or former parent of the child, if the parent or former parent consented to the adoption of the child; and

SB0128S02 compared with SB0128S01

(ii) the parent or former parent described in Subsection [~~(4)~~] (3)(d)(i):

(A) knew the person with whom the child is placed before the parent consented to the adoption; or

(B) became aware of the person with whom the child is placed through a source other than the division or the child-placing agency that assists with the adoption of the child; or

(e) it is in the best interests of the child to place the child with a single person.

~~[(5)]~~ (4) Except as provided in Subsection [~~(6)~~] (5), an adult may not adopt a child if, before adoption is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest to a felony or attempted felony involving conduct that constitutes any of the following:

(a) child abuse, as described in Section 76-5-109;

(b) child abuse homicide, as described in Section 76-5-208;

(c) child kidnapping, as described in Section 76-5-301.1;

(d) human trafficking of a child, as described in Section 76-5-308.5;

(e) sexual abuse of a minor, as described in Section 76-5-401.1;

(f) rape of a child, as described in Section 76-5-402.1;

(g) object rape of a child, as described in Section 76-5-402.3;

(h) sodomy on a child, as described in Section 76-5-403.1;

(i) sexual abuse of a child or aggravated sexual abuse of a child, as described in Section 76-5-404.1;

(j) sexual exploitation of a minor, as described in Section 76-5b-201; or

(k) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection [~~(5)~~] (4).

~~[(6)]~~ (5) (a) For purpose of this Subsection [~~(6)~~] (5), "disqualifying offense" means an offense listed in Subsection [~~(5)~~] (4) that prevents a court from considering a person for adoption of a child except as provided in this Subsection [~~(6)~~] (5).

(b) A person described in Subsection [~~(5)~~] (4) may only be considered for adoption of a child if the following criteria are met by clear and convincing evidence:

(i) at least 10 years have elapsed from the day on which the person is successfully released from prison, jail, parole, or probation related to a disqualifying offense;

(ii) during the 10 years before the day on which the person files a petition with the court seeking adoption, the person has not been convicted, pleaded guilty, or pleaded no

SB0128S02 compared with SB0128S01

contest to an offense greater than an infraction or traffic violation that would likely impact the health, safety, or well-being of the child;

(iii) the person can provide evidence of successful treatment or rehabilitation directly related to the disqualifying offense;

(iv) the court determines that the risk related to the disqualifying offense is unlikely to cause harm, as defined in Section 78A-6-105, or potential harm to the child currently or at any time in the future when considering all of the following:

(A) the child's age;

(B) the child's gender;

(C) the child's development;

(D) the nature and seriousness of the disqualifying offense;

(E) the preferences of a child 12 years of age or older;

(F) any available assessments, including custody evaluations, home studies, pre-placement adoptive evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and

(G) any other relevant information;

(v) the person can provide evidence of all of the following:

(A) the relationship with the child is of long duration;

(B) that an emotional bond exists with the child; and

(C) that adoption by the person who has committed the disqualifying offense ensures the best interests of the child are met; and

(vi) the adoption is by:

(A) a stepparent whose spouse is the adoptee's parent and consents to the adoption; or

(B) subject to Subsection ~~[(6)]~~ (5)(d), a relative of the child as defined in Section 78A-6-307 and there is not another relative without a disqualifying offense filing an adoption petition.

(c) The person with the disqualifying offense bears the burden of proof regarding why adoption with that person is in the best interest of the child over another responsible relative or equally situated person who does not have a disqualifying offense.

(d) If there is an alternative responsible relative who does not have a disqualifying offense filing an adoption petition, the following applies:

SB0128S02 compared with SB0128S01

- (i) preference for adoption shall be given to a relative who does not have a disqualifying offense; and
 - (ii) before the court may grant adoption to the person who has the disqualifying offense over another responsible, willing, and able relative:
 - (A) an impartial custody evaluation shall be completed; and
 - (B) a guardian ad litem shall be assigned.
- ~~[(7)]~~ (6) Subsections ~~[(5)]~~ (4) and ~~[(6)]~~ (5) apply to a case pending on March 25, 2017, for which a final decision on adoption has not been made and to a case filed on or after March 25, 2017.

Section 35. Section **78B-6-133** is amended to read:

78B-6-133. Contested adoptions -- Rights of parties -- Determination of custody.

(1) If a person whose consent for an adoption is required pursuant to Subsection 78B-6-120(1)(b), (c), (d), (e), or (f) refused to consent, the court shall determine whether proper grounds exist for the termination of that person's rights pursuant to the provisions of this chapter or Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

(2) (a) If there are proper grounds to terminate the person's parental rights, the court shall order that the person's rights be terminated.

(b) If there are not proper grounds to terminate the person's parental rights, the court shall:

- (i) dismiss the adoption petition;
 - (ii) conduct an evidentiary hearing to determine who should have custody of the child;
- and

(iii) award custody of the child in accordance with the child's best interest.

(c) Termination of a person's parental rights does not terminate the right of a relative of the parent to seek adoption of the child.

(3) Evidence considered at the custody hearing may include:

(a) evidence of psychological or emotional bonds that the child has formed with a third person, including the prospective adoptive parent; and

(b) any detriment that a change in custody may cause the child.

(4) If the court dismisses the adoption petition, the fact that a person relinquished a child for adoption or consented to the adoption may not be considered as evidence in a custody

SB0128S02 compared with SB0128S01

proceeding described in this section, or in any subsequent custody proceeding, that it is not in the child's best interest for custody to be awarded to such person or that:

- (a) the person is unfit or incompetent to be a parent;
- (b) the person has neglected or abandoned the child;
- (c) the person is not interested in having custody of the child; or
- (d) the person has forfeited the person's parental presumption.

(5) Any custody order entered pursuant to this section may also:

- (a) include provisions for:
 - (i) parent-time; or
 - (ii) visitation by an interested third party; and
- (b) provide for the financial support of the child.

(6) (a) If a person or entity whose consent is required for an adoption under Subsection 78B-6-120(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing and award custody as set forth in Subsection (2).

(b) The court may also finalize the adoption if doing so is in the best interest of the child.

(7) (a) A person may not contest an adoption after the final decree of adoption is entered, if that person:

- (i) was a party to the adoption proceeding;
- (ii) was served with notice of the adoption proceeding; or
- (iii) executed a consent to the adoption or relinquishment for adoption.

(b) No person may contest an adoption after one year from the day on which the final decree of adoption is entered.

(c) The limitations on contesting an adoption action, described in this Subsection (7), apply to all attempts to contest an adoption:

- (i) regardless of whether the adoption is contested directly or collaterally; and
- (ii) regardless of the basis for contesting the adoption, including claims of fraud, duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of jurisdiction.

(d) The limitations on contesting an adoption action, described in this Subsection (7), do not prohibit a timely appeal of:

SB0128S02 compared with SB0128S01

(i) a final decree of adoption; or

(ii) a decision in an action challenging an adoption, if the action was brought within the time limitations described in Subsections (7)(a) and (b).

(8) A court that has jurisdiction over a child for whom more than one petition for adoption is filed shall grant a hearing [~~only~~] under the following circumstances:

(a) to a petitioner:

(i) with whom the child is placed;

(ii) who has custody or guardianship of the child;

(iii) who has filed a written statement with the court within 120 days after the day on which the shelter hearing is held:

(A) requesting immediate placement of the child with the petitioner; and

(B) expressing the petitioner's intention of adopting the child; or

(iv) who is a relative:

(A) with whom the child has a significant and substantial relationship; and

(B) who was unaware, within the first 120 days after the day on which the shelter hearing is held, of the child's removal from the child's parent; or

(b) if the child:

(i) has been in the current placement for less than 180 days before the day on which the petitioner files the petition for adoption; or

(ii) is placed with, or is in the custody or guardianship of, an individual who previously informed the division or the court that the individual is unwilling or unable to adopt the child.

(9) (a) If the court grants a hearing on more than one petition for adoption, there is a rebuttable presumption that it is in the best interest of a child to be placed for adoption with a petitioner:

(i) who has fulfilled the requirements described in Title 78B, Chapter 6, Part 1, Utah Adoption Act; and

(ii) (A) with whom the child has continuously resided for six months;

(B) who has filed a written statement with the court within 120 days after the day on which the shelter hearing is held, as described in Subsection (8)(a)(iii); or

(C) who is a relative described in Subsection (8)(a)(iv).

(b) The court may consider other factors relevant to the best interest of the child to

SB0128S02 compared with SB0128S01

determine whether the presumption is rebutted.

(c) The court shall weigh the best interest of the child uniformly between petitioners if more than one petitioner satisfies a rebuttable presumption condition described in Subsection (9)(a).

(10) Nothing in this section shall be construed to prevent the division or the child's guardian ad litem from appearing or participating in any proceeding for a petition for adoption.

(11) ~~[Neither the court nor the division is obligated to inform a petitioner of the petitioner's rights or duties under this section]~~ The division shall use best efforts to provide a relative seeking adoption information relating to the relative's rights or duties under this section.