

Representative Jennifer Dailey-Provost proposes the following substitute bill:

JUVENILE INCARCERATION SERVICES AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer Dailey-Provost

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies child support obligations for children in state custody.

Highlighted Provisions:

This bill:

- ▶ adds definitions;
- ▶ requires a court to notify the Office of Recovery Services when a child in state custody is acquitted of all charges or has all charges dismissed;
- ▶ provides that a court shall waive or refund child support for a child in state custody if the child is acquitted or has all charges dismissed;
- ▶ amends the requirements for the Office of Recovery Services to waive a child support obligation; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 **78A-6-1106**, as last amended by Laws of Utah 2018, Chapter 56



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

29 Section 1. Section **78A-6-1106** is amended to read:

30 **78A-6-1106. Child support obligation when custody of a child is vested in an**
31 **individual or institution.**

32 (1) As used in this section:

33 (a) "Office" means the Office of Recovery Services.

34 (b) "State custody" means that a child is in the custody of a state department, division,
35 or agency, including a secure youth corrections facility.

36 (c) "Federal poverty level" means the poverty level as defined by the most recently
37 revised poverty income guidelines published by the United States Department of Health and
38 Human Services in the Federal Register.

39 (2) Under this section, a court may not issue a child support order against an individual
40 unless:

41 (a) the individual is served with notice that specifies the date and time of a hearing to
42 determine the financial support of a specified child;

43 (b) the individual makes a voluntary appearance; or

44 (c) the individual submits a waiver of service.

45 (3) Except as provided in Subsection (11), when a court places a child in state custody
46 or if the guardianship of the child has been granted to another party and an agreement for a
47 guardianship subsidy has been signed by the guardian, the court:

48 (a) shall order [~~the parents;~~] a parent[;] or other obligated individual to pay child
49 support for each month the child is in state custody or cared for under a grant of guardianship;
50 [~~and]~~

51 (b) shall inform [~~the parents;~~] a parent[;] or other obligated individual, verbally and in
52 writing, of the requirement to pay child support in accordance with Title 78B, Chapter 12, Utah
53 Child Support Act; and

54 (c) may refer the establishment of a child support order to the office.

55 (4) When a court chooses to refer a case to the office to determine support obligation
56 amounts in accordance with Title 78B, Chapter 12, Utah Child Support Act, the court shall:

57 (a) make the referral within three working days after the day on which the court holds
58 the hearing described in Subsection (2)(a); and

59 (b) inform [~~the parents,~~] a parent[;] or other obligated individual of:

60 (i) the requirement to contact the office within 30 days after the day on which the court
61 holds the hearing described in Subsection (2)(a); and

62 (ii) the penalty described in Subsection (6) for failure to contact the office.

63 (5) Liability for child support ordered under Subsection (3) shall accrue:

64 (a) except as provided in Subsection (5)(b), beginning on day 61 after the day on which
65 the court holds the hearing described in Subsection (2)(a), if there is no existing child support
66 order for the child; or

67 (b) beginning on the day the child is removed from the child's home, including time
68 spent in detention or sheltered care, if the child is removed after having been returned to the
69 child's home from state custody.

70 (6) (a) If [~~the parents,~~] a parent[;] or other obligated individual contacts the office
71 within 30 days after the day on which the court holds the hearing described in Subsection
72 (2)(a), the child support order may not include a judgment for past due support for more than
73 two months.

74 (b) Notwithstanding Subsections (5) and (6)(a), the court may order the liability of
75 support to begin to accrue from the date of the proceeding referenced in Subsection (3) if:

76 (i) the court informs [~~the parents,~~] a parent[;] or other obligated individual, as
77 described in Subsection (4)(b), and the [~~parents, a~~] parent[;] or other obligated individual fails
78 to contact the office within 30 days after the day on which the court holds the hearing described
79 in Subsection (2)(a); and

80 (ii) the office took reasonable steps under the circumstances to contact the [~~parents,~~]
81 parent[;] or other obligated individual within 30 days after the last day on which the [~~parents, a~~]
82 parent[;] or other obligated individual was required to contact the office to facilitate the
83 establishment of a child support order.

84 (c) For purposes of Subsection (6)(b)(ii), the office is presumed to have taken
85 reasonable steps if the office:

86 (i) has a signed, returned receipt for a certified letter mailed to the address of [~~the~~
87 ~~parents,~~] a parent[;] or other obligated individual regarding the requirement that a child support

88 order be established; or

89 (ii) has had a documented conversation, whether by telephone or in person, with the
90 [~~parents,~~] parent[;] or other obligated individual regarding the requirement that a child support
91 order be established.

92 (7) In collecting arrears, the office shall comply with Section [62A-11-320](#) in setting a
93 payment schedule or demanding payment in full.

94 (8) Unless a court orders otherwise, [~~the parents,~~] a parent[;] or other obligated
95 individual shall pay the child support to the office. The clerk of the court, the office, or the
96 Department of Human Services and its divisions shall have authority to receive periodic
97 payments for the care and maintenance of the child, such as Social Security payments or
98 railroad retirement payments made in the name of or for the benefit of the child.

99 (9) An existing child support order payable to a parent or other individual shall be
100 assigned to the Department of Human Services as provided in Section [62A-1-117](#).

101 (10) (a) Subsections (4) through (9) do not apply if legal custody of a child is vested by
102 the court in an individual.

103 (b) If legal custody of a child is vested by the court in an individual, the court may
104 order the [~~parents, a~~] parent[;] or other obligated individual to pay child support to the
105 individual in whom custody is vested. In the same proceeding, the court shall inform [~~the~~
106 ~~parents,~~] a parent[;] or other obligated individual, verbally and in writing, of the requirement to
107 pay child support in accordance with Title 78B, Chapter 12, Utah Child Support Act.

108 (11) The court may not order an individual to pay child support for a child in state
109 custody if:

110 (a) the individual's only form of income is a government-issued disability benefit;

111 (b) the benefit described in Subsection (11)(a) is issued because of the individual's
112 disability, and not the child's disability; and

113 (c) the individual provides the court and the office evidence that the individual meets
114 the requirements of Subsections (11)(a) and (b).

115 (12) After the court or the office establishes an individual's child support obligation
116 ordered under Subsection (3), the office shall waive the obligation without further order of the
117 court if:

118 (a) the individual's child support obligation is established under Subsection

119 78B-12-205(6) or Section 78B-12-302; [~~or~~]

120 (b) the individual's only source of income is a means-tested, income replacement
121 payment of aid, including:

122 (i) cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment
123 Program; or

124 (ii) cash benefits received under General Assistance, social security income, or social
125 security disability income[-]; or

126 (c) for a child in state custody, the individual has an adjusted gross income equal to or
127 less than the federal poverty level.

128 (13) (a) If a child in state custody is acquitted at trial on all of the charges or all charges
129 are dismissed against the child without a conviction, the court shall waive any child support
130 debt or obligation required in accordance with this section for each parent or other obligated
131 individual of the child.

132 (b) If a child in state custody is acquitted at trial on all of the charges or all charges are
133 dismissed against the child without a conviction, the court shall:

134 (i) notify the office of the acquittal or dismissal; and

135 (ii) order a refund of any child support paid under this section by a parent or obligated
136 individual.