

HB0285S02 compared with HB0285S01

~~deleted text~~ shows text that was in HB0285S01 but was deleted in HB0285S02.

inserted text shows text that was not in HB0285S01 but was inserted into HB0285S02.

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.

Representative V. Lowry Snow proposes the following substitute bill:

JUVENILE RECODIFICATION

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: _____

LONG TITLE

General Description:

This bill reorganizes, renumbers, amends, repeals, and enacts statutes related to juveniles.

Highlighted Provisions:

This bill:

- ▶ defines terms and amends definitions;
- ▶ reorganizes and renumbers Title 78A, Chapter 6, Juvenile Court Act;
- ▶ reorganizes and renumbers Title 62A, Chapter 7, Juvenile Justice Services;
- ▶ enacts Title 80, Utah Juvenile Code;
- ▶ renumbers and amends statutes in Title 62A, Chapter 7, Juvenile Justice Services, and Title 78A, Chapter 6, Juvenile Court Act, to Title 80, Utah Juvenile Code;
- ▶ reorganizes and clarifies provisions related to removal of a child from the home and

HB0285S02 compared with HB0285S01

placement of a child in protective custody;

- ▶ amends the notice requirements for removal of a child from the home or placement of the child in protective custody;
- ▶ clarifies the notice requirements for release of a minor who is committed to a local mental health authority or the Utah State Developmental Center;
- ▶ renumbers a statute related to aiding or concealing a juvenile offender, and trespassing in a secure care facility, to Title 76, Utah Criminal Code;
- ▶ clarifies that an offense for damaging a jail or other place of confinement is applicable to a child;
- ▶ renumbers statutes regarding the Office of the Guardian Ad Litem;
- ▶ clarifies the original and concurrent jurisdiction of the juvenile court;
- ▶ enacts a statute on the exclusive jurisdiction of the juvenile court;
- ▶ modifies the continuing jurisdiction of the juvenile court;
- ▶ clarifies jurisdiction for proceedings to determine parentage;
- ▶ repeals a provision allowing delinquency records for an individual charged with a felony as an adult to be made available upon request;
- ▶ clarifies provisions related to venue for juvenile court proceedings;
- ▶ repeals provisions related to venue transfer in the juvenile court;
- ▶ clarifies requirements for emergency medical or surgical treatment after a petition is filed in the juvenile court;
- ▶ clarifies the requirements and punishments for contempt of court in the juvenile court;
- ▶ repeals provisions related to hearings after an adjudication in the juvenile court;
- ▶ clarifies the requirements for modifying an order or decree in the juvenile court;
- ▶ provides that a county or district attorney may file a criminal information for an adult in the juvenile court for certain offenses;
- ▶ clarifies the jurisdiction and requirements for adult criminal proceedings in the juvenile court;
- ▶ provides that certain agencies and courts assist and cooperate to further the provisions of Title 80, Utah Juvenile Code;
- ▶ clarifies provisions related to abuse, neglect, and dependency proceedings,

HB0285S02 compared with HB0285S01

including provisions related to:

- individuals entitled to be present at abuse, neglect, and dependency proceedings;
 - consolidating abuse, neglect, and dependency proceedings;
 - records of abuse, neglect, and dependency proceedings;
 - disclosures made by parties in abuse, neglect, and dependency proceedings;
 - physical and mental health examinations for a minor in abuse, neglect, and dependency proceedings;
 - consideration of an individual's cannabis use in abuse, neglect, and dependency proceedings;
 - amending a petition for abuse, neglect, or dependency;
 - referrals for mediation in an abuse, neglect, and dependency proceeding;
 - temporary custody and protective services of a child who is the subject of a petition for abuse, neglect, or dependency;
 - shelter hearings;
 - dispositions that may be ordered after an adjudication on a petition for abuse, neglect, or dependency;
 - permanency hearings; and
 - removal of a minor from the jurisdiction of the juvenile court and custody of the Division of Child and Family Services;
- clarifies provisions related to proceedings for the termination and restoration of parental rights, including provisions related to:
- the rules of procedure that apply to termination proceedings;
 - individuals entitled to be present at termination proceedings;
 - records of termination proceedings;
 - physical or mental health examinations for termination proceedings;
 - temporary custody of a child after a petition for termination of parental rights is filed;
 - consideration of an individual's use of cannabis in termination proceedings;
 - amending a petition for termination of parental rights; and
 - referrals for mediation in termination proceedings;
- repeals provisions regarding the contents of a petition for termination of parental

HB0285S02 compared with HB0285S01

rights;

- ▶ clarifies the responsibilities of the Division of Juvenile Justice Services;
- ▶ grants rulemaking authority to the Division of Juvenile Justice Services regarding the operation of certain programs and facilities;
- ▶ requires the Division of Juvenile Justice to provide prenatal and postnatal care to a pregnant minor who is in secure detention or secure care;
- ▶ allows the Division of Juvenile Justice Services to refer a minor, who has a child while the minor is in secure detention or secure care, and the minor's child to the Division of Child and Family Services to receive services;
- ▶ requires a report for a runaway be given to the Division of Juvenile Justice Services;
- ▶ requires the Division of Juvenile Justice Services to refer a runaway to the Division of Child and Family Services to determine whether the runaway is abused, neglected, or dependent;
- ▶ reorganizes and clarifies statutes regarding the Youth Parole Authority;
- ▶ modifies school notification requirements for minors who are taken into custody, admitted to detention, or adjudicated by the juvenile court for certain offenses;
- ▶ amends the grounds for which a minor may be taken into custody by a peace officer or a juvenile probation officer;
- ▶ provides the warrant requirements for taking a minor into custody after a delinquency petition is filed;
- ▶ clarifies the requirements for holding a minor in custody and releasing a minor from custody;
- ▶ clarifies the requirements for admitting a minor to detention;
- ▶ provides the rights that a minor has in a detention facility;
- ▶ provides the requirements for interviewing a minor who is taken into custody or admitted to a detention facility;
- ▶ clarifies when bail is allowed for a minor who is in a detention facility;
- ▶ provides the types of pleas that a minor may enter in the juvenile court and the requirements for a minor to withdraw a plea in the juvenile court;
- ▶ clarifies that, in preparing a dispositional report or recommendation, a juvenile probation officer or the juvenile court shall consider the dispositional guidelines;

HB0285S02 compared with HB0285S01

- ▶ provides that competency proceedings apply to a petition or an information filed in the juvenile court for a minor;
- ▶ clarifies competency proceedings for minors in juvenile court, including commitment proceedings for a minor who is 18 years old or older;
- ▶ clarifies provisions regarding delinquency proceedings, including:
 - when the juvenile court or the Division of Juvenile Justice Services is required to take photographs or fingerprints of a minor;
 - the types of dispositions that a juvenile court may order after a minor is adjudicated for an offense;
 - the requirements for placing a minor in detention after an adjudication; and
 - the time periods for probation and supervision by the juvenile court and the Youth Parole Authority;
- ▶ enacts provisions on the rights that minors have for delinquency proceedings;
- ▶ provides the burden of proof for an adjudication of an offense;
- ▶ amends the time period for suspending a disposition after an adjudication of an offense;
- ▶ clarifies provisions regarding the commitment and parole of a minor, including:
 - commitment of a minor to a local mental health authority or the Utah State Developmental Center; and
 - the presumptive terms of commitment to secure care, parole supervision, and aftercare services;
- ▶ provides the rights that a juvenile offender has in secure care;
- ▶ clarifies provisions regarding youth courts;
- ▶ provides that a criminal defense attorney be appointed to the Youth Court Board;
- ▶ clarifies provisions regarding juvenile records and expungement;
- ▶ clarifies provisions regarding emancipation of a minor;
- ▶ repeals statutes relating to the Division of Juvenile Justice Services, Youth Parole Authority, and juvenile court proceedings; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

HB0285S02 compared with HB0285S01

Other Special Clauses:

This bill provides a special effective date.

This bill provides coordination clauses.

Utah Code Sections Affected:

AMENDS:

53G-6-201, as last amended by Laws of Utah 2020, Chapter 20
62A-4a-101, as last amended by Laws of Utah 2019, Chapters 259 and 335
62A-4a-202.2, as last amended by Laws of Utah 2008, Chapter 3
62A-5-308, as last amended by Laws of Utah 2011, Chapter 366
62A-5-309, as last amended by Laws of Utah 2011, Chapter 366
62A-15-705, as last amended by Laws of Utah 2018, Chapter 322
76-8-418, as last amended by Laws of Utah 2005, Chapter 13
78A-6-101, as last amended by Laws of Utah 2012, Chapter 316
78A-6-102, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-103, as last amended by Laws of Utah 2020, Chapters 142, 214, and 250
78A-6-120, as last amended by Laws of Utah 2020, Chapter 214
78A-6-201, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-202, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-203, as last amended by Laws of Utah 2009, Chapter 356
78A-6-204, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-205, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-206, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-207, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-208, as last amended by Laws of Utah 2012, Chapter 316
78A-6-209, as last amended by Laws of Utah 2017, Chapter 326
78A-6-210, as last amended by Laws of Utah 2020, Chapter 312
78A-6-211, as renumbered and amended by Laws of Utah 2008, Chapter 3
78B-6-105, as last amended by Laws of Utah 2020, Chapter 214
78B-15-104, as last amended by Laws of Utah 2010, Chapter 237

ENACTS:

78A-2-801, Utah Code Annotated 1953

HB0285S02 compared with HB0285S01

78A-6-101.5, Utah Code Annotated 1953
78A-6-103.5, Utah Code Annotated 1953
78A-6-357, Utah Code Annotated 1953
80-1-101, Utah Code Annotated 1953
80-2-101, Utah Code Annotated 1953
80-3-101, Utah Code Annotated 1953
80-3-105, Utah Code Annotated 1953
80-3-106, Utah Code Annotated 1953
80-3-107, Utah Code Annotated 1953
80-3-203, Utah Code Annotated 1953
80-3-206, Utah Code Annotated 1953
80-3-207, Utah Code Annotated 1953
80-3-405, Utah Code Annotated 1953
80-3-503, Utah Code Annotated 1953
80-4-103, Utah Code Annotated 1953
80-4-106, Utah Code Annotated 1953
80-4-107, Utah Code Annotated 1953
80-4-109, Utah Code Annotated 1953
80-4-205, Utah Code Annotated 1953
80-4-206, Utah Code Annotated 1953
80-4-207, Utah Code Annotated 1953
80-5-101, Utah Code Annotated 1953
80-5-102, Utah Code Annotated 1953
80-5-202, Utah Code Annotated 1953
80-5-702, Utah Code Annotated 1953
80-5-703, Utah Code Annotated 1953
80-6-101, Utah Code Annotated 1953
80-6-102, Utah Code Annotated 1953
80-6-103, Utah Code Annotated 1953
80-6-203, Utah Code Annotated 1953
80-6-205, Utah Code Annotated 1953

HB0285S02 compared with HB0285S01

80-6-206, Utah Code Annotated 1953
80-6-301, Utah Code Annotated 1953
80-6-306, Utah Code Annotated 1953
80-6-602, Utah Code Annotated 1953
80-6-603, Utah Code Annotated 1953
80-6-604, Utah Code Annotated 1953
80-6-606, Utah Code Annotated 1953
80-6-701, Utah Code Annotated 1953
80-6-702, Utah Code Annotated 1953
80-6-703, Utah Code Annotated 1953
80-6-704, Utah Code Annotated 1953
80-6-705, Utah Code Annotated 1953
80-6-706, Utah Code Annotated 1953
80-6-708, Utah Code Annotated 1953
80-6-709, Utah Code Annotated 1953
80-6-710, Utah Code Annotated 1953
80-6-711, Utah Code Annotated 1953
80-6-712, Utah Code Annotated 1953
80-6-801, Utah Code Annotated 1953
80-6-1003, Utah Code Annotated 1953
80-7-101, Utah Code Annotated 1953

REPEALS AND REENACTS:

62A-4a-202.1, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1
78A-6-104, as last amended by Laws of Utah 2020, Chapter 214

RENUMBERS AND AMENDS:

53G-6-210, (Renumbered from 78A-6-319, as last amended by Laws of Utah 2018, Chapter 415)
53G-6-211, (Renumbered from 78A-6-320, as renumbered and amended by Laws of Utah 2008, Chapter 3)
76-8-311.5, (Renumbered from 62A-7-402, as last amended by Laws of Utah 2020, Chapter 214)

HB0285S02 compared with HB0285S01

- 78A-2-802**, (Renumbered from 78A-6-901, as last amended by Laws of Utah 2014, Chapter 267)
- 78A-2-803**, (Renumbered from 78A-6-902, as last amended by Laws of Utah 2019, Chapter 335)
- 78A-2-804**, (Renumbered from 78A-6-903, as enacted by Laws of Utah 2020, Chapter 230)
- 78A-6-212**, (Renumbered from 62A-7-105.5, as last amended by Laws of Utah 2020, Chapter 214)
- 78A-6-350**, (Renumbered from 78A-6-110, as renumbered and amended by Laws of Utah 2008, Chapter 3)
- 78A-6-351**, (Renumbered from 78A-6-109, as last amended by Laws of Utah 2017, Chapter 330)
- 78A-6-352**, (Renumbered from 78A-6-111, as last amended by Laws of Utah 2018, Chapter 148)
- 78A-6-353**, (Renumbered from 78A-6-1101, as last amended by Laws of Utah 2019, Chapter 162)
- 78A-6-354**, (Renumbered from 78A-6-114, as last amended by Laws of Utah 2020, Chapter 142)
- 78A-6-355**, (Renumbered from 78A-6-1112, as renumbered and amended by Laws of Utah 2008, Chapter 3)
- 78A-6-356**, (Renumbered from 78A-6-1106, as last amended by Laws of Utah 2018, Chapter 56)
- 78A-6-358**, (Renumbered from 78A-6-118, as last amended by Laws of Utah 2020, Chapter 214)
- 78A-6-359**, (Renumbered from 78A-6-1109, as last amended by Laws of Utah 2013, Chapter 245)
- 78A-6-450**, (Renumbered from 78A-6-1001, as last amended by Laws of Utah 2018, Chapter 415)
- 78A-6-451**, (Renumbered from 78A-6-1002, as last amended by Laws of Utah 2013, Chapter 237)
- 78A-6-452**, (Renumbered from 78A-6-1003, as renumbered and amended by Laws of

HB0285S02 compared with HB0285S01

Utah 2008, Chapter 3)

80-1-102, (Renumbered from 78A-6-105, as last amended by Laws of Utah 2020, Chapters 214, 312 and last amended by Coordination Clause, Laws of Utah 2020, Chapter 214)

80-1-103, (Renumbered from 78A-6-1110, as renumbered and amended by Laws of Utah 2008, Chapter 3)

80-3-102, (Renumbered from 78A-6-301, as last amended by Laws of Utah 2018, Chapter 46)

80-3-103, (Renumbered from 78A-6-303, as renumbered and amended by Laws of Utah 2008, Chapter 3)

80-3-104, (Renumbered from 78A-6-317, as last amended by Laws of Utah 2019, Chapters 326 and 335)

80-3-108, (Renumbered from 78A-6-305, as last amended by Laws of Utah 2019, Chapter 71)

80-3-109, (Renumbered from 78A-6-324, as renumbered and amended by Laws of Utah 2008, Chapter 3)

80-3-110, (Renumbered from 78A-6-115, as last amended by Laws of Utah 2020, Chapters 12, 132, 250, and 354)

80-3-201, (Renumbered from 78A-6-304, as last amended by Laws of Utah 2020, Chapter 158)

80-3-202, (Renumbered from 78A-6-107, as renumbered and amended by Laws of Utah 2008, Chapter 3)

80-3-204, (Renumbered from 78A-6-302, as last amended by Laws of Utah 2020, Chapter 158)

80-3-205, (Renumbered from 78A-6-322, as last amended by Laws of Utah 2017, Chapter 459)

80-3-301, (Renumbered from 78A-6-306, as last amended by Laws of Utah 2020, Chapters 158 and 214)

80-3-302, (Renumbered from 78A-6-307, as last amended by Laws of Utah 2020, Chapter 250)

80-3-303, (Renumbered from 78A-6-307.5, as last amended by Laws of Utah 2019,

HB0285S02 compared with HB0285S01

Chapter 71)

80-3-304, (Renumbered from 78A-6-301.5, as enacted by Laws of Utah 2015, Chapter 274)

80-3-305, (Renumbered from 78A-6-308, as last amended by Laws of Utah 2012, Chapter 293)

80-3-306, (Renumbered from 78A-6-308.5, as enacted by Laws of Utah 2018, Chapter 46)

80-3-401, (Renumbered from 78A-6-309, as renumbered and amended by Laws of Utah 2008, Chapter 3)

80-3-402, (Renumbered from 78A-6-311, as renumbered and amended by Laws of Utah 2008, Chapter 3)

80-3-403, (Renumbered from 78A-6-321, as renumbered and amended by Laws of Utah 2008, Chapter 3)

80-3-404, (Renumbered from 78A-6-323, as last amended by Laws of Utah 2015, Chapters 255 and 307)

80-3-406, (Renumbered from 78A-6-312, as last amended by Laws of Utah 2020, Chapter 214)

80-3-407, (Renumbered from 78A-6-313, as renumbered and amended by Laws of Utah 2008, Chapter 3)

80-3-408, (Renumbered from 78A-6-315, as last amended by Laws of Utah 2009, Chapter 161)

80-3-409, (Renumbered from 78A-6-314, as last amended by Laws of Utah 2020, Chapter 158)

80-3-501, (Renumbered from 78A-6-311.5, as last amended by Laws of Utah 2020, Chapter 250)

80-3-502, (Renumbered from 78A-6-318, as last amended by Laws of Utah 2018, Chapter 285)

80-4-101, (Renumbered from 78A-6-501, as renumbered and amended by Laws of Utah 2008, Chapter 3)

80-4-102, (Renumbered from 78A-6-502, as renumbered and amended by Laws of Utah 2008, Chapter 3)

HB0285S02 compared with HB0285S01

- 80-4-104**, (Renumbered from 78A-6-503, as last amended by Laws of Utah 2020, Chapter 158)
- 80-4-105**, (Renumbered from 78A-6-513, as last amended by Laws of Utah 2013, Chapters 340, 416 and last amended by Coordination Clause, Laws of Utah 2013, Chapter 416)
- 80-4-108**, (Renumbered from 78A-6-515, as last amended by Laws of Utah 2012, Chapter 120)
- 80-4-201**, (Renumbered from 78A-6-504, as renumbered and amended by Laws of Utah 2008, Chapter 3)
- 80-4-202**, (Renumbered from 78A-6-505, as renumbered and amended by Laws of Utah 2008, Chapter 3)
- 80-4-203**, (Renumbered from 78A-6-316, as renumbered and amended by Laws of Utah 2008, Chapter 3)
- 80-4-204**, (Renumbered from 78A-6-506, as last amended by Laws of Utah 2018, Chapter 359)
- 80-4-301**, (Renumbered from 78A-6-507, as last amended by Laws of Utah 2020, Chapter 158)
- 80-4-302**, (Renumbered from 78A-6-508, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1)
- 80-4-303**, (Renumbered from 78A-6-509, as renumbered and amended by Laws of Utah 2008, Chapter 3)
- 80-4-304**, (Renumbered from 78A-6-510, as renumbered and amended by Laws of Utah 2008, Chapter 3)
- 80-4-305**, (Renumbered from 78A-6-511, as last amended by Laws of Utah 2013, Chapter 416 and last amended by Coordination Clause, Laws of Utah 2013, Chapter 416)
- 80-4-306**, (Renumbered from 78A-6-512, as last amended by Laws of Utah 2009, Chapter 32)
- 80-4-307**, (Renumbered from 78A-6-514, as renumbered and amended by Laws of Utah 2008, Chapter 3)
- 80-4-401**, (Renumbered from 78A-6-1403, as last amended by Laws of Utah 2015,

HB0285S02 compared with HB0285S01

Chapter 272)

80-4-402, (Renumbered from 78A-6-1404, as last amended by Laws of Utah 2015,
Chapter 272)

80-5-103, (Renumbered from 62A-7-102, as last amended by Laws of Utah 2019,
Chapter 246)

80-5-104, (Renumbered from 62A-7-103, as last amended by Laws of Utah 2019,
Chapter 246)

80-5-201, (Renumbered from 62A-7-104, as last amended by Laws of Utah 2020,
Chapter 214)

80-5-203, (Renumbered from 78A-6-124, as enacted by Laws of Utah 2017, Chapter
330)

80-5-204, (Renumbered from 62A-7-106.5, as last amended by Laws of Utah 2019,
Chapter 246)

80-5-205, (Renumbered from 62A-7-107.5, as last amended by Laws of Utah 2020,
Chapter 214)

80-5-206, (Renumbered from 62A-7-108.5, as last amended by Laws of Utah 2020,
Chapter 214)

80-5-207, (Renumbered from 62A-7-109.5, as last amended by Laws of Utah 2020,
Chapter 214)

80-5-208, (Renumbered from 62A-7-403, as last amended by Laws of Utah 2020,
Chapter 214)

80-5-301, (Renumbered from 62A-7-104.5, as enacted by Laws of Utah 2013, Chapter
452)

80-5-302, (Renumbered from 62A-7-112, as enacted by Laws of Utah 2019, Chapter
162)

80-5-303, (Renumbered from 62A-7-113, as last amended by Laws of Utah 2020,
Chapter 214)

80-5-401, (Renumbered from 62A-7-601, as last amended by Laws of Utah 2019,
Chapter 246)

80-5-402, (Renumbered from 62A-7-701, as last amended by Laws of Utah 2020,
Chapter 214)

HB0285S02 compared with HB0285S01

80-5-403, (Renumbered from 62A-7-702, as last amended by Laws of Utah 2020, Chapter 214)

80-5-501, (Renumbered from 62A-7-202, as last amended by Laws of Utah 2017, Chapter 330)

80-5-502, (Renumbered from 62A-7-203, as last amended by Laws of Utah 2012, Chapter 242)

80-5-503, (Renumbered from 62A-7-401.5, as last amended by Laws of Utah 2020, Chapter 214)

80-5-601, (Renumbered from 62A-4a-501, as last amended by Laws of Utah 2019, Chapter 242)

80-5-602, (Renumbered from 62A-4a-502, as enacted by Laws of Utah 2019, Chapter 242)

80-5-603, (Renumbered from 78A-6-117.5, as last amended by Laws of Utah 2020, Chapter 250)

80-5-701, (Renumbered from 62A-7-501, as last amended by Laws of Utah 2020, Chapters 214 and 352)

80-6-201, (Renumbered from 78A-6-112, as last amended by Laws of Utah 2020, Chapter 214)

80-6-202, (Renumbered from 78A-6-106.5, as enacted by Laws of Utah 2017, Chapter 330)

80-6-204, (Renumbered from 62A-7-201, as last amended by Laws of Utah 2020, Chapter 214)

80-6-207, (Renumbered from 78A-6-113, as last amended by Laws of Utah 2020, Chapters 214, 250, and 312)

80-6-302, (Renumbered from 78A-6-603, as last amended by Laws of Utah 2020, Chapters 214, 312 and last amended by Coordination Clause, Laws of Utah 2020, Chapter 214)

80-6-303, (Renumbered from 78A-6-601, as last amended by Laws of Utah 2020, Chapters 214, 312 and last amended by Coordination Clause, Laws of Utah 2020, Chapter 214)

80-6-304, (Renumbered from 78A-6-602, as last amended by Laws of Utah 2020, Fifth

HB0285S02 compared with HB0285S01

Special Session, Chapter 4)

80-6-305, (Renumbered from 78A-6-602.5, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 4)

80-6-307, (Renumbered from 78A-6-605, as renumbered and amended by Laws of Utah 2008, Chapter 3)

80-6-401, (Renumbered from 78A-6-1301, as last amended by Laws of Utah 2019, Chapter 388)

80-6-402, (Renumbered from 78A-6-1302, as last amended by Laws of Utah 2019, Chapters 136, 335, and 388)

80-6-403, (Renumbered from 78A-6-1303, as last amended by Laws of Utah 2019, Chapter 388)

80-6-501, (Renumbered from 78A-6-703.1, as enacted by Laws of Utah 2020, Chapter 214)

80-6-502, (Renumbered from 78A-6-703.2, as enacted by Laws of Utah 2020, Chapter 214)

80-6-503, (Renumbered from 78A-6-703.3, as enacted by Laws of Utah 2020, Chapter 214)

80-6-504, (Renumbered from 78A-6-703.5, as enacted by Laws of Utah 2020, Chapter 214)

80-6-505, (Renumbered from 78A-6-703.6, as enacted by Laws of Utah 2020, Chapter 214)

80-6-506, (Renumbered from 78A-6-704, as last amended by Laws of Utah 2020, Chapter 214)

80-6-507, (Renumbered from 78A-6-705, as last amended by Laws of Utah 2020, Chapter 214)

80-6-601, (Renumbered from 78A-6-116, as last amended by Laws of Utah 2020, Chapters 214, 218, 312 and last amended by Coordination Clause, Laws of Utah 2020, Chapter 214)

80-6-605, (Renumbered from 78A-6-703.4, as enacted by Laws of Utah 2020, Chapter 214)

80-6-607, (Renumbered from 78A-6-123, as last amended by Laws of Utah 2020,

HB0285S02 compared with HB0285S01

Chapter 142)

80-6-608, (Renumbered from 78A-6-1104, as last amended by Laws of Utah 2012, Chapter 369)

80-6-609, (Renumbered from 78A-6-122, as enacted by Laws of Utah 2015, Chapter 338)

80-6-610, (Renumbered from 78A-6-1113, as last amended by Laws of Utah 2015, Chapter 258)

80-6-707, (Renumbered from 78A-6-606, as last amended by Laws of Utah 2017, Chapter 330)

80-6-802, (Renumbered from 62A-7-404, as repealed and reenacted by Laws of Utah 2020, Chapter 214)

80-6-803, (Renumbered from 62A-7-111.5, as last amended by Laws of Utah 2020, Chapter 214)

80-6-804, (Renumbered from 62A-7-404.5, as enacted by Laws of Utah 2020, Chapter 214)

80-6-805, (Renumbered from 62A-7-502, as last amended by Laws of Utah 2020, Chapter 214)

80-6-806, (Renumbered from 62A-7-504, as last amended by Laws of Utah 2020, Chapter 214)

80-6-807, (Renumbered from 62A-7-506, as last amended by Laws of Utah 2020, Chapter 214)

80-6-808, (Renumbered from 62A-7-507, as last amended by Laws of Utah 2020, Chapter 214)

80-6-901, (Renumbered from 78A-6-1202, as last amended by Laws of Utah 2017, Chapter 330)

80-6-902, (Renumbered from 78A-6-1203, as last amended by Laws of Utah 2018, Chapter 415)

80-6-903, (Renumbered from 78A-6-1204, as renumbered and amended by Laws of Utah 2008, Chapter 3)

80-6-904, (Renumbered from 78A-6-1205, as last amended by Laws of Utah 2009, Chapter 356)

HB0285S02 compared with HB0285S01

80-6-905, (Renumbered from 78A-6-1206, as last amended by Laws of Utah 2009, Chapter 356)

80-6-906, (Renumbered from 78A-6-1207, as last amended by Laws of Utah 2013, Chapter 27)

80-6-907, (Renumbered from 78A-6-1208, as last amended by Laws of Utah 2013, Chapter 27)

80-6-908, (Renumbered from 78A-6-1209, as renumbered and amended by Laws of Utah 2008, Chapter 3)

80-6-909, (Renumbered from 78A-6-1210, as renumbered and amended by Laws of Utah 2008, Chapter 123)

80-6-1001, (Renumbered from 78A-6-1502, as enacted by Laws of Utah 2020, Chapter 218)

80-6-1002, (Renumbered from 78A-6-1114, as last amended by Laws of Utah 2020, Chapter 108)

80-6-1004, (Renumbered from 78A-6-1503, as renumbered and amended by Laws of Utah 2020, Chapter 218)

80-6-1005, (Renumbered from 78A-6-1504, as enacted by Laws of Utah 2020, Chapter 218)

80-6-1006, (Renumbered from 78A-6-1505, as enacted by Laws of Utah 2020, Chapter 218)

80-6-1007, (Renumbered from 78A-6-1506, as enacted by Laws of Utah 2020, Chapter 218)

80-7-102, (Renumbered from 78A-6-802, as renumbered and amended by Laws of Utah 2008, Chapter 3)

80-7-103, (Renumbered from 78A-6-803, as renumbered and amended by Laws of Utah 2008, Chapter 3)

80-7-104, (Renumbered from 78A-6-804, as last amended by Laws of Utah 2010, Chapter 259)

80-7-105, (Renumbered from 78A-6-805, as renumbered and amended by Laws of Utah 2008, Chapter 3)

REPEALS:

HB0285S02 compared with HB0285S01

62A-4a-203.5, as last amended by Laws of Utah 2008, Chapter 3
62A-7-101, as last amended by Laws of Utah 2020, Chapter 214
62A-7-503, as renumbered and amended by Laws of Utah 2005, Chapter 13
62A-7-505, as last amended by Laws of Utah 2020, Chapter 214
78A-6-106, as last amended by Laws of Utah 2018, Chapter 285
78A-6-108, as last amended by Laws of Utah 2020, Chapter 214
78A-6-117, as last amended by Laws of Utah 2020, Fifth Special Session, Chapters 20
and 20
78A-6-119, as last amended by Laws of Utah 2019, Chapter 162
78A-6-121, as last amended by Laws of Utah 2017, Chapter 330
78A-6-310, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-604, as last amended by Laws of Utah 2019, Chapter 162
78A-6-801, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-1102, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-1103, as last amended by Laws of Utah 2019, Chapters 136 and 335
78A-6-1107, as last amended by Laws of Utah 2020, Chapter 214
78A-6-1108, as last amended by Laws of Utah 2020, Chapter 214
78A-6-1111, as last amended by Laws of Utah 2020, Chapters 371, 392, and 395
78A-6-1201, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-6-1401, as enacted by Laws of Utah 2013, Chapter 340
78A-6-1402, as enacted by Laws of Utah 2013, Chapter 340
78A-6-1501, as enacted by Laws of Utah 2020, Chapter 218

Utah Code Sections Affected by Coordination Clause:

62A-4a-101, as last amended by Laws of Utah 2019, Chapters 259 and 335
76-3-201, as last amended by Laws of Utah 2017, Chapter 304
76-3-401.5, Utah Code Annotated 1953
77-38-601, Utah Code Annotated 1953
77-40-105, as last amended by Laws of Utah 2020, Chapters 177 and 218
80-3-102, Utah Code Annotated 1953
80-3-110, Utah Code Annotated 1953
80-6-206, Utah Code Annotated 1953

HB0285S02 compared with HB0285S01

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

Section 1. Section **53G-6-201** is amended to read:

53G-6-201. Definitions.

As used in this part:

(1) (a) "Absence" or "absent" means the failure of a school-age child assigned to a class or class period to attend a class or class period.

(b) "Absence" or "absent" does not mean multiple tardies used to calculate an absence for the sake of a truancy.

~~[(2) "Minor" means a person under the age of 18 years.]~~

(2) "Educational neglect" means the same as that term is defined in Section 80-1-102.

(3) "Minor" means an individual who is under 18 years old.

~~[(3)]~~ (4) "Parent" includes:

(a) a custodial parent of the minor;

(b) a legally appointed guardian of a minor; or

(c) any other person purporting to exercise any authority over the minor which could be exercised by a person described in Subsection ~~[(3)]~~ (4)(a) or (b).

~~[(4)]~~ (5) "School day" means the portion of a day that school is in session in which a school-age child is required to be in school for purposes of receiving instruction.

~~[(5)]~~ (6) "School year" means the period of time designated by a local school board or charter school governing board as the school year for the school where the school-age child:

(a) is enrolled; or

(b) should be enrolled, if the school-age child is not enrolled in school.

~~[(6)]~~ (7) "School-age child" means a minor who:

(a) is at least six years old but younger than 18 years old; and

(b) is not emancipated.

~~[(7)]~~ (8) (a) "Truant" means a condition in which a school-age child, without a valid excuse, and subject to Subsection ~~[(7)]~~ (8)(b), is absent for at least:

(i) half of the school day; or

(ii) if the school-age child is enrolled in a learner verified program, as that term is defined by the state board, the relevant amount of time under the LEA's policy regarding the

HB0285S02 compared with HB0285S01

LEA's continuing enrollment measure as it relates to truancy.

(b) A school-age child may not be considered truant under this part more than one time during one day.

~~[(8)]~~ (9) "Truant minor" means a school-age child who:

(a) is subject to the requirements of Section 53G-6-202 or 53G-6-203; and

(b) is truant.

~~[(9)]~~ (10) (a) "Valid excuse" means:

(i) an illness, which may be either mental or physical;

(ii) a family death;

(iii) an approved school activity;

(iv) an absence permitted by a school-age child's:

(A) individualized education program; or

(B) Section 504 accommodation plan;

(v) an absence permitted in accordance with Subsection 53G-6-803(5); or

(vi) any other excuse established as valid by a local school board, charter school governing board, or school district.

(b) "Valid excuse" does not mean a parent acknowledgment of an absence for a reason other than a reason described in Subsections ~~[(9)]~~ (10)(a)(i) through (vi), unless specifically permitted by the local school board, charter school governing board, or school district under Subsection ~~[(9)]~~ (10)(a)(vi).

Section 2. Section **53G-6-210**, which is renumbered from Section 78A-6-319 is renumbered and amended to read:

~~[78A-6-319].~~ **53G-6-210. Educational neglect of a minor -- Procedures -- Defenses.**

(1) With regard to a ~~[child]~~ minor who is the subject of a petition ~~[under this chapter]~~ under Section 80-3-201 based on educational neglect:

(a) if allegations include failure of a ~~[child]~~ minor to make adequate educational progress, the juvenile court shall permit demonstration of the ~~[child's]~~ minor's educational skills and abilities based upon any of the criteria used in granting school credit, in accordance with Section 53G-6-702;

(b) parental refusal to comply with actions taken by school authorities in violation of

HB0285S02 compared with HB0285S01

Section 53G-10-202, 53G-10-205, 53G-10-403, or 53G-10-203, does not constitute educational neglect;

(c) parental refusal to support efforts by a school to encourage a [child] minor to act in accordance with any educational objective that focuses on the adoption or expression of a personal philosophy, attitude, or belief that is not reasonably necessary to maintain order and discipline in the school, prevent unreasonable endangerment of persons or property, or to maintain concepts of civility and propriety appropriate to a school setting, does not constitute educational neglect; and

(d) an allegation of educational neglect may not be sustained, based solely on a [child's] minor's absence from school, unless the [child] minor has been absent from school or from any given class, without good cause, for more than 10 consecutive school days or more than 1/16 of the applicable school term.

(2) A [child] minor may not be considered to be educationally neglected, for purposes of this chapter:

(a) unless there is clear and convincing evidence that:

(i) the [child] minor has failed to make adequate educational progress, and school officials have complied with the requirements of Section 53G-6-206; and

(ii) the [child] minor is two or more years behind the local public school's age group expectations in one or more basic skills, and is not receiving special educational services or systematic remediation efforts designed to correct the problem;

(b) if the [child's] minor's parent or guardian establishes by a preponderance of the evidence that:

(i) school authorities have failed to comply with the requirements of [~~Title 53G, Public Education System -- Local Administration~~] this title;

(ii) the [child] minor is being instructed at home in compliance with Section 53G-6-204;

(iii) there is documentation that the [child] minor has demonstrated educational progress at a level commensurate with the [child's] minor's ability;

(iv) the parent, guardian, or other person in control of the [child] minor has made a good faith effort to secure the [child's] minor's regular attendance in school;

(v) good cause or a valid excuse exists for the [child's] minor's absence from school;

HB0285S02 compared with HB0285S01

(vi) the ~~[child]~~ minor is not required to attend school ~~[pursuant to]~~ under court order or is exempt under other applicable state or federal law;

(vii) the ~~[student]~~ minor has performed above the twenty-fifth percentile of the local public school's age group expectations in all basic skills, as measured by a standardized academic achievement test administered by the school district where the ~~[student]~~ minor resides; or

(viii) the parent or guardian ~~[has proffered]~~ presented a reasonable alternative curriculum to required school curriculum, in accordance with Section 53G-10-205 or 53G-10-403, ~~[that]~~ and the alternative curriculum was rejected by the school district, but the parents have implemented the alternative curriculum; or

(c) if the ~~[child]~~ minor is attending school on a regular basis.

Section 3. Section **53G-6-211**, which is renumbered from Section 78A-6-320 is renumbered and amended to read:

~~[78A-6-320].~~ **53G-6-211. Proceedings arising from failure to attend public school.**

(1) (a) When a proceeding under Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, arises from a ~~[child's]~~ minor's failure to attend public school based upon the assertion of a constitutional or statutory right or duty, raised either by the ~~[child or by the child's custodial]~~ minor, or by the minor's parent, guardian, or custodian, the juvenile court shall hear the petition and resolve the issues associated with the asserted constitutional or statutory claims within 15 days after the day on which the petition is filed.

(b) The parties may waive the time limitation described in this subsection.

(2) Absent an emergency situation or other exigent circumstances, the juvenile court may not enter any order changing the educational status of the ~~[child]~~ minor that existed at the time the petition was filed, until the hearing described in Subsection (1) is concluded.

(3) ~~[Parties]~~ A party proceeding under this section shall, insofar as it is possible, provide the juvenile court with factual stipulations and make all other efforts that are reasonably available to minimize the time required to hear the claims described in Subsection (1).

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

62A-4a-101. Definitions.

HB0285S02 compared with HB0285S01

As used in this chapter:

(1) "Abuse" means the same as that term is defined in Section ~~[78A-6-105]~~ 80-1-102.

(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]~~ an individual under 18 years ~~[of age]~~ old.

(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;
- (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) (a) "Chronic abuse" means repeated or patterned abuse.

(b) "Chronic abuse" does not mean an isolated incident of abuse.

HB0285S02 compared with HB0285S01

(7) (a) "Chronic neglect" means repeated or patterned neglect.

(b) "Chronic neglect" does not mean an isolated incident of 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 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 created in Section 62A-4a-103.

(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 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) "Educational neglect" means the same as that term is defined in Section 80-1-102.

~~(16)~~ (17) "Harm" means the same as that term is defined in Section ~~[78A-6-105]~~

HB0285S02 compared with HB0285S01

80-1-102.

~~[(17)]~~ (18) "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)]~~ (19) "Incest" means the same as that term is defined in Section ~~[78A-6-105]~~
80-1-102.

~~[(19)]~~ (20) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.

~~[(20)]~~ (21) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.

~~[(21)]~~ (22) "Minor" means, except as provided in Part 7, Interstate Compact on Placement of Children~~[:]~~, the same as that term is defined in Section 80-1-102.

~~[(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)]~~ (23) "Molestation" means the same as that term is defined in Section ~~[78A-6-105]~~ 80-1-102.

~~[(23)]~~ (24) "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 minor's noncustodial parent.]~~

(25) "Natural parent" means the same as that term is defined in Section 80-1-102.

~~[(25)]~~ (26) "Neglect" means the same as that term is defined in Section ~~[78A-6-105]~~
80-1-102.

~~[(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:]~~

HB0285S02 compared with HB0285S01

~~[(a) the shelter hearing; or]~~

~~[(b) the child's return home;]~~

(27) "Protective custody" means the same as that term is defined in Section 80-1-102.

~~[(27)]~~ (28) "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)]~~ (29) "Severe abuse" means the same as that term is defined in Section ~~[78A-6-105]~~ 80-1-102.

~~[(29)]~~ (30) "Severe neglect" means the same as that term is defined in Section ~~[78A-6-105]~~ 80-1-102.

~~[(30)]~~ (31) "Sexual abuse" means the same as that term is defined in Section ~~[78A-6-105]~~ 80-1-102.

~~[(31)]~~ (32) "Sexual exploitation" means the same as that term is defined in Section ~~[78A-6-105]~~ 80-1-102.

~~[(32)]~~ (33) "Shelter care" means the temporary care of a minor in a nonsecure facility.

(34) "Shelter facility" means a nonsecure facility that provides shelter care for a minor.

~~[(33)]~~ (35) "Sibling" means a child who shares or has shared at least one parent in common either by blood or adoption.

HB0285S02 compared with HB0285S01

~~[(34)]~~ (36) "Sibling visitation" means services provided by the division to facilitate the interaction between a child in division custody with a sibling of that child.

~~[(35)]~~ (37) "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)]~~ (38) "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)]~~ (39) "Status offense" means ~~[a violation of the law that would not be a violation but for the age of the offender]~~ the same as that term is defined in Section 80-1-102.

~~[(38)]~~ (40) "Substance abuse" means the same as that term is defined in Section ~~[78A-6-105]~~ 80-1-102.

~~[(39)]~~ (41) "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)]~~ (42) "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)]~~ (43) "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

HB0285S02 compared with HB0285S01

finding of supported.

~~[(42)] "Temporary custody," with regard to the division, means the custody of a child in the division from the date of the shelter hearing until disposition.]~~

(44) "Temporary custody" means, with regard to the division, the custody of a child from the day on which the shelter hearing described in Section 80-3-301 is held until the day on which the juvenile court enters a disposition under Section 80-3-405.

~~[(43)]~~ (45) "Threatened harm" means the same as that term is defined in Section ~~[78A-6-105]~~ 80-1-102.

~~[(44)]~~ (46) "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.

~~[(45)]~~ (47) "Unsubstantiated" means a judicial finding that there is insufficient evidence to conclude that abuse or neglect occurred.

~~[(46)]~~ (48) "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 did not conclude that the allegation was without merit.

~~[(47)]~~ (49) "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 5. Section **62A-4a-202.1** is repealed and reenacted to read:

62A-4a-202.1. Removal or protective custody of a child -- Search warrants --
Temporary care of a child.

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

(a) there exist exigent circumstances sufficient to relieve the peace officer or the child welfare worker of the requirement to obtain a search warrant under Subsection (4) or (8);

(b) the peace officer or the child welfare worker obtains a search warrant under Subsection (4) or (8);

(c) the peace officer or the child welfare worker obtains a court order after the child's

HB0285S02 compared with HB0285S01

parent or guardian is given notice and an opportunity to be heard; or

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

(2) A peace officer or a child welfare worker may not remove a child from the child's home or take a child into custody under this section solely on the basis of:

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

(b) the possession or use, in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act, of cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device, as those terms are defined in Section 26-61a-102.

(3) (a) A child welfare worker may take action under Subsection (1) accompanied by a peace officer or without a peace officer if a peace officer is not reasonably available.

(b) Before taking a child into protective custody, and if possible and if consistent with the child's safety and welfare, a child welfare worker shall determine whether there are services available that, if provided to a parent or guardian of the child, would eliminate the need to remove the child from the custody of the child's parent or guardian.

(c) If the services described in Subsection (3)(b) are reasonably available, the services described in Subsection (3)(b) shall be utilized.

(d) In determining whether the services described in Subsection (3)(b) are reasonably available, and in making reasonable efforts to provide the services described in Subsection (3)(b), the child's health, safety, and welfare shall be the child welfare worker's paramount concern.

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

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

(ii) it is necessary to take the child into protective custody to avoid the harm described in Subsection (4)(a)(i); and

(iii) it is likely that the child will suffer substantial harm if the parent or guardian of the

HB0285S02 compared with HB0285S01

child is given notice and an opportunity to be heard before the child is taken into protective custody.

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

(c) The individual executing the warrant shall take the child to a shelter facility designated by the juvenile court or the division or to an emergency placement if the division makes an emergency placement under Section 62A-4a-209.

(5) If a peace officer or a child welfare worker takes a child into protective custody under Subsection (1), the peace officer or the child welfare worker shall:

(a) notify the child's parent or guardian as described in Section 62A-4a-202.2;

(b) release the child to the care of the child's parent, guardian, or another responsible adult, unless:

(i) the child's immediate welfare requires the child remain in protective custody; or

(ii) the protection of the community requires the child's detention in accordance with Title 80, Chapter 6, Part 2, Custody and Detention.

(6) If a peace officer or a child welfare worker takes a child to a shelter facility, the peace officer or the child welfare worker shall promptly file a written report, on a form provided by the division, with the shelter facility.

(7) (a) A child removed or taken into protective custody under this section may not be placed or kept in detention, as defined in Section 80-1-102, pending court proceedings, unless the child may be held in detention under Title 80, Chapter 6, Part 2, Custody and Detention.

(b) A child removed from the custody of the child's parent or guardian but who does not require physical restriction shall be given temporary care in:

(i) a shelter facility; or

(ii) an emergency placement in accordance with Section 62A-4a-209.

(c) When making a placement under Subsection (7)(b), the division shall give priority to a placement with a noncustodial parent, relative, or friend in accordance with Section 62A-4a-209.

(d) If the child is not placed with a noncustodial parent, a relative, or a designated friend, the caseworker assigned to the child shall file a report with the caseworker's supervisor explaining why a different placement was in the child's best interest.

HB0285S02 compared with HB0285S01

(8) A juvenile court shall issue a warrant authorizing a peace officer or a child welfare worker to search for a child who is missing, has been abducted, or has run away, and take the child into custody if the court determines that:

(a) the child is in the legal custody of the division; and

(b) the child is missing, has been abducted, or has run away.

(9) When a juvenile court issues a warrant under Subsection (8):

(a) the division shall notify the child's parent or guardian who has a right to parent-time with the child;

(b) the court shall order:

(i) the law enforcement agency that has jurisdiction over the location from which the child ran away to enter a record of the warrant into the National Crime Information Center database within 24 hours after the time in which the law enforcement agency receives a copy of the warrant; and

(ii) the division to notify the law enforcement agency described in Subsection (9)(b)(i) of the order described in Subsection (9)(b)(i); and

(c) the court shall specify the location to which the peace officer or the child welfare worker shall transport the child.

(10) (a) The parent or guardian to be notified under Subsection (9) must be:

(i) the child's primary caregiver; or

(ii) the parent or guardian who has custody of the child when the order is sought.

(b) The person required to provide notice under Subsection (9) shall make a good faith effort to provide notice to a parent or guardian who:

(i) is not required to be notified under Subsection (10)(a); and

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

Section 6. Section **62A-4a-202.2** is amended to read:

62A-4a-202.2. Notice upon removal of a child -- Locating noncustodial parent -- Information provided to parent, guardian, or responsible adult.

(1) (a) [~~Any peace officer or caseworker~~] A peace officer or a child welfare worker who takes a child into protective custody [~~pursuant to Section 62A-4a-202.1~~] under Subsection 62A-4a-202.1(1), shall immediately use reasonable efforts to locate and inform, through the most efficient means available, the parents, including a noncustodial parent, the guardian, or

HB0285S02 compared with HB0285S01

responsible relative:

- (i) that the child has been taken into protective custody;
- (ii) the reasons for removal and placement of the child in protective custody;
- (iii) that ~~[a written statement is available that explains]~~ the parent, guardian, or relative

will be provided with information on:

- (A) the parent's or guardian's procedural rights; and
- (B) the preliminary stages of the investigation and shelter hearing;
- (iv) of a telephone number where the parent or guardian may access further

information;

(v) that the child and the child's parent or guardian are entitled to have an attorney present at the shelter hearing;

(vi) that if the child's parent or guardian is ~~[impecunious]~~ an indigent individual, as defined in Section 78B-22-102, and desires to have an attorney, one will be provided; and

(vii) that resources are available to assist the child's parent or guardian, including:

- (A) a parent advocate;
- (B) a qualified attorney; or
- (C) potential expert witnesses to testify on behalf of the~~[:]~~ child, the child's parent or guardian, or the child's family.

~~[(I) child;]~~

~~[(II) child's parent;]~~

~~[(III) child's guardian; or]~~

~~[(IV) child's family:]~~

(b) For purposes of locating and informing the noncustodial parent as required in Subsection (1)(a), the division shall search for the noncustodial parent through the national parent locator database if the division is unable to locate the noncustodial parent through other reasonable efforts.

~~[(2)(a) The Office of the Attorney General shall adopt, print, and distribute a form for the written statement described in Subsection (1)(a)(iii).]~~

~~[(b) The statement described in Subsections (1)(a)(iii) and (2)(a) shall:]~~

~~[(i) be made available to the division and for distribution in:]~~

(2) At the time that a child is taken into protective custody under Subsection

HB0285S02 compared with HB0285S01

62A-4a-202.1(1), the child's parent or a guardian shall be provided an informational packet with:

- (a) all of the information described in Subsection (1);
- (b) information on the conditions under which a child may be released;
- (c) information on resources that are available to the parent or guardian, including:
 - (i) mental health resources;
 - (ii) substance abuse resources; and
 - (iii) parenting classes; and
- (d) any other information considered relevant by the division.

(3) The informational packet described in Subsection (2) shall be:

(a) evaluated periodically for the effectiveness of the informational packet at conveying necessary information and revised accordingly;

- (b) written in simple, easy-to-understand language;
- (c) available in English and other languages as the division determines to be

appropriate and necessary; and

(d) made available for distribution in:

- ~~[(A)]~~ (i) schools;
- ~~[(B)]~~ (ii) health care facilities;
- ~~[(C)]~~ (iii) local police and sheriff's offices;
- ~~[(D)]~~ (iv) the division; and
- ~~[(E)]~~ (v) any other appropriate office within the Department of Human Services[;].

~~[(ii) be in simple language; and]~~

~~[(iii) include at least the following information:]~~

~~[(A) the conditions under which a child may be released;]~~

~~[(B) hearings that may be required;]~~

~~[(C) the means by which the parent or guardian may access further specific information about a child's case and conditions of protective and temporary custody; and]~~

~~[(D) the rights of a child and of the parent or guardian to legal counsel and to appeal.]~~

~~[(3)]~~ (4) If reasonable efforts are made by the peace officer or caseworker to notify the parent or guardian or a responsible relative in accordance with the requirements of Subsection (1), failure to notify:

HB0285S02 compared with HB0285S01

(a) shall be considered to be due to circumstances beyond the control of the peace officer or caseworker; and

(b) may not be construed to:

(i) permit a new defense to any juvenile or judicial proceeding; or

(ii) interfere with any rights, procedures, or investigations provided for by this chapter or ~~[Title 78A, Chapter 6, Juvenile Court Act of 1996]~~ Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, or Chapter 4, Termination and Restoration of Parental Rights.

Section 7. Section **62A-5-308** is amended to read:

62A-5-308. Commitment -- Individual who is under 18 years old.

(1) ~~[Beginning July 1, 1993, the]~~ The director of the division, or the director's designee, may commit an individual under 18 years ~~[of age]~~ old who has an intellectual disability or symptoms of an intellectual disability, to the division for observation, diagnosis, care, and treatment if that commitment is based on:

~~[(1) involuntary commitment under the provisions of Section 62A-5-312. Proceedings for involuntary commitment of an individual under 18 years of age may be commenced by filing a written petition with the juvenile court under Section 62A-5-312. The juvenile court has jurisdiction to proceed in the same manner and with the same authority as the district court; or]~~

~~[(2) an emergency commitment in accordance with the provisions of Section 62A-5-311.]~~

(a) an emergency commitment in accordance with Section 62A-5-311; or

(b) involuntary commitment in accordance with Section 62A-5-312.

(2) A proceeding for involuntary commitment under Subsection (1)(a) may be commenced by filing a written petition with the juvenile court under Section 62A-5-312.

(3) (a) A juvenile court has jurisdiction over the proceeding under Subsection (2) as described in Subsection 78A-6-103(2)(f).

(b) A juvenile court shall proceed with the written petition in the same manner and with the same authority as the district court.

(4) If an individual who is under 18 years old is committed to the custody of the Utah State Developmental Center by the juvenile court, the director or the director's designee shall give the juvenile court written notice of the intention to release the individual not fewer than

HB0285S02 compared with HB0285S01

five days before the day on which the individual is released.

Section 8. Section **62A-5-309** is amended to read:

62A-5-309. Commitment -- Individual who is 18 years old or older.

(1) [~~Beginning July 1, 1993, the~~] The director, or [~~his~~] the director's designee may commit to the division an individual 18 years [~~of age~~] old or older who has an intellectual disability, for observation, diagnosis, care, and treatment if that commitment is based on:

[(1)] (a) involuntary commitment [~~under the provisions of~~] in accordance with Section 62A-5-312; or

[(2)] (b) temporary emergency commitment [~~under the provisions of~~] in accordance with Section 62A-5-311.

(2) If an individual who is 18 years old or older is committed to the custody of the Utah State Developmental Center by the juvenile court, the director or the director's designee shall give the juvenile court written notice of the intention to release the individual not fewer than five days before the day on which the individual is released.

Section 9. Section **62A-15-705** is amended to read:

62A-15-705. Commitment proceedings in juvenile court -- Criteria -- Custody.

(1) (a) Subject to Subsection (1)(b), [~~commitment proceedings~~] a commitment proceeding for a child may be commenced by filing a written application with the juvenile court of the county in which the child resides or is found, in accordance with the procedures described in Section 62A-15-631.

(b) [~~Commitment proceedings~~] A commitment proceeding under this section may be commenced only after a commitment proceeding under Section 62A-15-703 has concluded without the child being committed.

(2) The juvenile court shall order commitment to the physical custody of a local mental health authority if, upon completion of the hearing and consideration of the record, [~~it~~] the juvenile court finds by clear and convincing evidence that:

- (a) the child has a mental illness, as defined in Section 62A-15-602;
- (b) the child demonstrates a risk of harm to [~~himself~~] the child or others;
- (c) the child is experiencing significant impairment in the child's ability to perform socially;
- (d) the child will benefit from the proposed care and treatment; and

HB0285S02 compared with HB0285S01

(e) there is no appropriate less restrictive alternative.

(3) The juvenile court may not commit a child under Subsection (1) directly to the Utah State Hospital.

~~[(3)]~~ (4) The local mental health authority has an affirmative duty to:

(a) conduct periodic reviews of children committed to ~~[its custody pursuant to]~~ the local mental health authority's custody in accordance with this section~~[, and to]; and~~

(b) release any child who has sufficiently improved so that the local mental health authority, or ~~[its]~~ the local mental authority's designee, determines that commitment is no longer appropriate.

(5) If a child is committed to the custody of a local mental health authority, or the local mental health authority's designee, by the juvenile court, the local mental health authority, or the local mental health authority's designee, shall give the juvenile court written notice of the intention to release the child not fewer than five days before the day on which the child is released.

Section 10. Section **76-8-311.5**, which is renumbered from Section 62A-7-402 is renumbered and amended to read:

~~[62A-7-402].~~ **76-8-311.5. Aiding or concealing a juvenile offender --**

Trespass of a secure care facility -- Criminal penalties.

(1) As used in this section:

(a) "Division" means the Division of Juvenile Justice Services created in Section 80-5-103.

(b) "Juvenile offender" means the same as that term is defined in Section 80-1-102.

(c) "Secure care" means the same as that term is defined in Section 80-1-102.

(d) "Secure care facility" means the same as that term is defined in Section 80-1-102.

~~[(1)]~~ (2) An individual who commits any of the following offenses is guilty of a class A misdemeanor:

(a) entering, or attempting to enter, a building or enclosure appropriated to the use of juvenile offenders, without permission;

(b) entering any premises belonging to a secure care facility and committing or attempting to commit a trespass or damage on ~~[those premises]~~ the premises of a secure care facility; or

HB0285S02 compared with HB0285S01

(c) willfully annoying or disturbing the peace and quiet of a secure care facility or of a juvenile offender in a secure care facility.

~~[(2)]~~ (3) An individual is guilty of a third degree felony who:

(a) knowingly harbors or conceals a juvenile offender who has:

(i) escaped from [~~a secure facility~~] secure care; or

(ii) as described in Subsection (4), absconded from:

(A) a facility or supervision; or

(B) supervision of the division; or

(b) willfully aided or assisted a juvenile offender who has been lawfully committed to a secure care facility in escaping or attempting to escape from [~~that~~] the secure care facility.

~~[(3)]~~ (4) As used in this section:

(a) a juvenile offender absconds from a facility under this section when the juvenile offender:

(i) leaves the facility without permission; or

(ii) fails to return at a prescribed time.

(b) A juvenile offender absconds from supervision when the juvenile offender:

(i) changes the juvenile offender's residence from the residence that the juvenile offender reported to the division as the juvenile offender's correct address to another residence, without notifying the division or obtaining permission; or

(ii) for the purpose of avoiding supervision:

(A) hides at a different location from the juvenile offender's reported residence; or

(B) leaves the juvenile offender's reported residence.

Section 11. Section **76-8-418** is amended to read:

76-8-418. Damaging jails or other places of confinement.

(1) As used in this section:

(a) "Child" means the same as that term is defined in Section 80-1-102.

(b) "Detention facility" means the same as that term is defined in Section 80-1-102.

(c) "Secure care facility" means the same as that term is defined in Section 80-1-102.

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

(2) A person who willfully and intentionally breaks down, pulls down, destroys, floods, or otherwise damages any public jail or other place of confinement, including a detention[;]

HB0285S02 compared with HB0285S01

~~shelter, or secure confinement facility for juveniles]~~ facility, a shelter facility, or a secure care facility, is guilty of a felony of the third degree.

(3) This section is applicable to a child who willfully and intentionally commits an offense against a public jail, a detention facility, a shelter facility, or a secure care facility.

Section 12. Section **78A-2-801** is enacted to read:

Part 8. Guardian Ad Litem

78A-2-801. Definitions.

As used in this chapter:

(1) "Abuse, neglect, or dependency petition" means the same as that term is defined in Section 80-3-102.

(2) "Attorney guardian ad litem" means an attorney employed by the office.

(3) "Director" means the director of the office.

(4) "Division" means the Division of Child and Family Services created in Section 62A-4a-103.

(5) "Guardian ad litem" means an attorney guardian ad litem or a private attorney guardian ad litem.

(6) "Indigent individual" means the same as that term is defined in Section 78B-22-102.

(7) "Minor" means the same as that term is defined in Section 80-1-102.

(8) "Office" means the Office of Guardian ad Litem created in Section 78A-2-802.

(9) "Private attorney guardian ad litem" means an attorney designated by the office in accordance with Section 78A-2-705 who is not an employee of the office.

Section 13. Section **78A-2-802**, which is renumbered from Section 78A-6-901 is renumbered and amended to read:

~~[78A-6-901].~~ 78A-2-802. Office of Guardian ad Litem -- Appointment of director -- Duties of director -- Contracts in second, third, and fourth districts.

~~[(1) As used in this part:]~~

~~[(a) "Attorney guardian ad litem" means an attorney employed by the office:]~~

~~[(b) "Director" means the director of the office:]~~

~~[(c) "Office" means the Office of Guardian ad Litem, created in this section:]~~

~~[(d) "Private attorney guardian ad litem" means an attorney designated by the office~~

HB0285S02 compared with HB0285S01

~~pursuant to Section 78A-2-705 who is not an employee of the office.]~~

~~[(2)]~~ (1) There is created the Office of Guardian ad Litem under the direct supervision of the Guardian ad Litem Oversight Committee described in Subsection 78A-2-104(13).

~~[(3)]~~ (2) (a) The Guardian ad Litem Oversight Committee shall appoint one ~~[person]~~ individual to serve full time as the guardian ad litem director for the state.

(b) The guardian ad litem director shall:

(i) serve at the pleasure of the Guardian ad Litem Oversight Committee, in consultation with the state court administrator~~[-]~~;

~~[(b)]~~ (ii) ~~[The director shall]~~ be an attorney licensed to practice law in this state and selected on the basis of:

~~[(i)]~~ (A) professional ability;

~~[(ii)]~~ (B) experience in abuse, neglect, and dependency proceedings;

~~[(iii)]~~ (C) familiarity with the role, purpose, and function of guardians ad litem in both juvenile and district courts; and

~~[(iv)]~~ (D) ability to develop training curricula and reliable methods for data collection and evaluation~~[-]~~; and

~~[(c)]~~ (iii) ~~[The director shall, prior to]~~ before or immediately after the director's appointment, be trained in nationally recognized standards for an attorney guardian ad litem.

~~[(4)]~~ (3) The guardian ad litem director shall:

(a) establish policy and procedure for the management of a statewide guardian ad litem program;

(b) manage the guardian ad litem program to assure that ~~[minors receive]~~ a minor receives qualified guardian ad litem services in an abuse, neglect, and dependency ~~[proceedings]~~ proceeding under Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, in accordance with state and federal law and policy;

(c) develop standards for contracts of employment and contracts with independent contractors, and employ or contract with attorneys licensed to practice law in this state, to act as attorney guardians ad litem in accordance with Section ~~[78A-6-902]~~ 78A-2-803;

(d) develop and provide training programs for volunteers in accordance with the United States Department of Justice National Court Appointed Special Advocates Association standards;

HB0285S02 compared with HB0285S01

- (e) develop and update a guardian ad litem manual that includes:
 - (i) best practices for an attorney guardian ad litem; and
 - (ii) statutory and case law relating to an attorney guardian ad litem;
- (f) develop and provide a library of materials for the continuing education of attorney guardians ad litem and volunteers;
- (g) educate court personnel regarding the role and function of guardians ad litem;
- (h) develop needs assessment strategies, perform needs assessment surveys, and ensure that guardian ad litem training programs correspond with actual and perceived needs for training;
- (i) design and implement evaluation tools based on specific objectives targeted in the needs assessments described in Subsection ~~[(4)]~~ (3)(h);
- (j) prepare and submit an annual report to the Guardian ad Litem Oversight Committee and the Child Welfare Legislative Oversight Panel created in Section 62A-4a-207 regarding:
 - (i) the development, policy, and management of the statewide guardian ad litem program;
 - (ii) the training and evaluation of attorney guardians ad litem and volunteers; and
 - (iii) the number of minors served by the office;
- (k) hire, train, and supervise investigators; and
- (l) administer the program of private attorney guardians ad litem established by Section 78A-2-705.

~~[(5)]~~ (4) A contract of employment or independent contract described under Subsection ~~[(4)]~~ (3)(c) shall provide that ~~[attorney guardians]~~ an attorney guardian ad litem in the second, third, and fourth judicial districts devote ~~[their]~~ the attorney guardian's ad litem full time and attention to the role of attorney guardian ad litem, having no clients other than the minors whose interest ~~[they represent]~~ the attorney guardian ad litem represents within the guardian ad litem program.

Section 14. Section **78A-2-803**, which is renumbered from Section 78A-6-902 is renumbered and amended to read:

~~[78A-6-902].~~ **78A-2-803. Appointment of attorney guardian ad litem -- Duties and responsibilities -- Training -- Trained staff and court-appointed special advocate volunteers -- Costs -- Immunity -- Annual report.**

HB0285S02 compared with HB0285S01

(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

(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]~~ minor who may become the subject of ~~[a petition alleging abuse, neglect, or dependency;]~~ an abuse, neglect, or dependency petition from the earlier of ~~[the day that]~~:

(a) the ~~[child]~~ day on which the minor is removed from the ~~[child's]~~ minor's home by the division; or

(b) the day on which the abuse, neglect, or dependency 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]~~ division in accordance with Section 62A-4a-205;

(b) ~~[prior to]~~ before 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

HB0285S02 compared with HB0285S01

(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

(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~~] division to:

(i) maintain a minor in the minor's home; or

(ii) reunify [~~a child with the child's parent~~] a minor with a minor'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~~] guardian's ad litem position regarding the best interest of the [~~child~~] minor.

HB0285S02 compared with HB0285S01

(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.

(b) ~~[All volunteers, paralegals, and staff utilized pursuant to]~~ A volunteer, paralegal, or other staff utilized under 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]~~ minor'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]~~ minor;
- (C) counseling for the parent, if mandated by the court or recommended by the

~~[Division of Child and Family Services]~~ division; and

- (D) any other cost the court determines to be relevant.

(ii) The court may not assess ~~[those]~~ the fees or costs described in Subsection (6)(c)(i) 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]~~ an indigent individual.

(d) For purposes of Subsection (6)(c)(ii)(B), if ~~[a person]~~ an individual claims to be

HB0285S02 compared with HB0285S01

[~~impecunious~~] an indigent individual, the court shall:

(i) require [~~that person~~] the individual to submit an affidavit of [~~impecuniosity~~] indigence 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~~] minor's parents, parent, or legal guardian may appeal the court's determination, under Subsection (6)(c), of fees, costs, and expenses.

(7) An attorney guardian ad litem appointed under this section, when serving in the scope of the attorney [~~guardian ad litem's~~] guardian's ad litem 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~~] minor unless the minor:

(i) instructs the guardian ad litem to not disclose the [~~child's~~] minor'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~~] minor of a marriage.

(9) [~~An~~] The division shall provide an attorney guardian ad litem [~~shall be provided~~] access to all [~~Division of Child and Family Services~~] division 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~~] is in the best interest of the minor.

(b) An attorney guardian ad litem may interview the minor's [~~Division of Child and Family Services caseworker~~] child welfare worker, but may not:

HB0285S02 compared with HB0285S01

(i) rely exclusively on the conclusions and findings of the ~~[Division of Child and Family Services]~~ division; 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]~~ child welfare worker.

(c) (i) 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]~~ child welfare worker is present for a purpose other than the attorney guardian ad litem's meeting with the client.

(ii) A party and the party's 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]~~ minor, 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), and notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, 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), the Legislature shall maintain 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

HB0285S02 compared with HB0285S01

General may include summary data and nonidentifying information in [its] the office's audits and reports to the Legislature.

(d) (i) Subsection (12)(b) [~~constitutes~~] is 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[~~:(F)~~] to provide a guardian ad litem program[~~;~~ and ~~(H)~~], and as parens patriae, to protect minors.

(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 15. Section **78A-2-804**, which is renumbered from Section 78A-6-903 is renumbered and amended to read:

[78A-6-903]. 78A-2-804. Guardian Ad Litem Services Account established -- Funding.

(1) There is created [~~in the General Fund~~] a restricted account in the General Fund known as the Guardian Ad Litem Services Account, for the purpose of funding the [~~Office of Guardian Ad Litem~~] office, in accordance with [~~the provisions of Sections 78A-6-901 and 78A-6-902~~] this part.

(2) The account shall be funded by the donation described in Subsection 41-1a-422(1)(a)(i)(F).

Section 16. Section **78A-6-101** is amended to read:

CHAPTER 6. JUVENILE COURT

78A-6-101. Title.

This chapter is known as [~~the~~] "Juvenile Court [~~Act~~]."

Section 17. Section **78A-6-101.5** is enacted to read:

78A-6-101.5. Definitions.

The terms defined in Section 80-1-102 apply to this chapter.

Section 18. Section **78A-6-102** is amended to read:

78A-6-102. Establishment of juvenile court -- Organization and status of court -- Purpose.

(1) There is established a juvenile court for the state [~~a juvenile court~~].

(2) (a) The juvenile court is a court of record. [~~It~~]

HB0285S02 compared with HB0285S01

(b) The juvenile court shall have a seal~~[, and its]~~.

(c) The juvenile court's judges, clerks, and referees have the power to administer oaths and affirmations.

(d) The juvenile court has the authority to issue search warrants, subpoenas, or investigative subpoenas under Section 62A-4a-202.1, Chapter 4a, Adult Criminal Proceedings, and Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, Chapter 4, Termination and Restoration of Parental Rights, and Chapter 6, Juvenile Justice, for the same purposes and in the same manner as described in Title 77, Utah Code of Criminal Procedure, and the Utah Rules of Criminal Procedure, for the issuance of search warrants, subpoenas, or investigative subpoenas in other trial courts in the state.

(3) The juvenile court is of equal status with the district courts of the state.

(4) The juvenile court is established as a forum for the resolution of all matters properly brought before [it] the juvenile court, consistent with applicable constitutional and statutory requirements of due process.

(5) The purpose of the court under this chapter is to:

(a) promote public safety and individual accountability by the imposition of appropriate sanctions on persons who have committed acts in violation of law;

(b) order appropriate measures to promote guidance and control, preferably in the minor's own home, as an aid in the prevention of future unlawful conduct and the development of responsible citizenship;

(c) where appropriate, order rehabilitation, reeducation, and treatment for persons who have committed acts bringing them within the court's jurisdiction;

(d) adjudicate matters that relate to minors who are beyond parental or adult control and to establish appropriate authority over these minors by means of placement and control orders;

(e) adjudicate matters that relate to abused, neglected, and dependent children and to provide care and protection for minors by placement, protection, and custody orders;

(f) remove a minor from parental custody only where the minor's safety or welfare, or the public safety, may not otherwise be adequately safeguarded; and

(g) consistent with the ends of justice, act in the best interests of the minor in all cases and preserve and strengthen family ties.

HB0285S02 compared with HB0285S01

Section 19. Section **78A-6-103** is amended to read:

78A-6-103. Original jurisdiction of the juvenile court -- Magistrate functions -- Findings -- Transfer of a case from another court.

(1) Except as otherwise provided by Subsections 78A-5-102(9), 78A-5-102(10), and 78A-7-106(2), the juvenile court has original jurisdiction over:

(a) a felony, misdemeanor, infraction, or violation of an ordinance, under municipal, state, or federal law, that was committed by a child; and

(b) a felony, misdemeanor, infraction, or violation of an ordinance, under municipal, state, or federal law, that was committed by an individual:

(i) who is under 21 years old at the time of all court proceedings; and

(ii) who was under 18 years old at the time the offense was committed.

(2) The juvenile court has original jurisdiction over any proceeding concerning:

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

(b) a protective order for a child in accordance with Title 78B, Chapter 7, Part 2, Child Protective Orders~~[, which the juvenile court may transfer to the district court if the juvenile court has entered an ex parte protective order and finds that:];~~

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

~~[(ii) the district court has a petition pending or an order related to custody or parent-time entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders, or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the petitioner and the respondent are parties; and]~~

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

(c) the appointment of a guardian of the individual or other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

(d) the emancipation of a minor in accordance with ~~[Part 8, Emancipation]~~ Title 80, Chapter 7, Emancipation;

(e) the termination of ~~[the legal parent-child relationship]~~ parental rights in accordance with ~~[Part 5, Termination of Parental Rights Act]~~ Title 80, Chapter 4, Termination and Restoration of Parental Rights, including termination of residual parental rights and duties;

HB0285S02 compared with HB0285S01

(f) the treatment or commitment of a minor who has an intellectual disability;

(g) the judicial consent to the marriage of a minor who is 16 or 17 years old ~~[upon a determination of voluntariness or where otherwise required by law]~~ in accordance with Section 30-1-9;

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

(h) an order for a parent or a guardian of a child under Subsection 80-6-705(3);

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

(j) the treatment or commitment of a child with a mental illness ~~[in accordance with Subsection (11)];~~

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

(l) a minor found not competent to proceed in accordance with ~~[Section 78A-6-1301]~~ Title 80, Chapter 6, Part 4, Competency;

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

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

~~[(3)(a) Except as provided in Subsection (3)(c), the juvenile court has exclusive jurisdiction over a felony, misdemeanor, infraction, or violation of an ordinance:]~~

~~[(i) committed by a child and that arises from a single criminal episode containing an offense for which:]~~

~~[(A) a citation, petition, indictment, or criminal information is filed; and]~~

~~[(B) the court has original jurisdiction; and]~~

~~[(ii) committed by an individual who is under 21 years old at the time of all court~~

HB0285S02 compared with HB0285S01

~~proceedings, but committed before the individual was 18 years old, and that arises from a single criminal episode containing an offense for which:]~~

~~[(A) a citation, petition, indictment, or criminal information is filed; and]~~

~~[(B) the court has original jurisdiction.]~~

~~[(b) For purposes of this Subsection (3), the juvenile court has jurisdiction over the following offenses committed by an individual who is under 21 years old at the time of all court proceedings, but was under 18 years old at the time the offense was committed:]~~

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

~~[(ii) Section 73-18-12.]~~

~~[(c) If a juvenile court transfers jurisdiction of an offense to the district court under Section 78A-6-703.5, the exclusive jurisdiction of the juvenile court over that offense is terminated.]~~

~~[(4) (a) As used in this Subsection (4):]~~

~~[(i) "Qualifying offense" means an offense described in Sections 78A-6-703.2 and 78A-6-703.3.]~~

~~[(ii) "Separate offense" means any offense that is not a qualifying offense.]~~

~~[(b) The juvenile court:]~~

~~[(i) regains exclusive jurisdiction over any separate offense described in Subsection (3)(a) if:]~~

~~[(A) the individual who is alleged to have committed the separate offense is bound over to the district court for a qualifying offense under Section 78A-6-703.5; and]~~

~~[(B) the qualifying offense results in an acquittal, a finding of not guilty, or a dismissal; and]~~

~~[(ii) gains exclusive jurisdiction over any separate offense described in Subsection (3)(a) if:]~~

~~[(A) the individual who is alleged to have committed the separate offense is charged for a qualifying offense under Section 78A-6-703.2 in the district court; and]~~

~~[(B) the qualifying offense results in an acquittal, a finding of not guilty, or a dismissal in the district court.]~~

~~[(5)] (o) [The juvenile court has jurisdiction over] an ungovernable or runaway child~~

HB0285S02 compared with HB0285S01

who is referred to the juvenile court by the Division of Juvenile Justice Services ~~[when]~~ if, despite earnest and persistent efforts by the Division of Juvenile Justice Services, the child has demonstrated that the child:

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

~~[(b)]~~ (ii) has run away from home~~[-]~~;

~~[(6)]~~ The juvenile court has continuing jurisdiction over a minor's case for an offense that is adjudicated under Section 78A-6-117 until jurisdiction is terminated in accordance with Section 78A-6-120.;

(p) the establishment of paternity, or the ordering of testing for the purposes of establishing paternity, ~~{in accordance with}~~ under Title 78B, Chapter 15, Utah Uniform Parentage Act, if the issue of paternity arises in a proceeding under Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, or Chapter 4, Termination and Restoration of Parental Rights; and

(q) a criminal information filed under Part 4a, Adult Criminal Proceedings, for an adult alleged to have committed an offense under Subsection 78A-6-352(4)(b) for failure to comply with a promise to appear and bring a child to the juvenile court.

(3) It is not necessary for a minor to be adjudicated for an offense or violation of the law under Section 80-6-701, for the juvenile court to exercise jurisdiction under Subsection (2)(q).

~~[(7)]~~ (4) This section does not restrict the right of access to the juvenile court by private agencies or other persons.

~~[(8)]~~ (5) The juvenile court has jurisdiction of all magistrate functions relative to cases arising under ~~[Part 7, Transfer of Jurisdiction]~~ Title 80, Chapter 6, Part 5, Transfer to District Court.

~~[(9)]~~ (6) The juvenile court has jurisdiction to make a finding of substantiated, unsubstantiated, or without merit, in accordance with Section ~~[78A-6-323]~~ 80-3-404.

~~[(10)]~~ (7) The juvenile court has ~~[subject matter]~~ jurisdiction over matters transferred to the juvenile court by another trial court in accordance with Subsection 78A-7-106(4) and Section ~~[78A-6-601]~~ 80-6-303.

HB0285S02 compared with HB0285S01

~~[(11) The juvenile court may commit a child to the physical custody of a local mental health authority in accordance with Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, but not directly to the Utah State Hospital.]~~

Section 20. Section **78A-6-103.5** is enacted to read:

78A-6-103.5. Exclusive jurisdiction of the juvenile court.

(1) Except as provided in Subsection (3), the juvenile court has exclusive jurisdiction over a felony, misdemeanor, infraction, or violation of an ordinance:

(a) committed by a child and that arises from a single criminal episode containing an offense for which:

(i) a citation, petition, indictment, or criminal information is filed; and

(ii) the court has original jurisdiction; and

(b) committed by an individual who is under 21 years old at the time of all court proceedings, but committed before the individual was 18 years old, and that arises from a single criminal episode containing an offense for which:

(i) a citation, petition, indictment, or criminal information is filed; and

(ii) the court has original jurisdiction.

(2) For purposes of this section, the juvenile court has jurisdiction over the following offenses committed by an individual who is under 21 years old at the time of all court proceedings, but was under 18 years old at the time the offense was committed:

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

(b) Section 73-18-12.

(3) If a juvenile court transfers jurisdiction of an offense to the district court under Section 80-6-504, the exclusive jurisdiction of the juvenile court over that offense is terminated.

(4) (a) As used in this Subsection (4):

(i) "Qualifying offense" means an offense described in Sections 80-6-502 and 80-6-503.

(ii) "Separate offense" means any offense that is not a qualifying offense.

(b) The juvenile court:

(i) regains exclusive jurisdiction over any separate offense described in Subsection (1)

HB0285S02 compared with HB0285S01

if:

(A) the individual who is alleged to have committed the separate offense is bound over to the district court for a qualifying offense under Section 80-6-504; and

(B) the qualifying offense results in an acquittal, a finding of not guilty, or a dismissal;
and

(ii) gains exclusive jurisdiction over any separate offense described in Subsection (1)

if:

(A) the individual who is alleged to have committed the separate offense is charged for a qualifying offense under Section 80-6-502 in the district court; and

(B) the qualifying offense results in an acquittal, a finding of not guilty, or a dismissal in the district court.

Section 21. Section **78A-6-104** is repealed and reenacted to read:

78A-6-104. Concurrent jurisdiction of the juvenile court -- Transfer of a protective order {to the district court}-- Transfer of a paternity action.

(1) The juvenile court has jurisdiction, concurrent with the district court, over:

(a) ~~{the establishment of paternity, or the ordering of testing for the purposes of establishing paternity, in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act;~~
—— (b) a petition to modify a minor's birth certificate if the juvenile court has jurisdiction over the minor's case under Section 78A-6-103; and

(~~{c}~~~~b~~) questions of custody, support, and parent-time of a minor if the ~~{minor's case is under the jurisdiction of the juvenile court under this section or}~~ juvenile court has jurisdiction over the minor's case under Section 78A-6-103.

(2) (a) The juvenile court has jurisdiction, concurrent with the district court or the justice court otherwise having jurisdiction, over a criminal information filed under Part 4a, Adult Criminal Proceedings, for an adult alleged to have committed:

(i) an offense under Section 32B-4-403, unlawful sale, offer for sale, or furnishing to minor;

(ii) an offense under Section 53G-6-202, failure to comply with compulsory education requirements;

(iii) an offense under Section 62A-4a-411, failure to report;

(iv) a misdemeanor offense under Section 76-5-303, custodial interference;

HB0285S02 compared with HB0285S01

(v) an offense under Section 76-10-2301, contributing to the delinquency of a minor; or

(vi) an offense under Section 80-5-601, harboring a runaway.

(b) It is not necessary for a minor to be adjudicated for an offense or violation of the law under Section 80-6-701 for the juvenile court to exercise jurisdiction under Subsection (2)(a).

(3) (a) When a support, custody, or parent-time award has been made by a district court in a divorce action or other proceeding, and the jurisdiction of the district court in the case is continuing, the juvenile court may acquire jurisdiction in a case involving the same child if the child ~~is dependent, abused, neglected, or otherwise~~ comes within the jurisdiction of the juvenile court under Section 78A-6-103.

(b) (i) The juvenile court may, by order, change the custody subject to Subsection 30-3-10(6), support, parent-time, and visitation rights previously ordered in the district court as necessary to implement the order of the juvenile court for the safety and welfare of the child.

(ii) An order by the juvenile court under Subsection (3)(b)(i) remains in effect so long as the juvenile court continues to exercise jurisdiction.

(c) If a copy of the findings and order of the juvenile court under this Subsection (3) are filed with the district court, the findings and order of the juvenile court are binding on the parties to the divorce action as though entered in the district court.

(4) This section does not deprive the district court of jurisdiction to:

(a) appoint a guardian for a child;

(b) determine the support, custody, and parent-time of a child upon writ of habeas corpus; or

(c) determine a question of support, custody, and parent-time that is incidental to the determination of an action in the district court.

(5) A juvenile court may transfer a petition for a protective order for a child to the district court if the juvenile court has entered an ex parte protective order and finds that:

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

(b) the district court has a petition pending or an order related to custody or parent-time entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders, or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the

HB0285S02 compared with HB0285S01

petitioner and the respondent are parties; and

(c) the best interests of the child will be better served in the district court.

(6) (a) A district court shall transfer a paternity action to the juvenile court if the establishment of paternity, or the ordering of testing for the purpose of establishing paternity, is an issue in a child welfare proceeding under Title 80, Chapter 3, Abuse, Neglect, or Dependency Proceedings, or Chapter 4, Termination and Restoration of Parental Rights.

(b) The juvenile court may consolidate the paternity action with the child welfare proceeding in accordance with Rule 100, Utah Rules of Civil Procedure.

(c) (i) If the juvenile court terminates jurisdiction over the child welfare proceeding before the day on which the paternity action is adjudicated, the juvenile court shall retain jurisdiction over the paternity action until the day on which the juvenile court adjudicates the paternity action.

(ii) After the day on which the juvenile court adjudicates the paternity action, the juvenile court shall transfer the paternity action to the district court.

Section 22. Section **78A-6-120** is amended to read:

78A-6-120. Continuing jurisdiction of juvenile court -- Period of and termination of jurisdiction.

(1) Except as provided in Subsection (2), if the ~~[court retains jurisdiction over a minor's case under Section 78A-6-117]~~ juvenile court obtains jurisdiction of a minor's case, the juvenile court's jurisdiction over the minor's case continues until:

(a) the minor is 21 years old; or

(b) if the juvenile court extends jurisdiction over the minor's case ~~[until the minor is 25 years old]~~ under Section ~~[78A-6-703.4]~~ 80-6-605, the minor is 25 years old.

(2) (a) The juvenile court's continuing jurisdiction under Subsection (1) terminates:

(i) upon order of the court;

(ii) upon ~~[commitment to a secure facility]~~ an order for secure care under Section 80-6-705; or

~~[(iii) upon commencement of proceedings in adult cases under Section 78A-6-1001; or]~~

~~[(iv)]~~ (iii) in accordance with ~~[Sections 62A-7-404 and 78A-6-117]~~ Section 80-6-712.

(b) The continuing jurisdiction of the juvenile court over a minor's case is not

HB0285S02 compared with HB0285S01

terminated:

(i) by marriage; or

(ii) when a minor commits an offense under municipal, state, or federal law that is under the jurisdiction of another court [~~and the minor is at least 18 years old at the time of the offense~~].

(c) Notwithstanding Subsection (2)(a)(ii), the juvenile court retains jurisdiction to make and enforce orders related to restitution until the Youth Parole Authority discharges the minor under Section 80-6-807.

~~[(3) When a minor has been committed by the court to the physical custody of a local mental health authority or the local mental health authority's designee or to the Utah State Developmental Center, the local mental health authority or the local mental health authority's designee or the superintendent of the Utah State Developmental Center shall give the court written notice of the intention to discharge, release, or parole the minor not fewer than five days before the discharge, release, or parole.]~~

~~[(4) (a) The court may transfer a case of a minor who is on probation or under protective supervision, or of a minor who is otherwise under the continuing jurisdiction of the court, to a court of another district, if the receiving court consents, or upon direction of the chair of the Board of Juvenile Court Judges.]~~

~~[(b) The receiving court has the same powers with respect to the minor that the court would have if the proceedings originated in that court.]~~

~~[(5) A minor shall undergo a validated risk and needs assessment within seven days of the day on which an order terminating jurisdiction is issued if:]~~

~~[(a) the minor is adjudicated under Section 78A-6-117; and]~~

~~[(b) the minor underwent a validated risk and needs assessment under Subsection 78A-6-117(1)(d).]~~

Section 23. Section **78A-6-201** is amended to read:

78A-6-201. Judges of juvenile court -- Appointments -- Terms.

(1) (a) [~~Judges of the juvenile court~~] A judge of the juvenile court shall be appointed initially to serve until the first general election held more than three years after [~~the effective date of the appointment. Thereafter,~~] the day on which the appointment is effective.

(b) After the initial term described in Subsection (1)(a), the term of office of a [judge

HB0285S02 compared with HB0285S01

~~of a juvenile court]~~ juvenile court judge is six years and commences on the first Monday in January next following the date of election.

(2) A juvenile court judge whose term expires may serve, upon request of the Judicial Council, until a successor is appointed and qualified.

Section 24. Section **78A-6-202** is amended to read:

78A-6-202. Sessions of juvenile court.

(1) In each county, regular juvenile court sessions shall be held at a place designated by the judge or judges of the juvenile court district, with the approval of the board.

(2) ~~[Court]~~ Juvenile court sessions shall be held in each county when the presiding judge of the juvenile court directs, except that a judge of the district may hold court in any county within the district at any time~~;~~ if required by the urgency of the case.

Section 25. Section **78A-6-203** is amended to read:

78A-6-203. Board of Juvenile Court Judges -- Composition -- Purpose - Presiding judge.

(1) (a) The Judicial Council shall, by rule, establish a Board of Juvenile Court Judges.

(b) The board shall establish general policies for the operation of the juvenile courts and uniform rules and forms governing practice, consistent with the provisions of this chapter, the rules of the Judicial Council, and the rules of the Supreme Court.

(c) ~~(i)~~ (i) The board may receive and expend any funds that may become available from the federal government or private sources to carry out any of the purposes ~~[of this chapter]~~ described in Section 78A-6-102(5).

~~[(ii)]~~ (ii) The board may meet any federal requirements that are conditions precedent to receiving the funds.

~~[(iii)]~~ (iii) The board may cooperate with the federal government in a program for training personnel employed, or preparing for employment, by the juvenile court and may receive and expend funds from federal or state sources or from private donations for these purposes.

~~[(iv)]~~ (iv) Funds donated or paid to the juvenile court by private sources for the purpose of compensatory service programs ~~[shall be]~~ are nonlapsing.

~~[(v)]~~ (v) The board may:

(A) contract with public or nonprofit institutions of higher learning for the training of

HB0285S02 compared with HB0285S01

personnel;

(B) conduct short-term training courses of [its] the board's own and hire experts on a temporary basis for this purpose; and

(C) cooperate with the Division of Child and Family Services and other state departments or agencies in personnel training programs.

(d) The board may contract, on behalf of the juvenile court, with the United States Forest Service or other agencies or departments of the federal government or with agencies or departments of other states for the care and placement of minors adjudicated under [~~this chapter~~] Title 80, Utah Juvenile Code.

(e) The powers to contract and expend funds are subject to budgetary control and procedures as provided by law.

(2) Under the direction of the presiding officer of the council, the chair shall supervise the juvenile courts to:

(a) ensure uniform adherence to law and to the rules and forms adopted by the Supreme Court and Judicial Council[~~, and to~~]; and

(b) promote the proper and efficient functioning of the juvenile courts.

(3) (a) The judges of districts having more than one juvenile court judge shall elect a presiding juvenile court judge.

(b) In districts comprised of five or more juvenile court judges and court commissioners, the presiding juvenile court judge shall receive an additional \$1,000 per annum as compensation.

~~[(4) Consistent with policies of the Judicial Council, the presiding judge shall:]~~

(4) The presiding juvenile court judge, in accordance with the policies of the Judicial Council, shall:

(a) implement policies of the Judicial Council;

(b) exercise powers and perform administrative duties as authorized by the Judicial Council;

(c) manage the judicial business of the district; and

(d) call and preside over meetings of juvenile court judges of the district.

Section 26. Section **78A-6-204** is amended to read:

78A-6-204. Administrator of the juvenile court -- Appointment -- Qualifications

HB0285S02 compared with HB0285S01

-- Powers and duties.

(1) With the approval of the board, the state court administrator shall appoint a chief administrative officer of the juvenile court.

(2) The chief administrative officer shall:

(a) be selected on the basis of professional ability and experience in the field of public administration [~~and shall~~]; and

(b) possess an understanding of court procedures[~~, as well as~~] and the nature and significance of probation services and other court services.

Section 27. Section **78A-6-205** is amended to read:

78A-6-205. District court executives -- Selection -- Duties.

(1) (a) The chief administrative officer of the juvenile court, with the approval of the juvenile court judge of each district or the presiding juvenile court judge of multiple judge districts, shall appoint a court executive for each district.

(b) [~~The court executive~~] A court executive appointed under Subsection (1)(a) serves at the pleasure of the chief administrative officer.

(2) The court executive shall:

(a) appoint a clerk of the court, [~~deputy court clerks, probation officers, and other persons~~] district managers, and other staff, including juvenile probation officers, as required to carry out the work of the court;

(b) supervise the work of all nonjudicial court staff of the district; and

(c) serve as administrative officer of the district.

(3) (a) The clerk shall keep a record of court proceedings [~~and~~].

(b) The clerk may issue all process and [~~notice~~] notices required.

Section 28. Section **78A-6-206** is amended to read:

78A-6-206. Juvenile court employees -- Salaries -- State courts personnel system -- Exemptions and discharge.

(1) All employees, except juvenile court judges and commissioners, shall be selected, promoted, and discharged through the state courts personnel system for the juvenile court[;] under the direction and rules of the [~~Board of Juvenile Court Judges~~] board and the Judicial Council.

(2) (a) An employee under the state courts personnel system may not be discharged

HB0285S02 compared with HB0285S01

except for cause and after a hearing before the appointing authority[;] with an appeal as provided by the state courts personnel system.

(b) An employee may be suspended pending the hearing and appeal under Subsection (2)(a).

Section 29. Section **78A-6-207** is amended to read:

78A-6-207. Volunteers.

(1) The [~~names of volunteers~~] name of a volunteer serving in a case under Section [78A-6-902] 78A-2-803 shall be stated in the court records of the [~~cases they work with.~~ Volunteers of record with the court are considered to be volunteers to the juvenile court and are volunteers under Title 67, Chapter 20, Volunteer Government Workers Act] case.

(2) A volunteer of record under Subsection (1) is:

(a) considered a volunteer to the juvenile court; and

(b) a volunteer under Title 67, Chapter 20, Volunteer Government Workers Act.

Section 30. Section **78A-6-208** is amended to read:

78A-6-208. Mental health evaluations -- Duty of administrator.

(1) The [~~administrator~~] chief administrative officer of the juvenile court, with the approval of the board, and the executive director of the Department of Health, and director of the Division of Substance Abuse and Mental Health shall from time to time agree upon an appropriate plan:

(a) for obtaining mental health services and health services for the juvenile court from the state and local health departments and programs of mental health; and

(b) for assistance by the Department of Health [~~and~~] or the Division of Substance Abuse and Mental Health in securing for the juvenile court special health, mental health, juvenile competency evaluations, and related services including community mental health services not already available from the Department of Health and the Division of Substance Abuse and Mental Health.

(2) The Legislature may provide an appropriation to the Department of Health and the Division of Substance Abuse and Mental Health for [~~this purpose~~] the services under Subsection (1).

Section 31. Section **78A-6-209** is amended to read:

78A-6-209. Court records -- Inspection.

HB0285S02 compared with HB0285S01

(1) The juvenile court and the juvenile court's probation department shall keep records as required by the board and the presiding judge.

(2) [~~Court records~~] A court record shall be open to inspection by:

(a) the parents or guardian of a child, a minor who is at least 18 years [~~of age~~] old, other parties in the case, the attorneys, and agencies to which custody of a minor has been transferred;

(b) for information relating to adult offenders alleged to have committed a sexual offense, a felony or class A misdemeanor drug offense, or an offense against the person under Title 76, Chapter 5, Offenses Against the Person, the State Board of Education for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, with the understanding that the State Board of Education must provide the individual with an opportunity to respond to any information gathered from [~~its~~] the State Board of Education's inspection of the records before [~~it~~] the State Board of Education makes a decision concerning licensure or employment;

(c) the Criminal Investigations and Technical Services Division, established in Section 53-10-103, for the purpose of a criminal history background check for the purchase of a firearm and establishing good character for issuance of a concealed firearm permit as provided in Section 53-5-704;

(d) the Division of Child and Family Services for the purpose of Child Protective Services Investigations in accordance with Sections 62A-4a-403 and 62A-4a-409 and administrative hearings in accordance with Section 62A-4a-1009;

(e) the Office of Licensing for the purpose of conducting a background check in accordance with Section 62A-2-120;

(f) for information related to a [~~juvenile offender~~] minor who has committed a sexual offense, a felony, or an offense that if committed by an adult would be a misdemeanor, the Department of Health for the purpose of evaluating under the provisions of Subsection 26-39-404(3) whether a licensee should be permitted to obtain or retain a license to provide child care, with the understanding that the department must provide the individual who committed the offense with an opportunity to respond to any information gathered from [~~its~~] the Department of Health's inspection of records before [~~it~~] the Department of Health makes a decision concerning licensure;

HB0285S02 compared with HB0285S01

(g) for information related to a ~~[juvenile offender]~~ minor who has committed a sexual offense, a felony, or an offense that if committed by an adult would be a misdemeanor, the Department of Health to determine whether an individual meets the background screening requirements of Title 26, Chapter 21, Part 2, Clearance for Direct Patient Access, with the understanding that the department must provide the individual who committed the offense an opportunity to respond to any information gathered from ~~[its]~~ the Department of Health's inspection of records before ~~[it]~~ the Department of Health makes a decision under that part; and

(h) for information related to a ~~[juvenile offender]~~ minor who has committed a sexual offense, a felony, or an offense that if committed by an adult would be a misdemeanor, the Department of Health to determine whether to grant, deny, or revoke background clearance under Section 26-8a-310 for an individual who is seeking or who has obtained an emergency medical service personnel license under Section 26-8a-302, with the understanding that the ~~[department]~~ Department of Health must provide the individual who committed the offense an opportunity to respond to any information gathered from the ~~[department's]~~ Department of Health's inspection of records before ~~[it]~~ the Department of Health makes a determination.

(3) With the consent of the ~~[judge, court records]~~ juvenile court, a court record may be inspected by the child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies.

(4) If a petition is filed charging a minor who is 14 years ~~[of age]~~ old or older with an offense that would be a felony if committed by an adult, the juvenile court shall make available to any person upon request the petition, any adjudication or disposition orders, and the delinquency history summary of the minor charged unless the records are closed by the juvenile court upon findings on the record for good cause.

(5) ~~[Probation officers']~~ A juvenile probation officer's records and reports of social and clinical studies are not open to inspection, except by consent of the juvenile court, given under rules adopted by the board.

~~[(6)(a) Any juvenile delinquency adjudication or disposition orders and the delinquency history summary of any person charged as an adult with a felony offense shall be made available to any person upon request.]~~

~~[(b) This provision does not apply to records that have been destroyed or expunged in accordance with court rules.]~~

HB0285S02 compared with HB0285S01

~~[(c)]~~ (6) The juvenile court may charge a reasonable fee to cover the costs associated with retrieving a requested record that has been archived.

Section 32. Section **78A-6-210** is amended to read:

78A-6-210. Fines -- Fees -- Deposit with state treasurer -- Restricted account.

(1) There is created ~~[within the General Fund]~~ a restricted account in the General Fund known as the "Nonjudicial Adjustment Account."

(2) (a) The account shall be funded from the financial penalty established under Subsection ~~[78A-6-602(8)(a)]~~ 80-6-304(6)(a).

(b) The court shall deposit all money collected as a result of penalties assessed as part of the nonjudicial adjustment of a case ~~[in]~~ into the account.

(c) The account shall be used to pay the expenses of juvenile compensatory service, victim restitution, and diversion programs.

(3) (a) Except under Subsection (3)(b) or (4) and as otherwise provided by law, the juvenile court shall pay all fines, fees, penalties, and forfeitures imposed and collected by the juvenile court ~~[shall be paid]~~ to the state treasurer for deposit into the General Fund.

(b) ~~[Not]~~ No more than 50% of any fine or forfeiture collected may be paid to a state rehabilitative employment program for ~~[delinquent minors]~~ a minor adjudicated under Section 80-6-701 that provides for employment of the minor in the county of the minor's residence if:

(i) reimbursement for the minor's labor is paid to the victim of the ~~[minor's delinquent behavior]~~ offense or wrongful act committed by the minor;

(ii) the amount earned and paid is set by court order;

(iii) the minor is not paid more than the hourly minimum wage; and

(iv) no payments to victims are made without the minor's involvement in a rehabilitative work program.

(c) Fines withheld under Subsection (3)(b) and any private contributions to the rehabilitative employment program are accounted for separately and are subject to audit at any time by the state auditor.

(d) (i) Funds withheld under Subsection (3)(b) and private contributions are nonlapsing.

(ii) The ~~[Board of Juvenile Court Judges]~~ board shall establish policies for the use of the funds described in this ~~[subsection]~~ Subsection (3)(d).

HB0285S02 compared with HB0285S01

(4) For fines and forfeitures collected by the court for a violation of Section 41-6a-1302 in instances where evidence of the violation was obtained by an automated traffic enforcement safety device as described in Section 41-6a-1310, the court shall allocate 20% to the school district or private school that owns or contracts for the use of the bus, and the state treasurer shall allocate 80% to the General Fund.

(5) ~~[No fee may be charged by any state or local public officer]~~ A state or local public officer may not charge a fee for the service of process in any proceedings initiated by a public agency.

Section 33. Section **78A-6-211** is amended to read:

78A-6-211. Courtrooms -- Physical facilities.

(1) Suitable courtrooms and office space in each county shall be provided or made available to the juvenile court by the county for the hearing of cases, except in counties where the state has provided courtrooms and offices as needed.

(2) Equipment and supplies for the use of the judges, officers, and employees of the juvenile court and the cost of maintaining the juvenile courts shall be paid from the General Fund or other funds for those purposes.

Section 34. Section **78A-6-212**, which is renumbered from Section 62A-7-105.5 is renumbered and amended to read:

~~[62A-7-105.5].~~ **78A-6-212. Information supplied to the Division of Juvenile Justice Services.**

(1) ~~[Juvenile court probation sections]~~ A juvenile probation officer shall render full and complete cooperation to the ~~[division]~~ Division of Juvenile Justice Services in supplying the ~~[division]~~ Division of Juvenile Justice Services with all pertinent information relating to ~~[juvenile offenders who have been]~~ a juvenile offender committed to the ~~[division]~~ Division of Juvenile Justice Services.

(2) Information under Subsection (1) ~~[may include, but is not limited to,]~~ includes prior criminal history, social history, psychological evaluations, and identifying information specified by the ~~[division]~~ Division of Juvenile Justice Services.

Section 35. Section **78A-6-350**, which is renumbered from Section 78A-6-110 is renumbered and amended to read:

Part 3a. Juvenile Court Proceedings

HB0285S02 compared with HB0285S01

~~[78A-6-110].~~ **78A-6-350.** Venue -- Dismissal without adjudication on merits.

(1) ~~[Proceedings in minor's cases]~~ Notwithstanding Title 78B, Chapter 3, Part 3, Place of Trial -- Venue, a proceeding for a minor's case in the juvenile court shall be commenced in the court of the district in which ~~[the minor is living or is found, or in which an alleged violation of law or ordinance occurred.];~~

~~[(2) After the filing of a petition, the court may transfer the case to the district where the minor resides or to the district where the violation of law or ordinance is alleged to have occurred. The court may, in its discretion, after adjudication certify the case for disposition to the court of the district in which the minor resides.]~~

~~[(3) The transferring or certifying court shall transmit all documents and legal and social records, or certified copies to the receiving court, and the receiving court shall proceed with the case as if the petition had been originally filed or the adjudication had been originally made in that court.]~~

(a) for a proceeding under Title 80, Chapter 6, Juvenile Justice:

(i) the minor is living or found; or

(ii) the alleged offense occurred; or

(b) for all other proceedings, the minor is living or found.

(2) If a party seeks to transfer a case to another district after a petition has been filed in the juvenile court, the juvenile court may transfer the case in accordance with the Utah Rules of Juvenile Procedure.

~~[(4)]~~ (3) The dismissal of a petition in one district where the dismissal is without prejudice and where there has been no adjudication upon the merits ~~[shall]~~ may not preclude refile within the same district or another district where there is venue ~~[of]~~ for the case.

Section 36. Section **78A-6-351**, which is renumbered from Section 78A-6-109 is renumbered and amended to read:

~~[78A-6-109].~~ **78A-6-351.** Summons -- Service and process -- Issuance and contents -- Notice to absent parent or guardian -- Emergency medical or surgical treatment -- Compulsory process for attendance of witnesses when authorized.

(1) (a) After a petition is filed ~~[the]~~ in the juvenile court, the juvenile court shall promptly issue a summons, unless the ~~[judge]~~ juvenile court directs that a further investigation

HB0285S02 compared with HB0285S01

is needed. ~~[No summons is required as to any person who]~~

(b) A summons is not required for a person who:

(i) appears voluntarily; or [who]

(ii) files a written waiver of service with the clerk of the court at or before the hearing.

~~(2) [The]~~ A summons under Subsection (1)(a) shall contain:

(a) the name of the court;

(b) the title of the proceedings; and

(c) except for a published summons, a brief statement of the substance of the allegations in the petition.

(3) A published summons shall state:

(a) that a proceeding concerning the minor is pending in the court; and

(b) an adjudication will be made.

(4) (a) The summons shall require [the person or persons who have]:

(i) a minor to appear personally in the juvenile court at a time and place stated; or

(ii) if a person who has physical custody of the minor, for the person to:

(A) appear personally; and

(B) bring the minor before the court at a time and place stated. [If the person or persons summoned are not the parent, parents, or guardian]

(b) If the minor is a child and a person summoned is not the parent or guardian of the minor, [the summons shall also be issued to the parent, parents, or guardian,] the juvenile court shall issue the summons to the minor's parent or guardian, as the case may be, notifying [them] the parent or guardian of the pendency of the case and of the time and place set for the hearing.

(5) [Summons] A summons may be issued requiring the appearance of any other person whose presence the juvenile court finds necessary.

(6) If it appears to the juvenile court that the welfare of the minor or of the public requires that the minor be taken into temporary custody under Section 80-6-201 or protective custody under Section 62A-4a-202.1, and it does not conflict with Section [78A-6-106.5] 80-6-202, the court may by endorsement upon the summons direct that the person serving the summons take the minor into custody at once.

(7) (a) [Subject to Subsection 78A-6-117(2), upon] Upon the sworn testimony of one or more reputable physicians, the juvenile court may order emergency medical or surgical

HB0285S02 compared with HB0285S01

treatment that is immediately necessary for a minor ~~[concerning]~~ for whom a petition has been filed pending the service of summons upon the minor's ~~[parents]~~ parent, guardian, or custodian.

(b) If the juvenile court orders emergency medical or surgical treatment:

(i) if a petition for delinquency has been filed under Section 80-6-305, Subsection 80-6-706(4) shall apply to the juvenile court's decision to order treatment;

(ii) if a petition has been filed under Section 80-3-201, Subsection 80-3-109(3) shall apply to the juvenile court's decision to order treatment; or

(iii) if a petition has been filed under Section 80-4-201, Subsection 80-4-108(4) shall apply to the juvenile court's decision to order treatment.

(8) (a) A minor is entitled to the issuance of compulsory process for the attendance of witnesses on the minor's own behalf.

~~[(8)]~~ (b) A minor's parent or guardian is entitled to the issuance of compulsory process for the attendance of witnesses on the parent's or guardian's own behalf or on behalf of the minor.

(c) A guardian ad litem or a juvenile probation officer is entitled to compulsory process for the attendance of witnesses on behalf of the minor.

(9) Service of summons and process and proof of service shall be made in the manner provided in the Utah Rules of ~~[Civil]~~ Juvenile Procedure.

(10) (a) Service of summons or process shall be made by the sheriff of the county where the service is to be made, or by the sheriff's deputy.

(b) Notwithstanding Subsection (10)(a), upon request of the juvenile court, service shall be made by any other peace officer~~[-]~~ or by another suitable person selected by the court.

(11) Service of summons in the state shall be made personally, by delivering a copy to the person summoned~~[-; provided, however, that]~~, except that the parents of a ~~[minor]~~ child living together at ~~[their]~~ the parents' usual place of abode may both be served by personal delivery ~~[to either parent of copies of the summons, one copy for each parent]~~ with one copy of the summons for each parent.

(12) (a) If the ~~[judge]~~ juvenile court makes a written finding that the ~~[judge]~~ juvenile court has reason to believe that personal service of the summons will be unsuccessful, or will not accomplish notification within a reasonable time after issuance of the summons, the ~~[judge]~~ juvenile court may order service by registered mail, with a return receipt to be signed by the

HB0285S02 compared with HB0285S01

addressee only, to be addressed to the last-known address of the person to be served in the state.

(b) Service ~~[shall be]~~ is complete upon return to the juvenile court of the signed receipt.

(13) (a) If the ~~[parents, parent,]~~ child's parent or guardian required to be summoned under Subsection (4) cannot be found within the state, the fact of ~~[their minor's]~~ the child's presence within the state shall confer jurisdiction on the juvenile court in proceedings in a ~~[minor's]~~ child's case under this ~~[chapter]~~ title as to any absent parent or guardian~~[, provided that due notice has been given in the following manner]~~ when:

~~[(a)]~~ (i) ~~[H]~~ if the address of the parent or guardian is known, due notice is given by sending the parent or guardian a copy of the summons by registered mail with a return receipt to be signed by the addressee only, or by personal service outside the state, as provided in the Utah Rules of ~~[Civil]~~ Juvenile Procedure~~[. Service by registered mail shall be complete upon return to the court of the signed receipt.]; or~~

~~[(b)-(i)]~~ (ii) ~~[H]~~ if the address or whereabouts of the parent or guardian outside the state cannot after diligent inquiry be ascertained, due notice is given by publishing a summons:

(A) in a newspaper having general circulation in the county in which the proceeding is pending once a week for four successive weeks; and

(B) in accordance with Section 45-1-101 for four weeks.

~~[(ii) Service shall be complete on the day of the last publication.]~~

(b) (i) If service is by registered mail under Subsection (13)(a)(i), service is complete upon return to the juvenile court of the signed receipt.

(ii) If service is by publication under Subsection (13)(a)(ii), service is complete on the day of the last publication.

(c) Service of summons as provided in this ~~[subsection]~~ Subsection (13) shall vest the court with jurisdiction over the parent or guardian served in the same manner and to the same extent as if the person served was served personally within the state.

(14) (a) In the case of service in the state, service completed not less than 48 hours before the time set in the summons for the appearance of the person served, shall be sufficient to confer jurisdiction.

(b) In the case of service outside the state, service completed not less than five days

HB0285S02 compared with HB0285S01

before the time set in the summons for appearance of the person served, shall be sufficient to confer jurisdiction.

(15) Computation of periods of time under this chapter and Title 80, Utah Juvenile Code, shall be made in accordance with ~~[the]~~ Utah Rules of ~~[Civil]~~ Juvenile Procedure, Rule 4.

Section 37. Section **78A-6-352**, which is renumbered from Section 78A-6-111 is renumbered and amended to read:

~~[78A-6-111].~~ **78A-6-352. Appearances -- Parents, guardian, or custodian to appear with minor or child -- Failure to appear -- Warrant of arrest, when authorized -- Parent's, guardian's, or custodian's employer to grant time off -- Appointment of attorney guardian ad litem.**

~~[(1) Any person required to appear who, without reasonable cause, fails to appear may be proceeded against for contempt of court, and the court may cause a bench warrant to be issued to produce the person in court.]~~

~~[(2) In a case when a minor is required to appear in court, the parents, guardian, or other person with legal custody of the minor shall appear with the minor unless excused by the judge.]~~

(1) If a person is required to appear in a proceeding in the juvenile court and the person fails, without reasonable cause, to appear before the juvenile court, the juvenile court may issue a bench warrant to produce the person in court.

(2) If a child is required to appear in juvenile court, the child's parent, guardian, or custodian shall appear with the child in the juvenile court, unless the child's parent, guardian, or custodian is excused by the juvenile court.

(3) (a) [An employee] A child's parent, guardian, or custodian, may request permission from the parent's, guardian's, or custodian's employer to leave the workplace for the purpose of attending court if the [employee has been] parent, guardian, or custodian is notified by the juvenile court that the [employee's minor] child is required to appear before the court.

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

~~[(3)]~~ (4) (a) If a parent, guardian, custodian or other person [who] to whom a child is

HB0285S02 compared with HB0285S01

released, signed a written promise to appear and bring the child to juvenile court under Section ~~[78A-6-112 or 78A-6-113]~~ 80-6-203 and fails to appear and bring the child to the juvenile court on the date set in the promise~~;~~ or, if the date was to be set, after notification by the juvenile court, a warrant may be issued for the apprehension of ~~[that person]~~ the parent, guardian, custodian, or other person.

~~[(4)]~~ ~~(b)~~ ~~[Willful]~~ A willful failure to perform the promise described in Subsection (4)(a) is a class B misdemeanor if, at the time of the execution of the promise, the promisor is given a copy of the promise ~~[which]~~ that clearly states ~~[that]~~ a failure to appear and have the child appear as promised is a class B misdemeanor. ~~[The juvenile court shall have jurisdiction to proceed against the promisor in adult proceedings pursuant to Part 10, Adult Offenses.]~~

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

(5) (a) A juvenile court shall make every effort to ensure the presence of the parent, guardian, or custodian of a child at all hearings through the use of a warrant of arrest, if necessary, or by other means.

(b) A juvenile court may appoint a guardian ad litem whenever necessary for the welfare of a child, regardless of whether the child's parent or guardian is present at the juvenile court proceedings.

(6) A ~~[warrant may be issued]~~ juvenile court may issue a warrant for a child's parent, [a] guardian, [a] or custodian~~[-or a minor]~~ if:

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

(b) ~~[it is made to appear to the]~~ it appears to the juvenile court that the person to be served will not obey the summons; or

(c) serving the summons will be ineffectual.

Section 38. Section **78A-6-353**, which is renumbered from Section 78A-6-1101 is renumbered and amended to read:

~~[78A-6-1101].~~ **78A-6-353. Contempt -- Penalty -- Enforcement of fine, fee,**

HB0285S02 compared with HB0285S01

or restitution.

(1) ~~[A person]~~ An individual who willfully violates or refuses to obey any order of the juvenile court may be proceeded against for contempt of court.

~~[(2) A person 18 years of age or older found in contempt of court may be punished in accordance with Section 78B-6-310.]~~

~~[(3)(a) A person younger than 18 years of age found in contempt of court may be punished by disposition permitted under Section 78A-6-117, except the court may only order a disposition that changes the custody of the minor, including community placement or commitment to a secure facility, if the disposition is commitment to a secure detention pursuant to Subsection 78A-6-117(2)(h) for no longer than 72 hours, excluding weekends and legal holidays.]~~

(2) If a juvenile court finds an individual who is 18 years old or older in contempt of court, the juvenile court may impose sanctions on the individual in accordance with Title 78B, Chapter 6, Part 3, Contempt.

(3) (a) Except as otherwise provided in this Subsection (3), if a juvenile court finds a child in contempt of court, the juvenile court may:

(i) place the child on probation in accordance with Section 80-6-702;

(ii) order the child to detention, or an alternative to detention, in accordance with Section 80-6-704; or

(iii) require the child to pay a fine or fee in accordance with Section 80-6-709.

(b) The juvenile court may only order a child to secure detention under Subsection (3)(a)(ii) for no longer than 72 hours, excluding weekends and legal holidays.

~~[(b) A]~~ (c) The juvenile court may not suspend all or part of [the punishment] an order to secure detention upon compliance with conditions imposed by the juvenile court.

~~[(4) In accordance with Section 78A-6-117, the court may enforce orders of fines, fees, or restitution through garnishments, wage withholdings, supplementary proceedings, or executions. An order described in this Subsection (4) may not be enforced through an order of detention, community placement, or commitment to a secure facility.]~~

(d) The juvenile court may not enforce a disposition under Subsection (3)(a)(iii) through an order for detention, a community-based program, or secure care.

(4) On the sole basis of a child's absence from placement, a juvenile court may not hold

HB0285S02 compared with HB0285S01

a child in contempt under this section if the child:

- (a) is in the legal custody of the Division of Child and Family Services; and
- (b) is missing, has been abducted, or has run away.

Section 39. Section **78A-6-354**, which is renumbered from Section 78A-6-114 is renumbered and amended to read:

~~[78A-6-114].~~ 78A-6-354. Hearings -- Minor's cases heard separately from adult cases -- Minor or parents or custodian heard separately -- Continuance of hearing.

(1) ~~[Hearings in minors' cases]~~ A hearing for a minor's case shall be held before the juvenile court without a jury and may be conducted in an informal manner.

~~[(a) (i) In abuse, neglect, and dependency cases the court shall admit any person to a hearing, including a hearing under Section 78A-6-322, unless the court makes a finding upon the record that the person's presence at the hearing would:]~~

~~[(A) be detrimental to the best interest of a child who is a party to the proceeding;]~~

~~[(B) impair the fact-finding process; or]~~

~~[(C) be otherwise contrary to the interests of justice.]~~

~~[(ii) The court may exclude a person from a hearing under Subsection (1)(a)(i) on its own motion or by motion of a party to the proceeding.]~~

~~[(b) In delinquency cases the court shall admit all persons who have a direct interest in the case and may admit persons requested by the parent or legal guardian to be present. The court shall exclude all other persons except as provided in Subsection (1)(c).]~~

~~[(c) In delinquency cases in which the minor charged is 14 years of age or older, the court shall admit any person unless the hearing is closed by the court upon findings on the record for good cause if:]~~

~~[(i) the minor has been charged with an offense which would be a felony if committed by an adult; or]~~

~~[(ii) the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult, and the minor has been previously charged with an offense which would be a misdemeanor or felony if committed by an adult.]~~

~~[(d) The victim of any act charged in a petition or information involving an offense committed by a minor which if committed by an adult would be a felony or a class A or class B misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter~~

HB0285S02 compared with HB0285S01

~~36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, Title 77, Chapter 38, Rights of Crime Victims Act, and Title 78B, Chapter 7, Part 8, Criminal Protective Orders. The notice provisions in Section 77-38-3 do not apply to important juvenile justice hearings as defined in Section 77-38-2.]~~

~~[(e) A victim, upon request to appropriate juvenile court personnel, shall have the right to inspect and duplicate juvenile court legal records that have not been expunged concerning:]~~

~~[(i) the scheduling of any court hearings on the petition;]~~

~~[(ii) any findings made by the court; and]~~

~~[(iii) any sentence or decree imposed by the court.]~~

(2) (a) ~~[Minors' cases]~~ A minor's case under Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, Chapter 4, Termination and Restoration of Parental Rights, and Chapter 6, Juvenile Justice, shall be heard separately from ~~[adult cases]~~ any adult case.

(b) The minor or the ~~[parents or custodian of a minor]~~ minor's parent or guardian may be heard separately when considered necessary by the juvenile court.

(c) ~~[The]~~ A hearing may be continued ~~[from time to time]~~ to a date specified by court order.

~~[(3) When more than one child is involved in a home situation which may be found to constitute neglect or dependency, or when more than one minor is alleged to be involved in the same law violation, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.]~~

Section 40. Section **78A-6-355**, which is renumbered from Section 78A-6-1112 is renumbered and amended to read:

~~[78A-6-1112].~~ **78A-6-355. Exchange of information with agency or institution having legal custody.**

(1) ~~[Whenever]~~ If legal custody of a minor is vested in an institution or agency, the juvenile court shall transmit, with the court order, copies of the social study, any clinical reports, and other information pertinent to the care and treatment of the minor to the institution or agency with legal custody of the minor.

(2) The institution or agency shall give the juvenile court any information concerning the minor that the juvenile court may at any time require.

~~[(2) The Division of Juvenile Justice Services or any other institution or agency to~~

HB0285S02 compared with HB0285S01

~~whom a minor is committed under Section 78A-6-117 may not transfer custody of the minor to the state prison or any other institution for the correction of adult offenders.]~~

Section 41. Section **78A-6-356**, which is renumbered from Section 78A-6-1106 is renumbered and amended to read:

~~[78A-6-1106].~~ 78A-6-356. Child support obligation when custody of a child is vested in an individual or institution.

(1) As used in this section:

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

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

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

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

(b) the individual makes a voluntary appearance; or

(c) the individual submits a waiver of service.

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

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

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

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

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

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

HB0285S02 compared with HB0285S01

(b) inform [~~the parents, a parent, or other obligated individual~~] the child's parent, guardian, or other obligated individual of:

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

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

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

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

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

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

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

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

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

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

HB0285S02 compared with HB0285S01

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

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

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

(8) (a) Unless a court orders otherwise, the ~~[parents, a parent, or other obligated individual]~~ child's parent, guardian, or other obligated individual shall pay the child support to the office.

(b) The clerk of the juvenile court, the office, or the Department of Human Services and ~~[its]~~ the department's divisions shall have authority to receive periodic payments for the care and maintenance of the child, such as ~~[Social Security]~~ social security payments or railroad retirement payments made in the name of or for the benefit of the child.

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

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

(b) (i) If legal custody of a child is vested by the juvenile court in an individual, the court may order the ~~[parents, a parent, or other obligated individual]~~ child's parent, guardian, or other obligated individual to pay child support to the individual in whom custody is vested.

(ii) In the same proceeding, the juvenile court shall inform the ~~[parents, a parent, or other obligated individual]~~ child's parent, guardian, or other obligated individual, verbally and in writing, of the requirement to pay child support in accordance with Title 78B, Chapter 12, Utah Child Support Act.

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

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

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

HB0285S02 compared with HB0285S01

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

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

(a) the individual's child support obligation is established under Subsection 78B-12-205(6) or Section 78B-12-302; or

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

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

(ii) cash benefits received under General Assistance, social security income, or social security disability income.

Section 42. Section **78A-6-357** is enacted to read:

78A-6-357. New hearings -- Modification of order or decree -- Requirements for changing or terminating custody, probation, or protective supervision.

(1) If a party seeks a new hearing after an adjudication under Title 80, Utah Juvenile Code, Utah Rules of Juvenile Procedure, Rule 48, shall govern the matter of granting a new hearing.

(2) (a) Except as provided in Subsection (3), a juvenile court may modify or set aside any order or decree made by the juvenile court.

(b) A modification of an order placing a minor on probation may not:

(i) include an order under Section 80-3-405, 80-6-703, 80-6-704, or 80-6-705; or

(ii) extend supervision over a minor, except in accordance with Section 80-6-712.

(3) (a) A parent or guardian of a child whose legal custody has been transferred by the juvenile court to an individual, agency, or institution may petition the juvenile court for restoration of custody or other modification or revocation of the juvenile court's order or decree, except as provided in Subsections (3)(b), (c), and (d) and for a transfer of legal custody for secure care.

(b) A parent or guardian may only petition the juvenile court under Subsection (3)(a) on the ground that a change of circumstances has occurred that requires modification or

HB0285S02 compared with HB0285S01

revocation in the best interest of the child or the public.

(c) A parent may not file a petition after the parent's parental rights have been terminated in accordance with Title 80, Chapter 4, Termination and Restoration of Parental Rights.

(d) 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 80-3-405(2)(d).

(4) (a) An individual, agency, or institution vested with legal custody of a child may petition the juvenile 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.

(b) The juvenile court shall proceed upon the petition in accordance with this section.

(5) Notice of hearing is required in any case in which the effect of modifying or setting aside an order or decree may be to make any change in the minor's legal custody under Section 80-3-405 or 80-6-703.

(6) (a) Upon the filing of a petition under Subsection (3)(a), the juvenile court shall make a preliminary investigation.

(b) After the preliminary investigation described in Subsection (6)(a), the juvenile court:

(i) may dismiss the petition if the juvenile court finds the alleged change of circumstances, if proved, would not affect the decree; or

(ii) shall conduct a hearing, if the juvenile court finds that further examination of the facts is needed, or if the juvenile court on the juvenile court's own motion determines that the juvenile court's order or decree should be reviewed.

(c) Notice of the hearing described in Subsection (6)(b)(ii) shall be given to all interested persons.

(d) At a hearing under Subsection (6)(b)(ii), the juvenile court may enter an order continuing, modifying, or terminating the juvenile court's order or decree.

(7) Notice of an order terminating probation or protective supervision of a child shall be given to the child's:

(a) parent;

(b) guardian;

HB0285S02 compared with HB0285S01

(c) custodian; and

(d) where appropriate, to the child.

(8) Notice of an order terminating probation or protective supervision of a minor who is at least 18 years old shall be given to the minor.

Section 43. Section **78A-6-358**, which is renumbered from Section 78A-6-118 is renumbered and amended to read:

[78A-6-118]. **78A-6-358.** **Period of effect for a judgment, decree, or order by a juvenile court.**

(1) A judgment, order, or decree of the juvenile court is no longer in effect after a minor is 21 years old, except:

(a) for an order of commitment to the Utah State Developmental Center or to the custody of the Division of Substance Abuse and Mental Health;

(b) for an adoption under Subsection 78A-6-103~~[(1)]~~(2);

(c) for an order permanently terminating the rights of a parent, guardian, or custodian under Title 80, Chapter 4, Termination and Restoration of Parental Rights;

(d) for a permanent order of custody and guardianship under Subsection 80-3-405(2)(d); ~~[and]~~

(e) an order establishing paternity under Subsection 78A-6-103(2)(p); and

~~[(c)]~~ (f) as provided in Subsection (2).

(2) If the juvenile court enters a judgment or order for a minor for whom the juvenile court has extended continuing jurisdiction over the minor's case until the minor is 25 years old under Section ~~[78A-6-703.4]~~ 80-6-605, the juvenile court's judgment or order is no longer in effect after the minor is 25 years old.

Section 44. Section **78A-6-359**, which is renumbered from Section 78A-6-1109 is renumbered and amended to read:

[78A-6-1109]. **78A-6-359.** **Appeals.**

(1) An appeal to the Court of Appeals may be taken from any order, decree, or judgment of the juvenile court.

~~[(2) Appeals of right from juvenile court orders related to abuse, neglect, dependency, termination, and adoption proceedings, shall be taken within 15 days from entry of the order, decree, or judgment appealed from. In addition, the]~~

HB0285S02 compared with HB0285S01

(2) (a) An appeal of right from an order, decree, or judgment by a juvenile court related to a proceeding under Title 78B, Chapter 6, Part 1, Utah Adoption Act, Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Title 80, Chapter 4, Termination and Restoration of Parental Rights, shall be filed within 15 days after the day on which the juvenile court enters the order, decree, or judgment.

(b) A notice of appeal must be signed by appellant's counsel, if any, and by appellant, unless the appellant is a child or state agency.

(c) If an appellant fails to timely sign a notice of appeal, the appeal shall be dismissed.

(3) [The disposition order] An order for a disposition from the juvenile court shall include the following information:

(a) notice that the right to appeal described in Subsection (2)(a) is time sensitive and must be taken within 15 days ~~[from entry of]~~ after the day on which the juvenile court enters the order, decree, or judgment appealed from;

(b) the right to appeal within the specified time limits;

(c) the need for the signature of the parties on a notice of appeal in ~~[appeals from juvenile court orders related to abuse, neglect, dependency, termination, and adoption proceedings]~~ an appeal described in Subsection (2)(a); and

(d) the need for parties to maintain regular contact with ~~[their]~~ the parties' counsel and to keep all other parties and the appellate court informed of ~~[their]~~ the parties' whereabouts.

(4) If the parties are not present in the courtroom, the juvenile court shall ~~[mail a written statement]~~ provide a statement containing the information provided in Subsection (3) to the parties at ~~[their]~~ the parties' last known address.

(5) (a) The juvenile court shall inform the parties' counsel at the conclusion of the proceedings that, if an appeal is filed, ~~[they]~~ the parties' counsel must represent ~~[their clients]~~ the parties throughout the appellate process unless relieved of that obligation by the juvenile court upon a showing of extraordinary circumstances.

(b) (i) Until the petition on appeal is filed, claims of ineffective assistance of counsel do not constitute extraordinary circumstances.

(ii) If a claim is raised by trial counsel or a party, ~~[it]~~ the claim must be included in the petition on appeal.

(6) During the pendency of an appeal ~~[from juvenile court orders related to abuse,~~

HB0285S02 compared with HB0285S01

~~neglect, dependency, termination, and adoption proceedings]~~ under Subsection (2)(a), parties shall maintain regular contact with [their] the parties' counsel, if any, and keep all other parties and the appellate court informed of [their] the parties' whereabouts.

(7) (a) In all other appeals of right, the appeal shall be taken within 30 days ~~[from the entry of the order, decree, or judgment appealed from and the]~~ after the day on which the juvenile court enters the order, decree, or judgment.

(b) A notice of appeal under Subsection (7)(a) must be signed by appellant's counsel, if any, or by appellant.

(8) The attorney general shall represent the state in all appeals under this chapter and Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, Chapter 4, Termination and Restoration of Parental Rights, and Chapter 6, Juvenile Justice.

~~[(8)]~~ (9) Unless the juvenile court stays ~~[its]~~ the juvenile court's order, the pendency of an appeal does not stay the order or decree appealed from in a minor's case, unless otherwise ordered by the Court of Appeals, if suitable provision for the care and custody of the minor involved is made pending the appeal.

~~[(9)]~~ (10) Access to the record on appeal ~~[shall be]~~ is governed by Title 63G, Chapter 2, Government Records Access and Management Act.

Section 45. Section **78A-6-450**, which is renumbered from Section 78A-6-1001 is renumbered and amended to read:

Part 4a. Adult Criminal Proceedings

~~[78A-6-1001].~~ **78A-6-450.** Criminal information for an adult in juvenile court.

~~[(1) The court shall have jurisdiction, concurrent with the district court or justice court otherwise having subject matter jurisdiction, to try adults for the following offenses committed against minors:]~~

A county attorney or district attorney may file a criminal information in the juvenile court charging an adult for:

~~[(a)]~~ (1) unlawful sale or furnishing of an alcoholic product to minors in violation of Section 32B-4-403;

~~[(b)]~~ (2) failure to report abuse or neglect~~[, as required by Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements]~~ in violation of Section 62A-4a-411;

HB0285S02 compared with HB0285S01

~~[(c)]~~ (3) harboring a runaway in violation of Section ~~[62A-4a-501]~~ 80-5-601;

~~[(d)]~~ (4) misdemeanor custodial interference in violation of Section 76-5-303;

~~[(e)]~~ (5) contributing to the delinquency of a minor in violation of Section 76-10-2301;

[and]

~~[(f)]~~ (6) failure to comply with compulsory education requirements in violation of Section 53G-6-202[:]; or

~~[(2) It is not necessary for the minor to be found to be delinquent or to have committed a delinquent act for the court to exercise jurisdiction under Subsection (1).]~~

(7) a willful failure to perform a promise to appear under Subsection 78A-6-352(4)(b).

Section 46. Section **78A-6-451**, which is renumbered from Section 78A-6-1002 is renumbered and amended to read:

~~[78A-6-1002].~~ **78A-6-451. Who may prosecute an adult in juvenile court -- Transfer to district court.**

(1) The county attorney or district attorney, as provided in Title 17, Chapter 18a, Powers and Duties of County and District Attorney, shall prosecute any case brought under this part.

(2) ~~[Proceedings]~~ Any proceeding under this part ~~[shall be]~~ is governed by the statutes and rules governing criminal proceedings in the district court, except the juvenile court may, [and] on stipulation of the parties, ~~[shall,]~~ transfer the case to the district court.

Section 47. Section **78A-6-452**, which is renumbered from Section 78A-6-1003 is renumbered and amended to read:

~~[78A-6-1003].~~ **78A-6-452. Costs and expenses of trial.**

~~[The fees and expenses, the cost of publication of summons, and the expense of a trial of an adult, when approved by the court, are paid by the state, except prosecution costs and public defender costs are paid by the county where the hearing or trial is held.]~~

(1) Except as provided in Subsection (2), the state shall pay, when approved by the court, the cost of publication of a summons, the expense of a trial, and any other fee or expense of a trial of an adult under this part.

(2) The county where the hearing or trial is held shall pay the prosecution costs and public defender costs.

Section 48. Section **78B-6-105** is amended to read:

HB0285S02 compared with HB0285S01

78B-6-105. District court venue -- Jurisdiction of juvenile court -- Jurisdiction over nonresidents -- Time for filing.

(1) ~~[Adoption proceedings]~~ An adoption proceeding shall be commenced by filing a petition ~~[with the clerk of the district court either]~~ in:

(a) the district court in the district where the prospective adoptive parent resides;
(b) if the prospective adoptive parent is not a resident of this state, the district court in the district where:

- (i) the adoptee was born;
- (ii) the adoptee resides on the day on which the petition is filed; or
- (iii) a parent of the proposed adoptee resides on the day on which the petition is filed;

or

(c) ~~[with]~~ the juvenile court as provided in Subsection 78A-6-103(2)(n) and Section 78A-6-350.

(2) All orders, decrees, agreements, and notices in ~~[the proceedings]~~ an adoption proceeding shall be filed with the clerk of the court where the adoption ~~[proceedings were]~~ proceeding is commenced under Subsection (1).

(3) A petition for adoption:

(a) may be filed before the birth of a child;
(b) may be filed before or after the adoptee is placed in the home of the petitioner for the purpose of adoption; and

(c) shall be filed no later than 30 days after the day on which the adoptee is placed in the home of the petitioners for the purpose of adoption, unless:

(i) the time for filing has been extended by the court; or
(ii) the adoption is arranged by a child-placing agency in which case the agency may extend the filing time.

(4) (a) If a person whose consent for the adoption is required under Section 78B-6-120 or 78B-6-121 cannot be found within the state, the fact of the minor's presence within the state shall confer jurisdiction on the court in proceedings under this chapter as to such absent person, provided that due notice has been given in accordance with the Utah Rules of Civil Procedure.

(b) The notice may not include the name of:

(i) a prospective adoptive parent; or

HB0285S02 compared with HB0285S01

(ii) an unmarried mother without her consent.

(5) Service of notice ~~[as provided in]~~ described in Subsection (6) shall vest the court with jurisdiction over the person served in the same manner and to the same extent as if the person served was served personally within the state.

(6) In the case of service outside the state, service completed not less than five days before the time set in the notice for appearance of the person served ~~[shall be]~~ is sufficient to confer jurisdiction.

(7) Computation of periods of time not otherwise set forth in this section shall be made in accordance with the Utah Rules of Civil Procedure.

Section 49. Section **78B-15-104** is amended to read:

78B-15-104. ~~{Adjudica}~~Jurisdiction -- ~~{Jurisdiction}~~Authority of Office of Recovery Services -- Dismissal of petition.

~~[(1) The district court, the juvenile court, and the Office of Recovery Services in accordance with Section 62A-11-304.2 and Title 63G, Chapter 4, Administrative Procedures Act, are authorized to adjudicate parentage under Part 1, General Provisions, Part 2, Parent and Child Relationship, Part 3, Voluntary Declaration of Paternity Act, Part 4, Registry, Part 5, Genetic Testing, Part 6, Adjudication of Parentage, and Part 9, Miscellaneous.]~~

~~[(2) The district court and the juvenile court have jurisdiction over proceedings under Part 7, Assisted Reproduction, and Part 8, Gestational Agreement.]~~

~~{3}1) {The juvenile}~~ Except as provided in Subsection 78A-6-103(2)(p), the district court has original jurisdiction over ~~{a proceeding}~~an action brought under this chapter.

(2) The Office of Recovery Services is authorized to establish paternity in accordance with ~~{Subsection 78A-6-103(2)(p)}~~.

~~[(3)] (4)~~ this chapter, Title 62A, Chapter 11, Recovery Services, and Title 63G, Chapter 4, Administrative Procedures Act.

(3) ~~[The]~~ A court shall, without adjudicating paternity, dismiss a petition that is filed under this chapter by an unmarried biological father if he is not entitled to consent to the adoption of the child under Sections 78B-6-121 and 78B-6-122.

Section 50. Section **80-1-101** is enacted to read:

TITLE 80. UTAH JUVENILE CODE CHAPTER 1. GENERAL PROVISIONS

HB0285S02 compared with HB0285S01

80-1-101. Title.

(1) This title is known as the "Utah Juvenile Code."

(2) This chapter is known as "General Provisions."

Section 51. Section **80-1-102**, which is renumbered from Section 78A-6-105 is renumbered and amended to read:

[78A-6-105]. 80-1-102. Juvenile code definitions.

As used in this [chapter] title:

(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.

(3) (a) "Adjudication" means a finding by the court, incorporated in a decree, that the

HB0285S02 compared with HB0285S01

facts alleged in the petition have been proved.

(b) "Adjudication" does not mean a finding of not competent to proceed in accordance with Section ~~[78A-6-1302]~~ 80-6-402.

(4) (a) "Adult" means an individual who is 18 years old or older.

(b) "Adult" does not include an individual:

(i) who is 18 years old or older; and

~~[(ii) whose case is under the continuing jurisdiction of the juvenile court in accordance with Section 78A-6-120.]~~

(ii) who is a minor.

(5) "Attorney guardian ad litem" means the same as that term is defined in Section 78A-2-801.

~~[(5)]~~ (6) "Board" means the Board of Juvenile Court Judges.

~~[(6)]~~ (7) "Child" means an individual who is under 18 years old.

(8) "Child and family plan" means a written agreement between a child's parents or guardian and the Division of Child and Family Services as described in Section 62A-4a-205.

~~[(7)]~~ (9) "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)]~~ (10) "Clandestine laboratory operation" means the same as that term is defined in Section 58-37d-3.

~~[(9)]~~ (11) "Commit" or "committed" 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 old, to transfer custody.

~~[(10)] "Court" means the juvenile court.]~~

(12) "Community-based program" means a nonsecure residential or nonresidential program, designated to supervise and rehabilitate juvenile offenders, that prioritizes the least restrictive setting, consistent with public safety, and operated by or under contract with the Division of Juvenile Justice Services.

(13) "Community placement" means placement of a minor in a community-based

HB0285S02 compared with HB0285S01

program described in Section 80-5-402.

(14) "Correctional facility" means:

(a) a county jail; or

(b) a secure correctional facility as defined in Section 64-13-1.

~~[(11)]~~ (15) "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)]~~ (16) "Department" means the Department of Human Services created in Section 62A-1-102.

~~[(14)]~~ (17) "Dependent child" [includes] or "dependency" means a child who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

~~[(15)]~~ (18) "Deprivation of custody" means transfer of legal custody by the juvenile court from a parent [or the parents] or a previous [legal] custodian to another person, agency, or institution.

~~[(16) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of a minor who requires secure custody in a physically restricting facility:]~~

~~[(a) pending court disposition or transfer to another jurisdiction; or]~~

~~[(b) while the minor's case is under the continuing jurisdiction of the court.]~~

~~[(17) "Detention risk assessment tool" means an evidence-based tool established under Section 78A-6-124, on and after July 1, 2018, that assesses a minor's risk of failing to appear in court or reoffending pre-adjudication and designed to assist in making detention determinations:]~~

(19) "Detention" means home detention or secure detention.

(20) "Detention risk assessment tool" means an evidence based tool established under Section 80-5-203 that:

(a) assesses a minor's risk of failing to appear in court or reoffending before adjudication; and

(b) is designed to assist in making a determination of whether a minor shall be held in detention.

HB0285S02 compared with HB0285S01

~~[(18)]~~ (21) "Developmental immaturity" means incomplete development in one or more domains ~~[which]~~ that manifests as a functional limitation in the minor's present ability to:

(a) consult with counsel with a reasonable degree of rational understanding; and

(b) have a rational as well as factual understanding of the proceedings.

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

(22) "Disposition" means an order by a juvenile court, after the adjudication of a minor, under Section 80-3-405 or 80-4-305 or Chapter 6, Part 7, Adjudication and Disposition.

~~[(20)]~~ (23) "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.

~~[(21)]~~ (24) "Educational series" means an evidence-based instructional series:

(a) obtained at a substance abuse program that is approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105; and

(b) designed to prevent substance use or the onset of a mental health disorder.

(25) "Emancipated" means the same as that term is defined in Section 80-7-102.

~~[(22)]~~ (26) "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.

~~[(23)]~~ (27) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.

~~[(24)]~~ (28) "Formal probation" means a minor is ~~[under field supervision by the probation department or other agency designated by the court and]~~:

(a) supervised in the community by, and reports to, a juvenile probation officer or an agency designated by the juvenile court; and

(b) subject to return to the juvenile court in accordance with Section ~~[78A-6-123 on and after July 1, 2018]~~ 80-6-607.

~~[(25) "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 the minor's case must be reviewed by the court's probation department or a prosecuting attorney.]~~

~~[(26)]~~ (29) "Group rehabilitation therapy" means psychological and social counseling

HB0285S02 compared with HB0285S01

of one or more individuals in the group, depending upon the recommendation of the therapist.

~~[(27)]~~ (30) ["Guardianship of the person" includes] "Guardian" means a person appointed by a court to make decisions regarding a minor, including 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.

~~[(28) "Habitual truant" means the same as that term is defined in Section 53G-6-201.]~~

(31) "Guardian ad litem" means the same as that term is defined in Section 78A-2-801.

~~[(29)]~~ (32) "Harm" means:

- (a) physical or developmental injury or damage;
- (b) emotional damage that results in a serious impairment in the child's growth,

development, behavior, or psychological functioning;

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

(33) "Home detention" means placement of a minor:

(a) if prior to a disposition, in the minor's home, or in a surrogate home with the consent of the minor's parent, guardian, or custodian, under terms and conditions established by the Division of Juvenile Justice Services or the juvenile court; or

(b) if after a disposition, and in accordance with Section 78A-6-353 or 80-6-704, in the minor's home, or in a surrogate home with the consent of the minor's parent, guardian, or custodian, under terms and conditions established by the Division of Juvenile Justice Services or the juvenile court.

~~[(30)]~~ (34) (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 (30)(a) include:]~~

(b) "Incest" includes:

- (i) blood relationships of the whole or half blood, without regard to legitimacy;
- (ii) relationships of parent and child by adoption; and

HB0285S02 compared with HB0285S01

(iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.

~~[(31) "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.]~~

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

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

(37) "Indigent defense service provider" means the same as that term is defined in Section 78B-22-102.

(38) "Indigent defense services" means the same as that term is defined in Section 78B-22-102.

(39) "Indigent individual" means the same as that term is defined in Section 78B-22-102.

(40) (a) "Intake probation" means a minor is:

(i) monitored by a juvenile probation officer; and

(ii) subject to return to the juvenile court in accordance with Section 80-6-607.

(b) "Intake probation" does not include formal probation.

~~[(32)]~~ (41) "Intellectual disability" means a significant subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior that constitutes a substantial limitation to the individual's ability to function in society.

(42) "Juvenile offender" means:

(a) a serious youth offender; or

(b) a youth offender.

(43) "Juvenile probation officer" means a probation officer appointed under Section 78A-6-205.

(44) "Juvenile receiving center" means a nonsecure, nonresidential program established by the Division of Juvenile Justice Services, or under contract with the Division of Juvenile Justice Services, that is responsible for minors taken into temporary custody under Section 80-6-201.

~~[(33)]~~ (45) "Legal custody" means a relationship embodying [the following rights and duties]:

HB0285S02 compared with HB0285S01

- (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.
- ~~[(34) "Material loss" means an uninsured:]~~
- ~~[(a) property loss;]~~
- ~~[(b) out-of-pocket monetary loss for property that is stolen, damaged, or destroyed;]~~
- ~~[(c) lost wages because of an injury, time spent as a witness, or time spent assisting the police or prosecution; or]~~
- ~~[(d) medical expense.]~~
- ~~[(35)]~~ (46) "Mental illness" means:
- (a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or related functioning; or
 - (b) the same as that term is defined in:
 - (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or
 - (ii) the current edition of the International Statistical Classification of Diseases and Related Health Problems.
- ~~[(36) "Minor" means:]~~
- ~~[(a) for the purpose of juvenile delinquency:]~~
- ~~[(i) a child; or]~~
- ~~[(ii) an individual:]~~
- ~~[(A) who is at least 18 years old and younger than 25 years old; and]~~
- ~~[(B) whose case is under the jurisdiction of the juvenile court; and]~~
- ~~[(b) for all other purposes in this chapter:]~~
- ~~[(i) a child; or]~~
- ~~[(ii) an individual:]~~
- ~~[(A) who is at least 18 years old and younger than 21 years old; and]~~
- ~~[(B) whose case is under the jurisdiction of the juvenile court.]~~

HB0285S02 compared with HB0285S01

(47) "Minor" means, except as provided in Sections 80-6-901 and 80-7-102:

(a) a child; or

(b) an individual:

(i) (A) who is at least 18 years old and younger than 21 years old; and

(B) for whom the Division of Child and Family Services has been specifically ordered by the juvenile court to provide services because the individual was an abused, neglected, or dependent child or because the individual was adjudicated for an offense; or

(ii) (A) who is at least 18 years old and younger than 25 years old; and

(B) whose case is under the continuing jurisdiction of the juvenile court under Chapter 6, Juvenile Justice.

~~[(37)]~~ (48) "Mobile crisis outreach team" means ~~[a crisis intervention service for a minor or the family of a minor experiencing a behavioral health or psychiatric emergency.]~~ the same as that term is defined in Section 62A-15-102.

~~[(38)]~~ (49) "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.

~~[(39)]~~ (50) (a) "Natural parent" means a minor's biological or adoptive parent.

(b) "Natural parent" includes the minor's noncustodial parent.

~~[(40)]~~ (51) (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.

HB0285S02 compared with HB0285S01

(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]~~ 80-3-304; 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.

~~[(41)]~~ (52) "Neglected child" means a child who has been subjected to neglect.

~~[(42)]~~ (53) "Nonjudicial adjustment" means closure of the case by the assigned juvenile probation officer, without ~~[judicial determination]~~ an adjudication of the minor's case under Section 80-6-701, upon the consent in writing of:

(a) the assigned juvenile probation officer; and

(b) (i) the minor; or

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

~~[(43)]~~ (54) "Not competent to proceed" means that a minor, due to a mental illness, intellectual disability or related condition, or developmental immaturity, lacks the ability to:

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

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

HB0285S02 compared with HB0285S01

(55) "Parole" means a conditional release of a juvenile offender from residency in secure care to live outside of secure care under the supervision of the Division of Juvenile Justice Services, or another person designated by the Division of Juvenile Justice Services.

~~[(44)]~~ (56) "Physical abuse" means abuse that results in physical injury or damage to a child.

~~[(45)]~~ (57) (a) "Probation" means a legal status created by court order, following an adjudication ~~[on the ground of a violation of law or under Section 78A-6-103,]~~ under Section 80-6-701, whereby the minor is permitted to remain in the minor's home under prescribed conditions.

(b) "Probation" includes intake probation or formal probation.

~~[(46)]~~ (58) "Prosecuting attorney" means:

- (a) the attorney general and any assistant attorney general;
- (b) any district attorney or deputy district attorney;
- (c) any county attorney or assistant county attorney; and
- (d) any other attorney authorized to commence an action on behalf of the state.

(59) "Protective custody" means the shelter of a child by the Division of Child and Family Services from the time the child is removed from the home until the earlier of:

- (a) the day on which the shelter hearing is held under Section 80-3-301; or
- (b) the day on which the child is returned home.

~~[(47)]~~ (60) "Protective supervision" means a legal status created by court order, following an adjudication on the ground of abuse, neglect, or dependency, whereby:

- (a) the minor is permitted to remain in the minor's home[;]; and
- (b) supervision and assistance to correct the abuse, neglect, or dependency is provided by [the probation department or other agency designated by the court] an agency designated by the juvenile court.

~~[(48)]~~ (61) (a) "Related condition" means a condition that:

- (i) is found to be closely related to intellectual disability;
- (ii) results in impairment of general intellectual functioning or adaptive behavior similar to that of an intellectually disabled individual;
- (iii) is likely to continue indefinitely; and
- (iv) constitutes a substantial limitation to the individual's ability to function in society.

HB0285S02 compared with HB0285S01

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

~~[(49)]~~ (62) (a) "Residual parental rights and duties" means ~~[those]~~ the rights and duties remaining with ~~[the]~~ a 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" includes the right to consent to:

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

~~[(50) "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 in accordance with Subsection 78A-6-117(2)(d).]~~

(63) "Runaway" means a child, other than an emancipated child, who willfully leaves the home of the child's parent or guardian, or the lawfully prescribed residence of the child, without permission.

(64) "Secure care" means placement of a minor, who is committed to the Division of Juvenile Justice Services for rehabilitation, in a facility operated by, or under contract with, the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement of the minor.

(65) "Secure care facility" means a facility, established in accordance with Section 80-5-503, for juvenile offenders in secure care.

(66) "Secure detention" means temporary care of a minor who requires secure custody in a physically restricting facility operated by, or under contract with, the Division of Juvenile Justice Services:

- (a) before disposition of an offense that is alleged to have been committed by the

HB0285S02 compared with HB0285S01

minor; or

(b) under Section 80-6-704.

(67) "Serious youth offender" means an individual who:

(a) is at least 14 years old, but under 25 years old;

(b) committed a felony listed in Subsection 80-6-503(1) and the continuing jurisdiction of the juvenile court was extended over the individual's case until the individual was 25 years old in accordance with Section 80-6-605; and

(c) is committed by the juvenile court to the Division of Juvenile Justice Services for secure care under Sections 80-6-703 and 80-6-705.

~~[(51)]~~ (68) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.

~~[(52)]~~ (69) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.

~~[(53)]~~ (70) "Sexual abuse" means:

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

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

(i) there is an indication of force or coercion;

(ii) the children are related, as described in Subsection ~~[(30)]~~ (34), 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 old 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;

HB0285S02 compared with HB0285S01

- (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.

~~[(54)]~~ (71) "Sexual exploitation" means knowingly:

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

(i) pose in the nude for the purpose of sexual arousal of any individual; or

(ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;

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

(i) in the nude, for the purpose of sexual arousal of any individual; or

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

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

~~[(55)]~~ (72) "Shelter" means the temporary care of a child in a physically unrestricted facility pending ~~[court]~~ a disposition or transfer to another jurisdiction.

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

~~[(56)]~~ (74) "Single criminal episode" means the same as that term is defined in Section 76-1-401.

~~[(57)]~~ (75) "Status offense" means ~~[a violation of the law that would not be a violation]~~ an offense that would not be an offense but for the age of the offender.

~~[(58)]~~ (76) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.

~~[(59)]~~ (77) "Substantiated" means the same as that term is defined in Section 62A-4a-101.

HB0285S02 compared with HB0285S01

~~[(60)]~~ (78) "Supported" means the same as that term is defined in Section 62A-4a-101.

~~[(61)]~~ (79) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

~~[(62)]~~ (80) "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]~~ the division's or agency's custody; or

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

~~[(63)]~~ (81) "Threatened harm" means actions, inactions, or credible verbal threats, indicating that the child is at an unreasonable risk of harm or neglect.

(82) "Ungovernable" means a child in conflict with a parent or guardian, and the conflict:

(a) results in behavior that is beyond the control or ability of the child, or the parent or guardian, to manage effectively;

(b) poses a threat to the safety or well-being of the child, the child's family, or others;
or

(c) results in the situations described in Subsections (82)(a) and (b).

~~[(64)]~~ (83) "Unregulated custody transfer" means the placement of a child:

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

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

(c) without taking:

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

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

~~[(65)]~~ (84) "Unsupported" means the same as that term is defined in Section 62A-4a-101.

~~[(66)]~~ (85) "Unsubstantiated" means the same as that term is defined in Section

HB0285S02 compared with HB0285S01

62A-4a-101.

~~[(67)]~~ (86) "Validated risk and needs assessment" means an evidence-based tool that assesses a minor's risk of reoffending and a minor's criminogenic needs.

~~[(68) (a) "Victim" means a person that the court determines has suffered a material loss as a result of a minor's wrongful act or conduct.]~~

~~[(b) "Victim" includes the Utah Office for Victims of Crime.]~~

~~[(69)]~~ (87) "Without merit" means the same as that term is defined in Section 62A-4a-101.

(88) "Youth offender" means an individual who is:

(a) at least 12 years old, but under 21 years old; and

(b) committed by the juvenile court to the Division of Juvenile Justice Services for secure care under Sections 80-6-703 and 80-6-705.

Section 52. Section **80-1-103**, which is renumbered from Section 78A-6-1110 is renumbered and amended to read:

~~[78A-6-1110].~~ **80-1-103.** Cooperation of political subdivisions and public or private agencies and organizations.

(1) Every county, municipality, and school district, and the Department of Human Services, the Division of Juvenile Justice Services, the Division of Child and Family Services, the Department of Health, the Division of Substance Abuse and Mental Health, the State Board of Education, and state and local law enforcement officers, shall render all assistance and cooperation within their jurisdiction and power to further the [objects] provisions of this [chapter, and the juvenile courts are] title.

(2) A juvenile court is authorized to seek the cooperation of all agencies and organizations, public or private, whose [object] objective is the protection or aid of minors.

Section 53. Section **80-2-101** is enacted to read:

80-2-101. Title.

Reserved

Section 54. Section **80-3-101** is enacted to read:

CHAPTER 3. ABUSE, NEGLECT, AND DEPENDENCY PROCEEDINGS

Part 1. General Provisions

80-3-101. Title.

HB0285S02 compared with HB0285S01

This chapter is known as "Abuse, Neglect, and Dependency Proceedings."

Section 55. Section **80-3-102**, which is renumbered from Section 78A-6-301 is renumbered and amended to read:

~~[78A-6-301].~~ **80-3-102. Definitions.**

As used in this ~~[part]~~ chapter:

(1) "Abuse, neglect, or dependency petition" means a petition filed in accordance with this chapter to commence proceedings in a juvenile court alleging that a child is:

(a) abused;

(b) neglected; or

(c) dependent.

(2) "Child protection team" means the same as that term is defined in Section 62A-4a-101.

(3) "Child protection unit" means the same as that term is defined in Section 62A-4a-101.

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

(5) "Division" means the Division of Child and Family Services created in Section 62A-4a-103.

(6) "Friend" means an adult who:

(a) has an established relationship with the child or a family member of the child; and

(b) is not the natural parent of the child.

~~[(2)]~~ (7) "Immediate family member" means a spouse, child, parent, sibling, grandparent, or grandchild.

~~[(3) "Protective custody" means the shelter of a child by the division from the time the child is removed from home until the earlier of:]~~

~~[(a) the shelter hearing; or]~~

~~[(b) the child's return home.]~~

(8) "Relative" means an adult who:

(a) is the child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother in law, sister in law, stepparent, first cousin, stepsibling, or sibling;

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

(c) is an adoptive parent of the child's sibling; or

HB0285S02 compared with HB0285S01

(d) in the case of a child who is an Indian child, an extended family member as defined in 25 U.S.C. Sec. 1903.

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

~~[(4)]~~ (10) "Sibling" means the same as that term is defined in Section 62A-4a-101.

~~[(5)]~~ (11) "Sibling visitation" means the same as that term is defined in Section 62A-4a-101.

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

~~[(6)]~~ (13) "Temporary custody" means ~~[the custody of a child in the division from the date of the shelter hearing until disposition]~~ the same as that term is defined in Section 62A-4a-101.

Section 56. Section **80-3-103**, which is renumbered from Section 78A-6-303 is renumbered and amended to read:

~~**[78A-6-303].**~~ **80-3-103.** **Nature of proceedings -- Rules of procedure -- Ex parte communications.**

~~[(1) The Utah Rules of Civil Procedure and the Utah Rules of Juvenile Procedure apply to abuse, neglect, and dependency proceedings unless the provisions of this part specify otherwise.]~~

(1) The proceedings under this chapter are civil in nature and are governed by the Utah Rules of Civil Procedure and the Utah Rules of Juvenile Procedure.

(2) Any unauthorized ex parte communication concerning a pending case between a judge and a party to an abuse, neglect, or dependency proceeding shall be recorded for subsequent review, if necessary, by the Judicial Conduct Commission.

Section 57. Section **80-3-104**, which is renumbered from Section 78A-6-317 is renumbered and amended to read:

~~**[78A-6-317].**~~ **80-3-104.** **Individuals entitled to be present at proceedings -- Legal representation -- Attorney general responsibilities.**

(1) (a) A ~~[child]~~ minor who is the subject of a juvenile court hearing, any person entitled to notice ~~[pursuant to Section 78A-6-306 or 78A-6-310]~~ under Section 80-3-201 or 80-3-301, preadoptive parents, foster parents, and any relative providing care for the ~~[child]~~ minor, are:

~~[(a)]~~ (i) entitled to notice of, and to be present at, each hearing and proceeding held

HB0285S02 compared with HB0285S01

under this ~~[part]~~ chapter, including administrative reviews; and

~~[(b)]~~ (ii) have a right to be heard at each hearing and proceeding described in Subsection (1)(a)~~(i)~~.

~~[(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.]~~

(b) A child's right to be present at a hearing under Subsection (1)(a) is subject to the discretion of the guardian ad litem, as defined in Section 78A-2-801, appointed under Subsection (3) or the juvenile court regarding any possible detriment to the child.

~~[(3)]~~ (2) (a) The parent or guardian of a ~~[child]~~ minor who is the subject of ~~[a]~~ an abuse, neglect, or dependency petition ~~[under this part]~~ has the right to be represented by counsel, and to present evidence, at each hearing.

~~[(b) A court may appoint an indigent defense service provider as provided in Title 78B, Chapter 22, Indigent Defense Act.]~~

(b) If a parent or guardian is the subject of an abuse, neglect, or dependency petition, the juvenile court shall:

(i) appoint an indigent defense service provider for a parent or guardian determined to be an indigent individual in accordance with Title 78B, Chapter 22, Part 2, Appointment of Counsel; and

(ii) order indigent defense services for the parent or legal guardian who is determined to be an indigent individual in accordance with Title 78B, Chapter 22, Part 2, Appointment of Counsel.

~~[(4)]~~ (3) (a) In ~~[every]~~ an abuse, neglect, or dependency proceeding under this chapter, the juvenile court shall order that the child be represented by ~~[a]~~ an attorney guardian ad litem, in accordance with Section ~~[78A-6-902. The]~~ 78A-2-803.

(b) A guardian ad litem appointed under Subsection (3)(a) shall represent the best interest of the [child] minor, in accordance with the requirements of [that section,] Section 78A-2-803:

(i) 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.] Chapter 4, Termination and Restoration of Parental

HB0285S02 compared with HB0285S01

Rights; and

(ii) in other actions initiated under this chapter when appointed by the court under Section 78A-2-803 or as otherwise provided by law.

(4) Subject to the attorney general's prosecutorial discretion in civil enforcement actions, the attorney general shall, in accordance with Section 62A-4a-113, enforce all provisions of this chapter and Title 62A, Chapter 4a, Child and Family Services, relating to protection or custody of an abused, neglected, or dependent minor and the termination of parental rights.

(5) (a) The juvenile court shall admit any individual to a hearing, including a hearing under Section 80-3-205, unless the juvenile court makes a finding upon the record that the individual's presence at the hearing would:

- (i) be detrimental to the best interest of a minor who is a party to the proceeding;
- (ii) impair the fact-finding process; or
- (iii) be otherwise contrary to the interests of justice.

(b) The juvenile court may exclude an individual from a hearing under Subsection (5)(a) on the juvenile court's own motion or by motion of a party to the proceeding.

~~[(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 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~~

HB0285S02 compared with HB0285S01

investigation;]

~~[(iv) disclosure of the record would jeopardize the life or physical safety of 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 58. Section **80-3-105** is enacted to read:

80-3-105. Consolidation of proceedings.

(1) Subject to Subsection (2), when more than one child is involved in a home situation that may be found to constitute abuse, neglect, or dependency, the proceedings may be consolidated.

(2) Separate hearings may be held in proceedings consolidated under Subsection (1) with respect to disposition.

Section 59. Section **80-3-106** is enacted to read:

80-3-106. Record of proceedings.

(1) As used in this section:

(a) "Record of a proceeding" does not include documentary materials of any type submitted to the juvenile court as part of the proceeding, including items submitted under Utah Rules of Juvenile Procedure, Rule 45.

HB0285S02 compared with HB0285S01

(b) "Subjects of the record" includes the child's attorney guardian ad litem, the child's guardian, the division, and any other party to the proceeding.

(2) (a) Except as provided in Subsection (2)(b), the juvenile court shall take a verbatim record of the proceedings under this chapter, unless dispensed with by the juvenile court.

(b) A juvenile court shall take a verbatim record of the proceedings in all cases under this chapter that might result in deprivation of custody.

(3) Notwithstanding any other provision, including Title 63G, Chapter 2, Government Records Access and Management Act, the juvenile court shall release a record of a proceeding made under Subsection (2) to any person upon a finding on the record for good cause.

(4) Following a petition for a record of a proceeding made under Subsection (2), the juvenile court shall:

(a) provide notice to all subjects of the record that a request for release of the record has been made; and

(b) allow sufficient time for the subjects of the record to respond before making a finding on the petition.

(5) A record of a proceeding may not be released under this section if the juvenile court's jurisdiction over the subjects of the proceeding ended more than 12 months before the day on which the request is made.

Section 60. Section **80-3-107** is enacted to read:

80-3-107. Disclosure of records -- Record sharing.

(1) (a) Except as provided in Subsections (1)(c) through (e), in an abuse, neglect, or dependency proceeding occurring after the commencement of a shelter hearing under Section 80-3-301, or the filing of an abuse, neglect, or dependency petition, each party to the proceeding shall provide in writing to any other party or the other party's counsel any information that the party:

(i) plans to report to the juvenile court at the proceeding; or

(ii) could reasonably expect would be requested of the party by the juvenile court at the proceeding.

(b) A party providing the disclosure required under Subsection (1)(a) shall make the disclosure:

(i) for a dispositional hearing under Part 4, Adjudication and Disposition, no less than

HB0285S02 compared with HB0285S01

five days before the day on which the dispositional hearing is held; and

(ii) for all other proceedings, no less than five days before the day on which the proceeding is held.

(c) The division is not required to provide a court report or a child and family plan described in Section 62A-4a-205 to each party to the proceeding if:

(i) the information is electronically filed with the juvenile court; and

(ii) each party to the proceeding has access to the electronically filed information.

(d) If a party to a proceeding obtains information after the deadline described in Subsection (1)(b), the information is exempt from the disclosure required under Subsection (1)(a) if the party certifies to the juvenile court that the information was obtained after the deadline.

(e) Subsection (1)(a) does not apply to:

(i) pretrial hearings; and

(ii) the frequent, periodic review hearings held in a dependency drug court case to assess and promote the parent's progress in substance use disorder treatment.

(2) (a) Except as provided in Subsection (2)(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 (2)(a)(i).

(b) The disclosures described in Subsection (2)(a) are not required if:

(i) subject to Subsection (2)(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 individual who provided substitute care for the child;

(iii) disclosure of the record would jeopardize the anonymity of the individual 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 an

HB0285S02 compared with HB0285S01

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 individual 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 (2)(b)(i), the division shall inform the individual making the request:

(i) of the existence of all records in the possession of the division or any other state or local public agency;

(ii) of the name and address of the individual or agency that originally created the record; and

(iii) that the individual making the request must seek access to the record from the individual or agency that originally created the record.

Section 61. Section **80-3-108**, which is renumbered from Section 78A-6-305 is renumbered and amended to read:

~~[78A-6-305].~~ 80-3-108. Opportunity for a minor to address the juvenile court -- Consideration of minor's statement outside of court.

(1) ~~[For purposes of]~~ As used in this section, "postadjudication hearing" means:

- (a) a dispositional hearing;
- (b) a permanency hearing; or
- (c) a review hearing, except a drug court review hearing.

(2) A minor shall be present at any postadjudication hearing in a case relating to the abuse, neglect, or dependency of the minor, unless the juvenile court determines that:

(a) requiring the minor to be present at the postadjudication hearing would be detrimental to the minor or impractical; or

(b) the minor is not sufficiently mature to articulate the minor's wishes in relation to the hearing.

(3) A juvenile court may, in the juvenile court's discretion, order that a minor described

HB0285S02 compared with HB0285S01

in Subsection (2) be present at a hearing that is not a postadjudication hearing.

(4) (a) Except as provided in Subsection (4)(b), at any hearing in a case relating to the abuse, neglect, or dependency of a minor, when the minor is present at the hearing, the juvenile court shall:

(i) ask the minor whether the minor desires the opportunity to address the juvenile court or testify; and

(ii) if the minor desires an opportunity to address the juvenile court or testify, allow the minor to address the juvenile court or testify.

(b) Subsection (4)(a) does not apply if the juvenile court determines that:

(i) it would be detrimental to the minor to comply with Subsection (4)(a); or

(ii) the minor is not sufficiently mature to articulate the minor's wishes in relation to the hearing.

(c) Subject to applicable court rules, the juvenile court may allow the minor to address the court in camera.

(d) If a minor 14 years ~~[of age]~~ old or older desires an opportunity to address the juvenile court or testify, the juvenile court shall give the minor's desires added weight, but may not treat the minor's desires as the single controlling factor in a postadjudication hearing or other hearing described in Subsection (3).

(e) For the purpose of establishing the fact of abuse, neglect, or dependency, the juvenile court may, in the juvenile court's discretion, consider evidence of statements made by a child under eight years old to an individual in a trust relationship.

(5) ~~[Nothing in this section prohibits]~~ This section does not prohibit a minor from being present at a hearing that the minor is not required to be at ~~[by]~~ under this section or by court order, unless the juvenile court orders otherwise.

Section 62. Section **80-3-109**, which is renumbered from Section 78A-6-324 is renumbered and amended to read:

~~[78A-6-324].~~ **80-3-109. Physical or mental health examination during proceedings -- Division duties.**

~~[(1) When a mental health practitioner is appointed in any juvenile court proceeding to evaluate the mental health of a parent or a minor, or to provide mental health services to a parent or minor, the court:]~~

HB0285S02 compared with HB0285S01

(1) In a proceeding under this chapter, the juvenile court:

(a) may appoint any mental health therapist, as defined in Section 58-60-102, [which] who the juvenile court finds to be qualified[; and] to:

(i) evaluate the mental health of a minor or provide mental health services to the minor;
or

(ii) after notice and a hearing set for the specific purpose, evaluate the mental health of the minor's parent or guardian or provide mental health services to the parent or guardian if the juvenile court finds from the evidence presented at the hearing that the parent's or guardian's mental or emotional condition may be a factor in causing the abuse, neglect, or dependency of the minor; or

(b) may appoint a physician or a physician assistant who the juvenile court finds to be qualified to:

(i) physically examine the minor; or

(ii) after notice and a hearing set for the specific purpose, physically examine the minor's parent or guardian if the juvenile court finds from the evidence presented at the hearing that the parent's or guardian's physical condition may be a factor in causing the abuse, neglect, or dependency of the minor.

[~~(b)~~] (2) The juvenile court may not refuse to appoint a mental health therapist under Subsection (1) for the reason that the therapist's recommendations in another case [~~have not followed~~] did not follow the recommendations of the [~~Division of Child and Family Services~~] division.

[~~(2) This section applies to all juvenile court proceedings involving:~~]

(3) The division shall, with regard to a minor in the division's custody:

(a) take reasonable measures to notify a minor's parent or guardian of any non-emergency health treatment or care scheduled for a minor;

(b) include the minor's parent or guardian as fully as possible in making health care decisions for the minor;

(c) defer to the minor's parent's or guardian's reasonable and informed decisions regarding the minor's health care to the extent that the minor's health and well-being are not unreasonably compromised by the parent's or guardian's decision; and

(d) notify the minor's parent or guardian within five business days after the day on

HB0285S02 compared with HB0285S01

which the minor receives emergency health care or treatment.

(4) An examination conducted in accordance with Subsection (1) is not a privileged communication under Utah Rules of Evidence, Rule 506(d)(3), and is exempt from the general rule of privilege.

(5) Subsection (1) applies to a proceeding under this chapter involving:

- (a) parents and minors; or
- (b) the [Division of Child and Family Services] division.

Section 63. Section **80-3-110**, which is renumbered from Section 78A-6-115 is renumbered and amended to read:

[78A-6-115]. 80-3-110. Consideration of cannabis during proceedings.

~~[(1)(a) A verbatim record of the proceedings shall be taken in all cases that might result in deprivation of custody as defined in this chapter. In all other cases a verbatim record shall also be made unless dispensed with by the court.]~~

~~[(b)(i) For purposes of this Subsection (1)(b):]~~

~~[(A) "Record of a proceeding" does not include documentary materials of any type submitted to the court as part of the proceeding, including items submitted under Subsection (4)(a).]~~

~~[(B) "Subjects of the record" includes the child's guardian ad litem, the child's legal guardian, the Division of Child and Family Services, and any other party to the proceeding:]~~

~~[(ii) Notwithstanding any other provision, including Title 63G, Chapter 2, Government Records Access and Management Act, the court shall release a record of a proceeding made under Subsection (1)(a) to any person upon a finding on the record for good cause:]~~

~~[(iii) Following a petition for a record of a proceeding made under Subsection (1)(a), the court shall:]~~

~~[(A) provide notice to all subjects of the record that a request for release of the record has been made; and]~~

~~[(B) allow sufficient time for the subjects of the record to respond before making a finding on the petition:]~~

~~[(iv) A record of a proceeding may not be released under this Subsection (1)(b) if the court's jurisdiction over the subjects of the proceeding ended more than 12 months before the day on which the request is made:]~~

HB0285S02 compared with HB0285S01

~~[(2)(a) Except as provided in Subsection (2)(b), the county attorney or, if within a prosecution district, the district attorney shall represent the state in any proceeding in a minor's case.]~~

~~[(b) Subject to the attorney general's prosecutorial discretion in civil enforcement actions, the attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child and Family Services, and this chapter, relating to:]~~

~~[(i) protection or custody of an abused, neglected, or dependent child; and]~~

~~[(ii) petitions for termination of parental rights.]~~

~~[(3) The board may adopt special rules of procedure to govern proceedings involving violations of traffic laws or ordinances, wildlife laws, and boating laws. However, proceedings involving offenses under Section 78A-6-606 are governed by that section regarding suspension of driving privileges.]~~

~~[(4)(a) For the purposes of determining proper disposition of the minor in dispositional hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and in hearings upon petitions for termination of parental rights, written reports and other material relating to the minor's mental, physical, and social history and condition may be received in evidence and may be considered by the court along with other evidence. The court may require that the individual who wrote the report or prepared the material appear as a witness if the individual is reasonably available.]~~

~~[(b) For the purpose of determining proper disposition of a minor alleged to be or adjudicated as abused, neglected, or dependent, dispositional reports prepared by the division under Section 78A-6-315 may be received in evidence and may be considered by the court along with other evidence. The court may require any individual who participated in preparing the dispositional report to appear as a witness, if the individual is reasonably available.]~~

~~[(5)(a) Except as provided in Subsections (5)(c) through (e), in an abuse, neglect, or dependency proceeding occurring after the commencement of a shelter hearing under Section 78A-6-306 or the filing of a petition under Section 78A-6-304, each party to the proceeding shall provide in writing to the other parties or their counsel any information which the party:]~~

~~[(i) plans to report to the court at the proceeding; or]~~

~~[(ii) could reasonably expect would be requested of the party by the court at the proceeding.]~~

HB0285S02 compared with HB0285S01

~~[(b) The disclosure required under Subsection (5)(a) shall be made:]~~

~~[(i) for dispositional hearings under Sections 78A-6-311 and 78A-6-312, no less than five days before the day on which the proceeding is held;]~~

~~[(ii) for proceedings under Chapter 6, Part 5, Termination of Parental Rights Act, in accordance with Utah Rules of Civil Procedure; and]~~

~~[(iii) for all other proceedings, no less than five days before the day on which the proceeding is held.]~~

~~[(c) The division is not required to provide a court report or a child and family plan to each party to the proceeding if:]~~

~~[(i) the information is electronically filed with the court; and]~~

~~[(ii) each party to the proceeding has access to the electronically filed information.]~~

~~[(d) If a party to a proceeding obtains information after the deadline in Subsection (5)(b), the information is exempt from the disclosure required under Subsection (5)(a) if the party certifies to the court that the information was obtained after the deadline.]~~

~~[(e) Subsection (5)(a) does not apply to:]~~

~~[(i) pretrial hearings; and]~~

~~[(ii) the frequent, periodic review hearings held in a dependency drug court case to assess and promote the parent's progress in substance use disorder treatment.]~~

~~[(6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court may, in the court's discretion, consider evidence of statements made by a child under eight years of age to an individual in a trust relationship.]~~

~~[(7)] (1) [(a)] As used in this [Subsection (7)] section:~~

~~[(i)] (a) "Cannabis" means the same as that term is defined in Section 26-61a-102.~~

~~[(ii)] (b) "Cannabis product" means the same as that term is defined in Section 26-61a-102.~~

~~[(iii)] (A) (c) (i) "Chronic" means repeated or patterned.~~

~~[(B)] (ii) "Chronic" does not mean an isolated incident.~~

~~[(iv)] (d) "Directions of use" means the same as that term is defined in Section 26-61a-102.~~

~~[(v)] (e) "Dosing guidelines" means the same as that term is defined in Section 26-61a-102.~~

HB0285S02 compared with HB0285S01

~~[(vii)]~~ (f) "Medical cannabis" means the same as that term is defined in Section 26-61a-102.

~~[(viii)]~~ (g) "Medical cannabis cardholder" means the same as that term is defined in Section 26-61a-102.

~~[(viii)]~~ (h) "Qualified medical provider" means the same as that term is defined in Section 26-61a-102.

~~[(b)]~~ (2) In ~~[any child welfare proceeding]~~ a proceeding under this chapter, in which the juvenile court makes a finding, determination, or otherwise considers an individual's possession or use of medical cannabis, a cannabis product, or a medical cannabis device, the juvenile court may not consider or treat the individual's possession or use any differently than the lawful possession or use of any prescribed controlled substance if:

~~[(i)]~~ (a) the individual's possession or use complies with Title 4, Chapter 41a, Cannabis Production Establishments;

~~[(ii)]~~ (b) the individual's possession or use complies with Subsection 58-37-3.7(2) or (3); or

~~[(iii)]~~ ~~(A)~~ (c) (i) the individual's possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act; and

~~[(B)]~~ (ii) the individual reasonably complies with the directions of use and dosing guidelines determined by the individual's qualified medical provider or through a consultation described in Subsection 26-61a-502(4) or (5).

~~[(c)]~~ (3) In a ~~[child welfare proceeding]~~ proceeding under this chapter, a child's parent's or guardian's use of cannabis or a cannabis product is not abuse or neglect of ~~[a]~~ the child ~~[under Section 78A-6-105]~~ unless there is evidence showing that:

~~[(i)]~~ (a) the child is harmed because of the child's inhalation or ingestion of cannabis, or because of cannabis being introduced to the child's body in another manner; or

~~[(ii)]~~ (b) the child is at an unreasonable risk of harm because of chronic inhalation or ingestion of cannabis or chronic introduction of cannabis to the child's body in another manner.

~~[(d)]~~ (4) Unless there is harm or an unreasonable risk of harm to the child as described in Subsection ~~[(7)(c)]~~ (3), in a child welfare proceeding under this chapter, a child's parent's or guardian's use of medical cannabis or a cannabis product is not contrary to the best interests of ~~[a]~~ the child if:

HB0285S02 compared with HB0285S01

~~[(i)]~~ (a) for a medical cannabis cardholder after January 1, 2021, the parent's or guardian's possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act, and there is no evidence that the parent's or guardian's use of medical cannabis unreasonably deviates from the directions of use and dosing guidelines determined by the parent's or guardian's qualified medical provider or through a consultation described in Subsection 26-61a-502(4) or (5); or

~~[(ii)]~~ (b) before January 1, 2021, the parent's or guardian's possession or use complies with Subsection 58-37-3.7(2) or (3).

~~[(c)]~~ (5) Subsection ~~[(7)(c)]~~ (3) does not prohibit a finding of abuse or neglect of a child ~~[under Section 78A-6-105]~~, and Subsection ~~[(7)(d)]~~ (3) does not prohibit a finding that a parent's or guardian's use of medical cannabis or a cannabis product is contrary to the best interests of a child, if there is evidence showing a nexus between the parent's or guardian's use of cannabis or a cannabis product and behavior that would separately constitute abuse or neglect of the child.

Section 64. Section **80-3-201**, which is renumbered from Section 78A-6-304 is renumbered and amended to read:

Part 2. Petition Alleging Abuse, Neglect, or Dependency

~~[78A-6-304].~~ **80-3-201. Petition -- Who may file -- Timing -- Dismissal -- Notice.**

~~[(1) For purposes of this section, "petition" means a petition to commence proceedings in a juvenile court alleging that a child is:]~~

~~[(a) abused;]~~

~~[(b) neglected; or]~~

~~[(c) dependent.]~~

~~[(2)(a)]~~ (1) Subject to Subsection (2)~~[(b)]~~, any interested person may file ~~[a]~~ an abuse, neglect, or dependency petition.

~~[(b)]~~ (2) A person described in Subsection ~~[(2)(a)]~~ (1) shall make a referral with the division before the person files ~~[a]~~ an abuse, neglect, or dependency petition.

~~[(3) If the child who is the subject of a petition is removed from the child's home by the division, the petition shall be filed on or before the date of the initial shelter hearing described in Section 78A-6-306:]~~

HB0285S02 compared with HB0285S01

~~[(4) The petition shall be verified, and contain all of the following:]~~

~~[(a) the name, age, and address, if any, of the child upon whose behalf the petition is brought;]~~

~~[(b) the names and addresses, if known to the petitioner, of both parents and any guardian of the child;]~~

~~[(c) a concise statement of facts, separately stated, to support the conclusion that the child upon whose behalf the petition is being brought is abused, neglected, or dependent; and]~~

~~[(d) a statement regarding whether the child is in protective custody, and if so, the date and precise time the child was taken into protective custody.]~~

~~[(5) If a petition is filed under this section, and a petition for termination of parental rights is filed under Section 78A-6-504 before a dispositional hearing, a party may request a hearing on whether reunification services are appropriate in accordance with the factors described in Subsections 78A-6-312(21) and (23).]~~

(3) If a child who is the subject of an abuse, neglect, or dependency petition is removed from the child's home by the division, the petition shall be filed on or before the day on which the initial shelter hearing described in Section 80-3-301 is held.

(4) An abuse, neglect, or dependency petition shall include:

(a) a concise statement of facts, separately stated, to support the conclusion that the child upon whose behalf the abuse, neglect, or dependency petition is brought is abused, neglected, or dependent; and

(b) a statement regarding whether the child is in protective custody, and if so, the date and precise time the child was taken into protective custody.

(5) (a) Upon the filing of an abuse, neglect, or dependency petition, the petitioner shall serve the petition and notice on:

(i) the guardian ad litem;

(ii) both parents and any guardian of the child; and

(iii) the child's foster parents.

(b) The notice described in Subsection (5) shall contain all of the following:

(i) the name and address of the person to whom the notice is directed;

(ii) the date, time, and place of the hearing on the petition;

(iii) the name of the child on whose behalf the petition is brought;

HB0285S02 compared with HB0285S01

(iv) a statement that the parent or guardian to whom notice is given, and the child, are entitled to have an attorney present at the hearing on the petition, 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; and

(v) a statement that the parent or legal guardian is liable for the cost of support of the child in the protective custody, temporary custody, and custody of the division, and for legal counsel appointed for the parent or guardian under Subsection (5)(b)(iv), according to the parent's or guardian's financial ability.

(6) The petitioner shall serve the abuse, neglect, or dependency petition and notice under this section on all individuals described in Subsection (5)(a) as soon as possible after the petition is filed and at least five days before the day on which the hearing is set.

(7) The juvenile court may dismiss an abuse, neglect, or dependency petition at any stage of the proceedings.

(8) If an abuse, neglect, or dependency petition includes an allegation of educational neglect, Sections 53G-6-210 and 53G-6-211 are applicable to the proceedings under this chapter.

Section 65. Section **80-3-202**, which is renumbered from Section 78A-6-107 is renumbered and amended to read:

~~[78A-6-107].~~ **80-3-202. Expedited filing of petition.**

~~[(1) For purposes of this section, "petition" means a petition, under Section 78A-6-304, to commence proceedings in a juvenile court alleging that a child is:]~~

~~[(a) abused;]~~

~~[(b) neglected; or]~~

~~[(c) dependent.]~~

~~[(2) If a]~~ (1) If an abuse, neglect, or dependency petition is requested by the division, the attorney general shall file the abuse, neglect, or dependency petition within 72 hours ~~[of]~~ after the completion of the division's investigation and request, excluding weekends and holidays, if:

(a) the child who is the subject of the requested abuse, neglect, or dependency petition is not removed from the child's home by the division; and

(b) without an expedited hearing and services ordered under the protective supervision

HB0285S02 compared with HB0285S01

of the juvenile court, the child will likely be taken into protective custody.

~~[(3)]~~ (2) The juvenile court shall give scheduling priority to the pretrial and adjudication hearings on [a] an abuse, neglect, or dependency petition if:

(a) the child who is the subject of the petition is not in:

(i) protective custody; or

(ii) temporary custody; and

(b) the division indicates in the petition that, without expedited hearings and services ordered under the protective supervision of the court, the child will likely be taken into protective custody.

Section 66. Section **80-3-203** is enacted to read:

80-3-203. Expedited hearing for temporary custody.

(1) After an abuse, neglect, or dependency petition is filed, the juvenile court may make an order:

(a) providing for temporary custody of the child who is the subject of the petition; or

(b) that the division provide protective services to the child who is the subject of the petition if the juvenile court determines that:

(i) the child is at risk of being removed from the child's home due to abuse or neglect;
and

(ii) the provision of protective services may make the removal described in Subsection (1)(b)(i) unnecessary.

(2) (a) The juvenile court shall hold an expedited hearing to determine whether a child should be placed in temporary custody if:

(i) a person files an abuse, neglect, or dependency petition;

(ii) a party to the proceeding files a motion for expedited placement in temporary custody; and

(iii) notice of the hearing described in this Subsection (1)(a) is served consistent with the requirements for notice of a shelter hearing under Section 80-3-301.

(b) The hearing described in Subsection (2)(a):

(i) shall be held within 72 hours, excluding weekends and holidays, after the time in which the motion described in Subsection (2)(a)(ii) is filed; and

(ii) shall be considered a shelter hearing under Section 80-3-301 and Utah Rules of

HB0285S02 compared with HB0285S01

Juvenile Procedure, Rule 13.

(3) (a) The hearing and notice described in Subsection (1) are subject to:

(i) Section 80-3-301;

(ii) Section 80-3-302; and

(iii) the Utah Rules of Juvenile Procedure.

(b) After the hearing described in Subsection (1), the juvenile court may order a child placed in the temporary custody of the division.

Section 67. Section **80-3-204**, which is renumbered from Section 78A-6-302 is renumbered and amended to read:

[78A-6-302]. 80-3-204. Protective custody of a child after a petition is filed

-- Grounds.

(1) When [a] an abuse, neglect, or dependency petition is filed [~~under Section 78A-6-304~~], the juvenile court shall apply, in addressing the petition, the least restrictive means and alternatives available to accomplish a compelling state interest and to prevent irretrievable destruction of family life as described in Subsections 62A-4a-201(1) and (7)(a) and Section [~~78A-6-503~~] 80-4-104.

(2) After [~~a petition has been filed under Section 78A-6-304~~] an abuse, neglect, or dependency petition is filed, if the child who is the subject of the petition is not in [~~the~~] protective custody [~~of the division~~], a juvenile court may order that the child be removed from the child's home or otherwise taken into protective custody if the juvenile court finds, by a preponderance of the evidence, that any one or more of the following circumstances exist:

(a) (i) there is an imminent danger to the physical health or safety of the child; and

(ii) the child's physical health or safety may not be protected without removing the child from the custody of the child's parent or guardian;

(b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct that causes the child to suffer harm; and

(ii) there are no less restrictive means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;

(c) the child or another child residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a parent or guardian, a member of the parent's or guardian's household, or other [~~person~~]

HB0285S02 compared with HB0285S01

individual 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(39)~~] Subsection 80-1-102(51)(b) and [~~78A-6-117(2) and Section 78A-6-301.5~~] Sections 80-3-109 and 80-3-304, 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 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~~] 80-4-203;

(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

HB0285S02 compared with HB0285S01

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

(3) (a) For purposes of Subsection (2)(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~~] is prima facie evidence that the child cannot safely remain in the custody of the child's parent.

(b) For purposes of Subsection (2)(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 (2)(c) or Subsection (3)(b)(ii); and

(ii) if a parent or guardian has received actual notice that physical abuse, sexual abuse, or sexual exploitation by [~~a person~~] an individual 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~~] is prima facie evidence that the child is at substantial risk of being physically abused, sexually abused, or sexually exploited.

(4) (a) For purposes of Subsection (2), if the division files [~~a~~] an abuse, neglect, or dependency petition [~~under Section 78A-6-304~~], the juvenile 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 juvenile court, guardian ad litem, and counsel for the parent or guardian, as soon as practicable before the shelter hearing described in Section [~~78A-6-306~~] 80-3-301.

(5) In the absence of one of the factors described in Subsection (2), a juvenile 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[-]; or

HB0285S02 compared with HB0285S01

(d) the possession or use, in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act, of cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device, as those terms are defined in Section 26-61a-102.

(6) 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]~~ detention, unless the child may be admitted to detention under Chapter 6, Part 2, Custody and Detention.

(7) 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.

(8) (a) Except as provided in Subsection (8)(b), ~~[a court or the Division of Child and Family Services may not]~~ a juvenile court and the division 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 (8)(a), ~~[a court or the Division of Child and Family Services]~~ a juvenile court or the division may remove a child under conditions that would otherwise be prohibited under Subsection (8)(a) if failure to take an action described under Subsection (8)(a) would present a serious, imminent risk to the child's physical safety or the physical safety of others.

Section 68. Section **80-3-205**, which is renumbered from Section 78A-6-322 is renumbered and amended to read:

~~[78A-6-322].~~ **80-3-205. Coordination of proceedings.**

(1) In each case where an information or indictment ~~[has been]~~ is filed against a defendant concerning abuse, neglect, or dependency of a child, and a petition ~~[has been]~~ is filed in juvenile court concerning the victim, the appropriate county attorney's or district attorney's office shall coordinate with the attorney general's office.

(2) Law enforcement personnel, ~~[Division of Child and Family Services]~~ division personnel, the appointed guardian ad litem, pretrial services personnel, and corrections

HB0285S02 compared with HB0285S01

personnel shall make reasonable efforts to facilitate the coordination required ~~[by]~~ under this section.

(3) ~~[Members of interdisciplinary child protection teams, established under Section 62A-4a-409,]~~ A member of a child protection team may participate in the coordination required ~~[by]~~ under this section.

(4) ~~[Members of a child protection unit, established under Section 10-3-913 or 17-22-2,]~~ A member of a child protection unit may coordinate with the attorney general's office, ~~[Division of Child and Family Services]~~ division personnel, the appointed guardian ad litem, pretrial services personnel, and corrections personnel as appropriate under this section.

Section 69. Section **80-3-206** is enacted to read:

80-3-206. Mediation.

If an abuse, neglect, or dependency petition is filed, or if a matter is referred to the juvenile court under Subsection 78A-6-104(1)(~~fe~~**b**), the juvenile court may require the parties to participate in mediation in accordance with Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act.

Section 70. Section **80-3-207** is enacted to read:

80-3-207. Modification of petition -- Continuance.

(1) When it appears in a proceeding under this chapter that evidence presented points to material facts not alleged in the abuse, neglect, or dependency petition, the juvenile court may consider the additional or different matters raised by the evidence if the parties consent.

(2) The juvenile court on motion of any interested party, or on the juvenile court's own motion, shall direct that the abuse, neglect, or dependency petition be amended to conform to the evidence described in Subsection (1).

(3) If the amendment described in Subsection (2) results in a substantial departure from the facts originally alleged in the abuse, neglect, or dependency petition, the juvenile court shall grant a continuance as justice may require in accordance with Utah Rules of Juvenile Procedure, Rule 54.

Section 71. Section **80-3-301**, which is renumbered from Section 78A-6-306 is renumbered and amended to read:

Part 3. Shelter Proceedings and Placement of a Child

~~[78A-6-306].~~ **80-3-301. Shelter hearing -- Court considerations.**

HB0285S02 compared with HB0285S01

(1) A juvenile court shall hold a shelter hearing [~~shall be held~~] to determine the temporary custody of a child 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)~~](7);
- (d) as an alternative to removal of the child, a parent enters a domestic violence shelter at the request of the division; or

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

(e) a motion for expedited placement in temporary custody is filed under Section 80-3-203.

(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~~] individual 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~~] an abuse, neglect, or dependency 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~~] is 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~~] an indigent individual and cannot afford an attorney, and desires to be represented by an attorney, one will be provided in accordance with Title 78B, Chapter 22, Indigent Defense Act; 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.

HB0285S02 compared with HB0285S01

(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 day on which the child is removed from the child's home, or the ~~[filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection 78A-6-106(4)]~~ day on which a motion for expedited placement in temporary custody under Section 80-3-203 is filed, 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]~~ Notwithstanding Section 80-3-104, the following ~~[persons]~~ individuals 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;

(d) the child's guardian ad litem;

(e) the ~~[caseworker]~~ child welfare worker 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 juvenile 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]~~ individual with relevant knowledge;

(ii) subject to Section ~~[78A-6-305]~~ 80-3-108, provide an opportunity for the child to testify; and

(iii) in accordance with Subsections ~~[78A-6-307(18)(c)]~~ 80-3-302(8)(c) through (e), grant preferential consideration to a relative or friend for the temporary placement of the child.

(b) The juvenile 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]~~ the requesting party's counsel; and

HB0285S02 compared with HB0285S01

(iii) may in ~~[its]~~ the juvenile court's 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 juvenile 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)]~~ 80-3-302(8)(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 juvenile court shall consider all relevant evidence provided by ~~[persons or entities]~~ an individual or entity authorized to present relevant evidence ~~[pursuant to]~~ under this section.

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

(b) A juvenile 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 juvenile 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 juvenile court shall order that the child be returned to the custody of the parent or guardian unless ~~[it]~~ the juvenile court 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;

HB0285S02 compared with HB0285S01

(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) a parent or guardian;

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

(C) [person] an individual 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 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(40)(b) and 78A-6-117(2) and Section 78A-6-301.5, the child is in immediate need of medical care;]~~

(ix) subject to Subsection 80-1-102(51)(b) and Sections 80-3-109 and 80-3-304, 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

HB0285S02 compared with HB0285S01

(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.

(ii) For purposes of Subsection (9)(a)(iv), if the juvenile court finds that the parent knowingly allowed the child to be in the physical care of [~~a person~~] an individual after the parent received actual notice that the [~~person~~] individual physically abused, sexually abused, or sexually exploited the child, that fact [~~constitutes~~] is 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 juvenile 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 juvenile court finds that the child can be safely returned to the custody of the

HB0285S02 compared with HB0285S01

child's parent or guardian through the provision of ~~[those]~~ the services described in Subsection (10)(a)(i), the juvenile court shall place the child with the child's parent or guardian and order that ~~[those]~~ the services be provided by the division.

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

(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 juvenile court shall make a finding that any lack of preplacement preventive efforts, as described in Section 62A-4a-203, 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]~~ the juvenile court and the division do not have 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 juvenile court may not order continued removal of a child solely on the basis of educational neglect ~~[as defined in Section 78A-6-105]~~, truancy, or failure to comply with a court order to attend school.

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

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

(15) If the juvenile court finds that continued removal and temporary custody are necessary for the protection of a child ~~[pursuant to]~~ under Subsection (9)(a), the juvenile 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.

HB0285S02 compared with HB0285S01

Section 72. Section **80-3-302**, which is renumbered from Section 78A-6-307 is renumbered and amended to read:

~~[78A-6-307].~~ **80-3-302. Shelter hearing -- Placement.**

~~[(1) As used in this section:]~~

~~[(a) "Friend" means an adult who:]~~

~~[(i) has an established relationship with the child or a family member of the child; and]~~

~~[(ii) is not a natural parent of the child:]~~

~~[(b) (i) "Natural parent," notwithstanding Section 78A-6-105, means:]~~

~~(1) As used in this section:~~

~~(a) "Natural parent," notwithstanding Section 80-1-102, means:~~

~~[(A)] (i) a biological or adoptive mother of the child;~~

~~[(B)] (ii) an adoptive father of the child; or~~

~~[(C)] (iii) a biological father of the child who:~~

~~[(F)] (A) was married to the child's biological mother at the time the child was conceived or born; or~~

~~[(H)] (B) has strictly complied with Sections 78B-6-120 through 78B-6-122, before removal of the child or voluntary surrender of the child by the custodial parent.~~

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

~~[(c) "Relative" means:]~~

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

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

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

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

(2) (a) At the shelter hearing, when the juvenile court orders that a child be removed from the custody of the child's parent in accordance with the requirements of Section

HB0285S02 compared with HB0285S01

[78A-6-306] 80-3-301, the juvenile court shall first determine whether there is another natural parent with whom the child was not residing at the time the events or conditions that brought the child within the juvenile court's jurisdiction occurred, who desires to assume custody of the child.

(b) [Hf] Subject to Subsection (8), if another natural parent requests custody under Subsection (2)(a), the juvenile court shall place the child with that parent unless the juvenile court finds that the placement would be unsafe or otherwise detrimental to the child.

~~[(c) This Subsection (2) is limited by Subsection (18)(b).]~~

~~[(d)(i)]~~ (c) The juvenile court:

(i) shall make a specific finding regarding the fitness of the parent described in Subsection (2)(b) to assume custody, and the safety and appropriateness of the placement[-];

(ii) ~~[The court]~~ shall, at a minimum, order the division to visit the parent's home, comply with the criminal background check provisions described in Section [78A-6-308] 80-3-305, and check the division's management information system for any previous reports of abuse or neglect received by the division regarding the parent at issue[-];

(iii) ~~[The court]~~ may order the division to conduct any further investigation regarding the safety and appropriateness of the placement[-]; and

~~[(iv) The division shall report the division's findings in writing to the court.]~~

~~[(v)]~~ (iv) ~~[The court]~~ may place the child in the temporary custody of the division, pending the juvenile court's determination regarding ~~[that]~~ the placement.

(d) The division shall report the division's findings from an investigation regarding the child in writing to the juvenile court.

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

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

(b) the juvenile court may order:

(i) that the parent ~~[assume]~~ take custody subject to the supervision of the juvenile court; and

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

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

HB0285S02 compared with HB0285S01

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

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

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

(c) the child should be placed [~~in the custody of~~] with a relative[~~, pursuant to~~] under Subsections (7) through [~~(12)~~] (10); or

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

(5) The time limitations described in Section [~~78A-6-312~~] 80-3-406 with regard to reunification efforts apply to children placed with a previously noncustodial parent [~~in accordance with~~] under Subsection (2).

(6) (a) Legal custody of the child is not affected by an order entered under Subsection (2) or (3).

(b) To affect a previous court order regarding legal custody, the party shall petition [~~that~~] the court for modification of [~~the order~~] legal custody.

(7) [~~H~~] Subject to Subsection (8), if, at the time of the shelter hearing, a child is removed from the custody of the child's parent and is not placed in the custody of the child's other parent, the juvenile court:

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

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

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

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

[~~(8) This section may not be construed as a guarantee that an identified relative or~~]

HB0285S02 compared with HB0285S01

~~friend will receive custody of the child.]~~

~~[(9)]~~ (8)(a) Subject to Subsections ~~[(18)(c) through (e)]~~ (8)(b) through (d), preferential consideration shall be given to a relative's or a friend's request for placement of the child, if ~~[it]~~ the placement is in the best interest of the child, and the provisions of this section are satisfied.

(b) (i) The preferential consideration that a relative or friend is initially granted under Subsection (8)(a) expires 120 days after the day on which the shelter hearing occurs.

(ii) After the day on which the time period described in Subsection (8)(b)(i) expires, a relative or friend, who has not obtained custody or asserted an interest in a child, may not be granted preferential consideration by the division or the juvenile court.

(c) (i) The preferential consideration that a natural parent is initially granted under Subsection (2) is limited after 120 days after the day on which the shelter hearing occurs.

(ii) After the time period described in Subsection (8)(c)(i), the juvenile court shall base the juvenile court's custody decision on the best interest of the child.

(iii) Before the day on which the time period described in Subsection (8)(c)(i) expires, the following order of preference shall be applied when determining the individual with whom a child will be placed, provided that the individual is willing and able to care for the child:

(A) a noncustodial parent of the child;

(B) a relative of the child;

(C) subject to Subsection (8)(d), a friend if the friend is a licensed foster parent; and

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

(d) In determining whether a friend is a willing, able, and appropriate placement for a child, the juvenile court or the division:

(i) subject to Subsections (8)(d)(ii) through (iv), shall consider the child's preferences or level of comfort with the friend;

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

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

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

HB0285S02 compared with HB0285S01

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

(B) the basis for removing the child under Section 80-3-301 is sexual abuse of the child.

(e) (i) If a parent of the child or the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement, is not able to designate a friend who is a licensed foster parent for placement of the child, but is able to identify a friend who is willing to become licensed as a foster parent, the department shall fully cooperate to expedite the licensing process for the friend.

(ii) If the friend described in Subsection (8)(e)(i) becomes licensed as a foster parent within the time frame described in Subsection (8)(b), the juvenile court shall determine whether it is in the best interest of the child to place the child with the friend.

~~[(10)]~~ (9) (a) If a [willing] relative or friend who is willing to cooperate with the child's permanency goal is identified under Subsection (7)(a), the juvenile court shall make a specific finding regarding:

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

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

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

~~[(11)(a)]~~ (b) In making the finding described in Subsection [(10)] (9)(a), the juvenile court shall, at a minimum, order the division to:

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

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

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

(C) a background check that complies with the criminal background check provisions described in Section [78A-6-308] 80-3-305, of each nonrelative, as defined in Section 62A-4a-209, of the child who resides in the household where the child may be placed;

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

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

HB0285S02 compared with HB0285S01

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

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

(C) a background check that complies with the criminal background check provisions described in Section ~~[78A-6-308]~~ 80-3-305, of each nonrelative, as defined in Section 62A-4a-209, of the child who resides in the household where the child may be placed;

(iii) if the child may be placed with an individual other than a noncustodial parent or a relative, conduct a criminal background check of the individual, and each adult that resides in the household where the child may be placed, that complies with the criminal background check provisions described in Section ~~[78A-6-308]~~ 80-3-305;

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

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

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

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

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

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

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

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

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

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

~~[(b)]~~ (c) The division may determine to conduct, or the juvenile court may order the division to conduct, any further investigation regarding the safety and appropriateness of the placement described in Subsection (9)(a).

~~[(c)]~~ (d) The division shall complete and file the division's assessment regarding placement with a relative or friend under Subsections (9)(a) and (b) as soon as practicable, in an effort to facilitate placement of the child with a relative or friend.

~~[(12)]~~ (10) (a) The juvenile court may place a child described in Subsection (2)(a) in

HB0285S02 compared with HB0285S01

the temporary custody of the division, pending the division's investigation [~~pursuant to Subsections (10) and (11)~~] under Subsection (9), and the juvenile court's determination regarding the appropriateness of [~~that~~] the placement.

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

[~~(13)~~] (11) When a juvenile court places a child described in Subsection (7) [~~in the custody of~~] with the child's relative or friend:

(a) the juvenile court:

(i) shall order the relative or friend [~~assume~~] take custody, subject to the continuing supervision of the juvenile court; and

(ii) may order the division provide necessary services to the child and the child's relative or friend, including the monitoring of the child's safety and well-being;

(b) the child and the relative or friend in whose custody the child is placed are under the continuing jurisdiction of the juvenile court;

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

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

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

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

(ii) the child should be returned home; or

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

[~~(14)~~] (12) No later than 12 months after [~~placement with a relative or friend~~] the day on which the child was removed from the home, the juvenile court shall schedule a hearing for the purpose of entering a permanent order in accordance with the best interest of the child.

[~~(15)~~] (13) The time limitations described in Section [~~78A-6-312~~] 80-3-406, with regard to reunification efforts, apply to children placed with a relative or friend [~~pursuant to~~] under Subsection (7).

[~~(16)~~] (14) (a) If the juvenile court awards temporary custody of a child to the division,

HB0285S02 compared with HB0285S01

and the division places the child with a relative, the division shall:

(i) conduct a criminal background check of the relative that complies with the criminal background check provisions described in Section ~~[78A-6-308]~~ 80-3-305; and

(ii) if the results of the criminal background check described in Subsection ~~[(16)]~~ (14)(a)(i) would prohibit the relative from having direct access to the child under Section 62A-2-120, the division shall:

(A) take the child into physical custody; and

(B) within three days, excluding weekends and holidays, after ~~[taking the child]~~ the day on which the child is taken into physical custody under Subsection ~~[(16)]~~ (14)(a)(ii)(A), give written notice to the juvenile court, and all parties to the proceedings, of the division's action.

(b) ~~[Nothing in Subsection (16)(a) prohibits]~~ Subsection (14)(a) does not prohibit the division from placing a child with a relative, pending the results of the background check described in Subsection ~~[(16)]~~ (14)(a) on the relative.

~~[(17)]~~ (15) ~~[When the]~~ If the juvenile court orders that a child be removed from the custody of the child's parent and does not award custody and guardianship to another parent, relative, or friend under this section, the juvenile court shall order that the child be placed in the temporary custody of the division, to proceed to adjudication and disposition and to be provided with care and services in accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.

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

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

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

HB0285S02 compared with HB0285S01

~~[(i) a noncustodial parent of the child;]~~

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

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

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

~~[(d) In determining whether a friend is a willing and appropriate placement for a child, the court or the division:]~~

~~[(i) subject to Subsections (18)(d)(ii) through (iv), shall consider the child's preferences or level of comfort with the friend;]~~

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

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

~~[(iv) shall give preference to a friend designated by the child, if:]~~

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

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

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

~~[(f) the department shall fully cooperate to expedite the licensing process for the friend; and]~~

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

~~[(19)]~~ (16) If, following the shelter hearing, the child is placed with an individual who is not a parent, a relative, a friend, or a former foster parent of the child, priority shall be given to a foster placement with a married couple, unless it is in the best interests of the child to place

HB0285S02 compared with HB0285S01

the child with a single foster parent.

~~[(20)]~~ (17) In determining the placement of a child, ~~[neither the court, nor the division, may]~~ the juvenile court and the division may not take into account, or discriminate against, the religion of an individual with whom the child may be placed, unless the purpose of taking religion into account is to place the child with an individual or family of the same religion as the child.

~~[(21)]~~ (18) If the juvenile court's decision differs from a child's express wishes if the child is of sufficient maturity to articulate the wishes in relation to the child's placement, the juvenile court shall make findings explaining why the juvenile court's decision differs from the child's wishes.

(19) This section does not guarantee that an identified relative or friend will receive custody of the child.

Section 73. Section **80-3-303**, which is renumbered from Section 78A-6-307.5 is renumbered and amended to read:

~~[78A-6-307.5].~~ **80-3-303.** Post-shelter hearing placement of a child in **division's temporary custody.**

(1) If the juvenile court awards temporary custody of a ~~[minor]~~ child to the division under Section ~~[78A-6-307]~~ 80-3-302, or as otherwise permitted by law, the division shall determine ongoing placement of the ~~[minor]~~ child.

(2) In placing a ~~[minor]~~ child under Subsection (1), the division:

(a) except as provided in Subsections (2)(b) and (d), shall comply with the applicable background check provisions described in Section ~~[78A-6-307]~~ 80-3-302;

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

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

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

(i) the background check described in Subsection ~~[78A-6-307(16)(a)]~~ 80-3-302(14)(a);

HB0285S02 compared with HB0285S01

and

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

(e) shall take into consideration the will of the [minor] child, if the [minor] child is of sufficient maturity to articulate the [minor's] child's wishes in relation to the [minor's] child's placement.

(3) If the division's placement decision differs from a [minor's] child's express wishes if the [minor] child is of sufficient maturity to state the child's wishes in relation to the [minor's] child's placement, the division shall make findings explaining why the division's decision differs from the [minor's] child's wishes in a writing provided to the juvenile court and the [minor's] child's attorney guardian ad litem.

Section 74. Section **80-3-304**, which is renumbered from Section 78A-6-301.5 is renumbered and amended to read:

~~[78A-6-301.5].~~ **80-3-304. Second medical opinion in cases of alleged medical neglect.**

(1) In cases of alleged medical neglect where the division seeks protective custody, temporary custody, or custody of the child based on the report or testimony of a physician, a parent or guardian shall have a reasonable amount of time, as determined by the juvenile court, to obtain a second medical opinion from another physician of the parent's or guardian's choosing who has expertise in the applicable field.

(2) Unless there is an imminent risk of death or a deteriorating condition of the child's health, the child shall remain in the custody of the parent or guardian while the parent or guardian obtains a second medical opinion.

(3) If the second medical opinion results in a different diagnosis or treatment recommendation from that of the opinion of the physician the division used, the juvenile court shall give deference to the second medical opinion as long as that opinion is reasonable and informed and is consistent with treatment that is regularly prescribed by medical experts in the applicable field.

(4) Subsections (1) through (3) do not apply to emergency treatment or care when the child faces an immediate threat of death or serious and irreparable harm and when there is insufficient time to safely allow the parent or guardian to provide alternative necessary care and

HB0285S02 compared with HB0285S01

treatment of the parent's or guardian's choosing.

Section 75. Section **80-3-305**, which is renumbered from Section 78A-6-308 is renumbered and amended to read:

~~[78A-6-308].~~ **80-3-305. Criminal background checks necessary before out-of-home placement.**

(1) Subject to Subsection (3), upon ordering removal of a child from the custody of the child's parent and placing that child in the temporary custody or custody of the ~~[Division of Child and Family Services, prior to the division's placement of that]~~ division before the division places a child in out-of-home care, the juvenile court shall require the completion of a nonfingerprint-based background check by the Utah Bureau of Criminal Identification regarding the proposed placement.

(2) (a) Except as provided in Subsection (4), the division and the Office of Guardian ad Litem may request, or the juvenile court upon the juvenile court's own motion, may order, the Department of Public Safety to conduct a complete Federal Bureau of Investigation criminal background check through the national criminal history system (NCIC).

(b) (i) Except as provided in Subsection (4), upon request by the division or the Office of Guardian ad Litem, or upon the juvenile court's order, ~~[persons]~~ an individual subject to the requirements of Subsection (1) shall submit fingerprints and shall be subject to an FBI fingerprint background check.

(ii) The child may be temporarily placed, pending the outcome of ~~[that]~~ the background check described in Subsection (2)(b)(i).

(c) (i) ~~[The]~~ Except as provided in Subsection (2)(c)(ii), the cost of ~~[those]~~ the investigations described in Subsection (2)(a) shall be borne by whoever is to receive placement of the child~~[, except that the Division of Child and Family Services]~~.

(ii) The division may pay all or part of the cost of ~~[those]~~ the investigations described in Subsection (2)(a).

(3) Except as provided in Subsection (5), a child who is in the legal custody of the ~~[state]~~ division may not be placed with a prospective foster parent or a prospective adoptive parent, unless, before the child is placed with the prospective foster parent or the prospective adoptive parent:

(a) a fingerprint based FBI national criminal history records check is conducted on the

HB0285S02 compared with HB0285S01

prospective foster parent or prospective adoptive parent and any other adult residing in the household;

(b) the ~~[Department of Human Services]~~ department conducts a check of the abuse and neglect registry in each state where the prospective foster parent or prospective adoptive parent resided in the five years immediately ~~[preceding]~~ before the day on which the prospective foster parent or prospective adoptive parent 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 a severe type of abuse or neglect as defined in Section 62A-4a-1002;

(c) the ~~[Department of Human Services]~~ department conducts a check of the abuse and neglect registry of each state where each adult living in the home of the prospective foster parent or prospective adoptive parent described in Subsection (3)(b) resided in the five years immediately ~~[preceding]~~ before the day on which the prospective foster parent or prospective adoptive parent 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 a severe type of abuse or neglect as defined in Section 62A-4a-1002; and

(d) each ~~[person]~~ individual required to undergo a background check described in this Subsection (3) passes the background check, ~~[pursuant to]~~ in accordance with the provisions of Section 62A-2-120.

(4) Subsections (2)(a) and (b) do not apply to a child who is placed with a noncustodial parent or relative under Section 62A-4a-209, ~~[78A-6-307, or 78A-6-307.5]~~ 80-3-302 or 80-3-303, unless the juvenile court finds that compliance with Subsection (2)(a) or (b) is necessary to ensure the safety of the child.

(5) The requirements under Subsection (3) do not apply to the extent that:

(a) federal law or rule permits otherwise; or

(b) the requirements would prohibit the division or a juvenile court from placing a child with:

(i) a noncustodial parent, under Section 62A-4a-209, ~~[78A-6-307, or 78A-6-307.5]~~ 80-3-302, or 80-3-303; or

(ii) a relative, under Section 62A-4a-209, ~~[78A-6-307, or 78A-6-307.5]~~ 80-3-302, or 80-3-303, pending completion of the background check described in Subsection (3).

HB0285S02 compared with HB0285S01

Section 76. Section **80-3-306**, which is renumbered from Section 78A-6-308.5 is renumbered and amended to read:

~~[78A-6-308.5].~~ **80-3-306.** **Outstanding arrest warrant check before return of custody.**

(1) Before the division may recommend that a child who is in ~~[the custody;]~~ protective custody, ~~[or]~~ temporary custody, or custody of the division be returned to the custody of a parent or guardian of the child, the division shall determine whether the parent or guardian has an outstanding felony arrest warrant in any state where the parent or guardian has resided or in any state where an immediate family member of the parent or guardian resides.

(2) The division shall file the results of the felony arrest warrant check with the juvenile court.

(3) (a) If the parent or guardian of a child who is in ~~[the custody;]~~ protective custody, ~~[or]~~ temporary custody, or custody of the division has an outstanding arrest warrant in any state, the juvenile court may deny the return of the child to the custody of ~~[that]~~ the parent or guardian.

(b) ~~[The]~~ When making a determination described in Subsection (3)(a), the juvenile court shall consider the best interest of the child ~~[when making the determination].~~

Section 77. Section **80-3-401**, which is renumbered from Section 78A-6-309 is renumbered and amended to read:

Part 4. Adjudication, Disposition, and Permanency

~~[78A-6-309].~~ **80-3-401.** **Pretrial and adjudication hearing -- Time deadlines.**

(1) (a) Upon the filing of ~~[a]~~ an abuse, neglect, or dependency petition, the clerk of the juvenile court shall set the pretrial hearing on the petition within 15 calendar days ~~[from]~~ after the later of:

~~[(a) the date of the shelter hearing; or]~~

~~[(b) the filing of the petition.]~~

(i) the day on which the shelter hearing is held; or

(ii) the day on which the abuse, neglect, or dependency petition is filed.

~~[(2)]~~ (b) The pretrial hearing may be continued upon motion of any party~~;~~ for good cause shown~~[, but the]~~ as described in Utah Rules of Juvenile Procedure, Rule 54.

HB0285S02 compared with HB0285S01

(2) The final adjudication hearing shall be held no later than 60 calendar days ~~[from]~~ after the later of:

~~[(a) the date of the shelter hearing; or]~~

~~[(b) the filing of the petition.]~~

(a) the day on which the shelter hearing is held; or

(b) the day on which the abuse, neglect, or dependency petition is filed.

Section 78. Section **80-3-402**, which is renumbered from Section 78A-6-311 is renumbered and amended to read:

~~[78A-6-311].~~ **80-3-402. Adjudication hearing -- Dispositional hearing time deadlines -- Scheduling of review and permanency hearing.**

(1) If, at the adjudication hearing, the juvenile court finds, by clear and convincing evidence, that the allegations contained in the abuse, neglect, or dependency petition are true, ~~[it]~~ the juvenile court shall conduct a dispositional hearing.

(2) The dispositional hearing may be held on the same date as the adjudication hearing, but shall be held no later than 30 calendar days after the ~~[date of the]~~ day on which the adjudication hearing is held.

(3) At the adjudication hearing or the dispositional hearing, the juvenile court shall schedule dates and times for:

(a) the six-month periodic review; and

(b) the permanency hearing.

(4) If an abuse, neglect, or dependency petition is filed under this chapter and a petition for termination of parental rights is filed under Section 80-4-201, before the day on which a dispositional hearing is held on the abuse, neglect, or dependency petition, a party may request a hearing on whether reunification services are appropriate in accordance with the factors described in Subsections 80-3-406(5) and (7).

Section 79. Section **80-3-403**, which is renumbered from Section 78A-6-321 is renumbered and amended to read:

~~[78A-6-321].~~ **80-3-403. Treatment for offender and victim -- Costs.**

(1) Upon adjudication in the juvenile court of ~~[a person or persons]~~ an individual charged with child abuse, child sexual abuse, or sexual exploitation of a child, the juvenile court may order treatment for the adjudicated offender ~~[and]~~ or the victim ~~[or the child victim]~~.

HB0285S02 compared with HB0285S01

(2) ~~[The adjudicated offender shall be required by the court]~~ The juvenile court shall require the adjudicated offender described in Subsection (1) to pay, to the extent that [he] the adjudicated offender is able, the costs of [that treatment together with] the treatment described in Subsection (1) and the administrative costs incurred by the division in monitoring completion of the ordered therapy or treatment.

(3) If the adjudicated offender is unable to pay the full cost of treatment under Subsection (2), the juvenile court:

(a) may order the ~~[Division of Child and Family Services]~~ division to pay ~~[those]~~ the costs, to the extent that funding is provided by the Legislature for that purpose~~[-]~~; and

(b) shall order the adjudicated offender ~~[shall be required by the court]~~ to perform public service work as compensation for the cost of the treatment.

Section 80. Section ~~80-3-404~~, which is renumbered from Section 78A-6-323 is renumbered and amended to read:

~~[78A-6-323].~~ **80-3-404. Finding of severe child abuse or neglect -- Petition for removal from Licensing Information System -- Court records.**

(1) Upon the filing with the juvenile court of ~~[a] an abuse, neglect, or dependency petition [under Section 78A-6-304 by the Division of Child and Family Services or any interested person informing the court, among other things,]~~ that informs the juvenile court that the division has made a supported finding that [a person] an individual committed a severe type of child abuse or neglect as defined in Section 62A-4a-1002, the juvenile court shall:

- (a) make a finding of substantiated, unsubstantiated, or without merit;
- (b) include the finding described in Subsection (1)(a) in a written order; and
- (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.

(2) ~~The [judicial finding under Subsection (1) shall be made]~~ juvenile court shall make the finding described in Subsection (1):

- (a) as part of the adjudication hearing;
- (b) at the conclusion of the adjudication hearing; or
- (c) as part of a court order entered pursuant to a written stipulation of the parties.

(3) (a) ~~[Any person]~~ An individual described in Subsection 62A-4a-1010(1) may at any time file with the juvenile court a petition for removal of the ~~[person's]~~ individual's name from the Licensing Information System.

HB0285S02 compared with HB0285S01

(b) At the conclusion of the hearing on the petition described in Subsection (3), the juvenile court shall:

- (i) make a finding of substantiated, unsubstantiated, or without merit;
- (ii) include the finding described in Subsection (1)(a) in a written order; and
- (iii) deliver a certified copy of the order described in Subsection (1)(b) to the division.

(4) A proceeding for adjudication of a supported finding under this section of a type of abuse or neglect that does not constitute a severe type of child abuse or neglect may be joined in the juvenile court with an adjudication of a severe type of child abuse or neglect.

(5) If [~~a person~~] an individual whose name appears on the Licensing Information [~~system~~] System [~~prior to~~] before May 6, 2002, files a petition under Subsection (3) during the time that an alleged perpetrator's application for clearance to work with children or vulnerable adults is pending, the juvenile court shall hear the matter and enter a final decision no later than 60 days after the [~~filing of the petition~~] day on which the petition is filed.

(6) For the purposes of licensing under Sections 26-39-402, 62A-1-118, and 62A-2-120, and for the purposes described in Sections 26-8a-310 and 62A-2-121 and Title 26, Chapter 21, Part 2, Clearance for Direct Patient Access:

(a) the juvenile court shall make available records of [~~its~~] the juvenile court's findings under Subsections (1) and (2):

- (i) for those purposes; and
- (ii) only to [~~those~~] a person with statutory authority to access [~~also~~] the Licensing Information System created under Section 62A-4a-1006; and

(b) any appellate court shall make available court records of appeals from juvenile court decisions under Subsections (1), (2), (3), and (4):

- (i) for those purposes; and
- (ii) only to [~~those~~] a person with statutory authority to [~~access also~~] also access the Licensing Information System.

Section 81. Section **80-3-405** is enacted to read:

80-3-405. Dispositions after adjudication.

(1) (a) Upon adjudication under Subsection 80-3-402(1), the juvenile court may make the dispositions described in Subsection (2) at the dispositional hearing.

(2) (a) (i) The juvenile court may vest custody of an abused, neglected, or dependent

HB0285S02 compared with HB0285S01

minor in the division or any other appropriate person, with or without court-specified child welfare services, in accordance with the requirements and procedures of this chapter.

(ii) When placing a minor in the custody of the division or any other appropriate person, the juvenile court:

(A) shall give primary consideration to the welfare of the minor;

(B) shall give due consideration to the rights of the parent or parents concerning the minor; and

(C) when practicable, may take into consideration the religious preferences of the minor and of the minor's parents or guardian.

(b) (i) The juvenile court may appoint a guardian for the minor if it appears necessary in the interest of the minor.

(ii) A guardian appointed under Subsection (2)(b)(i) may be a public or private institution or agency, but not a nonsecure residential placement provider, in which legal custody of the minor is vested.

(iii) When placing a minor under the guardianship of an individual or of a private agency or institution, the juvenile court:

(A) shall give primary consideration to the welfare of the minor; and

(B) when practicable, may take into consideration the religious preferences of the minor and of the minor's parents or guardian.

(c) The juvenile court may order:

(i) protective supervision;

(ii) family preservation;

(iii) sibling visitation; or

(iv) other services.

(d) (i) If a minor has been placed with an individual or relative as a result of an adjudication under this chapter, the juvenile court may enter an order of permanent legal custody and guardianship with the individual or relative of the minor.

(ii) If a juvenile court enters an order of permanent custody and guardianship with an individual or relative of a minor under Subsection (2)(d)(i), the juvenile court may, in accordance with Section 78A-6-356, enter an order for child support on behalf of the minor against the natural parents of the minor.

HB0285S02 compared with HB0285S01

(iii) An order under this Subsection (2)(d):

(A) shall remain in effect until the minor is 18 years old;

(B) is not subject to review under Section 78A-6-358; and

(C) may be modified by petition or motion as provided in Section 78A-6-357.

(e) The juvenile court may order a child be committed to the physical custody, as defined in Section 62A-15-701, 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.

(f) (i) If the child has an intellectual disability, the juvenile court may make an order committing a minor to the Utah State Developmental Center in accordance with Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability.

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

(g) (i) Subject to Subsection 80-1-102(51)(b) and Section 80-3-304, the juvenile court may order that a minor:

(A) be examined or treated by a mental health therapist, as described in Section 80-3-109; or

(B) receive other special care.

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

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

(A) the desires of the minor;

(B) the desires of the parent or guardian of the minor if the minor is younger than 18 years old; 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

HB0285S02 compared with HB0285S01

the examination, treatment, or care.

(h) The juvenile court may make other reasonable orders for the best interest of the minor.

(3) Upon an adjudication under this chapter, the juvenile court may not:

(a) commit a minor solely on the ground of abuse, neglect, or dependency to the

Division of Juvenile Justice Services;

(b) assume the function of developing foster home services; or

(c) vest legal custody of an abused, neglected, or dependent minor in the division to primarily address the minor's ungovernable or other behavior, mental health, or disability, unless the division:

(i) engages other relevant divisions within the department that are conducting an assessment of the minor and the minor's family's needs;

(ii) based on the assessment described in Subsection (3)(c)(i), determines that vesting custody of the minor in the division is the least restrictive intervention for the minor that meets the minor's needs; and

(iii) consents to legal custody of the minor being vested in the division.

(4) The juvenile court may combine the dispositions listed in Subsection (2) if combining the dispositions is permissible and the dispositions are compatible.

Section 82. Section **80-3-406**, which is renumbered from Section 78A-6-312 is renumbered and amended to read:

~~[78A-6-312].~~ **80-3-406. Permanency plan -- Reunification services.**

~~[(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(40), and 78A-6-117(2) and Section 78A-6-301.5, medical or mental health treatment;]~~

HB0285S02 compared with HB0285S01

~~[(iv) sibling visitation; or]~~

~~[(v) other services.]~~

~~[(2) Whenever]~~

(1) If the juvenile court orders continued removal at the dispositional hearing under Section 80-3-402, and that the minor remain in the custody of the division, the juvenile court shall first:

(a) establish a primary permanency plan and a concurrent permanency plan for the minor in accordance with this section; 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)]~~ minor and the minor's family under Subsections (5) through (8).

~~[(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.]~~

HB0285S02 compared with HB0285S01

~~[(8)(a) In addition to the primary permanency plan, the court shall establish a]~~

(2)(a) The concurrent permanency plan [that] shall include:

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

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

(b) In determining the primary permanency plan and concurrent permanency plan, the juvenile 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]~~ parental rights are 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)]~~ (3)(a) The juvenile court may amend a minor's primary permanency plan before the establishment of a final permanency plan under Section ~~[78A-6-314]~~ 80-3-409.

(b) The juvenile 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 juvenile court determines that reunification is no longer a minor's primary permanency plan, the juvenile court shall conduct a permanency hearing in accordance with Section ~~[78A-6-314]~~ 80-3-409 on or before the earlier of:

(i) 30 days after the day on which the juvenile court makes the determination described in this Subsection ~~[(10)]~~ (3)(c); or

(ii) the day on which the provision of reunification services, described in Section ~~[78A-6-314]~~ 80-3-409, ends.

(4)(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.

HB0285S02 compared with HB0285S01

(b) The juvenile 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 juvenile court and the division shall consider the minor's health, safety, and welfare as the paramount concern.

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

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

(b) subject to Subsection (6)(a), the parent is suffering from a mental illness of such magnitude that the mental illness 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 child:

(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 minor; or

(B) child abuse homicide;

(iii) committed sexual abuse against the minor;

(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 minor;

(B) is identified by a law enforcement agency as the primary suspect in an investigation

HB0285S02 compared with HB0285S01

for intentionally, knowingly, or recklessly causing the death of another parent of the minor; or

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

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

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

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

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

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

(j) the parent permitted the minor 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 (6)(b), with respect to a parent who is the minor's birth mother, the minor has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was exposed to an illegal or prescription drug that was abused by the minor's mother while the minor was in utero, if the minor 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 juvenile court determines should preclude reunification efforts or services.

(6) (a) The juvenile court shall base the finding under Subsection (5)(b) 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 juvenile court finding is made.

(b) The juvenile court may disregard the provisions of Subsection (5)(k) if the juvenile court finds, under the circumstances of the case, that the substance use disorder treatment

HB0285S02 compared with HB0285S01

described in Subsection (5)(k) is not warranted.

(7) In determining whether reunification services are appropriate, the juvenile 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 minor or an immediate family member;

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

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

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

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

(8) If, under Subsections (5)(b) through (l), the juvenile court does not order reunification services, a permanency hearing shall be conducted within 30 days in accordance with Section 80-3-409.

(9) (a) Subject to Subsections (9)(b) and (c), if the juvenile court determines that reunification services are appropriate for the minor and the minor's family, the juvenile 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.

(b) Parent-time is in the best interests of a minor unless the juvenile court makes a finding that it is necessary to deny parent-time in order to:

(i) protect the physical safety of the minor;

(ii) protect the life of the minor; or

(iii) 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.

(c) Notwithstanding Subsection (9)(a), a juvenile court may not deny parent-time based solely on a parent's failure to:

(i) prove that the parent has not used legal or illegal substances; or

(ii) comply with an aspect of the child and family plan that is ordered by the juvenile

HB0285S02 compared with HB0285S01

court.

~~[(11)]~~ (10) (a) If the juvenile court determines that reunification services are appropriate, the juvenile 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)]~~ (10)(a), the ~~[minor's]~~ juvenile court and the division shall consider the minor's health, safety, and welfare ~~[shall be the division's]~~ as the paramount concern~~[, and the court shall so order]~~.

(11) In cases where sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved:

(a) the juvenile court does not have any duty to order reunification services; and

(b) the division does not have a duty to make reasonable efforts to or in any other way attempt to provide reunification services or attempt to rehabilitate the offending parent or parents.

(12) (a) The juvenile court shall:

(i) determine whether the services offered or provided by the division under the child and family plan constitute ~~["reasonable efforts"]~~ 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, the juvenile court may order the parent:

(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 juvenile court or division.

(13) (a) The time period for reunification services may not exceed 12 months from the

HB0285S02 compared with HB0285S01

~~[date that]~~ day on which the minor was initially removed from the minor's home, unless the time period is extended under Subsection ~~[78A-6-314(7)]~~ 80-3-409(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 juvenile 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]~~ under Section ~~[78A-6-314]~~ 80-3-409, then measures shall be taken, in a timely manner, to:

(i) place the minor in accordance with the final 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)]~~ (10) 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]~~ the juvenile court shall conduct a permanency hearing in accordance with Section ~~[78A-6-314 at the expiration of the time period for reunification services]~~ 80-3-409 before the day on which the time period for reunification services expires.

(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]~~ 80-3-409.

(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]~~ day on which reunification services ~~[were]~~ are ordered:

(a) the juvenile court shall terminate reunification services; and

(b) the division shall petition the juvenile 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]~~

HB0285S02 compared with HB0285S01

~~[(b) in accordance with the best interest of the minor.]~~

~~[(19)]~~ (18) When a ~~[child]~~ minor is under the custody of the division and has been separated from a sibling due to foster care or adoptive placement, a juvenile court may order sibling visitation, subject to the division obtaining consent from the sibling's legal guardian, according to the juvenile court's determination of the best interests of the ~~[child]~~ minor 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 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;]~~

HB0285S02 compared with HB0285S01

~~[(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;]~~

~~[(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]~~

HB0285S02 compared with HB0285S01

~~[(f) 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;]~~

~~[(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)]~~ (19) (a) If reunification services are not ordered ~~[pursuant to Subsections (20) through (22)]~~ under this section, and the whereabouts of a parent ~~[become]~~ becomes known within six months after the day on which the out-of-home placement of the minor is made, the juvenile court may order the division to provide reunification services.

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

~~[(25)]~~ (20) (a) If a parent is incarcerated or institutionalized, the juvenile court shall order reasonable services unless the juvenile court determines that those services would be

HB0285S02 compared with HB0285S01

detrimental to the minor.

(b) In making the determination described in Subsection ~~[(25)]~~ (20)(a), the juvenile 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 who is 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)]~~ this section.

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

~~[(26) If, pursuant to Subsections (21)(b) through (1), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.]~~

Section 83. Section **80-3-407**, which is renumbered from Section 78A-6-313 is renumbered and amended to read:

~~[78A-6-313].~~ 80-3-407. Six-month review hearing -- Court determination regarding reasonable efforts by the division and parental compliance with child and family plan requirements.

If reunification efforts have been ordered by the juvenile court under Section 80-3-406, ~~[a hearing shall be held]~~ the juvenile court shall hold a hearing no more than six months after ~~[initial removal of a minor]~~ the day on which the minor is initially removed from the minor's home, in order for the juvenile court to determine whether:

(1) the division has provided and is providing ~~["reasonable efforts"]~~ reasonable efforts to reunify ~~[a]~~ the family~~;~~ in accordance with the child and family plan established under

HB0285S02 compared with HB0285S01

Section 62A-4a-205; and

(2) the parent has fulfilled or is fulfilling identified duties and responsibilities in order to comply with the requirements of the child and family plan.

Section 84. Section **80-3-408**, which is renumbered from Section 78A-6-315 is renumbered and amended to read:

~~[78A-6-315].~~ **80-3-408. Periodic review hearings -- Dispositional reports.**

(1) At least every six months, the division or the juvenile court shall conduct a periodic review of the status of each ~~[child]~~ minor in the custody of the division, until the juvenile court terminates the division's custody of the ~~[child]~~ minor.

(2) (a) The juvenile court or the division shall conduct the review described in Subsection (1) ~~[shall be conducted]~~ in accordance with the requirements of the case review system described in 42 U.S.C. Section 675.

(b) If a review described in Subsection (1) is conducted by the division, the division shall:

(i) conduct the review in accordance with the administrative review requirements of 42 U.S.C. Section 675; and

(ii) to the extent practicable, involve volunteer citizens in the administrative review process.

(3) (a) Within 30 days after ~~[completion of]~~ the day on which a review described in Subsection (1) that is conducted by the division is completed, the division shall:

(i) submit a copy of ~~[its]~~ the division's dispositional report to the juvenile court to be made a part of the juvenile court's legal file; and

(ii) provide a copy of the dispositional report to each party in the case to which the review relates.

(b) The juvenile court shall receive and review each dispositional report submitted under Subsection (3)(a)(i) in the same manner as the juvenile court receives and reviews a report described in Section ~~[78A-6-605]~~ 80-6-307.

(c) If a report submitted under Subsection (3)(a)(i) is determined to be an ex parte communication with a judge, the report ~~[shall be]~~ is considered a communication authorized by law.

~~[(d) A report described in Subsection (3)(a)(i) may be received as evidence, and may~~

HB0285S02 compared with HB0285S01

~~be considered by the court along with other evidence. The court may require any person who participated in the dispositional report to appear as a witness if the person is reasonably available.]~~

Section 85. Section **80-3-409**, which is renumbered from Section 78A-6-314 is renumbered and amended to read:

~~[78A-6-314].~~ **80-3-409. Permanency hearing -- Final plan -- Petition for termination of parental rights filed -- Hearing on termination of parental rights.**

(1) (a) ~~[When]~~ If reunification services ~~[have been ordered in accordance with Section 78A-6-312]~~ are ordered under Section 80-3-406, with regard to a minor who is in the custody of the ~~[Division of Child and Family Services, a permanency hearing shall be held by the court]~~ division, the juvenile court shall hold a permanency hearing no later than 12 months after the day on which the minor ~~[was]~~ is initially removed from the minor's home.

(b) If reunification services ~~[were]~~ are not ordered at the dispositional hearing, the juvenile court shall hold a permanency hearing ~~[shall be held]~~ within 30 days after the day on which the dispositional hearing ends.

(2) (a) If reunification services ~~[were]~~ are ordered ~~[by the court]~~ in accordance with Section ~~[78A-6-312]~~ 80-3-406, the juvenile court shall, at the permanency hearing, determine, consistent with Subsection (3), whether the minor may safely be returned to the custody of the minor's parent.

(b) If the juvenile court finds, by a preponderance of the evidence, that return of the minor to the minor's parent would create a substantial risk of detriment to the minor's physical or emotional well-being, the minor may not be returned to the custody of the minor's parent.

(c) Prima facie evidence that return of the minor to a parent or guardian would create a substantial risk of detriment to the minor is established if:

(i) the parent or guardian fails to:

(A) participate in a court approved child and family plan;

(B) comply with a court approved child and family plan in whole or in part; or

(C) meet the goals of a court approved child and family plan; or

(ii) the minor's natural parent:

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

HB0285S02 compared with HB0285S01

(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 minor; or

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

(3) In making a determination under Subsection (2)(a), the juvenile court shall:

(a) review and consider:

~~[(a)]~~ (i) the report prepared by the ~~[Division of Child and Family Services]~~ division;

~~[(b)]~~ (ii) in accordance with the Utah Rules of Evidence, any admissible evidence offered by the minor's attorney guardian ad litem;

~~[(c)]~~ (iii) any report submitted by the division under Subsection ~~[78A-6-315(3)(a)(i)]~~ 80-3-408(3)(a)(i);

~~[(d)]~~ (iv) any evidence regarding the efforts or progress demonstrated by the parent;
and

~~[(e)]~~ (v) the extent to which the parent cooperated and used the services provided~~[-]~~;
and

(b) attempt to keep the minor's sibling group together if keeping the sibling group together is:

(i) practicable; and

(ii) in accordance with the best interest of the minor.

(4) With regard to a case where reunification services ~~[were]~~ are ordered by the juvenile court, if a minor is not returned to the minor's parent or guardian at the permanency hearing, the juvenile court shall, unless the time for the provision of reunification services is extended under Subsection (7):

(a) order termination of reunification services to the parent;

(b) make a final determination regarding whether termination of parental rights, adoption, or permanent custody and guardianship is the most appropriate final plan for the minor, taking into account the minor's primary permanency plan established by the juvenile court ~~[pursuant to Section 78A-6-312]~~ under Section 80-3-406; and

(c) in accordance with Subsection 80-3-406(2), establish a concurrent permanency plan that identifies the second most appropriate final plan for the minor, if appropriate.

(5) The juvenile court may order another planned permanent living arrangement other

HB0285S02 compared with HB0285S01

than reunification for a minor who is 16 years old or older upon entering the following findings:

(a) the [~~Division of Child and Family Services~~] division has documented intensive, ongoing, and unsuccessful efforts to reunify the minor with the minor's parent or parents, or to secure a placement for the minor with a guardian, an adoptive parent, or an individual described in Subsection [~~78A-6-306(6)(c)~~] 80-3-301(6)(e);

(b) the [~~Division of Child and Family Services~~] division has demonstrated that the division has made efforts to normalize the life of the minor while in the division's custody, in accordance with Sections 62A-4a-210 through 62A-4a-212;

(c) the minor prefers another planned permanent living arrangement; and

(d) there is a compelling reason why reunification or a placement described in Subsection (5)(a) is not in the minor's best interest.

(6) Except as provided in Subsection (7), the juvenile court may not extend reunification services beyond 12 months after the day on which the minor [~~was~~] is initially removed from the minor's home, in accordance with the provisions of Section [~~78A-6-312~~] 80-3-406.

(7) (a) Subject to Subsection (7)(b), the juvenile court may extend reunification services for no more than 90 days if the juvenile court finds, beyond a preponderance of the evidence, that:

(i) there has been substantial compliance with the child and family plan;

(ii) reunification is probable within that 90-day period; and

(iii) the extension is in the best interest of the minor.

(b) (i) Except as provided in Subsection (7)(c), the juvenile court may not extend any reunification services beyond 15 months after the day on which the minor [~~was~~] is initially removed from the minor's home.

(ii) Delay or failure of a parent to establish paternity or seek custody does not provide a basis for the juvenile court to extend services for [~~that~~] the parent beyond the 12-month period described in Subsection (6).

(c) In accordance with Subsection (7)(d), the juvenile court may extend reunification services for one additional 90-day period, beyond the 90-day period described in Subsection (7)(a), if:

HB0285S02 compared with HB0285S01

(i) the juvenile court finds, by clear and convincing evidence, that:

(A) the parent has substantially complied with the child and family plan;

(B) it is likely that reunification will occur within the additional 90-day period; and

(C) the extension is in the best interest of the minor;

(ii) the juvenile court specifies the facts upon which the findings described in

Subsection (7)(c)(i) are based; and

(iii) the juvenile court specifies the time period in which it is likely that reunification will occur.

(d) A juvenile court may not extend the time period for reunification services without complying with the requirements of this Subsection (7) before the extension.

(e) In determining whether to extend reunification services for a minor, a juvenile court shall take into consideration the status of the minor siblings of the minor.

(8) The juvenile court may, in [its] the juvenile court's discretion:

(a) enter any additional order that [it] the juvenile court determines to be in the best interest of the minor, so long as that order does not conflict with the requirements and provisions of Subsections (4) through (7); or

(b) order the division to provide protective supervision or other services to a minor and the minor's family after the division's custody of a minor [~~has been~~] is terminated.

(9) (a) If the final plan for the minor is to proceed toward termination of parental rights, the petition for termination of parental rights shall be filed, and a pretrial held, within 45 calendar days after the day on which the permanency hearing is held.

(b) If the division opposes the plan to terminate parental rights, the juvenile court may not require the division to file a petition for the termination of parental rights, except as required under Subsection [~~78A-6-316(2)~~] 80-4-203(2).

(10) (a) Any party to an action may, at any time, petition the juvenile court for an expedited permanency hearing on the basis that continuation of reunification efforts are inconsistent with the permanency needs of the minor.

(b) If the juvenile court so determines, [it] the juvenile court shall order, in accordance with federal law, that:

(i) the minor be placed in accordance with the permanency plan; and

(ii) whatever steps are necessary to finalize the permanent placement of the minor be

HB0285S02 compared with HB0285S01

completed as quickly as possible.

(11) Nothing in this section may be construed to:

(a) entitle any parent to reunification services for any specified period of time;

(b) limit a juvenile court's ability to terminate reunification services at any time before a permanency hearing; or

(c) limit or prohibit the filing of a petition for termination of parental rights by any party, or a hearing on termination of parental rights, at any time [~~prior to~~] before a permanency hearing provided that relative placement and custody options have been fairly considered in accordance with Sections 62A-4a-201 and [~~78A-6-503~~] 80-4-104.

(12) (a) Subject to Subsection (12)(b), if a petition for termination of parental rights is filed [~~prior to~~] before the date scheduled for a permanency hearing, the juvenile court may consolidate the hearing on termination of parental rights with the permanency hearing.

(b) For purposes of Subsection (12)(a), if the juvenile court consolidates the hearing on termination of parental rights with the permanency hearing:

(i) the juvenile court shall first make a finding regarding whether reasonable efforts have been made by the [~~Division of Child and Family Services~~] division to finalize the permanency plan for the minor; and

(ii) any reunification services shall be terminated in accordance with the time lines described in Section [~~78A-6-312~~] 80-3-406.

(c) [~~A~~] The juvenile court shall make a decision on a petition for termination of parental rights [~~shall be made~~] within 18 months [~~from~~] after the day on which the minor is initially removed from the minor's home.

(13) If a juvenile court determines that a minor will not be returned to a parent of the minor, the juvenile court shall consider appropriate placement options inside and outside of the state.

(14) (a) [~~H~~] In accordance with Section 80-3-108, if a minor 14 years [~~of age~~] old or older desires an opportunity to address the juvenile court or testify regarding permanency or placement, the juvenile court shall give the minor's wishes added weight, but may not treat the minor's wishes as the single controlling factor under this section.

(b) If the juvenile court's decision under this section differs from a minor's express wishes if the minor is of sufficient maturity to articulate the wishes in relation to permanency

HB0285S02 compared with HB0285S01

or the minor's placement, the juvenile court shall make findings explaining why the juvenile court's decision differs from the minor's wishes.

Section 86. Section **80-3-501**, which is renumbered from Section 78A-6-311.5 is renumbered and amended to read:

Part 5. Miscellaneous Hearings

~~[78A-6-311.5].~~ **80-3-501. 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]~~ of the day on which a minor is placed in a qualified residential treatment program under this chapter or Chapter 6, Juvenile Justice, the juvenile court shall:

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

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

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

(i) placement of the ~~[child]~~ minor in a qualified residential treatment program provides the most effective and appropriate level of care for the ~~[child]~~ minor 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]~~ minor, as specified in the permanency plan for the ~~[child]~~ minor; and

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

(3) As long as a ~~[child]~~ minor remains placed in a qualified residential treatment program, the juvenile court shall review the placement decision at each subsequent review and

HB0285S02 compared with HB0285S01

permanency hearing held with respect to the ~~[child]~~ minor.

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

(a) demonstrate an ongoing assessment of the strengths and needs of the ~~[child]~~ minor such that the ~~[child's]~~ minor'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]~~ minor 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]~~ minor, as specified by the permanency plan for the ~~[child]~~ minor;

(d) document the specific treatment or service needs that will be met for the ~~[child]~~ minor in the placement;

(e) document the length of time the ~~[child]~~ minor is expected to need the treatment or services; and

(f) document the efforts made by the custodial division to prepare the ~~[child]~~ minor to return home or transition to another setting, such as with a relative, with a friend of the ~~[child]~~ minor, with a ~~[legal]~~ guardian, with an adoptive parent, a foster home, or independent living.

Section 87. Section **80-3-502**, which is renumbered from Section 78A-6-318 is renumbered and amended to read:

~~[78A-6-318].~~ **80-3-502. Review of foster care removal -- Foster parent's standing.**

(1) With regard to a ~~[child]~~ minor in the custody of the ~~[Division of Child and Family Services]~~ division who is the subject of a petition alleging abuse, neglect, or dependency, and who has been placed in foster care with a foster family, the Legislature finds that:

(a) except with regard to the ~~[child's]~~ minor's natural parents, a foster family has a very limited but recognized interest in its familial relationship with the ~~[child]~~ minor; and

(b) ~~[children]~~ minors in the custody of the division are experiencing multiple changes in foster care placements with little or no documentation, and that numerous studies of child growth and development emphasize the importance of stability in foster care living arrangements.

HB0285S02 compared with HB0285S01

(2) For the reasons described in Subsection (1), the Legislature finds that, except with regard to the ~~[child's]~~ minor's natural parents, procedural due process protections must be provided to a foster family prior to removal of a foster ~~[child]~~ minor from the foster home.

(3) (a) A foster parent who has had a foster ~~[child]~~ minor in the foster parent's home for 12 months or longer may petition the juvenile court for a review and determination of the appropriateness of a decision by the ~~[Division of Child and Family Services]~~ division to remove the ~~[child]~~ minor from the foster home, unless the removal was for the purpose of:

(i) returning the ~~[child to the child's]~~ minor to the minor's natural parent or legal guardian;

(ii) immediately placing the ~~[child]~~ minor in an approved adoptive home;

(iii) placing the ~~[child]~~ minor with a relative~~[-as defined in Subsection 78A-6-307(1);]~~ who obtained custody or asserted an interest in the ~~[child]~~ minor within the preference period described in Subsection ~~[78A-6-307(18)(a)]~~ 80-3-302(9); or

(iv) placing an Indian child in accordance with ~~[preplacement]~~ placement preferences and other requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

(b) The foster parent may petition the juvenile court under this section without exhausting administrative remedies within the division.

(c) The juvenile court may order the division to place the ~~[child]~~ minor in a specified home, and shall base ~~[its]~~ the juvenile court's determination on the best interest of the ~~[child]~~ minor.

(4) The requirements of this section do not apply to the removal of a ~~[child]~~ minor based on a foster parent's request for that removal.

Section 88. Section **80-3-503** is enacted to read:

80-3-503. Minor's petition for removal from division custody -- Reentering division custody.

(1) (a) A minor who is 18 years old or older, but younger than 21 years old, may petition the juvenile court to express the minor's desire to have the minor be removed from the custody of the division 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 Chapter 4, Termination and Restoration of Parental Rights, the minor's petition described in Subsection

HB0285S02 compared with HB0285S01

(1)(a) shall contain a statement from the minor's parent or guardian agreeing that the minor should be removed from the custody of the division.

(c) The minor and the minor's parent or guardian shall sign the petition described in Subsection (1)(a).

(2) The juvenile court shall:

(a) review the petition described in Subsection (1)(a) within 14 days after the day on which the petition is filed; and

(b) remove the minor from the custody of the division if:

(i) the requirements under Subsections (1)(b) and (c) are met; and

(ii) the court finds, based on input from the division, the minor's attorney guardian ad litem, and the Office of the Attorney General, that the minor does not pose an imminent threat to self or others.

(3) (a) A minor removed from custody of the division under this section may, within 90 days after the day on which the minor is removed from custody of the division, petition the court to re-enter custody of the division.

(b) Upon receiving a petition described in Subsection (3)(a), the juvenile court shall order the division to take custody of the minor based on the findings the juvenile court entered when the juvenile court originally vested custody of the minor in the division.

Section 89. Section **80-4-101**, which is renumbered from Section 78A-6-501 is renumbered and amended to read:

CHAPTER 4. TERMINATION AND RESTORATION OF PARENTAL RIGHTS

Part 1. General Provisions

~~[78A-6-501].~~ **80-4-101. Title.**

This [part] chapter is known as [~~the "Termination of Parental Rights Act."~~]
"Termination and Restoration of Parental Rights."

Section 90. Section **80-4-102**, which is renumbered from Section 78A-6-502 is renumbered and amended to read:

~~[78A-6-502].~~ **80-4-102. Definitions.**

As used in this chapter:

(1) "Division" means the Division of Child and Family Services [~~within the Department of Human Services~~] created in Section 62A-4a-103.

HB0285S02 compared with HB0285S01

(2) "Failure of parental adjustment" means that a parent or parents are unable or unwilling within a reasonable time to substantially correct the circumstances, conduct, or conditions that led to placement of their child outside of their home, notwithstanding reasonable and appropriate efforts made by the ~~[Division of Child and Family Services]~~ division to return the child to ~~[that]~~ the home.

~~[(3) "Plan" means a written agreement between the parents of a child, who has been removed from the child's home by the juvenile court, and the Division of Child and Family Services or written conditions and obligations imposed upon the parents directly by the juvenile court, that have a primary objective of reuniting the family or, if the parents fail or refuse to comply with the terms and conditions of the case plan, freeing the child for adoption.]~~

(3) "Former parent" means an individual whose legal parental rights were terminated under this chapter.

(4) "Petition to restore parental rights" means a petition filed in accordance with this chapter to restore the rights of a parent with regard to a child.

(5) "Petition for termination of parental rights" means a petition filed in accordance with this chapter to terminate the parental rights of a parent.

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

Section 91. Section **80-4-103** is enacted to read:

80-4-103. Nature of the proceedings -- Rules of procedure -- Burden of proof.

(1) The proceedings under this chapter are civil in nature and are governed by the Utah Rules of Civil Procedure and the Utah Rules of Juvenile Procedure.

(2) The juvenile court shall:

(a) in all cases filed under this chapter require the petitioner to establish the facts by clear and convincing evidence;

(b) give full and careful consideration to all of the evidence presented with regard to the constitutional rights and claims of the parent; and

(c) if a parent is found, by reason of the parent's conduct or condition, to be unfit or incompetent based upon any of the grounds for termination described in this chapter, consider the welfare and best interest of the child of paramount importance in determining whether to terminate parental rights.

HB0285S02 compared with HB0285S01

Section 92. Section **80-4-104**, which is renumbered from Section 78A-6-503 is renumbered and amended to read:

~~[78A-6-503].~~ **80-4-104. Judicial process for termination -- Parent unfit or incompetent -- Best interest of child.**

(1) 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 child. For this reason, the termination of family ties by the state may only be done for compelling reasons.

(2) The juvenile court shall provide a fundamentally fair process to a parent if a party moves to terminate the parent's parental rights.

(3) If the party moving to terminate parental rights is a governmental entity, the juvenile court shall find that any actions or allegations made in opposition to the rights and desires of a parent regarding the parent's child are supported 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.

(4) (a) The fundamental liberty interest of a parent concerning the care, custody, and management of the parent's child is recognized, protected, and does not cease to exist simply because:

- (i) a parent may fail to be a model parent; or
- (ii) the parent's child is placed in the temporary custody of the state.

(b) The juvenile court should give serious consideration to the fundamental right of a parent to rear the parent's child, and concomitantly, of the right of the child to be reared by the child's natural parent.

(5) At all times, a parent retains a vital interest in preventing the irretrievable destruction of family life.

(6) ~~[Prior to]~~ Before an adjudication of unfitness, government action in relation to a parent and a parent's child may not exceed the least restrictive means or alternatives available to accomplish a compelling state interest.

(7) Until parental unfitness is established and the children suffer, or are substantially likely to suffer, serious detriment as a result, the child and the child's parent share a vital interest in preventing erroneous termination of their relationship and the juvenile court may not

HB0285S02 compared with HB0285S01

presume that a child and the child's parents are adversaries.

(8) It is in the best interest and welfare of a child to be raised under the care and supervision of the child's natural parents. A child's need for a normal family life in a permanent home, and for positive, nurturing family relationships is usually best met by the child's natural parents. Additionally, the integrity of the family unit and the right of parents to conceive and raise their children are constitutionally protected. For these reasons, the juvenile court should only transfer custody of a child from the child's natural parent for compelling reasons and when there is a jurisdictional basis to do so.

(9) 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 of this state and of the United States, and is a fundamental public policy of this state.

(10) (a) The state recognizes that:

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

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

(b) It is the public policy of this state that a parent retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of the parent's child.

(c) The interests of the state favor preservation and not severance of natural familial bonds in situations where a positive, nurturing parent-child relationship can exist, including extended family association and support.

(11) This ~~[part]~~ chapter provides a judicial process for voluntary and involuntary severance of the parent-child relationship, designed to safeguard the rights and interests of all parties concerned and promote their welfare and that of the state.

(12) (a) Wherever possible, family life should be strengthened and preserved, but if a parent is found, by reason of the parent's conduct or condition, to be unfit or incompetent based upon any of the grounds for termination described in this part, the juvenile court shall then consider the welfare and best interest of the child of paramount importance in determining whether termination of parental rights shall be ordered.

(b) In determining whether termination is in the best interest of the child, and in

HB0285S02 compared with HB0285S01

finding that termination of parental rights, from the child's point of view, is strictly necessary, the juvenile court shall consider, among other relevant factors, whether:

(i) sufficient efforts were dedicated to reunification in accordance with [~~Subsection 78A-6-507(3)(a)~~] Section 80-4-301; and

(ii) the efforts to place the child with kin who have, or are willing to come forward to care for the child, were given due weight.

Section 93. Section **80-4-105**, which is renumbered from Section 78A-6-513 is renumbered and amended to read:

~~[78A-6-513].~~ **80-4-105. Effect of decree.**

(1) An order for the termination of [~~the parent-child legal relationship~~] parental rights divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other, except the right of the child to inherit from the parent.

(2) An order or decree entered [~~pursuant to this part~~] under this chapter may not disentitle a child to any benefit due [~~him~~] to the child from any third person, including[, ~~but not limited to,~~] any Indian tribe, agency, state, or the United States.

(3) Except as provided in Sections [~~78A-6-1401 through 78A-6-1404~~] 80-4-401 and 80-4-402, after the termination of [~~a parent-child legal relationship~~] a parent's parental rights, the former parent:

(a) is [~~neither~~] not entitled to any notice of proceedings for the adoption of the child [~~nor has~~]; and

(b) does not have any right to object to the adoption or to participate in any other placement proceedings.

(4) An order permanently terminating the rights of a parent, guardian, or custodian does not expire with termination of the jurisdiction of the juvenile court.

Section 94. Section **80-4-106** is enacted to read:

80-4-106. Individuals entitled to be present at proceedings -- Legal representation -- Attorney general responsibilities.

(1) (a) The juvenile court shall admit any individual to a hearing unless the juvenile court makes a finding upon the record that the individual's presence at the hearing would:

(i) be detrimental to the best interest of a child who is a party to the proceeding;

(ii) impair the fact-finding process; or

HB0285S02 compared with HB0285S01

(iii) be otherwise contrary to the interests of justice.

(b) The juvenile court may exclude an individual from a hearing under Subsection (1)(a) on the juvenile court's own motion or by motion of a party to the proceeding.

(2) (a) The parties shall be advised of the parties' right to counsel, including the appointment of counsel for a parent or legal guardian facing any action initiated by a private party under this chapter or under Section 78B-6-112 for termination of parental rights.

(b) If a parent or guardian is the subject of a petition for the termination of parental rights, the juvenile court shall:

(i) appoint an indigent defense service provider for a parent or guardian determined to be an indigent individual in accordance with Title 78B, Chapter 22, Part 2, Appointment of Counsel; and

(ii) order indigent defense services for the parent or legal guardian who is determined to be an indigent individual in accordance with Title 78B, Chapter 22, Part 2, Appointment of Counsel.

(c) In any action under this chapter, a guardian ad litem, as defined in Section 78A-2-801, shall represent the child in accordance with Sections 78A-2-803 and 80-3-104.

(d) A guardian ad litem, as defined in Section 78A-2-801, shall represent the child in other actions initiated under this chapter when appointed by the juvenile court under Section 78A-2-803 or as otherwise provided by law.

(3) Subject to the attorney general's prosecutorial discretion in civil enforcement actions, the attorney general shall, in accordance with Section 62A-4a-113, enforce all provisions of this chapter and Title 62A, Chapter 4a, Child and Family Services, relating to the termination of parental rights.

Section 95. Section **80-4-107** is enacted to read:

80-4-107. Record of Proceedings -- Written reports and other materials -- Statements of a child.

(1) As used in this section, "record of a proceeding" means the same as that term is defined in Section 80-3-106.

(2) A record of a proceeding under this chapter:

(a) shall be taken in accordance with Section 80-3-106; and

(b) may be requested for release as described in Section 80-3-106.

HB0285S02 compared with HB0285S01

(3) (a) For purposes of determining proper disposition of a child in hearings upon a petition for termination of parental rights, written reports and other material relating to the minor's mental, physical, and social history and condition may be:

- (i) received in evidence; and
- (ii) considered by the court along with other evidence.

(b) The court may require that an individual who wrote a report or prepared the material under Subsection (3)(a) to appear as a witness if the individual is reasonably available.

(4) For the purpose of establishing abuse, neglect, or dependency under this chapter, the juvenile court may, in the juvenile court's discretion, consider evidence of statements made by a child under eight years old to an individual in a trust relationship.

Section 96. Section **80-4-108**, which is renumbered from Section 78A-6-515 is renumbered and amended to read:

[78A-6-515]. 80-4-108. Physical or mental health examination during proceedings.

~~[(1) When a mental health practitioner is to be appointed in a parental rights action to evaluate the mental health of a parent or a child, or to provide mental health services to a parent or a child, the court:]~~

~~[(a)]~~ (1) In a proceeding under this chapter, the juvenile court may appoint any mental health therapist, as defined in Section 58-60-102, [which] who the juvenile court finds to be qualified[;] to:

- (a) evaluate the mental health of, or provide mental health services to, the child; or
- (b) after notice and a hearing set for the specific purpose, evaluate the mental health of a parent, or provide mental health services to a parent, if the juvenile court finds from the evidence presented at the hearing that the parent's mental or emotional condition may be a factor in the parent's unfitness.

(2) The juvenile court:

~~[(b)]~~ (a) may not refuse to appoint a mental health therapist under Subsection (1) for the reason that the therapist's recommendations in another case [have not followed] did not follow the recommendations of the [Division of Child and Family Services] division or the Office of Guardian Ad Litem; and

~~[(c)]~~ (b) shall give strong consideration to the parent's or guardian's wishes regarding

HB0285S02 compared with HB0285S01

the selection of a mental health therapist.

(3) In a proceeding under this chapter, the juvenile court may appoint a physician, or a physician assistant, who the court finds to be qualified to:

(a) physically examine the child; or

(b) after notice and a hearing set for a specific purpose, physically examine the parent if the juvenile court finds from the evidence presented at the hearing that the parent's physical condition may be a factor in causing the parent's unfitness.

(4) The division shall, with regard to a child in the division's custody:

(a) take reasonable measures to notify a parent of any non-emergency health treatment or care scheduled for a child;

(b) include the parent as fully as possible in making health care decisions for the child;

(c) defer to the parent'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 decision; and

(d) notify the parent of the child within five business days after the day on which the child receives emergency health care or treatment.

(5) An examination conducted in accordance with Subsection (1) or (2) is not a privileged communication under Utah Rules of Evidence, Rule 506(d)(3), and is exempt from the general rule of privilege.

~~[(2)]~~ (6) This section applies to all juvenile court proceedings under this chapter involving:

(a) parents and children; or

~~[(b) the Division of Child and Family Services.]~~

(b) the division.

Section 97. Section **80-4-109** is enacted to read:

80-4-109. Consideration of cannabis during proceedings.

(1) As used in this section:

(a) "Cannabis" means the same as that term is defined in Section 26-61a-102.

(b) "Cannabis product" means the same as that term is defined in Section 26-61a-102.

(c) (i) "Chronic" means repeated or patterned.

(ii) "Chronic" does not mean an isolated incident.

HB0285S02 compared with HB0285S01

(d) "Directions of use" means the same as that term is defined in Section 26-61a-102.

(e) "Dosing guidelines" means the same as that term is defined in Section 26-61a-102.

(f) "Medical cannabis" means the same as that term is defined in Section 26-61a-102.

(g) "Medical cannabis cardholder" means the same as that term is defined in Section 26-61a-102.

(h) "Qualified medical provider" means the same as that term is defined in Section 26-61a-102.

(2) In a proceeding under this chapter in which the juvenile court makes a finding, determination, or otherwise considers an individual's possession or use of medical cannabis, a cannabis product, or a medical cannabis device, the juvenile court may not consider or treat the individual's possession or use any differently than the lawful possession or use of any prescribed controlled substance if:

(a) the individual's possession or use complies with Title 4, Chapter 41a, Cannabis Production Establishments;

(b) the individual's possession or use complies with Subsection 58-37-3.7(2) or (3); or

(c) (i) the individual's possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act; and

(ii) the individual reasonably complies with the directions of use and dosing guidelines determined by the individual's qualified medical provider or through a consultation described in Subsection 26-61a-502(4) or (5).

(3) In a proceeding under this chapter, a parent's or guardian's use of cannabis or a cannabis product is not abuse or neglect of a child unless there is evidence showing that:

(a) the child is harmed because of the child's inhalation or ingestion of cannabis, or because of cannabis being introduced to the child's body in another manner; or

(b) the child is at an unreasonable risk of harm because of chronic inhalation or ingestion of cannabis or chronic introduction of cannabis to the child's body in another manner.

(4) Unless there is harm or an unreasonable risk of harm to the child as described in Subsection (3), a parent's or guardian's use of medical cannabis or a cannabis product is not contrary to the best interests of a child if:

(a) for a medical cannabis cardholder after January 1, 2021, the parent's or guardian's possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act, and there

HB0285S02 compared with HB0285S01

is no evidence that the parent's or guardian's use of medical cannabis unreasonably deviates from the directions of use and dosing guidelines determined by the parent's or guardian's qualified medical provider or through a consultation described in Subsection 26-61a-502(4) or (5); or

(b) before January 1, 2021, the parent's or guardian's possession or use complies with Subsection 58-37-3.7(2) or (3).

(5) Subsection (3) does not prohibit a finding of abuse or neglect of a child and Subsection (3) does not prohibit a finding that a parent's or guardian's use of medical cannabis or a cannabis product is contrary to the best interests of a child, if there is evidence showing a nexus between the parent's or guardian's use of cannabis or a cannabis product and behavior that would separately constitute abuse or neglect of the child.

Section 98. Section **80-4-201**, which is renumbered from Section 78A-6-504 is renumbered and amended to read:

Part 2. Petition for Termination of Parental Rights

~~[78A-6-504].~~ **80-4-201.** Petition -- Who may file -- Dismissal.

(1) Any interested party, including a foster parent, may file a petition for termination of ~~[the parent-child relationship with regard to a child]~~ parental rights.

(2) The attorney general shall file a petition for termination of parental rights under this ~~[part]~~ chapter on behalf of the division.

(3) The juvenile court may dismiss a petition for termination of parental rights at any stage of the proceedings.

Section 99. Section **80-4-202**, which is renumbered from Section 78A-6-505 is renumbered and amended to read:

~~[78A-6-505].~~ **80-4-202.** Contents of petition.

(1) ~~[The]~~ A petition for termination of parental rights shall include, to the best information or belief of the petitioner:

~~[(a) the name and place of residence of the petitioner;]~~

~~[(b) the name, sex, date and place of birth, and residence of the child;]~~

~~[(c) the relationship of the petitioner to the child;]~~

~~[(d) the names, addresses, and dates of birth of the parents, if known;]~~

~~[(e) the name and address of the person having legal custody or guardianship, or acting~~

HB0285S02 compared with HB0285S01

~~in loco parentis to the child, or the organization or agency having legal custody or providing care for the child;~~

(a) the information required by Utah Rules of Juvenile Procedure, Rule 17;

~~[(f)]~~ (b) the grounds on which termination of parental rights is sought, in accordance with Section ~~[78A-6-507]~~ 80-4-301; and

~~[(g)]~~ (c) the names and addresses of the ~~[persons]~~ individuals or the authorized agency to whom legal custody or guardianship of the child might be transferred.

(2) ~~[A]~~ The petitioner shall attach a copy of ~~[any]~~ a relinquishment or consent, if any, previously executed by the parent or parents ~~[shall be attached]~~ to the petition described in Subsection (1).

Section 100. Section **80-4-203**, which is renumbered from Section 78A-6-316 is renumbered and amended to read:

~~[78A-6-316].~~ **80-4-203. Mandatory petition for termination of parental rights.**

(1) For purposes of this section, "abandoned infant" means a child who is 12 months ~~[of age or younger]~~ old or younger and whose parent or parents:

(a) although having legal custody of the child, fail to maintain physical custody of the child without making arrangements for the care of the child;

(b) have failed to:

(i) maintain physical custody; and

(ii) exhibit the normal interest of a natural parent without just cause; or

(c) are unwilling to have physical custody of the child.

(2) Except as provided in Subsection (3), notwithstanding any other provision of this chapter or of Title 62A, Chapter 4a, Child and Family Services, the division shall file a petition for termination of parental rights with regard to:

(a) an abandoned infant; or

(b) the child of a parent, whenever a court has determined that the parent has:

(i) committed murder or child abuse homicide of another child of that parent;

(ii) committed manslaughter of another child of that parent;

(iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse homicide, or manslaughter against another child of that parent; or

HB0285S02 compared with HB0285S01

(iv) committed a felony assault or abuse that results in serious physical injury to:

(A) another child of that parent; or

(B) the other parent of the child.

(3) The division is not required to file a petition for termination of parental rights under Subsection (2) if:

(a) the child is being cared for by a relative;

(b) the division has:

(i) documented in the child's child and family plan a compelling reason for determining that filing a petition for termination of parental rights is not in the child's best interest; and

(ii) made that child and family plan available to the juvenile court for ~~[its]~~ the juvenile court's review; or

(c) (i) the juvenile court has previously determined, in accordance with the provisions and limitations of Sections 62A-4a-201, 62A-4a-203, ~~[78A-6-306, and 78A-6-312]~~ 80-3-301, and 80-3-406, that reasonable efforts to reunify the child with the child's parent or parents were required; and

(ii) the division has not provided, within the time period specified in the child and family plan, services that had been determined to be necessary for the safe return of the child.

Section 101. Section **80-4-204**, which is renumbered from Section 78A-6-506 is renumbered and amended to read:

~~[78A-6-506].~~ **80-4-204. Notice of petition.**

(1) ~~(a)~~ After a petition for termination of parental rights ~~[has been]~~ is filed, notice shall:

~~[(a)]~~ (i) be provided to the parents, the guardian, the ~~[person]~~ individual or agency having legal custody of the child, and any ~~[person]~~ individual acting in loco parentis to the child; and

~~[(b)]~~ (ii) indicate the:

~~[(i)]~~ (A) nature of the petition;

~~[(ii)]~~ (B) time and place of the hearing;

~~[(iii)]~~ (C) right to counsel; and

~~[(iv)]~~ (D) right to the appointment of counsel for a party whom the juvenile court determines is indigent and at risk of losing the party's parental rights.

(b) The notice described in Subsection (1)(a), or a separate notice subsequently issued,

HB0285S02 compared with HB0285S01

shall contain a statement to the effect that the rights of the parent or parents are proposed to be permanently terminated in the proceedings.

(2) ~~[A hearing shall be held]~~ The juvenile court shall hold a hearing specifically on the question of termination of parental rights no sooner than 10 days after [service of summons is complete. A verbatim record of the proceedings shall be taken and the parties shall be advised of their right to counsel, including the appointment of counsel for an indigent parent or legal guardian facing any action initiated by a private party under this part or termination of parental rights under Section 78B-6-112. The summons shall contain a statement to the effect that the rights of the parent or parents are proposed to be permanently terminated in the proceedings. That statement may be contained in the summons originally issued in the proceeding or in a separate summons subsequently issued.] the day on which the notice described in Subsection (1) is served.

~~[(3) The proceedings are civil in nature and are governed by the Utah Rules of Civil Procedure. The court shall in all cases require the petitioner to establish the facts by clear and convincing evidence, and shall give full and careful consideration to all of the evidence presented with regard to the constitutional rights and claims of the parent and, if a parent is found, by reason of the parent's conduct or condition, to be unfit or incompetent based upon any of the grounds for termination described in this part, the court shall then consider the welfare and best interest of the child of paramount importance in determining whether termination of parental rights shall be ordered.]~~

Section 102. Section **80-4-205** is enacted to read:

80-4-205. Expedited hearing for temporary custody.

(1) At any time after a petition for termination of parental rights is filed, the juvenile court may make an order in accordance with this chapter:

(a) providing for temporary custody of the child who is the subject of the petition; or

(b) that the division provide protective services to the child who is the subject of the petition if the juvenile court determines that:

(i) the child is at risk of being removed from the child's home due to abuse and neglect;
and

(ii) the provision of protective services may make the removal described in Subsection (1)(b)(i) unnecessary.

HB0285S02 compared with HB0285S01

(2) (a) The juvenile court shall hold an expedited hearing to determine whether a child should be placed in temporary custody if:

(i) a person files a petition for termination of parental rights;

(ii) a party to the proceeding files a motion for expedited placement in temporary custody; and

(iii) notice of the hearing described in this Subsection (1)(a) is served consistent with the requirements for notice of a shelter hearing under Section 80-3-301.

(b) The hearing described in Subsection (2)(a):

(i) shall be held within 72 hours, excluding weekends and holidays, after the time in which the motion described in Subsection (2)(a)(ii) is filed; and

(ii) shall be considered a shelter hearing under Section 80-3-301 and Utah Rules of Juvenile Procedure, Rule 13.

(3) (a) The hearing and notice described in Subsection (1) are subject to:

(i) Section 80-3-301;

(ii) Section 80-3-302; and

(iii) the Utah Rules of Juvenile Procedure.

(b) After the hearing described in Subsection (1), the juvenile court may order a child placed in the temporary custody of the division.

Section 103. Section **80-4-206** is enacted to read:

80-4-206. Mediation.

If a petition for termination of parental rights is filed, or if the matter is referred to the juvenile court under Subsection 78A-6-104(1)(~~fc~~**b**), the juvenile court may require the parties to participate in mediation in accordance with Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act.

Section 104. Section **80-4-207** is enacted to read:

80-4-207. Modification of petition -- Continuance.

(1) When it appears that evidence presented in a proceeding under this chapter points to material facts not alleged in the petition for termination of parental rights, the juvenile court may consider the additional or different matters raised by the evidence if the parties consent.

(2) The juvenile court, by a motion of any interested party or on the juvenile court's own motion, shall direct that the petition for termination of parental rights be amended to

HB0285S02 compared with HB0285S01

conform to the evidence described in Subsection (1).

(3) If the amendment described in Subsection (2) results in a substantial departure from the facts originally alleged in the petition for the termination of parental rights, the juvenile court shall grant a continuance as justice may require in accordance with Utah Rules of Juvenile Procedure, Rule 54.

Section 105. Section **80-4-301**, which is renumbered from Section 78A-6-507 is renumbered and amended to read:

Part 3. Termination and Posttermination Parental Rights

[78A-6-507]. 80-4-301. Grounds for termination of parental rights -- Findings regarding reasonable efforts.

(1) Subject to the protections and requirements of Section ~~[78A-6-503]~~ 80-4-104, and if the juvenile court finds termination of ~~[a-parent's]~~ parental rights, from the child's point of view, is strictly necessary, the juvenile court may terminate all parental rights with respect to the parent if the juvenile court finds any one of the following:

- (a) that the parent has abandoned the child;
- (b) that the parent has neglected or abused the child;
- (c) that the parent is unfit or incompetent;
- (d) (i) that the child is being cared for in an out-of-home placement under the supervision of the juvenile court or the division;
- (ii) that the parent has substantially neglected, ~~[wilfully]~~ willfully refused, or has been unable or unwilling to remedy the circumstances that cause the child to be in an out-of-home placement; and
- (iii) that there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care in the near future;
- (e) failure of parental adjustment, as defined in this chapter;
- (f) that only token efforts have been made by the parent:
 - (i) to support or communicate with the child;
 - (ii) to prevent neglect of the child;
 - (iii) to eliminate the risk of serious harm to the child; or
 - (iv) to avoid being an unfit parent;
- (g) (i) that the parent has voluntarily relinquished the parent's parental rights to the

HB0285S02 compared with HB0285S01

child; and

(ii) that termination is in the child's best interest;

(h) that, after a period of trial during which the child was returned to live in the child's own home, the parent substantially and continuously or repeatedly refused or failed to give the child proper parental care and protection; or

(i) the terms and conditions of safe relinquishment of a newborn child have been complied with, [~~pursuant to~~] in accordance with Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child.

(2) The juvenile court may not terminate the parental rights of a parent because the parent has failed to complete the requirements of a child and family plan.

(3) (a) Except as provided in Subsection (3)(b), in any case in which the juvenile court has directed the division to provide reunification services to a parent, the juvenile court must find that the division made reasonable efforts to provide those services before the juvenile court may terminate the parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).

(b) Notwithstanding Subsection (3)(a), the juvenile court is not required to make the finding under Subsection (3)(a) before terminating a parent's rights:

(i) under Subsection (1)(b), if the juvenile court finds that the abuse or neglect occurred subsequent to adjudication; or

(ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not required under federal law, and federal law is not inconsistent with Utah law.

Section 106. Section **80-4-302**, which is renumbered from Section 78A-6-508 is renumbered and amended to read:

[~~78A-6-508~~]. 80-4-302. Evidence of grounds for termination.

(1) In determining whether a parent or parents have abandoned a child, it is prima facie evidence of abandonment that the parent or parents:

(a) although having legal custody of the child, have surrendered physical custody of the child, and for a period of six months following the surrender have not manifested to the child or to the person having the physical custody of the child a firm intention to resume physical custody or to make arrangements for the care of the child;

(b) have failed to communicate with the child by mail, telephone, or otherwise for six months;

HB0285S02 compared with HB0285S01

(c) failed to have shown the normal interest of a natural parent, without just cause; or

(d) have abandoned an infant, as described in [~~Subsection 78A-6-316(1)~~] Section 80-4-203.

(2) In determining whether a parent or parents are unfit or have neglected a child the juvenile court shall consider[, ~~but is not limited to, the following circumstances, conduct, or conditions~~]:

(a) emotional illness, mental illness, or mental deficiency of the parent that renders the parent unable to care for the immediate and continuing physical or emotional needs of the child for extended periods of time;

(b) conduct toward a child of a physically, emotionally, or sexually cruel or abusive nature;

(c) habitual or excessive use of intoxicating liquors, controlled substances, or dangerous drugs that render the parent unable to care for the child;

(d) repeated or continuous failure to provide the child with adequate food, clothing, shelter, education, or other care necessary for the child's physical, mental, and emotional health and development by a parent or parents who are capable of providing that care;

(e) whether the parent is incarcerated as a result of conviction of a felony, and the sentence is of such length that the child will be deprived of a normal home for more than one year;

(f) a history of violent behavior; [~~or~~]

(g) whether the parent has intentionally exposed the child to pornography or material harmful to a minor, as defined in Section 76-10-1201[-]; or

(h) any other circumstance, conduct, or condition that the court considers relevant in the determination of whether a parent or parents are unfit or have neglected the child.

(3) Notwithstanding Subsection (2)(c), the juvenile court may not discriminate against a parent because of or otherwise consider the parent's lawful possession or consumption of cannabis in a medicinal dosage form, a cannabis product, as those terms are defined in Section 26-61a-102 or a medical cannabis device, in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act.

(4) A parent who, legitimately practicing the parent's religious beliefs, does not provide specified medical treatment for a child is not, for that reason alone, a negligent or unfit parent.

HB0285S02 compared with HB0285S01

(5) (a) Notwithstanding Subsection (2), a parent may not be considered neglectful or unfit because of a health care decision made for a child by the child's parent unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(b) Nothing in Subsection (5)(a) may prohibit a parent from exercising the right to obtain a second health care opinion.

(6) If a child has been placed in the custody of the division and the parent or parents fail to comply substantially with the terms and conditions of a plan within six months after the date on which the child was placed or the plan was commenced, whichever occurs later, that failure to comply is evidence of failure of parental adjustment.

(7) The following circumstances [~~constitute~~] are prima facie evidence of unfitness:

(a) sexual abuse, sexual exploitation, injury, or death of a sibling of the child, or of any child, due to known or substantiated abuse or neglect by the parent or parents;

(b) conviction of a crime, if the facts surrounding the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care to the extent necessary for the child's physical, mental, or emotional health and development;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child;

(d) the parent has committed, aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter of a child or child abuse homicide; or

(e) the parent intentionally, knowingly, or recklessly causes the death of another parent of the child, without legal justification.

Section 107. Section **80-4-303**, which is renumbered from Section 78A-6-509 is renumbered and amended to read:

~~[78A-6-509].~~ **80-4-303. Specific considerations when child is not in physical custody of parent.**

(1) If a child is not in the physical custody of the child's parent or parents, the juvenile court, in determining whether parental rights should be terminated, shall consider~~[, but is not limited to, the following]~~:

(a) the physical, mental, or emotional condition and needs of the child and ~~[his]~~ the child's desires regarding the termination, if the juvenile court determines ~~[he]~~ the child is of

HB0285S02 compared with HB0285S01

sufficient capacity to express ~~[his]~~ the child's desires; ~~[and]~~

(b) the effort the child's parent or parents have made to adjust ~~[their]~~ the parent or parents circumstances, conduct, or conditions to make it in the child's best interest to return ~~[him to his]~~ the child to the child's home after a reasonable length of time, including ~~[but not limited to]~~:

(i) payment of a reasonable portion of substitute physical care and maintenance, if financially able;

(ii) maintenance of regular parent-time or other contact with the child that was designed and carried out in a plan to reunite the child with the parent or parents; and

(iii) maintenance of regular contact and communication with the custodian of the child~~[-]~~; and

(c) any other factor that the juvenile court considers relevant in the determination of whether to terminate parental rights.

(2) For purposes of this section, the juvenile court shall disregard incidental conduct, contributions, contacts, and communications.

Section 108. Section **80-4-304**, which is renumbered from Section 78A-6-510 is renumbered and amended to read:

~~[78A-6-510].~~ **80-4-304.** Specific considerations when child is placed in foster home.

If a child is in the custody of the division and has been placed and resides in a foster home and the division institutes proceedings under this ~~[part]~~ chapter regarding the child, with an ultimate goal of having the child's foster parent or parents adopt ~~[him]~~ the child, the juvenile court shall consider:

(1) whether the child has become integrated into the foster family to the extent that ~~[his]~~ the child's familial identity is with ~~[that family, and]~~ the foster family;

(2) whether the foster family is able and willing permanently to treat the child as a member of the family~~[-The court shall also consider, but is not limited to, the following:]~~;

~~[(1)]~~ (3) the love, affection, and other emotional ties existing between the child and the parents, and the child's ties with the foster family;

~~[(2)]~~ (4) the capacity and disposition of the child's parents from whom the child was removed as compared with that of the foster family to give the child love, affection, and

HB0285S02 compared with HB0285S01

guidance and to continue the education of the child;

~~[(3)]~~ (5) the length of time the child has lived in a stable, satisfactory foster home and the desirability of ~~[his]~~ the child continuing to live in that environment;

~~[(4)]~~ (6) the permanence as a family unit of the foster family; and

~~[(5)]~~ (7) any other factor ~~[considered by the court to be]~~ that the juvenile court considers relevant to a particular placement of a child.

Section 109. Section **80-4-305**, which is renumbered from Section 78A-6-511 is renumbered and amended to read:

~~[78A-6-511].~~ **80-4-305.** **Court disposition of child upon termination of parental rights -- Posttermination reunification.**

(1) As used in this section, "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, sibling, or stepsibling of a child; and

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

(b) in the case of a child who is an Indian child, an extended family member as defined in 25 U.S.C. Sec. 1903.

(2) Upon entry of an order under this ~~[part]~~ chapter, the juvenile court may:

(a) place the child in the legal custody and guardianship of a licensed child placement agency or the division for adoption; or

(b) make any other disposition of the child authorized under Section ~~[78A-6-117]~~ 80-3-405.

(3) Subject to the requirements of Subsections (4) and (5), all adoptable children placed in the custody of the division shall be placed for adoption.

(4) If the parental rights of all parents of an adoptable child placed in the custody of the division have been terminated and a suitable adoptive placement is not already available, the juvenile court:

(a) shall determine whether there is a relative who desires to adopt the child;

(b) may order the division to conduct a reasonable search to determine whether there

HB0285S02 compared with HB0285S01

are relatives who are willing to adopt the child; and

(c) shall, if a relative desires to adopt the child:

(i) make a specific finding regarding the fitness of the relative to adopt the child; and

(ii) place the child for adoption with that relative unless ~~it~~ the juvenile court finds that adoption by the relative is not in the best interest of the child.

(5) This section does not guarantee that a relative will be permitted to adopt the child.

(6) A parent whose rights were terminated under this ~~part~~ chapter, or a relative of the child, as defined by Section ~~[78A-6-307]~~ 80-3-102, may petition for guardianship of the child if:

(a) (i) following an adoptive placement, the child's adoptive parent returns the child to the custody of the division; or

(ii) the child is in the custody of the division for one year following the day on which the parent's rights were terminated, and no permanent placement has been found or is likely to be found; and

(b) reunification with the child's parent, or guardianship by the child's relative, is in the best interest of the child.

Section 110. Section **80-4-306**, which is renumbered from Section 78A-6-512 is renumbered and amended to read:

~~[78A-6-512].~~ **80-4-306. Review following termination.**

(1) At the conclusion of the hearing in which the juvenile court orders termination of ~~[the parent-child relationship, the]~~ parental rights, the juvenile court shall order that a review hearing be held within 90 days after the day on which ~~[the parent-child relationship is]~~ parental rights are terminated~~;~~ if the child has not been permanently placed.

(2) At ~~that~~ the review hearing~~;~~ described in Subsection (1):

(a) the agency or individual vested with custody of the child shall report to the juvenile court regarding the plan for permanent placement of the child~~[-The]; and~~

(b) the guardian ad litem shall make recommendations to the juvenile court, based on an independent investigation, for disposition meeting the best interests of the child.

(3) The juvenile court may order the agency or individual vested with custody of the child to report, at appropriate intervals, on the status of the child until the plan for permanent placement of the child ~~[has been]~~ is accomplished.

HB0285S02 compared with HB0285S01

Section 111. Section **80-4-307**, which is renumbered from Section 78A-6-514 is renumbered and amended to read:

~~[78A-6-514].~~ **80-4-307. Voluntary relinquishment -- Irrevocable.**

~~[(1) Voluntary relinquishment or consent for termination of parental rights shall be signed or confirmed under oath either:]~~

(1) The individual consenting to termination of parental rights or voluntarily relinquishing parental rights shall sign or confirm the consent or relinquishment under oath:

(a) before a judge of any court that has jurisdiction over proceedings for termination of parental rights in this state or any other state, or a public officer appointed by that court for the purpose of taking consents or relinquishments; or

(b) except as provided in Subsection (2), any person authorized to take consents or relinquishments under Subsections 78B-6-124(1) and (2).

(2) Only the juvenile court is authorized to take consents or relinquishments from a parent who has any child who is in the custody of a state agency or who has a child who is otherwise under the jurisdiction of the juvenile court.

(3) The court, appointed officer, or other authorized person shall certify to the best of that person's information and belief that the ~~[person]~~ individual executing the consent or relinquishment has read and understands the consent or relinquishment and has signed ~~[it]~~ the consent or relinquishment freely and voluntarily.

(4) A voluntary relinquishment or consent for termination of parental rights is effective when ~~[it]~~ the voluntary relinquishment or consent is signed and may not be revoked.

(5) ~~(a)~~ The requirements and processes described in ~~[Sections 78A-6-503 through 78A-6-510]~~ Section 80-4-104, Sections 80-4-301 through 80-4-304, and Part 2, Petition for Termination of Parental Rights, do not apply to a voluntary relinquishment or consent for termination of parental rights.

~~(b)~~ ~~[The]~~ When determining voluntary relinquishment or consent for termination of parental rights, the juvenile court need only find that the relinquishment or termination is in the child's best interest.

(6) ~~(a)~~ There is a presumption that voluntary relinquishment or consent for termination of parental rights is not in the child's best interest where it appears to the juvenile court that the primary purpose for relinquishment or consent for termination is to avoid a financial support

HB0285S02 compared with HB0285S01

obligation.

(b) The presumption described in Subsection (6)(a) may be rebutted~~[, however,]~~ if the juvenile court finds the relinquishment or consent to termination of parental rights will facilitate the establishment of stability and permanency for the child.

(7) Upon granting a voluntary relinquishment the juvenile court may make orders relating to the child's care and welfare that the juvenile court considers to be in the child's best interest.

Section 112. Section **80-4-401**, which is renumbered from Section 78A-6-1403 is renumbered and amended to read:

Part 4. Restoration of Parental Rights

~~[78A-6-1403].~~ **80-4-401. Petition to restore parental rights -- Division duties.**

(1) A child, who is 12 years ~~[of age]~~ old or older, or an authorized representative acting on behalf of a child of any age, may file a petition to restore parental rights if:

(a) 24 months have passed since the day on which the juvenile court ordered termination of ~~[the parent-child legal relationship]~~ the former parent's parental rights; and

(b) the child:

(i) has not been adopted and is not in an adoptive placement, or is unlikely to be adopted before the child is 18 years ~~[of age]~~ old; or

(ii) was previously adopted following a termination of ~~[a parent-child legal relationship]~~ parental rights, but the adoption failed and the child was returned to the custody of the division.

(2) The petition ~~[described in Subsection (1)]~~ to restore parental rights shall be:

(a) filed in the juvenile court that previously terminated ~~[the parent-child relationship]~~ parental rights; and

(b) served on the division.

(3) The division shall notify and inform a child who is 12 years ~~[of age or]~~ old or older and who qualifies for restoration of parental rights under Subsection (1) that the child is eligible to file a petition ~~[for restoration]~~ to restore parental rights under this part.

(4) Upon the receipt of a petition to restore parental rights, filed by a child or an authorized representative acting on behalf of a child, the division shall:

HB0285S02 compared with HB0285S01

(a) make a diligent effort to locate the former parent whose rights may be restored under this part; and

(b) if the former parent is found, as described in Subsection (4)(a), notify the former parent of:

(i) the legal effects of restoration; and

(ii) the time and date of the hearing on the petition to restore parental rights.

(5) The juvenile court shall set a hearing on the petition to restore parental rights at least 30 days, but no more than 60 days, after the day on which the petition to restore parental rights is filed with the juvenile court.

(6) Before the hearing described in Subsection (5), the division may submit a confidential report to the juvenile court that includes the following information:

(a) material changes in circumstances since the termination of parental rights;

(b) a summary of the reasons why parental rights were terminated;

(c) the date on which parental rights were terminated;

(d) the willingness of the former parent to resume contact with the child and have parental rights restored;

(e) the ability of the former parent to be involved in the life of the child and accept physical custody of, and responsibility for, the child; and

(f) any other information the division reasonably considers appropriate and determinative.

(7) (a) A former parent who remedies the circumstances that resulted in the termination of the former parent's parental rights and who is capable of exercising proper and effective parental care, shall notify the division that if the circumstances described in Subsection (1) are established, the former parent desires and requests to have the former parent's parental rights restored.

(b) The former parent's request to the division shall be fully and fairly considered by the division for appropriate submittal to the court.

Section 113. Section **80-4-402**, which is renumbered from Section 78A-6-1404 is renumbered and amended to read:

~~[78A-6-1404].~~ **80-4-402. Hearing on petition to restore parental rights.**

(1) The juvenile court may restore ~~[the parent-child legal relationship]~~ a parent's

HB0285S02 compared with HB0285S01

parental rights if:

- (a) the child meets the requirements of Subsection [~~78A-6-1403~~] 80-4-401(1);
- (b) considering the age and maturity of the child, the child consents to the restoration;
- (c) the former parent consents to the restoration; and
- (d) the juvenile court finds by clear and convincing evidence that restoration is in the

best interest of the child.

(2) In determining whether reunification under this section is appropriate and in the best interest of the child, the juvenile court shall consider:

- (a) whether the former parent has been sufficiently rehabilitated from the behavior that resulted in the termination of [~~the parent-child relationship~~] parental rights;
- (b) extended family support for the former parent; and
- (c) other material changes of circumstances, if any, that may have occurred that warrant the granting of the motion.

(3) At the hearing on a petition [~~described in Section 78A-6-1403~~] to restore parental rights, if the former parent consents and if the juvenile court finds by clear and convincing evidence that it is in the best interest of the child, the juvenile court may:

- (a) allow contact between the former parent and the child, and describe the conditions under which contact may take place;
- (b) order that the child be placed with the former parent, in a temporary custody and guardianship relationship, to be reevaluated after the child has been placed with the former parent for six months; or
- (c) restore the parental rights of the parent.

(4) If the juvenile court orders the child to be placed in the physical custody of the former parent under Subsection (3), the juvenile court shall specify in the order:

- (a) whether that custody is subject to:
 - (i) continued evaluation by the court; or
 - (ii) the supervision of the division; and
- (b) the terms and conditions of reunification.

Section 114. Section **80-5-101** is enacted to read:

CHAPTER 5. JUVENILE JUSTICE SERVICES

Part 1. Division of Juvenile Justice Services

HB0285S02 compared with HB0285S01

80-5-101. Title.

This chapter is known as "Juvenile Justice Services."

Section 115. Section **80-5-102** is enacted to read:

80-5-102. Definitions.

As used in this chapter:

(1) "Account" means the Juvenile Justice Reinvestment Restricted Account created in Section 80-5-302.

(2) (a) "Adult" means an individual who is 18 years old or older.

(b) "Adult" does not include a juvenile offender.

(3) "Aftercare services" means the same as the term "aftercare" is defined in 45 C.F.R. 1351.1.

(4) "Authority" means the Youth Parole Authority created in Section 80-5-701.

(5) "Control" means the authority to detain, restrict, and supervise a juvenile offender in a manner consistent with public safety and the well-being of the juvenile offender and division employees.

(6) "Director" means the director of the Division of Juvenile Justice Services.

(7) "Discharge" means the same as that term is defined in Section 80-6-102.

(8) "Division" means the Division of Juvenile Justice Services created in Section 80-5-103.

(9) "Homeless youth" means a child, other than an emancipated minor:

(a) who is a runaway; or

(b) who is:

(i) not accompanied by the child's parent or guardian; and

(ii) without care, as defined in Section 80-5-602.

(10) "Observation and assessment program" means a nonresidential service program operated or purchased by the division that is responsible only for diagnostic assessment of minors, including for substance use disorder, mental health, psychological, and sexual behavior risk assessments.

(11) "Performance based contracting" means a system of contracting with service providers for the provision of residential or nonresidential services that:

(a) provides incentives for the implementation of evidence-based juvenile justice

HB0285S02 compared with HB0285S01

programs or programs rated as effective for reducing recidivism by a standardized tool in accordance with Section 63M-7-208; and

(b) provides a premium rate allocation for a minor who receives the evidence-based dosage of treatment and successfully completes the program within three months.

(12) "Rescission" means the same as that term is defined in Section 80-6-102.

(13) "Restitution" means the same as that term is defined in Section 80-6-102.

(14) "Revocation" means the same as that term is defined in Section 80-6-102.

(15) "Temporary custody" means the same as that term is defined in Section 80-6-102.

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

(a) provides temporary shelter to homeless youth; and

(b) is licensed by the Office of Licensing, created under Section 62A-1-105, as a residential support program.

(17) "Termination" means the same as that term is defined in Section 80-6-102.

(18) "Victim" means the same as that term is defined in Section 80-6-102.

(19) "Work program" means a nonresidential public or private service work project established and administered by the division for juvenile offenders for the purpose of rehabilitation, education, and restitution to victims.

(20) (a) "Youth services" means services provided in an effort to resolve family conflict:

(i) for families in crisis when a minor is ungovernable or a runaway; or

(ii) involving a minor and the minor's parent or guardian.

(b) "Youth services" include efforts to:

(i) resolve family conflict;

(ii) maintain or reunite minors with the minors' families; and

(iii) divert minors from entering or escalating in the juvenile justice system.

(c) "Youth services" may provide:

(i) crisis intervention;

(ii) short-term shelter;

(iii) time-out placement; and

(iv) family counseling.

(21) "Youth services center" means a center established by, or under contract with, the

HB0285S02 compared with HB0285S01

division to provide youth services.

Section 116. Section **80-5-103**, which is renumbered from Section 62A-7-102 is renumbered and amended to read:

~~[62A-7-102].~~ **80-5-103. Creation of division -- Jurisdiction.**

(1) There is created the Division of Juvenile Justice Services within the department~~].~~

(2) The division shall be under the administration and supervision of the executive director of the department.

~~[(2)]~~ (3) The division has jurisdiction over all [youth committed to the division under Section 78A-6-117] minors committed to the division under Sections 80-6-703 and 80-6-705.

Section 117. Section **80-5-104**, which is renumbered from Section 62A-7-103 is renumbered and amended to read:

~~[62A-7-103].~~ **80-5-104. Division director -- Qualifications -- Responsibility.**

~~[(1) The director of the division shall be appointed by the executive director.]~~

(1) The executive director of the department shall appoint the director of the division.

(2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in ~~[youth corrections]~~ juvenile justice.

(3) The director is the administrative head of the division.

Section 118. Section **80-5-201**, which is renumbered from Section 62A-7-104 is renumbered and amended to read:

Part 2. Division Responsibilities

~~[62A-7-104].~~ **80-5-201. Division responsibilities.**

(1) The division is responsible for all ~~[juvenile offenders]~~ minors committed to the division by juvenile courts ~~[for secure confinement or supervision and treatment in the community in accordance with Section 78A-6-117]~~ under Sections 80-6-703 and 80-6-705.

(2) The division shall:

(a) establish and administer a continuum of community, secure, and nonsecure programs for all ~~[juvenile offenders]~~ minors committed to the division;

(b) establish and maintain all detention and secure care facilities and set minimum standards for ~~[those]~~ all detention and secure care facilities;

(c) establish and operate prevention and early intervention youth services programs for

HB0285S02 compared with HB0285S01

nonadjudicated [~~youth~~] minors placed with the division; [~~and~~]

(d) establish observation and assessment programs necessary to serve [~~juvenile offenders~~] minors in a nonresidential setting under Subsection [~~78A-6-117(2)(c);~~] 80-6-706(1);

~~[(3) The division shall]~~

(e) place [~~juvenile offenders~~] minors committed to [~~it~~] the division under Section 80-6-703 in the most appropriate program for supervision and treatment[~~;~~];

~~[(4)(a) In an order committing a juvenile offender to the division, the court shall find whether the juvenile offender is being committed for secure confinement under Subsection 78A-6-117(2)(c), or placement in a community-based program under Subsection 78A-6-117(2)(c), and specify the criteria under Subsection 78A-6-117(2)(c) or (d) underlying the commitment.]~~

~~[(b) The division shall place a juvenile offender in the most appropriate program within the category specified by the court.]~~

~~[(5) The division shall]~~

(f) employ staff necessary to:

~~[(a)]~~ (i) supervise and control [~~juvenile offenders in secure facilities or in the community~~] minors committed to the division for secure care or placement in the community;

~~[(b)]~~ (ii) supervise and coordinate treatment of [~~juvenile offenders~~] minors committed to the division for placement in community-based programs; and

~~[(c)]~~ (iii) control and supervise adjudicated and nonadjudicated [~~youth~~] minors placed with the division for temporary services in juvenile receiving centers, youth services, and other programs established by the division[~~;~~];

~~[(6)(a) Youth in the custody or temporary custody of the division are controlled or detained in a manner consistent with public safety and rules made by the division. In the event of an unauthorized leave from a secure facility, detention center, community-based program, receiving center, home, or any other designated placement, division employees have the authority and duty to locate and apprehend the youth, or to initiate action with local law enforcement agencies for assistance.]~~

~~[(b) A rule made by the division under this Subsection (6) may not permit secure detention based solely on the existence of multiple status offenses, misdemeanors, or infractions alleged in the same criminal episode.]~~

HB0285S02 compared with HB0285S01

~~[(7) The division shall]~~

(g) control or detain a minor committed to the division, or in the temporary custody of the division, in a manner that is consistent with public safety and rules made by the division;

(h) establish and operate [compensatory-service] work programs for [juvenile offenders] minors committed to the division by the [court. The compensatory-service work program may not be residential and shall:] juvenile court that:

(i) are not residential;

[(a)] (ii) provide labor to help in the operation, repair, and maintenance of public facilities, parks, highways, and other programs designated by the division;

[(b)] (iii) provide educational and prevocational programs in cooperation with the State Board of Education for [juvenile offenders] minors placed in the program; and

[(c)] (iv) provide counseling to [juvenile offenders:] minors;

~~[(8) The division shall]~~

(i) establish minimum standards for the operation of all private residential and nonresidential rehabilitation facilities that provide services to [juveniles] minors who have committed [a delinquent act or infraction] an offense in this state or in any other state[:];

~~[(9) The division shall]~~

(j) provide regular training for [staff of secure facilities] secure care staff, detention staff, case management staff, and staff of the community-based programs[:];

~~[(10)(a) The division is authorized to employ special function officers, as defined in Section 53-13-105, to locate and apprehend minors who have absconded from division custody, transport minors taken into custody pursuant to division policy, investigate cases, and carry out other duties as assigned by the division.]~~

~~[(b) Special function officers may be employed through contract with the Department of Public Safety, any P.O.S.T. certified law enforcement agency, or directly hired by the division.]~~

~~[(11) The division shall]~~

(k) designate employees to obtain the saliva DNA specimens required under Section 53-10-403[:. The division shall];

(l) ensure that the designated employees receive appropriate training and that the specimens are obtained in accordance with accepted protocol[:];

HB0285S02 compared with HB0285S01

~~[(12) The division shall]~~

(m) register an individual with the Department of Corrections who:

~~[(a) (i)]~~ (i) is adjudicated ~~[delinquent]~~ for an offense listed in Subsection 77-41-102(17)(a) or 77-43-102(2);

~~[(b) (ii)]~~ (ii) is committed to the division for secure ~~[confinement]~~ care; and

~~[(c) (i)]~~ (iii) (A) if the individual is a youth offender, remains in the division's custody 30 days before the individual's 21st birthday; or

~~[(ii) (B)]~~ (B) if the individual is a serious youth offender, remains in the division's custody 30 days before the individual's 25th birthday~~[-]~~; and

~~[(13) The division shall]~~

(n) ensure that a program delivered to a ~~[juvenile offender]~~ minor under this section is ~~[evidence based]~~ an evidence-based program in accordance with Section 63M-7-208.

(3) (a) The division is authorized to employ special function officers, as defined in Section 53-13-105 to:

(i) locate and apprehend minors who have absconded from division custody;

(ii) transport minors taken into custody in accordance with division policy;

(iii) investigate cases; and

(iv) carry out other duties as assigned by the division.

(b) A special function officer may be:

(i) employed through a contract with the Department of Public Safety, or any law enforcement agency certified by the Peace Officer Standards and Training Division; or

(ii) directly hired by the division.

(4) In the event of an unauthorized leave from secure care, detention, a community-based program, a juvenile receiving center, a home, or any other designated placement of a minor, a division employee has the authority and duty to locate and apprehend the minor, or to initiate action with a local law enforcement agency for assistance.

Section 119. Section **80-5-202** is enacted to read:

80-5-202. Division rulemaking authority.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules:

(a) establishing standards for the admission of a minor to detention;

HB0285S02 compared with HB0285S01

(b) that describe good behavior for which credit may be earned under Subsection 80-6-704(4); and

(c) that establish a formula, in consultation with the Office of the Legislative Fiscal Analyst, to calculate savings from General Fund appropriations under 2017 Laws of Utah, Chapter 330, resulting from the reduction in out-of-home placements for juvenile offenders with the division.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules:

(a) that govern the operation of prevention and early intervention programs, youth service programs, juvenile receiving centers, and other programs described in Section 80-5-401; and

(b) that govern the operation of detention and secure care facilities.

(3) A rule made by the division under Subsection (1)(a):

(a) may not permit secure detention based solely on the existence of multiple status offenses, misdemeanors, or infractions arising out of a single criminal episode; and

(b) shall prioritize use of home detention for a minor who might otherwise be held in secure detention.

Section 120. Section **80-5-203**, which is renumbered from Section 78A-6-124 is renumbered and amended to read:

~~[78A-6-124].~~ 80-5-203. Detention risk assessment tool.

(1) The ~~[Division of Juvenile Justice Services]~~ division, in conjunction with the Administrative Office of the Courts, shall develop or adopt, and validate on the Utah juvenile population, a statewide detention risk assessment tool.

(2) ~~(a) The [Division of Juvenile Justice Services] division shall administer the detention risk assessment tool for each [youth] minor under consideration for detention. [The detention risk assessment tool shall be administered by a designated individual who has completed training to conduct the detention risk assessment tool.]~~

(b) A designated individual who has completed training to conduct the detention risk assessment tool shall administer the detention risk assessment tool.

(3) The ~~[Division of Juvenile Justice Services]~~ division and the Administrative Office of the Courts shall establish a scoring system to inform eligibility for placement of a minor in a

HB0285S02 compared with HB0285S01

[juvenile] detention facility or for referral to an alternative to detention.

Section 121. Section **80-5-204**, which is renumbered from Section 62A-7-106.5 is renumbered and amended to read:

~~[62A-7-106.5].~~ **80-5-204. Annual review of programs and facilities.**

(1) (a) The division shall:

(i) annually review all programs and facilities that provide services to ~~[juveniles who have committed a delinquent act]~~ minors who have committed an offense, in this state or in any other state, which would constitute a felony or misdemeanor if committed by an adult[;]; and

(ii) license ~~[those programs and facilities]~~ all programs and facilities under Subsection (1)(a)(i) that are in compliance with standards established by the division.

(b) The division shall provide ~~[written reviews to the managers of those programs and facilities]~~ a written review to the manager of a program or facility under Subsection (1)(a).

~~[(b) Programs or facilities that are]~~

(c) A program or facility that is unable or unwilling to comply with the standards established by the division may not be licensed.

(2) Any private facility or program providing services under this chapter that willfully fails to comply with the standards established by the division is guilty of a class B misdemeanor.

Section 122. Section **80-5-205**, which is renumbered from Section 62A-7-107.5 is renumbered and amended to read:

~~[62A-7-107.5].~~ **80-5-205. Contracts with private providers.**

(1) This chapter does not prohibit the division from contracting with private providers or other agencies for:

(a) the construction, operation, and maintenance of juvenile facilities; or

(b) the provision of care, treatment, and supervision of ~~[juvenile offenders]~~ minors who have been committed to ~~[the care of]~~ the division.

(2) All programs for the care, treatment, and supervision of ~~[juvenile offenders]~~ minors committed to the division shall be licensed in compliance with division standards within six months after commencing operation.

(3) A contract for the care, treatment, and supervision of a ~~[juvenile offender]~~ minor committed to the division shall be executed in accordance with the performance-based

HB0285S02 compared with HB0285S01

contracting system developed under Section 63M-7-208.

Section 123. Section **80-5-206**, which is renumbered from Section 62A-7-108.5 is renumbered and amended to read:

~~[62A-7-108.5].~~ **80-5-206. Records -- Property of division.**

(1) All records maintained by programs that are under contract with the division to provide services to ~~[juvenile offenders]~~ minors, are the property of the division and shall be returned to the division when the ~~[juvenile offender]~~ minor is terminated from the program.

(2) The division shall maintain an accurate audit trail of information provided to other programs or agencies regarding ~~[juvenile offenders]~~ minors under the division's jurisdiction.

Section 124. Section **80-5-207**, which is renumbered from Section 62A-7-109.5 is renumbered and amended to read:

~~[62A-7-109.5].~~ **80-5-207. Restitution by a minor committed to the division.**

(1) ~~(a)~~ The division shall make reasonable efforts to ensure that restitution is made to the victim of a ~~[juvenile offender. Restitution]~~ minor who is committed to the division.

~~(b)~~ Except as provided in Subsection (1)(c), restitution shall be made through the employment of [juvenile offenders] minors in work programs. [However, reimbursement]

~~(c)~~ Reimbursement to the victim of a [juvenile offender] minor is conditional upon the [juvenile offender's] minor's involvement in the work program.

~~[(2) Restitution ordered by the court may be made a condition of release, placement, or parole by the division.]~~

~~[(3)]~~ (2) The division shall notify the juvenile court of all restitution paid to victims through the employment of [juvenile offenders in work programs] a minor, who is committed to the division, in a work program.

Section 125. Section **80-5-208**, which is renumbered from Section 62A-7-403 is renumbered and amended to read:

~~[62A-7-403].~~ **80-5-208. Care of pregnant minor in secure detention or secure care.**

(1) When a ~~[juvenile offender in a secure facility]~~ minor in secure detention or secure care is pregnant, the division shall:

(a) ensure that adequate prenatal and postnatal care is provided[, and shall]; and

(b) place the [juvenile offender] minor in an accredited hospital before delivery.

HB0285S02 compared with HB0285S01

(2) As soon as the ~~[juvenile offender's]~~ minor's condition after delivery will permit, the ~~[juvenile offender may be returned to the secure facility]~~ minor may be returned to:[:]

~~[(2) If the division has concern regarding the juvenile offender's fitness to raise the juvenile offender's child, the division shall petition the juvenile court to hold a custody hearing.]~~

(a) secure detention if the minor was placed in secure detention; or

(b) secure care if the minor was committed to secure care.

(3) If the division has concerns regarding the minor's fitness to raise the minor's child, the division shall make a referral for services for the minor and the minor's child to the Division of Child and Family Services.

Section 126. Section **80-5-301**, which is renumbered from Section 62A-7-104.5 is renumbered and amended to read:

Part 3. Funds and Accounts

~~[62A-7-104.5].~~ **80-5-301. Appropriation and funding of juvenile receiving centers.**

Funding for juvenile receiving centers and youth services programs under this part is intended to be broad based, be provided by an appropriation by the Legislature to the division, and include federal grant money, local government money, and private donations.

Section 127. Section **80-5-302**, which is renumbered from Section 62A-7-112 is renumbered and amended to read:

~~[62A-7-112].~~ **80-5-302. Juvenile Justice Reinvestment Restricted Account.**

(1) There is created in the General Fund a restricted account known as the "Juvenile Justice Reinvestment Restricted Account."

(2) The account shall be funded by savings calculated from General Fund appropriations by the Division of Finance as described in Subsection (3).

(3) At the end of the fiscal year, the Division of Finance shall:

(a) use the formula established in ~~[Subsection 62A-7-113(1)]~~ Subsection 80-5-202(1)(c) to calculate the savings from General Fund appropriations; and

(b) lapse the calculated savings into the account.

(4) Upon appropriation by the Legislature, the department may expend funds from the account:

HB0285S02 compared with HB0285S01

- (a) for the statewide expansion of nonresidential community-based programs, including:
- (i) receiving centers;
 - (ii) mobile crisis outreach teams [~~as defined in Section 78A-6-105~~];
 - (iii) youth courts under Title 80, Chapter 6, Part 9, Youth Court; and
 - (iv) victim-offender mediation under Section 80-6-304 and Subsection 80-6-710(7);
- (b) for nonresidential evidence-based programs and practices in cognitive, behavioral, and family therapy;
- (c) to implement:
- (i) nonresidential diagnostic assessment; and
 - (ii) nonresidential early intervention programs, including family strengthening programs, family wraparound services, and truancy interventions; or
- (d) for infrastructure in nonresidential evidence-based juvenile justice programs, including staffing and transportation.

Section 128. Section **80-5-303**, which is renumbered from Section 62A-7-113 is renumbered and amended to read:

~~[62A-7-113].~~ **80-5-303. Report on the Juvenile Justice Reinvestment Restricted Account.**

~~[(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules that establish a formula, in consultation with the Office of the Legislative Fiscal Analyst, to calculate savings from General Fund appropriations under 2017 Laws of Utah, Chapter 330 resulting from the reduction in out-of-home placements for juvenile offenders with the division.]~~

~~[(2)]~~ No later than December 31 of each year, the division shall provide to the Executive Offices and Criminal Justice Appropriations Subcommittee a written report of the division's activities under [~~this section and Section 62A-7-112~~] Subsection 80-5-202(1)(c) and Section 80-5-302, including:

~~[(a)]~~ (1) for the report submitted in 2019, the formula used to calculate the savings from General Fund appropriations under Subsection [~~(1)~~] 80-5-202(1)(c);

~~[(b)]~~ (2) the amount of savings from General Fund appropriations calculated by the division for the previous fiscal year;

HB0285S02 compared with HB0285S01

~~[(c)]~~ (3) an accounting of the money expended or committed to be expended under Subsection ~~[62A-7-112]~~ 80-5-302(4); and

~~[(d)]~~ (4) the balance of the account.

Section 129. Section **80-5-401**, which is renumbered from Section 62A-7-601 is renumbered and amended to read:

Part 4. Programs

~~[62A-7-601].~~ **80-5-401.** Youth services for prevention and early intervention -- Program standards -- Program services.

(1) The division shall establish and operate prevention and early intervention youth services programs.

(2) The division shall adopt statewide policies and procedures, including minimum standards for the organization and operation of youth services programs.

(3) The division shall establish housing, programs, and procedures to ensure that ~~[youth]~~ minors who are receiving services under this section and who are not ~~[in the custody of]~~ committed to the division are served separately from ~~[youth who are in custody of the division]~~ minors who are committed to the division.

(4) The division may enter into contracts with state and local governmental entities and private providers to provide the youth services.

(5) The division shall establish and administer juvenile receiving centers and other programs to provide temporary custody, care, risk-needs assessments, evaluations, and control for nonadjudicated and adjudicated ~~[youth]~~ minors placed with the division.

(6) The division shall prioritize use of evidence-based juvenile justice programs and practices.

Section 130. Section **80-5-402**, which is renumbered from Section 62A-7-701 is renumbered and amended to read:

~~[62A-7-701].~~ **80-5-402.** Community-based programs.

(1) (a) The division shall operate residential and nonresidential community-based programs to provide care, treatment, and supervision for ~~[juvenile offenders]~~ minors committed to the division by juvenile courts.

(b) The division shall operate or contract for nonresidential community-based programs and independent living programs to provide care, treatment, and supervision of

HB0285S02 compared with HB0285S01

paroled juvenile offenders.

(2) The division shall adopt minimum standards for the organization and operation of community-based ~~[corrections]~~ programs for ~~[juvenile offenders]~~ minors.

(3) The division shall place ~~[juvenile offenders]~~ minors committed to the division for community-based programs in the most appropriate program based upon the division's evaluation of the ~~[juvenile offender's]~~ minor's needs and the division's available resources in accordance with Sections ~~[62A-7-404.5 and 78A-6-117]~~ 80-6-703 and 80-6-804.

Section 131. Section **80-5-403**, which is renumbered from Section 62A-7-702 is renumbered and amended to read:

~~[62A-7-702]~~. **80-5-403. Case management staff.**

(1) The division shall provide a sufficient number of case management staff members to provide care, treatment, and supervision for juvenile offenders on parole and for ~~[juvenile offenders]~~ minors committed to the division by the juvenile courts for community-based programs.

(2) (a) Case management staff shall develop treatment programs for each ~~[juvenile offender]~~ minor in the community, provide appropriate services, and monitor individual progress.

(b) Progress reports shall be filed every three months with:

(i) the juvenile court for each ~~[juvenile offender]~~ minor committed to the division for community-based programs; and ~~[with]~~

(ii) the authority for each ~~[parolee]~~ juvenile offender on parole.

(c) The authority, in the case of ~~[parolees]~~ juvenile offenders on parole, or the juvenile court, in the case of ~~[youth]~~ minors committed to the division for placement in community programs, shall be immediately notified, in writing, of any violation of law or of conditions of parole or placement.

(3) Case management staff shall:

(a) conduct investigations and make reports requested by ~~[the courts]~~ a juvenile court to aid ~~[them]~~ the juvenile court in determining appropriate case dispositions; and

(b) conduct investigations and make reports requested by the authority to aid ~~[it]~~ the authority in making appropriate dispositions in cases of parole, revocation, and termination.

Section 132. Section **80-5-501**, which is renumbered from Section 62A-7-202 is

HB0285S02 compared with HB0285S01

renumbered and amended to read:

Part 5. Facilities

~~[62A-7-202].~~ 80-5-501. **Detention facilities and services.**

(1) The division shall provide detention facilities and services in each county, or group of counties, as the population demands, in accordance with this chapter.

(2) (a) The division is responsible for development, implementation, and administration of home detention services available in every judicial district~~[-and]~~.

(b) The division shall establish criteria for placement ~~[on]~~ in home detention.

~~[(3)(a) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing standards for admission to secure detention and home detention programs:]~~

~~[(b) The rules made under this Subsection (3) shall prioritize use of home detention for a minor who might otherwise be held in secure detention:]~~

~~[(4)]~~ (3) The division shall provide training regarding implementation of the rules made under Subsection 80-5-202(1)(a) to law enforcement agencies, division employees, juvenile court employees, and other affected agencies and individuals upon their request.

Section 133. Section **80-5-502**, which is renumbered from Section 62A-7-203 is renumbered and amended to read:

~~[62A-7-203].~~ 80-5-502. **New detention facilities.**

(1) The division may issue requests for proposals to allow for the private construction of facilities suitable to meet the detention requirements of any county or group of counties, subject to approval by the governor.

(2) The governor shall furnish an analysis of the benefits of the proposals received to the Infrastructure and General Government Appropriations Subcommittee for ~~[its]~~ the subcommittee's review.

Section 134. Section **80-5-503**, which is renumbered from Section 62A-7-401.5 is renumbered and amended to read:

~~[62A-7-401.5].~~ 80-5-503. **Secure care facilities.**

(1) The division shall maintain and operate ~~[secure facilities]~~ secure care facilities for the custody and rehabilitation of juvenile offenders;

(a) who pose a danger of serious bodily harm to others~~[-];~~

HB0285S02 compared with HB0285S01

(b) who cannot be controlled in a less secure setting~~[-];~~ or

(c) who have engaged in a pattern of conduct characterized by persistent and serious criminal offenses ~~[which]~~ that, as demonstrated through the use of other alternatives, cannot be controlled in a less secure setting.

(2) (a) The director shall appoint an administrator for each ~~[secure facility]~~ secure care facility.

(b) An administrator of a secure care facility shall have experience in social work, law, criminology, corrections, or a related field, and ~~[also]~~ in administration.

(3) (a) (i) The division, in cooperation with the State Board of Education, shall provide instruction, or make instruction available, to juvenile offenders in secure care facilities.

(ii) The instruction shall be appropriate to the age, needs, and range of abilities of the juvenile offender.

(b) ~~[An assessment shall be made of]~~ A secure care facility shall:

(i) assess each juvenile offender ~~[by the appropriate secure facility]~~ to determine the juvenile offender's abilities, possible learning disabilities, interests, attitudes, and other attributes related to appropriate educational programs~~[-];~~ and

~~[(c) Prevocational education shall be provided]~~

(ii) provide prevocational education to juvenile offenders to acquaint juvenile offenders with vocations, and vocational requirements and opportunities.

(4) The division shall place juvenile offenders who have been committed to the division for ~~[secure confinement and rehabilitation in a secure facility]~~ secure care in a secure care facility, operated by the division or by a private entity, that is appropriate to ensure that humane care and rehabilitation opportunities are afforded to the juvenile offender.

(5) The division shall adopt standards, policies, and procedures for the regulation and operation of secure care facilities, consistent with state and federal law.

Section 135. Section **80-5-601**, which is renumbered from Section 62A-4a-501 is renumbered and amended to read:

Part 6. Runaways and Ungovernable Children

~~[62A-4a-501].~~ **80-5-601. Harboring a runaway -- Reporting requirements --**

Division of Child and Family Services to provide assistance -- Affirmative defense --

Providing shelter after notice.

HB0285S02 compared with HB0285S01

~~[(1) As used in this section:]~~

~~[(a) "Harbor" means to provide shelter in:]~~

~~[(i) the home of the person who is providing the shelter; or]~~

~~[(ii) any structure over which the person providing the shelter has any control:]~~

~~[(b) "Homeless youth" means a child, other than an emancipated minor:]~~

~~[(i) who is a runaway; or]~~

~~[(ii) who is not accompanied by the child's parent or legal guardian:]~~

~~[(c) "Receiving center" means the same as that term is defined in Section 62A-7-101:]~~

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

~~[(e) "Temporary homeless youth shelter" means a facility that:]~~

~~[(i) provides temporary shelter to a homeless youth; and]~~

~~[(ii) is licensed by the Office of Licensing, created in Section 62A-1-105, as a residential support program:]~~

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

(1) As used in this section, "harbor" means to provide shelter in:

(a) the home of the person who is providing shelter; or

(b) any structure over which the person providing the shelter has any control.

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

(a) knowingly and intentionally harbors a child;

(b) knows at the time of harboring the child that the child is a runaway;

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

(i) the parent or ~~[legal]~~ guardian of the child;

(ii) the division; or

(iii) a youth services center; and

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

HB0285S02 compared with HB0285S01

later of:

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

(ii) the time that the person begins harboring the child.

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

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

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

(A) the time that the person becomes aware that the child is a runaway; or

(B) the time that the person begins harboring the child; or

(b) (i) the child is a runaway who consents to shelter, care, or licensed services under Section [~~62A-4a-502~~] 80-5-602; and

(ii) (A) the person is unable to locate the child's parent or [~~legal~~] guardian; or

(B) the child refuses to disclose the contact information for the child's parent or [~~legal~~] guardian.

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

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

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

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

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

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

(B) the division;

(C) a youth services center; or

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

HB0285S02 compared with HB0285S01

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

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

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

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

(a) a youth services center shall:

(i) notify the ~~[parent or legal]~~ runaway's parent or guardian that a report has been made; and

(ii) inform the ~~[parent or legal]~~ runaway's parent or guardian of assistance available from the youth services center; or

(b) the division shall:

(i) make a referral to the Division of Child and Family Services to determine whether the runaway is abused, neglected, or dependent; and

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

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

(b) The local law enforcement agency may assist the parent or ~~[legal]~~ guardian in retrieving the runaway.

(8) Nothing in this section prohibits a person~~[-including a temporary homeless youth shelter;]~~ from continuing to provide shelter to a runaway, after giving the notice described in Subsections (2) through (4), if:

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

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

(9) Nothing in this section prohibits a person ~~[or a temporary homeless youth shelter]~~ from providing shelter to a child whose parent or ~~[legal]~~ guardian has intentionally:

(a) ceased to maintain physical custody of the child; and

(b) failed to make reasonable arrangements for the safety, care, and physical custody of

HB0285S02 compared with HB0285S01

the child.

(10) Nothing in this section prohibits:

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

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

Section 136. Section **80-5-602**, which is renumbered from Section 62A-4a-502 is renumbered and amended to read:

~~[62A-4a-502].~~ 80-5-602. Homeless youth -- Consent to shelter, care, or services by a homeless youth.

(1) As used in this section:

(a) "Care" means providing:

- (i) assistance to obtain food, clothing, hygiene products, or other basic necessities;
- (ii) access to a bed, showering facility, or transportation; or
- (iii) assistance with school enrollment or attendance.

~~[(b) "Homeless youth" means the same as that term is defined in Section 62A-4a-501.]~~

~~[(c)]~~ (b) "Licensed services" means a service provided by a temporary homeless youth shelter, a youth services center, or other facility that is licensed to provide the service to a homeless youth.

~~[(d)]~~ (c) "Service" means:

- (i) youth services~~[, as defined in Section 62A-7-101];~~
- (ii) child welfare or juvenile court case management or advocacy;
- (iii) aftercare services~~[, as defined in 45 C.F.R. 1351.1];~~ or
- (iv) independent living skills training.

~~[(e) "Temporary homeless youth shelter" means the same as that term is defined in Section 62A-4a-501.]~~

~~[(f) "Youth services center" means the same as that term is defined in Section 62A-4a-501.]~~

(2) A homeless youth may consent to temporary shelter, care, or licensed services if the homeless youth:

HB0285S02 compared with HB0285S01

(a) is at least 15 years old; and

(b) manages the homeless youth's own financial affairs, regardless of the source of income.

(3) In determining consent under Subsection (2), a person may rely on the homeless youth's verbal or written statement describing the homeless youth's ability to consent to temporary shelter, care, or licensed services.

(4) A person who provides shelter, care, or licensed services to a homeless youth who consents to the shelter, care, or licensed services under Subsection (2):

(a) shall report to the division as required under ~~[Section 62A-4a-403 and]~~ Subsection ~~[62A-4a-501]~~ 80-5-601(4); and

(b) may provide the homeless youth a referral to safe permanent housing, employment services, medical or dental care, or counseling.

Section 137. Section **80-5-603**, which is renumbered from Section 78A-6-117.5 is renumbered and amended to read:

~~[78A-6-117.5].~~ **80-5-603.** **Assessment of an ungovernable or runaway child for services.**

~~[(1) Notwithstanding Subsections 78A-6-117(2)(c) and (d), the court may not vest custody in the Division of Child and Family Services except pursuant to Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.]~~

~~[(2) Notwithstanding Section 78A-6-117, a court may not place a minor on a ranch, forestry camp, or other residential work program for care or work.]~~

~~[(3) Notwithstanding Section 78A-6-117, a court may not commit a minor to the temporary custody of the Division of Juvenile Justice Services for residential observation and evaluation or residential observation and assessment.]~~

~~[(4)(a) If the court]~~

(1) If a juvenile court finds that a child is ungovernable or a runaway, ~~[as those terms are defined in Section 62A-7-101,]~~ or that the family is in crisis, the ~~[court may order the Division of Juvenile Justice Services]~~ juvenile court may order the division to conduct an assessment to determine ~~[if provision of]~~ whether it would be appropriate for the division to provide prevention and early intervention youth services, as described in Section ~~[62A-7-601, is appropriate]~~ 80-5-401, to the child.

HB0285S02 compared with HB0285S01

~~[(b)] (2)~~ If the ~~[Division of Juvenile Justice Services]~~ division determines that provision of prevention and early intervention youth services is appropriate under Subsection ~~[(4)(a), the Division of Juvenile Justice Services]~~ (1), the division shall provide the services to the ungovernable or runaway child.

Section 138. Section **80-5-701**, which is renumbered from Section 62A-7-501 is renumbered and amended to read:

Part 7. Youth Parole Authority

~~[62A-7-501].~~ **80-5-701. Youth Parole Authority -- Creation -- Members.**

(1) There is created the Youth Parole Authority within the division.

(2) (a) The authority is composed of 10 part-time members and five pro tempore members who are residents of this state.

(b) No more than three pro tempore members may serve on the authority at any one time.

~~[(b) Throughout this section, the term "member" refers to both part-time and pro tempore members of the Youth Parole Authority.]~~

~~[(3)(a) Except as required by Subsection (3)(b), members shall be appointed to four-year terms by the governor with the advice and consent of the Senate.]~~

~~[(b) The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of authority members are staggered so that approximately half of the authority is appointed every two years.]~~

~~[(4) Each member shall have training or experience in social work, law, juvenile or criminal justice, or related behavioral sciences.]~~

~~[(5) When a vacancy occurs in the membership for any reason, the replacement member shall be appointed for the unexpired term.]~~

~~[(6) During the tenure of the member's appointment, a member may not:]~~

~~[(a) be an employee of the department, other than in the member's capacity as a member of the authority;]~~

~~[(b) hold any public office;]~~

~~[(c) hold any position in the state's juvenile justice system; or]~~

~~[(d) be an employee, officer, advisor, policy board member, or subcontractor of any juvenile justice agency or its contractor.]~~

HB0285S02 compared with HB0285S01

~~[(7) In extraordinary circumstances or when a regular member is absent or otherwise unavailable, the chair may assign a pro tempore member to act in the absent member's place.]~~

~~[(8) A member may not receive compensation or benefits for the member's service but may receive per diem and travel expenses in accordance with:]~~

~~[(a) Section 63A-3-106;]~~

~~[(b) Section 63A-3-107; and]~~

~~[(c) rules made by the Division of Finance in accordance with Sections 63A-3-106 and 63A-3-107.]~~

~~[(9) The authority shall determine appropriate parole dates for juvenile offenders in accordance with Section 62A-7-404.5:]~~

~~[(10) A juvenile offender may be paroled to the juvenile offender's home, to an independent living program contracted or operated by the division, to an approved independent living setting, or to other appropriate residences of qualifying relatives or guardians, but shall remain on parole until parole is terminated by the authority in accordance with Section 62A-7-404.5:]~~

~~[(11) The division's case management staff shall implement parole release plans and shall supervise juvenile offenders while on parole:]~~

~~[(12) The division shall permit the authority to have reasonable access to juvenile offenders in secure facilities and shall furnish all pertinent data requested by the authority in matters of parole, revocation, and termination:]~~

Section 139. Section **80-5-702** is enacted to read:

80-5-702. Member qualifications -- Expenses.

(1) As used in this section, "member" means both a part-time member and a pro tempore member of the authority.

(2) (a) Except as required by Subsection (2)(b), the governor, with the advice and consent of the Senate, shall appoint members to four-year terms.

(b) The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members are staggered so that approximately half of the authority is appointed every two years.

(3) A member shall have training or experience in social work, law, juvenile or criminal justice, or related behavioral sciences.

HB0285S02 compared with HB0285S01

(4) When a vacancy occurs in the membership for any reason, the replacement member shall be appointed for the unexpired term.

(5) During the tenure of the member's appointment, a member may not:

(a) be an employee of the department, other than in the member's capacity as a member of the authority;

(b) hold any public office;

(c) hold any position in the state's juvenile justice system; or

(d) be an employee, officer, advisor, policy board member, or subcontractor of any juvenile justice agency or the juvenile justice agency's contractor.

(6) In extraordinary circumstances or when a regular member is absent or otherwise unavailable, the chair may assign a pro tempore member to act in the absent member's place.

(7) A member may not receive compensation or benefits for the member's service but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance in accordance with Sections 63A-3-106 and 63A-3-107.

Section 140. Section **80-5-703** is enacted to read:

80-5-703. Authority responsibilities -- Administrative officer of the authority.

(1) The authority is responsible for:

(a) the release of a juvenile offender from secure care; and

(b) the rescission, revocation, and termination of parole for a juvenile offender.

(2) In accordance with Chapter 6, Part 8, Commitment and Parole, the authority shall:

(a) determine when and under what conditions a juvenile offender in secure care is eligible for parole;

(b) establish policies and procedures regarding:

(i) the authority's governance, meetings, and hearings;

(ii) the conduct of proceedings before the authority;

(iii) the parole of a juvenile offender; and

(iv) for which parole for a juvenile offender may be granted, rescinded, revoked, modified, and terminated; and

HB0285S02 compared with HB0285S01

(c) determine appropriate parole dates for juvenile offenders.

(3) The division's case management staff shall:

(a) implement plans for parole; and

(b) supervise a juvenile offender on parole.

(4) The division shall:

(a) permit the authority to have reasonable access to a juvenile offender in secure care;

and

(b) furnish all pertinent data requested by the authority in matters of parole, revocation, and termination.

(5) The director shall appoint an administrative officer of the authority.

(6) The administrative officer is responsible for the day to day operations of the authority.

(7) The authority and the administrative officer have power to:

(a) issue subpoenas;

(b) compel attendance of witnesses;

(c) compel production of books, papers and other documents; and

(d) administer oaths and take testimony under oath for the purposes of conducting the hearings.

(8) The administrative officer shall maintain summary records of all hearings and provide written notice to the juvenile offender of a decision and the reason for the decision.

Section 141. Section **80-6-101** is enacted to read:

CHAPTER 6. JUVENILE JUSTICE

80-6-101. Title.

This chapter is known as "Juvenile Justice."

Section 142. Section **80-6-102** is enacted to read:

80-6-102. Definitions.

As used in this chapter:

(1) "Aftercare services" means the same as the term "aftercare" is defined in 45 C.F.R. 1351.1.

(2) "Authority" means the Youth Parole Authority created in Section 80-5-701.

(3) "Commission" means the State Commission on Criminal and Juvenile Justice

HB0285S02 compared with HB0285S01

created in Section 63M-7-201.

(4) "Compensatory service" means service or unpaid work performed by a minor in lieu of the payment of a fine, fee, or restitution.

(5) "Control" means the same as that term is defined in Section 80-5-102.

(6) "Detention hearing" means a proceeding under Section 80-6-207 to determine whether a minor should remain in detention.

(7) "Detention guidelines" means standards, established by the division in accordance with Subsection 80-5-202(1)(a), for the admission of a minor to detention.

(8) "Discharge" means a written order of the authority that removes a juvenile offender from the authority's jurisdiction.

(9) "Division" means the Division of Juvenile Justice Services created in Section 80-5-103.

(10) "Formal referral" means a written report from a peace officer, or other person, informing the juvenile court that:

(a) an offense committed by a minor is, or appears to be, within the juvenile court's jurisdiction; and

(b) the minor's case must be reviewed by a juvenile probation officer or a prosecuting attorney.

(11) "Material loss" means an uninsured:

(a) property loss;

(b) out-of-pocket monetary loss for property that is stolen, damaged, or destroyed;

(c) lost wages because of an injury, time spent as a witness, or time spent assisting the police or prosecution; or

(d) medical expense.

(12) "Referral" means a formal referral, a referral to the juvenile court under Section 53G-8-211, or a citation issued to a minor for which the juvenile court receives notice under Section 80-6-302.

(13) "Rescission" means a written order of the authority that rescinds a date for parole.

(14) "Restitution" means money or services that the juvenile court, or a juvenile probation officer if the minor agrees to a nonjudicial adjustment, orders a minor to pay or render to a victim for the minor's wrongful act or conduct.

HB0285S02 compared with HB0285S01

(15) "Revocation" means a written order of the authority that, after a hearing and determination under Section 80-6-806:

(a) terminates supervision of a juvenile offender's parole; and

(b) directs a juvenile offender to return to secure care.

(16) "Temporary custody" means the control and responsibility of a minor, before an adjudication under Section 80-6-701, until the minor is released to a parent, guardian, responsible adult, or to an appropriate agency.

(17) "Termination" means a written order of the authority that terminates a juvenile offender from parole.

(18) (a) "Victim" means a person that the juvenile court determines suffered a material loss as a result of a minor's wrongful act or conduct.

(b) "Victim" includes:

(i) any person directly harmed by the minor's wrongful act or conduct in the course of the scheme, conspiracy, or pattern if the minor's wrongful act or conduct is an offense that involves an element of a scheme, a conspiracy, or a pattern of criminal activity; and

(ii) the Utah Office for Victims of Crime.

(19) "Violent felony" means the same as that term is defined in Section 76-3-203.5.

(20) "Work program" means the same as that term is defined in Section 80-5-102.

(21) "Youth services" means the same as that term is defined in Section 80-5-102.

Section 143. Section **80-6-103** is enacted to read:

80-6-103. Notification to a school -- Civil and criminal liability.

(1) As used in this section:

(a) "School official" means:

(i) the school superintendent of the district in which the minor resides or attends school; or

(ii) if there is no school superintendent for the school, the principal of the school where the minor attends.

(b) "Transferee school official" means:

(i) the school superintendent of the district in which the minor resides or attends school if the minor is admitted to home detention; or

(ii) if there is no school superintendent for the school, the principal of the school where

HB0285S02 compared with HB0285S01

the minor attends if the minor is admitted to home detention.

(2) A notification under this section is provided for a minor's supervision and student safety.

(3) (a) (i) If a minor is taken into temporary custody under Section 80-6-201, or admitted to a detention facility under Section 80-6-205, for a violent felony, or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the peace officer, or other person who has taken the minor into temporary custody, shall notify a school official as soon as practicable or as established under Subsection 53G-8-402(2).

(ii) A notification under this section shall only disclose:

(A) the name of the minor;

(B) the offense for which the minor was taken into temporary custody or admitted to detention; and

(C) if available, the name of the victim if the victim resides in the same school district as the minor or attends the same school as the minor.

(b) After a detention hearing for a minor who is alleged to have committed a violent felony, or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the juvenile court shall order that a school official, or a transferee school official, and the appropriate local law enforcement agency are notified of the juvenile court's decision, including any disposition, order, or no-contact order.

(4) If a designated staff member of a detention facility admits a minor to home detention under Section 80-6-205 and notifies the juvenile court of that admission, the juvenile court shall order that a school official, or a transferee school official, and the appropriate local law enforcement agency are notified that the minor has been admitted to home detention.

(5) (a) If the juvenile court adjudicates a minor for an offense of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the court shall order that a school official, or a transferee school official, is notified of the adjudication.

(b) A notification under Subsection (5)(a) shall be given to a school official, or a transferee school official, within three days after the day on which the minor is adjudicated.

(c) A notification under this section shall include:

(i) the name of the minor;

(ii) the offense for which the minor was adjudicated; and

HB0285S02 compared with HB0285S01

(iii) if available, the name of the victim if the victim:

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

(B) attends the same school as the minor.

(6) If the juvenile court orders probation under Section 80-6-702, the juvenile court may order that the appropriate local law enforcement agency and the school official are notified of the juvenile court's order for probation.

(7) (a) An employee of the local law enforcement agency, or the school the minor attends, who discloses a notification under this section is not:

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

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

(b) An employee of a governmental agency is immune from any criminal liability for failing to provide the information required by this section, unless the employee fails to act due to malice, gross negligence, or deliberate indifference to the consequences.

(8) (a) A notification under this section shall be classified as a protected record under Section 63G-2-305.

(b) All other records of disclosures under this section are governed by Title 63G, Chapter 2, Government Records Access and Management Act, and the Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g.

Section 144. Section **80-6-201**, which is renumbered from Section 78A-6-112 is renumbered and amended to read:

Part 2. Custody and Detention

~~[78A-6-112].~~ **80-6-201. Minor taken into temporary custody by peace officer, private citizen, or probation officer -- Grounds -- Protective custody.**

(1) A minor may be taken into temporary custody by a peace officer without a court order, or a warrant under Section 80-6-202, if the peace officer has probable cause to believe that:

(a) the minor has committed an offense under municipal, state, or federal law;

~~[(b) the minor has committed an act which if committed by an adult would be a felony;]~~

HB0285S02 compared with HB0285S01

~~[(c) the minor:]~~

~~[(i) (A) is seriously endangered in the minor's surroundings; or]~~

~~[(B) seriously endangers others; and]~~

~~[(ii) immediate removal appears to be necessary for the minor's protection or the protection of others;]~~

(b) the minor seriously endangers the minor's own welfare or the welfare of others and taking the minor into temporary custody appears to be necessary for the protection of the minor or others;

~~[(d)]~~ (c) the minor has run away or escaped from the minor's parents, guardian, or custodian; or

~~[(e) that]~~ (d) the minor is:

(i) subject to the state's compulsory education law; and

(ii) subject to Section 53G-6-208, absent from school without legitimate or valid excuse~~[; subject to Section 53G-6-208]~~.

(2) ~~[(a)]~~ A private citizen ~~[or a probation officer]~~ may take a minor into temporary custody if under the circumstances the private citizen ~~[or probation officer]~~ could make a citizen's arrest under Section 77-7-3 if the minor was an adult.

~~[(b)]~~ (3) A juvenile probation officer may take a minor into temporary custody:

~~[(i)]~~ (a) under the same circumstances as a peace officer in Subsection (1); or

~~[(ii)]~~ (b) if the juvenile probation officer has a reasonable suspicion that the minor has violated the conditions of the minor's probation~~[;]~~.

~~[(iii) if the minor is under the continuing jurisdiction of the juvenile court; or]~~

~~[(iv) in emergency situations in which a peace officer is not immediately available;]~~

~~[(3)(a)(i) If an officer or other person takes a minor into temporary custody under Subsection (1) or (2), the officer or person shall, without unnecessary delay, notify the parents, guardian, or custodian;]~~

~~[(ii) The minor shall then be released to the care of the minor's parent or other responsible adult, unless the minor's immediate welfare or the protection of the community requires the minor's detention;]~~

~~[(b) If the minor is taken into custody under Subsection (1) or (2) or placed in detention under Subsection (4) for a violent felony, as defined in Section 76-3-203.5, or an offense in~~

HB0285S02 compared with HB0285S01

~~violation of Title 76, Chapter 10, Part 5, Weapons, the officer or other law enforcement agent taking the minor into custody shall, as soon as practicable or as established under Subsection 53G-8-402(2), notify the school superintendent of the district in which the minor resides or attends school for the purposes of the minor's supervision and student safety.]~~

~~[(i) The notice shall disclose only:]~~

~~[(A) the name of the minor;]~~

~~[(B) the offense for which the minor was taken into custody or detention; and]~~

~~[(C) if available, the name of the victim, if the victim:]~~

~~[(F) resides in the same school district as the minor; or]~~

~~[(H) attends the same school as the minor.]~~

~~[(ii) The notice shall be classified as a protected record under Section 63G-2-305.]~~

~~[(iii) All other records disclosures are governed by Title 63G, Chapter 2, Government Records Access and Management Act, and the federal Family Educational Rights and Privacy Act.]~~

~~[(c) Employees of a governmental agency are immune from any criminal liability for providing or failing to provide the information required by this section unless the person acts or fails to act due to malice, gross negligence, or deliberate indifference to the consequences.]~~

~~[(d) Before the minor is released, the parent or other person to whom the minor is released shall be required to sign a written promise on forms supplied by the court to bring the minor to the court at a time set or to be set by the court.]~~

~~[(4) (a) A child may not be held in temporary custody by law enforcement any longer than is reasonably necessary to obtain the child's name, age, residence, and other necessary information and to contact the child's parents, guardian, or custodian.]~~

~~[(b) If the minor is not released under Subsection (3), the minor shall be taken to a place of detention or shelter without unnecessary delay.]~~

~~[(5) (a) The person who takes a minor to a detention or shelter facility shall promptly file with the detention or shelter facility a written report on a form provided by the division stating:]~~

~~[(i) the details of the presently alleged offense;]~~

~~[(ii) the facts that bring the minor within the jurisdiction of the juvenile court;]~~

~~[(iii) the reason the minor was not released by law enforcement; and]~~

HB0285S02 compared with HB0285S01

~~[(iv) the eligibility of the minor under the division guidelines for detention admissions established by the Division of Juvenile Justice Services under Section 62A-7-202 if the minor is under consideration for detention.]~~

~~[(b) (i) The designated facility staff person shall immediately review the form and determine, based on the guidelines for detention admissions established by the Division of Juvenile Justice Services under Section 62A-7-202, the results of the detention risk assessment, and the criteria for detention eligibility under Section 78A-6-113, whether to:]~~

~~[(A) admit the minor to secure detention;]~~

~~[(B) admit the minor to home detention;]~~

~~[(C) place the minor in another alternative to detention; or]~~

~~[(D) return the minor home upon written promise to bring the minor to the court at a time set, or without restriction.]~~

~~[(ii) If the designated facility staff person determines to admit the minor to home detention, that staff person shall notify the juvenile court of that determination. The court shall order that notice be provided to the designated persons in the local law enforcement agency and the school or transferee school, if applicable, which the minor attends of the home detention. The designated persons may receive the information for purposes of the minor's supervision and student safety.]~~

~~[(iii) Any employee of the local law enforcement agency and the school that the minor attends who discloses the notification of home detention is not:]~~

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

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

~~[(iv) The person who takes a minor to a detention facility or the designated facility staff person may release a minor to a less restrictive alternative even if the minor is eligible for secure detention under this Subsection (5).]~~

~~[(c) A minor may not be admitted to detention unless:]~~

~~[(i) the minor is detainable based on the guidelines; or]~~

~~[(ii) the minor has been brought to detention in accordance with:]~~

~~[(A) a judicial order; or]~~

HB0285S02 compared with HB0285S01

~~[(B) a division warrant in accordance with Section 62A-7-504.]~~

~~[(d) If a minor taken to detention does not qualify for admission under the guidelines established by the division under Section 62A-7-104 or the eligibility criteria under Subsection (4) and this Subsection (5), detention staff shall arrange an appropriate alternative.]~~

~~[(e) If a minor is taken into custody and admitted to a secure detention or shelter facility, facility staff shall:]~~

~~[(i) immediately notify the minor's parents, guardian, or custodian; and]~~

~~[(ii) promptly notify the court of the placement.]~~

~~[(f) If the minor is admitted to a secure detention or shelter facility outside the county of the minor's residence and it is determined in the hearing held under Subsection 78A-6-113(3) that detention shall continue, the judge or commissioner shall direct the sheriff of the county of the minor's residence to transport the minor to a detention or shelter facility as provided in this section.]~~

~~[(6) An individual may be taken into custody by a peace officer without a court order:]~~

~~[(a) if the individual is in apparent violation of a protective order; or]~~

~~[(b) if there is reason to believe that a child is being abused by the individual and any of the situations described in Section 77-7-2 exist.]~~

(4) (a) Nothing in this part shall be construed to prevent a peace officer or the Division of Child and Family Services from taking a minor into protective custody under Section 62A-4a-202.1 or 80-3-204.

(b) If a peace officer or the Division of Child and Family Services takes a minor into protective custody, the provisions of Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Title 62A, Chapter 4a, Child and Family Services, shall govern.

Section 145. Section **80-6-202**, which is renumbered from Section 78A-6-106.5 is renumbered and amended to read:

~~[78A-6-106.5].~~ **80-6-202. Warrants for minors.**

(1) (a) Except as otherwise provided in this section, after a petition is filed under Section 80-6-305, or a criminal information under Section 80-6-503, a juvenile court may issue a warrant for a minor to be taken into temporary custody if:

(i) there is probable cause to believe that:

(A) the minor has committed an offense that would be a felony if committed by an

HB0285S02 compared with HB0285S01

adult;

(B) the minor has failed to appear after the minor or the minor's parent, guardian, or custodian has been legally served with a summons in accordance with Section 78A-6-351 and the Utah Rules of Juvenile Procedure;

(C) there is a substantial likelihood the minor will not respond to a summons;

(D) a summons cannot be served and the minor's present whereabouts are unknown;

(E) serving a summons for the minor will be ineffectual;

(F) the minor seriously endangers others or the public and temporary custody appears to be necessary for the protection of others or the public; or

(G) the minor is a runaway or has escaped from the minor's parent, guardian, or custodian; or

(ii) the minor is under the continuing jurisdiction of the juvenile court and there is probable cause to believe that the minor:

(A) has left the custody of the person or agency vested by a court with legal custody, or guardianship of the minor, without permission; or

(B) has violated a court order.

(b) A warrant issued under this Subsection (1) shall be:

(i) filed in accordance with Utah Rules of Juvenile Procedure, Rule 7; and

(ii) executed in accordance with Title 77, Chapter 7, Arrest, by Whom, and How Made.

~~[(1) Except as otherwise provided in this section, a]~~

(2) A juvenile court may not issue a warrant ~~[of arrest]~~ for a minor to be taken into temporary custody for:

(a) a status offense; or

(b) an infraction.

~~[(2) A] (3) (a) For a minor not eligible for a warrant under Subsection (2), a juvenile court may issue a warrant that directs ~~[the]~~ a minor to be returned home, to the juvenile court, or to a shelter or other nonsecure facility ~~[for a minor not eligible for a warrant under Subsection (1). A warrant under this Subsection (2) may not direct placement in a secure facility, including secure detention].~~~~

(b) A warrant under Subsection (3)(a) may not direct a minor to secure care or secure detention.

HB0285S02 compared with HB0285S01

~~[(3)]~~ (4) Subsection ~~[(1)]~~ (2) does not apply to a minor who is under Title 55, Chapter 12, Interstate Compact for Juveniles.

Section 146. Section **80-6-203** is enacted to read:

80-6-203. Temporary custody of a minor -- Notification of a child's parent, guardian, or custodian -- Taking a minor to a detention facility.

(1) (a) Except as provided in Subsection (3), if a peace officer, or other person, takes a child into temporary custody under Section 80-6-201, the peace officer, or other person, may not take the child into temporary custody for any longer than is reasonably necessary to:

(i) obtain the child's name, age, residence, and other necessary information;

(ii) contact the child's parent, guardian, or custodian; and

(iii) release the child to the child's parent, guardian, or custodian.

(b) Before a child is released under Subsection (1)(a), the parent, or other person to whom the child is released, shall sign a written promise on forms supplied by the juvenile court to bring the child to the juvenile court at a time set or to be set by the court.

(2) Except as provided in Subsection (3), if a peace officer, or other person, takes a minor who is 18 years old or older into temporary custody under Section 80-6-201, the peace officer, or other person, may not take the minor into temporary custody for any longer than is reasonably necessary to obtain the minor's name, age, residence, and other necessary information.

(3) (a) A minor may remain in the temporary custody of a peace officer or other person if:

(i) the protection of the community requires the minor's detention; or

(ii) a warrant has been issued for the minor's arrest under Section 80-6-202 or 80-6-806.

(b) If a minor remains in temporary custody, the minor shall be taken to a detention facility without unnecessary delay.

(c) If the peace officer, or other person, takes a minor to a detention facility, the peace officer, or other person, shall promptly file a written report, on a form provided by the division, with the detention facility stating:

(i) the details of the offense that the minor is alleged to have committed;

(ii) the facts that bring the offense within the jurisdiction of the juvenile court;

HB0285S02 compared with HB0285S01

(iii) the reason that the minor was not released by the peace officer or other person; and
(iv) if the minor is under consideration for detention, the eligibility of the minor for detention under the detention guidelines.

Section 147. Section **80-6-204**, which is renumbered from Section 62A-7-201 is renumbered and amended to read:

~~[62A-7-201].~~ 80-6-204. Detention or confinement of a minor --

Restrictions.

(1) Except as provided in Subsection (2) or ~~[by another statute]~~ this chapter, if a child is apprehended by ~~[an]~~ a peace officer, or brought before a court for examination under state law, the child may not be confined:

- (a) in a jail, lockup, or cell used for an adult who is charged with a crime; or
- (b) in ~~[a secure facility operated by the division]~~ secure care.

(2) (a) The division shall detain a child in accordance with Sections ~~[78A-6-703.2, 78A-6-703.5, and 78A-6-703.6]~~ 80-6-502, 80-6-504, and 80-6-505 if:

(i) the child is charged with an offense under Section ~~[78A-6-703.2 or 78A-6-703.3]~~ 80-6-502 or 80-6-503;

(ii) the district court has obtained jurisdiction over the offense because the child is bound over to the district court under Section ~~[78A-6-703.5]~~ 80-6-504; and

(iii) the juvenile or district court orders the detention of the child.

(b) (i) If a child is detained before a detention hearing ~~[under Subsection 78A-6-113(3) or Section 78A-6-703.5]~~, or a preliminary hearing under Section 80-6-504 if a criminal information is filed for the child under Section 80-6-503, the child may only be held in certified juvenile detention accommodations in accordance with rules made by the commission.

(ii) The commission's rules shall include rules for acceptable sight and sound separation from adult inmates.

(iii) The commission shall certify that a correctional facility is in compliance with the commission's rules.

(iv) This Subsection (2)(b) does not apply to a child held in ~~[an adult detention facility]~~ a correctional facility in accordance with Subsection (2)(a).

(3) (a) In an area of low density population, the commission may, by rule, approve a juvenile detention accommodation within a correctional facility that has acceptable sight and

HB0285S02 compared with HB0285S01

sound separation.

(b) An accommodation described in Subsection (3)(a) shall be used only:

(i) for short-term holding of a child who is alleged to have committed an act that would be a criminal offense if committed by an adult; and

(ii) for a maximum confinement period of six hours.

(c) A child may only be held in an accommodation described in Subsection (3)(a) for:

(i) identification;

(ii) notification of a juvenile court official;

(iii) processing; and

(iv) allowance of adequate time for evaluation of needs and circumstances regarding the release or transfer of the child to a shelter or detention facility.

(d) This Subsection (3) does not apply to a child held in a correctional facility in accordance with Subsection (2)(a).

(4) (a) If a child is alleged to have committed an act that would be a criminal offense if committed by an adult, the child may be detained in a holding room in a local law enforcement agency facility:

(i) for a maximum of two hours; and

(ii) (A) for identification or interrogation; or

(B) while awaiting release to a parent or other responsible adult.

(b) A holding room described in Subsection (4)(a) shall be certified by the commission in accordance with the commission's rules.

(c) The commission's rules shall include provisions for constant supervision and for sight and sound separation from adult inmates.

(5) Willful failure to comply with this section is a class B misdemeanor.

(6) (a) The division is responsible for the custody and detention of:

(i) a child who requires [~~detention care~~] detention before trial or examination, [~~or is awaiting assignment to a home or facility, as a dispositional placement under Subsection 78A-6-117(2)(f)(i)]~~ or is placed in secure detention after an adjudication under Section 80-6-704; and

(ii) a juvenile offender under Subsection [~~62A-7-504(9)~~] 80-6-806(7).

(b) Subsection (6)(a) does not apply to a child held in a correctional facility in

HB0285S02 compared with HB0285S01

accordance with Subsection (2)(a).

(c) (i) The commission shall provide standards for custody or detention under Subsections (2)(b), (3), and (4).

(ii) The division shall determine and set standards for conditions of care and confinement of children in detention facilities.

(d) (i) The division, or a public or private agency willing to undertake temporary custody or detention upon agreed terms in a contract with the division, shall provide all other custody or detention in suitable premises distinct and separate from the general jails, lockups, or cells used in law enforcement and corrections systems.

(ii) This Subsection (6)(d) does not apply to a child held in a correctional facility in accordance with Subsection (2)(a).

(7) Except as otherwise provided by this chapter, if an individual who is, or appears to be, under 18 years old is received at a correctional facility, the sheriff, warden, or other official, in charge of the correctional facility shall:

(a) immediately notify the juvenile court of the individual; and

(b) make arrangements for the transfer of the individual to a detention facility, unless otherwise ordered by the juvenile court.

Section 148. Section **80-6-205** is enacted to read:

80-6-205. Admission to detention -- Alternative to detention -- Rights of a minor in detention.

(1) If a minor is taken to a detention facility under Section 80-6-203, a designated staff member of the detention facility shall immediately review the form and determine, based on the results of the detention risk assessment tool and Subsection (2), whether to:

(a) admit the minor to secure detention;

(b) admit the minor to home detention;

(c) place the minor in another alternative to detention; or

(d) if the minor is a child, return the minor home upon a written promise by the minor's parent, guardian, or custodian to bring the minor to the juvenile court at a time set or without restriction.

(2) A minor may not be admitted to detention unless:

(a) the minor is detainable based on the detention guidelines; or

HB0285S02 compared with HB0285S01

(b) the minor has been brought to detention in accordance with:

(i) a court order;

(ii) a warrant in accordance with Section 80-6-202; or

(iii) a division warrant in accordance with Section 80-6-806.

(3) If the designated staff member determines to admit a minor to home detention, the staff member shall notify the juvenile court of that determination.

(4) Even if a minor is eligible for secure detention, a peace officer or other person who takes a minor to a detention facility, or the designated staff member of the detention facility, may release a minor to a less restrictive alternative than secure detention.

(5) (a) If a minor taken to a detention facility does not qualify for admission under detention guidelines or this section, a designated staff member of the detention facility shall arrange an appropriate alternative, including admitting a minor to a juvenile receiving center or a shelter facility.

(b) (i) Except as otherwise provided by this section, a minor may not be placed or kept in secure detention while court proceedings are pending.

(ii) A child may not be placed or kept in a shelter facility while court proceedings are pending, unless the child is in protective custody in accordance with Chapter 3, Abuse, Neglect, and Dependency Proceedings.

(6) If a minor is taken into temporary custody and admitted to a secure detention, or another alternative to detention, a designated staff member of the detention facility shall:

(a) immediately notify the minor's parent, guardian, or custodian; and

(b) promptly notify the juvenile court of the placement.

(7) If a minor is admitted to secure detention, or another alternative to detention, outside the county of the minor's residence and a juvenile court determines, in a detention hearing, that secure detention, or an alternative to detention, of the minor shall continue, the juvenile court shall direct the sheriff of the county of the minor's residence to transport the minor to secure detention or another alternative to detention in that county.

(8) (a) Subject to Subsection (8)(b), a minor admitted to detention has a right to:

(i) phone the minor's parent, guardian, or attorney immediately after the minor is admitted to detention; and

(ii) confer in private, at any time, with an attorney, cleric, parent, guardian, or

HB0285S02 compared with HB0285S01

custodian.

(b) The division may:

(i) establish a schedule for which a minor in detention may visit or phone a person described in Subsection (8)(a);

(ii) allow a minor in detention to visit or call persons described in Subsection (8)(a) in special circumstances;

(iii) limit the number and length of calls and visits for a minor in detention to persons described in Subsection (8)(a) on account of scheduling, facility, or personnel constraints; or

(iv) limit the minor's rights under Subsection (8)(a) if a compelling reason exists to limit the minor's rights.

Section 149. Section **80-6-206** is enacted to read:

80-6-206. Interview of a child in detention.

(1) If a child is admitted to a detention facility, a juvenile probation officer, or a staff member at the detention facility, may interview the child regarding an offense the child is alleged to have committed without the child's parent, guardian, or custodian present.

(2) Except as provided in Subsection (1), a person may not interview a child, who is under 14 years old and admitted to a detention facility, regarding an offense the child is alleged to have committed, without the child's parent, guardian, or custodian present at the interview, unless:

(a) the parent, guardian, or custodian has given written permission for the interview to be held outside the presence of the parent, guardian, or custodian;

(b) the parent, guardian, or custodian has been advised of the child's rights under Section 80-6-603 and has knowingly and voluntarily waived the child's right under Subsection 80-6-603(9); and

(c) the child has been advised of the child's rights under Section 80-6-603 and has knowingly and voluntarily waived the child's right under Subsection 80-6-603(9).

(3) A person may not interview a minor who is 14 years old or older and admitted to a detention facility regarding an offense the minor is alleged to have committed without the consent of the minor or the minor's parent, guardian, or custodian, unless:

(a) the minor has been advised of the minor's rights under Section 80-6-603; and

(b) the minor has knowingly and voluntarily waived the minor's right under Subsection

HB0285S02 compared with HB0285S01

80-6-603(9).

(4) If a child's parent, guardian, or custodian is not available to consent to an interview of a child in a detention facility, the consent of the juvenile court shall be obtained before interviewing the child.

(5) If an guardian ad litem is appointed for a minor, the division may not consent to the interview of the minor by a law enforcement officer, unless consent for the interview is obtained from the minor's guardian ad litem.

Section 150. Section **80-6-207**, which is renumbered from Section 78A-6-113 is renumbered and amended to read:

[78A-6-113]. 80-6-207. Detention hearings -- Period of detention -- Bail.

~~[(1)(a) A minor may not be placed or kept in a secure detention facility pending court proceedings, except in accordance with Section 78A-6-112.]~~

~~[(b) A child may not be placed or kept in a shelter facility pending court proceedings unless it is unsafe to leave the child with the child's parents, guardian, or custodian.]~~

~~[(2)]~~ (1) (a) After admission of a child to a detention facility ~~[pursuant to Section 78A-6-112]~~ under Section 80-6-205 and immediate investigation by ~~[an authorized officer of the court]~~ a juvenile probation officer, the ~~[judge or the officer]~~ juvenile court or the juvenile probation officer shall order the release of the child to the child's parent, guardian, or custodian if the ~~[judge or]~~ juvenile court or the juvenile probation officer finds that the child can be safely returned to the parent's, the guardian's, or the custodian's care, ~~[either]~~ upon written promise to bring the child to the juvenile court at a time set or without restriction.

(b) If a child's parent, guardian, or custodian fails to retrieve the child from a detention facility within 24 hours after notification of release, the parent, guardian, or custodian is responsible for the cost of care for the time the child remains in the detention facility in accordance with Section 78A-6-356.

(c) The detention facility shall determine the cost of care.

(d) Any money collected under this Subsection ~~[(2)]~~ (1) shall be retained by the ~~[Division of Juvenile Justice Services]~~ division to recover the cost of care for the time the child remains in the facility.

~~[(3)]~~ (2) (a) When a child is ~~[detained in]~~ admitted to a detention ~~[or shelter]~~ facility, the ~~[parents or]~~ child's parent, guardian, or custodian shall be informed by the ~~[person]~~

HB0285S02 compared with HB0285S01

individual in charge of the detention facility that the parent's ~~[or]~~, the guardian's, or the custodian's child has the right to a prompt hearing in a juvenile court to determine whether the child is to be further detained or released.

(b) ~~[When a minor is detained in]~~ If a minor is admitted to a detention facility, the minor shall be informed by the person in charge of the facility that the minor has the right to a prompt hearing in a juvenile court to determine whether the minor is to be further detained or released.

~~[(c) Detention hearings shall be held by the judge or by a commissioner.]~~

~~[(d)]~~ (3) (a) The juvenile court may, at any time, order the release of the minor, from detention, regardless of whether a detention hearing is held or not.

~~[(e)]~~ (b) If a child is released, and the child remains in the detention facility, because the ~~[parents]~~ child's parents, guardian, or custodian fails to retrieve the child, the ~~[parents]~~ parent, guardian, or custodian shall be responsible for the cost of care as provided in Subsections ~~[(2)]~~ (1)(b), (c), and (d) in accordance with Section 78A-6-356.

(4) (a) As used in this Subsection (4), "arrest" means being apprehended, detained, taken into temporary custody under Section 80-6-201 or 80-6-202, held for investigation, or restrained by a peace officer or other person due to an accusation or suspicion that the minor committed an offense.

(b) A minor may not be held in a detention facility longer than 24 hours, unless a juvenile court determines that there is probable cause for the minor's arrest.

(5) (a) A detention hearing under this section shall be held by a juvenile court judge or commissioner.

(b) ~~[The court]~~ A juvenile court shall hold a detention hearing within 48 hours of the minor's ~~[arrest]~~ admission to a detention facility, excluding weekends and holidays, to determine whether the minor should:

- (i) remain in detention in accordance with Subsection ~~[(4)(f)]~~ (8);
- (ii) be released to a parent or guardian; or
- (iii) be placed in any other party's custody as authorized by statute.

~~[(e)]~~ (6) The probable cause determination under Subsection (4)~~[(a)]~~ and the detention hearing under Subsection ~~[(4)(b)]~~ (5) may occur at the same time if the probable cause determination and the detention hearing occur within the time ~~[frames]~~ frame under Subsection

HB0285S02 compared with HB0285S01

(4)[(a) and (4)(b)].

~~[(d) A child may not be held in a shelter facility longer than 48 hours before a shelter hearing, excluding weekends and holidays, unless a court order for extended shelter has been entered by the court after notice to all parties described in Section 78A-6-306.]~~

~~[(e) (i) A hearing for detention or shelter]~~

(7) (a) A detention hearing may not be waived.

~~[(ii) Detention staff]~~

(b) Staff at the detention facility shall provide the juvenile court with all information received from the individual who brought the minor to the detention facility.

~~[(f) The judge or commissioner]~~

(8) (a) The juvenile court may only order a minor to be held in the detention facility or be placed in another appropriate facility, subject to further order of the court, if the court finds at a detention hearing that:

~~[(f)]~~ (i) releasing the minor to the minor's parent, guardian, or custodian presents an unreasonable risk to public safety;

~~[(f)]~~ (ii) less restrictive nonresidential alternatives to detention have been considered and, where appropriate, attempted; and

~~[(f)]~~ (iii) the minor is eligible for detention under the [division guidelines for detention admissions established by the Division of Juvenile Justice Services, under Section 62A-7-202 and under Section 78A-6-112] detention guidelines and Section 80-6-205.

(b) The juvenile court may not vest custody of a minor admitted to detention in the Division of Child and Family Services, except as provided in Chapter 3, Abuse, Neglect, and Dependency Proceedings.

~~[(g) (i)]~~ (9) (a) After a detention hearing has been held, only the juvenile court may release a minor from detention.

(b) If a minor remains in a detention facility, periodic reviews shall be held in accordance with the Utah Rules of Juvenile Procedure to ensure that continued detention of the minor is necessary.

~~[(ii) After a detention hearing for a violent felony, as defined in Section 76-3-203.5, or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the court shall direct that notice of the court's decision, including any disposition, order, or no contact orders, be~~

HB0285S02 compared with HB0285S01

provided to designated persons in the appropriate local law enforcement agency and the district superintendent or 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.]

~~[(iii) Any employee of the local law enforcement agency, the school district, 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 disclosure constitutes a knowing violation of Section 63G-2-801:]~~

~~[(5) A minor may not be held in a detention facility, following a dispositional order of the court for nonsecure substitute care as defined in Section 62A-4a-101, or for community-based placement under Section 62A-7-101:]~~

~~[(6)(a) Except as otherwise provided in this section, a minor may not be held in a detention facility following a disposition order of the court for longer than 72 hours, excluding weekends and holidays:]~~

~~[(b) The period of detention may be extended by the court for a cumulative total of seven calendar days if:]~~

~~[(i) the Division of Juvenile Justice Services, or another agency responsible for placement, files a written petition with the court requesting the extension and setting forth good cause; and]~~

~~[(ii) the court enters a written finding that it is in the best interests of both the minor and the community to extend the period of detention:]~~

~~[(c) The court may extend the period of detention beyond the seven calendar days if the court finds by clear and convincing evidence that:]~~

~~[(i) the Division of Juvenile Justice Services or another agency responsible for placement does not have space for the minor; and]~~

~~[(ii) the safety of the minor and community requires an extension of the period of detention:]~~

~~[(d) The Division of Juvenile Justice Services shall report to the court every 48 hours, excluding weekends and holidays, regarding whether the Division of Juvenile Justice Services~~

HB0285S02 compared with HB0285S01

~~or another agency responsible for placement has space for the minor.]~~

~~[(7) The agency requesting an extension shall promptly notify the detention facility that a written petition has been filed.]~~

~~[(8) The court shall promptly notify the detention facility regarding the court's initial disposition and any ruling on a petition for an extension, whether granted or denied.]~~

~~[(9)(a)(i) A child who is younger than 16 years old may not be held in a jail, lockup, or other place for adult detention, except as provided by Section 62A-7-201, 78A-6-703.5, or 78A-6-703.6.]~~

~~[(ii) Section 62A-7-201 regarding confinement facilities applies to this Subsection (9).]~~

~~[(b)(i) A child who is 16 years old or older and whose conduct or condition endangers the safety or welfare of others in the detention facility for children may, by court order that specifies the reasons, be detained in another place of confinement considered appropriate by the court, including a jail or other place of confinement for adults.]~~

~~[(ii) A secure facility is not an appropriate place of confinement for detention purposes under this section.]~~

~~[(10) A sheriff, warden, or other official in charge of a jail or other facility for the detention of adult offenders or individuals charged with an offense shall immediately notify the juvenile court when an individual who is or appears to be under 18 years old is received at the facility and shall make arrangements for the transfer of the individual to a detention facility, unless otherwise ordered by the juvenile court.]~~

~~[(11)] (10) This section does not apply to a minor who is brought to [the adult facility] a correctional facility in accordance with Section [78A-6-703.2, 78A-6-703.5, or 78A-6-703.6] 80-6-502, 80-6-504, or 80-6-505.~~

~~[(12) A provision of law regarding bail is not applicable to minors detained or taken into custody under this chapter, except that bail may be allowed:]~~

~~[(a) if a minor who need not be detained lives outside this state; or]~~

~~[(b) when a minor who need not be detained comes within one of the classes in Section 78A-6-1101.]~~

~~[(13) Section 76-8-418 is applicable to a child who willfully and intentionally commits an act against a jail or other place of confinement, including a Division of Juvenile Justice Services detention, shelter, or secure confinement facility that would be a third degree felony if~~

HB0285S02 compared with HB0285S01

committed by an adult.]

(11) Notwithstanding Title 77, Chapter 20, Bail, a minor in a detention facility does not have a right to bail, except that bail is allowed if:

- (a) a minor is cited under Section 80-6-302;
- (b) a minor is charged in accordance with Section 80-6-502;
- (c) a minor is bound over to the district court in accordance with Section 80-6-504;
- (d) a minor, who need not be detained, lives outside this state; and
- (e) a minor, who need not be detained, is held in contempt under Section 78A-6-353.

Section 151. Section **80-6-301** is enacted to read:

Part 3. Referral and Prosecution

80-6-301. Referral to juvenile court.

(1) Except as provided in Subsections (2) and (3), a peace officer, or a public official of the state, a county, a city, or a town charged with the enforcement of the laws of the state or local jurisdiction, shall file a formal referral with the juvenile court within 10 days after the day on which a minor is taken into temporary custody under Section 80-6-201.

(2) If a minor is taken to a detention facility, a peace officer, or public official of the state, a county, a city, or a town charged with the enforcement of laws of the state or local jurisdiction, shall file the formal referral with the juvenile court within 24 hours after the time in which the minor is taken into temporary custody under Section 80-6-201.

(3) A peace officer, public official, school district, or school may only refer a minor to the juvenile court under Section 53G-8-211 for an offense that is subject to referral under Section 53G-8-211.

Section 152. Section **80-6-302**, which is renumbered from Section 78A-6-603 is renumbered and amended to read:

~~[78A-6-603].~~ **80-6-302. Citation -- Procedure -- Time limits -- Failure to appear.**

(1) A petition is not required to commence a proceeding against a minor for an adjudication of an alleged offense if a citation is issued for an offense for which the juvenile court has jurisdiction over and the offense listed in the citation is for:

- (a) a violation of a wildlife law;
- (b) a violation of a boating law;

HB0285S02 compared with HB0285S01

(c) a class B or C misdemeanor or an infraction other than a misdemeanor or infraction:

(i) for a traffic violation; or

(ii) designated as a citable offense by general order of the Board of Juvenile Court Judges;

(d) a class B misdemeanor or infraction for a traffic violation where the individual is 15 years old or younger at the time the offense was alleged to have occurred;

(e) an infraction or misdemeanor designated as a citable offense by a general order of the Board of Juvenile Court Judges; or

(f) a violation of Subsection 76-10-105(2).

(2) Except as provided in Subsection (6) and Section ~~[53G-8-211]~~ 80-6-301, a citation for an offense listed in Subsection (1) shall be submitted to the juvenile court within five days of issuance to a minor.

(3) A copy of the citation shall contain:

(a) the name and address of the juvenile court before which the minor may be required to appear;

(b) the name of the minor cited;

(c) the statute or local ordinance that the minor is alleged to have violated;

(d) a brief description of the offense charged;

(e) the date, time, and location at which the offense is alleged to have occurred;

(f) the date the citation was issued;

(g) the name and badge or identification number of the peace officer or public official who issued the citation;

(h) the name of the arresting person if an arrest was made by a private party and the citation was issued in lieu of taking the ~~[arrested]~~ minor into temporary custody as provided in Section ~~[78A-6-112]~~ 80-6-201;

(i) a statement that the minor and ~~[parent or legal guardian]~~ the minor's parent or guardian are to appear when notified by the juvenile court; and

(j) the signature of the minor and ~~[the parent or legal guardian]~~ the minor's parent or guardian, if present, agreeing to appear at the juvenile court when notified by the court.

(4) A copy of the citation shall contain space for the following information to be

HB0285S02 compared with HB0285S01

entered if known:

- (a) the minor's address;
- (b) the minor's date of birth;
- (c) the name and address of the child's custodial parent [~~or legal guardian~~] or guardian,

if different from the child; and

(d) if there is a victim, the victim's name, address, and an estimate of loss, except that this information shall be removed from the documents the minor receives.

(5) A citation received by the juvenile court beyond the time designated in Subsection (2) shall include a written explanation for the delay.

(6) A minor offense, as defined in Section [~~78A-6-1202~~] 80-6-901, alleged to have been committed by an enrolled child on school property or related to school attendance, may only be referred to the prosecuting attorney or the juvenile court in accordance with Section 53G-8-211.

(7) If a juvenile court receives a citation described in Subsection (1), [~~the court's probation department~~] a juvenile probation officer shall make a preliminary inquiry as to whether the minor is eligible for a nonjudicial adjustment in accordance with Subsection [~~78A-6-602(7)~~] 80-6-304(5).

(8) (a) Except as provided in Subsection (8)(b), if a citation is issued to a minor, a prosecuting attorney may commence a proceeding against a minor, without filing a petition, for an adjudication of the offense in the citation only if:

(i) the minor is not eligible for, or does not complete, a nonjudicial adjustment in accordance with Section [~~78A-6-602~~] 80-6-304; and

(ii) the prosecuting attorney conducts an inquiry under Subsection (9).

(b) Except as provided in Subsection [~~78A-6-602.5(2)~~] 80-6-305(2), a prosecuting attorney may not commence a proceeding against an individual for any offense listed in a citation alleged to have occurred before the individual was 12 years old.

(9) The prosecuting attorney shall conduct an inquiry to determine, upon reasonable belief, that:

(a) the charge listed in the citation is supported by probable cause;

(b) admissible evidence will be sufficient to support adjudication beyond a reasonable doubt; and

HB0285S02 compared with HB0285S01

(c) the decision to charge is in the interests of justice.

(10) If a proceeding is commenced against a minor under Subsection (8)(a), the minor shall appear at the juvenile court at a date and time established by the juvenile court.

(11) If a minor willfully fails to appear before the juvenile court for a proceeding under Subsection (8)(a), the juvenile court may:

(a) find the minor in contempt of court; and

(b) proceed against the minor as provided in Section [~~78A-6-1101~~] 78A-6-353.

(12) [~~When~~] If a proceeding is commenced under this section, bail may be posted and forfeited under Section [~~78A-6-113~~] 80-6-207 with the consent of:

(a) the juvenile court; and

(b) if the minor is a child, the parent or [~~legal~~] guardian of the child cited.

Section 153. Section **80-6-303**, which is renumbered from Section 78A-6-601 is renumbered and amended to read:

[~~78A-6-601~~]. 80-6-303. Criminal proceedings involving minors -- Transfer to juvenile court -- Exception.

(1) (a) If while a criminal or quasi-criminal proceeding is pending, a district court or justice court determines that an individual being charged is under 21 years old and was younger than 18 years old at the time of committing the alleged offense, the district court or justice court shall transfer the case to the juvenile court with all the papers, documents, and transcripts of any testimony.

(b) (i) Notwithstanding Subsection (1)(a), a district court may not transfer an offense that is:

(A) filed in the district court in accordance with Section [~~78A-6-703.2~~] 80-6-502; or

(B) transferred to the district court in accordance with Section [~~78A-6-703.5~~] 80-6-504.

(ii) Notwithstanding Subsection (1)(a), a justice court may decline to transfer an offense for which the justice court has original jurisdiction under Subsection 78A-7-106(2).

(2) (a) Except as provided in Subsection (2)(b), the district court or justice court making the transfer shall:

(i) order the individual to be taken immediately to the juvenile court or to a place of detention designated by the juvenile court; or

(ii) release the individual to the custody of the individual's parent or guardian or other

HB0285S02 compared with HB0285S01

person legally responsible for the individual, to be brought before the juvenile court at a time designated by the juvenile court.

(b) If the alleged offense under Subsection (1) occurred before the individual was 12 years old:

(i) the district court or justice court making the transfer shall release the individual to the custody of the individual's parent or guardian, or other person legally responsible for the individual;

(ii) the juvenile court shall treat the transfer as a referral under [~~Subsection 78A-6-602(3)~~] Section 80-6-301; and

(iii) [~~the juvenile court's probation department~~] a juvenile probation officer shall make a preliminary inquiry to determine whether the individual is eligible for a nonjudicial adjustment in accordance with Section [~~78A-6-602~~] 80-6-304.

(c) If the case is transferred to the juvenile court under this section, the juvenile court shall then proceed in accordance with this chapter.

(3) A district court or justice court does not have to transfer a case under Subsection (1) if the district court or justice court would have had jurisdiction over the case at the time the individual committed the offense in accordance with Subsections 78A-5-102(9) and 78A-7-106(2).

Section 154. Section **80-6-304**, which is renumbered from Section 78A-6-602 is renumbered and amended to read:

[~~78A-6-602~~]. 80-6-304. Nonjudicial adjustments.

~~[(1) As used in this section, "referral" means a formal referral, a referral to the court under Section 53G-8-211 or Subsection 78A-6-601(2)(b), or a citation issued to a minor for which the court receives notice under Section 78A-6-603.]~~

~~[(2)(a) A peace officer, or a public official of the state, a county, city, or town charged with the enforcement of the laws of the state or local jurisdiction, shall file a formal referral with the court within 10 days of a minor's arrest.]~~

~~[(b) If the arrested minor is taken to a detention facility, the peace officer, or public official, shall file the formal referral with the court within 24 hours.]~~

~~[(c) A peace officer, public official, school district, or school may only make a referral to the court under Section 53G-8-211 for an offense that is subject to referral under Section~~

HB0285S02 compared with HB0285S01

53G-8-211.]

~~[(3)]~~ (1) If the juvenile court receives a referral for ~~[a minor who]~~ an offense committed by a minor that is, or appears to be, within the juvenile court's jurisdiction, ~~[the court's probation department]~~ a juvenile probation officer shall make a preliminary inquiry in accordance with Subsections ~~[(5), (6), and (7)]~~ (3), (4), and (5) to determine whether the minor is eligible to enter into a nonjudicial adjustment.

~~[(4)]~~ (2) If a minor is referred to the juvenile court for multiple offenses arising from a single criminal episode, and the minor is eligible under this section for a nonjudicial adjustment, ~~[the court's probation department]~~ the juvenile probation officer shall offer the minor one nonjudicial adjustment for all offenses arising from the single criminal episode.

~~[(5)]~~ (3) (a) ~~[The court's probation department]~~ The juvenile probation officer may:

- (i) conduct a validated risk and needs assessment; and
- (ii) request that a prosecuting attorney review a referral in accordance with Subsection

~~[(11)]~~ (9) if:

(A) the results of the validated risk and needs assessment indicate the minor is high risk; or

(B) the results of the validated risk and needs assessment indicate the minor is moderate risk and the referral is for a class A misdemeanor violation under Title 76, Chapter 5, Offenses Against the Person, or Title 76, Chapter 9, Part 7, Miscellaneous Provisions.

(b) If a minor violates Section 41-6a-502, the minor shall:

- (i) undergo a drug and alcohol screening;
- (ii) if found appropriate by the screening, participate in an assessment; and
- (iii) if warranted by the screening and assessment, follow the recommendations of the assessment.

~~[(6)]~~ (4) Except as provided in Subsection ~~[(7)]~~ (5)(b), the ~~[probation department]~~ juvenile probation officer shall request that a prosecuting attorney review a referral in accordance with Subsection ~~[(11)]~~ (9) if:

(a) the referral involves:

- (i) a felony offense; or
- (ii) a violation of:

(A) Section 41-6a-502, driving under the influence;

HB0285S02 compared with HB0285S01

(B) Section 76-5-112, reckless endangerment creating a substantial risk of death or serious bodily injury;

(C) Section 76-5-206, negligent homicide;

(D) Section 76-9-702.1, sexual battery;

(E) Section 76-10-505.5, possession of a dangerous weapon, firearm, or short barreled shotgun on or about school premises; or

(F) Section 76-10-509, possession of a dangerous weapon by minor, but only if the dangerous weapon is a firearm;

(b) the minor has a current suspended order for custody under [~~Subsection 78A-6-117(5)(a)] Section 80-6-711; or~~

(c) the referral involves an offense alleged to have occurred before an individual was 12 years old and the offense is a felony violation of:

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

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

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

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

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

(vi) Section 76-6-103, aggravated arson;

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

(viii) Section 76-6-302, aggravated robbery; or

(ix) Section 76-10-508.1, felony discharge of a firearm.

[~~(7)~~] (5) (a) Except as provided in Subsections [~~(5) and (6)~~], ~~the court's probation department~~ (3) and (4), the juvenile probation officer shall offer a nonjudicial adjustment to a minor if the minor:

(i) is referred for an offense that is a misdemeanor, infraction, or status offense;

(ii) has no more than two prior adjudications; and

(iii) has no more than three prior unsuccessful nonjudicial adjustment attempts.

(b) If the juvenile court receives a referral for an offense that is alleged to have occurred before an individual was 12 years old, [~~the court's probation department~~] the juvenile probation officer shall offer a nonjudicial adjustment to the individual, unless the referral includes an offense described in Subsection [~~(6)~~] (4)(c).

HB0285S02 compared with HB0285S01

(c) (i) For purposes of determining a minor's eligibility for a nonjudicial adjustment under this Subsection [~~(7), the court's probation department~~] (5), the juvenile probation officer shall treat all offenses arising out of a single criminal episode that resulted in a nonjudicial adjustment as one prior nonjudicial adjustment.

(ii) For purposes of determining a minor's eligibility for a nonjudicial adjustment under this Subsection [~~(7), the court's probation department~~] (5), the juvenile probation officer shall treat all offenses arising out of a single criminal episode that resulted in one or more prior adjudications as a single adjudication.

(d) Except as provided in Subsection [~~(6), the court's probation department~~] (4), the juvenile probation officer may offer a nonjudicial adjustment to a minor who does not meet the criteria provided in Subsection [~~(7)~~] (5)(a).

~~[(8)]~~ (6) For a nonjudicial adjustment, [~~the court's probation department~~] the juvenile probation officer may require a minor to:

(a) pay a financial penalty of no more than \$250 to the juvenile court, subject to the terms established under Subsection [~~(10)~~] (8)(c);

(b) pay restitution to any victim;

(c) complete community or compensatory service;

(d) attend counseling or treatment with an appropriate provider;

(e) attend substance abuse treatment or counseling;

(f) comply with specified restrictions on activities or associations;

(g) attend victim-offender mediation if requested by the victim; and

(h) comply with any other reasonable action that is in the interest of the minor, the community, or the victim.

~~[(9)]~~ (7) (a) Within seven days of receiving a referral that appears to be eligible for a nonjudicial adjustment in accordance with Subsection [~~(7), the court's probation department~~] (5), the juvenile probation officer shall provide an initial notice to reasonably identifiable and locatable victims of the offense contained in the referral.

(b) The victim shall be responsible to provide to [~~the probation department~~] the juvenile probation officer upon request:

(i) invoices, bills, receipts, and any other evidence of injury, loss of earnings, and out-of-pocket loss;

HB0285S02 compared with HB0285S01

(ii) documentation and evidence of compensation or reimbursement from an insurance company or an agency of the state, any other state, or the federal government received as a direct result of the crime for injury, loss of earnings, or out-of-pocket loss; and

(iii) proof of identification, including home and work address and telephone numbers.

(c) The inability, failure, or refusal of the victim to provide all or part of the requested information shall result in ~~[the probation department]~~ the juvenile probation officer determining restitution based on the best information available.

~~[(10)]~~ (8) (a) The ~~[court's probation department]~~ juvenile probation officer may not predicate acceptance of an offer of a nonjudicial adjustment on an admission of guilt.

(b) The ~~[court's probation department]~~ juvenile probation officer may not deny a minor an offer of a nonjudicial adjustment due to a minor's inability to pay a financial penalty under Subsection ~~[(8)]~~ (6).

(c) The ~~[court's probation department]~~ juvenile probation officer shall base a fee, fine, or the restitution for a nonjudicial adjustment under Subsection ~~[(8)]~~ (6) upon the ability of the minor's family to pay as determined by a statewide sliding scale developed in accordance with Section 63M-7-208 ~~[on or after July 1, 2018]~~.

(d) A nonjudicial adjustment may not extend for more than 90 days, unless a juvenile court judge extends the nonjudicial adjustment for an additional 90 days.

(e) (i) Notwithstanding Subsection ~~[(10)]~~ (8)(d), a juvenile court judge may extend a nonjudicial adjustment beyond the 180 days permitted under Subsection ~~[(10)]~~ (8)(d) for a minor who is offered a nonjudicial adjustment under Subsection ~~[(7)]~~ (5)(b) for a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, or is referred under Subsection ~~[(11)]~~ (9)(b)(ii) for a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, that the minor committed before the minor was 12 years old, if the judge determines that:

(A) the nonjudicial adjustment requires specific treatment for the sexual offense;

(B) the treatment cannot be completed within 180 days after the day on which the minor entered into the nonjudicial adjustment; and

(C) the treatment is necessary based on a clinical assessment that is developmentally appropriate for the minor.

(ii) If a juvenile court judge extends a minor's nonjudicial adjustment under Subsection ~~[(10)]~~ (8)(e)(i), the judge may extend the nonjudicial adjustment until the minor completes the

HB0285S02 compared with HB0285S01

treatment under this Subsection ~~[(10)]~~ (8)(e), but the judge may only grant each extension for 90 days at a time.

(f) If a minor violates Section 76-10-105, the minor may be required to pay a fine or penalty and participate in a court-approved tobacco education program with a participation fee.

~~[(11)]~~ (9) If a prosecuting attorney is requested to review a referral in accordance with Subsection ~~[(5) or (6)]~~ (3) or (4), a minor fails to substantially comply with a condition agreed upon as part of the nonjudicial adjustment, or a minor is not offered or declines a nonjudicial adjustment in accordance with Subsection ~~[(7)]~~ (5), the prosecuting attorney shall:

(a) review the case; and

(b) (i) dismiss the case;

(ii) refer the case back to the ~~[probation department]~~ juvenile probation officer for a new attempt at nonjudicial adjustment; or

(iii) except as provided in Subsections ~~[(12)]~~ (10)(b), ~~[(13)]~~ (11), and ~~[78A-6-602.5(2)]~~ 80-6-305(2), file a petition with the juvenile court.

~~[(12)]~~ (10) (a) A prosecuting attorney may file a petition only upon reasonable belief that:

(i) the charges are supported by probable cause;

(ii) admissible evidence will be sufficient to support adjudication beyond a reasonable doubt; and

(iii) the decision to charge is in the interests of justice.

(b) Failure to pay a fine or fee may not serve as a basis for filing of a petition under Subsection ~~[(11)]~~ (9)(b)(iii) if the minor has substantially complied with the other conditions agreed upon in accordance with Subsection ~~[(8)]~~ (6) or conditions imposed through any other court diversion program.

~~[(13)]~~ (11) A prosecuting attorney may not file a petition against a minor unless:

(a) the prosecuting attorney has statutory authority to file the petition under Section ~~[78A-6-602.5]~~ 80-6-305; and

(b) (i) the minor does not qualify for a nonjudicial adjustment under Subsection ~~[(7)]~~ (5);

(ii) the minor declines a nonjudicial adjustment;

(iii) the minor fails to substantially comply with the conditions agreed upon as part of

HB0285S02 compared with HB0285S01

the nonjudicial adjustment;

(iv) the minor fails to respond to the [~~probation department's~~] juvenile probation officer's inquiry regarding eligibility for or an offer of a nonjudicial adjustment after being provided with notice for preliminary inquiry; or

(v) the prosecuting attorney is acting under Subsection [~~(11)~~] (9).

[~~(14)~~] (12) If the prosecuting attorney files a petition in a juvenile court, or a proceeding is commenced against a minor under Section [~~78A-6-603~~] 80-6-302, the juvenile court may refer the case to [~~the probation department~~] the juvenile probation officer for another offer of nonjudicial adjustment.

Section 155. Section **80-6-305**, which is renumbered from Section 78A-6-602.5 is renumbered and amended to read:

[~~78A-6-602.5~~]. 80-6-305. Petition for a delinquency proceeding -- Amending a petition -- Continuance.

(1) A prosecuting attorney shall file a petition, in accordance with Utah Rules of Juvenile Procedure, Rule 17, to commence a proceeding against a minor for an adjudication of an alleged offense, except as provided in:

- (a) Subsection (2);
- (b) Section [~~78A-6-603~~] 80-6-302;
- (c) Section [~~78A-6-703.2~~] 80-6-502; and
- (d) Section [~~78A-6-703.3~~] 80-6-503.

(2) A prosecuting attorney may not file a petition under Subsection (1) against an individual for an offense alleged to have occurred before the individual was 12 years old, unless:

- (a) the individual is alleged to have committed a felony violation of:
 - (i) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;
 - (ii) Section 76-5-202, aggravated murder or attempted aggravated murder;
 - (iii) Section 76-5-203, murder or attempted murder;
 - (iv) Section 76-5-302, aggravated kidnapping;
 - (v) Section 76-5-405, aggravated sexual assault;
 - (vi) Section 76-6-103, aggravated arson;
 - (vii) Section 76-6-203, aggravated burglary;

HB0285S02 compared with HB0285S01

(viii) Section 76-6-302, aggravated robbery; or

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

(b) an offer for a nonjudicial adjustment is made under Section ~~[78A-6-602]~~ 80-6-304

and the minor:

(i) declines to accept the offer for the nonjudicial adjustment; or

(ii) fails to substantially comply with the conditions agreed upon as part of the nonjudicial adjustment.

(3) A juvenile court may dismiss a petition under this section at any stage of the proceedings.

(4) (a) When evidence is presented during any proceeding in a minor's case that points to material facts not alleged in the petition, the juvenile court may consider the additional or different material facts raised by the evidence if the parties consent.

(b) The juvenile court, on a motion from any interested party or on the court's own motion, shall direct that the petition be amended to conform to the evidence.

(c) If an amended petition under Subsection (4)(b) results in a substantial departure from the material facts originally alleged, the juvenile court shall grant a continuance as justice may require in accordance with Utah Rules of Juvenile Procedure, Rule 54.

Section 156. Section **80-6-306** is enacted to read:

80-6-306. Plea -- Withdrawal of a plea.

(1) If a minor is facing a delinquency proceeding under this chapter, the minor may enter:

(a) a denial of the alleged offense;

(b) an admission of the alleged offense; or

(c) with the consent of the juvenile court, a plea of no contest as described in Section 77-13-2.

(2) (a) If a minor enters an admission under Subsection (1), the juvenile court may:

(i) delay in entering the admission for a defined period of time; and

(ii) impose conditions on the minor for the period of time under Subsection (2)(a)(i).

(b) If the minor successfully completes the conditions imposed under Subsection (2)(a)(ii), the juvenile court shall dismiss the petition filed under this chapter.

(c) If the minor fails to complete the conditions imposed under Subsection (2)(a)(ii),

HB0285S02 compared with HB0285S01

the juvenile court shall:

- (i) enter the minor's admission; and
- (ii) proceed with ordering a disposition in accordance with Section 80-6-701.
- (3) If a minor declines to enter a plea, the juvenile court shall enter a denial.
- (4) A minor's counsel may enter a denial in the absence of the minor or the minor's

parent, guardian, or custodian.

- (5) The minor may enter an admission to:
 - (a) a lesser included offense;
 - (b) an offense of a lesser degree; or
 - (c) a different offense for which the juvenile court may enter after amending the

petition.

(6) A plea under this section shall be conducted in accordance with Utah Rules of Juvenile Procedure, Rule 25.

(7) A minor may withdraw a denial of an offense at any time before an adjudication under Section 80-6-701.

- (8) A minor may only withdraw an admission or a plea of no contest upon:
 - (a) leave of the court; and
 - (b) a showing that the admission or plea was not knowingly and voluntarily made.

(9) (a) Even if the juvenile court has ordered a disposition under Part 7, Adjudication and Disposition, a minor shall make a request to withdraw an admission, or a plea of no contest, within 30 days after the day on which the minor entered the admission or plea.

(b) If the juvenile court has not entered a disposition, the juvenile court may not announce a disposition until the motion to withdraw under Subsection (9)(a) is denied.

Section 157. Section **80-6-307**, which is renumbered from Section 78A-6-605 is renumbered and amended to read:

[78A-6-605]. **80-6-307. Dispositional report required in minors' cases -- Exceptions.**

(1) [~~The probation department~~] A juvenile probation officer, or other agency designated by the juvenile court, shall make a dispositional report in writing in all [~~minor's~~] minors' cases in which a petition has been filed, except [~~that the court may dispense with the study and report~~] in cases involving violations of traffic laws or ordinances, violations of

HB0285S02 compared with HB0285S01

wildlife laws[;] and boating laws, and other minor cases.

(2) When preparing a dispositional report and recommendation in [~~a delinquency action, the probation department~~] a minor's case, the juvenile probation officer, or other agency designated by the juvenile court, shall consider the juvenile [~~sentencing guidelines developed in accordance with Section 63M-7-404 and any aggravating or mitigating circumstances~~] disposition guidelines developed in accordance with Section 63M-7-404 and any other factors relevant to the disposition designated in the juvenile disposition guidelines.

(3) Where the allegations of a petition filed under [~~Subsection 78A-6-103(1)~~] Section 80-6-305 are denied, the investigation may not be made until the juvenile court has made an adjudication.

Section 158. Section **80-6-401**, which is renumbered from Section 78A-6-1301 is renumbered and amended to read:

Part 4. Competency

~~[78A-6-1301].~~ **80-6-401. Competency to proceed.**

(1) [~~In a case alleging that a minor has violated any federal, state, or local law~~] If a petition is filed under Section 80-6-305, or a criminal information is filed under Section 80-6-503, in the juvenile court, a written motion may be filed alleging reasonable grounds to believe the minor is not competent to proceed.

(2) The written motion shall contain:

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

(i) a mental illness;

(ii) an intellectual disability or a related condition; or

(iii) developmental immaturity;

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

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

(3) The motion may be:

(a) based upon knowledge or information and belief; and [~~may be~~]

(b) filed by:

HB0285S02 compared with HB0285S01

- ~~[(a)]~~ (i) the minor alleged not competent to proceed;
- ~~[(b)]~~ (ii) any person acting on the minor's behalf;
- ~~[(c)]~~ (iii) the prosecuting attorney;
- ~~[(d)]~~ (iv) the attorney guardian ad litem; or
- ~~[(e)]~~ (v) any person having custody or supervision over the minor.

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

(b) If raised by the juvenile court, counsel for each party shall be permitted to address the issue of competency~~[-and the]~~.

(c) The juvenile court shall state the basis for the finding that there are reasonable grounds to believe the minor is not competent to proceed.

Section 159. Section **80-6-402**, which is renumbered from Section 78A-6-1302 is renumbered and amended to read:

~~[78A-6-1302].~~ **80-6-402. Procedure -- Standard.**

(1) When a written motion is filed ~~[pursuant to Section 78A-6-1301]~~ in accordance with Section 80-6-401 raising the issue of a minor's competency to proceed, or when the juvenile court raises the issue of a minor's competency to proceed, the juvenile court ~~[in which proceedings are pending]~~ shall stay all ~~[delinquency]~~ proceedings under this chapter.

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

(b) If the juvenile court finds that the allegations of incompetency raise a bona fide doubt as to the minor's competency to proceed, ~~[it]~~ the juvenile court shall:

- (i) enter an order for an evaluation of the minor's competency to proceed~~[-];~~ and ~~[shall]~~
- (ii) set a date for a hearing on the issue of the minor's competency.

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

(4) ~~[(a)]~~ The minor shall be evaluated by a forensic evaluator ~~[with]~~ who:

(a) has experience in juvenile forensic evaluations and juvenile brain development~~[-~~
who];

HB0285S02 compared with HB0285S01

(b) if it becomes apparent that the minor is not competent due to an intellectual disability or related condition, has experience in intellectual disability or related conditions; and

(c) is not involved in the current treatment of the minor.

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

(5) The petitioner or other party, as directed by the juvenile court, shall provide all information and materials relevant to a determination of the minor's competency to the department within seven days of the juvenile court's order, including:

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

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

- (i) medical records;
- (ii) prior mental evaluations; or
- (iii) records of diagnosis or treatment of substance abuse disorders.

(b) The minor shall cooperate, by executing a release of information when necessary, in providing the relevant information and materials to the forensic evaluator regarding records of diagnosis or treatment of a substance abuse disorder.

(7) (a) In conducting the evaluation and in the report determining if a minor is competent to proceed, the forensic evaluator shall inform the juvenile court of the forensic evaluator's opinion whether:

- (i) the minor has a present ability to consult with counsel with a reasonable degree of

HB0285S02 compared with HB0285S01

rational understanding; and ~~whether~~

(ii) the minor has a rational as well as factual understanding of the proceedings.

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

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

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

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

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

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

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

(vii) testify relevantly; and

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

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

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

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

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

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

(a) the nature of the minor's:

(i) mental illness;

(ii) intellectual disability or related condition; or

(iii) developmental immaturity;

(b) the relationship of the minor's mental illness, intellectual disability, related

HB0285S02 compared with HB0285S01

condition, or developmental immaturity to the minor's incompetence;

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

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

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

(f) the basis for clinical findings and opinions.

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

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

(b) may be admitted where relevant to a determination of the minor's competency.

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

(12) When the report is received, the juvenile 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 juvenile court enlarges the time for good cause.

(13) (a) A minor shall be presumed competent unless the juvenile court, by a preponderance of the evidence, finds the minor not competent to proceed.

(b) The burden of proof is upon the proponent of incompetency to proceed.

(14) (a) Following the hearing, the juvenile 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 juvenile court enters a finding [~~pursuant to~~] described in Subsection

HB0285S02 compared with HB0285S01

(14)(a)(i), the juvenile court shall proceed with ~~[the delinquency]~~ the proceedings in the minor's case.

(c) If the juvenile court enters a finding ~~[pursuant to]~~ described in Subsection (14)(a)(ii), the juvenile court shall proceed ~~[consistent]~~ in accordance with Section ~~[78A-6-1303]~~ 80-6-403.

(d) (i) If the juvenile court enters a finding ~~[pursuant to]~~ described in Subsection (14)(a)(iii), the juvenile court shall terminate the competency proceeding, dismiss the ~~[delinquency]~~ charges against the minor 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 will be initiated ~~[pursuant to]~~ in accordance with:

(A) Title 62A Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability; ~~[or]~~

(B) if the minor is 18 years old or older, Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities; or

~~[(B)]~~ (C) if the minor is a child, Title 62A Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(ii) The commitment proceedings described in Subsection (14)(d)(i) shall be initiated within seven days after the ~~[court's order]~~ day on which the juvenile court enters the order under Subsection (14)(a), unless the court enlarges the time for good cause shown.

(iii) The juvenile court may order the minor to remain in custody until the commitment proceedings have been concluded.

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

Section 160. Section **80-6-403**, which is renumbered from Section 78A-6-1303 is renumbered and amended to read:

~~[78A-6-1303].~~ **80-6-403. Disposition on finding of not competent to proceed -- Subsequent hearings -- Notice to prosecuting attorneys.**

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

HB0285S02 compared with HB0285S01

(2) The attainment plan shall include:

- (a) any services or treatment the minor has been or is currently receiving that are necessary to attain competency;
- (b) any additional services or treatment the minor may require to attain competency;
- (c) an assessment of the parent, custodian, or guardian's ability to access or provide any recommended treatment or services;
- (d) any special conditions or supervision that may be necessary for the safety of the minor or others during the attainment period; and
- (e) the likelihood that the minor will attain competency and the amount of time likely required for the minor to attain competency.

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

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

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

(c) If the juvenile court orders the minor to be held in detention during the attainment period, the juvenile court shall make the following findings on the record:

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

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

- (i) the most severe allegation against the minor if committed by an adult is a class B misdemeanor;
- (ii) more than 60 days have passed after the day on which the juvenile court adjudicated the minor not competent to proceed; and

HB0285S02 compared with HB0285S01

(iii) the minor has not attained competency.

(5) (a) At any time that the minor becomes competent to proceed during the attainment period, the department shall notify the juvenile court, [~~prosecutor~~] the prosecuting attorney, the defense attorney, and the attorney guardian ad litem.

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

(6) (a) If at any time during the attainment period the juvenile court finds that there is not a substantial probability that the minor will attain competency in the foreseeable future, the juvenile court shall terminate the competency proceeding, dismiss the [~~delinquency charges without prejudice~~] petition or information without prejudice, and release the minor from any custody order related to the pending [~~delinquency~~] proceeding, unless the [~~prosecutor~~] prosecuting attorney or any other individual informs the juvenile court that commitment proceedings will be initiated [~~pursuant to~~] in accordance with:

(i) Title 62A Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability; [~~or~~]

(ii) if the minor is 18 years old or older, Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities; or

[~~(ii)~~] (iii) if the minor is a child, Title 62A Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

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

(7) During the attainment period, the juvenile court may order a hearing or rehearing at anytime on [~~its~~] the juvenile court's own motion or upon recommendation of any interested party or the department.

(8) (a) Within three months of the juvenile court's approval of the attainment plan, the department shall provide a report on the minor's progress towards competence.

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

(i) compliance with the attainment plan;

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

HB0285S02 compared with HB0285S01

(iii) current mental illness, intellectual disability or related condition, or developmental immaturity, and need for treatment, if any, and whether there is substantial likelihood of the minor attaining competency within six months.

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

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

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

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

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

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

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

Section 161. Section **80-6-501**, which is renumbered from Section 78A-6-703.1 is renumbered and amended to read:

Part 5. Transfer to District Court

~~[78A-6-703.1].~~ **80-6-501. Definitions.**

As used in this part:

(1) "Qualifying offense" means an offense described in Subsection [~~78A-6-703.3~~] 80-6-503(1) or (2)(b).

(2) "Separate offense" means any offense that is not a qualifying offense.

Section 162. Section **80-6-502**, which is renumbered from Section 78A-6-703.2 is

HB0285S02 compared with HB0285S01

renumbered and amended to read:

~~[78A-6-703.2].~~ **80-6-502.** Criminal information for a minor in district court.

(1) If a prosecuting attorney charges a minor with aggravated murder under Section 76-5-202 or murder under Section 76-5-203, the prosecuting attorney shall file a criminal information in the district court if the minor was the principal actor in an offense and the information alleges:

- (a) the minor was 16 or 17 years old at the time of the offense; and
- (b) the offense for which the minor is being charged is:
 - (i) Section 76-5-202, aggravated murder; or
 - (ii) Section 76-5-203, murder.

(2) If the prosecuting attorney files a criminal information in the district court in accordance with Subsection (1), the district court shall try the minor as an adult, except:

(a) the minor is not subject to a sentence of death in accordance with Subsection 76-3-206(2)(b); and

(b) the minor is not subject to a sentence of life without parole in accordance with Subsection 76-3-206(2)(b) or 76-3-207.5(3) or Section 76-3-209.

(3) Except for a minor who is subject to the authority of the Board of Pardons and Parole, a minor shall be held in a ~~[juvenile]~~ detention facility until the district court determines where the minor will be held until the time of trial if:

- (a) the minor is 16 or 17 years old; and
- (b) the minor is arrested for aggravated murder or murder.

(4) In considering where a minor will be detained until the time of trial, the district court shall consider:

- (a) the age of the minor;
- (b) the nature, seriousness, and circumstances of the alleged offense;
- (c) the minor's history of prior criminal acts;
- (d) whether ~~[detention]~~ the minor being detained in a ~~[juvenile]~~ detention facility will

adequately serve the need for community protection pending the outcome of any criminal proceedings;

(e) the relative ability of the facility to meet the needs of the minor and protect the public;

HB0285S02 compared with HB0285S01

- (f) the physical maturity of the minor;
 - (g) the current mental state of the minor as evidenced by relevant mental health or a psychological assessment or screening that is made available to the district court; and
 - (h) any other factors that the district court considers relevant.
- (5) A minor ordered to a [~~juvenile~~] detention facility under Subsection (4) shall remain in the facility:
- (a) until released by the district court; or
 - (b) if convicted, until sentencing.
- (6) If a minor is held in a [~~juvenile~~] detention facility under Subsection (4), the district court shall:
- (a) advise the minor of the right to bail; and
 - (b) set initial bail in accordance with Title 77, Chapter 20, Bail.
- (7) If the minor ordered to a [~~juvenile~~] detention facility under Subsection (4) attains the age of 18 years, the minor shall be transferred within 30 days to an adult jail until:
- (a) released by the district court [~~judge~~]; or
 - (b) if convicted, sentencing.
- (8) If a minor is ordered to a [~~juvenile~~] detention facility under Subsection (4) and the minor's conduct or condition endangers the safety or welfare of others in the [~~juvenile~~] detention facility, the district court may find that the minor shall be detained in another place of confinement considered appropriate by the district court, including a jail or an adult facility for pretrial confinement.
- (9) If a minor is charged for aggravated murder or murder in the district court under this section, and all charges for aggravated murder or murder result in an acquittal, a finding of not guilty, or a dismissal:
- (a) the juvenile court gains jurisdiction over all other offenses committed by the minor; and
 - (b) the [~~Division of Juvenile Justice Services~~] division gains jurisdiction over the minor.

Section 163. Section **80-6-503**, which is renumbered from Section 78A-6-703.3 is renumbered and amended to read:

~~[78A-6-703.3].~~ **80-6-503. Criminal information for a minor in juvenile court**

HB0285S02 compared with HB0285S01

-- Extending juvenile court jurisdiction.

~~[Notwithstanding Section 78A-6-602.5, if]~~

(1) If a prosecuting attorney charges a minor with a felony, the prosecuting attorney may file a criminal information in the juvenile court if the minor was a principal actor in an offense and the information alleges:

~~[(1)(a)]~~ (a)(i) the minor was 16 or 17 years old at the time of the offense; and

~~[(b)]~~ (ii) the offense for which the minor is being charged is a felony violation of:

~~[(i)]~~ (A) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

~~[(ii)]~~ (B) Section 76-5-202, attempted aggravated murder;

~~[(iii)]~~ (C) Section 76-5-203, attempted murder;

~~[(iv)]~~ (D) Section 76-5-302, aggravated kidnapping;

~~[(v)]~~ (E) Section 76-5-405, aggravated sexual assault;

~~[(vi)]~~ (F) Section 76-6-103, aggravated arson;

~~[(vii)]~~ (G) Section 76-6-203, aggravated burglary;

~~[(viii)]~~ (H) Section 76-6-302, aggravated robbery;

~~[(ix)]~~ (I) Section 76-10-508.1, felony discharge of a firearm; or

~~[(x)]~~ (J) an offense other than an offense listed in Subsections ~~[(1)(b)(i)]~~ (1)(a)(ii)(A) through ~~[(ix)]~~ (I) involving the use of a dangerous weapon~~[(A)]~~ if the offense would be a felony had an adult committed the offense~~;~~, and ~~[(B)]~~ the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon that would have been a felony if committed by an adult; or

~~[(2)(a)]~~ (b)(i) the minor was 14 or 15 years old at the time of the offense; and

~~[(b)]~~ (ii) the offense for which the minor is being charged is a felony violation of:

~~[(i)]~~ (A) Section 76-5-202, aggravated murder or attempted aggravated murder; or

~~[(ii)]~~ (B) Section 76-5-203, murder or attempted murder.

(2) At the time that a prosecuting attorney files an information under this section, a party may file a motion to extend the juvenile court's continuing jurisdiction in accordance with Section 80-6-605.

Section 164. Section **80-6-504**, which is renumbered from Section 78A-6-703.5 is renumbered and amended to read:

HB0285S02 compared with HB0285S01

~~[78A-6-703.5].~~ **80-6-504.** Preliminary hearing -- Grounds for transfer --

Detention of a minor bound over to the district court.

(1) If a prosecuting attorney files a criminal information in accordance with Section ~~[78A-6-703.3]~~ 80-6-503, the juvenile court shall conduct a preliminary hearing to determine whether a minor should be bound over to the district court for a qualifying offense.

(2) At the preliminary hearing under Subsection (1), the prosecuting attorney shall have the burden of establishing:

(a) probable cause to believe that a qualifying offense was committed and the minor committed that offense; and

(b) by a preponderance of the evidence, that it is contrary to the best interests of the minor and the public for the juvenile court to retain jurisdiction over the offense.

(3) In making a determination under Subsection (2)(b), the juvenile court shall consider and make findings on:

(a) the seriousness of the qualifying offense and whether the protection of the community requires that the minor is detained beyond the amount of time allowed under Subsection ~~[78A-6-117(2)(h)]~~ 80-6-802(1), or beyond the age of continuing jurisdiction that the juvenile court may exercise under Section ~~[78A-6-703.4]~~ 80-6-605;

(b) the extent to which the minor's actions in the qualifying offense were committed in an aggressive, violent, premeditated, or willful manner;

(c) the minor's mental, physical, educational, trauma, and social history;

(d) the criminal record or history of the minor; and

(e) the likelihood of the minor's rehabilitation by the use of services and facilities that are available to the juvenile court.

(4) The amount of weight that each factor in Subsection (3) is given is in the juvenile court's discretion.

(5) (a) The juvenile court may consider any written report or other material that relates to the minor's mental, physical, educational, trauma, and social history.

(b) Upon request by the minor, the minor's parent, guardian, or other interested party, the juvenile court shall require the person preparing the report, or other material, under Subsection (5)(a) to appear and be subject to direct and cross-examination.

(6) At the preliminary hearing under Subsection (1), a minor may testify under oath,

HB0285S02 compared with HB0285S01

call witnesses, cross-examine witnesses, and present evidence on the factors described in Subsection (3).

(7) (a) A proceeding before the juvenile court related to a charge filed under this part shall be conducted in conformity with the Utah Rules of Juvenile Procedure.

(b) [~~Title 78B, Chapter 22, Indigent Defense Act, and Section 78A-6-115~~] Sections 80-6-602, 80-6-603, and 80-6-604 are applicable to the preliminary hearing under this section.

(8) If the juvenile court finds that the prosecuting attorney has met the burden of proof under Subsection (2), the juvenile court shall bind the minor over to the district court to be held for trial.

(9) (a) If the juvenile court finds that a qualifying offense has been committed by a minor, but the prosecuting attorney has not met the burden of proof under Subsection (2)(b), the juvenile court shall:

(i) proceed upon the criminal information as if the information were a petition under Section [~~78A-6-602.5~~] 80-6-305;

(ii) release or detain the minor in accordance with [~~Section 78A-6-113~~] Section 80-6-207; and

(iii) proceed with an adjudication for the minor in accordance with this chapter.

(b) If the juvenile court finds that the prosecuting attorney has not met the burden under Subsection (2) to bind a minor over to the district court, the prosecuting attorney may file a motion to extend the juvenile court's continuing jurisdiction over the minor's case until the minor is 25 years old in accordance with Section [~~78A-6-703.4~~] 80-6-605.

(10) (a) A prosecuting attorney may charge a minor with a separate offense in the same criminal information as the qualifying offense if the qualifying offense and separate offense arise from a single criminal episode.

(b) If the prosecuting attorney charges a minor with a separate offense as described in Subsection (10)(a):

(i) the prosecuting attorney shall have the burden of establishing probable cause to believe that the separate offense was committed and the minor committed the separate offense; and

(ii) if the prosecuting attorney establishes probable cause for the separate offense under Subsection (10)(b)(i) and the juvenile court binds the minor over to the district court for the

HB0285S02 compared with HB0285S01

qualifying offense, the juvenile court shall also bind the minor over for the separate offense to the district court.

(11) If a grand jury indicts a minor for a qualifying offense:

(a) the prosecuting attorney does not need to establish probable cause under Subsection (2)(a) for the qualifying offense and any separate offense included in the indictment; and

(b) the juvenile court shall proceed with determining whether the minor should be bound over to the district court for the qualifying offense and any separate offense included in the indictment in accordance with Subsections (2)(b) and (3).

(12) If a minor is bound over to the district court, the juvenile court shall:

(a) issue a criminal warrant of arrest;

(b) advise the minor of the right to bail; and

(c) set initial bail in accordance with Title 77, Chapter 20, Bail.

(13) (a) At the time that a minor is bound over to the district court, the juvenile court shall make an initial determination on where the minor is held until the time of trial.

(b) In determining where a minor is held until the time of trial, the juvenile court shall consider:

(i) the age of the minor;

(ii) the minor's history of prior criminal acts;

(iii) whether [~~detention~~] the minor being detained in a [~~juvenile~~] detention facility will adequately serve the need for community protection pending the outcome of any criminal proceedings;

(iv) the relative ability of the facility to meet the needs of the minor and protect the public;

(v) the physical maturity of the minor;

(vi) the current mental state of the minor as evidenced by relevant mental health or psychological assessments or screenings that are made available to the juvenile court; and

(vii) any other factors that the court considers relevant.

(14) If the juvenile court orders a minor to be detained in a [~~juvenile~~] detention facility under Subsection (13), the minor shall remain in the detention facility:

(a) until released by a district court; or

(b) if convicted, until sentencing.

HB0285S02 compared with HB0285S01

(15) If the juvenile court orders the minor to be detained in a [~~juvenile~~] detention facility under Subsection (13) and the minor attains the age of 18 while detained at the facility, the minor shall be transferred within 30 days to an adult jail to remain:

- (a) until released by the district court; or
- (b) if convicted, until sentencing.

(16) Except as provided in Subsection (17) and Section [~~78A-6-705~~] 80-6-507, if a minor is bound over to the district court under this section, the jurisdiction of the [~~Division of Juvenile Justice Services~~] division and the juvenile court over the minor is terminated for the qualifying offense and any other separate offense for which the minor is bound over.

(17) If a minor is bound over to the district court for a qualifying offense and the qualifying offense results in an acquittal, a finding of not guilty, or a dismissal:

- (a) the juvenile court regains jurisdiction over any separate offense committed by the minor; and
- (b) the [~~Division of Juvenile Justice Services~~] division regains jurisdiction over the minor.

Section 165. Section **80-6-505**, which is renumbered from Section 78A-6-703.6 is renumbered and amended to read:

~~[78A-6-703.6].~~ **80-6-505. Criminal proceedings for a minor bound over to district court.**

(1) If the juvenile court binds a minor over to the district court in accordance with Section [~~78A-6-703.5~~] 80-6-504, the prosecuting attorney shall try the minor as if the minor is an adult in the district court except:

- (a) the minor is not subject to a sentence of death in accordance with Subsection 76-3-206(2)(b); and
- (b) the minor is not subject to a sentence of life without parole in accordance with Subsection 76-3-206(2)(b) or 76-3-207.5(3) or Section 76-3-209.

(2) A minor who is bound over to the district court to answer as an adult is not entitled to a preliminary hearing in the district court.

(3) (a) If a minor is bound over to the district court by the juvenile court, the district court may reconsider the juvenile court's decision under Subsection [~~78A-6-703.5~~] 80-6-504(13) as to where the minor is being held until trial.

HB0285S02 compared with HB0285S01

(b) If the district court reconsiders the juvenile court's decision as to where the minor is held, the district court shall consider and make findings on:

- (i) the age of the minor;
- (ii) the minor's history of prior criminal acts;
- (iii) whether [~~detention~~] the minor being detained in a [~~juvenile~~] detention facility will adequately serve the need for community protection pending the outcome of any criminal proceedings;
- (iv) the relative ability of the detention facility to meet the needs of the minor and protect the public;
- (v) the physical maturity of the minor;
- (vi) the current mental state of the minor as evidenced by relevant mental health or psychological assessments or screenings that are made available to the district court; and
- (vii) any other factors the district court considers relevant.

(4) A minor who is ordered to a [~~juvenile~~] detention facility under Subsection (3) shall remain in the facility:

- (a) until released by a district court; or
- (b) if convicted, until sentencing.

(5) If the district court orders the minor to be detained in a [~~juvenile~~] detention facility under Subsection (3) and the minor attains the age of 18 while detained at the detention facility, the minor shall be transferred within 30 days to an adult jail to remain:

- (a) until released by the district court; or
- (b) if convicted, until sentencing.

(6) If a minor is bound over to the district court and detained in a [~~juvenile~~] detention facility, the district court may order the minor be detained in another place of confinement that is considered appropriate by the district court, including a jail or other place of pretrial confinement for adults if the minor's conduct or condition endangers the safety and welfare of others in the detention facility.

(7) If the district court obtains jurisdiction over a minor under Section [~~78A-6-703.5~~] 80-6-504, the district court is not divested of jurisdiction for a qualifying offense or a separate offense listed in the criminal information when the minor is allowed to enter a plea to, or is found guilty of, another offense in the same criminal information.

HB0285S02 compared with HB0285S01

Section 166. Section **80-6-506**, which is renumbered from Section 78A-6-704 is renumbered and amended to read:

~~[78A-6-704].~~ **80-6-506. Appeals from bind over proceedings.**

(1) A minor may, as a matter of right, appeal from an order of the juvenile court binding the minor over to the district court under Section ~~[78A-6-703.5]~~ 80-6-504.

(2) The prosecuting attorney may, as a matter of right, appeal an order of the juvenile court that a minor charged in accordance with Section ~~[78A-6-703.3]~~ 80-6-503 will be adjudicated in the juvenile court.

Section 167. Section **80-6-507**, which is renumbered from Section 78A-6-705 is renumbered and amended to read:

~~[78A-6-705].~~ **80-6-507. Commitment of a minor by a district court.**

(1) (a) Before sentencing a minor, who was bound over to the district court under Section ~~[78A-6-703.5]~~ 80-6-504 to be tried as an adult, to prison, the district court shall request a report from the ~~[Division of Juvenile Justice Services]~~ division regarding the potential risk to other minors if the minor were to be committed to the ~~[custody of the Division of Juvenile Justice Services]~~ division.

(b) The ~~[Division of Juvenile Justice Services]~~ division shall submit the requested report to the district court as part of the ~~[pre-sentence]~~ presentence report or as a separate report.

(2) If, after receiving the report described in Subsection (1), the district court determines that probation is not appropriate and commitment to prison is an appropriate sentence, the district court shall order the minor committed to prison and the minor shall be provisionally housed ~~[in a secure facility operated by the Division of Juvenile Justice Services]~~ in a secure care facility until the minor reaches 18 years old, unless released earlier from incarceration by the Board of Pardons and Parole.

(3) The district court may order the minor committed directly to the legal and physical custody of the Department of Corrections if the district court finds that:

(a) the minor would present an unreasonable risk to others while in the custody of the ~~[Division of Juvenile Justice Services]~~ division;

(b) the minor has previously been committed to a prison for adult offenders; or

(c) housing the minor in ~~[a secure facility operated by the Division of Juvenile Justice]~~

HB0285S02 compared with HB0285S01

~~Services]~~ a secure care facility would be contrary to the interests of justice.

(4) (a) The ~~[Division of Juvenile Justice Services]~~ division shall adopt procedures by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the transfer of a minor provisionally housed in ~~[a division facility]~~ a secure care facility under Subsection (2) to the custody of the Department of Corrections.

(b) If, in accordance with the rules adopted under Subsection (4)(a), the ~~[Division of Juvenile Justice Services]~~ division determines that housing the minor in ~~[a division facility]~~ a secure care facility presents an unreasonable risk to others or that it is not in the best interest of the minor, the ~~[Division of Juvenile Justice Services]~~ division shall transfer the physical custody of the minor to the Department of Corrections.

(5) (a) When a minor is committed to prison but ordered by a district court to be housed in ~~[a Division of Juvenile Justice Services facility]~~ a secure care facility under this section, the district court and the ~~[Division of Juvenile Justice Services]~~ division shall immediately notify the Board of Pardons and Parole so that the minor may be scheduled for a hearing according to board procedures.

(b) If a minor who is provisionally housed in ~~[a Division of Juvenile Justice Services facility]~~ a secure care facility under this section has not been paroled or otherwise released from incarceration by the time the minor reaches 18 years old, the ~~[Division of Juvenile Justice Services]~~ division shall as soon as reasonably possible, but not later than when the minor reaches 18 years and 6 months old, transfer the minor to the physical custody of the Department of Corrections.

(6) Upon the commitment of a minor to the custody of the ~~[Division of Juvenile Justice Services]~~ division or the Department of Corrections under this section, the Board of Pardons and Parole has authority over the minor for purposes of parole, pardon, commutation, termination of sentence, remission of fines or forfeitures, orders of restitution, and all other purposes authorized by law.

(7) The ~~[Youth Parole Authority]~~ authority may hold hearings, receive reports, or otherwise keep informed of the progress of a minor in the custody of the ~~[Division of Juvenile Justice Services]~~ division under this section and may forward to the Board of Pardons and Parole any information or recommendations concerning the minor.

(8) Commitment of a minor under this section is a prison commitment for all

HB0285S02 compared with HB0285S01

sentencing purposes.

Section 168. Section **80-6-601**, which is renumbered from Section 78A-6-116 is renumbered and amended to read:

Part 6. Delinquency Proceedings

~~[78A-6-116].~~ **80-6-601. Minors' cases considered civil proceedings -- Minor not to be charged with crime -- Exception for a prior adjudication -- Traffic violation cases.**

(1) Except as provided in ~~[Section 78A-6-703.2, 78A-6-703.5, or 78A-6-703.6]~~ Part 5, Transfer to District Court, a proceeding in a minor's case under this chapter is a civil proceeding with the juvenile court exercising equitable powers.

(2) (a) An adjudication by a juvenile court of a minor under ~~[Section 78A-6-117]~~ this chapter is not considered a conviction of a crime, except in cases involving traffic violations.

(b) An adjudication may not:

(i) operate to impose any civil disabilities upon the minor; or

(ii) disqualify the minor for any civil service or military service or appointment.

(3) (a) Except in cases involving traffic violations, and as provided in ~~[Section 78A-6-703.2, 78A-6-703.3, or 78A-6-703.5]~~ Part 5, Transfer to District Court, a minor may not be charged with a crime and convicted in any court.

(b) Except as provided in Section ~~[78A-6-703.5]~~ 80-6-504, if a petition is filed in the juvenile court, the minor may not later be subject to criminal prosecution based on the same facts.

(c) Except as provided in Section ~~[78A-6-602]~~ 80-6-305, an individual may not be subject to a ~~[delinquency]~~ proceeding under this chapter for an offense that the individual is alleged to have committed before the individual was 12 years old.

(4) (a) An adjudication by a juvenile court of a minor under ~~[Section 78A-6-117]~~ this chapter is considered a conviction for the purposes of determining the level of offense for which a minor may be charged and enhancing the level of an offense in the juvenile court.

(b) A prior adjudication may be used to enhance the level or degree of an offense committed by an adult only as otherwise specifically provided.

~~[(5) Abstracts of court records for all adjudications of traffic violations shall be submitted to the Department of Public Safety as provided in Section 53-3-218.]~~

HB0285S02 compared with HB0285S01

~~[(6) A court or state agency with custody of an individual's record related to an offense that the individual is alleged to have committed, or an offense that the individual committed, before the individual was 18 years old may not disclose the record to a federal agency that is responsible for criminal justice research or proceedings unless the court or state agency is required to share the record under state or federal law.]~~

~~[(7) Information necessary to collect unpaid fines, fees, assessments, bail, or restitution may be forwarded to employers, financial institutions, law enforcement, constables, the Office of Recovery Services, or other agencies for purposes of enforcing the order as provided in Section 78A-6-117.]~~

Section 169. Section **80-6-602** is enacted to read:

80-6-602. Hearings or proceedings for minors -- Prosecuting attorney -- Order for indigent defense -- Custody in the Division of Child and Family Services.

(1) In a hearing or proceeding under this chapter, the juvenile court:

(a) shall admit any person who has a direct interest in the case;

(b) may admit any person whose presence is requested by the minor's parent or guardian; and

(c) shall exclude any other person except as provided in Subsection (2).

(2) In a hearing or proceeding under this chapter for a minor who is 14 years old or older, the juvenile court shall admit any person, unless the hearing or proceeding is closed by the juvenile court upon findings, on the record, for good cause if:

(a) the minor has been charged with an offense that would be a felony if committed by an adult; or

(b) the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult and the minor has been previously charged with an offense that would be a misdemeanor or felony if committed by an adult.

(3) If more than one minor is alleged to be involved in a violation of a law or ordinance, the proceedings for the violation may be consolidated, except a separate hearing may be held with respect to a disposition for a minor.

(4) The county attorney, or the district attorney if within a prosecution district, shall represent the state in a proceeding under this chapter.

(5) If a minor is facing a proceeding under this chapter, a juvenile court shall:

HB0285S02 compared with HB0285S01

(a) appoint an indigent defense service provider for the minor in accordance with Title 78B, Chapter 22, Part 2, Appointment of Counsel; and

(b) order indigent defense services for the minor in accordance with Title 78B, Chapter 22, Part 2, Appointment of Counsel.

(6) A juvenile court may appoint an attorney guardian ad litem under Section 78A-2-803, or as otherwise provided by law, to represent a child under this chapter.

(7) A juvenile court may not vest custody of a minor facing a delinquency proceeding under this chapter in the Division of Child and Family Services, except as provided in Chapter 3, Abuse, Neglect, and Dependency Proceedings.

Section 170. Section **80-6-603** is enacted to read:

80-6-603. Rights of minors facing delinquency proceedings.

If a minor is facing a delinquency proceeding under this chapter, the minor has the right to:

(1) appear in person in the proceeding for the petition or the criminal information;

(2) defend, in person or by counsel, against the allegations in the petition or the criminal information;

(3) receive a copy of the petition or the criminal information;

(4) testify on the minor's own behalf;

(5) confront the witnesses against the minor;

(6) secure the attendance of witnesses on the minor's behalf under Section 78A-6-351;

(7) be represented by counsel at all stages of the proceedings;

(8) be appointed an indigent defense service provider and be provided indigent defense services in accordance with Title 78B, Chapter 22, Part 2, Appointment of Counsel;

(9) remain silent and be advised that anything the minor says can and will be used against the minor in any court proceedings; and

(10) appeal any adjudication under this chapter.

Section 171. Section **80-6-604** is enacted to read:

80-6-604. Victim's rights -- Access to juvenile court records.

(1) (a) If a minor is charged in a petition or information under this chapter for an offense that if committed by an adult would be a felony or a class A or class B misdemeanor, a victim of any act charged in the petition or information shall, upon request, be afforded all

HB0285S02 compared with HB0285S01

rights afforded to victims in:

- (i) Title 77, Chapter 36, Cohabitant Abuse Procedures Act;
- (ii) Title 77, Chapter 37, Victims' Rights;
- (iii) Title 77, Chapter 38, Rights of Crime Victims Act; and
- (iv) Title 78B, Chapter 7, Part 8, Criminal Protective Orders.

(b) The notice provisions in Section 77-38-3 do not apply to important juvenile justice hearings as defined in Section 77-38-2.

(2) A victim, upon request to the appropriate juvenile court personnel, shall have the right to inspect and duplicate juvenile court records related to the offense against the victim that have not been expunged under Part 10, Juvenile Records and Expungement, concerning:

(a) the scheduling of any juvenile court hearings on a petition or information filed under this chapter;

- (b) any findings made by the juvenile court; and
- (c) any order or disposition imposed by the juvenile court.

Section 172. Section **80-6-605**, which is renumbered from Section 78A-6-703.4 is renumbered and amended to read:

[78A-6-703.4]. **80-6-605.** **Extension of juvenile court jurisdiction --**

Procedure.

(1) At the time that a prosecuting attorney [~~charges~~] files a petition under Section 80-6-305, or a criminal information under Section 80-6-503 for a felony offense alleged to have been committed by a minor who is 14 years old or older [~~with a felony~~], either party may file a motion to extend the juvenile court's continuing jurisdiction over the minor's case until the minor is 25 years old if:

- (a) the minor was the principal actor in the offense; and
- (b) the petition or [~~criminal~~] information alleges a felony violation of:
 - (i) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;
 - (ii) Section 76-5-202, aggravated murder or attempted aggravated murder;
 - (iii) Section 76-5-203, murder or attempted murder;
 - (iv) Section 76-5-302, aggravated kidnapping;
 - (v) Section 76-5-405, aggravated sexual assault;
 - (vi) Section 76-6-103, aggravated arson;

HB0285S02 compared with HB0285S01

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

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

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

(x) (A) an offense other than the offenses listed in Subsections (1)(b)(i) through (ix) involving the use of a dangerous weapon that would be a felony if committed by an adult; and
(B) the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon that would have been a felony if committed by an adult.

(2) (a) Notwithstanding Subsection (1), either party may file a motion to extend the juvenile court's continuing jurisdiction after a determination by the juvenile court that the minor will not be bound over to the district court under Section [~~78A-6-703.5~~] 80-6-504.

(3) The juvenile court shall make a determination on a motion under Subsection (1) or (2) at the time of disposition.

(4) The juvenile court shall extend the continuing jurisdiction over the minor's case until the minor is 25 years old if the juvenile court finds, by a preponderance of the evidence, that extending continuing jurisdiction is in the best interest of the minor and the public.

(5) In considering whether it is in the best interest of the minor and the public for the court to extend jurisdiction over the minor's case until the minor is 25 years old, the juvenile court shall consider and base the juvenile court's decision on:

(a) whether the protection of the community requires an extension of jurisdiction beyond the age of 21;

(b) the extent to which the minor's actions in the offense were committed in an aggressive, violent, premeditated, or willful manner;

(c) the minor's mental, physical, educational, trauma, and social history; and

(d) the criminal record and previous history of the minor.

(6) The amount of weight that each factor in Subsection (5) is given is in the juvenile court's discretion.

(7) (a) The juvenile court may consider written reports and other materials relating to the minor's mental, physical, educational, trauma, and social history.

(b) Upon request by the minor, the minor's parent, guardian, or other interested party, the juvenile court shall require the person preparing the report or other material to appear and be subject to both direct and cross-examination.

HB0285S02 compared with HB0285S01

(8) A minor may testify under oath, call witnesses, cross-examine witnesses, and present evidence on the factors described in Subsection (5).

Section 173. Section **80-6-606** is enacted to read:

80-6-606. Validated risk and needs assessment -- Examination of minor or minor's parent or guardian.

(1) (a) If a minor is adjudicated for an offense under this chapter, the minor shall undergo a risk screening or, if indicated, a validated risk and needs assessment.

(b) If a minor undergoes a risk screening or a validated risk and needs assessment, the results of the screening or assessment shall be used to inform the juvenile court's disposition and any case planning for the minor.

(c) If a minor undergoes a validated risk and needs assessment, the results of the assessment may not be shared with the juvenile court before the adjudication of the minor.

(2) If the juvenile court's continuing jurisdiction over a minor's case is terminated, the minor shall undergo a validated risk and needs assessment within seven days of the day on which an order terminating the juvenile court's continuing jurisdiction is issued if:

(a) the minor is adjudicated under this chapter; and

(b) the minor underwent a validated risk and needs assessment under Subsection (1).

(3) (a) If a petition under this chapter has been filed for a minor, a juvenile court may:

(i) order that the minor be examined by a physician, surgeon, psychiatrist, or psychologist; and

(ii) place the minor in a hospital or other facility for examination.

(b) After notice and a hearing set for the specific purpose, the juvenile court may order an examination of a minor's parent or guardian whose ability to care for a minor is at issue if the juvenile court finds from the evidence presented at the hearing that the parent's or guardian's physical, mental, or emotional condition may be a factor in causing the delinquency of the minor.

(c) An examination conducted in accordance with this Subsection (3) is not a privileged communication under Utah Rules of Evidence, Rule 506(d)(3), and is exempt from the general rule of privilege.

Section 174. Section **80-6-607**, which is renumbered from Section 78A-6-123 is renumbered and amended to read:

HB0285S02 compared with HB0285S01

~~[78A-6-123].~~ **80-6-607.** Case planning and appropriate responses.

(1) For a minor adjudicated and placed on probation under Section 80-6-702 or ~~[into the custody of the Division of Juvenile Justice Services]~~ committed to the division under Section ~~[78A-6-117]~~ 80-6-703, a case plan shall be created and ~~[shall be]~~:

- (a) developed in collaboration with the minor and the minor's family;
- (b) individualized to the minor;
- (c) informed by the results of a validated risk and needs assessment under Section

80-6-606; and

- (d) tailored to the minor's offense and history.

(2) (a) The Administrative Office of the Courts and the ~~[Division of Juvenile Justice Services]~~ division shall develop a statewide system of appropriate responses to guide responses to the behaviors of minors:

- (i) undergoing nonjudicial adjustments;
- (ii) whose case is under the jurisdiction of the juvenile court; and
- (iii) in the custody of the ~~[Division of Juvenile Justice Services]~~ division.

(b) The system of responses shall include both sanctions and incentives that:

- (i) are swift and certain;
- (ii) include a continuum of community based responses for minors living at home;
- (iii) target a minor's criminogenic risks and needs, as determined by the results of a

validated risk and needs assessment under Section 80-6-606, and the severity of the violation; and

- (iv) authorize earned discharge credits as one incentive for compliance.

(c) After considering the juvenile disposition guidelines established by the Sentencing Commission, ~~[pursuant to]~~ in accordance with Section 63M-7-404, the system of appropriate responses under Subsections (2)(a) and (b) shall be developed.

(3) (a) A response to ~~[a]~~ compliant or noncompliant behavior under Subsection (2) shall be documented in the minor's case plan.

(b) Documentation under Subsection (3)(a) shall include:

- ~~[(a)]~~ (i) positive behaviors and incentives offered;
- ~~[(b)]~~ (ii) violations and corresponding sanctions; and
- ~~[(c)]~~ (iii) whether the minor has a subsequent violation after a sanction.

HB0285S02 compared with HB0285S01

(4) Before referring a minor to a juvenile court for judicial review, or to the [~~Youth Parole Authority~~] authority if the minor is under the jurisdiction of the [~~Youth Parole Authority~~] authority in response to [~~a violation, either through~~] a contempt filing under Section [~~78A-6-1101~~] 78A-6-353 or an order to show cause, [~~pursuant to Subsections (2)(a) and (b);~~] a pattern of appropriate responses shall be documented in the minor's case plan in accordance with Subsections (3)(a) and (b).

(5) Notwithstanding Subsection (4), [~~violations of protective orders or ex parte protective orders~~] if a minor violates a protective order or an ex parte protective order listed in Section 78B-7-803 [~~with victims and violations that constitute new delinquency offenses~~], the violation may be filed directly with the juvenile court.

Section 175. Section **~~80-6-608~~**, which is renumbered from Section 78A-6-1104 is renumbered and amended to read:

~~[78A-6-1104].~~ 80-6-608. When photographs, fingerprints, or HIV infection tests may be taken -- Distribution -- DNA Collection -- Reimbursement.

(1) The [~~Division of Juvenile Justice Services~~] division shall take a photograph and fingerprints of [~~all minors~~] a minor who is:

(a) 14 years [~~of age~~] old or older [~~who are~~] at the time of the alleged commission of an offense that would be a felony if the minor were 18 years old or older; and

(b) admitted to a detention facility [~~operated by the Division of Juvenile Justice Services for the alleged commission of an offense that would be a felony if the minor were 18 years of age or older~~] for the alleged commission of the offense.

(2) The [~~Juvenile Court~~] juvenile court shall order a minor who is 14 years [~~of age~~] old or older at the time that the minor is alleged to have committed an offense described in Subsection (2)(a) or (b) to have the minor's fingerprints taken at a detention facility [~~operated by the Division of Juvenile Justice Services~~] or a local law enforcement agency if the minor is:

(a) adjudicated for an offense that would be a class A misdemeanor if the minor were 18 years [~~of age~~] old or older; or

(b) adjudicated for an offense that would be a felony if the minor were 18 years [~~of age~~] old or older and the minor was not admitted to a detention facility [~~operated by the Division of Juvenile Justice Services~~].

(3) The [~~Juvenile Court~~] juvenile court shall take a photograph of [~~all minors~~] a minor

HB0285S02 compared with HB0285S01

who is:

(a) 14 years ~~[of age]~~ old or older ~~[who are]~~ at the time the minor was alleged to have committed an offense that would be a felony or a class A misdemeanor if the minor were 18 years old or older; and

(b) adjudicated for ~~[an offense that would be a felony or a class A misdemeanor if the minor were 18 years of age or older]~~ the offense described in Subsection (3)(a).

(4) ~~[Fingerprints]~~ If a minor's fingerprints are taken under this section, the minor's fingerprints shall be forwarded to the Bureau of Criminal Identification and may be stored by electronic medium.

(5) HIV testing shall be conducted on a minor who is taken into custody after having been adjudicated ~~[to have violated state law prohibiting]~~ for a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, upon the request of:

(a) the victim~~[-]~~;

(b) the parent or guardian of a victim who is younger than 14 years ~~[of age,]~~ old; or

(c) the ~~[legal]~~ guardian of the alleged victim if the victim is a vulnerable adult as defined in Section 62A-3-301.

(6) HIV testing shall be conducted on a minor against whom a petition has been filed or a pickup order has been issued for the commission of any offense under Title 76, Chapter 5, Part 4, Sexual Offenses~~[-]~~;

(a) upon the request of:

(i) the victim~~[-]~~;

(ii) the parent or guardian of a victim who is younger than 14 years ~~[of age,]~~ old; or

(iii) the ~~[legal]~~ guardian of the alleged victim if the victim is a vulnerable adult as defined in Section 62A-3-301~~[-, and regarding which.]; and~~

(b) in which:

~~[(a) a judge]~~ (i) the juvenile court has signed an accompanying arrest warrant, pickup order, or any other order based upon probable cause regarding the alleged offense; and

~~[(b) the judge]~~ (ii) the juvenile court has found probable cause to believe that the alleged victim has been exposed to HIV infection as a result of the alleged offense.

(7) HIV tests, photographs, and fingerprints may not be taken of a child who is younger than 14 years ~~[of age]~~ old without the consent of the juvenile court.

HB0285S02 compared with HB0285S01

(8) (a) Photographs taken under this section may be distributed or disbursed to ~~[the following individuals or agencies]:~~

- (i) state and local law enforcement agencies;
- (ii) the judiciary; and
- (iii) the ~~[Division of Juvenile Justice Services]~~ division.

(b) Fingerprints may be distributed or disbursed to ~~[the following individuals or agencies]:~~

- (i) state and local law enforcement agencies;
- (ii) the judiciary;
- (iii) the ~~[Division of Juvenile Justice Services]~~ division; and
- (iv) agencies participating in the Western Identification Network.

~~[(9) When a minor's juvenile record is expunged, all photographs and other records as ordered shall upon court order be destroyed by the law enforcement agency. Fingerprint records may not be destroyed.]~~

(9) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction of the juvenile court as described in Subsection 53-10-403(3).

(b) The DNA specimen shall be obtained, in accordance with Subsection 53-10-404(4), by:

- (i) designated employees of the juvenile court; or
- (ii) if the minor is committed to the division, designated employees of the division.

(c) The responsible agency under Subsection (9)(b) shall ensure that an employee designated to collect the saliva DNA specimens receives appropriate training and that the specimens are obtained in accordance with accepted protocol.

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

(e) Payment of the reimbursement is second in priority to payments the minor is ordered to make for restitution under Section 80-6-710 and for treatment ordered under Section 80-3-403.

Section 176. Section ~~80-6-609~~, which is renumbered from Section 78A-6-122 is renumbered and amended to read:

~~[78A-6-122].~~ **80-6-609. Restraint of a minor.**

HB0285S02 compared with HB0285S01

(1) As used in this section, "restrained" means the use of handcuffs, chains, shackles, zip ties, irons, straightjackets, and any other device or method [~~which may be~~] that is used to immobilize a [~~juvenile~~] minor.

(2) (a) The Judicial Council shall adopt rules that address the circumstances under which a [~~juvenile~~] minor may be restrained while appearing in juvenile court.

(b) The Judicial Council shall ensure that the rules consider both the welfare of the [~~juvenile~~] minor and the safety of the juvenile court.

(c) A [~~juvenile~~] minor may not be restrained during a juvenile court proceeding unless restraint is authorized by rules of the Judicial Council.

Section 177. Section **80-6-610**, which is renumbered from Section 78A-6-1113 is renumbered and amended to read:

[78A-6-1113]. 80-6-610. Property damage caused by a minor -- Liability of parent or legal guardian -- Criminal conviction or adjudication for criminal mischief or criminal trespass not a prerequisite for civil action -- When parent or guardian not liable.

(1) [~~The parent or legal guardian having~~] A parent or guardian with legal custody of [~~the~~] a minor is liable for damages sustained to property not to exceed \$2,000 when:

(a) the minor intentionally damages, defaces, destroys, or takes the property of another;

(b) the minor recklessly or willfully shoots or propels a missile, or other object at or against a motor vehicle, bus, airplane, boat, locomotive, train, railway car, or caboose, whether moving or standing; or

(c) the minor intentionally and unlawfully tampers with the property of another and thereby recklessly endangers human life or recklessly causes or threatens a substantial interruption or impairment of any public utility service.

(2) [~~The parent or legal guardian having~~] A parent or guardian with legal custody of [~~the~~] a minor is liable for damages sustained to property not to exceed \$5,000 when the minor [~~commits an~~] is adjudicated for an offense under [~~Section~~] Subsection (1):

(a) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or

(b) to gain recognition, acceptance, membership, or increased status with a criminal street gang.

(3) [~~The~~] A juvenile court may make an order for [~~the~~] restitution [~~authorized in this~~]

HB0285S02 compared with HB0285S01

~~section]~~ under Subsection (1) or (2) to be paid by the minor's parent or guardian ~~[as part of the minor's disposition order]~~ if the minor is adjudicated for an offense.

(4) As used in this section, property damage described under Subsection (1)(a) or (c), or Subsection (2), includes graffiti, as defined in Section 76-6-107.

(5) A court may waive part or all of the liability for damages under this section by the ~~[parent or legal guardian if the offender is adjudicated in the juvenile court under Section 78A-6-117 only upon stating on the record that the court finds]~~ minor's parent or guardian if, after the minor is adjudicated, the court finds, upon the record:

(a) good cause; or

(b) the parent or ~~[legal]~~ guardian:

(i) made a reasonable effort to restrain the wrongful conduct; and

(ii) reported the conduct to the property owner involved or the law enforcement agency having primary jurisdiction after the parent or guardian knew of the minor's unlawful act.

(6) A report is not required under Subsection (5)(b) from a parent or ~~[legal]~~ guardian if the minor was arrested or apprehended by a peace officer or by anyone acting on behalf of the property owner involved.

(7) A conviction for criminal mischief under Section 76-6-106, criminal trespass under Section 76-6-206, or an adjudication under Section ~~[78A-6-117]~~ 80-6-701 is not a condition precedent to a civil action authorized under Subsection (1) or (2).

(8) A parent or guardian is not liable under Subsection (1) or (2) if the parent or guardian made a reasonable effort to supervise and direct ~~[their minor child]~~ the minor, or, in the event the parent or guardian knew in advance of the possible taking, injury, or destruction by ~~[their minor child]~~ the minor, made a reasonable effort to restrain the ~~[child]~~ minor.

Section 178. Section **80-6-701** is enacted to read:

Part 7. Adjudication and Disposition

80-6-701. Adjudication of an offense.

(1) (a) If the juvenile court finds, by beyond a reasonable doubt, that the allegations in a petition under Section 80-6-305, or a criminal information under 80-6-503, are true at the adjudication hearing, the juvenile court may order a disposition for a minor under this part.

(b) In determining the proper disposition for a minor under Subsection (1), the juvenile court may consider written reports and materials in accordance with Utah Rules of Juvenile

HB0285S02 compared with HB0285S01

Procedure, Rule 45.

(c) Except as otherwise provided by this chapter, the juvenile court may combine the dispositions under this part if the dispositions are compatible.

(d) If the juvenile court orders any disposition under this part, including an order for secure detention under Section 80-6-704, the disposition shall be served concurrently with any other disposition for detention or secure care.

(2) The juvenile court shall adjudicate a minor's case in accordance with the Utah Rules of Juvenile Procedure.

(3) (a) If an offense committed by a minor comes within the juvenile court's jurisdiction, the juvenile court is not required to make findings of fact upon which the juvenile court bases the juvenile court's jurisdiction for an offense described in Subsection 78A-6-103(1).

(b) For an offense not described in Subsection 78A-6-103(1), the juvenile court shall make findings of fact upon which the juvenile court bases the juvenile court's jurisdiction.

Section 179. Section **80-6-702** is enacted to read:

80-6-702. Probation or protective supervision -- Conditions for probation.

(1) If a minor is adjudicated under Section 80-6-701, the juvenile court may place the minor on probation, or under protective supervision in accordance with Subsection (3) if the minor is a child, in the minor's own home and upon conditions determined by the juvenile court, including community or compensatory service.

(2) (a) If the juvenile court orders a condition under Subsection (1), the condition shall be:

(i) individualized and address a specific risk or need;

(ii) based on information provided to the juvenile court, including the results of a validated risk and needs assessment conducted under Section 80-6-606; and

(iii) if the juvenile court orders substance abuse treatment or an educational series, based on a validated risk and needs assessment conducted under Section 80-6-606.

(b) A juvenile court may not issue a standard order that contains control-oriented conditions.

(c) If the juvenile court orders a prohibition on weapon possession as a condition under Subsection (1), the prohibition shall be specific to the minor and not the minor's family.

HB0285S02 compared with HB0285S01

(3) If the juvenile court orders protective supervision, the Division of Child and Family Services may not provide protective supervision unless there is a petition filed under Section 80-3-201 that requests that the Division of Child and Family Services provide protective supervision.

(4) (a) If the juvenile court places a minor on probation, the juvenile court shall establish the period of time that a minor is on probation in accordance with Section 80-6-712.

(b) An order for probation or protective supervision shall include a date for review and presumptive termination of the case by the juvenile court in accordance with Section 80-6-712.

(c) For each review of a minor's case under Subsection (4)(b), the juvenile court shall set a new date for a review and presumptive termination of the minor's case.

(5) (a) If a minor is adjudicated under this chapter, the juvenile court may order a minor's parent, guardian, or custodian, or any other person who has been made a party to the proceedings, to comply with reasonable conditions, including:

(i) parent-time by the minor's parent;

(ii) restrictions on the individuals that the minor associates with;

(iii) restrictions on the minor's occupation and any other activity; and

(iv) requirements to be observed by the minor's parent, guardian, or custodian.

(b) If a minor's parent, guardian, or custodian successfully completes a family or other counseling program, the minor may be credited by the juvenile court for time spent in detention, in secure care, or on probation.

Section 180. Section **80-6-703** is enacted to read:

80-6-703. Placement of a child -- Commitment of a minor to the Division of Juvenile Justice Services -- Limitations.

(1) (a) If a child is adjudicated for an offense under Section 80-6-701, the juvenile court may:

(i) place the child in the legal custody of a relative or other suitable individual regardless of whether the minor is placed on probation under Subsection 80-6-702(1); or

(ii) appoint a guardian for the child if it appears that a guardian is necessary in the interest of the child.

(b) The juvenile court may not assume the function of developing foster home services in placing a child in the legal custody of a relative or other suitable individual under Subsection

HB0285S02 compared with HB0285S01

(1)(a).

(c) (i) If the juvenile court appoints a guardian for a child under Subsection (1)(a)(ii), the juvenile court:

(A) may appoint a public or private institution or agency as the guardian of the child; and

(B) may not appoint a nonsecure residential placement provider for which legal custody of the child is vested.

(d) In placing a child under the guardianship or legal custody of an individual or private agency or institution under Subsection (1)(a)(ii), the juvenile court:

(i) shall give primary consideration to the welfare of the child; and

(ii) may take into consideration the religious preferences of the child and the child's parent.

(2) If a minor is adjudicated under Section 80-6-701, the juvenile court shall only commit the minor to the division and order the division to provide recommendations and services if:

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

(b) the minor is adjudicated under this chapter for:

(i) a felony;

(ii) a misdemeanor when the minor has five prior misdemeanors or felony adjudications arising from separate criminal episodes; or

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

(3) A juvenile court may not commit a minor to the division:

(a) for residential observation and evaluation or residential observation and assessment;

(b) for contempt of court, except to the extent permitted under Section 78A-6-353;

(c) for a violation of probation;

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

(e) for unfinished compensatory or community service hours;

(f) for an infraction; or

HB0285S02 compared with HB0285S01

(g) for a status offense.

(4) If the juvenile court commits a minor to the division, the juvenile court shall:

(a) find whether the minor is being committed to the division for placement in a community-based program, secure detention under Section 80-6-704, or secure care under Section 80-6-705;

(b) specify the criteria under Subsection (3) for which the juvenile court is committing the minor to the division; and

(c) establish the period of time that the minor is committed to the division in accordance with Section 80-6-712.

(5) (a) Except for an order for secure care under Section 80-6-705, if the juvenile court commits a minor to the division, or places the minor with an individual under this section, the juvenile court shall include in the order a date for a review and presumptive termination of the minor's case by the juvenile court in accordance with Section 80-6-712.

(b) For each review of a minor's case under Subsection (5)(a), the juvenile court shall set a new date for a review and presumptive termination of the minor's case.

(6) If a minor is adjudicated for an offense under Section 80-6-701, a juvenile court may not commit a minor to:

(a) except as provided in Subsection (7), the Division of Child and Family Services; or

(b) a correctional facility.

(7) The juvenile court may not commit a minor to the Division of Child and Family Services to address the minor's ungovernable or other behavior, mental health, or disability, unless the Division of Child and Family Services:

(a) engages other relevant divisions of the department in conducting an assessment of the minor and the minor's family's needs;

(b) based on an assessment under Subsection (7)(a), determines that committing the minor to the Division of Child and Family Services is the least restrictive intervention for the minor that meets the minor's needs; and

(c) consents to the minor being committed to the Division of Child and Family Services.

(8) If a minor is committed to the division under this section, the division may not transfer custody of the minor to a correctional facility.

HB0285S02 compared with HB0285S01

Section 181. Section **80-6-704** is enacted to read:

80-6-704. Detention or alternative to detention -- Limitations.

(1) (a) The juvenile court may order a minor to detention, or an alternative to detention, if the minor is adjudicated for:

- (i) an offense under Section 80-6-701; or
- (ii) contempt of court under Section 78A-6-353.

(b) Except as provided in Subsection 78A-6-353(3), and subject to the juvenile court retaining continuing jurisdiction over a minor's case, the juvenile court may order a minor to detention, or an alternative to detention, under Subsection (1) for a period not to exceed 30 cumulative days for an adjudication.

(c) If a minor is held in detention before an adjudication, the time spent in detention before the adjudication shall be credited toward the 30 cumulative days eligible as a disposition under Subsection (1)(a).

(d) If a minor spent more than 30 days in detention before a disposition under Subsection (1), the juvenile court may not order the minor to detention under this section.

(2) An order for detention under Subsection (1) may not be suspended upon conditions ordered by the juvenile court.

(3) A juvenile court may not order a minor to detention for:

- (a) contempt of court, except to the extent permitted under Section 78A-6-353;
- (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.

(4) (a) If a minor is held in detention under this section, the minor is eligible to receive credit for good behavior against the period of detention.

(b) The rate of credit is one day of credit for good behavior for every three days spent in detention.

(5) (a) A minor may not be held in secure detention following a disposition by the juvenile court:

- (i) under Chapter 3, Abuse, Neglect, and Dependency Proceedings; or

HB0285S02 compared with HB0285S01

(ii) except as provided in Subsection (5)(b), for a community-based program.

(b) If a minor is awaiting placement by the division under Section 80-6-703, a minor may not be held in secure detention for longer than 72 hours, excluding weekends and holidays.

(c) The period of detention under Subsection (5)(b) may be extended by the juvenile court for a cumulative total of seven calendar days if:

(i) the division, or another agency responsible for placement, files a written petition with the juvenile court requesting the extension and setting forth good cause; and

(ii) the juvenile court enters a written finding that it is in the best interests of both the minor and the community to extend the period of detention.

(d) The juvenile court may extend the period of detention beyond the seven calendar days if the juvenile court finds, by clear and convincing evidence, that:

(i) the division, or another agency responsible for placement, does not have space for the minor; and

(ii) the safety of the minor and community requires an extension of the period of detention.

(e) The division, or the agency with custody of the minor, shall report to the juvenile court every 48 hours, excluding weekends and holidays, regarding whether the division, or another agency responsible for placement, has space for the minor.

(f) The division, or agency, requesting an extension shall promptly notify the detention facility that a written petition has been filed.

(g) The juvenile court shall promptly notify the detention facility regarding the juvenile court's initial disposition and any ruling on a petition for an extension, whether granted or denied.

Section 182. Section **80-6-705** is enacted to read:

80-6-705. Secure care -- Limitations -- Order for therapy for parent with minor in secure care.

(1) If a minor is adjudicated for an offense under Section 80-6-701, the juvenile court may order the minor to secure care if the juvenile court finds that:

(a) (i) the minor poses a risk of harm to others; or

(ii) the minor's conduct resulted in the victim's death; and

HB0285S02 compared with HB0285S01

(b) the minor is adjudicated for:

(i) a felony offense;

(ii) a misdemeanor offense if the minor has five prior misdemeanor or felony adjudications arising from separate criminal episodes; or
(iii) a misdemeanor offense involving use of a dangerous weapon as defined in Section 76-1-601.

(2) A juvenile court may not order a minor to secure care 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.

(3) The juvenile court may, on the recommendation of the division, order a parent of a minor in secure care to undergo group rehabilitation therapy under the direction of a therapist, who has supervision of the minor in secure care, or any other therapist for a period recommended by the division.

Section 183. Section **80-6-706** is enacted to read:

80-6-706. Treatment -- Commitment to local mental health authority or Utah State Developmental Center.

(1) If a minor is adjudicated under Section 80-6-701, the juvenile court may order:

(a) a nonresidential, diagnostic assessment for the minor, including a risk assessment for substance use disorder, mental health, psychological, or sexual behavior;

(b) the minor to be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

(c) other care for the minor.

(2) For purposes of receiving the examination, treatment, or care described in Subsection (1), the juvenile court may place the minor in a hospital or other suitable facility that is not secure care or secure detention.

(3) In determining whether to order the examination, treatment, or care described in Subsection (1), the juvenile court shall consider:

HB0285S02 compared with HB0285S01

(a) the desires of the minor;

(b) if the minor is a child, the desires of the minor's parent or guardian; 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.

(4) (a) If the juvenile court orders examination, treatment, or care for a child under Subsection (1) and the child is committed to the division under Subsection 80-6-703(2), the division shall:

(i) take reasonable measures to notify the child's parent or guardian of any non-emergency health treatment or care scheduled for the child;

(ii) include the child's parent or guardian as fully as possible in making health care decisions for the child; and

(iii) defer to the child's 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.

(b) The division shall notify the parent or guardian of a child within five business days after a child committed to the division receives emergency health care or treatment.

(c) The division shall use the least restrictive means to accomplish the care and treatment of a child described under Subsection (1).

(5) If a child is adjudicated for an offense under Section 80-6-701, the juvenile court may commit the child to the physical custody, as defined in Section 62A-15-701, of a local mental health authority in accordance with the procedures and requirements in Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(6) (a) If a minor is adjudicated for an offense under Section 80-6-701, and the minor has an intellectual disability, the juvenile court may commit the minor to the Utah State Developmental Center in accordance with Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability.

(b) The juvenile court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center when ordering a

HB0285S02 compared with HB0285S01

commitment under Subsection (6)(a).

Section 184. Section **80-6-707**, which is renumbered from Section 78A-6-606 is renumbered and amended to read:

~~[78A-6-606].~~ **80-6-707. Suspension of driving privileges.**

~~[(1) This section applies to a minor who is at least the age eligible for a driver license under Section 53-3-204 when found by the court to be within its jurisdiction by the commission of an offense under:]~~

~~[(a) Section 32B-4-409;]~~

~~[(b) Section 32B-4-410;]~~

~~[(c) Section 32B-4-411;]~~

~~[(d) Section 58-37-8;]~~

~~[(e) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;]~~

~~[(f) Title 58, Chapter 37b, Imitation Controlled Substances Act; or]~~

~~[(g) Subsection 76-9-701(1).]~~

~~[(2) This section only applies when the minor is found by the court to be in actual physical control of a motor vehicle during the commission of one of the offenses under Subsection (1).]~~

~~[(3) If the court hearing the case determines that the minor committed an offense under Section 58-37-8 or Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b, Imitation Controlled Substances Act, the court may prepare and send to the Driver License Division of the Department of Public Safety an order to suspend that minor's driving privileges:]~~

~~[(4)(a) The court hearing the case may suspend the minor's driving privileges if the minor violated Section 32B-4-409, Section 32B-4-410, or Subsection 76-9-701(1).]~~

(1) This section applies to a minor who:

(a) at the time that the minor is adjudicated under Section 80-6-701, is at least the age eligible for a driver license under Section 53-3-204; and

(b) is found by the juvenile court to be in actual physical control of a motor vehicle during the commission of the offense for which the minor is adjudicated.

(2)(a) Except as otherwise provided by this section, if a minor is adjudicated for a violation of a traffic law by the juvenile court under Section 80-6-701, the juvenile court may:

HB0285S02 compared with HB0285S01

(i) suspend the minor's driving privileges; and

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

(b) The juvenile court may order any other eligible disposition under Subsection (1), except for a disposition under Section 80-6-703 or 80-6-705.

(c) If a juvenile court suspends a minor's driving privileges under Subsection (2)(a):

(i) the juvenile court shall prepare and send the order to the Driver License Division of the Department of Public Safety; and

(ii) the minor's license shall be suspended under Section 53-3-219.

~~[(b)]~~ (3) The juvenile court may reduce a suspension period imposed under Section 53-3-219 if:

(a) (i) the violation is the minor's first violation of:

(A) Section 32B-4-409;

(B) Section 32B-4-410;

(C) Section 58-37-8;

(D) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(E) Title 58, Chapter 37b, Imitation Controlled Substances Act; or

(F) Subsection 76-9-701(1); and

(ii) (A) the minor completes an educational series as defined in Section 41-6a-501; or

(B) the minor demonstrates substantial progress in substance use disorder treatment[-];

or

~~[(c) The court may reduce the suspension period required under Section 53-3-219 if:]~~

(b) (i) the violation is the minor's second or subsequent violation of:

(A) Section 32B-4-409;

(B) Section 32B-4-410;

(C) Section 58-37-8;

(D) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(E) Title 58, Chapter 37b, Imitation Controlled Substances Act; or

(F) Subsection 76-9-701(1);

(ii) the minor has completed an educational series as defined in Section 41-6a-501 or demonstrated substantial progress in substance use disorder treatment; and

(iii) (A) the ~~[person is 18 years of age]~~ minor is 18 years old or older and provides a

HB0285S02 compared with HB0285S01

sworn statement to the juvenile court that the ~~[person]~~ minor has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under ~~[Subsection (4)(a)]~~ Section 53-3-219; or

(B) the ~~[person is under 18 years of age and has the person's]~~ minor is under 18 years old and the minor's parent or legal guardian ~~[provide]~~ provides an affidavit or sworn statement to the juvenile court certifying that to the parent or ~~[legal]~~ guardian's knowledge the ~~[person]~~ minor has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under ~~[Subsection (4)(a)]~~ Section 53-3-219.

~~[(d)]~~ (4) (a) If a minor ~~[commits]~~ is adjudicated under Section 80-6-701 for a proof of age violation, as defined in Section 32B-4-411:

(i) the juvenile court may forward a record of adjudication to the Department of Public Safety for a first or subsequent violation; and

(ii) the minor's driving privileges will be suspended:

(A) for a period of at least one year under Section 53-3-220 for a first conviction for a violation of Section 32B-4-411; or

(B) for a period of two years for a second or subsequent conviction for a violation of Section 32B-4-411.

~~[(e)]~~ (b) The juvenile court may reduce the suspension period imposed under Subsection ~~[(4)(d)]~~ (4)(a)(ii)(A) if:

(i) the violation is the minor's first violation of Section 32B-4-411; and

(ii) (A) the minor completes an educational series as defined in Section 41-6a-501; or

(B) the minor demonstrates substantial progress in substance use disorder treatment.

~~[(f)]~~ (c) The juvenile court may reduce the suspension period imposed under Subsection ~~[(4)(d)]~~ (4)(a)(ii)(B) if:

(i) the violation is the minor's second or subsequent violation of Section 32B-4-411;

(ii) the minor has completed an educational series as defined in Section 41-6a-501 or demonstrated substantial progress in substance use disorder treatment; and

(iii) (A) the ~~[person is 18 years of age]~~ minor is 18 years old or older and provides a sworn statement to the court that the ~~[person]~~ minor has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection ~~[(4)(d)]~~ (4)(a)(ii)(B); or

HB0285S02 compared with HB0285S01

(B) the ~~[person is under 18 years of age]~~ minor is under 18 years old and has the ~~[person's]~~ minor's parent or ~~[legal]~~ guardian provide an affidavit or sworn statement to the court certifying that to the parent or ~~[legal]~~ guardian's knowledge the ~~[person]~~ minor has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection ~~[(4)(d)]~~ (4)(a)(ii)(B).

~~[(5) A minor's license shall be suspended under Section 53-3-219 when a court issues an order suspending the minor's driving privileges in accordance with Subsection (2) for a violation of:]~~

~~[(a) Section 32B-4-409;]~~

~~[(b) Section 32B-4-410;]~~

~~[(c) Section 58-37-8;]~~

~~[(d) Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b, Imitation Controlled Substances Act; or]~~

~~[(e) Subsection 76-9-701(1).]~~

~~[(6)]~~ (5) When the Department of Public Safety receives the arrest or conviction record of a ~~[person]~~ minor for a driving offense committed while the ~~[person's]~~ minor's license is suspended under this section, the Department of Public Safety shall extend the suspension for a like period of time.

Section 185. Section **80-6-708** is enacted to read:

80-6-708. Service in National Guard.

If a minor is adjudicated under Section 80-6-701, the minor may be given a choice by the juvenile court to serve in the National Guard in lieu of other sanctions described in this part if:

(1) the minor meets the current entrance qualifications for service in the National Guard as determined by a recruiter, whose determination is final;

(2) the offense:

(a) would be a felony if committed by an adult;

(b) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

(c) was committed with a weapon; and

(3) the juvenile court retains jurisdiction over the minor's case under conditions set by the juvenile court and agreed upon by the recruiter or the unit commander to which the minor is

HB0285S02 compared with HB0285S01

eventually assigned.

Section 186. Section **80-6-709** is enacted to read:

80-6-709. Payment of fines, fees, restitution, or other costs -- Community or compensatory service -- Property damage -- Unpaid balances.

(1) (a) If a minor is adjudicated for an offense under Section 80-6-701, the juvenile court may order a minor to:

(i) pay a fine, fee, or other cost;

(ii) pay restitution in accordance with Section 80-6-710; or

(iii) complete community or compensatory service hours.

(b) (i) If the juvenile court orders the minor to pay restitution under Subsection (1)(a), a juvenile probation officer may permit the minor to complete a work program in lieu of paying part or all of the restitution by the juvenile court.

(ii) If the juvenile court orders the minor to complete community or compensatory service hours, a juvenile probation officer may permit the minor to complete a work program to help the minor complete the community or compensatory service hours.

(c) The juvenile court may, through a juvenile probation officer, encourage the development of nonresidential employment or a work program to enable a minor to fulfill the minor's obligations under Subsection (1)(a).

(d) Notwithstanding this section, a juvenile court may not place a minor on a ranch, forestry camp, or other residential work program for care or work.

(2) If the juvenile court orders a minor to pay a fine, fee, restitution, or other cost, or to complete community or compensatory service hours, the juvenile court shall consider the dispositions collectively to ensure that an order:

(a) is reasonable;

(b) prioritizes restitution; and

(c) takes into account the minor's ability to satisfy the order within the presumptive period of supervision under Section 80-6-712, or Section 80-6-802 if the minor is ordered to secure care.

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

HB0285S02 compared with HB0285S01

(i) for a minor under 16 years old at the time of adjudication, the juvenile court may impose up to \$190 or up to 24 hours of community or compensatory service; and

(ii) for a minor 16 years old or older at the time of adjudication, the juvenile court may impose up to \$280 or up to 36 hours of community or compensatory service.

(b) The cumulative order under Subsection (3)(a) does not include restitution.

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

(b) If the juvenile court orders a minor to complete community service, the presumptive service order shall include between five and 10 hours of service.

(c) If a minor completes an approved substance use disorder prevention or treatment program or other court-ordered condition, the minor may be credited with compensatory service hours for the completion of the program or condition by the juvenile court.

(5) (a) If a minor commits an offense involving the use of graffiti under Section 76-6-106 or 76-6-206, the juvenile court may order the minor to clean up graffiti created by the minor or any other individual at a time and place within the jurisdiction of the juvenile court.

(b) The minor may complete the order of the juvenile court under Subsection (5)(a) in the presence and under the direct supervision of the minor's parent, guardian, or custodian.

(c) The minor's parent, guardian, or custodian shall report completion of the order to the juvenile court.

(d) The juvenile court may also require the minor to perform other alternative forms of restitution or repair to the damaged property in accordance with Section 80-6-710.

(6) (a) Except as provided in Subsection (6)(b), the juvenile court may issue orders necessary for the collection of restitution and fines ordered under this section, including garnishments, wage withholdings, and executions.

(b) The juvenile court may not issue an order under Subsection (6)(a) if the juvenile court orders a disposition that changes custody of a minor, including detention, secure care, or any other secure or nonsecure residential placement.

(7) Any information necessary to collect unpaid fines, fees, assessments, bail, or restitution may be forwarded to employers, financial institutions, law enforcement, constables, the Office of Recovery Services, or other agencies for purposes of enforcing an order under this section.

HB0285S02 compared with HB0285S01

(8) (a) If, before the entry of any order terminating the juvenile court's continuing jurisdiction over a minor's case, there remains an unpaid balance for any fine, fee, or restitution ordered by the juvenile court, the juvenile court shall record all pertinent information for the unpaid balance in the minor's file.

(b) The juvenile court may not transfer responsibility to collect unpaid fines, fees, surcharges, and restitution for a minor's case to the Office of State Debt Collection created in Section 63A-3-502.

(c) The juvenile court shall reduce a restitution order to a judgment and list the victim, or the estate of the victim, as the judgment creditor in the judgment.

Section 187. Section **80-6-710** is enacted to read:

80-6-710. Restitution -- Requirements.

(1) If a minor is adjudicated under Section 80-6-701, the juvenile court may order the minor to repair, replace, or otherwise make restitution for:

(a) material loss caused by an offense listed in the petition; or

(b) conduct for which the minor agrees to make restitution.

(2) Within seven days after the day on which a petition is filed under this chapter, the prosecuting attorney or a juvenile probation officer shall provide notification of the restitution process to all reasonably identifiable and locatable victims of an offense listed in the petition.

(3) A victim that receives notice under Subsection (2) is responsible for providing the prosecutor with:

(a) all invoices, bills, receipts, and any other evidence of the injury or out-of-pocket loss;

(b) all documentation of any compensation or reimbursement from an insurance company or a local, state, or federal agency that is related to the injury or out-of-pocket loss;

(c) if available, the victim's proof of identification, including the victim's date of birth, social security number, or driver license number; and

(d) the victim's contact information, including the victim's current home and work address and telephone number.

(4) A prosecuting attorney or victim shall submit a request for restitution to the juvenile court:

(a) if feasible, at the time of disposition; or

HB0285S02 compared with HB0285S01

(b) within 90 days after disposition.

(5) The juvenile court shall order a financial disposition that prioritizes the payment of restitution.

(6) To determine whether restitution, or the amount of restitution, is appropriate under Subsection (1), the juvenile court:

(a) shall only order restitution for the victim's material loss;

(b) may not order restitution if the juvenile court finds that the minor is unable to pay or acquire the means to pay;

(c) shall credit any amount paid by the minor to the victim in a civil suit against restitution owed by the minor;

(d) shall take into account the presumptive period of supervision for the minor's case under Section 80-6-712, or the presumptive period of commitment for secure care under Section 80-6-804 if the minor is ordered to secure care, in determining the minor's ability to satisfy the restitution order within that presumptive term; and

(e) shall credit any amount paid to the victim in restitution against liability in a civil suit.

(7) If the minor and the victim of the adjudicated offense agree to participate, the juvenile court may refer the minor's case to a restorative justice program, such as victim offender mediation, to address how loss resulting from the adjudicated offense may be addressed.

(8) The juvenile court may require a minor to reimburse an individual, entity, or governmental agency who offered and paid a reward to a person for providing information resulting in an adjudication of a minor for the commission of an offense.

(9) If a minor is returned to this state in accordance with Title 55, Chapter 12, Interstate Compact for Juveniles, the juvenile court may order the minor to make restitution for costs expended by any governmental entity for the return of the minor.

Section 188. Section **80-6-711** is enacted to read:

80-6-711. Suspending a disposition.

(1) Except as otherwise provided in Subsection (2), a juvenile court may not suspend a disposition ordered under this part.

(2) (a) If a minor qualifies for secure care under Section 80-6-705, the juvenile court

HB0285S02 compared with HB0285S01

may suspend a disposition for commitment to the division under Section 80-6-703 in lieu of immediate commitment, upon the condition that the minor commit no new misdemeanor or felony offense within 90 days after the day on which the juvenile court suspends the disposition for commitment.

(b) The duration of a suspended disposition under Subsection (2)(a) may not:

(i) exceed 90 days after the day on which the juvenile court suspends the disposition for commitment; and

(ii) be extended under any circumstance.

(3) The juvenile court may only lift a suspension of a disposition under Subsection (2)(a):

(a) following adjudication of a new misdemeanor or felony offense committed by the minor during the period of suspension set out under Subsection (2)(a);

(b) if a new assessment or evaluation has been completed and the assessment or evaluation recommends that a higher level of care is needed and nonresidential treatment options have been exhausted or nonresidential treatment options are not appropriate; or

(c) if, after a notice and a hearing, the juvenile court finds:

(i) a new or previous evaluation recommends a higher level of treatment; and

(ii) the minor willfully failed to comply with a lower level of treatment and has been unsuccessfully discharged from treatment.

(4) A suspended disposition under Subsection (1) may not be imposed without notice to the minor and the minor's counsel, and a hearing.

Section 189. Section **80-6-712** is enacted to read:

80-6-712. Time periods for supervision of probation or placement -- Termination of continuing jurisdiction.

(1) If the juvenile court places a minor on probation under Section 80-6-702, the juvenile court shall establish a period of time for supervision for the minor that is:

(a) if the minor is placed on intake probation, no more than three months; or

(b) if the minor is placed on formal probation, from four to six months, but may not exceed six months.

(2) (a) If the juvenile court commits a minor to the division under Section 80-6-703, and the minor's case is under the jurisdiction of the court, the juvenile court shall establish:

HB0285S02 compared with HB0285S01

(i) for a minor placed out of the home, a period of custody from three to six months, but may not exceed six months; and

(ii) for aftercare services if the minor was placed out of the home, a period of supervision from three to four months, but may not exceed four months.

(b) A minor may be supervised for aftercare under Subsection (2)(a)(ii) in the home of a qualifying relative or guardian, or at an independent living program contracted or operated by the division.

(3) If the juvenile court orders a minor to secure care, the authority shall:

(a) have jurisdiction over the minor's case; and

(b) apply the provisions of Part 8, Commitment and Parole.

(4) (a) In accordance with Section 80-6-711 and Subsections (1) and (2), the juvenile court shall terminate continuing jurisdiction over a minor's case at the end of the time period described in Subsection (1) for probation or Subsection (2) for commitment to the division, unless:

(i) termination would interrupt the completion of the treatment program determined to be necessary by the results of a validated risk and needs assessment under Section 80-6-606;

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

(iii) community or compensatory service hours have not been completed;

(iv) there is an outstanding fine; or

(v) there is a failure to pay restitution in full.

(b) The juvenile court shall determine whether a minor has completed a treatment program under Subsection (4)(a)(i) by considering:

(i) the recommendations of the licensed service provider for the treatment program;

(ii) the minor's record in the treatment program; and

(iii) the minor's completion of the goals of the treatment program.

(5) Subject to Subsection (8), if one of the circumstances under Subsection (4) exists the juvenile court may extend supervision for the time needed to address the specific circumstance.

(6) If a circumstance under Subsection (4)(a)(iii), (iv), or (v) exists, the juvenile court may extend supervision for no more than three months.

(7) If the juvenile court extends supervision under this section, the grounds for the

HB0285S02 compared with HB0285S01

extension and the length of any extension shall be recorded in the court records and tracked in the data system used by the Administrative Office of the Courts and the division.

(8) For a minor who is under the continuing jurisdiction of the juvenile court and whose supervision is extended under Subsection (4)(a)(iii), (iv), or (v), supervision may only be extended as intake probation.

(9) If a minor leaves supervision without authorization for more than 24 hours, the supervision period for the minor shall toll until the minor returns.

(10) This section does not apply to any minor adjudicated under this chapter for:

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

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

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

(d) Section 76-5-205, manslaughter;

(e) Section 76-5-206, negligent homicide;

(f) Section 76-5-207, automobile homicide;

(g) Section 76-5-207.5, automobile homicide involving handheld wireless communication device;

(h) Section 76-5-208, child abuse homicide;

(i) Section 76-5-209, homicide by assault;

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

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

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

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

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

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

(p) (i) an offense other than an offense listed in Subsections (9)(a) through (o) involving the use of a dangerous weapon, as defined in Section 76-1-601, that is a felony; and

(ii) the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon; or

(q) a felony offense other than an offense listed in Subsections (9)(a) through (p) and the minor has been previously committed to the division for secure care.

Section 190. Section **80-6-801** is enacted to read:

HB0285S02 compared with HB0285S01

Part 8. Commitment and Parole

80-6-801. Commitment to local mental health authority or Utah State

Developmental Center.

(1) If a child is committed by the juvenile court to the physical custody, as defined in Section 62A-15-701, of a local mental health authority, or the local mental health authority's designee, Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, shall govern the commitment and release of the minor.

(2) If a minor is committed to the Utah State Developmental Center, Title 62A, Chapter 5, Services for People with Disabilities, shall govern the commitment and release of the minor.

Section 191. Section **80-6-802**, which is renumbered from Section 62A-7-404 is renumbered and amended to read:

[62A-7-404]. 80-6-802. Commitment to secure care -- Rights of juvenile offenders in secure care.

(1) If a youth offender [~~has been committed to a secure facility~~] is ordered to secure care under Section [~~78A-6-117~~] 80-6-705, the youth offender shall remain [~~at the secure facility~~] in secure care until the youth offender is:

- (a) 21 years old;
- (b) paroled; or
- (c) discharged.

(2) If a serious youth offender [~~has been committed to a secure facility~~] is ordered to secure care under Section [~~78A-6-117~~] 80-6-705, the serious youth offender shall remain [~~at the secure facility~~] in secure care until the serious youth offender is:

- (a) 25 years old;
- (b) paroled; or
- (c) discharged.

(3) (a) Subject to Subsection (3)(b), a juvenile offender in secure care has the right to:

(i) phone the juvenile offender's parent, guardian, or an attorney while the juvenile offender is in secure care; and

(ii) confer in private, at any time, with an attorney, cleric, parent, guardian, or custodian.

HB0285S02 compared with HB0285S01

(b) The division may:

(i) establish a schedule for which a juvenile offender may visit or phone a person described in Subsection (3)(a);

(ii) allow a juvenile offender to visit or call persons described in Subsection (3)(a) in special circumstances;

(iii) limit the number and length of calls and visits for a juvenile offender to persons described in Subsection (3)(a) on account of scheduling, facility, or personnel constraints; or

(iv) limit the juvenile's rights under Subsection (3)(a) if a compelling reason exists to limit the juvenile's rights.

Section 192. Section **80-6-803**, which is renumbered from Section 62A-7-111.5 is renumbered and amended to read:

[62A-7-111.5]. 80-6-803. Cost of support and maintenance of a juvenile offender -- Responsibility.

On commitment of a juvenile offender to the division, and on recommendation of the division to the juvenile court, the juvenile court may order the juvenile offender, or the juvenile offender's parent, guardian, or custodian in accordance with Section 78A-6-356, to share in the costs of support and maintenance for the juvenile offender during the juvenile offender's term of commitment.

Section 193. Section **80-6-804**, which is renumbered from Section 62A-7-404.5 is renumbered and amended to read:

[62A-7-404.5]. 80-6-804. Review and termination of secure care.

(1) If a juvenile offender [~~has been committed to a secure facility~~] is ordered to secure care under Section 80-6-705, the juvenile offender shall appear before the authority within 45 days after the day on which the juvenile offender [~~is committed to a secure facility~~] is ordered secure care for review of a treatment plan and to establish parole release guidelines.

(2) (a) If a juvenile offender is [~~committed to a secure facility~~] ordered to secure care under Section 80-6-705, the authority shall set a presumptive term of commitment for the juvenile offender [~~that does not exceed three to six months~~] from three to six months, but the presumptive term may not exceed six months.

(b) The authority shall release the juvenile offender on parole at the end of the presumptive term of commitment unless [~~at least one of the following circumstances exists~~]:

HB0285S02 compared with HB0285S01

(i) termination would interrupt the completion of a ~~[necessary]~~ treatment program determined to be necessary by the results of a validated risk and needs assessment under Section 80-6-606; or

(ii) the juvenile offender commits a new misdemeanor or felony offense.

(c) The authority shall determine whether a juvenile offender has completed a treatment program under Subsection (2)(b)(i) by considering:

(i) the recommendations of the licensed service provider~~;~~ for the treatment program;

(ii) the juvenile offender's ~~[consistent attendance record]~~ record in the treatment program; and

(iii) the juvenile offender's completion of the goals of the ~~[necessary]~~ treatment program.

(d) The authority may extend the length of commitment and delay parole release for the time needed to address the specific circumstance if one of the circumstances under Subsection (2)(b) exists.

(e) The authority shall:

(i) record the length of the extension and the grounds for the extension; and

(ii) report annually the length and grounds of extension to the commission.

(f) Records under Subsection (2)(e) shall be tracked in the data system used by the juvenile court and the division.

(3) (a) If a juvenile offender is committed to ~~[a secure facility]~~ secure care, the authority shall set a presumptive term of parole supervision ~~[that does not exceed three to four months]~~, including aftercare services, from three to four months, but the presumptive term may not exceed four months.

(b) If the authority determines that a juvenile offender is unable to return home immediately upon release, the juvenile offender may serve the term of parole in the home of a qualifying relative or guardian or at an independent living program contracted or operated by the division.

(c) The authority shall release a juvenile offender from parole and terminate the authority's jurisdiction at the end of the presumptive term of parole, unless ~~[at least one the following circumstances exists]~~:

(i) termination would interrupt the completion of a ~~[necessary]~~ treatment program that

HB0285S02 compared with HB0285S01

is determined to be necessary by the results of a validated risk and needs assessment under Section 80-6-606;

- (ii) the juvenile offender commits a new misdemeanor or felony offense; or
- (iii) restitution has not been completed.

(d) The authority shall determine whether a juvenile offender has completed a treatment program under Subsection (2)(c)(i) by considering:

- (i) the recommendations of the licensed service provider[~~;~~];
- (ii) the juvenile offender's [~~consistent attendance record;~~] record in the treatment

program; and

(iii) the juvenile offender's completion of the goals of the [~~necessary~~] treatment program.

(e) If one of the circumstances under Subsection (3)(c) exists, the authority may delay parole release only for the time needed to address the specific circumstance.

(f) The authority shall:

(i) record the grounds for extension of the presumptive length of parole and the length of the extension; and

(ii) report annually the extension and the length of the extension to the commission.

(g) Records under Subsection (3)(f) shall be tracked in the data system used by the juvenile court and the division.

~~[(g) In the event of an unauthorized leave lasting more than 24 hours]~~

(h) If a juvenile offender leaves parole supervision without authorization for more than 24 hours, the term of parole shall toll until the juvenile offender returns.

(4) Subsections (2) and (3) do not apply to a juvenile offender committed to [~~a secure facility~~] secure care for a felony violation of:

- (a) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;
- (b) Section 76-5-202, aggravated murder or 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) Section 76-6-103, aggravated arson;
- (g) Section 76-6-203, aggravated burglary;

HB0285S02 compared with HB0285S01

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

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

(j) an offense other than an offense listed in Subsections (4)(a) through (i) involving the use of a dangerous weapon:

(i) if the offense would be a felony had an adult committed the offense; and

(ii) the juvenile offender has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon that would have been a felony had an adult committed the offense; or

(k) an offense other than an offense listed in Subsections (4)(a) through (j) and the minor has been previously committed to [~~the custody of the Division of Juvenile Justice Services for secure confinement~~] the division for secure care.

(5) (a) The division may continue to have responsibility over a juvenile offender, who is discharged under this section from parole, to participate in a specific educational or rehabilitative program:

(i) until the juvenile offender is:

(A) if the juvenile offender is a youth offender, 21 years old; or

(B) if the juvenile offender is a serious youth offender, 25 years old; and

(ii) under an agreement by the division and the juvenile offender that the program has certain conditions.

(b) The division and the juvenile offender may terminate participation in a program under Subsection (5)(a) at any time.

(c) The division shall offer an educational or rehabilitative program before a juvenile offender's discharge date in accordance with this section.

(d) A juvenile offender may request the services described in this Subsection (5), even if the offender has been previously declined services or services were terminated for noncompliance.

(e) Notwithstanding Subsection (5)(c), the division:

(i) shall consider a request by a juvenile offender under Subsection (5)(d) for the services described in this Subsection (5) for up to 365 days after the juvenile offender's effective date of discharge, even if the juvenile offender has previously declined services or services were terminated for noncompliance; and

HB0285S02 compared with HB0285S01

(ii) may reach an agreement with the juvenile offender to provide the services described in this Subsection (5) until the juvenile offender is:

(A) if the juvenile offender is a youth offender, 21 years old; or

(B) if the juvenile offender is a serious youth offender, 25 years old.

(f) The division and the juvenile offender may terminate an agreement for services under this Subsection (5) at any time.

Section 194. Section **80-6-805**, which is renumbered from Section 62A-7-502 is renumbered and amended to read:

~~[62A-7-502].~~ **80-6-805. Parole procedures -- Conditions of parole.**

~~[(1) The authority has responsibility for parole release, rescission, revocation, and termination for juvenile offenders who have been committed to the division for secure confinement. The authority shall determine when and under what conditions juvenile offenders who have been committed to a secure facility are eligible for parole.]~~

~~[(2)]~~ (1) (a) A juvenile offender shall be served with notice of parole hearings and has the right to personally appear before the authority for parole consideration.

~~[(3) Orders and decisions]~~

(b) An order or decision of the authority shall be in writing~~[, and a]~~.

(c) A juvenile offender shall be provided written notice of the authority's reasoning and decision in the juvenile offender's case.

~~[(4) The authority shall establish policies and procedures for the authority's governance, meetings, hearings, the conduct of proceedings before the authority, the parole of juvenile offenders, and the general conditions under which parole may be granted, rescinded, revoked, modified, and terminated.]~~

(2) A juvenile offender may be paroled to the juvenile offender's home, to an independent living program contracted or operated by the division, to an approved independent living setting, or to other appropriate residences of qualifying relatives or guardians, but shall remain on parole until parole is terminated by the authority in accordance with Section 80-6-804.

(3) (a) Any condition of parole shall be specified in writing, and agreed to, by the juvenile offender.

(b) An agreement under Subsection (3)(a) shall be evidenced by the signature of the

HB0285S02 compared with HB0285S01

juvenile offender, which shall be affixed to the agreement.

(4) The authority may require a juvenile offender to pay restitution ordered by the juvenile court as a condition of release, placement, or parole.

Section 195. Section **80-6-806**, which is renumbered from Section 62A-7-504 is renumbered and amended to read:

[62A-7-504]. 80-6-806. Parole revocation -- Hearing -- Procedures.

(1) (a) The authority may only revoke the parole of a juvenile offender [~~only~~] after a hearing and upon determination that there has been a violation of law or of a condition of parole by the juvenile offender that warrants the juvenile offender's return to [~~a secure facility~~] secure care.

(b) The parole revocation hearing shall be held at [~~a secure facility~~] the secure care facility.

(2) (a) Before returning a juvenile offender to [~~a secure facility~~] secure care for a parole revocation or rescission hearing, the division shall provide a prerevocation or prerescission hearing within the vicinity of the alleged violation, to determine whether there is probable cause to believe that the juvenile offender violated the conditions of the juvenile offender's parole.

(b) Upon a finding of probable cause, the juvenile offender may be remanded to [~~a secure facility~~] secure care, pending a revocation hearing.

(3) The authority shall only proceed with the parole revocation or rescission process in accordance with the system of appropriate responses developed in accordance with Section [~~78A-6-123 on or after July 1, 2018~~] 80-6-607.

(4) A paroled juvenile offender is entitled to legal representation at the parole revocation hearing, and if the juvenile offender or the juvenile offender's family has requested but cannot afford legal representation, the authority shall appoint legal counsel.

~~[(5) The authority and the administrative officer have power to issue subpoenas, compel attendance of witnesses, compel production of books, papers and other documents, administer oaths, and take testimony under oath for the purposes of conducting the hearings.]~~

~~[(6)]~~ (5) (a) A juvenile offender;

(i) shall receive timely advance notice of the date, time, place, and reason for the hearing~~[-]~~; and

HB0285S02 compared with HB0285S01

(ii) has the right to appear at the hearing.

(b) The authority shall provide the juvenile offender an opportunity to be heard, to present witnesses and evidence, and to confront and cross-examine adverse witnesses, unless there is good cause for disallowing that confrontation.

~~[(7)]~~ (6) Decisions in parole revocation or rescission hearings shall be reached by a majority vote of the present members of the authority.

~~[(8) The administrative officer shall maintain summary records of all hearings and provide written notice to the juvenile offender of the decision and reason for the decision.]~~

~~[(9)]~~ (7) (a) The authority may issue a warrant to order any peace officer or division employee to take into custody a juvenile offender alleged to be in violation of parole conditions in accordance with Section ~~[78A-6-123 on or after July 1, 2018]~~ 80-6-607.

(b) The division may issue a warrant to any peace officer or division employee to retake a juvenile offender who has escaped from ~~[a secure facility]~~ secure care.

(c) Based upon the warrant issued under this Subsection (9), a juvenile offender may be held in a local detention facility for no longer than 48 hours, excluding weekends and legal holidays, to allow time for a prerevocation or ~~[prerecission]~~ prerescission hearing of the alleged parole violation, or in the case of an escapee, arrangement for transportation to ~~[the secure facility]~~ secure care.

Section 196. Section **80-6-807**, which is renumbered from Section 62A-7-506 is renumbered and amended to read:

~~[62A-7-506].~~ **80-6-807. Discharge of juvenile offender.**

(1) A juvenile offender may be discharged from the jurisdiction of the division at any time, by written order of the authority, upon a finding that no further purpose would be served by ~~[secure confinement]~~ secure care or supervision in a community setting.

(2) A juvenile offender shall be discharged in accordance with Section ~~[62A-7-404.5]~~ 80-6-804.

(3) Discharge of a juvenile offender is a complete release of all penalties incurred by adjudication of the offense for which the juvenile offender was committed to secure care.

Section 197. Section **80-6-808**, which is renumbered from Section 62A-7-507 is renumbered and amended to read:

~~[62A-7-507].~~ **80-6-808. Appeal regarding parole release or revocation.**

HB0285S02 compared with HB0285S01

(1) A juvenile offender, or the parent or ~~[legal]~~ guardian of a juvenile offender, may appeal to the executive director of the department, or ~~[his]~~ the executive director's designee, any decision of the authority regarding parole release, rescission, or revocation.

(2) The executive director, or the executive director's designee, may set aside or remand the authority's decision only if the authority's decision is arbitrary, capricious, an abuse of discretion, or contrary to law.

Section 198. Section **80-6-901**, which is renumbered from Section 78A-6-1202 is renumbered and amended to read:

Part 9. Youth Court

~~[78A-6-1202].~~ **80-6-901. Definitions.**

As used in this part:

(1) "Adult" means ~~[a person 18 years of age]~~ an individual who is 18 years old or older.

(2) (a) "Gang activity" means any criminal activity that is conducted as part of an organized youth gang. ~~[It]~~

(b) "Gang activity" includes any criminal activity that is done in concert with other gang members, or done alone if ~~[it]~~ the criminal activity is to fulfill gang purposes.

~~[(b)]~~ (c) "Gang activity" does not include graffiti.

(3) "Minor" means an individual who is:

(a) under 18 years old; or

(b) is 18 years old and still attending high school.

~~[(3)]~~ (4) (a) "Minor offense" means any unlawful act that is a status offense or ~~[would]~~ an offense that would be a misdemeanor, infraction, or violation of a municipal or county ordinance if ~~[the youth were]~~ committed by an adult.

(b) "Minor offense" does not include:

(i) a class A misdemeanor; or

(ii) a felony of any degree.

~~[(4)]~~ (5) "Sponsoring entity" means any political subdivision of the state, including a school or school district, juvenile court, law enforcement agency, prosecutor's office, county, city, or town.

~~[(5)]~~ (6) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

HB0285S02 compared with HB0285S01

~~[(6) "Youth" means a person under the age of 18 years or who is 18 but still attending high school.]~~

(7) "Youth court" means a diversion program that is an alternative disposition for cases involving minors who have committed minor offenses.

(8) "Youth Court Board" means the board created under Subsection 80-6-907(1).

Section 199. Section **80-6-902**, which is renumbered from Section 78A-6-1203 is renumbered and amended to read:

~~[78A-6-1203].~~ **80-6-902. Youth court -- Authorization -- Referral.**

~~(1) [Youth court is a diversion program that provides an alternative disposition for cases involving juvenile offenders in which youth participants]~~ A minor may serve in a youth court, under the supervision of an adult coordinator, ~~[may serve]~~ in various capacities within the courtroom, acting in the role of jurors, lawyers, bailiffs, clerks, and judges.

~~(a) [Youth who appear before youth courts have been]~~ A minor who appears before a youth court has been identified by law enforcement personnel, school officials, a prosecuting attorney, or the juvenile court as having committed ~~[acts which indicate]~~ an act, including a minor offense or eligible offense under Section 53G-8-211, that indicates a need for intervention to prevent further development toward juvenile delinquency, but which appear to be acts that can be appropriately addressed outside the juvenile court process.

~~(b) [Youth courts]~~ A youth court may only hear cases as provided for in this part.

~~(c) [Youth court is a diversion program and]~~ A youth court is not a court established under the Utah Constitution, Article VIII.

(2) A youth court may not accept referrals from law enforcement, schools, prosecuting attorneys, or a juvenile court unless the youth court is certified by the ~~[Utah]~~ Youth Court Board.

(3) (a) Any person may refer ~~[youth]~~ a minor to a youth court for ~~[minor offenses]~~ a minor offense or for any other eligible offense under Section 53G-8-211.

(b) Once a referral is made, the case shall be screened by an adult coordinator to determine whether ~~[it]~~ the minor offense or other eligible offense qualifies as a youth court case.

~~(4) [Youth courts have authority over youth]~~ A youth court has authority over a minor:

(a) referred for one or more minor offenses or who are referred for other eligible

HB0285S02 compared with HB0285S01

offenses under Section 53G-8-211, or who are granted permission for referral under this part;

(b) who, along with a parent, guardian, or ~~[legal]~~ custodian, voluntarily and in writing, request youth court involvement; and

(c) who, along with a parent, guardian, or ~~[legal]~~ custodian, agree to follow the youth ~~[court]~~ court's disposition of the case.

(5) (a) Except with permission granted under Subsection (6), or ~~[pursuant to]~~ in accordance with Section 53G-8-211, ~~[youth courts]~~ a youth court may not exercise authority over ~~[youth who are]~~ a minor whose case is under the continuing jurisdiction of the juvenile court ~~[for law violations]~~ for an offense, including any ~~[youth who may have a matter pending which]~~ minor who has a matter pending that has not yet been adjudicated. ~~[Youth courts]~~

(b) Notwithstanding Subsection (5)(a), a youth court may~~[-however,]~~ exercise authority over ~~[youth who are under]~~ a minor who is involved in a proceeding under the continuing jurisdiction of the juvenile court ~~[as set forth in this Subsection (5)]~~ if the offense before the youth court is not a law violation~~[-]~~ and the referring agency has notified the juvenile court of the referral.

(6) ~~[Youth courts]~~ A youth court may exercise authority over ~~[youth]~~ a minor described in Subsection (5), and over any other offense with the permission of the juvenile court and the prosecuting attorney in the county or district that would have jurisdiction if the matter were referred to juvenile court.

(7) Permission of the juvenile court may be granted by a ~~[probation officer of the court]~~ juvenile probation officer in the district that would have jurisdiction over the offense being referred to a youth court.

(8) ~~[Youth courts]~~ A youth court may:

(a) decline to accept a ~~[youth]~~ minor for youth court disposition for any reason; and ~~[may]~~

(b) terminate a youth from youth court participation at any time.

(9) (a) A ~~[youth or the youth's]~~ minor, or the minor's parent, guardian, or ~~[legal]~~ custodian may withdraw from the youth court process at any time.

(b) The youth court shall immediately notify the referring source of the withdrawal.

(10) The youth court may transfer a case back to the referring source for alternative handling at any time.

HB0285S02 compared with HB0285S01

(11) Referral of a case to youth court may not, if otherwise eligible, prohibit the subsequent referral of the case to any court.

(12) Proceedings and dispositions of a youth court may only be shared with the referring agency, juvenile court, and victim.

(13) When a ~~[person]~~ minor does not complete the terms ordered by a youth court, and if the case is referred to a juvenile court, the youth court shall provide the case file to the juvenile court.

Section 200. Section **80-6-903**, which is renumbered from Section 78A-6-1204 is renumbered and amended to read:

~~[78A-6-1204].~~ 80-6-903. Parental involvement -- Victims -- Restitution.

(1) ~~[Every youth]~~ A minor appearing before the youth court shall be accompanied by a parent, guardian, or ~~[legal]~~ custodian.

(2) ~~[Victims]~~ A victim shall have the right to attend hearings and be heard.

(3) (a) Any restitution due to a victim of an offense shall be made in full prior to the time the case is completed by the youth court.

(b) Restitution shall be agreed upon between the ~~[youth]~~ minor and the victim.

Section 201. Section **80-6-904**, which is renumbered from Section 78A-6-1205 is renumbered and amended to read:

~~[78A-6-1205].~~ 80-6-904. Dispositions.

(1) ~~[Youth court dispositional options include]~~ A youth court may order a disposition for:

- (a) compensatory service;
- (b) participation in law-related educational classes, appropriate counseling, treatment, or other educational programs;
- (c) providing periodic reports to the youth court;
- (d) participating in mentoring programs;
- (e) participation by the ~~[youth]~~ minor as a member of a youth court;
- (f) letters of apology;
- (g) essays; and
- (h) any other disposition considered appropriate by the youth court and adult coordinator.

HB0285S02 compared with HB0285S01

(2) ~~[Youth courts]~~ A youth court may not:

(a) impose a term of imprisonment or detention ~~[and may not]; or~~

(b) impose fines.

(3) ~~[Youth court dispositions]~~ A disposition by a youth court shall be completed within 180 days from the date of referral.

(4) ~~[Youth court dispositions]~~ A disposition by a youth court shall be reduced to writing and signed by the ~~[youth and a]~~ minor and the minor's parent, guardian, or [legal] custodian indicating ~~[their]~~ acceptance of the ~~[disposition terms]~~ terms of the disposition.

(5) (a) ~~[Youth court]~~ A youth court shall notify the referring source if a ~~[participant]~~ minor fails to successfully complete the youth ~~[court]~~ court's disposition.

(b) The referring source may then take any action ~~[it]~~ the referring source considers appropriate.

Section 202. Section **80-6-905**, which is renumbered from Section 78A-6-1206 is renumbered and amended to read:

~~[78A-6-1206].~~ **80-6-905. Liability.**

(1) A person ~~[or entity]~~ associated with the referral, evaluation, adjudication, disposition, or supervision of matters under this part may not be held civilly liable for any injury occurring to ~~[any person]~~ a minor performing compensatory service or any other activity associated with a certified youth court, unless the person causing the injury acted in a willful or wanton manner.

(2) ~~[Persons]~~ A person participating in a certified youth court shall be considered ~~[to be volunteers]~~ a volunteer for purposes of Workers' Compensation and other risk-related issues.

Section 203. Section **80-6-906**, which is renumbered from Section 78A-6-1207 is renumbered and amended to read:

~~[78A-6-1207].~~ **80-6-906. Fees.**

(1) (a) ~~[Youth courts]~~ A youth court may require that ~~[the youth]~~ a minor pay a reasonable fee, not to exceed \$50, to participate in the youth court. ~~[This fee]~~

(b) A fee under Subsection (1) may be reduced or waived by the youth court in exigent circumstances. ~~[This fee]~~

(c) A fee under Subsection (1) shall be paid to and accounted for by the sponsoring entity. ~~[The]~~

HB0285S02 compared with HB0285S01

(d) Any fees collected shall be used for supplies and any training requirements.

(2) [~~Youth court participants are~~] A minor who participates in youth court is responsible for the all expenses of any classes, counseling, treatment, or other educational programs that are the disposition of the youth court.

Section 204. Section **80-6-907**, which is renumbered from Section 78A-6-1208 is renumbered and amended to read:

~~[78A-6-1208].~~ **80-6-907. Youth Court Board -- Membership --**

Responsibilities.

(1) [~~The Utah attorney general's office shall provide staff support and assistance to a Youth Court Board comprised of the following:~~] The Youth Court Board shall be comprised of the following members:

- (a) the Utah attorney general or the attorney general's designee;
- (b) one prosecuting attorney appointed by the Utah Prosecution Council;
- (c) one criminal defense attorney appointed by the Utah Association of Criminal

Defense Attorneys:

- ~~[(c)]~~ (d) one juvenile court judge appointed by the Board of Juvenile Court Judges;
- ~~[(d)]~~ (e) the juvenile court administrator or the administrator's designee;
- ~~[(e)]~~ (f) the executive director of the [~~Utah Commission on Criminal and Juvenile Justice~~] commission or the executive director's designee;
- ~~[(f)]~~ (g) the state superintendent of education or the state superintendent's designee;
- ~~[(g)]~~ (h) two representatives, appointed by the Utah Youth Court Association, from youth courts based primarily in schools;
- ~~[(h)]~~ (i) two representatives, appointed by the Utah Youth Court Association, from youth courts based primarily in communities;
- ~~[(i)]~~ (j) one member from the law enforcement community appointed by the Youth Court Board;
- ~~[(j)]~~ (k) one member from the community at large appointed by the Youth Court Board; and
- ~~[(k)]~~ (l) the president of the Utah Youth Court Association.

(2) The Office of the Attorney General shall provide staff support and assistance to the Youth Court Board.

HB0285S02 compared with HB0285S01

~~[(2)] (3)~~ The members selected to fill the positions in Subsections (1)(a) through ~~[(f)]~~ (g) shall jointly select the members to fill the positions in Subsections ~~[(1)(g) through (j)]~~ (1)(h) through (k).

~~[(3)] (4)~~ Members shall serve two-year staggered terms beginning July 1, 2012, except the initial terms of the members designated by Subsections (1)(b), (c), ~~[(i), and (j)]~~ (d), (j), and (k) and one of the members from Subsections ~~[(1)(g) and (h)]~~ (1)(h) and (i) shall serve two-year terms, but may be reappointed for a full four-year term upon the expiration of ~~[their]~~ the member's initial term.

~~[(4)] (5)~~ The Youth Court Board shall meet at least quarterly to:

(a) set minimum standards for the establishment of ~~[youth courts]~~ a youth court, including an application process, membership and training requirements, and the qualifications for the adult coordinator;

(b) review certification applications; and

(c) provide for a process to recertify each youth court every three years.

~~[(5)] (6)~~ In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Youth Court Board shall make rules to accomplish the requirements of Subsection ~~[(3)] (4)~~.

~~[(6)] (7)~~ The Youth Court Board may deny certification, recertification, or withdraw the certification of any youth court for failure to comply with program requirements.

~~[(7)] (8)~~ A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance ~~[pursuant to]~~ in accordance with Sections 63A-3-106 and 63A-3-107.

~~[(8)] (9)~~ The Youth Court Board shall provide a list of certified youth courts to the Board of Juvenile Court Judges, all law enforcement agencies in the state, all school districts, and the Utah Prosecution Council by October 1 of each year.

Section 205. Section **80-6-908**, which is renumbered from Section 78A-6-1209 is renumbered and amended to read:

~~[78A-6-1209].~~ **80-6-908.** Establishing a youth court -- Sponsoring entity

HB0285S02 compared with HB0285S01

responsibilities.

(1) [~~Youth courts~~] A youth court may be established by a sponsoring entity or by a private nonprofit entity [~~which~~] that contracts with a sponsoring entity.

(2) The sponsoring entity shall:

(a) oversee the formation of the youth court;

(b) provide assistance with the application for certification from the Youth Court Board; and

(c) provide assistance for the training of youth court members.

Section 206. Section **80-6-909**, which is renumbered from Section 78A-6-1210 is renumbered and amended to read:

~~[78A-6-1210].~~ **80-6-909. School credit.**

~~[Local school boards]~~ A local school board may provide school credit for participation [~~as~~] to a member of a youth court.

Section 207. Section **80-6-1001**, which is renumbered from Section 78A-6-1502 is renumbered and amended to read:

Part 10. Juvenile Records and Expungement

~~[78A-6-1502].~~ **80-6-1001. Definitions.**

As used in this part:

(1) "Abstract" means a copy or summary of a court's disposition.

~~[(1)]~~ (2) "Agency" means a state, county, or local government entity that generates or maintains records relating to a nonjudicial adjustment or an adjudication for which expungement may be ordered under this part.

~~[(2)]~~ (3) "Expunge" means to seal or otherwise restrict access to an individual's record held by a court or an agency when the record relates to a nonjudicial adjustment or an adjudication of an offense in the juvenile court.

Section 208. Section **80-6-1002**, which is renumbered from Section 78A-6-1114 is renumbered and amended to read:

~~[78A-6-1114].~~ **80-6-1002. Vacatur of adjudications.**

(1) (a) ~~[A person]~~ An individual who has been adjudicated under this chapter may petition the juvenile court for vacatur of the ~~[person's]~~ individual's juvenile court records and any related records in the custody of ~~[a state agency]~~ an agency if the record relates to:

HB0285S02 compared with HB0285S01

(i) [~~a delinquency~~] an adjudication under Section 76-10-1302, [~~prostitution, Section~~] 76-10-1304, [~~aiding prostitution, or Section~~] or 76-10-1313[, ~~sex solicitation~~]; or

(ii) an adjudication that was based on [~~delinquent conduct~~] an offense that the petitioner engaged in while subject to force, fraud, or coercion, as defined in Section 76-5-308.

(b) The petitioner shall include in the petition the relevant juvenile court incident number and any agencies known or alleged to have any documents related to the offense for which vacatur is being sought.

(c) The petitioner shall include with the petition the original criminal history report obtained from the Bureau of Criminal Identification in accordance with the provisions of Section 53-10-108.

(d) The petitioner shall send a copy of the petition to the county attorney or, if within a prosecution district, the district attorney.

[~~(c)-(f)~~] (2) (a) Upon the filing of a petition, the juvenile court shall:

[~~(A)~~] (i) set a date for a hearing;

[~~(B)~~] (ii) notify the county attorney or district attorney and the agency with custody of the records at least 30 days prior to the hearing of the pendency of the petition; and

[~~(C)~~] (iii) notify the county attorney or district attorney and the agency with records the petitioner is asking the juvenile court to vacate of the date of the hearing.

[~~(f)~~] (b) (i) The juvenile court shall provide a victim with the opportunity to request notice of a petition for vacatur.

(ii) A victim shall receive notice of a petition for vacatur at least 30 days [~~prior to~~] before the hearing if, [~~prior to~~] before the entry of [~~a vacatur order~~] vacatur, the victim or, in the case of a child or [~~a person~~] an individual who is incapacitated or deceased, the victim's next of kin or authorized representative, submits a written and signed request for notice to the court in the judicial district in which the crime occurred or judgment was entered.

(iii) The notice shall include a copy of the petition and statutes and rules applicable to the petition.

[~~(2)~~] (3) (a) At the hearing the petitioner, the county attorney or district attorney, a victim, and any other person who may have relevant information about the petitioner may testify.

(b) (i) In deciding whether to grant a petition for vacatur, the juvenile court shall

HB0285S02 compared with HB0285S01

consider whether the petitioner acted subject to force, fraud, or coercion, as defined in Section 76-5-308, at the time of the conduct giving rise to the adjudication.

(ii) (A) If the juvenile court finds by a preponderance of the evidence that the petitioner was subject to force, fraud, or coercion, as defined in Section 76-5-308 at the time of the conduct giving rise to the adjudication, the juvenile court shall grant vacatur.

(B) If the court does not find sufficient evidence, the juvenile court shall deny vacatur.

(iii) If the petition is for vacatur of any adjudication under Section 76-10-1302, [~~prostitution, Section~~] 76-10-1304, [~~aiding prostitution, or Section~~] or 76-10-1313, [~~sex solicitation,~~] the juvenile court shall presumptively grant vacatur unless the petitioner acted as a purchaser of any sexual activity.

(c) If vacatur is granted, the juvenile court shall order sealed all of the petitioner's records under the control of the juvenile court and any of the petitioner's records under the control of any other agency or official pertaining to the incident identified in the petition, including relevant related records contained in the Management Information System created by Section 62A-4a-1003 and the Licensing Information System created by Section 62A-4a-1005.

(3) (a) The petitioner shall be responsible for service of the order of vacatur to all affected state, county, and local entities, agencies, and officials.

(b) To avoid destruction or sealing of the records in whole or in part, the agency or entity receiving the vacatur order shall only vacate all references to the petitioner's name in the records pertaining to the relevant adjudicated juvenile court incident.

(4) (a) Upon the entry of [~~the order granting~~] vacatur, the proceedings in the incident identified in the petition shall be considered never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter.

(b) Inspection of the records may thereafter only be permitted by the juvenile court upon petition by the [~~person~~] individual who is the subject of the records, and only to persons named in the petition.

(5) The juvenile court may not vacate a juvenile court record if the record contains an adjudication of:

- (a) Section 76-5-202, aggravated murder; or
- (b) Section 76-5-203, murder.

Section 209. Section **80-6-1003** is enacted to read:

HB0285S02 compared with HB0285S01

80-6-1003. Court records -- Abstracts.

(1) (a) Except as otherwise provided in this part, if a minor's juvenile record is expunged, and upon a court order, all photographs or records under Section 80-6-608 shall be destroyed by an agency.

(b) A record of a minor's fingerprints may not be destroyed by an agency.

(2) A court or agency with custody of an individual's record related to an offense that the individual is alleged to have committed, or an offense that the individual committed, before the individual was 18 years old may not disclose the record to a federal agency that is responsible for criminal justice research or proceedings unless the court or the agency is required to share the record under state or federal law.

(3) An abstract of a juvenile court record for an adjudication of a traffic offense shall be submitted to the Department of Public Safety as provided in Section 53-3-218.

Section 210. Section **80-6-1004**, which is renumbered from Section 78A-6-1503 is renumbered and amended to read:

[78A-6-1503]. 80-6-1004. Requirements to apply to expunge an adjudication.

(1) (a) An individual who has been adjudicated by a juvenile court may petition the juvenile court for an order to expunge the individual's juvenile court record and any related records in the custody of an agency if:

(i) the individual has reached 18 years old; and

(ii) at least one year has passed from the date of:

(A) termination of the continuing jurisdiction of the juvenile court; or

(B) the individual's unconditional release from the custody of the [~~Division of Juvenile Justice Services~~] division if the individual was committed to [~~a secure youth corrections facility~~] secure care.

(b) The juvenile court may waive the requirements in Subsection (1)(a) if the juvenile court finds, and states on the record, the reason why the waiver is appropriate.

(c) The petitioner shall include in the petition described in Subsection (1)(a):

(i) any agency known or alleged to have any records related to the offense for which expungement is being sought; and

(ii) the original criminal history report obtained from the Bureau of Criminal

HB0285S02 compared with HB0285S01

Identification in accordance with Section 53-10-108.

(d) The petitioner shall send a copy of the petition described in Subsection (1)(a) to the county attorney or, if within a prosecution district, the district attorney.

(e) (i) Upon the filing of a petition described in Subsection (1)(a), the juvenile court shall:

(A) set a date for a hearing;

(B) notify the county attorney or district attorney and the agency with custody of the records at least 30 days before the day on which the hearing of the pendency of the petition is scheduled; and

(C) notify the county attorney or district attorney and the agency with records that the petitioner is asking the court to expunge of the date of the hearing.

(ii) (A) The juvenile court shall provide a victim with the opportunity to request notice of a petition described in Subsection (1)(a).

(B) Upon the victim's request under Subsection (1)(e)(ii)(A), the victim shall receive notice of the petition at least 30 days before the day on which the hearing is scheduled if, before the day on which an expungement order is made, the victim or, in the case of a child or an individual who is incapacitated or deceased, the victim's next of kin or authorized representative submits a written and signed request for notice to the juvenile court in the judicial district in which the offense occurred or judgment is entered.

(C) The notice described in Subsection (1)(e)(ii)(B) shall include a copy of the petition described in Subsection (1)(a) and any statutes and rules applicable to the petition.

(2) (a) At the hearing described in Subsection (1)(e)(i), the county attorney or district attorney, a victim, and any other individual who may have relevant information about the petitioner may testify.

(b) In deciding whether to grant a petition described in Subsection (1)(a) for expungement, the juvenile court shall consider whether the rehabilitation of the petitioner has been attained to the satisfaction of the juvenile court, including the petitioner's response to programs and treatment, the petitioner's behavior subsequent to the adjudication, and the nature and seriousness of the conduct.

(c) The juvenile court may order [~~sealed~~] expunged all of the petitioner's records under the control of the juvenile court and an agency or an official, including any record contained in

HB0285S02 compared with HB0285S01

the Management Information System created in Section 62A-4a-1003 and the Licensing Information System created in Section 62A-4a-1005, if the juvenile court finds that:

(i) the petitioner has not, in the five years preceding the day on which the petition described in Subsection (1)(a) is filed, been convicted of a violent felony[~~as defined in Section 76-3-203.5~~];

(ii) there are no delinquency or criminal proceedings pending against the petitioner; and

(iii) a judgment for restitution entered by the juvenile court on the [~~conviction~~] adjudication for which the expungement is sought has been satisfied.

(3) (a) The petitioner is responsible for service of the expungement order issued under Subsection (2) to any affected agency or official.

(b) To avoid destruction or sealing of the records in whole or in part, the agency or the official receiving the expungement order described in Subsection (3)(a) shall only expunge all references to the petitioner's name in the records pertaining to the petitioner's juvenile court record.

(4) The juvenile court may not expunge a record if the record contains an adjudication of:

(a) Section 76-5-202, aggravated murder; or

(b) Section 76-5-203, murder.

Section 211. Section **80-6-1005**, which is renumbered from Section 78A-6-1504 is renumbered and amended to read:

~~[78A-6-1504].~~ **80-6-1005. Nonjudicial adjustment expungement.**

(1) An individual whose record consists solely of one or more nonjudicial adjustments may petition the juvenile court for an order to expunge the individual's juvenile court record if the individual:

(a) has reached 18 years old; and

(b) has completed the conditions of each nonjudicial adjustment.

(2) (a) The petitioner shall include in the petition described in Subsection (1) any agency known or alleged to have any records related to the nonjudicial adjustment for which expungement is being sought.

(b) The petitioner is not required to include in the petition described in Subsection (1)

HB0285S02 compared with HB0285S01

an original criminal history report obtained from the Bureau of Criminal Identification in accordance with Section 53-10-108.

(3) Upon the filing of the petition described in Subsection (1), the juvenile court shall, without a hearing, order expungement of all of the petitioner's records under the control of the juvenile court, an agency, or an official.

(4) (a) The petitioner is responsible for service of the expungement order issued under Subsection (3) to any affected agency or official.

(b) To avoid destruction or sealing of the records in whole or in part, the agency or the official receiving the expungement order shall expunge only the references to the individual's name in the records relating to the petitioner's nonjudicial adjustment.

Section 212. Section **80-6-1006**, which is renumbered from Section 78A-6-1505 is renumbered and amended to read:

~~[78A-6-1505].~~ 80-6-1006. Effect of an expunged record -- Agency duties.

(1) Upon receipt of an expungement order under this part, an agency shall expunge all records described in the expungement order that are under the control of the agency in accordance with Subsection ~~[78A-6-1504]~~ 80-6-1005(4)(b).

(2) Upon the entry of the expungement order under this part:

(a) an adjudication or a nonjudicial adjustment in a petitioner's case is considered to have never occurred; and

(b) the petitioner may reply to an inquiry on the matter as though there never was an adjudication or nonjudicial adjustment.

(3) The following persons may inspect an expunged record upon a petition by an individual who is the subject of the record:

(a) the individual who is the subject of the record; and

(b) a person that is named in the petition.

(4) An agency named in an expungement order under this part shall mail an affidavit to the petitioner verifying the agency has complied with the expungement order.

Section 213. Section **80-6-1007**, which is renumbered from Section 78A-6-1506 is renumbered and amended to read:

~~[78A-6-1506].~~ 80-6-1007. Fees.

(1) Except for a filing fee for a petition under this part, the juvenile court may not

HB0285S02 compared with HB0285S01

charge a fee for:

- (a) an issuance of an expungement order under this part; or
- (b) an expungement of a record under this part.
- (2) An agency may not charge a fee for the expungement of a record under this part.

Section 214. Section **80-7-101** is enacted to read:

CHAPTER 7. EMANCIPATION

80-7-101. Title.

This chapter is known as "Emancipation."

Section 215. Section **80-7-102**, which is renumbered from Section 78A-6-802 is renumbered and amended to read:

[78A-6-802]. **80-7-102. Definitions.**

As used in this [part] chapter:

(1) "Emancipation" or "emancipated" means a legal status created by court order that allows a minor to:

- (a) live independent of the minor's parents or guardian; and
- (b) exercise the same rights as an adult under Subsection 80-7-105(1).
- [(1)] (2) "Guardian" has the same meaning as in Section 75-1-201.
- [(2)] (3) "Minor" means [a person] an individual who is 16 years [of age] old or older.
- [(3)] (4) "Parent" means a natural parent as defined in Section [78A-6-105] 80-1-102.

Section 216. Section **80-7-103**, which is renumbered from Section 78A-6-803 is renumbered and amended to read:

[78A-6-803]. **80-7-103. Petition for emancipation -- Amending a petition -- Continuance.**

(1) A minor may petition the juvenile court on [~~his or her~~] the minor's own behalf [~~in the district in which he or she resides~~]

(2) The petition under Subsection (1) shall:

- (a) be on a form provided by the clerk of the juvenile court[;]; and
- (b) state that the minor is:

[(a)] (i) 16 years [of age] old or older;

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

and

HB0285S02 compared with HB0285S01

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

(2) Notice of the petition shall be served on the minor's parents, guardian, any other person or agency with custody of the minor, and the Child and Family Support Division of the Office of the Attorney General, unless the juvenile court determines that service is impractical.

(3) (a) When it appears in a proceeding under this chapter that evidence presented points to material facts not alleged in the petition described in Subsection (1), the juvenile court may consider the additional or different material facts raised by the evidence if the parties consent.

(b) The juvenile court, on a motion from any interested party or on the court's own motion, shall direct that the petition be amended to conform to the evidence.

(c) If an amended petition under Subsection (3)(b) results in a substantial departure from the material facts originally alleged, the juvenile court shall grant a continuance as justice may require in accordance with Utah Rules of Juvenile Procedure, Rule 54.

Section 217. Section **80-7-104**, which is renumbered from Section 78A-6-804 is renumbered and amended to read:

~~[78A-6-804].~~ **80-7-104. Procedure for emancipation.**

(1) (a) Upon the filing of a petition in accordance with Section ~~[78A-6-803]~~ 80-7-103, the juvenile court shall review the petition for completeness and whether the petitioner meets the age requirement for filing the petition.

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

~~[(b)]~~ (c) If the petition is complete and the petitioner meets the age requirement, the juvenile court shall schedule a pretrial hearing on the matter within 30 days.

(2) The juvenile court may appoint ~~[a]~~ an attorney guardian ad litem in accordance with Section ~~[78A-6-902]~~ 78A-2-803 to represent the minor.

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

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

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

(c) opinions and recommendations from the attorney guardian ad litem, parents,

HB0285S02 compared with HB0285S01

guardian, or custodian, and any other evidence; and

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

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

(5) A juvenile court may modify or set aside any order or decree made by the court in accordance with Section 78A-6-357.

Section 218. Section **80-7-105**, which is renumbered from Section 78A-6-805 is renumbered and amended to read:

~~[78A-6-805].~~ **80-7-105. Emancipation.**

(1) ~~[An emancipated minor]~~ A minor who is emancipated may:

- (a) enter into contracts;
- (b) buy and sell property;
- (c) sue or be sued;
- (d) retain ~~[his or her]~~ the minor's own earnings;
- (e) borrow money for any purpose, including for education; and
- (f) obtain healthcare without parental consent.

(2) ~~[An emancipated minor]~~ A minor who is emancipated may not be considered an adult:

(a) under the criminal laws of the state, unless the requirements of ~~[Part 7, Transfer of Jurisdiction,]~~ Chapter 6, Part 5, Transfer to District Court have been met;

(b) under the criminal laws of the state when ~~[he or she]~~ the minor is a victim and the age of the victim is an element of the offense; and

(c) for specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, possession of tobacco or firearms, and other health and safety regulations relevant to the minor because of the minor's age.

(3) (a) An order of emancipation prospectively terminates parental responsibilities that accrue based on the minor's status as a minor under the custody and control of a parent, guardian, or custodian, including parental tort liability for the acts of the minor.

(b) Nothing in this chapter shall be construed to interfere with the integrity of the family or to minimize the rights of parents or children.

HB0285S02 compared with HB0285S01

Section 219. **Repealer.**

This bill repeals:

Section **62A-4a-203.5, Mandatory petition for termination of parental rights.**

Section **62A-7-101, Definitions.**

Section **62A-7-503, Administrative officer of Youth Parole Authority.**

Section **62A-7-505, Conditions of parole.**

Section **78A-6-106, Search warrants and subpoenas -- Authority to issue --
Protective custody -- Expedited hearing.**

Section **78A-6-108, Title of petition and other court documents -- Form and
contents of petition -- Order for temporary custody or protective services -- Physical or
psychological examination of minor, parent, or guardian -- Dismissal of petition.**

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

Section **78A-6-119, Modification of order or decree -- Requirements for changing
or terminating custody, probation, or protective supervision.**

Section **78A-6-121, Entry of judgment for fine, fee, surcharge, or restitution.**

Section **78A-6-310, Notice of adjudication hearing.**

Section **78A-6-604, Minor held in detention -- Credit for good behavior.**

Section **78A-6-801, Purpose.**

Section **78A-6-1102, Amendment of petition -- When authorized -- Continuance of
proceedings.**

Section **78A-6-1103, Modification or termination of custody order or decree --
Grounds -- Procedure.**

Section **78A-6-1107, Transfer of continuing jurisdiction to other district.**

Section **78A-6-1108, New hearings authorized -- Grounds and procedure.**

Section **78A-6-1111, Order for indigent defense service or guardian ad litem.**

Section **78A-6-1201, Title.**

Section **78A-6-1401, Title.**

Section **78A-6-1402, Definitions.**

Section **78A-6-1501, Title.**

Section 220. **Effective date.**

HB0285S02 compared with HB0285S01

This bill takes effect on September 1, 2021.

Section 221. **Coordinating H.B. 285 with H.B. 37 -- Substantive and technical amendment.**

If this H.B. 285 and H.B. 37, Child Protection Unit Amendments, both pass and become law, the Legislature intends that, on September 1, 2021, the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication by:

(1) amending Section 80-3-102 to read:

~~"[78A-6-301]~~ **80-3-102. Definitions.**

As used in this [part] chapter:

(1) "Abuse, neglect, or dependency petition" means a petition filed in accordance with this chapter to commence proceedings in a juvenile court alleging a child is:

(a) abused;

(b) neglected; or

(c) dependent.

(2) "Child protection team" means the same as that term is defined in Section 62A-4a-101.

~~[(1)]~~ (3) "Custody" means the same as that term is defined in Section 62A-4a-101.

(4) "Division" means the Division of Child and Family Services created in Section 62A-4a-103.

(5) "Friend" means an adult who:

(a) has an established relationship with the child or a family member of the child; and

(b) is not the natural parent of the child.

~~[(2)]~~ (6) "Immediate family member" means a spouse, child, parent, sibling, grandparent, or grandchild.

~~[(3)] "Protective custody" means the shelter of a child by the division from the time the child is removed from home until the earlier of:]~~

~~[(a) the shelter hearing; or]~~

~~[(b) the child's return home.]~~

(7) "Relative" means an adult who:

(a) is the child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother in law, sister in law, stepparent, first cousin, stepsibling, or sibling;

HB0285S02 compared with HB0285S01

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

(c) is an adoptive parent of the child's sibling; or

(d) in the case of a child who is an Indian child, an extended family member as defined in 25 U.S.C. Sec. 1903.

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

[~~(4)~~ (9) "Sibling" means the same as that term is defined in Section 62A-4a-101.

[~~(5)~~ (10) "Sibling visitation" means the same as that term is defined in Section 62A-4a-101.

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

[~~(6)~~ (12) "Temporary custody" means [the custody of a child in the division from the date of the shelter hearing until disposition.] the same as that term is defined in Section 62A-4a-101."; and

(2) amending Subsection 80-3-205(4) to read:

"(4) [~~Members of a child protection unit, established under Section 10-3-913 or 17-22-2,~~] A member of a child protection team may coordinate with the attorney general's office, [~~Division of Child and Family Services~~] division personnel, the appointed guardian ad litem, pretrial services personnel, and corrections personnel as appropriate under this section."

Section 222. Coordinating H.B. 285 with H.B. 37 and S.B. 99 -- Substantive amendment.

If this H.B. 285 and H.B. 37, Child Protection Unit Amendments, and S.B. 99, Child Welfare Amendments, all pass and become law, the Legislature intends that, on September 1, 2021, the amendments to the definition of "minor" in Section 62A-4a-101 of this bill supersede the amendments to the definition of "minor" in Section 62A-4a-101 in H.B. 37 and S.B. 99 when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication.

Section 223. Coordinating H.B. 285 with H.B. 67 -- Substantive and technical amendment.

If this H.B. 285 and H.B. 67, Juvenile Sentencing Amendments, both pass and become law, the Legislature intends that on September 1, 2021, the Office of Legislative Research and General Counsel prepare the Utah Code database for publication by:

(1) changing the cross-reference in Subsection 76-3-401.5(1)(a) from Section

HB0285S02 compared with HB0285S01

62A-7-501 to Section 80-5-701;

(2) changing the cross-reference in Subsection 76-3-401.5(1)(c) from Section 62A-7-102 to Section 80-5-103;

(3) amending Subsection 76-3-401.5(1)(d) to read:

"(d) (i) "Juvenile disposition" means an order for commitment to the custody of the division under Subsection 80-6-703(2).

(ii) "Juvenile disposition" includes an order for secure care under Subsection 80-6-705(1).";

(4) amending Subsection 76-3-401.5(1)(f) to read:

"(f) "Secure care" means the same as that term is defined in Section 80-1-102.";

(5) amending Subsection 76-3-401.5(4) to read:

"(4) If a court orders a sentence for imprisonment to run concurrently with a juvenile disposition for secure care, the defendant shall serve the sentence in secure care until the juvenile disposition is terminated by the authority in accordance with Section 80-6-804.";

(6) amending Subsection 76-3-401.5(5) to read:

"(5) If a court orders a sentence for imprisonment in a county jail to run concurrently with a juvenile disposition for secure care and the disposition is terminated before the defendant's sentence for imprisonment in the county jail is terminated, the division shall:

(a) notify the county jail at least 14 days before the day on which the defendant's disposition is terminated or the defendant is released from secure care; and

(b) facilitate the transfer or release of the defendant in accordance with the order of judgment and commitment imposed by the court."; and

(7) amending Subsection 76-3-401.5(6) to read:

"(6) (a) If a court orders a sentence for imprisonment in a secure correctional facility to run concurrently with a juvenile disposition for secure care:

(i) the board has authority over the defendant for purposes of ordering parole, pardon, commutation, termination of sentence, remission of fines or forfeitures, restitution, and any other authority granted by law; and

(ii) the court and the division shall immediately notify the board that the defendant will remain in secure care as described in Subsection (4) for the board to schedule a hearing for the defendant in accordance with board procedures.

HB0285S02 compared with HB0285S01

(b) If a court orders a sentence for imprisonment in a secure correctional facility to run concurrently with a juvenile disposition for secure care and the juvenile disposition is terminated before the defendant's sentence is terminated, the division shall:

(i) notify the board and the Department of Corrections at least 14 days before the day on which the defendant's disposition is terminated or the defendant is released from the secure care; and

(ii) facilitate a release or transfer of the defendant in accordance with the order of judgment and commitment imposed by the court."

Section 224. Coordinating H.B. 285 with H.B. 73 -- Technical amendment.

If this H.B. 285 and H.B. 73, Drug Testing Amendments, both pass and become law, the Legislature intends that, on September 1, 2021, the Office of Legislative Research and General Counsel prepare the Utah Code database for publication by:

(1) replacing the words "Part 3, Abuse, Neglect, and Dependency Proceedings" in Subsection 80-3-110(6) with the words "this chapter"; and

(2) changing the reference in Subsection 80-3-406(12)(b)(i) from Subsection 78A-6-115(8) to Subsection 80-3-110(6).

Section 225. Coordinating H.B. 285 with H.B. 104 -- Technical amendment.

If this H.B. 285 and H.B. 104, Victim Address Confidentiality Program, both pass and become law, the Legislature intends that, on September 1, 2021, the Office of Legislative Research and General Counsel prepare the Utah Code database for publication by changing the reference in Subsection 77-38-601(1)(a) from Section 78A-6-105 to Section 80-1-102.

Section 226. Coordinating H.B. 285 with H.B. 158 -- Substantive and technical amendment.

If this H.B. 285 and H.B. 158, Juvenile Interrogation Amendments, both pass and become law, the Legislature intends that, on September 1, 2021, the Office of Legislative Research and General Counsel prepare the Utah Code database for publication by:

(1) repealing Section 80-6-206 enacted by H.B. 285;

(2) renumbering Section 78A-6-112.5 enacted by H.B. 158 to Section 80-6-206;

(3) changing the reference in Subsection 80-6-206(4)(a) of the renumbered section from Section 78A-6-805 to Section 80-7-105;

(4) amending Subsection 80-6-206(5)(a) of the renumbered section to read:

HB0285S02 compared with HB0285S01

"(5) (a) If a minor is admitted to a detention facility under Section 80-6-205, or the minor is committed to secure care or a correctional facility, and is subject to interrogation for an offense, the minor may not be interrogated unless:

(i) the minor has had a meaningful opportunity to consult with the minor's appointed or retained attorney;

(ii) the minor waives the minor's constitutional rights after consultation with the minor's appointed or retained attorney; and

(iii) the minor's appointed or retained attorney is present for the interrogation."; and

(5) replacing the words "legal guardian" in Subsections 80-6-206(1), (2), (3), and (4) of the renumbered section with the word "guardian".

Section 227. Coordinating H.B. 285 with H.B. 260 -- Technical amendment.

If this H.B. 285 and H.B. 260, Criminal Justice Modifications, both pass and become law, the Legislature intends that, on September 1, 2021, the Office of Legislative Research and General Counsel prepare the Utah Code database for publication by:

(1) changing the reference in Subsection 76-3-201(1)(a)(ii) from Section 78A-6-117 to Section 80-6-701; and

(2) changing the reference in Subsection 77-38b-102(1)(b)(iii) from Section 78A-6-117 to 80-6-701.

Section 228. Coordinating H.B. 285 with S.B. 50 -- Technical amendment.

If this H.B. 285 and S.B. 50, Juvenile Offender Penalty Amendments, both pass and become law, the Legislature intends that, on September 1, 2021, the Office of Legislative Research and General Counsel prepare the Utah Code database for publication by:

(1) changing the reference in Subsection 77-40-105(3)(a) from Section 78A-6-703.2 to Section 80-6-502;

(2) changing the reference in Subsection 77-40-105(3)(a) from Section 78A-6-703.3 to Section 80-6-503; and

(3) changing the reference in Subsection 77-40-105(3)(b) from Section 78A-6-703.5 to Section 80-6-504.

~~{ Section 229. Coordinating H.B. 285 with S.B. 99 -- Technical amendment.~~

~~—— If this H.B. 285 and S.B. 99, Child Welfare Amendments, both pass and become law, the Legislature intends that, on September 1, 2021, the amendments to Subsection~~

HB0285S02 compared with HB0285S01

~~62A-4a-101(3) in S.B. 99 supersede the amendments to Subsection 62A-4a-101(3) in this bill when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication.~~

~~‡~~