SB0209S01 compared with SB0209

~~{deleted text}~~ shows text that was in SB0209 but was deleted in SB0209S01.

inserted text shows text that was not in SB0209 but was inserted into SB0209S01.

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 Raymond P. Ward proposes the following substitute bill:

HEALTH AND HUMAN SERVICES RECODIFICATION ~~{-}~~ -

CROSS REFERENCES, TITLES ~~{63J-80}~~63J-80

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: Raymond P. Ward

LONG TITLE

General Description:

This bill updates ~~{cross-references}~~cross references to the Utah Health and Human Services Code in Titles 63J through 80.

Highlighted Provisions:

This bill:

- makes technical updates in Titles 63J through 80 to cross references to the Utah Health and Human Services Code that are renumbered and amended in:
  - S.B. 38, Health and Human Services Recodification - Administration, Licensing, and Recovery Services;
  - S.~~{B. 39, Health and Human Services Recodification - Prevention, Supports,~~

~~Substance Use and Mental Health;~~

- ~~S.}~~B. ~~{40}~~39, Health and Human Services Recodification - Health Care Assistance and Data;~~{ and}~~
- S.B. ~~{41}~~40, Health and Human Services Recodification - Health Care Delivery and Repeals; and
- S.B. 41, Health and Human Services Recodification - Prevention, Supports, Substance Use and Mental Health; and

- makes technical and corresponding changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides revisor instructions.

This bill provides coordination clauses.

Utah Code Sections Affected:

AMENDS:

63J-1-601, as last amended by Laws of Utah 2022, Chapters 68, 451

63J-1-602.1, as last amended by Laws of Utah 2022, Chapters 48, 191, 255, 335, 415, and 451

63J-1-602.2, as last amended by Laws of Utah 2022, Chapters 59, 68, 154, 224, 236, 242, and 447 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 154

63J-5-206, as last amended by Laws of Utah 2018, Chapter 467

63J-7-102, as last amended by Laws of Utah 2022, Chapters 224, 451 and 456

63M-7-204, as last amended by Laws of Utah 2022, Chapter 187

63M-7-209, as last amended by Laws of Utah 2022, Chapter 36

63M-7-216, as enacted by Laws of Utah 2020, Chapter 200

63M-7-301, as last amended by Laws of Utah 2022, Chapter 255

63M-7-303, as last amended by Laws of Utah 2022, Chapter 211

63M-13-202, as last amended by Laws of Utah 2020, Chapter 354

64-13-37, as enacted by Laws of Utah 1993, Chapter 277

64-13-39, as enacted by Laws of Utah 1995, Chapter 353

64-13-39.5, as last amended by Laws of Utah 2009, Chapter 355

64-13-44, as enacted by Laws of Utah 2013, Chapter 256

67-3-1, as last amended by Laws of Utah 2022, Chapter 307

67-3-11, as last amended by Laws of Utah 2022, Chapter 255

67-5-1, as last amended by Laws of Utah 2022, Chapter 222

67-5-16, as last amended by Laws of Utah 2022, Chapter 335

67-20-2, as last amended by Laws of Utah 2022, Chapters 346, 347 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 347

71-11-5, as last amended by Laws of Utah 2018, Chapter 39

72-6-107.5, as last amended by Laws of Utah 2022, Chapters 421, 443

72-9-103, as last amended by Laws of Utah 2017, Chapter 96

72-10-502, as last amended by Laws of Utah 2018, Chapter 35

75-1-107, as last amended by Laws of Utah 2003, Chapter 49

75-2a-103, as last amended by Laws of Utah 2022, Chapter 277

75-2a-106, as last amended by Laws of Utah 2021, Chapter 223

75-3-104.5, as last amended by Laws of Utah 2020, Chapter 205

75-3-803, as last amended by Laws of Utah 2018, Chapter 443

75-3-805, as last amended by Laws of Utah 2018, Chapter 443

75-5-309, as last amended by Laws of Utah 2018, Chapter 455

75-5-311, as last amended by Laws of Utah 2018, Chapter 455

75-7-508, as last amended by Laws of Utah 2018, Chapter 443

75-7-509, as last amended by Laws of Utah 2004, Chapters 72, 90 and renumbered and amended by Laws of Utah 2004, Chapter 89

75-7-511, as last amended by Laws of Utah 2018, Chapter 443

76-3-203.11, as last amended by Laws of Utah 2020, Chapter 131

76-5-102.6, as last amended by Laws of Utah 2022, Chapter 181

76-5-102.7, as last amended by Laws of Utah 2022, Chapters 117, 181

76-5-102.9, as last amended by Laws of Utah 2022, Chapter 181

76-5-112.5, as last amended by Laws of Utah 2022, Chapter 181

76-5-113, as last amended by Laws of Utah 2022, Chapter 181

76-5-412, as last amended by Laws of Utah 2022, Chapter 181

76-5b-201, as last amended by Laws of Utah 2022, Chapters 181, 185

76-6-106, as last amended by Laws of Utah 2012, Chapter 135

76-6-702, as last amended by Laws of Utah 2017, Chapters 462, 467

76-7-301, as last amended by Laws of Utah 2021, Chapter 262

76-7-305, as last amended by Laws of Utah 2022, Chapter 181

76-7-305.5, as last amended by Laws of Utah 2020, Chapter 251

76-7-306, as repealed and reenacted by Laws of Utah 2011, Chapter 277

76-7-313, as last amended by Laws of Utah 2019, Chapters 124, 208

76-7-314, as last amended by Laws of Utah 2019, Chapter 208

76-8-311.1, as last amended by Laws of Utah 2020, Chapter 396

76-8-311.3, as last amended by Laws of Utah 2020, Chapters 302, 347

76-8-1202, as last amended by Laws of Utah 1997, Chapter 174

76-9-307, as last amended by Laws of Utah 2009, Chapter 110

76-9-704, as last amended by Laws of Utah 2007, Chapters 60, 231

76-10-101, as last amended by Laws of Utah 2022, Chapter 199

76-10-526, as last amended by Laws of Utah 2021, Chapters 166, 277

76-10-528, as last amended by Laws of Utah 2022, Chapter 159

76-10-1311, as last amended by Laws of Utah 2008, Chapter 382

76-10-1312, as last amended by Laws of Utah 2011, Chapter 70

76-10-1602, as last amended by Laws of Utah 2022, Chapters 181, 185

76-10-2204, as enacted by Laws of Utah 2019, Chapter 377

76-10-3105, as renumbered and amended by Laws of Utah 2013, Chapter 187

77-15-6, as last amended by Laws of Utah 2018, Chapter 147

77-15a-104, as last amended by Laws of Utah 2018, Chapter 281

77-15a-105, as enacted by Laws of Utah 2003, Chapter 11

77-16a-101, as last amended by Laws of Utah 2011, Chapter 366

77-16a-202, as last amended by Laws of Utah 2011, Chapter 366

77-16a-203, as last amended by Laws of Utah 2011, Chapter 366

77-16a-204, as last amended by Laws of Utah 2011, Chapter 366

77-16a-302, as last amended by Laws of Utah 2011, Chapter 366

77-18-102, as enacted by Laws of Utah 2021, Chapter 260

77-18-106, as enacted by Laws of Utah 2021, Chapter 260

77-19-204, as enacted by Laws of Utah 2004, Chapter 137

77-19-205, as enacted by Laws of Utah 2004, Chapter 137

77-19-206, as enacted by Laws of Utah 2004, Chapter 137

77-23-213, as last amended by Laws of Utah 2019, Chapter 349

77-32b-103, as last amended by Laws of Utah 2022, Chapters 328, 359

77-40a-305, as last amended by Laws of Utah 2022, Chapter 384 and renumbered and amended by Laws of Utah 2022, Chapter 250

77-40a-306, as enacted by Laws of Utah 2022, Chapter 250

78A-2-231, as last amended by Laws of Utah 2022, Chapter 256

78A-2-301, as last amended by Laws of Utah 2022, Chapters 276, 384

78A-5-201, as last amended by Laws of Utah 2022, Chapter 187

78A-6-103, as last amended by Laws of Utah 2022, Chapters 155, 335

78A-6-208, as last amended by Laws of Utah 2021, Chapter 261

78A-6-209, as last amended by Laws of Utah 2022, Chapters 335, 430

78A-6-356, as last amended by Laws of Utah 2022, Chapters 334, 470

78B-3-403, as last amended by Laws of Utah 2022, Chapters 356, 415

78B-3-405, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-3-701, as last amended by Laws of Utah 2009, Chapter 110

78B-4-501, as last amended by Laws of Utah 2018, Chapter 62

78B-5-618, as last amended by Laws of Utah 2022, Chapter 327

78B-5-902, as last amended by Laws of Utah 2022, Chapter 255

78B-5-904, as enacted by Laws of Utah 2021, Chapter 208

78B-6-103, as last amended by Laws of Utah 2022, Chapter 335

78B-6-113, as last amended by Laws of Utah 2017, Chapter 280

78B-6-124, as last amended by Laws of Utah 2022, Chapter 335

78B-6-128, as last amended by Laws of Utah 2022, Chapter 335

78B-6-131, as last amended by Laws of Utah 2022, Chapter 335

78B-6-142, as last amended by Laws of Utah 2020, Chapter 201

78B-7-205, as last amended by Laws of Utah 2020, Chapter 142

78B-7-603, as last amended by Laws of Utah 2022, Chapter 142

78B-8-401, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 16

78B-8-402, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 16

78B-8-404, as last amended by Laws of Utah 2017, Chapter 185

78B-10-106, as last amended by Laws of Utah 2022, Chapter 335

78B-12-102, as last amended by Laws of Utah 2021, Chapter 111

78B-12-111, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-12-112, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-12-113, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-12-216, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-12-402, as last amended by Laws of Utah 2019, Chapter 136

78B-14-103, as and further amended by Revisor Instructions, Laws of Utah 2013, Chapter 245

78B-14-501, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-14-605, as last amended by Laws of Utah 2015, Chapter 45

78B-14-703, as and further amended by Revisor Instructions, Laws of Utah 2013, Chapter 245

78B-14-704, as and further amended by Revisor Instructions, Laws of Utah 2013, Chapter 245

78B-15-104, as last amended by Laws of Utah 2021, Chapter 261

78B-15-107, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-24-203, as enacted by Laws of Utah 2022, Chapter 326

78B-24-307, as enacted by Laws of Utah 2022, Chapter 326

78B-24-308, as enacted by Laws of Utah 2022, Chapter 326

79-2-404, as last amended by Laws of Utah 2022, Chapters 421, 443

80-1-102, as last amended by Laws of Utah 2022, Chapters 155, 185, 217, 255, 326, 334, and 430

80-1-103, as renumbered and amended by Laws of Utah 2021, Chapter 261

80-2-501, as renumbered and amended by Laws of Utah 2022, Chapter 334

80-2-603, as renumbered and amended by Laws of Utah 2022, Chapter 334

80-2-604, as renumbered and amended by Laws of Utah 2022, Chapter 334

80-2-802, as enacted by Laws of Utah 2022, Chapter 334

80-2-803, as enacted by Laws of Utah 2022, Chapter 334

80-2-804, as renumbered and amended by Laws of Utah 2022, Chapter 334

80-2-909, as renumbered and amended by Laws of Utah 2022, Chapter 334

80-2-1001, as renumbered and amended by Laws of Utah 2022, Chapter 334

80-2-1002, as renumbered and amended by Laws of Utah 2022, Chapter 334

80-2-1005, as last amended by Laws of Utah 2022, Chapters 187, 255 and 430 and renumbered and amended by Laws of Utah 2022, Chapter 334

80-2a-202, as renumbered and amended by Laws of Utah 2022, Chapter 334

80-2a-301, as last amended by Laws of Utah 2022, Chapter 287 and renumbered and amended by Laws of Utah 2022, Chapter 334 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 334

80-3-110, as last amended by Laws of Utah 2022, Chapter 256

80-3-204, as last amended by Laws of Utah 2022, Chapter 335

80-3-302, as last amended by Laws of Utah 2022, Chapters 287, 334

80-3-305, as last amended by Laws of Utah 2022, Chapter 334

80-3-404, as last amended by Laws of Utah 2022, Chapters 255, 334

80-3-405, as last amended by Laws of Utah 2022, Chapter 335

80-3-504, as enacted by Laws of Utah 2022, Chapter 334

80-4-109, as enacted by Laws of Utah 2021, Chapter 261

80-4-302, as renumbered and amended by Laws of Utah 2021, Chapter 261

80-4-501, as renumbered and amended by Laws of Utah 2022, Chapter 334

80-6-402, as last amended by Laws of Utah 2022, Chapter 152

80-6-403, as last amended by Laws of Utah 2022, Chapter 152

80-6-608, as renumbered and amended by Laws of Utah 2021, Chapter 261

80-6-706, as enacted by Laws of Utah 2021, Chapter 261

80-6-801, as enacted by Laws of Utah 2021, Chapter 261

Utah Code Sections Affected by Coordination Clause:

63M-7-303, as last amended by Laws of Utah 2022, Chapter 211

78A-2-231, as last amended by Laws of Utah 2022, Chapter 256

80-3-110, as last amended by Laws of Utah 2022, Chapter 256

80-4-109, as enacted by Laws of Utah 2021, Chapter 261

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

Section 1. Section **63J-1-601** is amended to read:

63J-1-601. End of fiscal year -- Unexpended balances -- Funds not to be closed out -- Pending claims -- Transfer of amounts from item of appropriation -- Nonlapsing accounts and funds -- Institutions of higher education to report unexpended balances.

(1) As used in this section:

(a) "Education grant subrecipient" means a nonfederal entity that:

(i) receives a subaward from the State Board of Education to carry out at least part of a federal or state grant program; and

(ii) does not include an individual who is a beneficiary of the federal or state grant program.

(b) "Transaction control number" means the unique numerical identifier established by the Department of [~~Health~~] Health and Human Services to track each medical claim and indicates the date on which the claim is entered.

(2) On or before August 31 of each fiscal year, the director of the Division of Finance shall close out to the proper fund or account all remaining unexpended and unencumbered balances of appropriations made by the Legislature, except:

(a) those funds classified under Title 51, Chapter 5, Funds Consolidation Act, as:

(i) enterprise funds;

(ii) internal service funds;

(iii) fiduciary funds;

(iv) capital projects funds;

(v) discrete component unit funds;

(vi) debt service funds; and

(vii) permanent funds;

(b) those appropriations from a fund or account or appropriations to a program that are designated as nonlapsing under Section 63J-1-602.1 or 63J-1-602.2;

(c) expendable special revenue funds, unless specifically directed to close out the fund in the fund's enabling legislation;

(d) acquisition and development funds appropriated to the Division of State Parks or

the Division of Outdoor Recreation;

(e) funds encumbered to pay purchase orders issued before May 1 for capital equipment if delivery is expected before June 30; and

(f) unexpended and unencumbered balances of appropriations that meet the requirements of Section 63J-1-603.

(3) (a) Liabilities and related expenses for goods and services received on or before June 30 shall be recognized as expenses due and payable from appropriations made before June 30.

(b) The liability and related expense shall be recognized within time periods established by the Division of Finance but shall be recognized not later than August 31.

(c) Liabilities and expenses not so recognized may be paid from regular departmental appropriations for the subsequent fiscal year, if these claims do not exceed unexpended and unencumbered balances of appropriations for the years in which the obligation was incurred.

(d) Amounts may not be transferred from an item of appropriation of any department, institution, or agency into the Capital Projects Fund or any other fund without the prior express approval of the Legislature.

(4) (a) For purposes of this chapter, a claim processed under the authority of [~~Title 26, Chapter 18, Medical Assistance Act~~] Title 26B, Chapter 3, Health Care ~~{--}~~ Administration and Assistance:

(i) is not a liability or an expense to the state for budgetary purposes, unless the Division of [~~Health Care Financing~~] Integrated Healthcare receives the claim within the time periods established by the Division of Finance under Subsection (3)(b); and

(ii) is not subject to Subsection (3)(c).

(b) The transaction control number that the Division of [~~Health Care Financing~~] Integrated Healthcare records on each claim invoice is the date of receipt.

(5) (a) For purposes of this chapter, a claim processed in accordance with Title 35A, Chapter 13, Utah State Office of Rehabilitation Act:

(i) is not a liability or an expense to the state for budgetary purposes, unless the Utah State Office of Rehabilitation receives the claim within the time periods established by the Division of Finance under Subsection (3)(b); and

(ii) is not subject to Subsection (3)(c).

(b) (i) The Utah State Office of Rehabilitation shall mark each claim invoice with the date on which the Utah State Office of Rehabilitation receives the claim invoice.

(ii) The date described in Subsection (5)(b)(i) is the date of receipt for purposes of this section.

(6) (a) For purposes of this chapter, a reimbursement request received from an education grant subrecipient:

(i) is not a liability or expense to the state for budgetary purposes, unless the State Board of Education receives the claim within the time periods described in Subsection (3)(b); and

(ii) is not subject to Subsection (3)(c).

(b) The transaction control number that the State Board of Education records on a claim invoice is the date of receipt.

(7) Any balance from an appropriation to a state institution of higher education that remains unexpended at the end of the fiscal year shall be reported to the Division of Finance by the September 1 following the close of the fiscal year.

Section 2. Section **63J-1-602.1** is amended to read:

63J-1-602.1. List of nonlapsing appropriations from accounts and funds.

Appropriations made from the following accounts or funds are nonlapsing:

(1) The Utah Intracurricular Student Organization Support for Agricultural Education and Leadership Restricted Account created in Section 4-42-102.

(2) The Native American Repatriation Restricted Account created in Section 9-9-407.

(3) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in Section 9-18-102.

(4) The National Professional Men's Soccer Team Support of Building Communities Restricted Account created in Section 9-19-102.

(5) Funds collected for directing and administering the C-PACE district created in Section 11-42a-106.

(6) Money received by the Utah Inland Port Authority, as provided in Section 11-58-105.

(7) The "Latino Community Support Restricted Account" created in Section 13-1-16.

(8) The Clean Air Support Restricted Account created in Section 19-1-109.

(9) The Division of Air Quality Oil, Gas, and Mining Restricted Account created in Section 19-2a-106.

(10) The Division of Water Quality Oil, Gas, and Mining Restricted Account created in Section 19-5-126.

(11) The "Support for State-Owned Shooting Ranges Restricted Account" created in Section 23-14-13.5.

(12) Award money under the State Asset Forfeiture Grant Program, as provided under Section 24-4-117.

(13) Funds collected from the program fund for local health department expenses incurred in responding to a local health emergency under Section [~~26-1-38~~] 26B-7-111.

(14) The Children with Cancer Support Restricted Account created in Section [~~26-21a-304~~] 26B-1-314.

(15) State funds for matching federal funds in the Children's Health Insurance Program as provided in Section [~~26-40-108~~] 26B-3-906.

(16) The Children with Heart Disease Support Restricted Account created in Section[~~26-58-102~~] 26B-1-321.

(17) The Technology Development Restricted Account created in Section 31A-3-104.

(18) The Criminal Background Check Restricted Account created in Section 31A-3-105.

(19) The Captive Insurance Restricted Account created in Section 31A-3-304, except to the extent that Section 31A-3-304 makes the money received under that section free revenue.

(20) The Title Licensee Enforcement Restricted Account created in Section 31A-23a-415.

(21) The Health Insurance Actuarial Review Restricted Account created in Section 31A-30-115.

(22) The Insurance Fraud Investigation Restricted Account created in Section 31A-31-108.

(23) The Underage Drinking Prevention Media and Education Campaign Restricted Account created in Section 32B-2-306.

(24) The Drinking While Pregnant Prevention Media and Education Campaign Restricted Account created in Section 32B-2-308.

(25) The School Readiness Restricted Account created in Section 35A-15-203.

(26) Money received by the Utah State Office of Rehabilitation for the sale of certain products or services, as provided in Section 35A-13-202.

(27) The Oil and Gas Administrative Penalties Account created in Section 40-6-11.

(28) The Oil and Gas Conservation Account created in Section 40-6-14.5.

(29) The Division of Oil, Gas, and Mining Restricted account created in Section 40-6-23.

(30) The Electronic Payment Fee Restricted Account created by Section 41-1a-121 to the Motor Vehicle Division.

(31) The Motor Vehicle Enforcement Division Temporary Permit Restricted Account created by Section 41-3-110 to the State Tax Commission.

(32) The Utah Law Enforcement Memorial Support Restricted Account created in Section 53-1-120.

(33) The State Disaster Recovery Restricted Account to the Division of Emergency Management, as provided in Section 53-2a-603.

(34) The Post Disaster Recovery and Mitigation Restricted Account created in Section 53-2a-1302.

(35) The Department of Public Safety Restricted Account to the Department of Public Safety, as provided in Section 53-3-106.

(36) The Utah Highway Patrol Aero Bureau Restricted Account created in Section 53-8-303.

(37) The DNA Specimen Restricted Account created in Section 53-10-407.

(38) The Canine Body Armor Restricted Account created in Section 53-16-201.

(39) The Technical Colleges Capital Projects Fund created in Section 53B-2a-118.

(40) The Higher Education Capital Projects Fund created in Section 53B-22-202.

(41) A certain portion of money collected for administrative costs under the School Institutional Trust Lands Management Act, as provided under Section 53C-3-202.

(42) The Public Utility Regulatory Restricted Account created in Section 54-5-1.5, subject to Subsection 54-5-1.5(4)(d).

(43) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-3a-105.

(44) Certain fines collected by the Division of Professional Licensing for violation of unlawful or unprofessional conduct that are used for education and enforcement purposes, as provided in Section 58-17b-505.

(45) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-22-104.

(46) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-55-106.

(47) Funds collected from a surcharge fee to provide certain licensees with access to an electronic reference library, as provided in Section 58-56-3.5.

(48) Certain fines collected by the Division of Professional Licensing for use in education and enforcement of the Security Personnel Licensing Act, as provided in Section 58-63-103.

(49) The Relative Value Study Restricted Account created in Section 59-9-105.

(50) The Cigarette Tax Restricted Account created in Section 59-14-204.

(51) Funds paid to the Division of Real Estate for the cost of a criminal background check for a mortgage loan license, as provided in Section 61-2c-202.

(52) Funds paid to the Division of Real Estate for the cost of a criminal background check for principal broker, associate broker, and sales agent licenses, as provided in Section 61-2f-204.

(53) Certain funds donated to the Department of Health and Human Services, as provided in Section 26B-1-202.

(54) The National Professional Men's Basketball Team Support of Women and Children Issues Restricted Account created in Section 26B-1-302.

(55) Certain funds donated to the Division of Child and Family Services, as provided in Section 80-2-404.

(56) The Choose Life Adoption Support Restricted Account created in Section 80-2-502.

(57) Funds collected by the Office of Administrative Rules for publishing, as provided in Section 63G-3-402.

(58) The Immigration Act Restricted Account created in Section 63G-12-103.

(59) Money received by the military installation development authority, as provided in

Section 63H-1-504.

(60) The Computer Aided Dispatch Restricted Account created in Section 63H-7a-303.

(61) The Unified Statewide 911 Emergency Service Account created in Section 63H-7a-304.

(62) The Utah Statewide Radio System Restricted Account created in Section 63H-7a-403.

(63) The Utah Capital Investment Restricted Account created in Section 63N-6-204.

(64) The Motion Picture Incentive Account created in Section 63N-8-103.

(65) Certain money payable for expenses of the Pete Suazo Utah Athletic Commission, as provided under Section 63N-10-301.

(66) Funds collected by the housing of state probationary inmates or state parole inmates, as provided in Subsection 64-13e-104(2).

(67) Certain forestry and fire control funds utilized by the Division of Forestry, Fire, and State Lands, as provided in Section 65A-8-103.

(68) The Amusement Ride Safety Restricted Account, as provided in Section 72-16-204.

(69) Certain funds received by the Office of the State Engineer for well drilling fines or bonds, as provided in Section 73-3-25.

(70) The Water Resources Conservation and Development Fund, as provided in Section 73-23-2.

(71) Funds donated or paid to a juvenile court by private sources, as provided in Subsection 78A-6-203(1)(c).

(72) Fees for certificate of admission created under Section 78A-9-102.

(73) Funds collected for adoption document access as provided in Sections 78B-6-141, 78B-6-144, and 78B-6-144.5.

(74) Funds collected for indigent defense as provided in Title 78B, Chapter 22, Part 4, Utah Indigent Defense Commission.

(75) The Utah Geological Survey Oil, Gas, and Mining Restricted Account created in Section 79-3-403.

(76) Revenue for golf user fees at the Wasatch Mountain State Park, Palisades State Park, and Green River State Park, as provided under Section 79-4-403.

(77) Funds donated as described in Section 41-1a-422 for the State Park Fees Restricted Account created in Section 79-4-402 for support of the Division of State Parks' dark sky initiative.

(78) Certain funds received by the Division of State Parks from the sale or disposal of buffalo, as provided under Section 79-4-1001.

Section 3. Section **63J-1-602.2** is amended to read:

63J-1-602.2. List of nonlapsing appropriations to programs.

Appropriations made to the following programs are nonlapsing:

(1) The Legislature and the Legislature's committees.

(2) The State Board of Education, including all appropriations to agencies, line items, and programs under the jurisdiction of the State Board of Education, in accordance with Section 53F-9-103.

(3) The Percent-for-Art Program created in Section 9-6-404.

(4) The LeRay McAllister Critical Land Conservation Program created in Section 4-46-301.

(5) The Utah Lake Authority created in Section 11-65-201.

(6) Dedicated credits accrued to the Utah Marriage Commission as provided under Subsection 17-16-21(2)(d)(ii).

(7) The Division of Wildlife Resources for the appraisal and purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6.

[~~(8) The Emergency Medical Services Grant Program in Section 26-8a-207.~~]

[~~(9) The primary care grant program created in Section 26-10b-102.~~]

[~~(10) Sanctions collected as dedicated credits from Medicaid providers under Subsection 26-18-3(7).~~]

[~~(11) The Utah Health Care Workforce Financial Assistance Program created in Section 26-46-102.~~]

[~~(12) The Rural Physician Loan Repayment Program created in Section 26-46a-103.~~]

[~~(13) The Opiate Overdose Outreach Pilot Program created in Section 26-55-107.~~]

[~~(14) The Utah Medical Education Council for the:~~]

[~~(a) administration of the Utah Medical Education Program created in Section 26-69-403;~~]

[~~(b) provision of medical residency grants described in Section 26-69-407; and~~]

[~~(c) provision of the forensic psychiatric fellowship grant described in Section 26-69-408.~~]

(8) Sanctions collected as dedicated credits from Medicaid providers under Subsection 26B-3-108(7).

(9) The Emergency Medical Services Grant Program in Section 26B-4-107.

(10) The primary care grant program created in Section 26B-4-310.

(11) The Opiate Overdose Outreach Pilot Program created in Section 26B-4-512.

(12) The Utah Health Care Workforce Financial Assistance Program created in Section 26B-4-702.

(13) The Rural Physician Loan Repayment Program created in Section 26B-4-703.

(14) The Utah Medical Education Council for the:

(a) administration of the Utah Medical Education Program created in Section 26B-4-707;

(b) provision of medical residency grants described in Section 26B-4-711; and

(c) provision of the forensic psychiatric fellowship grant described in Section 26B-4-712.

(15) The Division of Services for People with Disabilities, as provided in Section 26B-6-402.

[~~(15)~~] (16) Funds that the Department of Alcoholic Beverage Services retains in accordance with Subsection 32B-2-301(8)(a) or (b).

[~~(16)~~] (17) The General Assistance program administered by the Department of Workforce Services, as provided in Section 35A-3-401.

[~~(17)~~] (18) The Utah National Guard, created in Title 39, Militia and Armories.

[~~(18)~~] (19) The State Tax Commission under Section 41-1a-1201 for the:

(a) purchase and distribution of license plates and decals; and

(b) administration and enforcement of motor vehicle registration requirements.

[~~(19)~~] (20) The Search and Rescue Financial Assistance Program, as provided in Section 53-2a-1102.

[~~(20)~~] (21) The Motorcycle Rider Education Program, as provided in Section 53-3-905.

[~~(21)~~] (22) The Utah Board of Higher Education for teacher preparation programs, as

provided in Section 53B-6-104.

[~~(22)~~] (23) Innovation grants under Section 53G-10-608, except as provided in Subsection 53G-10-608(6).

[~~(23) The Division of Services for People with Disabilities, as provided in Section 62A-5-102.~~]

(24) The Division of Fleet Operations for the purpose of upgrading underground storage tanks under Section 63A-9-401.

(25) The Utah Seismic Safety Commission, as provided in Section 63C-6-104.

(26) The Division of Technology Services for technology innovation as provided under Section 63A-16-903.

(27) The Office of Administrative Rules for publishing, as provided in Section 63G-3-402.

(28) The Colorado River Authority of Utah, created in Title 63M, Chapter 14, Colorado River Authority of Utah Act.

(29) The Governor's Office of Economic Opportunity to fund the Enterprise Zone Act, as provided in Title 63N, Chapter 2, Part 2, Enterprise Zone Act.

(30) The Governor's Office of Economic Opportunity's Rural Employment Expansion Program, as described in Title 63N, Chapter 4, Part 4, Rural Employment Expansion Program.

(31) Programs for the Jordan River Recreation Area as described in Section 65A-2-8.

(32) The Division of Human Resource Management user training program, as provided in Section 63A-17-106.

(33) A public safety answering point's emergency telecommunications service fund, as provided in Section 69-2-301.

(34) The Traffic Noise Abatement Program created in Section 72-6-112.

(35) The money appropriated from the Navajo Water Rights Negotiation Account to the Division of Water Rights, created in Section 73-2-1.1, for purposes of participating in a settlement of federal reserved water right claims.

(36) The Judicial Council for compensation for special prosecutors, as provided in Section 77-10a-19.

(37) A state rehabilitative employment program, as provided in Section 78A-6-210.

(38) The Utah Geological Survey, as provided in Section 79-3-401.

(39) The Bonneville Shoreline Trail Program created under Section 79-5-503.

(40) Adoption document access as provided in Sections 78B-6-141, 78B-6-144, and 78B-6-144.5.

(41) Indigent defense as provided in Title 78B, Chapter 22, Part 4, Utah Indigent Defense Commission.

(42) The program established by the Division of Facilities Construction and Management under Section 63A-5b-703 under which state agencies receive an appropriation and pay lease payments for the use and occupancy of buildings owned by the Division of Facilities Construction and Management.

(43) The State Tax Commission for reimbursing counties for deferred property taxes in accordance with Section 59-2-1802.

Section 4. Section **63J-5-206** is amended to read:

63J-5-206. Intergovernmental transfers for Medicaid.

(1) Subject to Subsections (2) and (3), an intergovernmental transfer program under Section [~~26-18-21~~] 26B-3-130 is subject to the same review provisions as a federal funds request under this chapter.

(2) Notwithstanding Subsection (1), if a new intergovernmental transfer program created under Subsection [~~26-18-21(3)~~] 26B-3-130(3) will result in the state receiving total payments of $10,000,000 or more per year from the federal government, the intergovernmental transfer program is subject to the same review provisions as a high impact federal funds request in Subsections 63J-5-204(3), (4), and (5).

(3) (a) Beginning on July 1, 2017, an intergovernmental transfer program created before July 1, 2017, is subject to the federal funds review process of Section 63J-5-201 for periods after July 1, 2017.

(b) The addition of a new participant into an existing intergovernmental transfer program, or the addition by the department of a nursing care facility or a non-state government entity to the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program, is not subject to the requirements of this section.

Section 5. Section **63J-7-102** is amended to read:

63J-7-102. Scope and applicability of chapter.

(1) Except as provided in Subsection (2), and except as otherwise provided by a statute

superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to each agency and govern each grant received on or after May 5, 2008.

(2) This chapter does not govern:

(a) a grant deposited into a General Fund restricted account;

(b) a grant deposited into a Fiduciary Fund as defined in Section 51-5-4;

(c) a grant deposited into an Enterprise Fund as defined in Section 51-5-4;

(d) a grant made to the state without a restriction or other designated purpose that is deposited into the General Fund as free revenue;

(e) a grant made to the state that is restricted only to "education" and that is deposited into the Income Tax Fund or Uniform School Fund as free revenue;

(f) in-kind donations;

(g) a tax, fees, penalty, fine, surcharge, money judgment, or other money due the state when required by state law or application of state law;

(h) a contribution made under Title 59, Chapter 10, Part 13, Individual Income Tax Contribution Act;

(i) a grant received by an agency from another agency or political subdivision;

(j) a grant to the Utah Dairy Commission created in Section 4-22-103;

(k) a grant to the Heber Valley Historic Railroad Authority created in Section 63H-4-102;

(l) a grant to the Utah State Railroad Museum Authority created in Section 63H-5-102;

(m) a grant to the Utah Housing Corporation created in Section 63H-8-201;

(n) a grant to the Utah State Fair Corporation created in Section 63H-6-103;

(o) a grant to the Utah State Retirement Office created in Section 49-11-201;

(p) a grant to the School and Institutional Trust Lands Administration created in Section 53C-1-201;

(q) a grant to the Utah Communications Authority created in Section 63H-7a-201;

(r) a grant to the Medical Education Program created in Section [~~26-69-403~~] 26B-4-707;

(s) a grant to the Utah Capital Investment Corporation created in Section 63N-6-301;

(t) a grant to the Utah Charter School Finance Authority created in Section 53G-5-602;

(u) a grant to the State Building Ownership Authority created in Section 63B-1-304; or

(v) a grant to the Military Installation Development Authority created in Section 63H-1-201.

(3) An agency need not seek legislative review or approval of grants under Part 2, Grant Approval Requirements, if:

(a) the governor has declared a state of emergency; and

(b) the grant is donated to the agency to assist victims of the state of emergency under Subsection 53-2a-204(1).

Section 6. Section **63M-7-204** is amended to read:

63M-7-204. Duties of commission.

(1) The State Commission on Criminal and Juvenile Justice administration shall:

(a) promote the commission's purposes as enumerated in Section 63M-7-201;

(b) promote the communication and coordination of all criminal and juvenile justice agencies;

(c) study, evaluate, and report on the status of crime in the state and on the effectiveness of criminal justice policies, procedures, and programs that are directed toward the reduction of crime in the state;

(d) study, evaluate, and report on programs initiated by state and local agencies to address reducing recidivism, including changes in penalties and sentencing guidelines intended to reduce recidivism, costs savings associated with the reduction in the number of inmates, and evaluation of expenses and resources needed to meet goals regarding the use of treatment as an alternative to incarceration, as resources allow;

(e) study, evaluate, and report on policies, procedures, and programs of other jurisdictions which have effectively reduced crime;

(f) identify and promote the implementation of specific policies and programs the commission determines will significantly reduce crime in Utah;

(g) provide analysis and recommendations on all criminal and juvenile justice legislation, state budget, and facility requests, including program and fiscal impact on all components of the criminal and juvenile justice system;

(h) provide analysis, accountability, recommendations, and supervision for state and federal criminal justice grant money;

(i) provide public information on the criminal and juvenile justice system and give

technical assistance to agencies or local units of government on methods to promote public awareness;

(j) promote research and program evaluation as an integral part of the criminal and juvenile justice system;

(k) provide a comprehensive criminal justice plan annually;

(l) review agency forecasts regarding future demands on the criminal and juvenile justice systems, including specific projections for secure bed space;

(m) promote the development of criminal and juvenile justice information systems that are consistent with common standards for data storage and are capable of appropriately sharing information with other criminal justice information systems by:

(i) developing and maintaining common data standards for use by all state criminal justice agencies;

(ii) annually performing audits of criminal history record information maintained by state criminal justice agencies to assess their accuracy, completeness, and adherence to standards;

(iii) defining and developing state and local programs and projects associated with the improvement of information management for law enforcement and the administration of justice; and

(iv) establishing general policies concerning criminal and juvenile justice information systems and making rules as necessary to carry out the duties under Subsection (1)(k) and this Subsection (1)(m);

(n) allocate and administer grants, from money made available, for approved education programs to help prevent the sexual exploitation of children;

(o) allocate and administer grants for law enforcement operations and programs related to reducing illegal drug activity and related criminal activity;

(p) request, receive, and evaluate data and recommendations collected and reported by agencies and contractors related to policies recommended by the commission regarding recidivism reduction, including the data described in Section 13-53-111 and Subsection [~~62A-15-103(2)(l)~~] 26B-5-102(2)(l);

(q) establish and administer a performance incentive grant program that allocates funds appropriated by the Legislature to programs and practices implemented by counties that reduce

recidivism and reduce the number of offenders per capita who are incarcerated;

(r) oversee or designate an entity to oversee the implementation of juvenile justice reforms;

(s) make rules and administer the juvenile holding room standards and juvenile jail standards to align with the Juvenile Justice and Delinquency Prevention Act requirements pursuant to 42 U.S.C. Sec. 5633;

(t) allocate and administer grants, from money made available, for pilot qualifying education programs;

(u) oversee the trauma-informed justice program described in Section 63M-7-209;

(v) request, receive, and evaluate the aggregate data collected from prosecutorial agencies and the Administrative Office of the Courts, in accordance with Sections 63M-7-216 and 78A-2-109.5;

(w) report annually to the Law Enforcement and Criminal Justice Interim Committee on the progress made on each of the following goals of the Justice Reinvestment Initiative:

(i) ensuring oversight and accountability;

(ii) supporting local corrections systems;

(iii) improving and expanding reentry and treatment services; and

(iv) strengthening probation and parole supervision;

(x) compile a report of findings based on the data and recommendations provided under Section 13-53-111 and Subsection [~~62A-15-103(2)(n)~~] 26B-5-102(2)(n) that:

(i) separates the data provided under Section 13-53-111 by each residential, vocational and life skills program; and

(ii) separates the data provided under Subsection [~~62A-15-103(2)(n)~~] 26B-5-102(2)(n) by each mental health or substance use treatment program; and

(y) publish the report described in Subsection (1)(x) on the commission's website and annually provide the report to the Judiciary Interim Committee, the Health and Human Services Interim Committee, the Law Enforcement and Criminal Justice Interim Committee, and the related appropriations subcommittees.

(2) If the commission designates an entity under Subsection (1)(r), the commission shall ensure that the membership of the entity includes representation from the three branches of government and, as determined by the commission, representation from relevant stakeholder

groups across all parts of the juvenile justice system, including county representation.

Section 7. Section **63M-7-209** is amended to read:

63M-7-209. Trauma-informed justice program.

(1) As used in this section:

(a) "Committee" means the Multi-Disciplinary Trauma-Informed Committee created under Subsection (2).

(b) "First responder" includes:

(i) a law enforcement officer, as defined in Section 53-13-103;

(ii) emergency medical service personnel, as defined in Section [~~26-8a-102~~] 26B-4-101; and

(iii) a firefighter.

(c) "Trauma-informed" means a policy, procedure, program, or practice that demonstrates an ability to minimize retraumatization associated with the criminal and juvenile justice system.

(d) "Victim" means the same as that term is defined in Section 77-37-2.

(2) (a) The commission shall create a committee known as the Multi-Disciplinary Trauma-Informed Committee to assist the commission in meeting the requirements of this section. The commission shall provide for the membership, terms, and quorum requirements of the committee, except that:

(i) at least one member of the committee shall be a victim;

(ii) the executive director of the Department of [~~Health~~] Health and Human Services or the executive director's designee shall be on the committee; and

[~~(iii) the executive director of the Department of Human Services or the executive director's designee shall be on the committee; and~~]

[~~(iv)~~] (iii) the commission shall terminate the committee on June 30, 2020.

(b) The commission shall use the Utah Office for Victims of Crime, the Utah Office on Domestic and Sexual Violence, and the Utah Council on Victims of Crime in meeting the requirements of this section.

(3) (a) The committee shall work with statewide coalitions, children's justice centers, and other stakeholders to complete, by no later than September 1, 2019, a review of current and recommended trauma-informed policies, procedures, programs, or practices in the state's

criminal and juvenile justice system, including:

(i) reviewing the role of victim advocates and victim services in the criminal and juvenile justice system and:

(A) how to implement the option of a comprehensive, seamless victim advocate system that is based on the best interests of victims and assists a victim throughout the criminal and juvenile justice system or a victim's process of recovering from the trauma the victim experienced as a result of being a victim of crime; and

(B) recommending what minimum qualifications a victim advocate must meet, including recommending trauma-informed training or trauma-informed continuing education hours;

(ii) reviewing of best practice standards and protocols, including recommending adoption or creation of trauma-informed interview protocols, that may be used to train persons within the criminal and juvenile justice system concerning trauma-informed policies, procedures, programs, or practices, including training of:

(A) peace officers that is consistent with the training developed under Section 53-10-908;

(B) first responders;

(C) prosecutors;

(D) defense counsel;

(E) judges and other court personnel;

(F) the Board of Pardons and Parole and its personnel;

(G) the Department of Corrections, including Adult Probation and Parole; and

(H) others involved in the state's criminal and juvenile justice system;

(iii) recommending outcome based metrics to measure achievement related to trauma-informed policies, procedures, programs, or practices in the criminal and juvenile justice system;

(iv) recommending minimum qualifications and continuing education of individuals providing training, consultation, or administrative supervisory consultation within the criminal and juvenile justice system regarding trauma-informed policies, procedures, programs, or practices;

(v) identifying needs that are not funded or that would benefit from additional

resources;

(vi) identifying funding sources, including outlining the restrictions on the funding sources, that may fund trauma-informed policies, procedures, programs, or practices;

(vii) reviewing which governmental entities should have the authority to implement recommendations of the committee; and

(viii) reviewing the need, if any, for legislation or appropriations to meet budget needs.

(b) Whenever the commission conducts a related survey, the commission, when possible, shall include how victims and their family members interact with Utah's criminal and juvenile justice system, including whether the victims and family members are treated with trauma-informed policies, procedures, programs, or practices throughout the criminal and juvenile justice system.

(4) The commission shall establish and administer a performance incentive grant program that allocates money appropriated by the Legislature to public or private entities:

(a) to provide advocacy and related service for victims in connection with the Board of Pardons and Parole process; and

(b) that have demonstrated experience and competency in the best practices and standards of trauma-informed care.

(5) The commission shall report to the Judiciary Interim Committee, at the request of the Judiciary Interim Committee, and the Law Enforcement and Criminal Justice Interim Committee by no later than the September 2019 interim regarding the grant under Subsection (4), the committee's activities under this section, and whether the committee should be extended beyond June 30, 2020.

Section 8. Section **63M-7-216** is amended to read:

63M-7-216. Prosecutorial data collection -- Policy transparency.

(1) As used in this section:

(a) "Commission" means the Commission on Criminal and Juvenile Justice created in Section 63M-7-201.

(b) (i) "Criminal case" means a case where an offender is charged with an offense for which a mandatory court appearance is required under the Uniform Bail Schedule.

(ii) "Criminal case" does not mean a case for criminal non-support under Section 76-7-201 or any proceeding involving collection or payment of child support, medical support,

or child care expenses by or on behalf of the Office of Recovery Services under Section [~~62A-11-107~~] 26B-9-108 or 76-7-202.

(c) "Offense tracking number" means a distinct number applied to each criminal offense by the Bureau of Criminal Identification.

(d) "Pre-filing diversion" means an agreement between a prosecutor and an individual prior to being charged with a crime, before an information or indictment is filed, in which the individual is diverted from the traditional criminal justice system into a program of supervision and supportive services in the community.

(e) "Post-filing diversion" is as described in Section 77-2-5.

(f) "Prosecutorial agency" means the Office of the Attorney General and any city, county, or district attorney acting as a public prosecutor.

(g) "Publish" means to make aggregated data available to the general public.

(2) Beginning July 1, 2021, all prosecutorial agencies within the state shall submit the following data with regards to each criminal case referred to it from a law enforcement agency to the commission for compilation and analysis:

(a) the defendant's:

(i) full name;

(ii) offense tracking number;

(iii) date of birth; and

(iv) zip code;

(b) referring agency;

(c) whether the prosecutorial agency filed charges, declined charges, initiated a pre-filing diversion, or asked the referring agency for additional information;

(d) if charges were filed, the case number and the court in which the charges were filed;

(e) all charges brought against the defendant;

(f) whether bail was requested and, if so, the requested amount;

(g) the date of initial discovery disclosure;

(h) whether post-filing diversion was offered and, if so, whether it was entered;

(i) if post-filing diversion or other plea agreement was accepted, the date entered by the court; and

(j) the date of conviction, acquittal, plea agreement, dismissal, or other disposition of the case.

(3) (a) The information required by Subsection (2), including information that was missing or incomplete at the time of an earlier submission but is presently available, shall be submitted within 90 days of the last day of March, June, September, and December of each year for the previous 90-day period in the form and manner selected by the commission.

(b) If the last day of the month is a Saturday, Sunday, or state holiday, the information shall be submitted on the next working day.

(4) The prosecutorial agency shall maintain a record of all information collected and transmitted to the commission for 10 years.

(5) The commission shall include in the plan required by Subsection 63M-7-204(1)(k) an analysis of the data received, comparing and contrasting the practices and trends among and between prosecutorial agencies in the state. The Law Enforcement and Criminal Justice Interim Committee may request an in-depth analysis of the data received annually. Any request shall be in writing and specify which data points the report shall focus on.

(6) The commission may provide assistance to prosecutorial agencies in setting up a method of collecting and reporting data required by this section.

(7) Beginning January 1, 2021, all prosecutorial agencies shall publish specific office policies. If the agency does not maintain a policy on a topic in this subsection, the agency shall affirmatively disclose that fact. Policies shall be published online on the following topics:

(a) screening and filing criminal charges;

(b) plea bargains;

(c) sentencing recommendations;

(d) discovery practices;

(e) prosecution of juveniles, including whether to prosecute a juvenile as an adult;

(f) collection of fines and fees;

(g) criminal and civil asset forfeiture practices;

(h) services available to victims of crime, both internal to the prosecutorial office and by referral to outside agencies;

(i) diversion programs; and

(j) restorative justice programs[; ~~and~~].

(8) (a) A prosecutorial agency not in compliance with this section by July 1, 2022, in accordance with the commission's guidelines may not receive grants or other funding intended to assist with bringing the agency into compliance with this section. In addition, any funds received for the purpose of bringing the agency into compliance with this section shall be returned to the source of the funding.

(b) Only funding received from the commission by a prosecutorial agency specifically intended to assist the agency with compliance with this section may be recalled.

Section 9. Section **63M-7-301** is amended to read:

63M-7-301. Definitions -- Creation of council -- Membership -- Terms.

(1) (a) As used in this part, "council" means the Utah Substance Use and Mental Health Advisory Council created in this section.

(b) There is created within the governor's office the Utah Substance Use and Mental Health Advisory Council.

(2) The council shall be comprised of the following voting members:

(a) the attorney general or the attorney general's designee;

(b) one elected county official appointed by the Utah Association of Counties;

(c) the commissioner of public safety or the commissioner's designee;

(d) the director of the Division of Integrated Healthcare or the director's designee;

(e) the state superintendent of public instruction or the superintendent's designee;

(f) the executive director of the Department of Health and Human Services or the executive director's designee;

(g) the executive director of the Commission on Criminal and Juvenile Justice or the executive director's designee;

(h) the executive director of the Department of Corrections or the executive director's designee;

(i) the director of the Division of Juvenile Justice and Youth Services or the director's designee;

(j) the director of the Division of Child and Family Services or the director's designee;

(k) the chair of the Board of Pardons and Parole or the chair's designee;

(l) the director of the Office of Multicultural Affairs or the director's designee;

(m) the director of the Division of Indian Affairs or the director's designee;

(n) the state court administrator or the state court administrator's designee;

(o) one district court judge who presides over a drug court and who is appointed by the chief justice of the Utah Supreme Court;

(p) one district court judge who presides over a mental health court and who is appointed by the chief justice of the Utah Supreme Court;

(q) one juvenile court judge who presides over a drug court and who is appointed by the chief justice of the Utah Supreme Court;

(r) one prosecutor appointed by the Statewide Association of Prosecutors;

(s) the chair or co-chair of each committee established by the council;

(t) the chair or co-chair of the Statewide Suicide Prevention Coalition created under Subsection [~~62A-15-1101(2)~~] 26B-5-611(3);

(u) one representative appointed by the Utah League of Cities and Towns to serve a four-year term;

(v) the following members appointed by the governor to serve four-year terms:

(i) one resident of the state who has been personally affected by a substance use or mental health disorder; and

(ii) one citizen representative; and

(w) in addition to the voting members described in Subsections (2)(a) through (v), the following voting members appointed by a majority of the members described in Subsections (2)(a) through (v) to serve four-year terms:

(i) one resident of the state who represents a statewide advocacy organization for recovery from substance use disorders;

(ii) one resident of the state who represents a statewide advocacy organization for recovery from mental illness;

(iii) one resident of the state who represents a statewide advocacy organization for protection of rights of individuals with a disability;

(iv) one resident of the state who represents prevention professionals;

(v) one resident of the state who represents treatment professionals;

(vi) one resident of the state who represents the physical health care field;

(vii) one resident of the state who is a criminal defense attorney;

(viii) one resident of the state who is a military servicemember or military veteran

under Section 53B-8-102;

(ix) one resident of the state who represents local law enforcement agencies;

(x) one representative of private service providers that serve youth with substance use disorders or mental health disorders; and

(xi) one resident of the state who is certified by the Division of Integrated Healthcare as a peer support specialist as described in Subsection [~~62A-15-103(2)(h)~~] 26B-5-102(2)(h).

(3) An individual other than an individual described in Subsection (2) may not be appointed as a voting member of the council.

Section 10. Section **63M-7-303** is amended to read:

63M-7-303. Duties of council.

(1) The Utah Substance Use and Mental Health Advisory Council shall:

(a) provide leadership and generate unity for Utah's ongoing efforts to reduce and eliminate the impact of substance use and mental health disorders in Utah through a comprehensive and evidence-based prevention, treatment, and justice strategy;

(b) recommend and coordinate the creation, dissemination, and implementation of statewide policies to address substance use and mental health disorders;

(c) facilitate planning for a balanced continuum of substance use and mental health disorder prevention, treatment, and justice services;

(d) promote collaboration and mutually beneficial public and private partnerships;

(e) coordinate recommendations made by any committee created under Section 63M-7-302;

(f) analyze and provide an objective assessment of all proposed legislation concerning substance use, mental health, and related issues;

(g) coordinate the implementation of Section 77-18-104 and related provisions in Subsections 77-18-103(2)(c) and (d), as provided in Section 63M-7-305;

(h) comply with Sections 32B-2-306 and [~~62A-15-403~~] 26B-5-206; and

(i) oversee coordination for the funding, implementation, and evaluation of suicide prevention efforts described in Section [~~62A-15-1101~~] 26B-5-611.

(2) The council shall meet quarterly or more frequently as determined necessary by the chair.

(3) The council shall report the council's recommendations annually to the

commission, governor, the Legislature, and the Judicial Council.

Section 11. Section **63M-13-202** is amended to read:

63M-13-202. Duties of the commission.

(1) The responsibilities of the commission include:

(a) supporting Utah parents and families, who have family members that are in early childhood, by providing comprehensive and accurate information regarding the availability of voluntary services that are available to children in early childhood from state agencies and other private and public entities;

(b) facilitating improved coordination between state agencies and community partners that provide services to children in early childhood;

(c) sharing and analyzing information regarding early childhood issues in the state;

(d) developing and coordinating a comprehensive delivery system of services for children in early childhood that addresses the following four areas:

(i) family support and safety;

(ii) health and development;

(iii) early learning; and

(iv) economic development; and

(e) identifying opportunities for and barriers to the alignment of standards, rules, policies, and procedures across programs and agencies that support children in early childhood.

(2) To fulfill the responsibilities described in Subsection (1), the commission shall:

(a) directly engage with parents, families, community members, and public and private service providers to identify and address:

(i) the quality, effectiveness, and availability of existing services for children in early childhood and the coordination of those services;

(ii) gaps and barriers to entry in the provision of services for children in early childhood; and

(iii) community-based solutions in improving the quality, effectiveness, and availability of services for children in early childhood;

(b) seek regular and ongoing feedback from a wide range of entities and individuals that use or provide services for children in early childhood, including entities and individuals that use, represent, or provide services for any of the following:

(i) children in early childhood who live in urban, suburban, or rural areas of the state;

(ii) children in early childhood with varying socioeconomic backgrounds;

(iii) children in early childhood with varying ethnic or racial heritage;

(iv) children in early childhood from various geographic areas of the state; and

(v) children in early childhood with special needs;

(c) study, evaluate, and report on the status and effectiveness of policies, procedures, and programs that provide services to children in early childhood;

(d) study and evaluate the effectiveness of policies, procedures, and programs implemented by other states and nongovernmental entities that address the needs of children in early childhood;

(e) identify policies, procedures, and programs that are impeding efforts to help children in early childhood in the state and recommend and implement changes to those policies, procedures, and programs;

(f) identify policies, procedures, and programs related to children in early childhood in the state that are inefficient or duplicative and recommend and implement changes to those policies, procedures, and programs;

(g) recommend policy, procedure, and program changes to address the needs of children in early childhood;

(h) develop methods for using interagency information to inform comprehensive policy and budget decisions relating to early childhood services;

(i) develop, recommend, and coordinate a comprehensive delivery system of services for children in early childhood; and

(j) develop strategies and monitor efforts concerning:

(i) increasing school readiness;

(ii) improving access to child care and early education programs; and

(iii) improving family and community engagement in early childhood education and development.

(3) In fulfilling the duties of the commission, the commission shall collaborate with the Early Childhood Utah Advisory Council created in Section [~~26-66-201~~] 26B-1-422.

(4) In fulfilling the commission's duties, the commission may:

(a) request and receive, from any state or local governmental agency or institution,

information relating to early childhood, including reports, audits, projections, and statistics; and

(b) appoint special advisory groups to advise and assist the commission.

(5) Members of a special advisory group described in Subsection (4)(b):

(a) shall be appointed by the commission;

(b) may include:

(i) members of the commission; and

(ii) individuals from the private or public sector; and

(c) may not receive reimbursement or pay for work done in relation to the special advisory group.

(6) A special advisory group created in accordance with Subsection (4)(b) shall report to the commission on the progress of the special advisory group.

Section 12. Section **64-13-37** is amended to read:

64-13-37. Department authorized to test offenders for communicable disease.

(1) As used in this section, "communicable disease" means:

(a) an illness due to a specific infectious agent or its toxic products, which arises through transmission of that agent or its products from a reservoir to a susceptible host either directly, as from an infected person or animal, or indirectly, through an intermediate plant or animal host, vector, or the inanimate environment; and

(b) a disease designated by the Department of [~~Health~~] Health and Human Services by rule as a communicable disease in accordance with Section [~~26-6-7~~] 26B-7-207.

(2) The department may:

(a) test an offender for a communicable disease upon admission or within a reasonable time after admission to a correctional facility; and

(b) periodically retest the offender for a communicable disease during the time the offender is in the custody of the department.

Section 13. Section **64-13-39** is amended to read:

64-13-39. Standards for health care facilities.

All health care facilities, as defined in Section [~~26-21-2~~] 26B-2-201, owned or operated by the department shall apply for and meet the requirements for accreditation by the National Commission for Correctional Health Care. The department shall begin the application process

in a timely manner to facilitate accreditation of the health care facilities of the department on or before January 1, 1996. Inspections to ensure compliance and accreditation shall be conducted by staff of the national commission.

Section 14. Section **64-13-39.5** is amended to read:

64-13-39.5. Definitions -- Health care for chronically or terminally ill offenders -- Notice to health care facility.

(1) As used in this section:

(a) "Department or agency" means the Utah Department of Corrections or a department of corrections or government entity responsible for placing an offender in a facility located in Utah.

(b) "Chronically ill" has the same meaning as in Section 31A-36-102.

(c) "Facility" means an assisted living facility as defined in [~~Subsection 26-21-2(5)~~] Section 26B-2-201 and a nursing care facility as defined in [~~Subsection 26-21-2(17)~~] Section 26B-2-201, except that transitional care units and other long term care beds owned or operated on the premises of acute care hospitals or critical care hospitals are not facilities for the purpose of this section.

(d) "Offender" means an inmate whom the department or agency has given an early release, pardon, or parole due to a chronic or terminal illness.

(e) "Terminally ill" has the same meaning as in Section 31A-36-102.

(2) If an offender from Utah or any other state is admitted as a resident of a facility due to the chronic or terminal illness, the department or agency placing the offender shall:

(a) provide written notice to the administrator of the facility no later than 15 days prior to the offender's admission as a resident of a facility, stating:

(i) the offense for which the offender was convicted and a description of the actual offense;

(ii) the offender's status with the department or agency;

(iii) that the information provided by the department or agency regarding the offender shall be provided to employees of the facility no later than 10 days prior to the offender's admission to the facility; and

(iv) the contact information for:

(A) the offender's parole officer and also a point of contact within the department or

agency, if the offender is on parole; and

(B) a point of contact within the department or agency, if the offender is not under parole supervision but was given an early release or pardon due to a chronic or terminal illness;

(b) make available to the public on the Utah Department of Corrections' website and upon request:

(i) the name and address of the facility where the offender resides; and

(ii) the date the offender was placed at the facility; and

(c) provide a training program for employees who work in a facility where offenders reside, and if the offender is placed at the facility by:

(i) the Utah Department of Corrections, the department shall provide the training program for the employees; and

(ii) by a department or agency from another state, that state's department or agency shall arrange with the Utah Department of Corrections to provide the training required by this Subsection (2), if training has not already been provided by the Utah Department of Corrections, and shall provide to the Utah Department of Corrections any necessary compensation for this service.

(3) The administrator of the facility shall:

(a) provide residents of the facility or their guardians notice that a convicted felon is being admitted to the facility no later than 10 days prior to the offender's admission to the facility;

(b) advise potential residents or their guardians of persons under Subsection (2) who are current residents of the facility; and

(c) provide training, offered by the Utah Department of Corrections, in the safe management of offenders for all employees.

(4) The Utah Department of Corrections shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing:

(a) a consistent format and procedure for providing notification to facilities and information to the public in compliance with Subsection (2); and

(b) a training program, in compliance with Subsection (3) for employees, who work at facilities where offenders reside to ensure the safety of facility residents and employees.

Section 15. Section **64-13-44** is amended to read:

64-13-44. Posthumous organ donations by inmates.

(1) As used in this section:

(a) "Document of gift" [~~has the same meaning as in Section 26-28-102~~] means the same as that term is defined in Section 26B-8-301.

(b) "Sign" [~~has the same meaning as in Section 26-28-102~~] means the same as that term is defined in Section 26B-8-301.

(2) (a) The Utah Department of Corrections shall make available to each inmate a document of gift form that allows an inmate to indicate the inmate's desire to make an anatomical gift if the inmate dies while in the custody of the department.

(b) If the inmate chooses to make an anatomical gift after death, the inmate shall complete a document of gift in accordance with the requirements of [~~Title 26, Chapter 28, Revised Uniform Anatomical Gift Act~~] Title 26B, Chapter 8, Part 3, Revised Uniform Anatomical Gift Act.

(c) The department shall maintain a record of the document of gift that an inmate provides to the department.

(3) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the department may, upon request, release to an organ procurement organization, as defined in Section [~~26-28-102~~] 26B-8-301, the names and addresses of all inmates who complete and sign the document of gift form indicating they intend to make an anatomical gift.

(4) The making of an anatomical gift by an inmate under this section shall comply with [~~Title 26, Chapter 28, Revised Uniform Anatomical Gift Act~~] Title 26B, Chapter 8, Part 3, Revised Uniform Anatomical Gift Act.

(5) Notwithstanding anything in this section, the department shall not be considered to be an inmate's "guardian" for the purposes of [~~Title 26, Chapter 28, Revised Uniform Anatomical Gift Act~~] Title 26B, Chapter 8, Part 3, Revised Uniform Anatomical Gift Act.

Section 16. Section **67-3-1** is amended to read:

67-3-1. Functions and duties.

(1) (a) The state auditor is the auditor of public accounts and is independent of any executive or administrative officers of the state.

(b) The state auditor is not limited in the selection of personnel or in the determination

of the reasonable and necessary expenses of the state auditor's office.

(2) The state auditor shall examine and certify annually in respect to each fiscal year, financial statements showing:

(a) the condition of the state's finances;

(b) the revenues received or accrued;

(c) expenditures paid or accrued;

(d) the amount of unexpended or unencumbered balances of the appropriations to the agencies, departments, divisions, commissions, and institutions; and

(e) the cash balances of the funds in the custody of the state treasurer.

(3) (a) The state auditor shall:

(i) audit each permanent fund, each special fund, the General Fund, and the accounts of any department of state government or any independent agency or public corporation as the law requires, as the auditor determines is necessary, or upon request of the governor or the Legislature;

(ii) perform the audits in accordance with generally accepted auditing standards and other auditing procedures as promulgated by recognized authoritative bodies; and

(iii) as the auditor determines is necessary, conduct the audits to determine:

(A) honesty and integrity in fiscal affairs;

(B) accuracy and reliability of financial statements;

(C) effectiveness and adequacy of financial controls; and

(D) compliance with the law.

(b) If any state entity receives federal funding, the state auditor shall ensure that the audit is performed in accordance with federal audit requirements.

(c) (i) The costs of the federal compliance portion of the audit may be paid from an appropriation to the state auditor from the General Fund.

(ii) If an appropriation is not provided, or if the federal government does not specifically provide for payment of audit costs, the costs of the federal compliance portions of the audit shall be allocated on the basis of the percentage that each state entity's federal funding bears to the total federal funds received by the state.

(iii) The allocation shall be adjusted to reflect any reduced audit time required to audit funds passed through the state to local governments and to reflect any reduction in audit time

obtained through the use of internal auditors working under the direction of the state auditor.

(4) (a) Except as provided in Subsection (4)(b), the state auditor shall, in addition to financial audits, and as the auditor determines is necessary, conduct performance and special purpose audits, examinations, and reviews of any entity that receives public funds, including a determination of any or all of the following:

(i) the honesty and integrity of all the entity's fiscal affairs;

(ii) whether the entity's administrators have faithfully complied with legislative intent;

(iii) whether the entity's operations have been conducted in an efficient, effective, and cost-efficient manner;

(iv) whether the entity's programs have been effective in accomplishing the intended objectives; and

(v) whether the entity's management, control, and information systems are adequate, effective, and secure.

(b) The auditor may not conduct performance and special purpose audits, examinations, and reviews of any entity that receives public funds if the entity:

(i) has an elected auditor; and

(ii) has, within the entity's last budget year, had the entity's financial statements or performance formally reviewed by another outside auditor.

(5) The state auditor:

(a) shall administer any oath or affirmation necessary to the performance of the duties of the auditor's office; and

(b) may:

(i) subpoena witnesses and documents, whether electronic or otherwise; and

(ii) examine into any matter that the auditor considers necessary.

(6) The state auditor may require all persons who have had the disposition or management of any property of this state or its political subdivisions to submit statements regarding the property at the time and in the form that the auditor requires.

(7) The state auditor shall:

(a) except where otherwise provided by law, institute suits in Salt Lake County in relation to the assessment, collection, and payment of revenues against:

(i) persons who by any means have become entrusted with public money or property

and have failed to pay over or deliver the money or property; and

(ii) all debtors of the state;

(b) collect and pay into the state treasury all fees received by the state auditor;

(c) perform the duties of a member of all boards of which the state auditor is a member by the constitution or laws of the state, and any other duties that are prescribed by the constitution and by law;

(d) stop the payment of the salary of any state official or state employee who:

(i) refuses to settle accounts or provide required statements about the custody and disposition of public funds or other state property;

(ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling board or department head with respect to the manner of keeping prescribed accounts or funds; or

(iii) fails to correct any delinquencies, improper procedures, and errors brought to the official's or employee's attention;

(e) establish accounting systems, methods, and forms for public accounts in all taxing or fee-assessing units of the state in the interest of uniformity, efficiency, and economy;

(f) superintend the contractual auditing of all state accounts;

(g) subject to Subsection (8)(a), withhold state allocated funds or the disbursement of property taxes from a state or local taxing or fee-assessing unit, if necessary, to ensure that officials and employees in those taxing units comply with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds;

(h) subject to Subsection (9), withhold the disbursement of tax money from any county, if necessary, to ensure that officials and employees in the county comply with Section 59-2-303.1; and

(i) withhold state allocated funds or the disbursement of property taxes from a local government entity or a limited purpose entity, as those terms are defined in Section 67-1a-15 if the state auditor finds the withholding necessary to ensure that the entity registers and maintains the entity's registration with the lieutenant governor, in accordance with Section 67-1a-15.

(8) (a) Except as otherwise provided by law, the state auditor may not withhold funds under Subsection (7)(g) until a state or local taxing or fee-assessing unit has received formal

written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections.

(b) If, after receiving notice under Subsection (8)(a), a state or independent local fee-assessing unit that exclusively assesses fees has not made corrections to comply with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds, the state auditor:

(i) shall provide a recommended timeline for corrective actions;

(ii) may prohibit the state or local fee-assessing unit from accessing money held by the state; and

(iii) may prohibit a state or local fee-assessing unit from accessing money held in an account of a financial institution by filing an action in district court requesting an order of the court to prohibit a financial institution from providing the fee-assessing unit access to an account.

(c) The state auditor shall remove a limitation on accessing funds under Subsection (8)(b) upon compliance with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds.

(d) If a local taxing or fee-assessing unit has not adopted a budget in compliance with state law, the state auditor:

(i) shall provide notice to the taxing or fee-assessing unit of the unit's failure to comply;

(ii) may prohibit the taxing or fee-assessing unit from accessing money held by the state; and

(iii) may prohibit a taxing or fee-assessing unit from accessing money held in an account of a financial institution by:

(A) contacting the taxing or fee-assessing unit's financial institution and requesting that the institution prohibit access to the account; or

(B) filing an action in district court requesting an order of the court to prohibit a financial institution from providing the taxing or fee-assessing unit access to an account.

(e) If the local taxing or fee-assessing unit adopts a budget in compliance with state law, the state auditor shall eliminate a limitation on accessing funds described in Subsection (8)(d).

(9) The state auditor may not withhold funds under Subsection (7)(h) until a county has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections.

(10) (a) The state auditor may not withhold funds under Subsection (7)(i) until the state auditor receives a notice of non-registration, as that term is defined in Section 67-1a-15.

(b) If the state auditor receives a notice of non-registration, the state auditor may prohibit the local government entity or limited purpose entity, as those terms are defined in Section 67-1a-15, from accessing:

(i) money held by the state; and

(ii) money held in an account of a financial institution by:

(A) contacting the entity's financial institution and requesting that the institution prohibit access to the account; or

(B) filing an action in district court requesting an order of the court to prohibit a financial institution from providing the entity access to an account.

(c) The state auditor shall remove the prohibition on accessing funds described in Subsection (10)(b) if the state auditor received a notice of registration, as that term is defined in Section 67-1a-15, from the lieutenant governor.

(11) Notwithstanding Subsection (7)(g), (7)(h), (7)(i), (8)(b), (8)(d), or (10)(b), the state auditor:

(a) shall authorize a disbursement by a local government entity or limited purpose entity, as those terms are defined in Section 67-1a-15, or a state or local taxing or fee-assessing unit if the disbursement is necessary to:

(i) avoid a major disruption in the operations of the local government entity, limited purpose entity, or state or local taxing or fee-assessing unit; or

(ii) meet debt service obligations; and

(b) may authorize a disbursement by a local government entity, limited purpose entity, or state or local taxing or fee-assessing unit as the state auditor determines is appropriate.

(12) (a) The state auditor may seek relief under the Utah Rules of Civil Procedure to take temporary custody of public funds if an action is necessary to protect public funds from being improperly diverted from their intended public purpose.

(b) If the state auditor seeks relief under Subsection (12)(a):

(i) the state auditor is not required to exhaust the procedures in Subsection (7) or (8); and

(ii) the state treasurer may hold the public funds in accordance with Section 67-4-1 if a court orders the public funds to be protected from improper diversion from their public purpose.

(13) The state auditor shall:

(a) establish audit guidelines and procedures for audits of local mental health and substance abuse authorities and their contract providers, conducted pursuant to Title 17, Chapter 43, Part 2, Local Substance Abuse Authorities, Title 17, Chapter 43, Part 3, Local Mental Health Authorities, Title 26B, Chapter 5, Health Care -- Substance Use and Mental Health, and Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act[~~, and Title 62A, Chapter 15, Substance Abuse and Mental Health Act~~]; and

(b) ensure that those guidelines and procedures provide assurances to the state that:

(i) state and federal funds appropriated to local mental health authorities are used for mental health purposes;

(ii) a private provider under an annual or otherwise ongoing contract to provide comprehensive mental health programs or services for a local mental health authority is in compliance with state and local contract requirements, and state and federal law;

(iii) state and federal funds appropriated to local substance abuse authorities are used for substance abuse programs and services; and

(iv) a private provider under an annual or otherwise ongoing contract to provide comprehensive substance abuse programs or services for a local substance abuse authority is in compliance with state and local contract requirements, and state and federal law.

(14) (a) The state auditor may, in accordance with the auditor's responsibilities for political subdivisions of the state as provided in Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, initiate audits or investigations of any political subdivision that are necessary to determine honesty and integrity in fiscal affairs, accuracy and reliability of financial statements, effectiveness, and adequacy of financial controls and compliance with the law.

(b) If the state auditor receives notice under Subsection 11-41-104(7) from the

Governor's Office of Economic Opportunity on or after July 1, 2024, the state auditor may initiate an audit or investigation of the public entity subject to the notice to determine compliance with Section 11-41-103.

(15) (a) The state auditor may not audit work that the state auditor performed before becoming state auditor.

(b) If the state auditor has previously been a responsible official in state government whose work has not yet been audited, the Legislature shall:

(i) designate how that work shall be audited; and

(ii) provide additional funding for those audits, if necessary.

(16) The state auditor shall:

(a) with the assistance, advice, and recommendations of an advisory committee appointed by the state auditor from among local district boards of trustees, officers, and employees and special service district boards, officers, and employees:

(i) prepare a Uniform Accounting Manual for Local Districts that:

(A) prescribes a uniform system of accounting and uniform budgeting and reporting procedures for local districts under Title 17B, Limited Purpose Local Government Entities - Local Districts, and special service districts under Title 17D, Chapter 1, Special Service District Act;

(B) conforms with generally accepted accounting principles; and

(C) prescribes reasonable exceptions and modifications for smaller districts to the uniform system of accounting, budgeting, and reporting;

(ii) maintain the manual under this Subsection (16)(a) so that the manual continues to reflect generally accepted accounting principles;

(iii) conduct a continuing review and modification of procedures in order to improve them;

(iv) prepare and supply each district with suitable budget and reporting forms; and

(v) (A) prepare instructional materials, conduct training programs, and render other services considered necessary to assist local districts and special service districts in implementing the uniform accounting, budgeting, and reporting procedures; and

(B) ensure that any training described in Subsection (16)(a)(v)(A) complies with Title 63G, Chapter 22, State Training and Certification Requirements; and

(b) continually analyze and evaluate the accounting, budgeting, and reporting practices and experiences of specific local districts and special service districts selected by the state auditor and make the information available to all districts.

(17) (a) The following records in the custody or control of the state auditor are protected records under Title 63G, Chapter 2, Government Records Access and Management Act:

(i) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a past or present governmental employee if the information or allegation cannot be corroborated by the state auditor through other documents or evidence, and the records relating to the allegation are not relied upon by the state auditor in preparing a final audit report;

(ii) records and audit workpapers to the extent the workpapers would disclose the identity of an individual who during the course of an audit, communicated the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the individual be protected;

(iii) before an audit is completed and the final audit report is released, records or drafts circulated to an individual who is not an employee or head of a governmental entity for the individual's response or information;

(iv) records that would disclose an outline or part of any audit survey plans or audit program; and

(v) requests for audits, if disclosure would risk circumvention of an audit.

(b) The provisions of Subsections (17)(a)(i), (ii), and (iii) do not prohibit the disclosure of records or information that relate to a violation of the law by a governmental entity or employee to a government prosecutor or peace officer.

(c) The provisions of this Subsection (17) do not limit the authority otherwise given to the state auditor to classify a document as public, private, controlled, or protected under Title 63G, Chapter 2, Government Records Access and Management Act.

(d) (i) As used in this Subsection (17)(d), "record dispute" means a dispute between the state auditor and the subject of an audit performed by the state auditor as to whether the state

auditor may release a record, as defined in Section 63G-2-103, to the public that the state auditor gained access to in the course of the state auditor's audit but which the subject of the audit claims is not subject to disclosure under Title 63G, Chapter 2, Government Records Access and Management Act.

(ii) The state auditor may submit a record dispute to the State Records Committee, created in Section 63G-2-501, for a determination of whether the state auditor may, in conjunction with the state auditor's release of an audit report, release to the public the record that is the subject of the record dispute.

(iii) The state auditor or the subject of the audit may seek judicial review of a State Records Committee determination under Subsection (17)(d)(ii), as provided in Section 63G-2-404.

(18) If the state auditor conducts an audit of an entity that the state auditor has previously audited and finds that the entity has not implemented a recommendation made by the state auditor in a previous audit, the state auditor shall notify the Legislative Management Committee through the Legislative Management Committee's audit subcommittee that the entity has not implemented that recommendation.

(19) The state auditor shall, with the advice and consent of the Senate, appoint the state privacy officer described in Section 67-3-13.

(20) The state auditor shall report, or ensure that another government entity reports, on the financial, operational, and performance metrics for the state system of higher education and the state system of public education, including metrics in relation to students, programs, and schools within those systems.

Section 17. Section **67-3-11** is amended to read:

67-3-11. Health care price transparency tool -- Transparency tool requirements.

(1) The state auditor shall create a health care price transparency tool:

(a) subject to appropriations from the Legislature and any available funding from third-party sources;

(b) with technical support from the Public Employees' Benefit and Insurance Program created in Section 49-20-103, the Department of Health and Human Services, and the Insurance Department; and

(c) in accordance with the requirements in Subsection (2).

(2) A health care price transparency tool created by the state auditor under this section shall:

(a) present health care price information for consumers in a manner that is clear and accurate;

(b) be available to the public in a user-friendly manner;

(c) incorporate existing data collected under Section [~~26-33a-106.1~~] 26B-8-504;

(d) incorporate data collected under Section [~~26-61a-106~~] 26B-4-204, regarding fees for qualified medical providers recommending medical cannabis, as those terms are defined in Section [~~26-61a-102~~] 26B-4-201;

(e) group billing codes for common health care procedures;

(f) be updated on a regular basis; and

(g) be created and operated in accordance with all applicable state and federal laws.

(3) The state auditor may make the health care pricing data from the health care price transparency tool available to the public through an application program interface format if the data meets state and federal data privacy requirements.

(4) (a) Before making a health care price transparency tool available to the public, the state auditor shall:

(i) seek input from the Health Data Committee created in Section 26B-1-204 on the overall accuracy and effectiveness of the reports provided by the health care price transparency tool; and

(ii) establish procedures to give data providers a 30-day period to review pricing information before the state auditor publishes the information on the health care price transparency tool.

(b) If the state auditor complies with the requirements of Subsection (4)(a), the health care price transparency tool is not subject to the requirements of Section [~~26-33a-107~~] 26B-8-506.

(5) Each year in which a health care price transparency tool is operational, the state auditor shall report to the Health and Human Services Interim Committee before November 1 of that year:

(a) the utilization of the health care price transparency tool; and

(b) policy options for improving access to health care price transparency data.

Section 18. Section **67-5-1** is amended to read:

67-5-1. General duties.

(1) The attorney general shall:

(a) perform all duties in a manner consistent with the attorney-client relationship under Section 67-5-17;

(b) except as provided in Sections 10-3-928 and 17-18a-403, attend the Supreme Court and the Court of Appeals of this state, and all courts of the United States, and prosecute or defend all causes to which the state or any officer, board, or commission of the state in an official capacity is a party, and take charge, as attorney, of all civil legal matters in which the state is interested;

(c) after judgment on any cause referred to in Subsection (1)(b), direct the issuance of process as necessary to execute the judgment;

(d) account for, and pay over to the proper officer, all money that comes into the attorney general's possession that belongs to the state;

(e) keep a file of all cases in which the attorney general is required to appear, including any documents and papers showing the court in which the cases have been instituted and tried, and whether they are civil or criminal, and:

(i) if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment and of any process issued if satisfied, and if not satisfied, documentation of the return of the sheriff;

(ii) if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution, if the sentence has been executed, and, if not executed, the reason for the delay or prevention; and

(iii) deliver this information to the attorney general's successor in office;

(f) exercise supervisory powers over the district and county attorneys of the state in all matters pertaining to the duties of the district and county attorneys' offices, including the authority described in Subsection (2);

(g) give the attorney general's opinion in writing and without fee, when required, upon any question of law relating to the office of the requester:

(i) in accordance with Section 67-5-1.1, to the Legislature or either house;

(ii) to any state officer, board, or commission; and

(iii) to any county attorney or district attorney;

(h) when required by the public service or directed by the governor, assist any county, district, or city attorney in the discharge of county, district, or city attorney's duties;

(i) purchase in the name of the state, under the direction of the state Board of Examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and enter satisfaction in whole or in part of the judgments as the consideration of the purchases;

(j) when the property of a judgment debtor in any judgment mentioned in Subsection (1)(i) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, redeem the property, under the direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and pay all money necessary for the redemption, upon the order of the state Board of Examiners, out of any money appropriated for these purposes;

(k) when in the attorney general's opinion it is necessary for the collection or enforcement of any judgment, institute and prosecute on behalf of the state any action or proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of Examiners, out of any money not otherwise appropriated;

(l) discharge the duties of a member of all official boards of which the attorney general is or may be made a member by the Utah Constitution or by the laws of the state, and other duties prescribed by law;

(m) institute and prosecute proper proceedings in any court of the state or of the United States to restrain and enjoin corporations organized under the laws of this or any other state or territory from acting illegally or in excess of their corporate powers or contrary to public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations, and wind up their affairs;

(n) institute investigations for the recovery of all real or personal property that may have escheated or should escheat to the state, and for that purpose, subpoena any persons before any of the district courts to answer inquiries and render accounts concerning any property, examine all books and papers of any corporations, and when any real or personal

property is discovered that should escheat to the state, institute suit in the district court of the county where the property is situated for its recovery, and escheat that property to the state;

(o) administer the Children's Justice Center as a program to be implemented in various counties pursuant to Sections 67-5b-101 through 67-5b-107;

(p) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4a, Constitutional and Federalism Defense Act;

(q) pursue any appropriate legal action to implement the state's public lands policy established in Section 63C-4a-103;

(r) investigate and prosecute violations of all applicable state laws relating to fraud in connection with the state Medicaid program and any other medical assistance program administered by the state, including violations of [~~Title 26, Chapter 20, Utah False Claims Act~~] Title 26B, Chapter 3, Part 11, Utah False Claims Act;

(s) investigate and prosecute complaints of abuse, neglect, or exploitation of patients:

(i) in health care facilities that receive payments under the state Medicaid program;

(ii) in board and care facilities, as defined in the federal Social Security Act, 42 U.S.C. Sec. 1396b(q)(4)(B), regardless of the source of payment to the board and care facility; and

(iii) who are receiving medical assistance under the Medicaid program as defined in Section [~~26-18-2~~] 26B-3-101 in a noninstitutional or other setting;

(t) (i) report at least twice per year to the Legislative Management Committee on any pending or anticipated lawsuits, other than eminent domain lawsuits, that might:

(A) cost the state more than $500,000; or

(B) require the state to take legally binding action that would cost more than $500,000 to implement; and

(ii) if the meeting is closed, include an estimate of the state's potential financial or other legal exposure in that report;

(u) (i) submit a written report to the committees described in Subsection (1)(u)(ii) that summarizes any lawsuit or decision in which a court or the Office of the Attorney General has determined that a state statute is unconstitutional or unenforceable since the attorney general's last report under this Subsection (1)(u), including any:

(A) settlements reached;

(B) consent decrees entered;

(C) judgments issued;

(D) preliminary injunctions issued;

(E) temporary restraining orders issued; or

(F) formal or informal policies of the Office of the Attorney General to not enforce a law; and

(ii) at least 30 days before the Legislature's May and November interim meetings, submit the report described in Subsection (1)(u)(i) to:

(A) the Legislative Management Committee;

(B) the Judiciary Interim Committee; and

(C) the Law Enforcement and Criminal Justice Interim Committee;

(v) if the attorney general operates the Office of the Attorney General or any portion of the Office of the Attorney General as an internal service fund agency in accordance with Section 67-5-4, submit to the rate committee established in Section 67-5-34:

(i) a proposed rate and fee schedule in accordance with Subsection 67-5-34(4); and

(ii) any other information or analysis requested by the rate committee;

(w) before the end of each calendar year, create an annual performance report for the Office of the Attorney General and post the report on the attorney general's website;

(x) ensure that any training required under this chapter complies with Title 63G, Chapter 22, State Training and Certification Requirements;

(y) notify the legislative general counsel in writing within three business days after the day on which the attorney general is officially notified of a claim, regardless of whether the claim is filed in state or federal court, that challenges:

(i) the constitutionality of a state statute;

(ii) the validity of legislation; or

(iii) any action of the Legislature; and

(z) (i) notwithstanding Title 63G, Chapter 6a, Utah Procurement Code, provide a special advisor to the Office of the Governor and the Office of the Attorney General in matters relating to Native American and tribal issues to:

(A) establish outreach to the tribes and affected counties and communities; and

(B) foster better relations and a cooperative framework; and

(ii) annually report to the Executive Offices and Criminal Justice Appropriations

Subcommittee regarding:

(A) the status of the work of the special advisor described in Subsection (1)(z)(i); and

(B) whether the need remains for the ongoing appropriation to fund the special advisor described in Subsection (1)(z)(i).

(2) (a) The attorney general may require a district attorney or county attorney of the state to, upon request, report on the status of public business entrusted to the district or county attorney's charge.

(b) The attorney general may review investigation results de novo and file criminal charges, if warranted, in any case involving a first degree felony, if:

(i) a law enforcement agency submits investigation results to the county attorney or district attorney of the jurisdiction where the incident occurred and the county attorney or district attorney:

(A) declines to file criminal charges; or

(B) fails to screen the case for criminal charges within six months after the law enforcement agency's submission of the investigation results; and

(ii) after consultation with the county attorney or district attorney of the jurisdiction where the incident occurred, the attorney general reasonably believes action by the attorney general would not interfere with an ongoing investigation or prosecution by the county attorney or district attorney of the jurisdiction where the incident occurred.

(c) If the attorney general decides to conduct a review under Subsection (2)(b), the district attorney, county attorney, and law enforcement agency shall, within 14 days after the day on which the attorney general makes a request, provide the attorney general with:

(i) all information relating to the investigation, including all reports, witness lists, witness statements, and other documents created or collected in relation to the investigation;

(ii) all recordings, photographs, and other physical or digital media created or collected in relation to the investigation;

(iii) access to all evidence gathered or collected in relation to the investigation; and

(iv) the identification of, and access to, all officers or other persons who have information relating to the investigation.

(d) If a district attorney, county attorney, or law enforcement agency fails to timely comply with Subsection (2)(c), the attorney general may seek a court order compelling

compliance.

(e) If the attorney general seeks a court order under Subsection (2)(d), the court shall grant the order unless the district attorney, county attorney, or law enforcement agency shows good cause and a compelling interest for not complying with Subsection (2)(c).

Section 19. Section **67-5-16** is amended to read:

67-5-16. Child protective services investigators within attorney general's office -- Authority -- Training.

(1) The attorney general may employ, with the consent of the Division of Child and Family Services within the Department of [~~Human Services~~] Health and Human Services, and in accordance with Section 80-2-703, child protective services investigators to investigate alleged instances of abuse or neglect of a child that occur while a child is in the custody of the Division of Child and Family Services. Those investigators may also investigate reports of abuse or neglect of a child by an employee of the Department of [~~Human Services~~] Health and Human Services, or involving a person or entity licensed to provide substitute care for children in the custody of the Division of Child and Family Services.

(2) Attorneys who represent the Division of Child and Family Services under Section 67-5-17, and child protective services investigators employed by the attorney general under Subsection (1), shall be trained on and implement into practice the following items, in order of preference and priority:

(a) the priority of maintaining a child safely in the child's home, whenever possible;

(b) the importance of:

(i) kinship placement, in the event the child is removed from the home; and

(ii) keeping sibling groups together, whenever practicable and in the best interests of the children;

(c) the preference for kinship adoption over nonkinship adoption, if the parent-child relationship is legally terminated;

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

(e) the use of an individualized permanency goal, only as a last resort.

Section 20. Section **67-20-2** is amended to read:

67-20-2. Definitions.

As used in this chapter:

(1) "Agency" means:

(a) a department, institution, office, college, university, authority, division, board, bureau, commission, council, or other agency of the state;

(b) a county, city, town, school district, or special improvement or taxing district; or

(c) any other political subdivision.

(2) "Compensatory service worker" means a person who performs a public service with or without compensation for an agency as a condition or part of the person's:

(a) incarceration;

(b) plea;

(c) sentence;

(d) diversion;

(e) probation; or

(f) parole.

(3) "Emergency medical service volunteer" means an individual who:

(a) provides services as a volunteer under the supervision of a supervising agency or government officer; and

(b) at the time the individual provides the services described in Subsection (3)(a), is:

(i) an emergency medical technician volunteer, a paramedic volunteer, an ambulance volunteer, a volunteer firefighter, or another volunteer provider of emergency medical services; and

(ii) acting in the capacity of a volunteer described in Subsection (3)(b)(i).

(4) "IRS aggregate amount" means the fixed or determinable income aggregate amount described in 26 C.F.R. Sec. 1.6041-1(a)(1)(i)(A).

(5) (a) "Volunteer" means an individual who donates service without pay or other compensation except the following, as approved by the supervising agency:

(i) expenses actually and reasonably incurred;

(ii) a stipend for future higher education expenses, awarded from the National Service Trust under 45 C.F.R. Secs. 2526.10 and 2527.10;

(iii) a stipend, below the IRS aggregate amount, for:

(A) emergency volunteers, including emergency medical service volunteers, volunteer

safety officers, and volunteer search and rescue team members; or

(B) non-emergency volunteers, including senior program volunteers and community event volunteers;

(iv) (A) health benefits provided through the supervising agency; or

(B) for a volunteer who participates in the Volunteer Emergency Medical Service Personnel Health Insurance Program described in Section [~~26-8a-603~~] 26B-4-136, health insurance provided through the program.

(v) passthrough stipends or other compensation provided to volunteers through a federal or state program, including Americorp Seniors volunteers, consistent with 42 U.S.C. Sec. 5058;

(vi) stipends or other compensation, below the IRS aggregate amount, provided to volunteers from any person;

(vii) uniforms, identification, personal protective equipment, or safety equipment used by a volunteer only while volunteering for the supervising entity;

(viii) a nonpecuniary item not exceeding $50 in value;

(ix) nonpecuniary items, below the IRS aggregate amount, donated to the supervising agency with the express intent of benefitting a volunteer; or

(x) meals or gifts, not exceeding $50 in value, provided as part of a volunteers appreciation event by the volunteering agency.

(b) "Volunteer" does not include:

(i) a person participating in human subjects research to the extent that the participation is governed by federal law or regulation inconsistent with this chapter; or

(ii) a compensatory service worker.

(c) "Volunteer" includes a juror or potential juror appearing in response to a summons for a trial jury or grand jury.

(6) "Volunteer facilitator" means a business or nonprofit organization that, from individuals who have a relationship with the business or nonprofit organization, such as membership or employment, provides volunteers to an agency or facilitates volunteers volunteering with an agency.

(7) "Volunteer safety officer" means an individual who:

(a) provides services as a volunteer under the supervision of an agency; and

(b) at the time the individual provides the services to the supervising agency described in Subsection (7)(a), the individual is:

(i) exercising peace officer authority as provided in Section 53-13-102; or

(ii) if the supervising agency described in Subsection (7)(a) is a fire department:

(A) on the rolls of the supervising agency as a firefighter;

(B) not regularly employed as a firefighter by the supervising agency; and

(C) acting in a capacity that includes the responsibility for the extinguishment of fire.

(8) "Volunteer search and rescue team member" means an individual who:

(a) provides services as a volunteer under the supervision of a county sheriff; and

(b) at the time the individual provides the services to the county sheriff described in Subsection (8)(a), is:

(i) certified as a member of the county sheriff's search and rescue team; and

(ii) acting in the capacity of a member of the search and rescue team of the supervising county sheriff.

Section 21. Section **71-11-5** is amended to read:

71-11-5. Operation of homes -- Rulemaking authority -- Selection of administrator.

(1) The department shall, subject to the approval of the executive director:

(a) establish appropriate criteria for the admission and discharge of residents for each home, subject to the requirements in Section 71-11-6 and criteria set by the United States Department of Veterans Affairs;

(b) establish a schedule of charges for each home in cases where residents have available resources;

(c) establish standards for the operation of the homes not inconsistent with standards set by the United States Department of Veterans Affairs;

(d) make rules to implement this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(e) ensure that the homes are licensed in accordance with [~~Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act~~] Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection, and 38 U.S.C. Sec. 1742(a).

(2) The department shall, after reviewing recommendations of the board, appoint an

administrator for each home.

Section 22. Section **72-6-107.5** is amended to read:

72-6-107.5. Construction of improvements of highway -- Contracts -- Health insurance coverage.

(1) As used in this section:

(a) "Aggregate" means the sum of all contracts, change orders, and modifications related to a single project.

(b) "Change order" means the same as that term is defined in Section 63G-6a-103.

(c) "Employee" means, as defined in Section 34A-2-104, an "employee," "worker," or "operative" who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance, which may not exceed the first day of the calendar month following 60 days after the day on which the individual is hired.

(d) "Health benefit plan" means:

(i) the same as that term is defined in Section 31A-1-301; or

(ii) an employee welfare benefit plan:

(A) established under the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.;

(B) for an employer with 100 or more employees; and

(C) in which the employer establishes a self-funded or partially self-funded group health plan to provide medical care for the employer's employees and dependents of the employees.

(e) "Qualified health coverage" means the same as that term is defined in Section [~~26-40-115~~] 26B-3-909.

(f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.

(g) "Third party administrator" or "administrator" means the same as that term is defined in Section 31A-1-301.

(2) Except as provided in Subsection (3), the requirements of this section apply to:

(a) a contractor of a design or construction contract entered into by the department on or after July 1, 2009, if the prime contract is in an aggregate amount equal to or greater than

$2,000,000; and

(b) a subcontractor of a contractor of a design or construction contract entered into by the department on or after July 1, 2009, if the subcontract is in an aggregate amount equal to or greater than $1,000,000.

(3) The requirements of this section do not apply to a contractor or subcontractor described in Subsection (2) if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(4) A person that intentionally uses change orders, contract modifications, or multiple contracts to circumvent the requirements of this section is guilty of an infraction.

(5) (a) A contractor subject to the requirements of this section shall demonstrate to the department that the contractor has and will maintain an offer of qualified health coverage for the contractor's employees and the employees' dependents during the duration of the contract by submitting to the department a written statement that:

(i) the contractor offers qualified health coverage that complies with Section [~~26-40-115~~] 26B-3-909;

(ii) is from:

(A) an actuary selected by the contractor or the contractor's insurer;

(B) an underwriter who is responsible for developing the employer group's premium rates; or

(C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by a third party administrator; and

(iii) was created within one year before the day on which the statement is submitted.

(b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii) shall provide the actuary or underwriter selected by an administrator, as described in Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's contribution to the health benefit plan and the actuarial value of the health benefit plan meet the requirements of qualified health coverage.

(ii) A contractor may not make a change to the contractor's contribution to the health benefit plan, unless the contractor provides notice to:

(A) the actuary or underwriter selected by an administrator, as described in Subsection (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in Subsection (5)(a) in compliance with this section; and

(B) the department.

(c) A contractor that is subject to the requirements of this section shall:

(i) place a requirement in each of the contractor's subcontracts that a subcontractor that is subject to the requirements of this section shall obtain and maintain an offer of qualified health coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and

(ii) obtain from a subcontractor that is subject to the requirements of this section a written statement that:

(A) the subcontractor offers qualified health coverage that complies with Section [~~26-40-115~~] 26B-3-909;

(B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an underwriter who is responsible for developing the employer group's premium rates, or if the subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by an administrator; and

(C) was created within one year before the day on which the contractor obtains the statement.

(d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage described in Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

(ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health coverage described in Subsection (5)(c) during the duration of the subcontract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health coverage described in Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the Division of Facilities Construction and Management in accordance with Section 63A-5b-607;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) a public transit district in accordance with Section 17B-2a-818.5; and

(vi) the Legislature's Administrative Rules Review and General Oversight Committee; and

(c) that establish:

(i) the requirements and procedures a contractor and a subcontractor shall follow to demonstrate compliance with this section, including:

(A) that a contractor or subcontractor's compliance with this section is subject to an audit by the department or the Office of the Legislative Auditor General;

(B) that a contractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(a); and

(C) that a subcontractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(c)(ii);

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health coverage for an employee and a dependent of the employee of the contractor or subcontractor who was not offered qualified health coverage during the duration of the contract; and

(iii) a website on which the department shall post the commercially equivalent benchmark, for the qualified health coverage identified in Subsection (1)(e), that is provided by the Department of [~~Health~~] Health and Human Services, in accordance with Subsection [~~26-40-115(2)~~] 26B-3-909(2).

(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor or subcontractor who intentionally violates the provisions of this section is liable to the employee for health care costs that would have been covered by qualified health coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement described in Subsection (5)(a) or (5)(c)(ii); or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section [~~26-18-402~~] 26B-1-309.

(9) The failure of a contractor or subcontractor to provide qualified health coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:

(i) Section 63G-6a-1602; or

(ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

(10) An administrator, including an administrator's actuary or underwriter, who provides a written statement under Subsection (5)(a) or (c) regarding the qualified health coverage of a contractor or subcontractor who provides a health benefit plan described in Subsection (1)(d)(ii):

(a) subject to Subsection (10)(b), is not liable for an error in the written statement,

unless the administrator commits gross negligence in preparing the written statement;

(b) is not liable for any error in the written statement if the administrator relied in good faith on information from the contractor or subcontractor; and

(c) may require as a condition of providing the written statement that a contractor or subcontractor hold the administrator harmless for an action arising under this section.

Section 23. Section **72-9-103** is amended to read:

72-9-103. Rulemaking -- Motor vehicle liability coverage for certain motor carriers -- Adjudicative proceedings.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules:

(a) adopting by reference in whole or in part the Federal Motor Carrier Safety Regulations including minimum security requirements for motor carriers;

(b) specifying the equipment required to be carried in each tow truck, including limits on loads that may be moved based on equipment capacity and load weight; and

(c) providing for the necessary administration and enforcement of this chapter.

(2) (a) Notwithstanding Subsection (1)(a), the department shall not require a motor carrier to comply with 49 C.F.R. Part 387 Subpart B if the motor carrier is:

(i) engaging in or transacting the business of transporting passengers by an intrastate commercial vehicle that has a seating capacity of no more than 30 passengers; and

(ii) a licensed child care provider under Section [~~26-39-401~~] 26B-2-403.

(b) Policies containing motor vehicle liability coverage for a motor carrier described under Subsection (2)(a) shall require minimum coverage of:

(i) $1,000,000 for a vehicle with a seating capacity of up to 20 passengers; or

(ii) $1,500,000 for a vehicle with a seating capacity of up to 30 passengers.

(3) The department shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

Section 24. Section **72-10-502** is amended to read:

72-10-502. Implied consent to chemical tests for alcohol or drugs -- Number of tests -- Refusal -- Person incapable of refusal -- Results of test available -- Who may give test -- Evidence -- Immunity from liability.

(1) (a) A person operating an aircraft in this state consents to a chemical test or tests of

the person's breath, blood, urine, or oral fluids:

(i) for the purpose of determining whether the person was operating or in actual physical control of an aircraft while having a blood or breath alcohol content statutorily prohibited under Section 72-10-501, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 72-10-501, if the test is or tests are administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of an aircraft in violation of Section 72-10-501; or

(ii) if the person operating the aircraft is involved in an accident that results in death, serious injury, or substantial aircraft damage.

(b) (i) The peace officer determines which of the tests are administered and how many of them are administered.

(ii) The peace officer may order any or all tests of the person's breath, blood, urine, or oral fluids.

(iii) If an officer requests more than one test, refusal by a person to take one or more requested tests, even though the person does submit to any other requested test or tests, is a refusal under this section.

(c) (i) A person who has been requested under this section to submit to a chemical test or tests of the person's breath, blood, urine, or oral fluids may not select the test or tests to be administered.

(ii) The failure or inability of a peace officer to arrange for any specific chemical test is not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the requested test or tests.

(2) (a) If the person has been placed under arrest and has then been requested by a peace officer to submit to any one or more of the chemical tests provided in Subsection (1) and refuses to submit to any chemical test, the person shall be warned by the peace officer requesting the test that a refusal to submit to the test is admissible in civil or criminal proceedings as provided under Subsection (8).

(b) Following this warning, unless the person immediately requests that the chemical test offered by a peace officer be administered, a test may not be given.

(3) A person who is dead, unconscious, or in any other condition rendering the person

incapable of refusal to submit to any chemical test or tests is considered to not have withdrawn the consent provided for in Subsection (1), and the test or tests may be administered whether the person has been arrested or not.

(4) Upon the request of the person who was tested, the results of the test or tests shall be made available to that person.

(5) (a) Only the following, acting at the request of a peace officer, may draw blood to determine its alcohol or drug content:

(i) a physician;

(ii) a registered nurse;

(iii) a licensed practical nurse;

(iv) a paramedic;

(v) as provided in Subsection (5)(b), emergency medical service personnel other than paramedics; or

(vi) a person with a valid permit issued by the Department of [~~Health~~] Health and Human Services under Section [~~26-1-30~~] 26B-1-202.

(b) The Department of [~~Health~~] Health and Human Services may designate by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which emergency medical service personnel, as defined in Section [~~26-8a-102~~] 26B-4-101, are authorized to draw blood under Subsection (5)(a)(v), based on the type of license under Section [~~26-8a-302~~] 26B-4-116.

(c) Subsection (5)(a) does not apply to taking a urine, breath, or oral fluid specimen.

(d) The following are immune from civil or criminal liability arising from drawing a blood sample from a person who a peace officer has reason to believe is flying in violation of this chapter if the sample is drawn in accordance with standard medical practice:

(i) a person authorized to draw blood under Subsection (5)(a); and

(ii) if the blood is drawn at a hospital or other medical facility, the medical facility.

(6) (a) The person to be tested may, at the person's own expense, have a physician of the person's own choice administer a chemical test in addition to the test or tests administered at the direction of a peace officer.

(b) The failure or inability to obtain the additional test does not affect admissibility of the results of the test or tests taken at the direction of a peace officer, or preclude or delay the

test or tests to be taken at the direction of a peace officer.

(c) The additional test shall be subsequent to the test or tests administered at the direction of a peace officer.

(7) For the purpose of determining whether to submit to a chemical test or tests, the person to be tested does not have the right to consult an attorney or have an attorney, physician, or other person present as a condition for the taking of any test.

(8) If a person under arrest refuses to submit to a chemical test or tests or any additional test under this section, evidence of any refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating or in actual physical control of an aircraft while under the influence of alcohol, any drug, or combination of alcohol and any drug.

(9) The results of any test taken under this section or the refusal to be tested shall be reported to the Federal Aviation Administration by the peace officer requesting the test.

(10) Notwithstanding the provisions of this section, a blood test taken under this section is subject to Section 77-23-213.

Section 25. Section **75-1-107** is amended to read:

75-1-107. Evidence of death or status.

(1) In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:

(a) Death occurs when an individual is determined to be dead as provided in [~~Title 26, Chapter 34, Uniform Determination of Death Act~~] Section 26B-8-132.

(b) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.

(c) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(d) In the absence of prima facie evidence of death under Subsection (1)(b) or (c), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

(e) An individual whose death is not established under Subsection (1)(a), (b), (c) or (d) who is absent for a continuous period of five years, during which the individual has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(f) In the absence of evidence disputing the time of death stated on a document described in Subsection (1)(b) or (c), a document described in Subsection (1)(b) or (c) that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours.

(2) The right and duty to control the disposition of a deceased person shall be governed by Sections 58-9-601 through 58-9-604.

Section 26. Section **75-2a-103** is amended to read:

75-2a-103. Definitions.

As used in this chapter:

(1) "Adult" means an individual who is:

(a) at least 18 years [~~of age~~] old; or

(b) an emancipated minor.

(2) "Advance health care directive":

(a) includes:

(i) a designation of an agent to make health care decisions for an adult when the adult cannot make or communicate health care decisions; or

(ii) an expression of preferences about health care decisions;

(b) may take one of the following forms:

(i) a written document, voluntarily executed by an adult in accordance with the requirements of this chapter; or

(ii) a witnessed oral statement, made in accordance with the requirements of this chapter; and

(c) does not include a POLST order.

(3) "Agent" means an adult designated in an advance health care directive to make health care decisions for the declarant.

(4) "APRN" means an individual who is:

(a) certified or licensed as an advance practice registered nurse under Subsection 58-31b-301(2)(e);

(b) an independent practitioner;

(c) acting under a consultation and referral plan with a physician; and

(d) acting within the scope of practice for that individual, as provided by law, rule, and specialized certification and training in that individual's area of practice.

(5) "Best interest" means that the benefits to the person resulting from a treatment outweigh the burdens to the person resulting from the treatment, taking into account:

(a) the effect of the treatment on the physical, emotional, and cognitive functions of the person;

(b) the degree of physical pain or discomfort caused to the person by the treatment or the withholding or withdrawal of treatment;

(c) the degree to which the person's medical condition, the treatment, or the withholding or withdrawal of treatment, result in a severe and continuing impairment of the dignity of the person by subjecting the person to humiliation and dependency;

(d) the effect of the treatment on the life expectancy of the person;

(e) the prognosis of the person for recovery with and without the treatment;

(f) the risks, side effects, and benefits of the treatment, or the withholding or withdrawal of treatment; and

(g) the religious beliefs and basic values of the person receiving treatment, to the extent these may assist the decision maker in determining the best interest.

(6) "Capacity to appoint an agent" means that the adult understands the consequences of appointing a particular person as agent.

(7) "Declarant" means an adult who has completed and signed or directed the signing of an advance health care directive.

(8) "Default surrogate" means the adult who may make decisions for an individual when either:

(a) an agent or guardian has not been appointed; or

(b) an agent is not able, available, or willing to make decisions for an adult.

(9) "Emergency medical services provider" means a person that is licensed, designated,

or certified under [~~Title 26, Chapter 8a, Utah Emergency Medical Services System Act~~] Title 26B, Chapter 4, Part 1, Utah Emergency Medical Services System.

(10) "Generally accepted health care standards":

(a) is defined only for the purpose of:

(i) this chapter and does not define the standard of care for any other purpose under Utah law; and

(ii) enabling health care providers to interpret the statutory form set forth in Section 75-2a-117; and

(b) means the standard of care that justifies a provider in declining to provide life sustaining care because the proposed life sustaining care:

(i) will not prevent or reduce the deterioration in the health or functional status of an individual;

(ii) will not prevent the impending death of an individual; or

(iii) will impose more burden on the individual than any expected benefit to the person.

(11) "Health care" means any care, treatment, service, or procedure to improve, maintain, diagnose, or otherwise affect an individual's physical or mental condition.

(12) "Health care decision":

(a) means a decision about an adult's health care made by, or on behalf of, an adult, that is communicated to a health care provider;

(b) includes:

(i) selection and discharge of a health care provider and a health care facility;

(ii) approval or disapproval of diagnostic tests, procedures, programs of medication, and orders not to resuscitate; and

(iii) directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care; and

(c) does not include decisions about an adult's financial affairs or social interactions other than as indirectly affected by the health care decision.

(13) "Health care decision making capacity" means an adult's ability to make an informed decision about receiving or refusing health care, including:

(a) the ability to understand the nature, extent, or probable consequences of health status and health care alternatives;

(b) the ability to make a rational evaluation of the burdens, risks, benefits, and alternatives of accepting or rejecting health care; and

(c) the ability to communicate a decision.

(14) "Health care facility" means:

(a) a health care facility as defined in [~~Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act~~] Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection; and

(b) private offices of physicians, dentists, and other health care providers licensed to provide health care under Title 58, Occupations and Professions.

(15) "Health care provider" means the same as that term is defined in Section 78B-3-403, except that "health care provider" does not include an emergency medical services provider.

(16) (a) "Life sustaining care" means any medical intervention, including procedures, administration of medication, or use of a medical device, that maintains life by sustaining, restoring, or supplanting a vital function.

(b) "Life sustaining care" does not include care provided for the purpose of keeping an individual comfortable.

(17) "Minor" means an individual who:

(a) is under 18 years old; and

(b) is not an emancipated minor.

(18) "Physician" means a physician and surgeon or osteopathic surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic Medical Practice Act.

(19) "Physician assistant" means an individual licensed as a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act.

(20) "POLST order" means an order, on a form designated by the Department of [~~Health~~] Health and Human Services under Section 75-2a-106, that gives direction to health care providers, health care facilities, and emergency medical services providers regarding the specific health care decisions of the individual to whom the order relates.

(21) "Reasonably available" means:

(a) readily able to be contacted without undue effort; and

(b) willing and able to act in a timely manner considering the urgency of the circumstances.

(22) "Substituted judgment" means the standard to be applied by a surrogate when making a health care decision for an adult who previously had the capacity to make health care decisions, which requires the surrogate to consider:

(a) specific preferences expressed by the adult:

(i) when the adult had the capacity to make health care decisions; and

(ii) at the time the decision is being made;

(b) the surrogate's understanding of the adult's health care preferences;

(c) the surrogate's understanding of what the adult would have wanted under the circumstances; and

(d) to the extent that the preferences described in Subsections (22)(a) through (c) are unknown, the best interest of the adult.

(23) "Surrogate" means a health care decision maker who is:

(a) an appointed agent;

(b) a default surrogate under the provisions of Section 75-2a-108; or

(c) a guardian.

Section 27. Section **75-2a-106** is amended to read:

75-2a-106. Emergency medical services -- POLST order.

(1) A POLST order may be created by or on behalf of a person as described in this section.

(2) A POLST order shall, in consultation with the person authorized to consent to the order pursuant to this section, be prepared by:

(a) the physician, APRN, or, subject to Subsection (11), physician assistant of the person to whom the POLST order relates; or

(b) a health care provider who:

(i) is acting under the supervision of a person described in Subsection (2)(a); and

(ii) is:

(A) a nurse, licensed under Title 58, Chapter 31b, Nurse Practice Act;

(B) a physician assistant, licensed under Title 58, Chapter 70a, Utah Physician Assistant Act;

(C) a mental health professional, licensed under Title 58, Chapter 60, Mental Health Professional Practice Act; or

(D) another health care provider, designated by rule as described in Subsection (10).

(3) A POLST order shall be signed:

(a) personally, by the physician, APRN, or, subject to Subsection (11), physician assistant of the person to whom the POLST order relates; and

(b) (i) if the person to whom the POLST order relates is an adult with health care decision making capacity, by:

(A) the person; or

(B) an adult who is directed by the person to sign the POLST order on behalf of the person;

(ii) if the person to whom the POLST order relates is an adult who lacks health care decision making capacity, by:

(A) the surrogate with the highest priority under Section 75-2a-111;

(B) the majority of the class of surrogates with the highest priority under Section 75-2a-111; or

(C) a person directed to sign the POLST order by, and on behalf of, the persons described in Subsection (3)(b)(ii)(A) or (B); or

(iii) if the person to whom the POLST order relates is a minor, by a parent or guardian of the minor.

(4) If a POLST order relates to a minor and directs that life sustaining treatment be withheld or withdrawn from the minor, the order shall include a certification by two physicians that, in their clinical judgment, an order to withhold or withdraw life sustaining treatment is in the best interest of the minor.

(5) A POLST order:

(a) shall be in writing, on a form designated by the Department of [~~Health~~] Health and Human Services;

(b) shall state the date on which the POLST order was made;

(c) may specify the level of life sustaining care to be provided to the person to whom the order relates; and

(d) may direct that life sustaining care be withheld or withdrawn from the person to

whom the order relates.

(6) A health care provider or emergency medical service provider, licensed or certified under [~~Title 26, Chapter 8a, Utah Emergency Medical Services System Act~~] Title 26B, Chapter 4, Part 1, Utah Emergency Medical Services System, is immune from civil or criminal liability, and is not subject to discipline for unprofessional conduct, for:

(a) complying with a POLST order in good faith; or

(b) providing life sustaining treatment to a person when a POLST order directs that the life sustaining treatment be withheld or withdrawn.

(7) To the extent that the provisions of a POLST order described in this section conflict with the provisions of an advance health care directive made under Section 75-2a-107, the provisions of the POLST order take precedence.

(8) An adult, or a parent or guardian of a minor, may revoke a POLST order by:

(a) orally informing emergency service personnel;

(b) writing "void" across the POLST order form;

(c) burning, tearing, or otherwise destroying or defacing:

(i) the POLST order form; or

(ii) a bracelet or other evidence of the POLST order;

(d) asking another adult to take the action described in this Subsection (8) on the person's behalf;

(e) signing or directing another adult to sign a written revocation on the person's behalf;

(f) stating, in the presence of an adult witness, that the person wishes to revoke the order; or

(g) completing a new POLST order.

(9) (a) Except as provided in Subsection (9)(c), a surrogate for an adult who lacks health care decision making capacity may only revoke a POLST order if the revocation is consistent with the substituted judgment standard.

(b) Except as provided in Subsection (9)(c), a surrogate who has authority under this section to sign a POLST order may revoke a POLST order, in accordance with Subsection (9)(a), by:

(i) signing a written revocation of the POLST order; or

(ii) completing and signing a new POLST order.

(c) A surrogate may not revoke a POLST order during the period of time beginning when an emergency service provider is contacted for assistance, and ending when the emergency ends.

(10) (a) The Department of [~~Health~~] Health and Human Services shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(i) create the forms and systems described in this section; and

(ii) develop uniform instructions for the form established in Section 75-2a-117.

(b) The Department of [~~Health~~] Health and Human Services may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to designate health care professionals, in addition to those described in Subsection (2)(b)(ii), who may prepare a POLST order.

(c) The Department of [~~Health~~] Health and Human Services may assist others with training of health care professionals regarding this chapter.

(11) A physician assistant may not prepare or sign a POLST order, unless the physician assistant is permitted to prepare or sign the POLST order under the physician assistant's delegation of services agreement, as defined in Section 58-70a-102.

(12) (a) Notwithstanding any other provision of this section:

(i) the provisions of Title 46, Chapter 4, Uniform Electronic Transactions Act, apply to any signature required on the POLST order; and

(ii) a verbal confirmation satisfies the requirement for a signature from an individual under Subsection (3)(b)(ii) or (iii), if:

(A) requiring the individual described in Subsection (3)(b)(i)(B), (ii), or (iii) to sign the POLST order in person or electronically would require significant difficulty or expense; and

(B) a licensed health care provider witnesses the verbal confirmation and signs the POLST order attesting that the health care provider witnessed the verbal confirmation.

(b) The health care provider described in Subsection (12)(a)(ii)(B):

(i) may not be the same individual who signs the POLST order under Subsection (3)(a); and

(ii) shall verify, in accordance with HIPAA as defined in Section [~~26-18-17~~] 26B-3-126, the identity of the individual who is providing the verbal confirmation.

Section 28. Section **75-3-104.5** is amended to read:

75-3-104.5. Notice to the Office of Recovery Services.

Within 30 days after the day on which a person files an application or a petition for probate under this chapter for a decedent who was at least 55 years old, the court shall provide notice of the application or petition to the Office of Recovery Services created in Section [~~62A-1-105~~] 26B-9-103 for purposes of presentation or enforcement of a lien or claim under Section [~~26-19-405~~] 26B-3-1013.

Section 29. Section **75-3-803** is amended to read:

75-3-803. Limitations on presentation of claims.

(1) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision of it, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following dates:

(a) one year after the decedent's death; or

(b) within the time provided by Subsection 75-3-801(2) for creditors who are given actual notice, and where notice is published, within the time provided in Subsection 75-3-801(1) for all claims barred by publication.

(2) In all events, claims barred by the nonclaim statute at the decedent's domicile are also barred in this state.

(3) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any of its subdivisions, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(a) a claim based on a contract with the personal representative within three months after performance by the personal representative is due; or

(b) any other claim within the later of three months after it arises, or the time specified in Subsection (1)(a).

(4) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which the decedent or the personal representative is protected by liability insurance;

(c) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate; or

(d) medical assistance recovery under [~~Title 26, Chapter 19, Medical Benefits Recovery Act~~] Title 26B, Chapter 3, Part 10, Medical Benefits Recovery.

(5) If a personal representative has not been timely appointed in accordance with this chapter, one may be appointed for the limited purposes of Subsection (4)(b) for any claim timely brought against the decedent.

Section 30. Section **75-3-805** is amended to read:

75-3-805. Classification of claims.

(1) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(a) reasonable funeral expenses;

(b) costs and expenses of administration;

(c) debts and taxes with preference under federal law;

(d) reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent, and medical assistance if Section [~~26-19-405~~] 26B-3-1013 applies;

(e) debts and taxes with preference under other laws of this state; and

(f) all other claims.

(2) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

Section 31. Section **75-5-309** is amended to read:

75-5-309. Notices in guardianship proceedings.

(1) In a proceeding for the appointment or removal of a guardian of an incapacitated

person other than the appointment of an emergency guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

(a) the ward or the person alleged to be incapacitated and spouse, parents, and adult children of the ward or person;

(b) any person who is serving as guardian or conservator or who has care and custody of the ward or person;

(c) in case no other person is notified under Subsection (1)(a), at least one of the closest adult relatives, if any can be found;

(d) any guardian appointed by the will of the parent who died later or spouse of the incapacitated person; and

(e) Adult Protective Services if Adult Protective Services has received a referral under [~~Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult~~] Title 26B, Chapter 6, Part 2, Abuse, Neglect, or Exploitation of a Vulnerable Adult, concerning the welfare of the ward or person alleged to be incapacitated or concerning the guardian or conservator or proposed guardian or conservator.

(2) The notice shall be in plain language and large type and the form shall have the final approval of the Judicial Council. The notice shall indicate the time and place of the hearing, the possible adverse consequences to the person receiving notice of rights, a list of rights, including the person's own or a court appointed counsel, and a copy of the petition.

(3) Notice shall be served personally on the alleged incapacitated person and the person's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person shall be given as provided in Section 75-1-401. Waiver of notice by the person alleged to be incapacitated is not effective unless the person attends the hearing or the person's waiver of notice is confirmed in an interview with the visitor appointed pursuant to Section 75-5-303.

Section 32. Section **75-5-311** is amended to read:

75-5-311. Who may be guardian -- Priorities.

(1) As used in this section:

(a) "Specialized care professional" means a person who is certified as a National Certified Guardian or National Master Guardian by the Center for Guardianship Certification

or similar organization.

(b) "Suitable institution" means any nonprofit or for profit corporation, partnership, sole proprietorship, or other type of business organization that is owned, operated by, or employs a specialized care professional.

(2) The court shall appoint a guardian in accordance with the incapacitated person's most recent nomination, unless that person is disqualified or the court finds other good cause why the person should not serve as guardian. That nomination shall have been made prior to the person's incapacity, shall be in writing and shall be signed by the person making the nomination. The nomination shall be in substantially the following form:

Nomination of Guardian by an Adult

I, (Name), being of sound mind and not acting under duress, fraud, or other undue influence, do hereby nominate (Name, current residence, and relationship, if any, of the nominee) to serve as my guardian in the event that after the date of this instrument I become incapacitated.

Executed at _____ (city, state)

on this _____ day of _____

_____

(Signature)

(3) Except as provided in Subsection (2), persons who are not disqualified have priority for appointment as guardian in the following order:

(a) a person who has been nominated by the incapacitated person, by any means other than that described in Subsection (2), if the incapacitated person was 14 years [~~of age~~] old or older when the nomination was executed and, in the opinion of the court, that person acted with sufficient mental capacity to make the nomination;

(b) the spouse of the incapacitated person;

(c) an adult child of the incapacitated person;

(d) a parent of the incapacitated person, including a person nominated by will, written instrument, or other writing signed by a deceased parent;

(e) any relative of the incapacitated person with whom he has resided for more than six months prior to the filing of the petition;

(f) a person nominated by the person who is caring for him or paying benefits to him;

(g) a specialized care professional, so long as the specialized care professional does not:

(i) profit financially or otherwise from or receive compensation for acting in that capacity, except for the direct costs of providing guardianship or conservatorship services; or

(ii) otherwise have a conflict of interest in providing those services;

(h) any competent person or suitable institution; or

(i) the Office of Public Guardian under [~~Title 62A, Chapter 14, Office of Public Guardian Act~~] Title 26B, Chapter 6, Part 3, Office of Public Guardian.

Section 33. Section **75-7-508** is amended to read:

75-7-508. Notice to creditors.

(1) (a) A trustee for an inter vivos revocable trust, upon the death of the settlor, may publish a notice to creditors:

(i) once a week for three successive weeks in a newspaper of general circulation in the county where the settlor resided at the time of death; and

(ii) in accordance with Section 45-1-101 for three weeks.

(b) The notice required by Subsection (1)(a) shall:

(i) provide the trustee's name and address; and

(ii) notify creditors:

(A) of the deceased settlor; and

(B) to present their claims within three months after the date of the first publication of the notice or be forever barred from presenting the claim.

(2) A trustee shall give written notice by mail or other delivery to any known creditor of the deceased settlor, notifying the creditor to present the creditor's claim within 90 days from the published notice if given as provided in Subsection (1) or within 60 days from the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice shall be the notice described in Subsection (1) or a similar notice.

(3) (a) If the deceased settlor received medical assistance, as defined in Section [~~26-19-102~~] 26B-3-1001, at any time after the age of 55, the trustee for an inter vivos revocable trust, upon the death of the settlor, shall mail or deliver written notice to the Director of the Office of Recovery Services, on behalf of the Department of [~~Health~~] Health and Human Services, to present any claim under Section [~~26-19-405~~] 26B-3-1013 within 60 days from the

mailing or other delivery of notice, whichever is later, or be forever barred.

(b) If the trustee does not mail notice to the director of the Office of Recovery Services on behalf of the department in accordance with Subsection (3)(a), the department shall have one year from the death of the settlor to present its claim.

(4) The trustee is not liable to any creditor or to any successor of the deceased settlor for giving or failing to give notice under this section.

(5) The notice to creditors shall be valid against any creditor of the trust and also against any creditor of the estate of the deceased settlor.

Section 34. Section **75-7-509** is amended to read:

75-7-509. Limitations on presentation of claims.

(1) All claims against a deceased settlor which arose before the death of the deceased settlor, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the deceased settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased settlor's trust, unless presented within the earlier of the following:

(a) one year after the settlor's death; or

(b) the time provided by Subsection 75-7-508(2) or (3) for creditors who are given actual notice, and where notice is published, within the time provided in Subsection 75-7-508(1) for all claims barred by publication.

(2) In all events, claims barred by the nonclaim statute at the deceased settlor's domicile are also barred in this state.

(3) All claims against a deceased settlor's estate or trust estate which arise at or after the death of the settlor, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis are barred against the deceased settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased settlor, unless presented as follows:

(a) a claim based on a contract with the trustee within three months after performance by the trustee is due; or

(b) any other claim within the later of three months after it arises, or the time specified in Subsection (1).

(4) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the deceased settlor's estate or the trust estate;

(b) to the limits of the insurance protection only, any proceeding to establish liability of the deceased settlor or the trustee for which he is protected by liability insurance;

(c) collection of compensation for services rendered and reimbursement for expenses advanced by the trustee or by the attorney or accountant for the trustee of the trust estate; or

(d) the right to recover medical assistance provided to the settlor under [~~Title 26, Chapter 19, Medical Benefits Recovery Act~~] Title 26B, Chapter ~~{19}~~3, Part 10, Medical Benefits Recovery~~{ Act}~~.

Section 35. Section **75-7-511** is amended to read:

75-7-511. Classification of claims.

(1) If the applicable assets of the deceased settlor's estate or trust estate are insufficient to pay all claims in full, the trustee shall make payment in the following order:

(a) reasonable funeral expenses;

(b) costs and expenses of administration;

(c) debts and taxes with preference under federal law;

(d) reasonable and necessary medical and hospital expenses of the last illness of the deceased settlor, including compensation of persons attending the deceased settlor, and medical assistance if Section [~~26-19-405~~] 26B-3-1013 applies;

(e) debts and taxes with preference under other laws of this state; and

(f) all other claims.

(2) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

Section 36. Section **76-3-203.11** is amended to read:

76-3-203.11. Reporting an overdose -- Mitigating factor.

It is a mitigating factor in sentencing for an offense under Title 58, Chapter 37, Utah Controlled Substances Act, that the person or bystander:

(1) reasonably believes that the person or another person is experiencing an overdose event due to the ingestion, injection, inhalation, or other introduction into the human body of a controlled substance or other substance;

(2) reports, or assists a person who reports, in good faith the overdose event to a medical provider, an emergency medical service provider as defined in Section [~~26-8a-102~~] 26B-4-101, a law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the person is the subject of a report made under this section;

(3) provides in the report under Subsection (2) a functional description of the location of the actual overdose event that facilitates responding to the person experiencing the overdose event;

(4) remains at the location of the person experiencing the overdose event until a responding law enforcement officer or emergency medical service provider arrives, or remains at the medical care facility where the person experiencing an overdose event is located until a responding law enforcement officer arrives;

(5) cooperates with the responding medical provider, emergency medical service provider, and law enforcement officer, including providing information regarding the person experiencing the overdose event and any substances the person may have injected, inhaled, or otherwise introduced into the person's body; and

(6) committed the offense in the same course of events from which the reported overdose arose.

Section 37. Section **76-5-102.6** is amended to read:

76-5-102.6. Propelling object or substance at a correctional or peace officer -- Penalties.

(1) (a) As used in this section, "infectious agent" means the same as that term is defined in Section [~~26-6-2~~] 26B-7-201.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits the offense of propelling an object or substance at a correctional or peace officer if the actor:

(a) is a prisoner or a detained individual; and

(b) throws or otherwise propels an object or substance at a peace officer, a correctional officer, or an employee or volunteer, including a health care provider.

(3) (a) A violation of Subsection (2) is a class A misdemeanor.

(b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree felony if:

(i) the object or substance causes substantial bodily injury to the peace officer, the correctional officer, or the employee or volunteer, including a health care provider; or

(ii) (A) the object or substance is:

(I) blood, urine, semen, or fecal material;

(II) an infectious agent or a material that carries an infectious agent;

(III) vomit or a material that carries vomit; or

(IV) the actor's saliva, and the actor knows the actor is infected with HIV, hepatitis B, or hepatitis C; and

(B) the object or substance comes into contact with any portion of the officer's, employee's, volunteer's, or health care provider's face, including the eyes or mouth, or comes into contact with any open wound on the officer's, employee's, volunteer's, or health care provider's body.

(4) If an offense committed under this section amounts to an offense subject to a greater penalty under another provision of state law than under this section, this section does not prohibit prosecution and sentencing for the more serious offense.

Section 38. Section **76-5-102.7** is amended to read:

76-5-102.7. Assault or threat of violence against health care provider, emergency medical service worker, or health facility employee, owner, or contractor -- Penalty.

(1) (a) As used in this section:

(i) "Assault" means an offense under Section 76-5-102.

(ii) "Emergency medical service worker" means an individual licensed under Section [~~26-8a-302~~] 26B-4-116.

(iii) "Health care provider" means the same as that term is defined in Section 78B-3-403.

(iv) "Health facility" means:

(A) a health care facility as defined in Section [~~26-21-2~~] 26B-2-201; and

(B) the office of a private health care provider, whether for individual or group practice.

(v) "Health facility employee" means an employee, owner, or contractor of a health facility.

(vi) "Threat of violence" means an offense under Section 76-5-107.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) (a) An actor commits assault or threat of violence against a health care provider or emergency medical service worker if:

(i) the actor is not a prisoner or a detained individual;

(ii) the actor commits an assault or threat of violence;

(iii) the actor knew that the victim was a health care provider or emergency medical service worker; and

(iv) the health care provider or emergency medical service worker was performing emergency or [~~life saving~~] lifesaving duties within the scope of his or her authority at the time of the assault or threat of violence.

(b) An actor commits assault or threat of violence against a health facility employee if:

(i) the actor is not a prisoner or a detained individual;

(ii) the actor commits an assault or threat of violence;

(iii) the actor knew that the victim was a health facility employee; and

(iv) the health facility employee was acting within the scope of the health facility employee's duties for the health facility.

(3) (a) A violation of Subsection (2) is a class A misdemeanor.

(b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree felony if the actor:

(i) causes substantial bodily injury; and

(ii) acts intentionally or knowingly.

Section 39. Section **76-5-102.9** is amended to read:

76-5-102.9. Propelling a bodily substance or material -- Penalties.

(1) (a) As used in this section:

(i) "Bodily substance or material" means:

(A) saliva, blood, urine, semen, or fecal material;

(B) an infectious agent or a material that carries an infectious agent; or

(C) vomit or a material that carries vomit.

(ii) "Infectious agent" means the same as that term is defined in Section [~~26-6-2~~] 26B-7-201.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits propelling a bodily substance or material if the actor knowingly or intentionally throws or otherwise propels a bodily substance or material at another individual.

(3) (a) A violation of Subsection (2) is a class B misdemeanor.

(b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a class A misdemeanor if:

(i) the bodily substance or material is the actor's saliva and the actor knows the actor is infected with HIV, hepatitis B, or hepatitis C; or

(ii) the bodily substance or material comes into contact with any portion of the other individual's face, including the eyes or mouth, or comes into contact with any open wound on the other individual's body.

(4) If an offense committed under this section amounts to an offense subject to a greater penalty under another provision of state law than under this section, this section does not prohibit prosecution and sentencing for the more serious offense.

Section 40. Section **76-5-112.5** is amended to read:

76-5-112.5. Endangerment of a child or vulnerable adult.

(1) (a) As used in this section:

(i) (A) "Chemical substance" means:

(I) a substance intended to be used as a precursor in the manufacture of a controlled substance;

(II) a substance intended to be used in the manufacture of a controlled substance; or

(III) any fumes or by-product resulting from the manufacture of a controlled substance.

(B) Intent under this Subsection (1)(a)(i) may be demonstrated by:

(I) the use, quantity, or manner of storage of the substance; or

(II) the proximity of the substance to other precursors or to manufacturing equipment.

(ii) "Child" means an individual who is under 18 years old.

(iii) "Controlled substance" means the same as that term is defined in Section 58-37-2.

(iv) "Drug paraphernalia" means the same as that term is defined in Section 58-37a-3.

(v) "Exposed to" means that the child or vulnerable adult:

(A) is able to access an unlawfully possessed:

(I) controlled substance; or

(II) chemical substance;

(B) has the reasonable capacity to access drug paraphernalia; or

(C) is able to smell an odor produced during, or as a result of, the manufacture or production of a controlled substance.

(vi) "Prescription" means the same as that term is defined in Section 58-37-2.

(vii) "Vulnerable adult" means the same as that term is defined in Section 76-5-111.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits endangerment of a child or vulnerable adult if the actor knowingly or intentionally causes or permits a child or a vulnerable adult to be exposed to, inhale, ingest, or have contact with a controlled substance, chemical substance, or drug paraphernalia.

(3) (a) A violation of Subsection (2) is a third degree felony.

(b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a second degree felony if:

(i) the actor engages in the conduct described in Subsection (2); and

(ii) as a result of the conduct described in Subsection (2), the child or the vulnerable adult suffers bodily injury, substantial bodily injury, or serious bodily injury.

(c) Notwithstanding Subsection (3)(a) or (b), a violation of Subsection (2) is a first degree felony if:

(i) the actor engages in the conduct described in Subsection (2); and

(ii) as a result of the conduct described in Subsection (2), the child or the vulnerable adult dies.

(4) (a) Notwithstanding Subsection (3), a child may not be subjected to delinquency proceedings for a violation of Subsection (2) unless:

(i) the child is 15 years old or older; and

(ii) the other child who is exposed to or inhales, ingests, or has contact with the controlled substance, chemical substance, or drug paraphernalia, is under 12 years old.

(b) It is an affirmative defense to a violation of this section that the controlled substance:

(i) was obtained by lawful prescription or in accordance with [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical

Cannabis; and

(ii) is used or possessed by the individual to whom the controlled substance was lawfully prescribed or recommended to under [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.

(5) The penalties described in this section are separate from, and in addition to, the penalties and enhancements described in Title 58, Occupations and Professions.

(6) If an offense committed under this section amounts to an offense subject to a greater penalty under another provision of state law, this section does not prohibit prosecution and sentencing for the more serious offense.

Section 41. Section **76-5-113** is amended to read:

76-5-113. Surreptitious administration of certain substances -- Definitions -- Penalties -- Defenses.

(1) (a) As used in this section:

(i) "Administer" means the introduction of a substance into the body by injection, inhalation, ingestion, or by any other means.

(ii) "Alcoholic beverage" means the same as that term is defined in Section 32B-1-102.

(iii) "Controlled substance" means the same as that term is defined in Section 58-37-2.

(iv) "Deleterious substance" means a substance which, if administered, would likely cause bodily injury.

(v) "Health care provider" means the same as that term is defined in Section [~~26-23a-1~~] 78B-3-403.

(vi) "Poisonous" means a substance which, if administered, would likely cause serious bodily injury or death.

(vii) "Prescription drug" means the same as that term is defined in Section 58-17b-102.

(viii) "Serious bodily injury" means the same as that term is defined in Section 19-2-115.

(ix) "Substance" means a controlled substance, poisonous substance, or deleterious substance.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits surreptitious administration of a certain substance if the actor, surreptitiously or by means of fraud, deception, or misrepresentation, causes an individual to

unknowingly consume or receive the administration of:

(a) any poisonous, deleterious, or controlled substance; or

(b) any alcoholic beverage.

(3) A violation of Subsection (2) is:

(a) a second degree felony if the substance is a poisonous substance, regardless of whether the substance is a controlled substance or a prescription drug;

(b) a third degree felony if the substance is not within the scope of Subsection (3)(a), and is a controlled substance or a prescription drug; or

(c) a class A misdemeanor if the substance is a deleterious substance or an alcoholic beverage.

(4) (a) It is an affirmative defense to a prosecution under Subsection (2) that the actor:

(i) provided the appropriate administration of a prescription drug; and

(ii) acted on the reasonable belief that the actor's conduct was in the best interest of the well-being of the individual to whom the prescription drug was administered.

(b) (i) The defendant shall file and serve on the prosecuting attorney a notice in writing of the defendant's intention to claim a defense under Subsection (4)(a) not fewer than 20 days before the trial.

(ii) The notice shall specifically identify the factual basis for the defense and the names and addresses of the witnesses the defendant proposes to examine to establish the defense.

(c) (i) The prosecuting attorney shall file and serve the defendant with a notice containing the names and addresses of the witnesses the prosecutor proposes to examine in order to contradict or rebut the defendant's claim of an affirmative defense under Subsection (4)(a).

(ii) This notice shall be filed or served not more than 10 days after receipt of the defendant's notice under Subsection (4)(b), or at another time as the court may direct.

(d) (i) Failure of a party to comply with the requirements of Subsection (4)(b) or (4)(c) entitles the opposing party to a continuance to allow for preparation.

(ii) If the court finds that a party's failure to comply is the result of bad faith, it may impose appropriate sanctions.

(5) (a) This section does not diminish the scope of authorized health care by a health care provider.

(b) Conduct in violation of Subsection (2) may also constitute a separate offense.

Section 42. Section **76-5-412** is amended to read:

76-5-412. Custodial sexual relations -- Penalties -- Defenses and limitations.

(1) (a) As used in this section:

(i) "Actor" means:

(A) a law enforcement officer, as defined in Section 53-13-103;

(B) a correctional officer, as defined in Section 53-13-104;

(C) a special function officer, as defined in Section 53-13-105; or

(D) an employee of, or private provider or contractor for, the Department of Corrections or a county jail.

(ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.

(iii) "Person in custody" means an individual, either an adult 18 years old or older, or a minor younger than 18 years old, who is:

(A) a prisoner, as defined in Section 76-5-101, and includes a prisoner who is in the custody of the Department of Corrections created under Section 64-13-2, but who is being housed at the Utah State Hospital established under Section [~~62A-15-601~~] 26B-5-302 or other medical facility;

(B) under correctional supervision, such as at a work release facility or as a parolee or probationer; or

(C) under lawful or unlawful arrest, either with or without a warrant.

(iv) "Private provider or contractor" means a person that contracts with the Department of Corrections or with a county jail to provide services or functions that are part of the operation of the Department of Corrections or a county jail under state or local law.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) (a) An actor commits custodial sexual relations if the actor commits any of the acts under Subsection (2)(b):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (4); and

(ii) (A) the actor knows that the individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.

(b) Acts referred to in Subsection (2)(a) are:

(i) having sexual intercourse with a person in custody;

(ii) engaging in a sexual act with a person in custody involving the genitals of one individual and the mouth or anus of another individual; or

(iii) (A) causing the penetration, however slight, of the genital or anal opening of a person in custody by any foreign object, substance, instrument, or device, including a part of the human body; and

(B) intending to cause substantial emotional or bodily pain to any individual.

(c) Any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of a violation of Subsection (2)(a).

(3) (a) A violation of Subsection (2) is a third degree felony.

(b) Notwithstanding Subsection (3)(a), if the person in custody is younger than 18 years old, a violation of Subsection (2) is a second degree felony.

(c) If the act committed under Subsection (3) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (3), this Subsection (3) does not prohibit prosecution and sentencing for the more serious offense.

(4) The offenses referred to in Subsection (2)(a)(i) and Subsection 76-5-412.2(2)(a)(i) are:

(a) Section 76-5-401, unlawful sexual activity with a minor;

(b) Section 76-5-402, rape;

(c) Section 76-5-402.1, rape of a child;

(d) Section 76-5-402.2, object rape;

(e) Section 76-5-402.3, object rape of a child;

(f) Section 76-5-403, forcible sodomy;

(g) Section 76-5-403.1, sodomy on a child;

(h) Section 76-5-404, forcible sexual abuse;

(i) Section 76-5-404.1, sexual abuse of a child, or Section 76-5-404.3, aggravated sexual abuse of a child; or

(j) Section 76-5-405, aggravated sexual assault.

(5) (a) It is not a defense to the commission of, or the attempt to commit, the offense of custodial sexual relations under Subsection (2) if the person in custody is younger than 18 years

old, that the actor:

(i) mistakenly believed the person in custody to be 18 years old or older at the time of the alleged offense; or

(ii) was unaware of the true age of the person in custody.

(b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2).

(6) It is a defense that the commission by the actor of an act under Subsection (2) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Section 43. Section **76-5b-201** is amended to read:

76-5b-201. Sexual exploitation of a minor -- Offenses.

(1) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits sexual exploitation of a minor when the actor knowingly possesses or intentionally views child pornography.

(3) (a) A violation of Subsection (2) is a second degree felony.

(b) It is a separate offense under this section:

(i) for each minor depicted in the child pornography; and

(ii) for each time the same minor is depicted in different child pornography.

(4) (a) It is an affirmative defense to a charge of violating this section that no minor was actually depicted in the visual depiction or used in producing or advertising the visual depiction.

(b) For a charge of violating this section, it is an affirmative defense that:

(i) the defendant:

(A) did not solicit the child pornography from the minor depicted in the child pornography;

(B) is not more than two years older than the minor depicted in the child pornography; and

(C) upon request of a law enforcement agent or the minor depicted in the child pornography, removes from an electronic device or destroys the child pornography and all copies of the child pornography in the defendant's possession; and

(ii) the child pornography does not depict an offense under Chapter 5, Part 4, Sexual Offenses.

(5) In proving a violation of this section in relation to an identifiable minor, proof of the actual identity of the identifiable minor is not required.

(6) This section may not be construed to impose criminal or civil liability on:

(a) an entity or an employee, director, officer, or agent of an entity when acting within the scope of employment, for the good faith performance of:

(i) reporting or data preservation duties required under federal or state law; or

(ii) implementing a policy of attempting to prevent the presence of child pornography on tangible or intangible property, or of detecting and reporting the presence of child pornography on the property;

(b) a law enforcement officer acting within the scope of a criminal investigation;

(c) an employee of a court who may be required to view child pornography during the course of and within the scope of the employee's employment;

(d) a juror who may be required to view child pornography during the course of the individual's service as a juror;

(e) an attorney or employee of an attorney who is required to view child pornography during the course of a judicial process and while acting within the scope of employment;

(f) an employee of the Department of [~~Human Services~~] Health and Human Services who is required to view child pornography within the scope of the employee's employment; or

(g) an attorney who is required to view child pornography within the scope of the attorney's responsibility to represent the Department of [~~Human Services~~] Health and Human Services, including the divisions and offices within the Department of [~~Human Services~~] Health and Human Services.

Section 44. Section **76-6-106** is amended to read:

76-6-106. Criminal mischief.

(1) As used in this section, "critical infrastructure" includes:

(a) information and communication systems;

(b) financial and banking systems;

(c) any railroads, airlines, airports, airways, highways, bridges, waterways, fixed guideways, or other transportation systems intended for the transportation of persons or property;

(d) any public utility service, including the power, energy, and water supply systems;

(e) sewage and water treatment systems;

(f) health care facilities as listed in Section [~~26-21-2~~] 26B-2-201, and emergency fire, medical, and law enforcement response systems;

(g) public health facilities and systems;

(h) food distribution systems; and

(i) other government operations and services.

(2) A person commits criminal mischief if the person:

(a) under circumstances not amounting to arson, damages or destroys property with the intention of defrauding an insurer;

(b) intentionally and unlawfully tampers with the property of another and as a result:

(i) recklessly endangers:

(A) human life; or

(B) human health or safety; or

(ii) recklessly causes or threatens a substantial interruption or impairment of any critical infrastructure;

(c) intentionally damages, defaces, or destroys the property of another; or

(d) 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.

(3) (a) (i) A violation of Subsection (2)(a) is a third degree felony.

(ii) A violation of Subsection (2)(b)(i)(A) is a class A misdemeanor.

(iii) A violation of Subsection (2)(b)(i)(B) is a class B misdemeanor.

(iv) A violation of Subsection (2)(b)(ii) is a second degree felony.

(b) Any other violation of this section is a:

(i) second degree felony if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of $5,000 in value;

(ii) third degree felony if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of $1,500 but is less than $5,000 in value;

(iii) class A misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of $500 but is less than $1,500 in value; and

(iv) class B misdemeanor if the actor's conduct causes or is intended to cause pecuniary

loss less than $500 in value.

(4) In determining the value of damages under this section, or for computer crimes under Section 76-6-703, the value of any item, computer, computer network, computer property, computer services, software, or data includes the measurable value of the loss of use of the items and the measurable cost to replace or restore the items.

(5) In addition to any other penalty authorized by law, a court shall order any person convicted of any violation of this section to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses incurred in responding to a violation of Subsection (2)(b)(ii), unless the court states on the record the reasons why the reimbursement would be inappropriate.

Section 45. Section **76-6-702** is amended to read:

76-6-702. Definitions.

As used in this part:

(1) "Access" means to directly or indirectly use, attempt to use, instruct, communicate with, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, computer network, or any means of communication with any of them.

(2) "Authorization" means having the express or implied consent or permission of the owner, or of the person authorized by the owner to give consent or permission to access a computer, computer system, or computer network in a manner not exceeding the consent or permission.

(3) "Computer" means any electronic device or communication facility that stores, processes, transmits, or facilitates the transmission of data.

(4) "Computer network" means:

(a) the interconnection of communication or telecommunication lines between:

(i) computers; or

(ii) computers and remote terminals; or

(b) the interconnection by wireless technology between:

(i) computers; or

(ii) computers and remote terminals.

(5) "Computer property" includes electronic impulses, electronically produced data, information, financial instruments, software, or programs, in either machine or human readable

form, any other tangible or intangible item relating to a computer, computer system, computer network, and copies of any of them.

(6) "Computer system" means a set of related, connected or unconnected, devices, software, or other related computer equipment.

(7) "Computer technology" includes:

(a) a computer;

(b) a computer network;

(c) computer hardware;

(d) a computer system;

(e) a computer program;

(f) computer services;

(g) computer software; or

(h) computer data.

(8) "Confidential" means data, text, or computer property that is protected by a security system that clearly evidences that the owner or custodian intends that it not be available to others without the owner's or custodian's permission.

(9) "Critical infrastructure" includes:

(a) a financial or banking system;

(b) any railroad, airline, airport, airway, highway, bridge, waterway, fixed guideway, or other transportation system intended for the transportation of persons or property;

(c) any public utility service, including a power, energy, gas, or water supply system;

(d) a sewage or water treatment system;

(e) a health care facility, as that term is defined in Section [~~26-21-2~~] 26B-2-201;

(f) an emergency fire, medical, or law enforcement response system;

(g) a public health facility or system;

(h) a food distribution system;

(i) a government computer system or network;

(j) a school; or

(k) other government facilities, operations, or services.

(10) "Denial of service attack" means an attack or intrusion that is intended to disrupt legitimate access to, or use of, a network resource, a machine, or computer technology.

(11) "Financial instrument" includes any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, electronic fund transfer, automated clearing house transaction, credit card, or marketable security.

(12) (a) "Identifying information" means a person's:

(i) social security number;

(ii) driver license number;

(iii) nondriver governmental identification number;

(iv) bank account number;

(v) student identification number;

(vi) credit or debit card number;

(vii) personal identification number;

(viii) unique biometric data;

(ix) employee or payroll number;

(x) automated or electronic signature; or

(xi) computer password.

(b) "Identifying information" does not include information that is lawfully available from publicly available information, or from federal, state, or local government records lawfully made available to the general public.

(13) "Information" does not include information obtained:

(a) through use of:

(i) an electronic product identification or tracking system; or

(ii) other technology used by a retailer to identify, track, or price goods; and

(b) by a retailer through the use of equipment designed to read the electronic product identification or tracking system data located within the retailer's location.

(14) "Interactive computer service" means an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet or a system operated, or services offered, by a library or an educational institution.

(15) "License or entitlement" includes:

(a) licenses, certificates, and permits granted by governments;

(b) degrees, diplomas, and grades awarded by educational institutions;

(c) military ranks, grades, decorations, and awards;

(d) membership and standing in organizations and religious institutions;

(e) certification as a peace officer;

(f) credit reports; and

(g) another record or datum upon which a person may be reasonably expected to rely in making decisions that will have a direct benefit or detriment to another.

(16) "Security system" means a computer, computer system, network, or computer property that has some form of access control technology implemented, such as encryption, password protection, other forced authentication, or access control designed to keep out unauthorized persons.

(17) "Services" include computer time, data manipulation, and storage functions.

(18) "Service provider" means a telecommunications carrier, cable operator, computer hardware or software provider, or a provider of information service or interactive computer service.

(19) "Software" or "program" means a series of instructions or statements in a form acceptable to a computer, relating to the operations of the computer, or permitting the functioning of a computer system in a manner designed to provide results including system control programs, application programs, or copies of any of them.

Section 46. Section **76-7-301** is amended to read:

76-7-301. Definitions.

As used in this part:

(1) (a) "Abortion" means:

(i) the intentional termination or attempted termination of human pregnancy after implantation of a fertilized ovum through a medical procedure carried out by a physician or through a substance used under the direction of a physician;

(ii) the intentional killing or attempted killing of a live unborn child through a medical procedure carried out by a physician or through a substance used under the direction of a physician; or

(iii) the intentional causing or attempted causing of a miscarriage through a medical procedure carried out by a physician or through a substance used under the direction of a physician.

(b) "Abortion" does not include:

(i) removal of a dead unborn child;

(ii) removal of an ectopic pregnancy; or

(iii) the killing or attempted killing of an unborn child without the consent of the pregnant woman, unless:

(A) the killing or attempted killing is done through a medical procedure carried out by a physician or through a substance used under the direction of a physician; and

(B) the physician is unable to obtain the consent due to a medical emergency.

(2) "Abortion clinic" means the same as that term is defined in Section [~~26-21-2~~] 26B-2-201.

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

(4) "Department" means the Department of [~~Health~~] Health and Human Services.

(5) "Down syndrome" means a genetic condition associated with an extra chromosome 21, in whole or in part, or an effective trisomy for chromosome 21.

(6) "Gestational age" means the age of an unborn child as calculated from the first day of the last menstrual period of the pregnant woman.

(7) "Hospital" means:

(a) a general hospital licensed by the department according to [~~Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act~~] Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection; and

(b) a clinic or other medical facility to the extent that such clinic or other medical facility is certified by the department as providing equipment and personnel sufficient in quantity and quality to provide the same degree of safety to the pregnant woman and the unborn child as would be provided for the particular medical procedures undertaken by a general hospital licensed by the department.

(8) "Information module" means the pregnancy termination information module prepared by the department.

(9) "Medical emergency" means that condition which, on the basis of the physician's good faith clinical judgment, so threatens the life of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.

(10) "Minor" means an individual who is:

(a) under 18 years old;

(b) unmarried; and

(c) not emancipated.

(11) (a) "Partial birth abortion" means an abortion in which the person performing the abortion:

(i) deliberately and intentionally vaginally delivers a living fetus until, in the case of a head first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and

(ii) performs the overt act, other than completion of delivery, that kills the partially living fetus.

(b) "Partial birth abortion" does not include the dilation and evacuation procedure involving dismemberment prior to removal, the suction curettage procedure, or the suction aspiration procedure for abortion.

(12) "Physician" means:

(a) a medical doctor licensed to practice medicine and surgery under Title 58, Chapter 67, Utah Medical Practice Act;

(b) an osteopathic physician licensed to practice osteopathic medicine under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

(c) a physician employed by the federal government who has qualifications similar to a person described in Subsection (12)(a) or (b).

(13) (a) "Severe brain abnormality" means a malformation or defect that causes an individual to live in a mentally vegetative state.

(b) "Severe brain abnormality" does not include:

(i) Down syndrome;

(ii) spina bifida;

(iii) cerebral palsy; or

(iv) any other malformation, defect, or condition that does not cause an individual to live in a mentally vegetative state.

Section 47. Section **76-7-305** is amended to read:

76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory -- Exceptions.

(1) A person may not perform an abortion, unless, before performing the abortion, the physician who will perform the abortion obtains from the woman on whom the abortion is to be performed a voluntary and informed written consent that is consistent with:

(a) Section 8.08 of the American Medical Association's Code of Medical Ethics, Current Opinions; and

(b) the provisions of this section.

(2) Except as provided in Subsection (8), consent to an abortion is voluntary and informed only if, at least 72 hours before the abortion:

(a) a staff member of an abortion clinic or hospital, physician, registered nurse, nurse practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or physician's assistant presents the information module to the pregnant woman;

(b) the pregnant woman views the entire information module and presents evidence to the individual described in Subsection (2)(a) that the pregnant woman viewed the entire information module;

(c) after receiving the evidence described in Subsection (2)(b), the individual described in Subsection (2)(a):

(i) documents that the pregnant woman viewed the entire information module;

(ii) gives the pregnant woman, upon her request, a copy of the documentation described in Subsection (2)(c)(i); and

(iii) provides a copy of the statement described in Subsection (2)(c)(i) to the physician who is to perform the abortion, upon request of that physician or the pregnant woman;

(d) after the pregnant woman views the entire information module, the physician who is to perform the abortion, the referring physician, a physician, a registered nurse, nurse practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or physician's assistant, in a face-to-face consultation in any location in the state, orally informs the woman of:

(i) the nature of the proposed abortion procedure;

(ii) specifically how the procedure described in Subsection (2)(d)(i) will affect the

fetus;

(iii) the risks and alternatives to the abortion procedure or treatment;

(iv) the options and consequences of aborting a medication-induced abortion, if the proposed abortion procedure is a medication-induced abortion;

(v) the probable gestational age and a description of the development of the unborn child at the time the abortion would be performed;

(vi) the medical risks associated with carrying her child to term;

(vii) the right to view an ultrasound of the unborn child, at no expense to the pregnant woman, upon her request; and

(viii) when the result of a prenatal screening or diagnostic test indicates that the unborn child has or may have Down syndrome, the Department of [~~Health~~] Health and Human Services website containing the information described in Section [~~26-10-14~~] 26B-7-106, including the information on the informational support sheet; and

(e) after the pregnant woman views the entire information module, a staff member of the abortion clinic or hospital provides to the pregnant woman:

(i) on a document that the pregnant woman may take home:

(A) the address for the department's website described in Section 76-7-305.5; and

(B) a statement that the woman may request, from a staff member of the abortion clinic or hospital where the woman viewed the information module, a printed copy of the material on the department's website;

(ii) a printed copy of the material on the department's website described in Section 76-7-305.5, if requested by the pregnant woman; and

(iii) a copy of the form described in Subsection [~~26-21-33(3)(a)(i)~~] 26B-2-232(3)(a)(i) regarding the disposition of the aborted fetus.

(3) Before performing an abortion, the physician who is to perform the abortion shall:

(a) in a face-to-face consultation, provide the information described in Subsection (2)(d), unless the attending physician or referring physician is the individual who provided the information required under Subsection (2)(d); and

(b) (i) obtain from the pregnant woman a written certification that the information required to be provided under Subsection (2) and this Subsection (3) was provided in accordance with the requirements of Subsection (2) and this Subsection (3);

(ii) obtain a copy of the statement described in Subsection (2)(c)(i); and

(iii) ensure that:

(A) the woman has received the information described in Subsections [~~26-21-33(3) and (4)~~] 26B-2-232(3) and (4); and

(B) if the woman has a preference for the disposition of the aborted fetus, the woman has informed the health care facility of the woman's decision regarding the disposition of the aborted fetus.

(4) When a serious medical emergency compels the performance of an abortion, the physician shall inform the woman prior to the abortion, if possible, of the medical indications supporting the physician's judgment that an abortion is necessary.

(5) If an ultrasound is performed on a woman before an abortion is performed, the individual who performs the ultrasound, or another qualified individual, shall:

(a) inform the woman that the ultrasound images will be simultaneously displayed in a manner to permit her to:

(i) view the images, if she chooses to view the images; or

(ii) not view the images, if she chooses not to view the images;

(b) simultaneously display the ultrasound images in order to permit the woman to:

(i) view the images, if she chooses to view the images; or

(ii) not view the images, if she chooses not to view the images;

(c) inform the woman that, if she desires, the person performing the ultrasound, or another qualified person shall provide a detailed description of the ultrasound images, including:

(i) the dimensions of the unborn child;

(ii) the presence of cardiac activity in the unborn child, if present and viewable; and

(iii) the presence of external body parts or internal organs, if present and viewable; and

(d) provide the detailed description described in Subsection (5)(c), if the woman requests it.

(6) The information described in Subsections (2), (3), and (5) is not required to be provided to a pregnant woman under this section if the abortion is performed for a reason described in:

(a) Subsection 76-7-302(3)(b)(i), if the treating physician and one other physician

concur, in writing, that the abortion is necessary to avert:

(i) the death of the woman on whom the abortion is performed; or

(ii) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed; or

(b) Subsection 76-7-302(3)(b)(ii).

(7) In addition to the criminal penalties described in this part, a physician who violates the provisions of this section:

(a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102; and

(b) shall be subject to:

(i) suspension or revocation of the physician's license for the practice of medicine and surgery in accordance with Section 58-67-401 or 58-68-401; and

(ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.

(8) A physician is not guilty of violating this section for failure to furnish any of the information described in Subsection (2) or (3), or for failing to comply with Subsection (5), if:

(a) the physician can demonstrate by a preponderance of the evidence that the physician reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the pregnant woman;

(b) in the physician's professional judgment, the abortion was necessary to avert:

(i) the death of the woman on whom the abortion is performed; or

(ii) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed;

(c) the pregnancy was the result of rape or rape of a child, as described in Sections 76-5-402 and 76-5-402.1;

(d) the pregnancy was the result of incest, as defined in Subsection 76-5-406(2)(j) and Section 76-7-102; or

(e) at the time of the abortion, the pregnant woman was 14 years old or younger.

(9) A physician who complies with the provisions of this section and Section 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain informed consent under Section 78B-3-406.

(10) (a) The department shall provide an ultrasound, in accordance with the provisions

of Subsection (5)(b), at no expense to the pregnant woman.

(b) A local health department shall refer a pregnant woman who requests an ultrasound described in Subsection (10)(a) to the department.

(11) A physician is not guilty of violating this section if:

(a) the information described in Subsection (2) is provided less than 72 hours before the physician performs the abortion; and

(b) in the physician's professional judgment, the abortion was necessary in a case where:

(i) a ruptured membrane, documented by the attending or referring physician, will cause a serious infection; or

(ii) a serious infection, documented by the attending or referring physician, will cause a ruptured membrane.

Section 48. Section **76-7-305.5** is amended to read:

76-7-305.5. Requirements for information module and website.

(1) In order to ensure that a woman's consent to an abortion is truly an informed consent, the department shall, in accordance with the requirements of this section, develop an information module and maintain a public website.

(2) The information module and public website described in Subsection (1) shall:

(a) be scientifically accurate, comprehensible, and presented in a truthful, nonmisleading manner;

(b) present adoption as a preferred and positive choice and alternative to abortion;

(c) be produced in a manner that conveys the state's preference for childbirth over abortion;

(d) state that the state prefers childbirth over abortion;

(e) state that it is unlawful for any person to coerce a woman to undergo an abortion;

(f) state that any physician who performs an abortion without obtaining the woman's informed consent or without providing her a private medical consultation in accordance with the requirements of this section, may be liable to her for damages in a civil action at law;

(g) provide a geographically indexed list of resources and public and private services available to assist, financially or otherwise, a pregnant woman during pregnancy, at childbirth, and while the child is dependent, including:

(i) medical assistance benefits for prenatal care, childbirth, and neonatal care;

(ii) services and supports available under Section 35A-3-308;

(iii) other financial aid that may be available during an adoption;

(iv) services available from public adoption agencies, private adoption agencies, and private attorneys whose practice includes adoption; and

(v) the names, addresses, and telephone numbers of each person listed under this Subsection (2)(g);

(h) describe the adoption-related expenses that may be paid under Section 76-7-203;

(i) describe the persons who may pay the adoption related expenses described in Subsection (2)(h);

(j) except as provided in Subsection (4), describe the legal responsibility of the father of a child to assist in child support, even if the father has agreed to pay for an abortion;

(k) except as provided in Subsection (4), describe the services available through the Office of Recovery Services, within the Department of [~~Human Services~~] Health and Human Services, to establish and collect the support described in Subsection (2)(j);

(l) state that private adoption is legal;

(m) describe and depict, with pictures or video segments, the probable anatomical and physiological characteristics of an unborn child at two-week gestational increments from fertilization to full term, including:

(i) brain and heart function;

(ii) the presence and development of external members and internal organs; and

(iii) the dimensions of the fetus;

(n) show an ultrasound of the heartbeat of an unborn child at:

(i) four weeks from conception;

(ii) six to eight weeks from conception; and

(iii) each month after 10 weeks gestational age, up to 14 weeks gestational age;

(o) describe abortion procedures used in current medical practice at the various stages of growth of the unborn child, including:

(i) the medical risks associated with each procedure;

(ii) the risk related to subsequent childbearing that are associated with each procedure; and

(iii) the consequences of each procedure to the unborn child at various stages of fetal development;

(p) describe the possible detrimental psychological effects of abortion;

(q) describe the medical risks associated with carrying a child to term;

(r) include relevant information on the possibility of an unborn child's survival at the two-week gestational increments described in Subsection (2)(m);

(s) except as provided in Subsection (5), include:

(i) information regarding substantial medical evidence from studies concluding that an unborn child who is at least 20 weeks gestational age may be capable of experiencing pain during an abortion procedure; and

(ii) the measures that will be taken in accordance with Section 76-7-308.5;

(t) explain the options and consequences of aborting a medication-induced abortion;

(u) include the following statement regarding a medication-induced abortion, "Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you have taken mifepristone but have not yet taken the second drug and have questions regarding the health of your fetus or are questioning your decision to terminate your pregnancy, you should consult a physician immediately.";

(v) inform a pregnant woman that she has the right to view an ultrasound of the unborn child, at no expense to her, upon her request;

(w) inform a pregnant woman that she has the right to:

(i) determine the final disposition of the remains of the aborted fetus;

(ii) unless the woman waives this right in writing, wait up to 72 hours after the abortion procedure is performed to make a determination regarding the disposition of the aborted fetus before the health care facility may dispose of the fetal remains;

(iii) receive information about options for disposition of the aborted fetus, including the method of disposition that is usual and customary for a health care facility; and

(iv) for a medication-induced abortion, return the aborted fetus to the health care facility for disposition; and

(x) provide a digital copy of the form described in Subsection [~~26-21-33(3)(a)(i)~~] 26B-2-232(3)(a)(i); and

(y) be in a typeface large enough to be clearly legible.

(3) The information module and website described in Subsection (1) may include a toll-free 24-hour telephone number that may be called in order to obtain, orally, a list and description of services, agencies, and adoption attorneys in the locality of the caller.

(4) The department may develop a version of the information module and website that omits the information in Subsections (2)(j) and (k) for a viewer who is pregnant as the result of rape.

(5) The department may develop a version of the information module and website that omits the information described in Subsection (2)(s) for a viewer who will have an abortion performed:

(a) on an unborn child who is less than 20 weeks gestational age at the time of the abortion; or

(b) on an unborn child who is at least 20 weeks gestational age at the time of the abortion, if:

(i) the abortion is being performed for a reason described in Subsection 76-7-302(3)(b)(i) or (ii); and

(ii) due to a serious medical emergency, time does not permit compliance with the requirement to provide the information described in Subsection (2)(s).

(6) The department and each local health department shall make the information module and the website described in Subsection (1) available at no cost to any person.

(7) The department shall make the website described in Subsection (1) available for viewing on the department's website by clicking on a conspicuous link on the home page of the website.

(8) The department shall ensure that the information module is:

(a) available to be viewed at all facilities where an abortion may be performed;

(b) interactive for the individual viewing the module, including the provision of opportunities to answer questions and manually engage with the module before the module transitions from one substantive section to the next;

(c) produced in English and may include subtitles in Spanish or another language; and

(d) capable of being viewed on a tablet or other portable device.

(9) After the department releases the initial version of the information module, for the

use described in Section 76-7-305, the department shall:

(a) update the information module, as required by law; and

(b) present an updated version of the information module to the Health and Human Services Interim Committee for the committee's review and recommendation before releasing the updated version for the use described in Section 76-7-305.

Section 49. Section **76-7-306** is amended to read:

76-7-306. Refusal to participate, admit, or treat for abortion based on religious or moral grounds -- Cause of action.

(1) As used in this section:

(a) "Health care facility" is as defined in Section [~~26-21-2~~] 26B-2-201.

(b) "Health care provider" means an individual who is an employee of, has practice privileges at, or is otherwise associated with a health care facility.

(2) A health care provider may, on religious or moral grounds, refuse to perform or participate in any way, in:

(a) an abortion; or

(b) a procedure that is intended to, or likely to, result in the termination of a pregnancy.

(3) Except as otherwise required by law, a health care facility may refuse, on religious or moral grounds, to:

(a) admit a patient for an abortion procedure or another procedure that is intended to, or likely to, result in the termination of a pregnancy; or

(b) perform for a patient an abortion procedure or another procedure that is intended to, or likely to, result in the termination of a pregnancy.

(4) A health care provider's refusal under Subsection (2) and a health care facility's refusal under Subsection (3) may not be the basis for civil liability or other recriminatory action.

(5) A health care facility, employer, or other person may not take an adverse action against a health care provider for exercising the health care provider's right of refusal described in Subsection (2), or for bringing or threatening to bring an action described in Subsection (6), including:

(a) dismissal;

(b) demotion;

(c) suspension;

(d) discipline;

(e) discrimination;

(f) harassment;

(g) retaliation;

(h) adverse change in status;

(i) termination of, adverse alteration of, or refusal to renew an association or agreement; or

(j) refusal to provide a benefit, privilege, raise, promotion, tenure, or increased status that the health care provider would have otherwise received.

(6) A person who is adversely impacted by conduct prohibited in Subsection (5) may bring a civil action for equitable relief, including reinstatement, and for damages. A person who brings an action under this section must commence the action within three years after the day on which the cause of action arises.

Section 50. Section **76-7-313** is amended to read:

76-7-313. Department's enforcement responsibility -- Physician's report to department.

(1) In order for the department to maintain necessary statistical information and ensure enforcement of the provisions of this part:

(a) any physician performing an abortion must obtain and record in writing:

(i) the age, marital status, and county of residence of the woman on whom the abortion was performed;

(ii) the number of previous abortions performed on the woman described in Subsection (1)(a)(i);

(iii) the hospital or other facility where the abortion was performed;

(iv) the weight in grams of the unborn child aborted, if it is possible to ascertain;

(v) the pathological description of the unborn child;

(vi) the given gestational age of the unborn child;

(vii) the date the abortion was performed;

(viii) the measurements of the unborn child, if possible to ascertain; and

(ix) the medical procedure used to abort the unborn child; and

(b) the department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) Each physician who performs an abortion shall provide the following to the department within 30 days after the day on which the abortion is performed:

(a) the information described in Subsection (1);

(b) a copy of the pathologist's report described in Section 76-7-309;

(c) an affidavit:

(i) indicating whether the required consent was obtained pursuant to Sections 76-7-305 and 76-7-305.5;

(ii) described in Subsection (3), if applicable; and

(iii) indicating whether at the time the physician performed the abortion, the physician had any knowledge that the pregnant woman sought the abortion solely because the unborn child had or may have had Down syndrome; and

(d) a certificate indicating:

(i) whether the unborn child was or was not viable, as defined in Subsection 76-7-302(1), at the time of the abortion;

(ii) whether the unborn child was older than 18 weeks gestational age at the time of the abortion; and

(iii) if the unborn child was viable, as defined in Subsection 76-7-302(1), or older than 18 weeks gestational age at the time of the abortion, the reason for the abortion.

(3) If the information module or the address to the website is not provided to a pregnant woman, the physician who performs the abortion on the woman shall, within 10 days after the day on which the abortion is performed, provide to the department an affidavit that:

(a) specifies the information that was not provided to the woman; and

(b) states the reason that the information was not provided to the woman.

(4) All information supplied to the department shall be confidential and privileged pursuant to [~~Title 26, Chapter 25, Confidential Information Release~~] Section 26B-1-229.

(5) The department shall pursue all administrative and legal remedies when the department determines that a physician or a facility has not complied with the provisions of this part.

Section 51. Section **76-7-314** is amended to read:

76-7-314. Violations of abortion laws -- Classifications.

(1) A willful violation of Section 76-7-307, 76-7-308, 76-7-310, 76-7-310.5, 76-7-311, or 76-7-312 is a felony of the third degree.

(2) A violation of Section 76-7-326 is a felony of the third degree.

(3) A violation of Section 76-7-302.5 or 76-7-314.5 is a felony of the second degree.

(4) A violation of any other provision of this part, including Subsections 76-7-305(2)(a) through (c), and (e), is a class A misdemeanor.

(5) The Department of [~~Health~~] Health and Human Services shall report a physician's violation of any provision of this part to the Physicians Licensing Board, described in Section 58-67-201.

(6) Any person with knowledge of a physician's violation of any provision of this part may report the violation to the Physicians Licensing Board, described in Section 58-67-201.

(7) In addition to the penalties described in this section, the department may take any action described in Section [~~26-21-11~~] 26B-2-208 against an abortion clinic if a violation of this chapter occurs at the abortion clinic.

Section 52. Section **76-8-311.1** is amended to read:

76-8-311.1. Secure areas -- Items prohibited -- Penalty.

(1) In addition to the definitions in Section 76-10-501, as used in this section:

(a) "Correctional facility" has the same meaning as defined in Section 76-8-311.3.

(b) "Explosive" has the same meaning as defined for "explosive, chemical, or incendiary device" defined in Section 76-10-306.

(c) "Law enforcement facility" means a facility which is owned, leased, or operated by a law enforcement agency.

(d) "Mental health facility" has the same meaning as defined in Section [~~62A-15-602~~] 26B-5-301.

(e) (i) "Secure area" means any area into which certain persons are restricted from transporting any firearm, ammunition, dangerous weapon, or explosive.

(ii) A "secure area" may not include any area normally accessible to the public.

(2) (a) A person in charge of the State Tax Commission or a correctional, law enforcement, or mental health facility may establish secure areas within the facility and may prohibit or control by rule any firearm, ammunition, dangerous weapon, or explosive.

(b) Subsections (2)(a), (3), (4), (5), and (6) apply to higher education secure area hearing rooms referred to in Subsections 53B-3-103(2)(a)(ii) and (b).

(3) At least one notice shall be prominently displayed at each entrance to an area in which a firearm, ammunition, dangerous weapon, or explosive is restricted.

(4) (a) Provisions shall be made to provide a secure weapons storage area so that persons entering the secure area may store their weapons prior to entering the secure area.

(b) The entity operating the facility shall be responsible for weapons while they are stored in the storage area.

(5) It is a defense to any prosecution under this section that the accused, in committing the act made criminal by this section, acted in conformity with the facility's rule or policy established pursuant to this section.

(6) (a) Any person who knowingly or intentionally transports into a secure area of a facility any firearm, ammunition, or dangerous weapon is guilty of a third degree felony.

(b) Any person violates Section 76-10-306 who knowingly or intentionally transports, possesses, distributes, or sells any explosive in a secure area of a facility.

Section 53. Section **76-8-311.3** is amended to read:

76-8-311.3. Items prohibited in correctional and mental health facilities -- Penalties.

(1) As used in this section:

(a) "Contraband" means any item not specifically prohibited for possession by offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

(b) "Controlled substance" means any substance defined as a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.

(c) "Correctional facility" means:

(i) any facility operated by or contracting with the Department of Corrections to house offenders in either a secure or nonsecure setting;

(ii) any facility operated by a municipality or a county to house or detain criminal offenders;

(iii) any juvenile detention facility; and

(iv) any building or grounds appurtenant to the facility or lands granted to the state, municipality, or county for use as a correctional facility.

(d) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.

(e) "Medicine" means any prescription drug as defined in Title 58, Chapter 17b, Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58, Chapter 37, Utah Controlled Substances Act.

(f) "Mental health facility" means the same as that term is defined in Section [~~62A-15-602~~] 26B-5-301.

(g) "Nicotine product" means the same as that term is defined in Section 76-10-101.

(h) "Offender" means a person in custody at a correctional facility.

(i) "Secure area" means the same as that term is defined in Section 76-8-311.1.

(j) "Tobacco product" means the same as that term is defined in Section 76-10-101.

(2) Notwithstanding Section 76-10-500, a correctional or mental health facility may provide by rule that no firearm, ammunition, dangerous weapon, implement of escape, explosive, controlled substance, spirituous or fermented liquor, medicine, or poison in any quantity may be:

(a) transported to or upon a correctional or mental health facility;

(b) sold or given away at any correctional or mental health facility;

(c) given to or used by any offender at a correctional or mental health facility; or

(d) knowingly or intentionally possessed at a correctional or mental health facility.

(3) It is a defense to any prosecution under this section if the accused in committing the act made criminal by this section with respect to:

(a) a correctional facility operated by the Department of Corrections, acted in conformity with departmental rule or policy;

(b) a correctional facility operated by a municipality, acted in conformity with the policy of the municipality;

(c) a correctional facility operated by a county, acted in conformity with the policy of the county; or

(d) a mental health facility, acted in conformity with the policy of the mental health facility.

(4) (a) An individual who transports to or upon a correctional facility, or into a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of

escape with intent to provide or sell it to any offender, is guilty of a second degree felony.

(b) An individual who provides or sells to any offender at a correctional facility, or any detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a second degree felony.

(c) An offender who possesses at a correctional facility, or a detainee who possesses at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a second degree felony.

(d) An individual who, without the permission of the authority operating the correctional facility or the secure area of a mental health facility, knowingly possesses at a correctional facility or a secure area of a mental health facility any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a third degree felony.

(e) An individual violates Section 76-10-306 who knowingly or intentionally transports, possesses, distributes, or sells any explosive in a correctional facility or mental health facility.

(5) (a) An individual is guilty of a third degree felony who, without the permission of the authority operating the correctional facility or secure area of a mental health facility, knowingly transports to or upon a correctional facility or into a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine, whether or not lawfully prescribed for the offender; or

(iii) poison in any quantity.

(b) An individual is guilty of a third degree felony who knowingly violates correctional or mental health facility policy or rule by providing or selling to any offender at a correctional facility or detainee within a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine, whether or not lawfully prescribed for the offender; or

(iii) poison in any quantity.

(c) An inmate is guilty of a third degree felony who, in violation of correctional or mental health facility policy or rule, possesses at a correctional facility or in a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine, other than medicine provided by the facility's health care providers in compliance with facility policy; or

(iii) poison in any quantity.

(d) An individual is guilty of a class A misdemeanor who, with the intent to directly or indirectly provide or sell any tobacco product, electronic cigarette product, or nicotine product to an offender, directly or indirectly:

(i) transports, delivers, or distributes any tobacco product, electronic cigarette product, or nicotine product to an offender or on the grounds of any correctional facility;

(ii) solicits, requests, commands, coerces, encourages, or intentionally aids another person to transport any tobacco product, electronic cigarette product, or nicotine product to an offender or on any correctional facility, if the person is acting with the mental state required for the commission of an offense; or

(iii) facilitates, arranges, or causes the transport of any tobacco product, electronic cigarette product, or nicotine product in violation of this section to an offender or on the grounds of any correctional facility.

(e) An individual is guilty of a class A misdemeanor who, without the permission of the authority operating the correctional or mental health facility, fails to declare or knowingly possesses at a correctional facility or in a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine; or

(iii) poison in any quantity.

(f) (i) Except as provided in Subsection (5)(f)(ii), an individual is guilty of a class B misdemeanor who, without the permission of the authority operating the correctional facility, knowingly engages in any activity that would facilitate the possession of any contraband by an offender in a correctional facility.

(ii) The provisions of Subsection (5)(d) regarding any tobacco product, electronic cigarette product, or nicotine product take precedence over this Subsection (5)(f).

(g) Exemptions may be granted for worship for Native American inmates pursuant to Section 64-13-40.

(6) The possession, distribution, or use of a controlled substance at a correctional facility or in a secure area of a mental health facility shall be prosecuted in accordance with

Title 58, Chapter 37, Utah Controlled Substances Act.

(7) The department shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish guidelines for providing written notice to visitors that providing any tobacco product, electronic cigarette product, or nicotine product to offenders is a class A misdemeanor.

Section 54. Section **76-8-1202** is amended to read:

76-8-1202. Application of part.

(1) This part does not apply to offenses by providers under the state's Medicaid program that are actionable under [~~Title 26, Chapter 20, Utah False Claims Act~~] Title 26B, Chapter 3, Part 11, Utah False Claims Act.

(2) (a) Section 35A-1-503 applies to criminal actions taken under this part.

(b) The repayment of funds or other benefits obtained in violation of the provisions of this chapter shall not constitute a defense or grounds for dismissal of a criminal action.

Section 55. Section **76-9-307** is amended to read:

76-9-307. Injury to service animals -- Penalties.

(1) As used in this section:

(a) "Disability" has the same meaning as defined in Section [~~62A-5b-102~~] 26B-6-801.

(b) "Search and rescue dog" means a dog:

(i) with documented training to locate persons who are:

(A) lost, missing, or injured; or

(B) trapped under debris as the result of a natural or man-made event; and

(ii) affiliated with an established search and rescue dog organization.

(c) "Service animal" means:

(i) a service animal as defined in Section [~~62A-5b-102~~] 26B-6-801; or

(ii) a search and rescue dog.

(2) It is a class A misdemeanor for a person to knowingly, intentionally, or recklessly cause substantial bodily injury or death to a service animal.

(3) It is a class A misdemeanor for a person who owns, keeps, harbors, or exercises control over an animal to knowingly, intentionally, or recklessly fail to exercise sufficient control over the animal to prevent it from causing:

(a) any substantial bodily injury or the death of a service animal; or

(b) the service animal's subsequent inability to function as a service animal as a result of the animal's attacking, chasing, or harassing the service animal.

(4) It is a class B misdemeanor for a person to chase or harass a service animal.

(5) It is a class B misdemeanor for a person who owns, keeps, harbors, or exercises control over an animal to knowingly, intentionally, or recklessly fail to exercise sufficient control over the animal to prevent it from chasing or harassing a service animal while it is carrying out its functions as a service animal, to the extent that the animal temporarily interferes with the service animal's ability to carry out its functions.

(6) (a) A service animal is exempt from quarantine or other animal control ordinances if it bites any person while it is subject to an offense under Subsection (2), (3), (4), or (5).

(b) The owner of the service animal or the person with a disability whom the service animal serves shall make the animal available for examination at any reasonable time and shall notify the local health officer if the animal exhibits any abnormal behavior.

(7) In addition to any other penalty, a person convicted of any violation of this section is liable for restitution to the owner of the service animal or the person with a disability whom the service animal serves for the replacement, training, and veterinary costs incurred as a result of the violation of this section.

(8) If the act committed under this section amounts to an offense subject to a greater penalty under another provision of Title 76, Utah Criminal Code, than is provided under this section, this section does not prohibit prosecution and sentencing for the more serious offense.

Section 56. Section **76-9-704** is amended to read:

76-9-704. Abuse or desecration of a dead human body -- Penalties.

(1) For purposes of this section, "dead human body" includes any part of a human body in any stage of decomposition, including ancient human remains as defined in Section 9-8-302.

(2) A person is guilty of abuse or desecration of a dead human body if the person intentionally and unlawfully:

(a) fails to report the finding of a dead human body to a local law enforcement agency;

(b) disturbs, moves, removes, conceals, or destroys a dead human body or any part of it;

(c) disinters a buried or otherwise interred dead human body, without authority of a court order;

(d) dismembers a dead human body to any extent, or damages or detaches any part or portion of a dead human body; or

(e) (i) commits or attempts to commit upon any dead human body any act of sexual penetration, regardless of the sex of the actor and of the dead human body; and

(ii) as used in Subsection (2)(e)(i), "sexual penetration" means penetration, however slight, of the genital or anal opening by any object, substance, instrument, or device, including a part of the human body, or penetration involving the genitals of the actor and the mouth of the dead human body.

(3) A person does not violate this section if when that person directs or carries out procedures regarding a dead human body, that person complies with:

(a) Title 9, Chapter 8, Part 3, Antiquities;

(b) [~~Title 26, Chapter 4, Utah Medical Examiner Act~~] Title 26B, Chapter 8, Part 2, Utah Medical Examiner;

(c) [~~Title 26, Chapter 28, Revised Uniform Anatomical Gift Act~~] Title 26B, Chapter 8, Part 3, Revised Uniform Anatomical Gift Act;

(d) Title 53B, Chapter 17, Part 3, Use of Dead Bodies for Medical Purposes;

(e) Title 58, Chapter 9, Funeral Services Licensing Act; or

(f) Title 58, Chapter 67, Utah Medical Practice Act, which concerns licensing to practice medicine.

(4) (a) Failure to report the finding of a dead human body as required under Subsection (2)(a) is a class B misdemeanor.

(b) Abuse or desecration of a dead human body as described in Subsections (2)(b) through (e) is a third degree felony.

Section 57. Section **76-10-101** is amended to read:

76-10-101. Definitions.

As used in this part:

(1) (a) "Alternative nicotine product" means a product, other than a cigarette, a counterfeit cigarette, an electronic cigarette product, a nontherapeutic nicotine product, or a tobacco product, that:

(i) contains nicotine;

(ii) is intended for human consumption;

(iii) is not purchased with a prescription from a licensed physician; and

(iv) is not approved by the United States Food and Drug Administration as nicotine replacement therapy.

(b) "Alternative nicotine product" includes:

(i) pure nicotine;

(ii) snortable nicotine;

(iii) dissolvable salts, orbs, pellets, sticks, or strips; and

(iv) nicotine-laced food and beverage.

(c) "Alternative nicotine product" does not include a fruit, a vegetable, or a tea that contains naturally occurring nicotine.

(2) "Cigar" means a product that contains nicotine, is intended to be burned under ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in any substance containing tobacco, other than any roll of tobacco that is a cigarette.

(3) "Cigarette" means a product that contains nicotine, is intended to be heated or burned under ordinary conditions of use, and consists of:

(a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(b) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in Subsection (3)(a).

(4) (a) "Electronic cigarette" means:

(i) any electronic oral device:

(A) that provides an aerosol or a vapor of nicotine or other substance; and

(B) which simulates smoking through the use or inhalation of the device;

(ii) a component of the device described in Subsection (4)(a)(i); or

(iii) an accessory sold in the same package as the device described in Subsection (4)(a)(i).

(b) "Electronic cigarette" includes an oral device that is:

(i) composed of a heating element, battery, or electronic circuit; and

(ii) marketed, manufactured, distributed, or sold as:

(A) an e-cigarette;

(B) an e-cigar;

(C) an e-pipe; or

(D) any other product name or descriptor, if the function of the product meets the definition of Subsection (4)(a).

(c) "Electronic cigarette" does not mean a medical cannabis device, as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(5) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette substance, or a prefilled electronic cigarette.

(6) "Electronic cigarette substance" means any substance, including liquid containing nicotine, used or intended for use in an electronic cigarette.

(7) (a) "Flavored electronic cigarette product" means an electronic cigarette product that has a taste or smell that is distinguishable by an ordinary consumer either before or during use or consumption of the electronic cigarette product.

(b) "Flavored electronic cigarette product" includes an electronic cigarette product that has a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice.

(c) "Flavored electronic cigarette product" does not include an electronic cigarette product that:

(i) has a taste or smell of only tobacco, mint, or menthol; or

(ii) has been approved by an order granting a premarket tobacco product application of the electronic cigarette product by the United States Food and Drug Administration under 21 U.S.C. Sec. 387j(c)(1)(A)(i).

(8) "Nicotine" means a poisonous, nitrogen containing chemical that is made synthetically or derived from tobacco or other plants.

(9) "Nicotine product" means an alternative nicotine product or a nontherapeutic nicotine product.

(10) (a) "Nontherapeutic nicotine device" means a device that:

(i) has a pressurized canister that is used to administer nicotine to the user through inhalation or intranasally;

(ii) is not purchased with a prescription from a licensed physician; and

(iii) is not approved by the United States Food and Drug Administration as nicotine replacement therapy.

(b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or a nontherapeutic nicotine nasal spray.

(11) "Nontherapeutic nicotine device substance" means a substance that:

(a) contains nicotine;

(b) is sold in a cartridge for use in a nontherapeutic nicotine device;

(c) is not purchased with a prescription from a licensed physician; and

(d) is not approved by the United States Food and Drug Administration as nicotine replacement therapy.

(12) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.

(13) "Place of business" includes:

(a) a shop;

(b) a store;

(c) a factory;

(d) a public garage;

(e) an office;

(f) a theater;

(g) a recreation hall;

(h) a dance hall;

(i) a poolroom;

(j) a cafe;

(k) a cafeteria;

(l) a cabaret;

(m) a restaurant;

(n) a hotel;

(o) a lodging house;

(p) a streetcar;

(q) a bus;

(r) an interurban or railway passenger coach;

(s) a waiting room; and

(t) any other place of business.

(14) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled with an electronic cigarette substance.

(15) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine device that is sold prefilled with a nontherapeutic nicotine device substance.

(16) "Retail tobacco specialty business" means the same as that term is defined in Section [~~26-62-102~~] 26B-7-501.

(17) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other lighted smoking equipment.

(18) (a) "Tobacco paraphernalia" means equipment, product, or material of any kind that is used, intended for use, or designed for use to package, repackage, store, contain, conceal, ingest, inhale, or otherwise introduce a tobacco product, an electronic cigarette substance, or a nontherapeutic nicotine device substance into the human body.

(b) "Tobacco paraphernalia" includes:

(i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) water pipes;

(iii) carburetion tubes and devices;

(iv) smoking and carburetion masks;

(v) roach clips, meaning objects used to hold burning material, such as a cigarette, that has become too small or too short to be held in the hand;

(vi) chamber pipes;

(vii) carburetor pipes;

(viii) electric pipes;

(ix) air-driven pipes;

(x) chillums;

(xi) bongs; and

(xii) ice pipes or chillers.

(c) "Tobacco paraphernalia" does not include matches or lighters.

(19) "Tobacco product" means:

(a) a cigar;

(b) a cigarette; or

(c) tobacco in any form, including:

(i) chewing tobacco; and

(ii) any substitute for tobacco, including flavoring or additives to tobacco.

(20) "Tobacco retailer" means:

(a) a general tobacco retailer, as that term is defined in Section [~~26-62-102~~] 26B-7-501; or

(b) a retail tobacco specialty business.

Section 58. Section **76-10-526** is amended to read:

76-10-526. Criminal background check prior to purchase of a firearm -- Fee -- Exemption for concealed firearm permit holders and law enforcement officers.

(1) For purposes of this section, "valid permit to carry a concealed firearm" does not include a temporary permit issued under Section 53-5-705.

(2) (a) To establish personal identification and residence in this state for purposes of this part, a dealer shall require an individual receiving a firearm to present one photo identification on a form issued by a governmental agency of the state.

(b) A dealer may not accept a driving privilege card issued under Section 53-3-207 as proof of identification for the purpose of establishing personal identification and residence in this state as required under this Subsection (2).

(3) (a) A criminal history background check is required for the sale of a firearm by a licensed firearm dealer in the state.

(b) Subsection (3)(a) does not apply to the sale of a firearm to a Federal Firearms Licensee.

(4) (a) An individual purchasing a firearm from a dealer shall consent in writing to a criminal background check, on a form provided by the bureau.

(b) The form shall contain the following information:

(i) the dealer identification number;

(ii) the name and address of the individual receiving the firearm;

(iii) the date of birth, height, weight, eye color, and hair color of the individual receiving the firearm; and

(iv) the social security number or any other identification number of the individual receiving the firearm.

(5) (a) The dealer shall send the information required by Subsection (4) to the bureau immediately upon its receipt by the dealer.

(b) A dealer may not sell or transfer a firearm to an individual until the dealer has provided the bureau with the information in Subsection (4) and has received approval from the bureau under Subsection (7).

(6) The dealer shall make a request for criminal history background information by telephone or other electronic means to the bureau and shall receive approval or denial of the inquiry by telephone or other electronic means.

(7) When the dealer calls for or requests a criminal history background check, the bureau shall:

(a) review the criminal history files, including juvenile court records, and the temporary restricted file created under Section 53-5c-301, to determine if the individual is prohibited from purchasing, possessing, or transferring a firearm by state or federal law;

(b) inform the dealer that:

(i) the records indicate the individual is prohibited; or

(ii) the individual is approved for purchasing, possessing, or transferring a firearm;

(c) provide the dealer with a unique transaction number for that inquiry; and

(d) provide a response to the requesting dealer during the call for a criminal background check, or by return call, or other electronic means, without delay, except in case of electronic failure or other circumstances beyond the control of the bureau, the bureau shall advise the dealer of the reason for the delay and give the dealer an estimate of the length of the delay.

(8) (a) The bureau may not maintain any records of the criminal history background check longer than 20 days from the date of the dealer's request, if the bureau determines that the individual receiving the firearm is not prohibited from purchasing, possessing, or transferring the firearm under state or federal law.

(b) However, the bureau shall maintain a log of requests containing the dealer's federal firearms number, the transaction number, and the transaction date for a period of 12 months.

(9) (a) If the criminal history background check discloses information indicating that the individual attempting to purchase the firearm is prohibited from purchasing, possessing, or transferring a firearm, the bureau shall inform the law enforcement agency in the jurisdiction

where the individual resides.

(b) Subsection (9)(a) does not apply to an individual prohibited from purchasing a firearm solely due to placement on the temporary restricted list under Section 53-5c-301.

(c) A law enforcement agency that receives information from the bureau under Subsection (9)(a) shall provide a report before August 1 of each year to the bureau that includes:

(i) based on the information the bureau provides to the law enforcement agency under Subsection (9)(a), the number of cases that involve an individual who is prohibited from purchasing, possessing, or transferring a firearm as a result of a conviction for an offense involving domestic violence; and

(ii) of the cases described in Subsection (9)(c)(i):

(A) the number of cases the law enforcement agency investigates; and

(B) the number of cases the law enforcement agency investigates that result in a criminal charge.

(d) The bureau shall:

(i) compile the information from the reports described in Subsection (9)(c);

(ii) omit or redact any identifying information in the compilation; and

(iii) submit the compilation to the Law Enforcement and Criminal Justice Interim Committee before November 1 of each year.

(10) If an individual is denied the right to purchase a firearm under this section, the individual may review the individual's criminal history information and may challenge or amend the information as provided in Section 53-10-108.

(11) The bureau shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of all records provided by the bureau under this part are in conformance with the requirements of the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

(12) (a) A dealer shall collect a criminal history background check fee for the sale of a firearm under this section.

(b) The fee described under Subsection (12)(a) remains in effect until changed by the bureau through the process described in Section 63J-1-504.

(c) (i) The dealer shall forward at one time all fees collected for criminal history

background checks performed during the month to the bureau by the last day of the month following the sale of a firearm.

(ii) The bureau shall deposit the fees in the General Fund as dedicated credits to cover the cost of administering and conducting the criminal history background check program.

(13) An individual with a concealed firearm permit issued under Title 53, Chapter 5, Part 7, Concealed Firearm Act, is exempt from the background check and corresponding fee required in this section for the purchase of a firearm if:

(a) the individual presents the individual's concealed firearm permit to the dealer prior to purchase of the firearm; and

(b) the dealer verifies with the bureau that the individual's concealed firearm permit is valid.

(14) (a) A law enforcement officer, as defined in Section 53-13-103, is exempt from the background check fee required in this section for the purchase of a personal firearm to be carried while off-duty if the law enforcement officer verifies current employment by providing a letter of good standing from the officer's commanding officer and current law enforcement photo identification.

(b) Subsection (14)(a) may only be used by a law enforcement officer to purchase a personal firearm once in a 24-month period.

(15) A dealer engaged in the business of selling, leasing, or otherwise transferring any firearm shall:

(a) make the firearm safety brochure described in Subsection [~~62A-15-103(3)~~] 26B-5-102(3) available to a customer free of charge; and

(b) at the time of purchase, distribute a cable-style gun lock provided to the dealer under Subsection [~~62A-15-103(3)~~] 26B-5-102(3) to a customer purchasing a shotgun, short barreled shotgun, short barreled rifle, rifle, or another firearm that federal law does not require be accompanied by a gun lock at the time of purchase.

Section 59. Section **76-10-528** is amended to read:

76-10-528. Carrying a dangerous weapon while under influence of alcohol or drugs unlawful.

(1) It is a class B misdemeanor for an actor to carry a dangerous weapon while under the influence of:

(a) alcohol as determined by the actor's blood or breath alcohol concentration in accordance with Subsections 41-6a-502(1)(a) through (c); or

(b) a controlled substance as defined in Section 58-37-2.

(2) This section does not apply to:

(a) an actor carrying a dangerous weapon that is either securely encased, as defined in this part, or not within such close proximity and in such a manner that it can be retrieved and used as readily as if carried on the person;

(b) an actor who uses or threatens to use force in compliance with Section 76-2-402;

(c) an actor carrying a dangerous weapon in the actor's residence or the residence of another with the consent of the individual who is lawfully in possession;

(d) an actor under the influence of cannabis or a cannabis product, as those terms are defined in Section [~~26-61a-102~~] 26B-4-201, if the actor's use of the cannabis or cannabis product complies with [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; or

(e) an actor who:

(i) has a valid prescription for a medication approved by the federal Food and Drug Administration for the treatment of attention deficit disorder or attention deficit hyperactivity disorder; and

(ii) takes the medication described in Subsection (2)(e)(i) as prescribed.

(3) It is not a defense to prosecution under this section that the actor:

(a) is licensed in the pursuit of wildlife of any kind; or

(b) has a valid permit to carry a concealed firearm.

Section 60. Section **76-10-1311** is amended to read:

76-10-1311. Mandatory testing -- Retention of offender medical file -- Civil liability.

(1) A person who has entered a plea of guilty, a plea of no contest, a plea of guilty and mentally ill, or been found guilty for violation of Section 76-10-1302, 76-10-1303, or 76-10-1313 shall be required to submit to a mandatory test to determine if the offender is an HIV positive individual. The mandatory test shall be required and conducted prior to sentencing.

(2) If the mandatory test has not been conducted prior to sentencing, and the convicted

offender is already confined in a county jail or state prison, such person shall be tested while in confinement.

(3) The local law enforcement agency shall cause the blood specimen of the offender as defined in Subsection (1) confined in county jail to be taken and tested.

(4) The Department of Corrections shall cause the blood specimen of the offender defined in Subsection (1) confined in any state prison to be taken and tested.

(5) The local law enforcement agency shall collect and retain in the offender's medical file the following data:

(a) the HIV infection test results;

(b) a copy of the written notice as provided in Section 76-10-1312;

(c) photographic identification; and

(d) fingerprint identification.

(6) The local law enforcement agency shall classify the medical file as a private record pursuant to Subsection 63G-2-302(1)(b) or a controlled record pursuant to Section 63G-2-304.

(7) The person tested shall be responsible for the costs of testing, unless the person is indigent. The costs will then be paid by the local law enforcement agency or the Department of Corrections from the General Fund.

(8) (a) The laboratory performing testing shall report test results to only designated officials in the Department of Corrections, the Department of [~~Health~~] Health and Human Services, and the local law enforcement agency submitting the blood specimen.

(b) Each department or agency shall designate those officials by written policy.

(c) Designated officials may release information identifying an offender under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has tested HIV positive as provided under Subsection 63G-2-202(1) and for purposes of prosecution pursuant to Section 76-10-1309.

(9) (a) An employee of the local law enforcement agency, the Department of Corrections, or the Department of [~~Health~~] Health and Human Services who discloses the HIV test results under this section is not civilly liable except when disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202.

(b) An employee of the local law enforcement agency, the Department of Corrections, or the Department of [~~Health~~] Health and Human Services who discloses the HIV test results under this section is not civilly or criminally liable, except when disclosure constitutes a

knowing violation of Section 63G-2-801.

(10) When the medical file is released as provided in Section 63G-2-803, the local law enforcement agency, the Department of Corrections, or the Department of [~~Health~~] Health and Human Services or its officers or employees are not liable for damages for release of the medical file.

Section 61. Section **76-10-1312** is amended to read:

76-10-1312. Notice to offender of HIV positive test results.

(1) A person convicted under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has tested positive for the HIV infection shall be notified of the test results in person by:

(a) the local law enforcement agency;

(b) the Department of Corrections, for offenders confined in any state prison;

(c) the state Department of [~~Health~~] Health and Human Services; or

(d) an authorized representative of any of the agencies listed in this Subsection (1).

(2) The notice under Subsection (1) shall contain the signature of the HIV positive person, indicating the person's receipt of the notice, the name and signature of the person providing the notice, and:

(a) the date of the test;

(b) the positive test results;

(c) the name of the HIV positive individual; and

(d) the following language:

"A person who has been convicted of prostitution under Section 76-10-1302, patronizing a prostitute under Section 76-10-1303, or sexual solicitation under Section 76-10-1313 after being tested and diagnosed as an HIV positive individual and either had actual knowledge that the person is an HIV positive individual or the person has previously been convicted of any of the criminal offenses listed above is guilty of a third degree felony under Section 76-10-1309."

(3) Failure to provide this notice, or to provide the notice in the manner or form prescribed under this section, does not create any civil liability and does not create a defense to any prosecution under this part.

(4) Upon conviction under Section 76-10-1309, and as a condition of probation, the offender shall receive treatment and counseling for HIV infection and drug abuse as provided

in [~~Title 62A, Chapter 15, Substance Abuse and Mental Health Act~~] Title 26B, Chapter 5, Health Care -- Substance Use and Mental Health.

Section 62. Section **76-10-1602** is amended to read:

76-10-1602. Definitions.

As used in this part:

(1) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities.

(2) "Pattern of unlawful activity" means engaging in conduct which constitutes the commission of at least three episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful activity as defined by this part shall have occurred within five years of the commission of the next preceding act alleged as part of the pattern.

(3) "Person" includes any individual or entity capable of holding a legal or beneficial interest in property, including state, county, and local governmental entities.

(4) "Unlawful activity" means to directly engage in conduct or to solicit, request, command, encourage, or intentionally aid another person to engage in conduct which would constitute any offense described by the following crimes or categories of crimes, or to attempt or conspire to engage in an act which would constitute any of those offenses, regardless of whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor or a felony:

(a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized Recording Practices Act;

(b) any act prohibited by the criminal provisions of Title 19, Environmental Quality Code, Sections 19-1-101 through 19-7-109;

(c) taking, destroying, or possessing wildlife or parts of wildlife for the primary purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources

Code of Utah, or Section 23-20-4;

(d) false claims for medical benefits, kickbacks, and any other act prohibited by [~~Title 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12~~] Title 26B, Chapter 3, Part 11, Utah False Claims Act, Sections 26B-3-1101 through 26B-3-1112;

(e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal Offenses and Procedure Act;

(f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

(g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d, Clandestine Drug Lab Act;

(h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform Securities Act;

(i) any act prohibited by the criminal provisions of Title 63G, Chapter 6a, Utah Procurement Code;

(j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

(k) a threat of terrorism, Section 76-5-107.3;

(l) a criminal homicide offense, as described in Section 76-5-201;

(m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;

(n) human trafficking, human trafficking of a child, human smuggling, or aggravated human trafficking, Sections 76-5-308, 76-5-308.1, 76-5-308.3, 76-5-308.5, 76-5-309, and 76-5-310;

(o) sexual exploitation of a minor or aggravated sexual exploitation of a minor, Sections 76-5b-201 and 76-5b-201.1;

(p) arson or aggravated arson, Sections 76-6-102 and 76-6-103;

(q) causing a catastrophe, Section 76-6-105;

(r) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;

(s) burglary of a vehicle, Section 76-6-204;

(t) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;

(u) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;

(v) theft, Section 76-6-404;

(w) theft by deception, Section 76-6-405;

(x) theft by extortion, Section 76-6-406;

(y) receiving stolen property, Section 76-6-408;

(z) theft of services, Section 76-6-409;

(aa) forgery, Section 76-6-501;

(bb) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and 76-6-506.6;

(cc) deceptive business practices, Section 76-6-507;

(dd) bribery or receiving bribe by person in the business of selection, appraisal, or criticism of goods, Section 76-6-508;

(ee) bribery of a labor official, Section 76-6-509;

(ff) defrauding creditors, Section 76-6-511;

(gg) acceptance of deposit by insolvent financial institution, Section 76-6-512;

(hh) unlawful dealing with property by fiduciary, Section 76-6-513;

(ii) bribery or threat to influence contest, Section 76-6-514;

(jj) making a false credit report, Section 76-6-517;

(kk) criminal simulation, Section 76-6-518;

(ll) criminal usury, Section 76-6-520;

(mm) fraudulent insurance act, Section 76-6-521;

(nn) retail theft, Section 76-6-602;

(oo) computer crimes, Section 76-6-703;

(pp) identity fraud, Section 76-6-1102;

(qq) mortgage fraud, Section 76-6-1203;

(rr) sale of a child, Section 76-7-203;

(ss) bribery to influence official or political actions, Section 76-8-103;

(tt) threats to influence official or political action, Section 76-8-104;

(uu) receiving bribe or bribery by public servant, Section 76-8-105;

(vv) receiving bribe or bribery for endorsement of person as public servant, Section 76-8-106;

(ww) official misconduct, Sections 76-8-201 and 76-8-202;

(xx) obstruction of justice, Section 76-8-306;

(yy) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;

(zz) false or inconsistent material statements, Section 76-8-502;

(aaa) false or inconsistent statements, Section 76-8-503;

(bbb) written false statements, Section 76-8-504;

(ccc) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;

(ddd) retaliation against a witness, victim, or informant, Section 76-8-508.3;

(eee) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;

(fff) tampering with evidence, Section 76-8-510.5;

(ggg) falsification or alteration of government record, Section 76-8-511, if the record is a record described in Title 20A, Election Code, Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act, or Title 36, Chapter 11a, Local Government and Board of Education Lobbyist Disclosure and Regulation Act;

(hhh) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or 76-8-1205;

(iii) unemployment insurance fraud, Section 76-8-1301;

(jjj) intentionally or knowingly causing one animal to fight with another, Subsection 76-9-301(2)(d) or (e), or Section 76-9-301.1;

(kkk) possession, use, or removal of explosives, chemical, or incendiary devices or parts, Section 76-10-306;

(lll) delivery to common carrier, mailing, or placement on premises of an incendiary device, Section 76-10-307;

(mmm) possession of a deadly weapon with intent to assault, Section 76-10-507;

(nnn) unlawful marking of pistol or revolver, Section 76-10-521;

(ooo) alteration of number or mark on pistol or revolver, Section 76-10-522;

(ppp) forging or counterfeiting trademarks, trade name, or trade device, Section 76-10-1002;

(qqq) selling goods under counterfeited trademark, trade name, or trade devices, Section 76-10-1003;

(rrr) sales in containers bearing registered trademark of substituted articles, Section 76-10-1004;

(sss) selling or dealing with article bearing registered trademark or service mark with intent to defraud, Section 76-10-1006;

(ttt) gambling, Section 76-10-1102;

(uuu) gambling fraud, Section 76-10-1103;

(vvv) gambling promotion, Section 76-10-1104;

(www) possessing a gambling device or record, Section 76-10-1105;

(xxx) confidence game, Section 76-10-1109;

(yyy) distributing pornographic material, Section 76-10-1204;

(zzz) inducing acceptance of pornographic material, Section 76-10-1205;

(aaaa) dealing in harmful material to a minor, Section 76-10-1206;

(bbbb) distribution of pornographic films, Section 76-10-1222;

(cccc) indecent public displays, Section 76-10-1228;

(dddd) prostitution, Section 76-10-1302;

(eeee) aiding prostitution, Section 76-10-1304;

(ffff) exploiting prostitution, Section 76-10-1305;

(gggg) aggravated exploitation of prostitution, Section 76-10-1306;

(hhhh) communications fraud, Section 76-10-1801;

(iiii) any act prohibited by the criminal provisions of Part 19, Money Laundering and Currency Transaction Reporting Act;

(jjjj) vehicle compartment for contraband, Section 76-10-2801;

(kkkk) any act prohibited by the criminal provisions of the laws governing taxation in this state; and

(llll) any act illegal under the laws of the United States and enumerated in 18 U.S.C. Sec. 1961(1)(B), (C), and (D).

Section 63. Section **76-10-2204** is amended to read:

76-10-2204. Duty to report drug diversion.

(1) As used in this section:

(a) "Diversion" means a practitioner's transfer of a significant amount of drugs to another for an unlawful purpose.

(b) "Drug" means a Schedule II or Schedule III controlled substance, as defined in Section 58-37-4, that is an opiate.

(c) "HIPAA" means the same as that term is defined in Section [~~26-18-17~~] 26B-3-126.

(d) "Opiate" means the same as that term is defined in Section 58-37-2.

(e) "Practitioner" means an individual:

(i) licensed, registered, or otherwise authorized by the appropriate jurisdiction to administer, dispense, distribute, or prescribe a drug in the course of professional practice; or

(ii) employed by a person who is licensed, registered, or otherwise authorized by the appropriate jurisdiction to administer, dispense, distribute, or prescribe a drug in the course of professional practice or standard operations.

(f) "Significant amount" means an aggregate amount equal to, or more than, 500 morphine milligram equivalents calculated in accordance with guidelines developed by the Centers for Disease Control and Prevention (CDC).

(2) An individual is guilty of a class B misdemeanor if the individual:

(a) knows that a practitioner is involved in diversion; and

(b) knowingly fails to report the diversion to a peace officer or law enforcement agency.

(3) Subsection (2) does not apply to the extent that an individual is prohibited from reporting by 42 C.F.R. Part 2 or HIPAA.

Section 64. Section **76-10-3105** is amended to read:

76-10-3105. Exempt activities.

(1) This act may not be construed to prohibit:

(a) the activities of any public utility to the extent that those activities are subject to regulation by the public service commission, the state or federal department of transportation, the federal energy regulatory commission, the federal communications commission, the interstate commerce commission, or successor agencies;

(b) the activities of any insurer, insurance producer, independent insurance adjuster, or rating organization including, but not limited to, making or participating in joint underwriting or reinsurance arrangements, to the extent that those activities are subject to regulation by the commissioner of insurance;

(c) the activities of securities dealers, issuers, or agents, to the extent that those activities are subject to regulation under the laws of either this state or the United States;

(d) the activities of any state or national banking institution, to the extent that the

activities are regulated or supervised by state government officers or agencies under the banking laws of this state or by federal government officers or agencies under the banking laws of the United States;

(e) the activities of any state or federal savings and loan association to the extent that those activities are regulated or supervised by state government officers or agencies under the banking laws of this state or federal government officers or agencies under the banking laws of the United States;

(f) the activities of a political subdivision to the extent authorized or directed by state law, consistent with the state action doctrine of federal antitrust law; or

(g) the activities of an emergency medical service provider licensed under [~~Title 26, Chapter 8a, Utah Emergency Medical Services System Act~~] Title 26B, Chapter 4, Part 1, Utah Emergency Medical Services System, to the extent that those activities are regulated by state government officers or agencies under that act.

(2) (a) The labor of a human being is not a commodity or article of commerce.

(b) Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help and not having capital stock or conducted for profit, or to forbid or restrain individual members of these organizations from lawfully carrying out their legitimate objects; nor may these organizations or membership in them be held to be illegal combinations or conspiracies in restraint of trade under the antitrust laws.

(3) (a) As used in this section, an entity is also a municipality if the entity was formed under Title 11, Chapter 13, Interlocal Cooperation Act, prior to January 1, 1981, and the entity is:

(i) a project entity as defined in Section 11-13-103;

(ii) an electric interlocal entity as defined in Section 11-13-103; or

(iii) an energy services interlocal entity as defined in Section 11-13-103.

(b) The activities of the entities under Subsection (3)(a) are authorized or directed by state law.

Section 65. Section **77-15-6** is amended to read:

77-15-6. Commitment on finding of incompetency to stand trial -- Subsequent hearings -- Notice to prosecuting attorneys.

(1) (a) Except as provided in Subsection (5), if after a hearing a court finds a defendant to be incompetent to proceed, the court shall order the defendant committed to the department for restoration treatment.

(b) The court may recommend but may not order placement of the defendant. The court may, however, order that the defendant be placed in a secure setting rather than a nonsecure setting. Following restoration screening, the department's designee shall designate and inform the court of the specific placement and restoration treatment program for the defendant.

(c) Restoration treatment shall be of sufficient scope and duration to:

(i) restore the individual to competency; or

(ii) determine whether the individual can be restored to competency in the foreseeable future.

(d) A defendant whom a court determines is incompetent to proceed may not be held for restoration treatment longer than:

(i) the time reasonably necessary to determine whether there is a substantial probability that the defendant will become competent to stand trial in the foreseeable future, or that the defendant cannot become competent to stand trial in the foreseeable future; and

(ii) the maximum period of incarceration that the defendant could receive if the defendant were convicted of the most severe offense of the offenses charged.

(2) (a) A defendant who is receiving restoration treatment shall receive a progress toward competency evaluation, by:

(i) a forensic evaluator, designated by the department; and

(ii) an additional forensic evaluator, if requested by a party and paid for by the requesting party.

(b) A forensic evaluator shall complete a progress toward competency evaluation and submit a report within 90 days after the day on which the forensic evaluator receives the commitment order. If the forensic evaluator is unable to complete the report within 90 days, the forensic evaluator shall provide to the court and counsel a summary progress statement that informs the court that additional time is necessary to complete the report, in which case the examiner shall have up to an additional 45 days to provide the full report.

(c) The report shall:

(i) assess whether the defendant is exhibiting false or exaggerated physical or psychological symptoms;

(ii) describe any diagnostic instruments, methods, and observations used by the examiner to make the determination;

(iii) state the forensic evaluator's opinion as to the effect of any false or exaggerated symptoms on the defendant's competency to stand trial;

(iv) assess the facility's or program's capacity to provide appropriate restoration treatment for the defendant;

(v) assess the nature of restoration treatment provided to the defendant;

(vi) assess what progress the defendant has made toward competency restoration, with respect to the factors identified by the court in its initial order;

(vii) describe the defendant's current level of intellectual or developmental disability and need for treatment, if any; and

(viii) assess the likelihood of restoration to competency, the amount of time estimated to achieve competency, or the amount of time estimated to determine whether restoration to competency may be achieved.

(3) The court on its own motion or upon motion by either party or the department may appoint an additional forensic evaluator to conduct a progress toward competency evaluation. If the court appoints an additional forensic evaluator upon motion of a party, that party shall pay the costs of the additional forensic evaluator.

(4) Within 15 days after the day on which the court receives the forensic evaluator's report of the progress toward competency evaluation, the court shall hold a hearing to review the defendant's competency. At the hearing, the burden of proving that the defendant is competent to stand trial is on the proponent of competency. Following the hearing, the court shall determine by a preponderance of evidence whether the defendant is:

(a) competent to stand trial;

(b) incompetent to proceed, with a substantial probability that the defendant may become competent in the foreseeable future; or

(c) incompetent to proceed, without a substantial probability that the defendant may become competent in the foreseeable future.

(5) (a) If the court determines that the defendant is competent to stand trial, the court

shall:

(i) proceed with the trial or other procedures as may be necessary to adjudicate the charges; and

(ii) order that the defendant be returned to the placement and status that the defendant was in at the time when the petition for the adjudication of competency was filed, unless the court determines that a different placement is more appropriate.

(b) If the court determines that the defendant is not competent to proceed but that there is a substantial probability that the defendant may become competent in the foreseeable future, the court may order that the defendant remain committed to the department or the department's designee for the purpose of restoration treatment.

(c) If the court determines that the defendant is incompetent to proceed and that there is not a substantial probability that the defendant may become competent in the foreseeable future, the court shall order the defendant released from commitment to the department, unless the prosecutor informs the court that commitment proceedings pursuant to [~~Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act~~] Title 26B, Chapter 5, Health Care -- Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of Services for People with Disabilities, will be initiated. These commitment proceedings must be initiated within seven days after the day on which the court makes the determination described in Subsection (4)(c), unless the court finds that there is good cause to delay the initiation of the civil commitment proceedings. The court may order the defendant to remain in the commitment of the department until the civil commitment proceedings conclude. If the defendant is civilly committed, the department shall notify the court that adjudicated the defendant incompetent to proceed at least 10 days before any release of the committed individual.

(6) If a court, under Subsection (5)(b), extends a defendant's commitment, the court shall schedule a competency review hearing for the earlier of:

(a) the department's best estimate of when the defendant may be restored to competency; or

(b) three months after the day on which the court determined under Subsection (5)(b) to extend the defendant's commitment.

(7) If a defendant is not competent to proceed by the day of the competency review

hearing that follows the extension of a defendant's commitment, a court shall:

(a) except for a defendant charged with crimes listed in Subsection (8), order a defendant:

(i) released; or

(ii) temporarily detained pending civil commitment proceedings under the same terms as described in Subsection (5)(c); and

(b) terminate the defendant's commitment to the department for restoration treatment.

(8) If the defendant has been charged with aggravated murder, murder, attempted murder, manslaughter, or a first degree felony and the court determines that the defendant is making reasonable progress towards restoration of competency at the time of the hearing held pursuant to Subsection (6), the court may extend the commitment for a period not to exceed 9 months for the purpose of restoration treatment, with a mandatory review hearing at the end of the 9-month period.

(9) If at the 9-month review hearing described in Subsection (8), the court determines that the defendant is not competent to proceed, the court shall:

(a) order the defendant, except for a defendant charged with aggravated murder or murder, to be:

(i) released; or

(ii) temporarily detained pending civil commitment proceedings under the same terms as provided in Subsection (5)(c); and

(b) terminate the defendant's commitment to the department for restoration treatment.

(10) If the defendant has been charged with aggravated murder or murder and the court determines that the defendant is making reasonable progress towards restoration of competency at the time of the 9-month review hearing described in Subsection (8), the court may extend the commitment for a period not to exceed 24 months for the purpose of restoration treatment.

(11) If the court extends the defendant's commitment term under Subsection (10), the court shall hold a hearing no less frequently than at 12-month intervals following the extension for the purpose of determining the defendant's competency status.

(12) If, at the end of the 24-month commitment period described in Subsection (10), the court determines that the defendant is not competent to proceed, the court shall:

(a) order the defendant to be:

(i) released; or

(ii) temporarily detained pending civil commitment proceedings under the same terms as provided in Subsection (5)(c); and

(b) terminate the defendant's commitment to the department for restoration treatment.

(13) Neither release from a pretrial incompetency commitment under the provisions of this section nor civil commitment requires dismissal of criminal charges. The court may retain jurisdiction over the criminal case and may order periodic reviews.

(14) A defendant who is civilly committed pursuant to [~~Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act~~] Title 26B, Chapter 5, Health Care -- Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of Services for People with Disabilities, may still be adjudicated competent to stand trial under this chapter.

(15) (a) The remedy for a violation of the time periods specified in this section, other than those specified in Subsection (5)(c), (7), (9), or (12), shall be a motion to compel the hearing, or mandamus, but not release from detention or dismissal of the criminal charges.

(b) The remedy for a violation of the time periods specified in Subsection (5)(c), (7), (9), or (12), or is not dismissal of the criminal charges.

(16) In cases in which the treatment of the defendant is precluded by court order for a period of time, that time period may not be considered in computing time limitations under this section.

(17) (a) At any time that the defendant becomes competent to stand trial, the clinical director of the hospital, the department, or the department's designee shall certify that fact to the court.

(b) The court shall conduct a competency review hearing:

(i) within 15 working days after the day on which the court receives the certification described in Subsection (17)(a); or

(ii) within 30 working days after the day on which the court receives the certification described in Subsection (17)(a), if the court determines that more than 15 days are necessary for good cause related to the defendant's competency.

(18) The court may order a hearing or rehearing at any time on its own motion or upon recommendations of the clinical director of the hospital or other facility or the department.

(19) Notice of a hearing on competency to stand trial shall be given to the prosecuting attorney. If the hearing is held in the county where the defendant is confined, notice shall also be given to the prosecuting attorney for that county.

Section 66. Section **77-15a-104** is amended to read:

77-15a-104. Hearing -- Notice -- Stay of proceeding -- Examinations of defendant -- Scope of examination -- Report -- Procedures.

(1) (a) If a defendant proposes to offer evidence concerning or argue that he qualifies for an exemption from the death penalty under Subsection 77-15a-101(1) or (2), the defendant shall file and serve the prosecuting attorney with written notice of his intention as soon as practicable, but not fewer than 60 days before trial.

(b) If the defendant wishes to claim the exemption provided in Subsection 77-15a-101(2), the defendant shall file and serve the prosecuting attorney with written notice of his intention as soon as practicable, but not fewer than 60 days before trial.

(2) When notice is given under Subsection (1), the court raises the issue, or a motion is filed regarding Section 77-15a-101, the court may stay all proceedings in order to address the issue.

(3) (a) The court shall order the Department of [~~Human Services~~] Health and Human Services to appoint at least two mental health experts to examine the defendant and report to the court. The experts:

(i) may not be involved in the current treatment of the defendant; and

(ii) shall have expertise in intellectual disability assessment.

(b) Upon appointment of the experts, the defendant or other party as directed by the court shall provide information and materials to the examiners relevant to a determination of the defendant's intellectual disability, including copies of the charging document, arrest or incident reports pertaining to the charged offense, known criminal history information, and known prior mental health evaluations and treatments.

(c) The court may make the necessary orders to provide the information listed in Subsection (3)(b) to the examiners.

(d) The court may provide in its order appointing the examiners that custodians of mental health records pertaining to the defendant shall provide those records to the examiners without the need for consent of the defendant or further order of the court.

(e) Prior to examining the defendant, examiners shall specifically advise the defendant of the limits of confidentiality as provided under Section 77-15a-106.

(4) During any examinations under Subsection (3), unless the court directs otherwise, the defendant shall be retained in the same custody or status he was in at the time the examination was ordered.

(5) The experts shall in the conduct of their examinations and in their reports to the court consider and address:

(a) whether the defendant is intellectually disabled as defined in Section 77-15a-102;

(b) the degree of any intellectual disability the expert finds to exist;

(c) whether the defendant is intellectually disabled as specified in Subsection 77-15a-101(2); and

(d) the degree of any intellectual disability the expert finds to exist.

(6) (a) The experts examining the defendant shall provide written reports to the court, the prosecution, and the defense within 60 days of the receipt of the court's order, unless the expert submits to the court a written request for additional time in accordance with Subsection (6)(c).

(b) The reports shall provide to the court and to prosecution and defense counsel the examiners' written opinions concerning the intellectual disability of the defendant.

(c) If an examiner requests of the court additional time, the examiner shall provide the report to the court and counsel within 90 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the examination and provide the report.

(7) Any written report submitted by an expert shall:

(a) identify the specific matters referred for evaluation;

(b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;

(c) state the expert's clinical observations, findings, and opinions; and

(d) identify the sources of information used by the expert and present the basis for the expert's clinical findings and opinions.

(8) Within 30 days after receipt of the report from the Department of [~~Human Services~~] Health and Human Services, but not later than five days before hearing, or at any other time the

court directs, the prosecuting attorney shall file and serve upon the defendant a notice of witnesses the prosecuting attorney proposes to call in rebuttal.

(9) (a) Except pursuant to Section 77-15a-105, this chapter does not prevent any party from producing any other testimony as to the mental condition of the defendant.

(b) Expert witnesses who are not appointed by the court are not entitled to compensation under Subsection (10).

(10) (a) Expenses of examinations of the defendant ordered by the court under this section shall be paid by the Department of [~~Human Services~~] Health and Human Services.

(b) Travel expenses associated with any court-ordered examination that are incurred by the defendant shall be charged by the Department of [~~Human Services~~] Health and Human Services to the county where prosecution is commenced.

(11) (a) When the report is received, the court shall set a date for a hearing to determine if the exemption under Section 77-15a-101 applies. The hearing shall be held and the judge shall make the determination within a reasonable time prior to jury selection.

(b) Prosecution and defense counsel may subpoena to testify at the hearing any person or organization appointed by the Department of [~~Human Services~~] Health and Human Services to conduct the examination and any independent examiner.

(c) The court may call any examiner to testify at the hearing who is not called by the parties. If the court calls an examiner, counsel for the parties may cross-examine that examiner.

(12) (a) A defendant is presumed not to be intellectually disabled unless the court, by a preponderance of the evidence, finds the defendant to be intellectually disabled. The burden of proof is upon the proponent of intellectual disability at the hearing.

(b) A finding of intellectual disability does not operate as an adjudication of intellectual disability for any purpose other than exempting the person from a sentence of death in the case before the court.

(13) (a) The defendant is presumed not to possess the mental deficiencies listed in Subsection 77-15a-101(2) unless the court, by a preponderance of the evidence, finds that the defendant has significant subaverage general intellectual functioning that exists concurrently with significant deficiencies in adaptive functioning and that this functioning was manifested prior to age 22. The burden of proof is upon the proponent of that proposition.

(b) If the court finds by a preponderance of the evidence that the defendant has significant subaverage general intellectual functioning that exists concurrently with significant deficiencies in adaptive functioning and that this functioning was manifested prior to age 22, then the burden is upon the state to establish that any confession by the defendant which the state intends to introduce into evidence is supported by substantial evidence independent of the confession.

(14) (a) If the court finds the defendant intellectually disabled, it shall issue an order:

(i) containing findings of fact and conclusions of law, and addressing each of the factors in Subsections (5)(a) and (b); and

(ii) stating that the death penalty is not a sentencing option in the case before the court.

(b) If the court finds by a preponderance of the evidence that the defendant possesses the mental deficiencies listed in Subsection 77-15a-101(2) and that the state fails to establish that any confession is supported by substantial evidence independent of the confession, the state may proceed with its case and:

(i) introduce the confession into evidence, and the death penalty will not be a sentencing option in the case; or

(ii) not introduce into evidence any confession or the fruits of a confession that the court has found is not supported by substantial evidence independent of the confession, and the death penalty will be a sentencing option in the case.

(c) (i) A finding by the court regarding whether the defendant qualifies for an exemption under Section 77-15a-101 is a final determination of that issue for purposes of this chapter.

(ii) The following questions may not be submitted to the jury by instruction, special verdict, argument, or other means:

(A) whether the defendant is intellectually disabled for purposes of this chapter; and

(B) whether the defendant possesses the mental deficiencies specified in Subsection 77-15a-101(2).

(iii) This chapter does not prevent the defendant from submitting evidence of intellectual disability or other mental deficiency to establish a mental condition as a mitigating circumstance under Section 76-3-207.

(15) A ruling by the court that the defendant is exempt from the death penalty may be

appealed by the state pursuant to Section 77-18a-1.

(16) Failure to comply with this section does not result in the dismissal of criminal charges.

Section 67. Section **77-15a-105** is amended to read:

77-15a-105. Defendant's wilful failure to cooperate -- Expert testimony regarding intellectual disability is barred.

(1) If the defendant files notice, raises the issue, or intends to present evidence or make an argument that the defendant is exempt from the death penalty under this chapter, the defendant shall make himself available and fully cooperate in any examination by mental health experts appointed by the Department of [~~Human Services~~] Health and Human Services and any other independent examiners for the defense or the prosecution.

(2) If the defendant wilfully fails to make himself available and fully cooperate in the examination, and that failure is established to the satisfaction of the court, the defendant is barred from presenting expert testimony relating to any exemption from the death penalty under this chapter.

Section 68. Section **77-16a-101** is amended to read:

77-16a-101. Definitions.

As used in this chapter:

(1) "Board" means the Board of Pardons and Parole established under Section 77-27-2.

(2) "Department" means the Department of [~~Human Services~~] Health and Human Services.

(3) "Executive director" means the executive director of the Department of [~~Human Services~~] Health and Human Services.

(4) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, or organization that contracts with a local mental health authority.

(5) "Mental illness" is as defined in Section 76-2-305.

(6) "Offender with a mental illness" means an individual who has been adjudicated guilty with a mental illness, including an individual who has an intellectual disability.

(7) "UDC" means the Department of Corrections.

Section 69. Section **77-16a-202** is amended to read:

77-16a-202. Person found guilty with a mental illness -- Commitment to department -- Admission to Utah State Hospital.

(1) In sentencing and committing an offender with a mental illness to the department under Subsection 77-16a-104(3)(a), the court shall:

(a) sentence the offender to a term of imprisonment and order that he be committed to the department and admitted to the Utah State Hospital for care and treatment until transferred to UDC in accordance with Sections 77-16a-203 and 77-16a-204, making provision for readmission to the Utah State Hospital whenever the requirements and conditions of Section 77-16a-204 are met; or

(b) sentence the offender to a term of imprisonment and order that the offender be committed to the department for care and treatment for no more than 18 months, or until the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital is no longer necessary to ensure adequate mental health treatment, whichever occurs first. At the expiration of that time, the court may recall the sentence and commitment, and resentence the offender. A commitment and retention of jurisdiction under this Subsection (1)(b) shall be specified in the sentencing order. If that specification is not included in the sentencing order, the offender shall be committed in accordance with Subsection (1)(a).

(2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of an offender with a mental illness who has been convicted of a capital felony. In capital cases, the court shall make the findings required by this section after the capital sentencing proceeding mandated by Section 76-3-207.

(3) When an offender is committed to the department and admitted to the Utah State Hospital under Subsection (1)(b), the department shall provide the court with reports of the offender's mental health status every six months. Those reports shall be prepared in accordance with the requirements of Section 77-16a-203. Additionally, the court may appoint an independent examiner to assess the mental health status of the offender.

(4) The period of commitment to the department and admission to the Utah State Hospital, and any subsequent retransfers to the Utah State Hospital made pursuant to Section 77-16a-204 may not exceed the maximum sentence imposed by the court. Upon expiration of that sentence, the administrator of the facility where the offender is located may initiate civil

proceedings for involuntary commitment in accordance with [~~Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act~~] Title 26B, Chapter 5, Health Care -- Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of Services for People with Disabilities.

Section 70. Section **77-16a-203** is amended to read:

77-16a-203. Review of offenders with a mental illness committed to department -- Recommendations for transfer to Department of Corrections.

(1) (a) The executive director shall designate a review team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the mental condition of each offender with a mental illness committed to it in accordance with Section 77-16a-202, at least once every six months.

(b) If the offender has an intellectual disability, the review team shall include at least one individual who is a designated intellectual disability professional, as defined in Section [~~62A-5-101~~] 26B-6-401.

(2) At the conclusion of its evaluation, the review team described in Subsection (1) shall make a report to the executive director:

(a) regarding the offender's:

(i) current mental condition;

(ii) progress since commitment; and

(iii) prognosis; and

(b) that includes a recommendation regarding whether the offender with a mental illness should be:

(i) transferred to UDC; or

(ii) remain in the custody of the department.

(3) (a) The executive director shall notify the UDC medical administrator and the board's mental health adviser that an offender with a mental illness is eligible for transfer to UDC if the review team finds that the offender:

(i) no longer has a mental illness; or

(ii) has a mental illness and may continue to be a danger to self or others, but can be controlled if adequate care, medication, and treatment are provided by UDC; and

(iii) the offender's condition has been stabilized to the point that commitment to the

department and admission to the Utah State Hospital are no longer necessary to ensure adequate mental health treatment.

(b) The administrator of the mental health facility where the offender is located shall provide the UDC medical administrator with a copy of the reviewing staff's recommendation and:

(i) all available clinical facts;

(ii) the diagnosis;

(iii) the course of treatment received at the mental health facility;

(iv) the prognosis for remission of symptoms;

(v) the potential for recidivism;

(vi) an estimation of the offender's dangerousness, either to self or others; and

(vii) recommendations for future treatment.

Section 71. Section **77-16a-204** is amended to read:

77-16a-204. UDC acceptance of transfer of persons found guilty with a mental illness -- Retransfer from UDC to department for admission to the Utah State Hospital.

(1) The UDC medical administrator shall designate a transfer team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the recommendation made by the department's review team pursuant to Section 77-16a-203. If the offender has an intellectual disability, the transfer team shall include at least one person who has expertise in testing and diagnosis of people with intellectual disabilities.

(2) The transfer team shall concur in the recommendation if the transfer team determines that UDC can provide the offender with a mental illness with adequate mental health treatment.

(3) The UDC transfer team and medical administrator shall recommend the facility in which the offender should be placed and the treatment to be provided in order for the offender's mental condition to remain stabilized to the director of the Division of Institutional Operations, within the Department of Corrections.

(4) In the event that the department and UDC do not agree on the transfer of an offender with a mental illness, the administrator of the mental health facility where the offender is located shall notify the mental health adviser for the board, in writing, of the dispute. The mental health adviser shall be provided with copies of all reports and recommendations. The

board's mental health adviser shall make a recommendation to the board on the transfer and the board shall issue its decision within 30 days.

(5) UDC shall notify the board whenever an offender with a mental illness is transferred from the department to UDC.

(6) When an offender with a mental illness sentenced under Section 77-16a-202, who has been transferred from the department to UDC, and accepted by UDC, is evaluated and it is determined that the offender's mental condition has deteriorated or that the offender has become mentally unstable, the offender may be readmitted to the Utah State Hospital in accordance with the findings and procedures described in Section [~~62A-15-605.5~~] 26B-5-372.

(7) Any person readmitted to the Utah State Hospital pursuant to Subsection (6) shall remain in the custody of UDC, and the state hospital shall act solely as the agent of UDC.

(8) An offender with a mental illness who has been readmitted to the Utah State Hospital pursuant to Subsection (6) shall be transferred back to UDC in accordance with the provisions of Section 77-16a-203.

Section 72. Section **77-16a-302** is amended to read:

77-16a-302. Persons found not guilty by reason of insanity -- Disposition.

(1) Upon a verdict of not guilty by reason of insanity, the court shall conduct a hearing within 10 days to determine whether the defendant currently has a mental illness. The defense counsel and prosecutors may request further evaluations and present testimony from those examiners.

(2) After the hearing and upon consideration of the record, the court shall order the defendant committed to the department if it finds by clear and convincing evidence that:

(a) the defendant has a mental illness; and

(b) because of that mental illness the defendant presents a substantial danger to self or others.

(3) The period of commitment described in Subsection (2) may not exceed the period for which the defendant could be incarcerated had the defendant been convicted and received the maximum sentence for the crime of which the defendant was accused. At the time that period expires, involuntary civil commitment proceedings may be instituted in accordance with [~~Title 62A, Chapter 15, Substance Abuse and Mental Health Act~~] Title 26B, Chapter 5, Health Care -- Substance Use and Mental Health.

Section 73. Section **77-18-102** is amended to read:

77-18-102. Definitions.

As used in this chapter:

(1) "Assessment" means, except as provided in Section 77-18-104, the same as the term "risk and needs assessment" in Section 77-1-3.

(2) "Board" means the Board of Pardons and Parole.

(3) "Civil accounts receivable" means the same as that term is defined in Section 77-32b-102.

(4) "Civil judgment of restitution" means the same as that term is defined in Section 77-32b-102.

(5) "Convicted" means the same as that term is defined in Section 76-3-201.

(6) "Criminal accounts receivable" means the same as that term is defined in Section 77-32b-102.

(7) "Default" means the same as that term is defined in Section 77-32b-102.

(8) "Delinquent" means the same as that term is defined in Section 77-32b-102.

(9) "Department" means the Department of Corrections created in Section 64-13-2.

(10) "Payment schedule" means the same as that term is defined in Section 77-32b-102.

(11) "Restitution" means the same as that term is defined in Section 77-38b-102.

(12) "Screening" means, except as provided in Section 77-18-104, a tool or questionnaire that is designed to determine whether an individual needs further assessment or any additional resource or referral for treatment.

(13) "Substance use disorder treatment" means treatment obtained through a substance use disorder program that is licensed by the Office of Licensing within the Department of [~~Human Services~~] Health and Human Services.

Section 74. Section **77-18-106** is amended to read:

77-18-106. Treatment at the Utah State Hospital -- Condition of probation or stay of sentence.

The court may order as a condition of probation, or a stay of sentence, that the defendant be voluntarily admitted to the custody of the [~~Division of Substance Abuse~~] Office of Substance Use and Mental Health for treatment at the Utah State Hospital only if the

superintendent of the Utah State Hospital, or the superintendent's designee, certifies to the court that:

(1) the defendant is appropriate for, and can benefit from, treatment at the Utah State Hospital;

(2) there is space at the Utah State Hospital for treatment of the defendant; and

(3) individuals described in Subsection [~~62A-15-610(2)(g)~~] 26B-5-306(2)(g) are receiving priority for treatment over the defendant.

Section 75. Section **77-19-204** is amended to read:

77-19-204. Order for hearing -- Examinations of inmate -- Scope of examination and report.

(1) When a court has good reason to believe an inmate sentenced to death is incompetent to be executed, it shall stay the execution and shall order the Department of [~~Human Services~~] Health and Human Services to examine the inmate and report to the court concerning the inmate's mental condition.

(2) (a) The inmate subject to examination under Subsection (1) shall be examined by at least two mental health experts who are not involved in the inmate's current treatment.

(b) The Department of Corrections shall provide information and materials to the examiners relevant to a determination of the inmate's competency to be executed.

(3) The inmate shall make himself available and fully cooperate in the examination by the Department of [~~Human Services~~] Health and Human Services and any other independent examiners for the defense or the state.

(4) The examiners shall in the conduct of their examinations and in their reports to the court consider and address, in addition to any other factors determined to be relevant by the examiners:

(a) the inmate's awareness of the fact of the inmate's impending execution;

(b) the inmate's understanding that the inmate is to be executed for the crime of murder;

(c) the nature of the inmate's mental disorder, if any, and its relationship to the factors relevant to the inmate's competency; and

(d) whether psychoactive medication is necessary to maintain or restore the inmate's competency.

(5) The examiners who are examining the inmate shall each provide an initial report to the court and the attorneys for the state and the inmate within 60 days of the receipt of the court's order. The report shall inform the court of the examiner's opinion concerning the competency of the inmate to be executed, or, in the alternative, the examiner may inform the court in writing that additional time is needed to complete the report. If the examiner informs the court that additional time is needed, the examiner shall have up to an additional 30 days to provide the report to the court and counsel. The examiner shall provide the report within 90 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the examination and provide the report.

(6) (a) All interviews with the inmate conducted by the examiners shall be videotaped, unless otherwise ordered by the court for good cause shown. The Department of Corrections shall provide the videotaping equipment and facilitate the videotaping of the interviews.

(b) Immediately following the videotaping, the videotape shall be provided to the attorney for the state, who shall deliver it as soon as practicable to the judge in whose court the competency determination is pending.

(c) The court shall grant counsel for the state and for the inmate, and examiners who are examining the inmate under this part access to view the videotape at the court building where the court is located that is conducting the competency determination under this part.

(7) Any written report submitted by an examiner shall:

(a) identify the specific matters referred for evaluation;

(b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;

(c) state the examiner's clinical observations, findings, and opinions on each issue referred for examination by the court, and indicate specifically those issues, if any, on which the examiner could not give an opinion; and

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

(8) (a) When the reports are received, the court shall set a date for a competency hearing, which shall be held within not less than five and not more than 15 days, unless the court extends the time for good cause.

(b) Any examiner directed by the Department of [~~Human Services~~] Health and Human

Services to conduct the examination may be subpoenaed to provide testimony at the hearing. If the examiners are in conflict as to the competency of the inmate, all of them should be called to testify at the hearing if they are reasonably available.

(c) The court may call any examiner to testify at the hearing who is not called by the parties. An examiner called by the court may be cross-examined by counsel for the parties.

(9) (a) An inmate shall be presumed competent to be executed unless the court, by a preponderance of the evidence, finds the inmate incompetent to be executed. The burden of proof is upon the proponent of incompetency at the hearing.

(b) An adjudication of incompetency to be executed does not operate as an adjudication of the inmate's incompetency to give informed consent for medical treatment or for any other purpose, unless specifically set forth in the court order.

(10) (a) If the court finds the inmate incompetent to be executed, its order shall contain findings addressing each of the factors in Subsections (4)(a) through (d).

(b) The order finding the inmate incompetent to be executed shall be delivered to the Department of [~~Human Services~~] Health and Human Services, and shall be accompanied by:

(i) copies of the reports of the examiners filed with the court pursuant to the order of examination, if not provided previously;

(ii) copies of any of the psychiatric, psychological, or social work reports submitted to the court relative to the mental condition of the inmate; and

(iii) any other documents made available to the court by either the defense or the state, pertaining to the inmate's current or past mental condition.

(c) A copy of the order finding the inmate incompetent to be executed shall be delivered to the Department of Corrections.

Section 76. Section **77-19-205** is amended to read:

77-19-205. Procedures on finding of incompetency to be executed -- Subsequent hearings -- Notice to attorneys.

(1) (a) (i) If after the hearing under Section 77-19-204 the inmate is found to be incompetent to be executed, the court shall continue the stay of execution and the inmate shall receive appropriate mental health treatment.

(ii) Appropriate mental health treatment under Subsection (1)(a)(i) does not include the forcible administration of psychoactive medication for the sole purpose of restoring the

inmate's competency to be executed.

(b) The court shall order the executive director of the Department of [~~Human Services~~] Health and Human Services to provide periodic assessments to the court regarding the inmate's competency to be executed.

(c) The inmate shall be held in secure confinement, either at the prison or the State Hospital, as agreed upon by the executive director of the Department of Corrections and the executive director of the Department of [~~Human Services~~] Health and Human Services. If the inmate remains at the prison, the Department of [~~Human Services~~] Health and Human Services shall consult with the Department of Corrections regarding the inmate's mental health treatment.

(2) (a) The examiner or examiners designated by the executive director of the Department of [~~Human Services~~] Health and Human Services to assess the inmate's progress toward competency may not be involved in the routine treatment of the inmate.

(b) The examiner or examiners shall each provide a full report to the court and counsel for the state and the inmate within 90 days of receipt of the court's order. If any examiner is unable to complete the assessment within 90 days, that examiner shall provide to the court and counsel for the state and the inmate a summary progress report which informs the court that additional time is necessary to complete the assessment, in which case the examiner has up to an additional 90 days to provide the full report, unless the court enlarges the time for good cause. The full report shall assess:

(i) the facility's or program's capacity to provide appropriate treatment for the inmate;

(ii) the nature of treatments provided to the inmate;

(iii) what progress toward restoration of competency has been made;

(iv) the inmate's current level of mental disorder and need for treatment, if any; and

(v) the likelihood of restoration of competency and the amount of time estimated to achieve it.

(3) The court on its own motion or upon motion by either party may order the Department of [~~Human Services~~] Health and Human Services to appoint additional mental health examiners to examine the inmate and advise the court on the inmate's current mental status and progress toward competency restoration.

(4) (a) Upon receipt of the full report, the court shall hold a hearing to determine the

inmate's current status. At the hearing, the burden of proving that the inmate is competent is on the proponent of competency.

(b) Following the hearing, the court shall determine by a preponderance of evidence whether the inmate is competent to be executed.

(5) (a) If the court determines that the inmate is competent to be executed, it shall enter findings and shall proceed under Subsection 77-19-202(2)(c).

(b) (i) If the court determines the inmate is still incompetent to be executed, the inmate shall continue to receive appropriate mental health treatment, and the court shall hold hearings no less frequently than at 18-month intervals for the purpose of determining the defendant's competency to be executed.

(ii) Continued appropriate mental health treatment under Subsection (1)(a)(i) does not include the forcible administration of psychoactive medication for the sole purpose of restoring the inmate's competency to be executed.

(6) (a) If at any time the clinical director of the Utah State Hospital or the primary treating mental health professional determines that the inmate has been restored to competency, he shall notify the court.

(b) The court shall conduct a hearing regarding the inmate's competency to be executed within 30 working days of the receipt of the notification under Subsection (6)(a), unless the court extends the time for good cause. The court may order a hearing or rehearing at any time on its own motion.

(7) Notice of a hearing on competency to be executed shall be given to counsel for the state and for the inmate, as well as to the office of the prosecutor who prosecuted the inmate on the original capital charge.

Section 77. Section **77-19-206** is amended to read:

77-19-206. Expenses -- Allocation.

The Department of [~~Human Services~~] Health and Human Services and the Department of Corrections shall each pay 1/2 of the costs of any examination of the inmate conducted pursuant to Sections 77-19-204 and 77-19-205 to determine if an inmate is competent to be executed.

Section 78. Section **77-23-213** is amended to read:

77-23-213. Blood testing.

(1) As used in this section:

(a) "Law enforcement purpose" means duties that consist primarily of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of this state's political subdivisions.

(b) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace Officer Classifications.

(2) A peace officer may require an individual to submit to a blood test for a law enforcement purpose only if:

(a) the individual or legal representative of the individual with authority to give consent gives oral or written consent to the blood test;

(b) the peace officer obtains a warrant to administer the blood test; or

(c) a judicially recognized exception to obtaining a warrant exists as established by the Utah Court of Appeals, Utah Supreme Court, Court of Appeals of the Tenth Circuit, or the Supreme Court of the United States.

(3) (a) Only the following, acting at the request of a peace officer, may draw blood to determine the blood's alcohol or drug content:

(i) a physician;

(ii) a physician assistant;

(iii) a registered nurse;

(iv) a licensed practical nurse;

(v) a paramedic;

(vi) as provided in Subsection (3)(b), emergency medical service personnel other than a paramedic; or

(vii) a person with a valid permit issued by the Department of [~~Health~~] Health and Human Services under Section [~~26-1-30~~] 26B-1-202.

(b) The Department of [~~Health~~] Health and Human Services may designate by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which emergency medical service personnel, as defined in Section [~~26-8a-102~~] 26B-4-101, are authorized to draw blood under Subsection (3)(a)(vi), based on the type of license under Section [~~26-8a-302~~] 26B-4-116.

(c) The following are immune from civil or criminal liability arising from drawing a

blood sample from a person who a peace officer requests, for law enforcement purposes, if the sample is drawn in accordance with standard medical practice:

(i) a person authorized to draw blood under Subsection (3)(a); and

(ii) if the blood is drawn at a hospital or other medical facility, the medical facility.

Section 79. Section **77-32b-103** is amended to read:

77-32b-103. Establishment of a criminal accounts receivable -- Responsibility -- Payment schedule -- Delinquency or default.

(1) (a) Except as provided in Subsection (1)(b) and (c), at the time of sentencing or acceptance of a plea in abeyance, the court shall enter an order to establish a criminal accounts receivable for the defendant.

(b) The court is not required to create a criminal accounts receivable for the defendant under Subsection (1)(a) if the court finds that the defendant does not owe restitution and there are no other fines or fees to be assessed against the defendant.

(c) Subject to Subsection 77-38b-205(5), if the court does not create a criminal accounts receivable for a defendant under Subsection (1)(a), the court shall enter an order to establish a criminal accounts receivable for the defendant at the time the court enters an order for restitution under Section 77-38b-205.

(2) After establishing a criminal accounts receivable for a defendant, the court shall:

(a) if a prison sentence is imposed and not suspended for the defendant:

(i) accept any payment for the criminal accounts receivable that is tendered on the date of sentencing; and

(ii) transfer the responsibility of receiving, distributing, and processing payments for the criminal accounts receivable to the Office of State Debt Collection; and

(b) for all other cases:

(i) retain the responsibility for receiving, processing, and distributing payments for the criminal accounts receivable until the court enters a civil accounts receivable or civil judgment of restitution on the civil judgment docket under Subsection 77-18-114(1) or (2); and

(ii) record each payment by the defendant on the case docket.

(c) For a criminal accounts receivable that a court retains responsibility for receiving, processing, and distributing payments under Subsection (2)(b)(i), the Judicial Council may establish rules to require a defendant to pay the cost, or a portion of the cost, for an electronic

payment fee that is charged by a financial institution for the use of a credit or debit card to make payments towards the criminal accounts receivable.

(3) (a) Upon entering an order for a criminal accounts receivable, the court shall establish a payment schedule for the defendant to make payments towards the criminal accounts receivable.

(b) In establishing the payment schedule for the defendant, the court shall consider:

(i) the needs of the victim if the criminal accounts receivable includes an order for restitution under Section 77-38b-205;

(ii) the financial resources of the defendant, as disclosed in the financial declaration under Section 77-38b-204 or in evidence obtained by subpoena under Subsection 77-38b-402(1)(b);

(iii) the burden that the payment schedule will impose on the defendant regarding the other reasonable obligations of the defendant;

(iv) the ability of the defendant to pay restitution on an installment basis or on other conditions fixed by the court;

(v) the rehabilitative effect on the defendant of the payment of restitution and method of payment; and

(vi) any other circumstance that the court determines is relevant.

(4) A payment schedule for a criminal accounts receivable does not limit the ability of a judgment creditor to pursue collection by any means allowable by law.

(5) If the court orders restitution under Section 77-38b-205, or makes another financial decision, after sentencing that increases the total amount owed in a defendant's case, the defendant's criminal accounts receivable balance shall be adjusted to include any new amount ordered by the court.

(6) (a) If a defendant is incarcerated in a county jail or a secure correctional facility, as defined in Section 64-13-1, or the defendant is involuntarily committed under Section [~~62A-15-631~~] 26B-5-332:

(i) all payments for a payment schedule shall be suspended for the period of time that the defendant is incarcerated or involuntarily committed, unless the court, or the board if the defendant is under the jurisdiction of the board, expressly orders the defendant to make payments according to the payment schedule; and

(ii) the defendant shall provide the court with notice of the incarceration or involuntary commitment.

(b) A suspension under Subsection (6)(a) shall remain in place for 60 days after the day in which the defendant is released from incarceration or commitment.

Section 80. Section **77-40a-305** is amended to read:

77-40a-305. Petition for expungement -- Prosecutorial responsibility -- Hearing.

(1) (a) The petitioner shall file a petition for expungement, in accordance with the Utah Rules of Criminal Procedure, that includes the identification number for the certificate of eligibility described in Subsection 77-40a-304(1)(d)(ii).

(b) Information on a certificate of eligibility is incorporated into a petition by reference to the identification number for the certificate of eligibility.

(2) (a) If a petition for expungement is filed under Subsection (1)(a), the court shall obtain a certificate of eligibility from the bureau.

(b) A court may not accept a petition for expungement if the certificate of eligibility is no longer valid as described in Subsection 77-40a-304(1)(d)(i).

(3) Notwithstanding Subsection (2), the petitioner may file a petition for expungement of a traffic conviction without obtaining a certificate of eligibility if:

(a) (i) for a class C misdemeanor or infraction, at least three years have elapsed from the day on which the petitioner was convicted; or

(ii) for a class B misdemeanor, at least four years have elapsed from the day on which the petitioner was convicted; and

(b) all convictions in the case for the traffic conviction are for traffic offenses.

(4) Notwithstanding Subsection (2), a petitioner may file a petition for expungement of a record for a conviction related to cannabis possession without a certificate of eligibility if the petition demonstrates that:

(a) the petitioner had, at the time of the relevant arrest or citation leading to the conviction, a qualifying condition, as that term is defined in Section [~~26-61a-102~~] 26B-4-201; and

(b) the possession of cannabis in question was in a form and an amount to medicinally treat the qualifying condition described in Subsection (4)(a).

(5) (a) The court shall provide notice of a filing of a petition and certificate of

eligibility to the prosecutorial office that handled the court proceedings within three days after the day on which the petitioner's filing fee is paid or waived.

(b) If there were no court proceedings, the court shall provide notice of a filing of a petition and certificate of eligibility to the county attorney's office in the jurisdiction where the arrest occurred.

(c) If the prosecuting agency with jurisdiction over the arrest, investigation, detention, or conviction, was a city attorney's office, the county attorney's office in the jurisdiction where the arrest occurred shall immediately notify the city attorney's office that the county attorney's office has received a notice of a filing of a petition for expungement.

(6) (a) Upon receipt of a notice of a filing of a petition for expungement of a conviction or a charge dismissed in accordance with a plea in abeyance, the prosecuting attorney shall make a reasonable effort to provide notice to any victim of the conviction or charge.

(b) The notice under Subsection (6)(a) shall:

(i) include a copy of the petition, certificate of eligibility, statutes, and rules applicable to the petition;

(ii) state that the victim has a right to object to the expungement; and

(iii) provide instructions for registering an objection with the court.

(7) The prosecuting attorney and the victim, if applicable, may respond to the petition by filing a recommendation or objection with the court within 35 days after the day on which the notice of the filing of the petition is sent by the court to the prosecuting attorney.

(8) (a) The court may request a written response to the petition from the Division of Adult Probation and Parole within the Department of Corrections.

(b) If requested, the response prepared by the Division of Adult Probation and Parole shall include:

(i) the reasons probation was terminated; and

(ii) certification that the petitioner has completed all requirements of sentencing and probation or parole.

(c) The Division of Adult Probation and Parole shall provide a copy of the response to the petitioner and the prosecuting attorney.

(9) The petitioner may respond in writing to any objections filed by the prosecuting attorney or the victim and the response prepared by the Division of Adult Probation and Parole

within 14 days after the day on which the objection or response is received.

(10) (a) If the court receives an objection concerning the petition from any party, the court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the date set for the hearing.

(b) The prosecuting attorney shall notify the victim of the date set for the hearing.

(c) The petitioner, the prosecuting attorney, the victim, and any other person who has relevant information about the petitioner may testify at the hearing.

(d) The court shall review the petition, the certificate of eligibility, and any written responses submitted regarding the petition.

(11) If no objection is received within 60 days from the day on which the petition for expungement is filed with the court, the expungement may be granted without a hearing.

Section 81. Section **77-40a-306** is amended to read:

77-40a-306. Order of expungement.

(1) If a petition is filed in accordance with Section 77-40a-305, the court shall issue an order of expungement if the court finds, by clear and convincing evidence, that:

(a) except as provided in Subsection 77-40a-305(3) or (4), the petition and certificate of eligibility are sufficient;

(b) the statutory requirements have been met;

(c) if the petitioner seeks expungement after a case is dismissed without prejudice or without condition, the prosecuting attorney provided written consent and has not filed and does not intend to refile related charges;

(d) if the petitioner seeks expungement without a certificate of eligibility for expungement under Subsection 77-40a-305(4) for a record of conviction related to cannabis possession:

(i) the petitioner had, at the time of the relevant arrest or citation leading to the conviction, a qualifying condition, as that term is defined in Section [~~26-61a-102~~] 26B-4-201; and

(ii) the possession of cannabis in question was in a form and an amount to medicinally treat the qualifying condition described in Subsection (1)(d)(i);

(e) if an objection is received, the petition for expungement is for a charge dismissed in accordance with a plea in abeyance agreement, and the charge is an offense eligible to be used

for enhancement, there is good cause for the court to grant the expungement; and

(f) the interests of the public would not be harmed by granting the expungement.

(2) (a) If the court denies a petition described in Subsection (1)(c) because the prosecuting attorney intends to refile charges, the petitioner may apply again for a certificate of eligibility if charges are not refiled within 180 days after the day on which the court denies the petition.

(b) A prosecuting attorney who opposes an expungement of a case dismissed without prejudice, or without condition, shall have a good faith basis for the intention to refile the case.

(c) A court shall consider the number of times that good faith basis of intention to refile by the prosecuting attorney is presented to the court in making the court's determination to grant the petition for expungement described in Subsection (1)(c).

(3) If the court grants a petition described in Subsection (1)(e), the court shall make the court's findings in a written order.

(4) A court may not expunge a conviction of an offense for which a certificate of eligibility may not be, or should not have been, issued under Section 77-40a-302 or 77-40a-303.

Section 82. Section **78A-2-231** is amended to read:

78A-2-231. Consideration of lawful use or possession of medical cannabis.

(1) As used in this section:

(a) "Cannabis product" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(b) "Directions of use" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(c) "Dosing guidelines" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(d) "Medical cannabis" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(e) "Medical cannabis card" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(f) "Medical cannabis device" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(g) "Recommending medical provider" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(2) In any judicial proceeding in which a judge, panel, jury, or court commissioner makes a finding, determination, or otherwise considers an individual's medical cannabis card, medical cannabis recommendation from a recommending medical provider, or possession or use of medical cannabis, a cannabis product, or a medical cannabis device, the judge, panel, jury, or court commissioner may not consider or treat the individual's card, recommendation, possession, or use any differently than the lawful possession or use of any prescribed controlled substance if:

(a) the individual's possession 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~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; and

(ii) the individual reasonably complies with the directions of use and dosing guidelines determined by the individual's recommending medical provider or through a consultation described in Subsection [~~26-61a-502~~~~{(4) or (5)}~~] 26B-4-230(4) or (5).

(3) Notwithstanding Sections 77-18-105 and 77-2a-3, for probation, release, a plea in abeyance agreement, a diversion agreement, or a tendered admission under Utah Rules of Juvenile Procedure, Rule 25, a term or condition may not require that an individual abstain from the use or possession of medical cannabis, a cannabis product, or a medical cannabis device, either directly or through a general prohibition on violating federal law, without an exception related to medical cannabis use, if the individual's use or possession complies with:

(a) [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; or

(b) Subsection 58-37-3.7(2) or (3).

Section 83. Section **78A-2-301** is amended to read:

78A-2-301. Civil fees of the courts of record -- Courts complex design.

(1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a court of record not governed by another subsection is $375.

(b) The fee for filing a complaint or petition is:

(i) $90 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is $2,000 or less;

(ii) $200 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than $2,000 and less than $10,000;

(iii) $375 if the claim for damages or amount in interpleader is $10,000 or more;

(iv) $325 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance;

(v) $35 for a motion for temporary separation order filed under Section 30-3-4.5;

(vi) $125 if the petition is for removal from the Sex Offender and Kidnap Offender Registry under Section 77-41-112; and

(vii) $35 if the petition is for guardianship and the prospective ward is the biological or adoptive child of the petitioner.

(c) The fee for filing a small claims affidavit is:

(i) $60 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is $2,000 or less;

(ii) $100 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than $2,000, but less than $7,500; and

(iii) $185 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is $7,500 or more.

(d) The fee for filing a counter claim, cross claim, complaint in intervention, third party complaint, or other claim for relief against an existing or joined party other than the original complaint or petition is:

(i) $55 if the claim for relief exclusive of court costs, interest, and attorney fees is $2,000 or less;

(ii) $165 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than $2,000 and less than $10,000;

(iii) $170 if the original petition is filed under Subsection (1)(a), the claim for relief is $10,000 or more, or the party seeks relief other than monetary damages; and

(iv) $130 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance.

(e) The fee for filing a small claims counter affidavit is:

(i) $50 if the claim for relief exclusive of court costs, interest, and attorney fees is $2,000 or less;

(ii) $70 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than $2,000, but less than $7,500; and

(iii) $120 if the claim for relief exclusive of court costs, interest, and attorney fees is $7,500 or more.

(f) The fee for depositing funds under Section 57-1-29 when not associated with an action already before the court is determined under Subsection (1)(b) based on the amount deposited.

(g) The fee for filing a petition is:

(i) $240 for trial de novo of an adjudication of the justice court or of the small claims department; and

(ii) $80 for an appeal of a municipal administrative determination in accordance with Section 10-3-703.7.

(h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or petition for writ of certiorari is $240.

(i) The fee for filing a petition for expungement is $150.

(j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be allocated to and between the Judges' Contributory Retirement Trust Fund and the Judges' Noncontributory Retirement Trust Fund, as provided in Title 49, Chapter 17, Judges' Contributory Retirement Act, and Title 49, Chapter 18, Judges' Noncontributory Retirement Act.

(ii) Four dollars of the fees established by Subsections (1)(a) through (i) shall be allocated by the state treasurer to be deposited into the restricted account, Children's Legal Defense Account, as provided in Section 51-9-408.

(iii) Five dollars of the fees established under Subsections (1)(a) through (e), (1)(g), and (1)(s) shall be allocated to and deposited with the Dispute Resolution Account as provided in Section 78B-6-209.

(iv) Thirty dollars of the fees established by Subsections (1)(a), (1)(b)(iii) and (iv), (1)(d)(iii) and (iv), (1)(g)(ii), (1)(h), and (1)(i) shall be allocated by the state treasurer to be

deposited into the restricted account, Court Security Account, as provided in Section 78A-2-602.

(v) Twenty dollars of the fees established by Subsections (1)(b)(i) and (ii), (1)(d)(ii) and (1)(g)(i) shall be allocated by the state treasurer to be deposited into the restricted account, Court Security Account, as provided in Section 78A-2-602.

(k) The fee for filing a judgment, order, or decree of a court of another state or of the United States is $35.

(l) The fee for filing a renewal of judgment in accordance with Section 78B-6-1801 is 50% of the fee for filing an original action seeking the same relief.

(m) The fee for filing probate or child custody documents from another state is $35.

(n) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the State Tax Commission is $30.

(ii) The fee for filing an abstract or transcript of judgment of a court of law of this state or a judgment, order, or decree of an administrative agency, commission, board, council, or hearing officer of this state or of its political subdivisions other than the State Tax Commission, is $50.

(o) The fee for filing a judgment by confession without action under Section 78B-5-205 is $35.

(p) The fee for filing an award of arbitration for confirmation, modification, or vacation under Title 78B, Chapter 11, Utah Uniform Arbitration Act, that is not part of an action before the court is $35.

(q) The fee for filing a petition or counter-petition to modify a domestic relations order other than a protective order or stalking injunction is $100.

(r) The fee for filing any accounting required by law is:

(i) $15 for an estate valued at $50,000 or less;

(ii) $30 for an estate valued at $75,000 or less but more than $50,000;

(iii) $50 for an estate valued at $112,000 or less but more than $75,000;

(iv) $90 for an estate valued at $168,000 or less but more than $112,000; and

(v) $175 for an estate valued at more than $168,000.

(s) The fee for filing a demand for a civil jury is $250.

(t) The fee for filing a notice of deposition in this state concerning an action pending in

another state under Utah Rules of Civil Procedure, Rule 30 is $35.

(u) The fee for filing documents that require judicial approval but are not part of an action before the court is $35.

(v) The fee for a petition to open a sealed record is $35.

(w) The fee for a writ of replevin, attachment, execution, or garnishment is $50 in addition to any fee for a complaint or petition.

(x) (i) The fee for a petition for authorization for a minor to marry required by Section 30-1-9 is $5.

(ii) The fee for a petition for emancipation of a minor provided in Title 80, Chapter 7, Emancipation, is $50.

(y) The fee for a certificate issued under Section [~~26-2-25~~] 26B-8-128 is $8.

(z) The fee for a certified copy of a document is $4 per document plus 50 cents per page.

(aa) The fee for an exemplified copy of a document is $6 per document plus 50 cents per page.

(bb) The Judicial Council shall, by rule, establish a schedule of fees for copies of documents and forms and for the search and retrieval of records under Title 63G, Chapter 2, Government Records Access and Management Act. Fees under Subsection (1)(bb) and (cc) shall be credited to the court as a reimbursement of expenditures.

(cc) The Judicial Council may, by rule, establish a reasonable fee to allow members of the public to conduct a limited amount of searches on the Xchange database without having to pay a monthly subscription fee.

(dd) There is no fee for services or the filing of documents not listed in this section or otherwise provided by law.

(ee) Except as provided in this section, all fees collected under this section are paid to the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk accepts the pleading for filing or performs the requested service.

(ff) The filing fees under this section may not be charged to the state, the state's agencies, or political subdivisions filing or defending any action. In judgments awarded in favor of the state, its agencies, or political subdivisions, except the Office of Recovery Services, the court shall order the filing fees and collection costs to be paid by the judgment

debtor. The sums collected under this Subsection (1)(ff) shall be applied to the fees after credit to the judgment, order, fine, tax, lien, or other penalty and costs permitted by law.

(2) (a) (i) From March 17, 1994, until June 30, 1998, the state court administrator shall transfer all revenues representing the difference between the fees in effect after May 2, 1994, and the fees in effect before February 1, 1994, as dedicated credits to the Division of Facilities Construction and Management Capital Projects Fund.

(ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities Construction and Management shall use up to $3,750,000 of the revenue deposited into the Capital Projects Fund under this Subsection (2)(a) to design and take other actions necessary to initiate the development of a courts complex in Salt Lake City.

(B) If the Legislature approves funding for construction of a courts complex in Salt Lake City in the 1995 Annual General Session, the Division of Facilities Construction and Management shall use the revenue deposited into the Capital Projects Fund under this Subsection (2)(a)(ii) to construct a courts complex in Salt Lake City.

(C) After the courts complex is completed and all bills connected with its construction have been paid, the Division of Facilities Construction and Management shall use any money remaining in the Capital Projects Fund under this Subsection (2)(a)(ii) to fund the Vernal District Court building.

(iii) The Division of Facilities Construction and Management may enter into agreements and make expenditures related to this project before the receipt of revenues provided for under this Subsection (2)(a)(iii).

(iv) The Division of Facilities Construction and Management shall:

(A) make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund; and

(B) reimburse the Capital Projects Fund upon receipt of the revenues provided for under this Subsection (2).

(b) After June 30, 1998, the state court administrator shall ensure that all revenues representing the difference between the fees in effect after May 2, 1994, and the fees in effect before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted account.

(c) The Division of Finance shall deposit all revenues received from the state court

administrator into the restricted account created by this section.

(d) (i) From May 1, 1995, until June 30, 1998, the state court administrator shall transfer $7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to the Division of Facilities Construction and Management Capital Projects Fund. The division of money pursuant to Section 78A-5-110 shall be calculated on the balance of the fine or bail forfeiture paid.

(ii) After June 30, 1998, the state court administrator or a municipality shall transfer $7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to the Division of Finance for deposit in the restricted account created by this section. The division of money pursuant to Section 78A-5-110 shall be calculated on the balance of the fine or bail forfeiture paid.

(3) (a) There is created within the General Fund a restricted account known as the State Courts Complex Account.

(b) The Legislature may appropriate money from the restricted account to the state court administrator for the following purposes only:

(i) to repay costs associated with the construction of the court complex that were funded from sources other than revenues provided for under this Subsection (3)(b)(i); and

(ii) to cover operations and maintenance costs on the court complex.

(4) (a) The requirement of a fee for filing a petition for expungement under Subsection (1)(i) is suspended from May 4, 2022, to June 30, 2023.

(b) An individual may not be charged a fee for filing a petition for expungement during the time period described in Subsection (4)(a).

Section 84. Section **78A-5-201** is amended to read:

78A-5-201. Creation and expansion of existing drug court programs -- Definition of drug court program -- Criteria for participation in drug court programs -- Reporting requirements.

(1) There may be created a drug court program in any judicial district that demonstrates:

(a) the need for a drug court program; and

(b) the existence of a collaborative strategy between the court, prosecutors, defense counsel, corrections, and substance abuse treatment services to reduce substance abuse by

offenders.

(2) The collaborative strategy in each drug court program shall:

(a) include monitoring and evaluation components to measure program effectiveness; and

(b) be submitted to, for the purpose of coordinating the disbursement of funding, the:

(i) executive director of the Department of [~~Human Services~~] Health and Human Services;

(ii) executive director of the Department of Corrections; and

(iii) state court administrator.

(3) (a) Funds disbursed to a drug court program shall be allocated as follows:

(i) 87% to the Department of [~~Human Services~~] Health and Human Services for testing, treatment, and case management; and

(ii) 13% to the Administrative Office of the Courts for increased judicial and court support costs.

(b) This provision does not apply to federal block grant funds.

(4) A drug court program shall include continuous judicial supervision using a cooperative approach with prosecutors, defense counsel, corrections, substance abuse treatment services, juvenile court probation, and the Division of Child and Family Services as appropriate to promote public safety, protect participants' due process rights, and integrate substance abuse treatment with justice system case processing.

(5) Screening criteria for participation in a drug court program shall include:

(a) a plea to, conviction of, or adjudication for a nonviolent drug offense or drug-related offense;

(b) an agreement to frequent alcohol and other drug testing;

(c) participation in one or more substance abuse treatment programs; and

(d) an agreement to submit to sanctions for noncompliance with drug court program requirements.

(6) (a) The Judicial Council shall develop rules prescribing eligibility requirements for participation in adult criminal drug courts.

(b) Acceptance of an offender into a drug court shall be based on a risk and needs assessment, without regard to the nature of the offense.

(c) A plea to, conviction of, or adjudication for a felony offense is not required for participation in a drug court program.

Section 85. 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 Sections 78A-5-102.5 and 78A-7-106, 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;

(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; and

(c) a misdemeanor, infraction, or violation of an ordinance, under municipal or state law, that was committed:

(i) by an individual:

(A) who was 18 years old and enrolled in high school at the time of the offense; and

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

(ii) on school property where the individual was enrolled:

(A) when school was in session; or

(B) during a school-sponsored activity, as defined in Subsection 53G-8-211(1)(k).

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

(a) a child who is an abused child, neglected child, or dependent child;

(b) a protective order for a child in accordance with Title 78B, Chapter 7, Part 2, Child Protective Orders;

(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 Title 80, Chapter 7, Emancipation;

(e) the termination of parental rights in accordance with Title 80, Chapter 4, Termination and Restoration of Parental Rights, including termination of residual parental rights and duties;

(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 in accordance with Section 30-1-9;

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

(i) a minor under Title 80, Chapter 6, Part 11, Interstate Compact for Juveniles;

(j) the treatment or commitment of a child with a mental illness;

(k) the commitment of a child to a secure drug or alcohol facility in accordance with Section [~~62A-15-301~~] 26B-5-204;

(l) a minor found not competent to proceed in accordance with 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;

(n) adoptions conducted in accordance with the procedures described in Title 78B, Chapter 6, Part 1, Utah Adoption Act, 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;

(o) an ungovernable or runaway child who is referred to the juvenile court by the Division of Juvenile Justice and Youth Services if, despite earnest and persistent efforts by the Division of Juvenile Justice and Youth Services, the child has demonstrated that the child:

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

(ii) has run away from home; and

(p) 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)(p).

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

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

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

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

Section 86. Section **78A-6-208** is amended to read:

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

(1) The chief administrative officer of the juvenile court, with the approval of the board, and the executive director of the Department of [~~Health~~] Health and Human Services, and director of the [~~Division of Substance Abuse~~] Office of Substance Use 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~~] Health and Human Services or the [~~Division of Substance Abuse~~] Office of Substance Use 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~~] Health and Human Services and the [~~Division of Substance Abuse~~] Office of Substance Use and Mental Health.

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

Section 87. Section **78A-6-209** is amended to read:

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

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

(2) 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 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 Individual, 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 the State Board of Education's inspection of the records before 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 80-2-602 and 80-2-701 and administrative hearings in accordance with Section 80-2-707;

(e) the [~~Office of Licensing~~] Division of Licensing and Background Checks for the purpose of conducting a background check in accordance with Section [~~62A-2-120~~] 26B-2-120;

(f) for information related to a 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~~] Health and Human Services for the purpose of evaluating under the provisions of Subsection [~~26-39-404(3)~~] 26B-2-406(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 the Department of [~~Health's~~] Health and Human Services' inspection of records before the Department of [~~Health~~] Health and Human Services makes a decision concerning licensure;

(g) for information related to a 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~~] Health and Human Services to determine whether an individual meets the background screening requirements of [~~Title 26, Chapter 21, Part 2, Clearance for Direct Patient Access~~] Sections 26B-2-238 through 26B-2-241, with the understanding that the department must provide the individual who committed the offense an opportunity to respond to any information gathered from the Department of [~~Health's~~] Health and Human Services' inspection of records

before the Department of [~~Health~~] Health and Human Services makes a decision under that part; and

(h) for information related to a 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~~] Health and Human Services to determine whether to grant, deny, or revoke background clearance under Section [~~26-8a-310~~] 26B-4-124 for an individual who is seeking or who has obtained an emergency medical service personnel license under Section [~~26-8a-302~~] 26B-4-116, with the understanding that the Department of [~~Health~~] Health and Human Services must provide the individual who committed the offense an opportunity to respond to any information gathered from the Department of [~~Health's~~] Health and Human Services' inspection of records before the Department of [~~Health~~] Health and Human Services makes a determination.

(3) With the consent of the 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 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) 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) The juvenile court may charge a reasonable fee to cover the costs associated with retrieving a requested record that has been archived.

Section 88. Section **78A-6-356** is amended to read:

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 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 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;

(b) shall inform 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

(b) inform 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 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 child's parent, guardian, or other obligated individual, as described in Subsection (4)(b), and the 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 child's parent, guardian, or other obligated individual within 30 days after the last day on which 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:

(i) has a signed, returned receipt for a certified letter mailed to the address of the 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 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~~] 26B-9-219 in setting a payment schedule or demanding payment in full.

(8) (a) Unless a court orders otherwise, the 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 and the department's divisions shall have authority to receive periodic payments for the care and maintenance of the child, such as 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 as provided in Section [~~62A-1-117~~] 26B-9-111.

(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 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 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

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

(12) (a) The child's parent or another obligated individual is not responsible for child support for the period of time that the child is removed from the child's home by the Division of Child and Family Services if:

(i) the juvenile court finds that there were insufficient grounds for the removal of the child; and

(ii) the child is returned to the home of the child's parent or guardian based on the finding described in Subsection (12)(a)(i).

(b) If the juvenile court finds insufficient grounds for the removal of the child under Subsection (12)(a), but that the child is to remain in state custody, the juvenile court shall order that the child's parent or another obligated individual is responsible for child support beginning on the day on which it became improper to return the child to the home of the child's parent or guardian.

(13) 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 the low income table in Section 78B-12-302 or 78B-12-304; 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 89. Section **78B-3-403** is amended to read:

78B-3-403. Definitions.

As used in this part:

(1) "Audiologist" means a person licensed to practice audiology under Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act.

(2) "Certified social worker" means a person licensed to practice as a certified social worker under Section 58-60-205.

(3) "Chiropractic physician" means a person licensed to practice chiropractic under Title 58, Chapter 73, Chiropractic Physician Practice Act.

(4) "Clinical social worker" means a person licensed to practice as a clinical social worker under Section 58-60-205.

(5) "Commissioner" means the commissioner of insurance as provided in Section 31A-2-102.

(6) "Dental hygienist" means a person licensed to engage in the practice of dental hygiene as defined in Section 58-69-102.

(7) "Dental care provider" means any person, partnership, association, corporation, or other facility or institution who causes to be rendered or who renders dental care or professional services as a dentist, dental hygienist, or other person rendering similar care and services relating to or arising out of the practice of dentistry or the practice of dental hygiene, and the officers, employees, or agents of any of the above acting in the course and scope of their employment.

(8) "Dentist" means a person licensed to engage in the practice of dentistry as defined in Section 58-69-102.

(9) "Division" means the Division of Professional Licensing created in Section 58-1-103.

(10) "Future damages" includes a judgment creditor's damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and suffering.

(11) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

(12) "Health care facility" means general acute hospitals, specialty hospitals, home health agencies, hospices, nursing care facilities, assisted living facilities, birthing centers, ambulatory surgical facilities, small health care facilities, health care facilities owned or operated by health maintenance organizations, and end stage renal disease facilities.

(13) "Health care provider" includes any person, partnership, association, corporation, or other facility or institution who causes to be rendered or who renders health care or professional services as a hospital, health care facility, physician, physician assistant, registered nurse, licensed practical nurse, nurse-midwife, licensed direct-entry midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, physical therapist assistant, podiatric physician, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech-language pathologist, clinical social worker, certified social worker, social service worker, marriage and family counselor, practitioner of obstetrics, licensed athletic trainer, or others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons and officers, employees, or agents of any of the above acting in the course and scope of their employment.

(14) "Hospital" means a public or private institution licensed under [~~Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act~~] Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection.

(15) "Licensed athletic trainer" means a person licensed under Title 58, Chapter 40a, Athletic Trainer Licensing Act.

(16) "Licensed direct-entry midwife" means a person licensed under the Direct-entry Midwife Act to engage in the practice of direct-entry midwifery as defined in Section 58-77-102.

(17) "Licensed practical nurse" means a person licensed to practice as a licensed practical nurse as provided in Section 58-31b-301.

(18) "Malpractice action against a health care provider" means any action against a health care provider, whether in contract, tort, breach of warranty, wrongful death, or otherwise, based upon alleged personal injuries relating to or arising out of health care rendered or which should have been rendered by the health care provider.

(19) "Marriage and family therapist" means a person licensed to practice as a marriage therapist or family therapist under Sections 58-60-305 and 58-60-405.

(20) "Naturopathic physician" means a person licensed to engage in the practice of naturopathic medicine as defined in Section 58-71-102.

(21) "Nurse-midwife" means a person licensed to engage in practice as a nurse midwife under Section 58-44a-301.

(22) "Optometrist" means a person licensed to practice optometry under Title 58, Chapter 16a, Utah Optometry Practice Act.

(23) "Osteopathic physician" means a person licensed to practice osteopathy under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(24) "Patient" means a person who is under the care of a health care provider, under a contract, express or implied.

(25) "Periodic payments" means the payment of money or delivery of other property to a judgment creditor at intervals ordered by the court.

(26) "Pharmacist" means a person licensed to practice pharmacy as provided in Section 58-17b-301.

(27) "Physical therapist" means a person licensed to practice physical therapy under Title 58, Chapter 24b, Physical Therapy Practice Act.

(28) "Physical therapist assistant" means a person licensed to practice physical therapy, within the scope of a physical therapist assistant license, under Title 58, Chapter 24b, Physical Therapy Practice Act.

(29) "Physician" means a person licensed to practice medicine and surgery under Title

58, Chapter 67, Utah Medical Practice Act.

(30) "Physician assistant" means a person licensed to practice as a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act.

(31) "Podiatric physician" means a person licensed to practice podiatry under Title 58, Chapter 5a, Podiatric Physician Licensing Act.

(32) "Practitioner of obstetrics" means a person licensed to practice as a physician in this state under Title 58, Chapter 67, Utah Medical Practice Act, or under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(33) "Psychologist" means a person licensed under Title 58, Chapter 61, Psychologist Licensing Act, to engage in the practice of psychology as defined in Section 58-61-102.

(34) "Registered nurse" means a person licensed to practice professional nursing as provided in Section 58-31b-301.

(35) "Relative" means a patient's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The term includes relationships that are created as a result of adoption.

(36) "Representative" means the spouse, parent, guardian, trustee, attorney-in-fact, person designated to make decisions on behalf of a patient under a medical power of attorney, or other legal agent of the patient.

(37) "Social service worker" means a person licensed to practice as a social service worker under Section 58-60-205.

(38) "Speech-language pathologist" means a person licensed to practice speech-language pathology under Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act.

(39) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act or omission proximately causing injury or damage to another.

(40) "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected result.

Section 90. Section **78B-3-405** is amended to read:

78B-3-405. Amount of award reduced by amounts of collateral sources available to plaintiff -- No reduction where subrogation right exists -- Collateral sources defined -- Procedure to preserve subrogation rights -- Evidence admissible -- Exceptions.

(1) In all malpractice actions against health care providers as defined in Section 78B-3-403 in which damages are awarded to compensate the plaintiff for losses sustained, the court shall reduce the amount of the award by the total of all amounts paid to the plaintiff from all collateral sources which are available to him. No reduction may be made for collateral sources for which a subrogation right exists as provided in this section nor shall there be a reduction for any collateral payment not included in the award of damages.

(2) Upon a finding of liability and an awarding of damages by the trier of fact, the court shall receive evidence concerning the total amounts of collateral sources which have been paid to or for the benefit of the plaintiff or are otherwise available to him. The court shall also take testimony of any amount which has been paid, contributed, or forfeited by, or on behalf of the plaintiff or members of his immediate family to secure his right to any collateral source benefit which he is receiving as a result of his injury, and shall offset any reduction in the award by those amounts. Evidence may not be received and a reduction may not be made with respect to future collateral source benefits except as specified in Subsection (5).

(3) For purposes of this section "collateral source" means payments made to or for the benefit of the plaintiff for:

(a) medical expenses and disability payments payable under the United States Social Security Act, any federal, state, or local income disability act, or any other public program, except the federal programs which are required by law to seek subrogation;

(b) any health, sickness, or income replacement insurance, automobile accident insurance that provides health benefits or income replacement coverage, and any other similar insurance benefits, except life insurance benefits available to the plaintiff, whether purchased by the plaintiff or provided by others;

(c) any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except benefits received as gifts, contributions, or assistance made gratuitously; and

(d) any contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability.

(4) To preserve subrogation rights for amounts paid or received prior to settlement or judgment, a provider of collateral sources shall, at least 30 days before settlement or trial of the

action, serve a written notice upon each health care provider against whom the malpractice action has been asserted. The written notice shall state:

(a) the name and address of the provider of collateral sources;

(b) the amount of collateral sources paid;

(c) the names and addresses of all persons who received payment; and

(d) the items and purposes for which payment has been made.

(5) Evidence is admissible of government programs that provide payments or benefits available in the future to or for the benefit of the plaintiff to the extent available irrespective of the recipient's ability to pay. Evidence of the likelihood or unlikelihood that the programs, payments, or benefits will be available in the future is also admissible. The trier of fact may consider the evidence in determining the amount of damages awarded to a plaintiff for future expenses.

(6) A provider of collateral sources is not entitled to recover any amount of benefits from a health care provider, the plaintiff, or any other person or entity as reimbursement for collateral source payments made prior to settlement or judgment, including any payments made under [~~Title 26, Chapter 19, Medical Benefits Recovery Act~~] Title 26B, Chapter 3, Part 10, Medical Benefits Recovery, except to the extent that subrogation rights to amounts paid prior to settlement or judgment are preserved as provided in this section.

(7) All policies of insurance providing benefits affected by this section are construed in accordance with this section.

Section 91. Section **78B-3-701** is amended to read:

78B-3-701. Definitions.

As used in this part:

(1) "Disability" has the same meaning as defined in Section [~~62A-5b-102~~] 26B-6-801.

(2) "Search and rescue dog" means a dog:

(a) with documented training to locate persons who are:

(i) lost, missing, or injured; or

(ii) trapped under debris as the result of a natural or man-made event; and

(b) affiliated with an established search and rescue dog organization.

(3) "Service animal" means:

(a) a service animal, as defined in Section [~~62A-5b-102~~] 26B-6-801; or

(b) a search and rescue dog.

Section 92. Section **78B-4-501** is amended to read:

78B-4-501. Good Samaritan Law.

(1) As used in this section:

(a) "Child" means an individual of such an age that a reasonable person would perceive the individual as unable to open the door of a locked motor vehicle, but in any case younger than 18 years of age.

(b) "Emergency" means an unexpected occurrence involving injury, threat of injury, or illness to a person or the public, including motor vehicle accidents, disasters, actual or threatened discharges, removal or disposal of hazardous materials, and other accidents or events of a similar nature.

(c) "Emergency care" includes actual assistance or advice offered to avoid, mitigate, or attempt to mitigate the effects of an emergency.

(d) "First responder" means a state or local:

(i) law enforcement officer, as defined in Section 53-13-103;

(ii) firefighter, as defined in Section 34A-3-113; or

(iii) emergency medical service provider, as defined in Section [~~26-8a-102~~] 26B-4-101.

(e) "Motor vehicle" means the same as that term is defined in Section 41-1a-102.

(2) A person who renders emergency care at or near the scene of, or during, an emergency, gratuitously and in good faith, is not liable for any civil damages or penalties as a result of any act or omission by the person rendering the emergency care, unless the person is grossly negligent or caused the emergency.

(3) (a) A person who gratuitously, and in good faith, assists a governmental agency or political subdivision in an activity described in Subsections (3)(a)(i) through (iii) is not liable for any civil damages or penalties as a result of any act or omission, unless the person rendering assistance is grossly negligent in:

(i) implementing measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health, or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;

(ii) investigating and controlling suspected bioterrorism and disease as set out in [~~Title 26, Chapter 23b, Detection of Public Health Emergencies Act~~] Title 26B, Chapter 7, Part 3,

Treatment, Isolation, and Quarantine Procedures for Communicable Diseases; and

(iii) responding to a national, state, or local emergency, a public health emergency as defined in Section [~~26-23b-102~~] 26B-7-301, or a declaration by the president of the United States or other federal official requesting public health-related activities.

(b) The immunity in this Subsection (3) is in addition to any immunity or protection in state or federal law that may apply.

(4) (a) A person who uses reasonable force to enter a locked and unattended motor vehicle to remove a confined child is not liable for damages in a civil action if all of the following apply:

(i) the person has a good faith belief that the confined child is in imminent danger of suffering physical injury or death unless the confined child is removed from the motor vehicle;

(ii) the person determines that the motor vehicle is locked and there is no reasonable manner in which the person can remove the confined child from the motor vehicle;

(iii) before entering the motor vehicle, the person notifies a first responder of the confined child;

(iv) the person does not use more force than is necessary under the circumstances to enter the motor vehicle and remove the confined child from the vehicle; and

(v) the person remains with the child until a first responder arrives at the motor vehicle.

(b) A person is not immune from civil liability under this Subsection (4) if the person fails to abide by any of the provisions of Subsection (4)(a) or commits any unnecessary or malicious damage to the motor vehicle.

Section 93. Section **78B-5-618** is amended to read:

78B-5-618. Patient access to medical records -- Third party access to medical records.

(1) As used in this section:

(a) "Health care provider" means the same as that term is defined in Section 78B-3-403.

(b) "Indigent individual" means an individual whose household income is at or below 100% of the federal poverty level as defined in Section [~~26-18-3.9~~] 26B-3-113.

(c) "Inflation" means the unadjusted Consumer Price Index, as published by the Bureau of Labor Statistics of the United States Department of Labor, that measures the average

changes in prices of goods and services purchased by urban wage earners and clerical workers.

(d) "Qualified claim or appeal" means a claim or appeal under any:

(i) provision of the Social Security Act as defined in Section 67-11-2; or

(ii) federal or state financial needs-based benefit program.

(2) Pursuant to Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R., Parts 160 and 164, a patient or a patient's personal representative may inspect or receive a copy of the patient's records from a health care provider when that health care provider is governed by the provisions of 45 C.F.R., Parts 160 and 164.

(3) When a health care provider is not governed by Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R., Parts 160 and 164, a patient or a patient's personal representative may inspect or receive a copy of the patient's records unless access to the records is restricted by law or judicial order.

(4) A health care provider who provides a paper or electronic copy of a patient's records to the patient or the patient's personal representative:

(a) shall provide the copy within the deadlines required by the Health Insurance Portability and Accountability Act of 1996, Administrative Simplification rule, 45 C.F.R. Sec. 164.524(b); and

(b) may charge a reasonable cost-based fee provided that the fee includes only the cost of:

(i) copying, including the cost of supplies for and labor of copying; and

(ii) postage, when the patient or patient's personal representative has requested the copy be mailed.

(5) Except for records provided by a health care provider under Section [~~26-1-37~~] 26B-8-411, a health care provider who provides a copy of a patient's records to a patient's attorney, legal representative, or other third party authorized to receive records:

(a) shall provide the copy within 30 days after receipt of notice; and

(b) may charge a reasonable fee for paper or electronic copies, but may not exceed the following rates:

(i) $30 per request for locating a patient's records;

(ii) reproduction charges may not exceed 53 cents per page for the first 40 pages and 32 cents per page for each additional page;

(iii) the cost of postage when the requester has requested the copy be mailed;

(iv) if requested, the health care provider will certify the record as a duplicate of the original for a fee of $20; and

(v) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.

(6) Except for records provided under Section [~~26-1-37~~] 26B-8-411, a contracted third party service that provides medical records, other than a health care provider under Subsections (4) and (5), who provides a copy of a patient's records to a patient's attorney, legal representative, or other third party authorized to receive records:

(a) shall provide the copy within 30 days after the request; and

(b) may charge a reasonable fee for paper or electronic copies, but may not exceed the following rates:

(i) $30 per request for locating a patient's records;

(ii) reproduction charges may not exceed 53 cents per page for the first 40 pages and 32 cents per page for each additional page;

(iii) the cost of postage when the requester has requested the copy be mailed;

(iv) if requested, the health care provider or the health care provider's contracted third party service will certify the record as a duplicate of the original for a fee of $20; and

(v) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act.

(7) A health care provider or the health care provider's contracted third party service shall deliver the medical records in the electronic medium customarily used by the health care provider or the health care provider's contracted third party service or in a universally readable image such as portable document format:

(a) if the patient, patient's personal representative, or a third party authorized to receive the records requests the records be delivered in an electronic medium; and

(b) the original medical record is readily producible in an electronic medium.

(8) (a) Except as provided in Subsections (8)(b) and (c), the per page fee in Subsections (4), (5), and (6) applies to medical records reproduced electronically or on paper.

(b) The per page fee for producing a copy of records in an electronic medium shall be 50% of the per page fee otherwise provided in this section, regardless of whether the original medical records are stored in electronic format.

(c) (i) A health care provider or a health care provider's contracted third party service

shall deliver the medical records in the electronic medium customarily used by the health care provider or the health care provider's contracted third party service or in a universally readable image, such as portable document format, if the patient, patient's personal representative, patient's attorney, legal representative, or a third party authorized to receive the records, requests the records be delivered in an electronic medium.

(ii) An entity providing requested information under Subsection (8)(c)(i):

(A) shall provide the requested information within 30 days; and

(B) may not charge a fee for the electronic copy that exceeds $150 regardless of the number of pages and regardless of whether the original medical records are stored in electronic format.

(9) (a) On January 1 of each year, the state treasurer shall adjust the following fees for inflation:

(i) the fee for providing patient's records under:

(A) Subsections (5)(b)(i) through (ii); and

(B) Subsections (6)(b)(i) through (ii); and

(ii) the maximum amount that may be charged for an electronic copy under Subsection (8)(c)(ii)(B).

(b) On or before January 30 of each year, the state treasurer shall:

(i) certify the inflation-adjusted fees and maximum amounts calculated under this section; and

(ii) notify the Administrative Office of the Courts of the information described in Subsection (9)(b)(i) for posting on the court's website.

(10) Notwithstanding Subsections (4) through (6), if a request for a medical record is accompanied by documentation of a qualified claim or appeal, a health care provider or the health care provider's contracted third party service:

(a) may not charge a fee for the first copy of the record for each date of service that is necessary to support the qualified claim or appeal in each calendar year;

(b) for a second or subsequent copy in a calendar year of a date of service that is necessary to support the qualified claim or appeal, may charge a reasonable fee that may not:

(i) exceed 60 cents per page for paper photocopies;

(ii) exceed a reasonable cost for copies of X-ray photographs and other health care

records produced by similar processes;

(iii) include an administrative fee or additional service fee related to the production of the medical record; or

(iv) exceed the fee provisions for an electronic copy under Subsection (8)(c); and

(c) shall provide the health record within 30 days after the day on which the request is received by the health care provider.

(11) (a) Except as otherwise provided in Subsections (4) through (6), a health care provider or the health care provider's contracted third party service shall waive all fees under this section for an indigent individual.

(b) A health care provider or the health care provider's contracted third party service may require the indigent individual or the indigent individual's authorized representative to provide proof that the individual is an indigent individual by executing an affidavit.

(c) (i) An indigent individual that receives copies of a medical record at no charge under this Subsection (11) is limited to one copy for each date of service for each health care provider, or the health care provider's contracted third party service, in each calendar year.

(ii) Any request for additional copies in addition to the one copy allowed under Subsection (11)(c) is subject to the fee provisions described in Subsection (10).

(12) By January 1, 2023, a health care provider and all of the health care provider's contracted third party health related services shall accept a properly executed form described in [~~Title 26, Chapter 70, Standard Health Record Access Form~~] Section 26B-8-514.

Section 94. Section **78B-5-902** is amended to read:

78B-5-902. Definitions.

As used in this part:

(1) "Communication" means an oral statement, written statement, note, record, report, or document made during, or arising out of, a meeting between a law enforcement officer, firefighter, emergency medical service provider, or rescue provider and a peer support team member.

(2) "Behavioral emergency services technician" means an individual who is licensed under Section [~~26-8a-302~~] 26B-4-116 as:

(a) a behavioral emergency services technician; or

(b) an advanced behavioral emergency services technician.

(3) "Emergency medical service provider or rescue unit peer support team member" means a person who is:

(a) an emergency medical service provider as defined in Section [~~26-8a-102~~] 26B-4-101, a regular or volunteer member of a rescue unit acting as an emergency responder as defined in Section 53-2a-502, or another person who has been trained in peer support skills; and

(b) designated by the chief executive of an emergency medical service agency or the chief of a rescue unit as a member of an emergency medical service provider's peer support team or as a member of a rescue unit's peer support team.

(4) "Law enforcement or firefighter peer support team member" means a person who is:

(a) a peace officer, law enforcement dispatcher, civilian employee, or volunteer member of a law enforcement agency, a regular or volunteer member of a fire department, or another person who has been trained in peer support skills; and

(b) designated by the commissioner of the Department of Public Safety, the executive director of the Department of Corrections, a sheriff, a police chief, or a fire chief as a member of a law enforcement agency's peer support team or a fire department's peer support team.

(5) "Trained" means a person who has successfully completed a peer support training program approved by the Peace Officer Standards and Training Division, the State Fire Marshal's Office, or the Department of Health and Human Services, as applicable.

Section 95. Section **78B-5-904** is amended to read:

78B-5-904. Exclusions for certain communications.

In accordance with the Utah Rules of Evidence, a behavioral emergency services technician may refuse to disclose communications made by an individual during the delivery of behavioral emergency services as defined in Section [~~26-8a-102~~] 26B-4-101.

Section 96. Section **78B-6-103** is amended to read:

78B-6-103. Definitions.

As used in this part:

(1) "Adoptee" means a person who:

(a) is the subject of an adoption proceeding; or

(b) has been legally adopted.

(2) "Adoption" means the judicial act that:

(a) creates the relationship of parent and child where it did not previously exist; and

(b) except as provided in Subsections 78B-6-138(2) and (4), terminates the parental rights of any other person with respect to the child.

(3) "Adoption document" means an adoption-related document filed with the office, a petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted in support of a supplementary birth certificate.

(4) "Adoption service provider" means:

(a) a child-placing agency;

(b) a licensed counselor who has at least one year of experience providing professional social work services to:

(i) adoptive parents;

(ii) prospective adoptive parents; or

(iii) birth parents; or

(c) the Office of Licensing within the Department of [~~Human Services~~] Health and Human Services.

(5) "Adoptive parent" means an individual who has legally adopted an adoptee.

(6) "Adult" means an individual who is 18 years of age or older.

(7) "Adult adoptee" means an adoptee who is 18 years of age or older and was adopted as a minor.

(8) "Adult sibling" means an adoptee's brother or sister, who is 18 years of age or older and whose birth mother or father is the same as that of the adoptee.

(9) "Birth mother" means the biological mother of a child.

(10) "Birth parent" means:

(a) a birth mother;

(b) a man whose paternity of a child is established;

(c) a man who:

(i) has been identified as the father of a child by the child's birth mother; and

(ii) has not denied paternity; or

(d) an unmarried biological father.

(11) "Child-placing agency" means an agency licensed to place children for adoption

under [~~Title 62A, Chapter 2, Licensure of Programs and Facilities~~] Title 26B, Chapter 2, Part 1, Human Services Programs and Facilities.

(12) "Cohabiting" means residing with another person and being involved in a sexual relationship with that person.

(13) "Division" means the Division of Child and Family Services, within the Department of [~~Human Services~~] Health and Human Services, created in Section 80-2-201.

(14) "Extra-jurisdictional child-placing agency" means an agency licensed to place children for adoption by a district, territory, or state of the United States, other than Utah.

(15) "Genetic and social history" means a comprehensive report, when obtainable, that contains the following information on an adoptee's birth parents, aunts, uncles, and grandparents:

(a) medical history;

(b) health status;

(c) cause of and age at death;

(d) height, weight, and eye and hair color;

(e) ethnic origins;

(f) where appropriate, levels of education and professional achievement; and

(g) religion, if any.

(16) "Health history" means a comprehensive report of the adoptee's health status at the time of placement for adoption, and medical history, including neonatal, psychological, physiological, and medical care history.

(17) "Identifying information" means information that is in the possession of the office and that contains the name and address of a pre-existing parent or an adult adoptee, or other specific information that by itself or in reasonable conjunction with other information may be used to identify a pre-existing parent or an adult adoptee, including information on a birth certificate or in an adoption document.

(18) "Licensed counselor" means an individual who is licensed by the state, or another state, district, or territory of the United States as a:

(a) certified social worker;

(b) clinical social worker;

(c) psychologist;

(d) marriage and family therapist;

(e) clinical mental health counselor; or

(f) an equivalent licensed professional of another state, district, or territory of the United States.

(19) "Man" means a male individual, regardless of age.

(20) "Mature adoptee" means an adoptee who is adopted when the adoptee is an adult.

(21) "Office" means the Office of Vital Records and Statistics within the Department of [~~Health~~] Health and Human Services operating under [~~Title 26, Chapter 2, Utah Vital Statistics Act~~] Title 26B, Chapter 8, Part 1, Vital Statistics.

(22) "Parent," for purposes of Section 78B-6-119, means any person described in Subsections 78B-6-120(1)(b) through (f) from whom consent for adoption or relinquishment for adoption is required under Sections 78B-6-120 through 78B-6-122.

(23) "Potential birth father" means a man who:

(a) is identified by a birth mother as a potential biological father of the birth mother's child, but whose genetic paternity has not been established; and

(b) was not married to the biological mother of the child described in Subsection (23)(a) at the time of the child's conception or birth.

(24) "Pre-existing parent" means:

(a) a birth parent; or

(b) an individual who, before an adoption decree is entered, is, due to an earlier adoption decree, legally the parent of the child being adopted.

(25) "Prospective adoptive parent" means an individual who seeks to adopt an adoptee.

(26) "Relative" means:

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

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

(27) "Unmarried biological father" means a man who:

(a) is the biological father of a child; and

(b) was not married to the biological mother of the child described in Subsection

(27)(a) at the time of the child's conception or birth.

Section 97. Section **78B-6-113** is amended to read:

78B-6-113. Prospective adoptive parent not a resident -- Preplacement requirements.

(1) When an adoption petition is to be finalized in this state with regard to any prospective adoptive parent who is not a resident of this state at the time a child is placed in that person's home, the prospective adoptive parent shall comply with the provisions of Sections 78B-6-128 and 78B-6-130.

(2) Except as provided in Subsection 78B-6-131(2), in addition to the other requirements of this section, before a child in state custody is placed with a prospective foster parent or a prospective adoptive parent, the Department of [~~Human Services~~] Health and Human Services shall comply with Section 78B-6-131.

Section 98. Section **78B-6-124** is amended to read:

78B-6-124. Persons who may take consents and relinquishments.

(1) A consent or relinquishment by a birth mother or an adoptee shall be signed before:

(a) a judge of any court that has jurisdiction over adoption proceedings;

(b) subject to Subsection (6), a person appointed by the judge described in Subsection (1)(a) to take consents or relinquishments; or

(c) subject to Subsection (6), a person who is authorized by a child-placing agency to take consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional child-placing agency.

(2) If the consent or relinquishment of a birth mother or adoptee is taken out of state it shall be signed before:

(a) subject to Subsection (6), a person who is authorized by a child-placing agency to take consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional child-placing agency;

(b) subject to Subsection (6), a person authorized or appointed to take consents or relinquishments by a court of this state that has jurisdiction over adoption proceedings;

(c) a court that has jurisdiction over adoption proceedings in the state where the consent or relinquishment is taken; or

(d) a person authorized, under the laws of the state where the consent or relinquishment

is taken, to take consents or relinquishments of a birth mother or adoptee.

(3) The consent or relinquishment of any other person or agency as required by Section 78B-6-120 may be signed before a Notary Public or any person authorized to take a consent or relinquishment under Subsection (1) or (2).

(4) A person, authorized by Subsection (1) or (2) to take consents or relinquishments, shall certify to the best of his information and belief that the person executing the consent or relinquishment has read and understands the consent or relinquishment and has signed it freely and voluntarily.

(5) A person executing a consent or relinquishment is entitled to receive a copy of the consent or relinquishment.

(6) A signature described in Subsection (1)(b), (1)(c), (2)(a), or (2)(b), shall be:

(a) notarized; or

(b) witnessed by two individuals who are not members of the birth mother's or the adoptee's immediate family.

(7) Except as provided in Subsection [~~62A-2-108.6(2)~~] 26B-2-127(2), a transfer of relinquishment from one child-placing agency to another child-placing agency shall be signed before a Notary Public.

Section 99. Section **78B-6-128** is amended to read:

78B-6-128. Preplacement adoptive evaluations -- Exceptions.

(1) (a) Except as otherwise provided in this section, a child may not be placed in an adoptive home until a preplacement adoptive evaluation, assessing the prospective adoptive parent and the prospective adoptive home, has been conducted in accordance with the requirements of this section.

(b) Except as provided in Section 78B-6-131, the court may, at any time, authorize temporary placement of a child in a prospective adoptive home pending completion of a preplacement adoptive evaluation described in this section.

(c) (i) Subsection (1)(a) does not apply if a pre-existing parent has legal custody of the child to be adopted and the prospective adoptive parent is related to that child or the pre-existing parent as a stepparent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin, unless the court otherwise requests the preplacement adoption.

(ii) The prospective adoptive parent described in this Subsection (1)(c) shall obtain the

information described in Subsections (2)(a) and (b), and file that documentation with the court prior to finalization of the adoption.

(d) (i) The preplacement adoptive evaluation shall be completed or updated within the 12-month period immediately preceding the placement of a child with the prospective adoptive parent.

(ii) If the prospective adoptive parent has previously received custody of a child for the purpose of adoption, the preplacement adoptive evaluation shall be completed or updated within the 12-month period immediately preceding the placement of a child with the prospective adoptive parent and after the placement of the previous child with the prospective adoptive parent.

(2) The preplacement adoptive evaluation shall include:

(a) a criminal history background check regarding each prospective adoptive parent and any other adult living in the prospective home, prepared no earlier than 18 months immediately preceding placement of the child in accordance with the following:

(i) if the child is in state custody, each prospective adoptive parent and any other adult living in the prospective home shall submit fingerprints to the Department of [~~Human Services~~] Health and Human Services, which shall perform a criminal history background check in accordance with Section [~~62A-2-120~~] 26B-2-120; or

(ii) subject to Subsection (3), if the child is not in state custody, an adoption service provider or an attorney representing a prospective adoptive parent shall submit fingerprints from the prospective adoptive parent and any other adult living in the prospective home to the Criminal and Technical Services Division of Public Safety for a regional and nationwide background check, to the Office of Licensing within the Department of [~~Human Services~~] Health and Human Services for a background check in accordance with Section [~~62A-2-120~~] 26B-2-120, or to the Federal Bureau of Investigation;

(b) a report containing all information regarding reports and investigations of child abuse, neglect, and dependency, with respect to each prospective adoptive parent and any other adult living in the prospective home, obtained no earlier than 18 months immediately preceding the day on which the child is placed in the prospective home, pursuant to waivers executed by each prospective adoptive parent and any other adult living in the prospective home, that:

(i) if the prospective adoptive parent or the adult living in the prospective adoptive

parent's home is a resident of Utah, is prepared by the Department of [~~Human Services~~] Health and Human Services from the records of the Department of [~~Human Services~~] Health and Human Services; or

(ii) if the prospective adoptive parent or the adult living in the prospective adoptive parent's home is not a resident of Utah, prepared by the Department of [~~Human Services~~] Health and Human Services, or a similar agency in another state, district, or territory of the United States, where each prospective adoptive parent and any other adult living in the prospective home resided in the five years immediately preceding the day on which the child is placed in the prospective adoptive home;

(c) in accordance with Subsection (6), a home study conducted by an adoption service provider that is:

(i) an expert in family relations approved by the court;

(ii) a certified social worker;

(iii) a clinical social worker;

(iv) a marriage and family therapist;

(v) a psychologist;

(vi) a social service worker, if supervised by a certified or clinical social worker;

(vii) a clinical mental health counselor; or

(viii) an Office of Licensing employee within the Department of [~~Human Services~~] Health and Human Services who is trained to perform a home study; and

(d) in accordance with Subsection (7), if the child to be adopted is a child who is in the custody of any public child welfare agency, and is a child who has a special need as defined in Section 80-2-801, the preplacement adoptive evaluation shall be conducted by the Department of [~~Human Services~~] Health and Human Services or a child-placing agency that has entered into a contract with the department to conduct the preplacement adoptive evaluations for children with special needs.

(3) For purposes of Subsection (2)(a)(ii), subject to Subsection (4), the criminal history background check described in Subsection (2)(a)(ii) shall be submitted in a manner acceptable to the court that will:

(a) preserve the chain of custody of the results; and

(b) not permit tampering with the results by a prospective adoptive parent or other

interested party.

(4) In order to comply with Subsection (3), the manner in which the criminal history background check is submitted shall be approved by the court.

(5) Except as provided in Subsection 78B-6-131(2), in addition to the other requirements of this section, before a child in state custody is placed with a prospective foster parent or a prospective adoptive parent, the Department of [~~Human Services~~] Health and Human Services shall comply with Section 78B-6-131.

(6) (a) An individual described in Subsections (2)(c)(i) through (vii) shall be licensed to practice under the laws of:

(i) this state; or

(ii) the state, district, or territory of the United States where the prospective adoptive parent or other person living in the prospective adoptive home resides.

(b) Neither the Department of [~~Human Services~~] Health and Human Services nor any of the department's divisions may proscribe who qualifies as an expert in family relations or who may conduct a home study under Subsection (2)(c).

(c) The home study described in Subsection (2)(c) shall be a written document that contains the following:

(i) a recommendation to the court regarding the suitability of the prospective adoptive parent for placement of a child;

(ii) a description of in-person interviews with the prospective adoptive parent, the prospective adoptive parent's children, and other individuals living in the home;

(iii) a description of character and suitability references from at least two individuals who are not related to the prospective adoptive parent and with at least one individual who is related to the prospective adoptive parent;

(iv) a medical history and a doctor's report, based upon a doctor's physical examination of the prospective adoptive parent, made within two years before the date of the application; and

(v) a description of an inspection of the home to determine whether sufficient space and facilities exist to meet the needs of the child and whether basic health and safety standards are maintained.

(7) Any fee assessed by the evaluating agency described in Subsection (2)(d) is the

responsibility of the adopting parent.

(8) The person conducting the preplacement adoptive evaluation shall, in connection with the preplacement adoptive evaluation, provide the prospective adoptive parent with literature approved by the Division of Child and Family Services relating to adoption, including information relating to:

(a) the adoption process;

(b) developmental issues that may require early intervention; and

(c) community resources that are available to the prospective adoptive parent.

(9) A copy of the preplacement adoptive evaluation shall be filed with the court.

Section 100. Section **78B-6-131** is amended to read:

78B-6-131. Child in custody of state -- Placement.

(1) Notwithstanding Sections 78B-6-128 through 78B-6-130, and except as provided in Subsection (2), a child who is in the legal custody of the state 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 prospective foster parent, prospective adoptive parent, and any other adult residing in the household;

(b) the Department of [~~Human Services~~] Health and Human Services conducts a check of the child abuse and neglect registry in each state where the prospective foster parent or prospective adoptive parent resided in the five years immediately preceding 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 child abuse or neglect;

(c) the Department of [~~Human Services~~] Health and Human Services conducts a check of the child 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 (1)(b) resided in the five years immediately preceding 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 child

abuse or neglect; and

(d) each person required to undergo a background check described in this section passes the background check, pursuant to the provisions of Section [~~62A-2-120~~] 26B-2-120.

(2) The requirements under Subsection (1) do not apply to the extent that:

(a) federal law or rule permits otherwise; or

(b) the requirements would prohibit the division or a court from placing a child with:

(i) a noncustodial parent, under Section 80-2a-301, 80-3-302, or 80-3-303; or

(ii) a relative, under Section 80-2a-301, 80-3-302, or 80-3-303, pending completion of the background check described in Subsection (1).

Section 101. Section **78B-6-142** is amended to read:

78B-6-142. Adoption order from foreign country.

(1) Except as otherwise provided by federal law, an adoption order rendered to a resident of this state that is made by a foreign country shall be recognized by the courts of this state and enforced as if the order were rendered by a court in this state.

(2) A person who adopts a child in a foreign country may register the order in this state. A petition for registration of a foreign adoption order may be combined with a petition for a name change. If the court finds that the foreign adoption order meets the requirements of Subsection (1), the court shall order the state registrar to:

(a) file the order pursuant to Section 78B-6-137; and

(b) file a certificate of birth for the child pursuant to Section [~~26-2-28~~] 26B-8-131.

(3) If a clerk of the court is unable to establish the fact, time, and place of birth from the documentation provided, a person holding a direct, tangible, and legitimate interest as described in Subsection [~~26-2-22(3)(a) or (b)~~] 26B-8-125(3)(a) or (b) may petition for a court order establishing the fact, time, and place of a birth pursuant to Subsection [~~26-2-15(1)~~] 26B-8-119(1).

Section 102. Section **78B-7-205** is amended to read:

78B-7-205. Service -- Income withholding -- Expiration.

(1) If the court enters an ex parte child protective order or a child protective order, the court shall:

(a) make reasonable efforts to ensure that the order is understood by the petitioner and the respondent, if present;

(b) as soon as possible transmit the order to the county sheriff for service; and

(c) by the end of the next business day after the order is entered, transmit electronically a copy of the order to any law enforcement agency designated by the petitioner and to the statewide domestic violence network described in Section 78B-7-113.

(2) The county sheriff shall serve the order and transmit verification of service to the statewide domestic violence network described in Section 78B-7-113 in an expeditious manner. Any law enforcement agency may serve the order and transmit verification of service to the statewide domestic violence network if the law enforcement agency has contact with the respondent or if service by that law enforcement agency is in the best interests of the child.

(3) When an order is served on a respondent in a jail, prison, or other holding facility, the law enforcement agency managing the facility shall notify the petitioner of the respondent's release. Notice to the petitioner consists of a prompt, good faith effort to provide notice, including mailing the notice to the petitioner's last-known address.

(4) Child support orders issued as part of a child protective order are subject to mandatory income withholding under [~~Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases~~] Title 26B, Chapter 9, Part 3, Income Withholding in IV-D Cases, and Title 26B, Chapter 9, Part 4, Income Withholding in Non IV-D Cases.

(5) (a) A child protective order issued against a respondent who is a parent, stepparent, guardian, or custodian of the child who is the subject of the order expires 150 days after the day on which the order is issued unless a different date is set by the court.

(b) The court may not set a date on which a child protective order described in Subsection (5)(a) expires that is more than 150 days after the day on which the order is issued without a finding of good cause.

(c) The court may review and extend the expiration date of a child protective order described in Subsection (5)(a), but may not extend the expiration date more than 150 days after the day on which the order is issued without a finding of good cause.

(d) Notwithstanding Subsections (5)(a) through (c), a child protective order is not effective after the day on which the child who is the subject of the order turns 18 years old and the court may not extend the expiration date of a child protective order to a date after the day on which the child who is the subject of the order turns 18 years old.

(6) A child protective order issued against a respondent who is not a parent, stepparent, guardian, or custodian of the child who is the subject of the order expires on the day on which the child turns 18 years old.

Section 103. Section **78B-7-603** is amended to read:

78B-7-603. Cohabitant abuse protective orders -- Ex parte cohabitant abuse protective orders -- Modification of orders -- Service of process -- Duties of the court.

(1) If it appears from a petition for a protective order or a petition to modify a protective order that domestic violence or abuse has occurred, that there is a substantial likelihood domestic violence or abuse will occur, or that a modification of a protective order is required, a court may:

(a) without notice, immediately issue an ex parte cohabitant abuse protective order or modify a protective order ex parte as the court considers necessary to protect the petitioner and all parties named to be protected in the petition; or

(b) upon notice, issue a protective order or modify an order after a hearing, regardless of whether the respondent appears.

(2) A court may grant the following relief without notice in a protective order or a modification issued ex parte:

(a) enjoin the respondent from threatening to commit domestic violence or abuse, committing domestic violence or abuse, or harassing the petitioner or any designated family or household member;

(b) prohibit the respondent from telephoning, contacting, or otherwise communicating with the petitioner or any designated family or household member, directly or indirectly, with the exception of any parent-time provisions in the ex parte order;

(c) subject to Subsection (2)(e), prohibit the respondent from being within a specified distance of the petitioner;

(d) subject to Subsection (2)(e), order that the respondent is excluded from and is to stay away from the following places and their premises:

(i) the petitioner's residence or any designated family or household member's residence;

(ii) the petitioner's school or any designated family or household member's school;

(iii) the petitioner's or any designated family or household member's place of employment;

(iv) the petitioner's place of worship or any designated family or household member's place of worship; or

(v) any specified place frequented by the petitioner or any designated family or household member;

(e) if the petitioner or designated family or household member attends the same school as the respondent, is employed at the same place of employment as the respondent, or attends the same place of worship, the court:

(i) may not enter an order under Subsection (2)(c) or (d) that excludes the respondent from the respondent's school, place of employment, or place of worship; and

(ii) may enter an order governing the respondent's conduct at the respondent's school, place of employment, or place of worship;

(f) upon finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or possessing a firearm or other weapon specified by the court;

(g) order possession and use of an automobile and other essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

(h) order the respondent to maintain an existing wireless telephone contract or account;

(i) grant to the petitioner or someone other than the respondent temporary custody of a minor child of the parties;

(j) order the appointment of an attorney guardian ad litem under Sections 78A-2-703 and 78A-2-803;

(k) prohibit the respondent from physically injuring, threatening to injure, or taking possession of a household animal that is owned or kept by the petitioner;

(l) prohibit the respondent from physically injuring or threatening to injure a household animal that is owned or kept by the respondent;

(m) order any further relief that the court considers necessary to provide for the safety and welfare of the petitioner and any designated family or household member; and

(n) if the petition requests child support or spousal support, at the hearing on the

petition order both parties to provide verification of current income, including year-to-date pay stubs or employer statements of year-to-date or other period of earnings, as specified by the court, and complete copies of tax returns from at least the most recent year.

(3) A court may grant the following relief in a cohabitant abuse protective order or a modification of an order after notice and hearing, regardless of whether the respondent appears:

(a) grant the relief described in Subsection (2); and

(b) specify arrangements for parent-time of any minor child by the respondent and require supervision of that parent-time by a third party or deny parent-time if necessary to protect the safety of the petitioner or child.

(4) In addition to the relief granted under Subsection (3), the court may order the transfer of a wireless telephone number in accordance with Section 78B-7-117.

(5) Following the cohabitant abuse protective order hearing, the court shall:

(a) as soon as possible, deliver the order to the county sheriff for service of process;

(b) make reasonable efforts to ensure that the cohabitant abuse protective order is understood by the petitioner, and the respondent, if present;

(c) transmit electronically, by the end of the next business day after the order is issued, a copy of the cohabitant abuse protective order to the local law enforcement agency or agencies designated by the petitioner;

(d) transmit a copy of the order to the statewide domestic violence network described in Section 78B-7-113; and

(e) if the individual is a respondent or defendant subject to a court order that meets the qualifications outlined in 18 U.S.C. Sec. 922(g)(8), transmit within 48 hours, excluding Saturdays, Sundays, and legal holidays, a record of the order to the Bureau of Criminal Identification that includes:

(i) an agency record identifier;

(ii) the individual's name, sex, race, and date of birth;

(iii) the issue date, conditions, and expiration date for the protective order; and

(iv) if available, the individual's social security number, government issued driver license or identification number, alien registration number, government passport number, state identification number, or FBI number.

(6) Each protective order shall include two separate portions, one for provisions, the

violation of which are criminal offenses, and one for provisions, the violation of which are civil offenses, as follows:

(a) criminal offenses are those under Subsections (2)(a) through (g), and under Subsection (3)(a) as it refers to Subsections (2)(a) through (g); and

(b) civil offenses are those under Subsections (2)(h) through (l), Subsection (3)(a) as it refers to Subsections (2)(h) through (l), and Subsection (3)(b).

(7) Child support and spouse support orders issued as part of a protective order are subject to mandatory income withholding under [~~Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases~~] Title 26B, Chapter 9, Part 3, Income Withholding in IV-D Cases, and Title 26B, Chapter 9, Part 4, Income Withholding in Non IV-D Cases, except when the protective order is issued ex parte.

(8) (a) The county sheriff that receives the order from the court, under Subsection (5), shall provide expedited service for protective orders issued in accordance with this part, and shall transmit verification of service of process, when the order has been served, to the statewide domestic violence network described in Section 78B-7-113.

(b) This section does not prohibit any law enforcement agency from providing service of process if that law enforcement agency:

(i) has contact with the respondent and service by that law enforcement agency is possible; or

(ii) determines that under the circumstances, providing service of process on the respondent is in the best interests of the petitioner.

(9) (a) When an order is served on a respondent in a jail or other holding facility, the law enforcement agency managing the facility shall make a reasonable effort to provide notice to the petitioner at the time the respondent is released from incarceration.

(b) Notification of the petitioner shall consist of a good faith reasonable effort to provide notification, including mailing a copy of the notification to the last-known address of the victim.

(10) A court may modify or vacate a protective order or any provisions in the protective order after notice and hearing, except that the criminal provisions of a cohabitant abuse protective order may not be vacated within two years of issuance unless the petitioner:

(a) is personally served with notice of the hearing, as provided in the Utah Rules of Civil Procedure, and the petitioner personally appears, in person or through court video conferencing, before the court and gives specific consent to the vacation of the criminal provisions of the cohabitant abuse protective order; or

(b) submits a verified affidavit, stating agreement to the vacation of the criminal provisions of the cohabitant abuse protective order.

(11) A protective order may be modified without a showing of substantial and material change in circumstances.

(12) A civil provision of a protective order described in Subsection (6) may be dismissed or modified at any time in a divorce, parentage, custody, or guardianship proceeding that is pending between the parties to the protective order action if:

(a) the parties stipulate in writing or on the record to dismiss or modify a civil provision of the protective order; or

(b) the court in the divorce, parentage, custody, or guardianship proceeding finds good cause to dismiss or modify the civil provision.

Section 104. Section **78B-8-401** is amended to read:

78B-8-401. Definitions.

As used in this part:

(1) "Blood or contaminated body fluids" includes blood, saliva, amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, and vaginal secretions, and any body fluid visibly contaminated with blood.

(2) "COVID-19" means the same as that term is defined in Section 78B-4-517.

(3) "Disease" means Human Immunodeficiency Virus infection, acute or chronic Hepatitis B infection, Hepatitis C infection, COVID-19 or another infectious disease that may cause Severe Acute Respiratory Syndrome, and any other infectious disease specifically designated by the Labor Commission, in consultation with the Department of [~~Health~~] Health and Human Services, for the purposes of this part.

(4) "Emergency services provider" means:

(a) an individual licensed under Section [~~26-8a-302~~] 26B-4-116, a peace officer, local fire department personnel, or personnel employed by the Department of Corrections or by a county jail, who provide prehospital emergency care for an emergency services provider either

as an employee or as a volunteer; or

(b) an individual who provides for the care, control, support, or transport of a prisoner.

(5) "First aid volunteer" means a person who provides voluntary emergency assistance or first aid medical care to an injured person prior to the arrival of an emergency medical services provider or peace officer.

(6) "Health care provider" means the same as that term is defined in Section 78B-3-403.

(7) "Medical testing procedure" means a nasopharyngeal swab, a nasal swab, a capillary blood sample, a saliva test, or a blood draw.

(8) "Peace officer" means the same as that term is defined in Section 53-1-102.

(9) "Prisoner" means the same as that term is defined in Section 76-5-101.

(10) "Significant exposure" and "significantly exposed" mean:

(a) exposure of the body of one individual to the blood or body fluids of another individual by:

(i) percutaneous injury, including a needle stick, cut with a sharp object or instrument, or a wound resulting from a human bite, scratch, or similar force; or

(ii) contact with an open wound, mucous membrane, or nonintact skin because of a cut, abrasion, dermatitis, or other damage;

(b) exposure of the body of one individual to the body fluids, including airborne droplets, of another individual if:

(i) the other individual displays symptoms known to be associated with COVID-19 or another infectious disease that may cause Severe Acute Respiratory Syndrome; or

(ii) other evidence exists that would lead a reasonable person to believe that the other individual may be infected with COVID-19 or another infectious disease that may cause Severe Acute Respiratory Syndrome; or

(c) exposure that occurs by any other method of transmission defined by the Labor Commission, in consultation with the Department of [~~Health~~] Health and Human Services, as a significant exposure.

Section 105. Section **78B-8-402** is amended to read:

78B-8-402. Petition -- Disease testing -- Notice -- Payment for testing.

(1) An emergency services provider or first aid volunteer who is significantly exposed

during the course of performing the emergency services provider's duties or during the course of performing emergency assistance or first aid, or a health care provider acting in the course and scope of the health care provider's duties as a health care provider may:

(a) request that the person to whom the emergency services provider, first aid volunteer, or health care provider was significantly exposed voluntarily submit to testing; or

(b) petition the district court or a magistrate for an order requiring that the person to whom the emergency services provider, first aid volunteer, or health care provider was significantly exposed submit to testing to determine the presence of a disease and that the results of that test be disclosed to the petitioner by the Department of [~~Health~~] Health and Human Services.

(2) (a) A law enforcement agency may submit on behalf of the petitioner by electronic or other means an ex parte request for a warrant ordering a medical testing procedure of the respondent.

(b) The court or magistrate shall issue a warrant ordering the respondent to submit to a medical testing procedure within two hours, and that reasonable force may be used, if necessary, if the court or magistrate finds that:

(i) the petitioner was significantly exposed during the course of performing the petitioner's duties as an emergency services provider, first aid volunteer, or health care provider;

(ii) the respondent refused to give consent to the medical testing procedure or is unable to give consent;

(iii) there may not be an opportunity to obtain a sample at a later date; and

(iv) a delay in administering available FDA-approved post-exposure treatment or prophylaxis could result in a lack of effectiveness of the treatment or prophylaxis.

(c) (i) If the petitioner requests that the court order the respondent to submit to a blood draw, the petitioner shall request a person authorized under Section 41-6a-523 to perform the blood draw.

(ii) If the petitioner requests that the court order the respondent to submit to a medical testing procedure, other than a blood draw, the petitioner shall request that a qualified medical professional, including a physician, a physician's assistant, a registered nurse, a licensed practical nurse, or a paramedic, perform the medical testing procedure.

(d) (i) A sample drawn in accordance with a warrant following an ex parte request shall be sent to the Department of [~~Health~~] Health and Human Services for testing.

(ii) If the Department of [~~Health~~] Health and Human Services is unable to perform a medical testing procedure ordered by the court under this section, a qualified medical laboratory may perform the medical testing procedure if:

(A) the Department of [~~Health~~] Health and Human Services requests that the medical laboratory perform the medical testing procedure; and

(B) the result of the medical testing procedure is provided to the Department of [~~Health~~] Health and Human Services.

(3) If a petitioner does not seek or obtain a warrant pursuant to Subsection (2), the petitioner may file a petition with the district court seeking an order to submit to testing and to disclose the results in accordance with this section.

(4) (a) The petition described in Subsection (3) shall be accompanied by an affidavit in which the petitioner certifies that the petitioner has been significantly exposed to the individual who is the subject of the petition and describes that exposure.

(b) The petitioner shall submit to testing to determine the presence of a disease, when the petition is filed or within three days after the petition is filed.

(5) The petitioner shall cause the petition required under this section to be served on the person who the petitioner is requesting to be tested in a manner that will best preserve the confidentiality of that person.

(6) (a) The court shall set a time for a hearing on the matter within 10 days after the petition is filed and shall give the petitioner and the individual who is the subject of the petition notice of the hearing at least 72 hours prior to the hearing.

(b) The individual who is the subject of the petition shall also be notified that the individual may have an attorney present at the hearing and that the individual's attorney may examine and cross-examine witnesses.

(c) The hearing shall be conducted in camera.

(7) The district court may enter an order requiring that an individual submit to testing, including a medical testing procedure, for a disease if the court finds probable cause to believe:

(a) the petitioner was significantly exposed; and

(b) the exposure occurred during the course of the emergency services provider's

duties, the provision of emergency assistance or first aid by a first aid volunteer, or the health care provider acting in the course and scope of the provider's duties as a health care provider.

(8) The court may order that the use of reasonable force is permitted to complete an ordered test if the individual who is the subject of the petition is a prisoner.

(9) The court may order that additional, follow-up testing be conducted and that the individual submit to that testing, as it determines to be necessary and appropriate.

(10) The court is not required to order an individual to submit to a test under this section if it finds that there is a substantial reason, relating to the life or health of the individual, not to enter the order.

(11) (a) Upon order of the district court that an individual submit to testing for a disease, that individual shall report to the designated local health department to provide the ordered specimen within five days after the day on which the court issues the order, and thereafter as designated by the court, or be held in contempt of court.

(b) The court shall send the order to the Department of [~~Health~~] Health and Human Services and to the local health department ordered to conduct or oversee the test.

(c) Notwithstanding the provisions of Section [~~26-6-27~~] 26B-7-217, the Department of [~~Health~~] Health and Human Services and a local health department may disclose the test results pursuant to a court order as provided in this section.

(d) Under this section, anonymous testing as provided under Section [~~26-6-3.5~~] 26B-7-203 may not satisfy the requirements of the court order.

(12) The local health department or the Department of [~~Health~~] Health and Human Services shall inform the subject of the petition and the petitioner of the results of the test and advise both parties that the test results are confidential. That information shall be maintained as confidential by all parties to the action.

(13) The court, the court's personnel, the process server, the Department of [~~Health~~] Health and Human Services, local health department, and petitioner shall maintain confidentiality of the name and any other identifying information regarding the individual tested and the results of the test as they relate to that individual, except as specifically authorized by this chapter.

(14) (a) Except as provided in Subsection (14)(b), the petitioner shall remit payment for each test performed in accordance with this section to the entity that performs the

procedure.

(b) If the petitioner is an emergency services provider, the agency that employs the emergency services provider shall remit payment for each test performed in accordance with this section to the entity that performs the procedure.

(15) The entity that obtains a specimen for a test ordered under this section shall cause the specimen and the payment for the analysis of the specimen to be delivered to the Department of [~~Health~~] Health and Human Services for analysis.

(16) If the individual is incarcerated, the incarcerating authority shall either obtain a specimen for a test ordered under this section or shall pay the expenses of having the specimen obtained by a qualified individual who is not employed by the incarcerating authority.

(17) The ex parte request or petition shall be sealed upon filing and made accessible only to the petitioner, the subject of the petition, and their attorneys, upon court order.

Section 106. Section **78B-8-404** is amended to read:

78B-8-404. Department authority -- Rules.

The Labor Commission, in consultation with the Department of [~~Health~~] Health and Human Services, has authority to establish rules necessary for the purposes of Subsections 78B-8-401(2) and (8).

Section 107. Section **78B-10-106** is amended to read:

78B-10-106. Exceptions to privilege.

(1) There is no privilege under Section 78B-10-104 for a mediation communication that is:

(a) in an agreement evidenced by a record signed by all parties to the agreement;

(b) available to the public under Title 63G, Chapter 2, Government Records Access and Management Act, or made during a mediation session which is open, or is required by law to be open, to the public;

(c) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(d) intentionally used to plan a crime, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity;

(e) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;

(f) except as otherwise provided in Subsection (3), sought or offered to prove or

disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or

(g) subject to the reporting requirements in Section [~~62A-3-305~~] 26B-6-205 or 80-2-602.

(2) There is no privilege under Section 78B-10-104 if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that:

(a) the evidence is not otherwise available;

(b) there is a need for the evidence that substantially outweighs the interest in protecting confidentiality; and

(c) the mediation communication is sought or offered in:

(i) a court proceeding involving a felony or misdemeanor; or

(ii) except as otherwise provided in Subsection (3), a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(3) A mediator may not be compelled to provide evidence of a mediation communication referred to in Subsection (1)(f) or (2)(c)(ii).

(4) If a mediation communication is not privileged under Subsection (1) or (2), only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under Subsection (1) or (2) does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

Section 108. Section **78B-12-102** is amended to read:

78B-12-102. Definitions.

As used in this chapter:

(1) "Adjusted gross income" means income calculated under Subsection 78B-12-204(1).

(2) "Administrative agency" means the Office of Recovery Services or the Department of [~~Human Services~~] Health and Human Services.

(3) "Administrative order" means an order that has been issued by the Office of Recovery Services, the Department of [~~Human Services~~] Health and Human Services, or an

administrative agency of another state or other comparable jurisdiction with similar authority to that of the office.

(4) "Base child support award" means the award that may be ordered and is calculated using the guidelines before additions for medical expenses and work-related child care costs.

(5) "Base combined child support obligation table," "child support table," "base child support obligation table," "low income table," or "table" means the appropriate table in Part 3, Tables.

(6) "Cash medical support" means an obligation to equally share all reasonable and necessary medical and dental expenses of children.

(7) "Child" means:

(a) a son or daughter under the age of 18 years who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States;

(b) a son or daughter over the age of 18 years, while enrolled in high school during the normal and expected year of graduation and not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) a son or daughter of any age who is incapacitated from earning a living and, if able to provide some financial resources to the family, is not able to support self by own means.

(8) "Child support" means a base child support award, or a monthly financial award for uninsured medical expenses, ordered by a tribunal for the support of a child, including current periodic payments, arrearages that accrue under an order for current periodic payments, and sum certain judgments awarded for arrearages, medical expenses, and child care costs.

(9) "Child support order" or "support order" means a judgment, decree, or order of a tribunal whether interlocutory or final, whether or not prospectively or retroactively modifiable, whether incidental to a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection, or otherwise that:

(a) establishes or modifies child support;

(b) reduces child support arrearages to judgment; or

(c) establishes child support or registers a child support order under Chapter 14, Utah Uniform Interstate Family Support Act.

(10) "Child support services" or "IV-D child support services" means services provided pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651 et seq.

(11) "Court" means the district court or juvenile court.

(12) "Guidelines" means the directions for the calculation and application of child support in Part 2, Calculation and Adjustment.

(13) "Health care coverage" means coverage under which medical services are provided to a dependent child through:

(a) fee for service;

(b) a health maintenance organization;

(c) a preferred provider organization;

(d) any other type of private health insurance; or

(e) public health care coverage.

(14) (a) "Income" means earnings, compensation, or other payment due to an individual, regardless of source, whether denominated as wages, salary, commission, bonus, pay, allowances, contract payment, or otherwise, including severance pay, sick pay, and incentive pay.

(b) "Income" includes:

(i) all gain derived from capital assets, labor, or both, including profit gained through sale or conversion of capital assets;

(ii) interest and dividends;

(iii) periodic payments made under pension or retirement programs or insurance policies of any type;

(iv) unemployment compensation benefits;

(v) workers' compensation benefits; and

(vi) disability benefits.

(15) "Joint physical custody" means the child stays with each parent overnight for more than 30% of the year, and both parents contribute to the expenses of the child in addition to paying child support.

(16) "Medical expenses" means health and dental expenses and related insurance costs.

(17) "Obligee" means an individual, this state, another state, or another comparable jurisdiction to whom child support is owed or who is entitled to reimbursement of child support or public assistance.

(18) "Obligor" means a person owing a duty of support.

(19) "Office" means the Office of Recovery Services within the Department of [~~Human Services~~] Health and Human Services.

(20) "Parent" includes a natural parent, or an adoptive parent.

(21) "Pregnancy expenses" means an amount equal to:

(a) the sum of a pregnant mother's:

(i) health insurance premiums while pregnant that are not paid by an employer or government program; and

(ii) medical costs related to the pregnancy, incurred after the date of conception and before the pregnancy ends; minus

(b) any portion of the amount described in Subsection (21)(a) that a court determines is equitable based on the totality of the circumstances, not including any amount paid by the mother or father of the child.

(22) "Split custody" means that each parent has physical custody of at least one of the children.

(23) "State" includes a state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Native American Tribe, or other comparable domestic or foreign jurisdiction.

(24) "Temporary" means a period of time that is projected to be less than 12 months in duration.

(25) "Third party" means an agency or a person other than the biological or adoptive parent or a child who provides care, maintenance, and support to a child.

(26) "Tribunal" means the district court, the Department of [~~Human Services~~] Health and Human Services, Office of Recovery Services, or court or administrative agency of a state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Native American Tribe, or other comparable domestic or foreign jurisdiction.

(27) "Work-related child care costs" means reasonable child care costs for up to a full-time work week or training schedule as necessitated by the employment or training of a parent under Section 78B-12-215.

(28) "Worksheets" means the forms used to aid in calculating the base child support award.

Section 109. Section **78B-12-111** is amended to read:

78B-12-111. Court order -- Medical expenses of dependent children -- Assigning responsibility for payment -- Insurance coverage -- Income withholding.

The court shall include the following in its order:

(1) a provision assigning responsibility for the payment of reasonable and necessary medical expenses for the dependent children;

(2) a provision requiring the purchase and maintenance of appropriate insurance for the medical expenses of dependent children, if coverage is or becomes available at a reasonable cost; and

(3) provisions for income withholding, in accordance with [~~Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases,and Part 5, Income Withholding in Non IV-D Cases~~] Title 26B, Chapter 9, Part 3, Income Withholding in IV-D Cases, and Title 26B, Chapter 9, Part 4, Income Withholding in Non IV-D Cases.

Section 110. Section **78B-12-112** is amended to read:

78B-12-112. Payment under child support order -- Judgment.

(1) All monthly payments of child support shall be due on the 1st day of each month pursuant to [~~Title 62A, Chapter 11, Part 3, Child Support Services Act, Part 4, Income Withholding in IV-D Cases, and Part 5, Income Withholding in Non IV-D Cases~~] Title 26B, Chapter 9, Part 2, Child Support Services, Title 26B, Chapter 9, Part 3, Income Withholding in IV-D Cases, and Title 26B, Chapter 9, Part 4, Income Withholding in Non IV-D Cases.

(2) For purposes of child support services and income withholding pursuant to [~~Title 62A, Chapter 11, Part 3, Child Support Services Act, and Part 4, Income Withholding in IV-D Cases~~] Title 26B, Chapter 9, Part 2, Child Support Services, and Title 26B, Chapter Part 3, Income Withholding in IV-D Cases, child support is not considered past due until the 1st day of the following month. For purposes other than those specified in Subsection (1) support shall be payable 1/2 by the 5th day of each month and 1/2 by the 20th day of that month, unless the order or decree provides for a different time for payment.

(3) Each payment or installment of child or spousal support under any support order, as defined by Section 78B-12-102, is, on and after the date it is due:

(a) a judgment with the same attributes and effect of any judgment of a district court, except as provided in Subsection (4);

(b) entitled, as a judgment, to full faith and credit in this and in any other jurisdiction;

and

(c) not subject to retroactive modification by this or any other jurisdiction, except as provided in Subsection (4).

(4) A child or spousal support payment under a support order may be modified with respect to any period during which a modification is pending, but only from the date of service of the pleading on the obligee, if the obligor is the petitioner, or on the obligor, if the obligee is the petitioner. If the tribunal orders that the support should be modified, the effective date of the modification shall be the month following service on the parent whose support is affected. Once the tribunal determines that a modification is appropriate, the tribunal shall order a judgment to be entered for any difference in the original order and the modified amount for the period from the service of the pleading until the final order of modification is entered.

(5) The judgment provided for in Subsection (3)(a), to be effective and enforceable as a lien against the real property interest of any third party relying on the public record, shall be docketed in the district court in accordance with Sections 78B-5-202 and [~~62A-11-312.5~~] 26B-9-214.

Section 111. Section **78B-12-113** is amended to read:

78B-12-113. Enforcement of right of support.

(1) (a) The obligee may enforce his right of support against the obligor. The office may proceed pursuant to this chapter or any other applicable statute on behalf of:

(i) the Department of [~~Human Services~~] Health and Human Services;

(ii) any other department or agency of this state that provides public assistance, as defined by Subsection [~~62A-11-303(3)~~] 26B-9-201(4), to enforce the right to recover public assistance; or

(iii) the obligee, to enforce the obligee's right of support against the obligor.

(b) Whenever any court action is commenced by the office to enforce payment of the obligor's support obligation, the attorney general or the county attorney of the county of residence of the obligee shall represent the office.

(2) (a) A person may not commence an action, file a pleading, or submit a written stipulation to the court, without complying with Subsection (2)(b), if the purpose or effect of the action, pleading, or stipulation is to:

(i) establish paternity;

(ii) establish or modify a support obligation;

(iii) change the court-ordered manner of payment of support;

(iv) recover support due or owing; or

(v) appeal issues regarding child support laws.

(b) (i) When taking an action described in Subsection (2)(a), a person must file an affidavit with the court at the time the action is commenced, the pleading is filed, or the stipulation is submitted stating whether child support services have been or are being provided under Part IV of the Social Security Act, 42 U.S.C., Section 601 et seq., on behalf of a child who is a subject of the action, pleading, or stipulation.

(ii) If child support services have been or are being provided, under Part IV of the Social Security Act, 42 U.S.C., Section 601 et seq., the person shall mail a copy of the affidavit and a copy of the pleading or stipulation to the Office of the Attorney General, Child Support Division.

(iii) If notice is not given in accordance with this Subsection (2), the office is not bound by any decision, judgment, agreement, or compromise rendered in the action. For purposes of appeals, service must be made on the Office of the Director for the Office of Recovery Services.

(c) If IV-D services have been or are being provided, that person shall join the office as a party to the action, or mail or deliver a written request to the Office of the Attorney General, Child Support Division asking the office to join as a party to the action. A copy of that request, along with proof of service, shall be filed with the court. The office shall be represented as provided in Subsection (1)(b).

(3) Neither the attorney general nor the county attorney represents or has an attorney-client relationship with the obligee or the obligor in carrying out the duties under this chapter.

Section 112. Section **78B-12-216** is amended to read:

78B-12-216. Reduction for extended parent-time.

(1) The base child support award shall be:

(a) reduced by 50% for each child for time periods during which the child is with the noncustodial parent by order of the court or by written agreement of the parties for at least 25 of any 30 consecutive days of extended parent-time; or

(b) 25% for each child for time periods during which the child is with the noncustodial parent by order of the court, or by written agreement of the parties for at least 12 of any 30 consecutive days of extended parent-time.

(2) If the dependent child is a client of cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment Program, any agreement by the parties for reduction of child support during extended parent-time shall be approved by the administrative agency.

(3) Normal parent-time and holiday visits to the custodial parent shall not be considered extended parent-time.

(4) For cases receiving IV-D child support services in accordance with [~~Title 62A, Chapter 11, Part 1, Office of Recovery Services, Part 3, Child Support Services Act, and Part 4, Income Withholding in IV-D Cases~~] Title 26B, Chapter 9, Part 1, Office of Recovery Services, Title 26B, Chapter 9, Part 2, Child Support Services, and Title 26B, Chapter 9, Part 3, Income Withholding in IV-D Cases, to receive the adjustment the noncustodial parent shall provide written documentation of the extended parent-time schedule, including the beginning and ending dates, to the Office of Recovery Services in the form of either a court order or a voluntary written agreement between the parties.

(5) If the noncustodial parent complies with Subsection (4), owes no past-due support, and pays the full, unadjusted amount of current child support due for the month of scheduled extended parent-time and the following month, the Office of Recovery Services shall refund the difference from the child support due to the custodial parent or the state, between the full amount of current child support received during the month of extended parent-time and the adjusted amount of current child support due:

(a) from current support received in the month following the month of scheduled extended parent-time; or

(b) from current support received in the month following the month written documentation of the scheduled extended parent-time is provided to the office, whichever occurs later.

(6) If the noncustodial parent complies with Subsection (4), owes past-due support, and pays the full, unadjusted amount of current child support due for the month of scheduled extended parent-time, the Office of Recovery Services shall apply the difference, from the child support due to the custodial parent or the state, between the full amount of current child

support received during the month of extended parent-time and the adjusted amount of current child support due, to the past-due support obligation in the case.

(7) For cases not receiving IV-D child support services in accordance with [~~Title 62A, Chapter 11, Part 1, Office of Recovery Services, Part 3, Child Support Services Act, and Part 4, Income Withholding in IV-D Cases~~] Title 26B, Chapter 9, Part 1, Office of Recovery Services, Title 26B, Chapter 9, Part 2, Child Support Services, and Title 26B, Chapter Part 3, Income Withholding in IV-D Cases, any potential adjustment of the support payment during the month of extended visitation or any refund that may be due to the noncustodial parent from the custodial parent, shall be resolved between the parents or through the court without involvement by the Office of Recovery Services.

(8) For purposes of this section the per child amount to which the abatement applies shall be calculated by dividing the base child support award by the number of children included in the award.

(9) The reduction in this section does not apply to parents with joint physical custody obligations calculated in accordance with Section 78B-12-208.

Section 113. Section **78B-12-402** is amended to read:

78B-12-402. Duties -- Report -- Staff.

(1) The advisory committee shall review the child support guidelines to ensure the application of the guidelines results in the determination of appropriate child support award amounts.

(2) The advisory committee shall submit, in accordance with Section 68-3-14, a written report to the legislative Judiciary Interim Committee on or before October 1, 2021, and then on or before October 1 of every fourth year subsequently.

(3) The advisory committee's report shall include recommendations of the majority of the advisory committee, as well as specific recommendations of individual members of the advisory committee.

(4) Staff for the advisory committee shall be provided from the existing budget of the Department of [~~Human Services~~] Health and Human Services.

Section 114. Section **78B-14-103** is amended to read:

78B-14-103. State tribunal and support enforcement agency.

(1) The district court and the Utah Department of [~~Human Services~~] Health and Human

Services are the tribunals of this state.

(2) The Utah Department of [~~Human Services~~] Health and Human Services is the state support enforcement agency.

Section 115. Section **78B-14-501** is amended to read:

78B-14-501. Employer's receipt of income-withholding order of another state.

An income-withholding order issued in another state may be sent by or on behalf of the obligee, or by the support-enforcement agency, to the person defined as the obligor's employer under [~~Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Part 5, Income Withholding in Non IV-D Cases~~] Title 26B, Chapter 9, Part 3, Income Withholding in IV-D Cases, and Title 26B, Chapter 9, Part 4, Income Withholding in Non IV-D Cases, without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

Section 116. Section **78B-14-605** is amended to read:

78B-14-605. Notice of registration of order.

(1) When a support order or income-withholding order issued in another state, or a foreign support order, is registered, the registering tribunal of this state shall notify the nonregistering party. The notice shall be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(2) A notice shall inform the nonregistering party:

(a) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(b) that a hearing to contest the validity or enforcement of the registered order shall be requested within 20 days after notice, unless the registered order is under Section 78B-14-707;

(c) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(d) of the amount of any alleged arrearages.

(3) If the registering party asserts that two or more orders are in effect, a notice shall also:

(a) identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any;

(b) notify the nonregistering party of the right to a determination of which is the

controlling order;

(c) state that the procedures provided in Subsection (2) apply to the determination of which is the controlling order; and

(d) state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(4) Upon registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer pursuant to [~~Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases~~] Title 26B, Chapter 9, Part 3, Income Withholding in IV-D Cases.

Section 117. Section **78B-14-703** is amended to read:

78B-14-703. Relationship of Department of Health and Human Services to United States central authority.

The Utah Department of [~~Human Services~~] Health and Human Services is recognized as the agency designated by the United States central authority to perform specific functions under the convention.

Section 118. Section **78B-14-704** is amended to read:

78B-14-704. Initiation by Department of Health and Human Services of support proceeding under convention.

(1) In a support proceeding under this part, the Utah Department of [~~Human Services~~] Health and Human Services shall:

(a) transmit and receive applications; and

(b) initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

(2) The following support proceedings are available to an obligee under the convention:

(a) recognition or recognition and enforcement of a foreign support order;

(b) enforcement of a support order issued or recognized in this state;

(c) establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;

(d) establishment of a support order if recognition of a foreign support order is refused

under Subsection 78B-14-708(2)(b), (d), or (i);

(e) modification of a support order of a tribunal of this state; and

(f) modification of a support order of a tribunal of another state or a foreign country.

(3) The following support proceedings are available under the convention to an obligor against which there is an existing support order:

(a) recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;

(b) modification of a support order of a tribunal of this state; and

(c) modification of a support order of a tribunal of another state or a foreign country.

(4) A tribunal of this state may not require security, bond, or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the convention.

Section 119. Section **78B-15-104** is amended to read:

78B-15-104. Jurisdiction -- Authority of Office of Recovery Services -- Dismissal of petition.

(1) (a) Except as provided in Subsection 78A-6-104(1)(a)(i), the district court has original jurisdiction over any action brought under this chapter.

(b) If the juvenile court has concurrent jurisdiction under Subsection 78A-6-104(1)(a)(i) over a paternity action filed in the district court, the district court may transfer jurisdiction over the paternity action to the juvenile court.

(2) The Office of Recovery Services is authorized to establish paternity in accordance with this chapter, [~~Title 62A, Chapter 11, Recovery Services~~] Title 26B, Chapter 9, Recovery Services and Administration of Child Support, and Title 63G, Chapter 4, Administrative Procedures Act.

(3) 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 120. Section **78B-15-107** is amended to read:

78B-15-107. Effect.

An adjudication or declaration of paternity shall be filed with the state registrar in accordance with Section [~~26-2-5~~] 26B-8-104.

Section 121. Section **78B-24-203** is amended to read:

78B-24-203. Prohibited custody transfer.

(1) Except as provided in Subsection (2), a parent or guardian of a child, or an individual with whom a child has been placed for adoption, may not transfer custody of the child to another person with the intent, at the time of the transfer, to abandon the rights and responsibilities concerning the child.

(2) A parent or guardian of a child or an individual with whom a child has been placed for adoption may transfer custody of the child to another person with the intent, at the time of the transfer, to abandon the rights and responsibilities concerning the child only through:

(a) adoption or guardianship;

(b) judicial award of custody;

(c) placement by or through a child-placing agency;

(d) other judicial or tribal action; or

(e) safe relinquishment under [~~Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child~~] Title 80, Chapter 4, Part 5, Safe Relinquishment of a Newborn Child.

(3) (a) A person may not receive custody of a child, or act as an intermediary in a transfer of custody of a child, if the person knows or reasonably should know the transfer violates Subsection (1).

(b) This subsection does not apply if the person as soon as practicable after the transfer, notifies the Division of Child and Family Services of the transfer or takes appropriate action to establish custody under Subsection (2).

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

(5) A violation of Subsection (1) is not established solely because a parent or guardian that transfers custody of a child does not regain custody.

Section 122. Section **78B-24-307** is amended to read:

78B-24-307. Child-placing agency compliance.

(1) The Office of Licensing, created in Section [~~62A-2-103~~] 26B-2-103, may investigate an allegation that a child-placing agency has failed to comply with this part and commence an action for injunctive or other relief or initiate administrative proceedings against the child-placing agency to enforce this part.

(2) (a) The Office of Licensing may initiate a proceeding to determine whether a

child-placing agency has failed to comply with this part.

(b) If the Office of Licensing finds that the child-placing agency has failed to comply, the Office of Licensing may suspend or revoke the child-placing agency's license or take other action permitted by law of the state.

Section 123. Section **78B-24-308** is amended to read:

78B-24-308. Rulemaking authority.

The Office of Licensing, created in Section [~~62A-2-103~~] 26B-2-103, may adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement Sections 78B-24-303, 78B-24-304, 78B-24-305, and 78B-24-306.

Section 124. Section **79-2-404** is amended to read:

79-2-404. Contracting powers of department -- Health insurance coverage.

(1) As used in this section:

(a) "Aggregate" means the sum of all contracts, change orders, and modifications related to a single project.

(b) "Change order" means the same as that term is defined in Section 63G-6a-103.

(c) "Employee" means, as defined in Section 34A-2-104, an "employee," "worker," or "operative" who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance, which may not exceed the first day of the calendar month following 60 days after the day on which the individual is hired.

(d) "Health benefit plan" means:

(i) the same as that term is defined in Section 31A-1-301; or

(ii) an employee welfare benefit plan:

(A) established under the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.;

(B) for an employer with 100 or more employees; and

(C) in which the employer establishes a self-funded or partially self-funded group health plan to provide medical care for the employer's employees and dependents of the employees.

(e) "Qualified health coverage" means the same as that term is defined in Section

[~~26-40-115~~] 26B-3-909.

(f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.

(g) "Third party administrator" or "administrator" means the same as that term is defined in Section 31A-1-301.

(2) Except as provided in Subsection (3), the requirements of this section apply to:

(a) a contractor of a design or construction contract entered into by, or delegated to, the department or a division, board, or council of the department on or after July 1, 2009, if the prime contract is in an aggregate amount equal to or greater than $2,000,000; and

(b) a subcontractor of a contractor of a design or construction contract entered into by, or delegated to, the department or a division, board, or council of the department on or after July 1, 2009, if the subcontract is in an aggregate amount equal to or greater than $1,000,000.

(3) This section does not apply to contracts entered into by the department or a division, board, or council of the department if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract or agreement is between:

(i) the department or a division, board, or council of the department; and

(ii) (A) another agency of the state;

(B) the federal government;

(C) another state;

(D) an interstate agency;

(E) a political subdivision of this state; or

(F) a political subdivision of another state; or

(c) the contract or agreement is:

(i) for the purpose of disbursing grants or loans authorized by statute;

(ii) a sole source contract; or

(iii) an emergency procurement.

(4) A person that intentionally uses change orders, contract modifications, or multiple contracts to circumvent the requirements of this section is guilty of an infraction.

(5) (a) A contractor subject to the requirements of this section shall demonstrate to the department that the contractor has and will maintain an offer of qualified health coverage for the contractor's employees and the employees' dependents during the duration of the contract

by submitting to the department a written statement that:

(i) the contractor offers qualified health coverage that complies with Section [~~26-40-115~~] 26B-3-909;

(ii) is from:

(A) an actuary selected by the contractor or the contractor's insurer;

(B) an underwriter who is responsible for developing the employer group's premium rates; or

(C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by a third party administrator; and

(iii) was created within one year before the day on which the statement is submitted.

(b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii) shall provide the actuary or underwriter selected by an administrator, as described in Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's contribution to the health benefit plan and the actuarial value of the health benefit plan meet the requirements of qualified health coverage.

(ii) A contractor may not make a change to the contractor's contribution to the health benefit plan, unless the contractor provides notice to:

(A) the actuary or underwriter selected by an administrator, as described in Subsection (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in Subsection (5)(a) in compliance with this section; and

(B) the department.

(c) A contractor that is subject to the requirements of this section shall:

(i) place a requirement in each of the contractor's subcontracts that a subcontractor that is subject to the requirements of this section shall obtain and maintain an offer of qualified health coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and

(ii) obtain from a subcontractor that is subject to the requirements of this section a written statement that:

(A) the subcontractor offers qualified health coverage that complies with Section [~~26-40-115~~] 26B-3-909;

(B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an

underwriter who is responsible for developing the employer group's premium rates, or if the subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by an administrator; and

(C) was created within one year before the day on which the contractor obtains the statement.

(d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage described in Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

(ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health coverage described in Subsection (5)(c) during the duration of the subcontract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health coverage described in Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) a public transit district in accordance with Section 17B-2a-818.5;

(iii) the Division of Facilities Construction and Management in accordance with Section 63A-5b-607;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Administrative Rules Review and General Oversight Committee; and

(c) that establish:

(i) the requirements and procedures a contractor and a subcontractor shall follow to demonstrate compliance with this section, including:

(A) that a contractor or subcontractor's compliance with this section is subject to an

audit by the department or the Office of the Legislative Auditor General;

(B) that a contractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(a); and

(C) that a subcontractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(c)(ii);

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health coverage for an employee and a dependent of an employee of the contractor or subcontractor who was not offered qualified health coverage during the duration of the contract; and

(iii) a website on which the department shall post the commercially equivalent benchmark, for the qualified health coverage identified in Subsection (1)(e), provided by the Department of [~~Health~~] Health and Human Services, in accordance with Subsection [~~26-40-115(2)~~] 26B-3-909(2).

(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor or subcontractor who intentionally violates the provisions of this section is liable to the employee for health care costs that would have been covered by qualified health coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement described in Subsection (5)(a) or (5)(c)(ii); or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3).

(b) An employee has a private right of action only against the employee's employer to

enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section [~~26-18-402~~] 26B-1-309.

(9) The failure of a contractor or subcontractor to provide qualified health coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:

(i) Section 63G-6a-1602; or

(ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

(10) An administrator, including an administrator's actuary or underwriter, who provides a written statement under Subsection (5)(a) or (c) regarding the qualified health coverage of a contractor or subcontractor who provides a health benefit plan described in Subsection (1)(d)(ii):

(a) subject to Subsection (10)(b), is not liable for an error in the written statement, unless the administrator commits gross negligence in preparing the written statement;

(b) is not liable for any error in the written statement if the administrator relied in good faith on information from the contractor or subcontractor; and

(c) may require as a condition of providing the written statement that a contractor or subcontractor hold the administrator harmless for an action arising under this section.

Section 125. Section **80-1-102** is amended to read:

80-1-102. Juvenile Code definitions.

Except as provided in Section 80-6-1103, as used in this 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 facts alleged in the petition have been proved.

(b) "Adjudication" does not mean a finding of not competent to proceed in accordance with Section 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) who is a minor.

(5) "Attorney guardian ad litem" means the same as that term is defined in Section 78A-2-801.

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

(7) "Child" means, except as provided in Section 80-2-905, 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 80-3-307.

(9) "Child placing" means the same as that term is defined in Section [~~62A-2-101~~] 26B-2-101.

(10) "Child-placing agency" means the same as that term is defined in Section [~~62A-2-101~~] 26B-2-101.

(11) "Child protection team" means a team consisting of:

(a) the child welfare caseworker assigned to the case;

(b) if applicable, the child welfare caseworker who made the decision to remove the child;

(c) a representative of the school or school district where the child attends school;

(d) if applicable, the law enforcement 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) if appropriate, a representative of law enforcement selected by the chief of police or sheriff in the city or county where the child resides; and

(h) any other individuals determined appropriate and necessary by the team coordinator and chair.

(12) (a) "Chronic abuse" means repeated or patterned abuse.

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

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

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

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

(15) "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.

(16) "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 and Youth Services.

(17) "Community placement" means placement of a minor in a community-based program described in Section 80-5-402.

(18) "Correctional facility" means:

(a) a county jail; or

(b) a secure correctional facility as defined in Section 64-13-1.

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

(20) "Department" means the Department of Health and Human Services created in Section 26B-1-201.

(21) "Dependent child" or "dependency" means a child who is without proper care through no fault of the child's parent, guardian, or custodian.

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

(23) "Detention" means home detention or secure detention.

(24) "Detention facility" means a facility, established by the Division of Juvenile Justice and Youth Services in accordance with Section 80-5-501, for minors held in detention.

(25) "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.

(26) "Developmental immaturity" means incomplete development in one or more domains 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.

(27) "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.

(28) "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.

(29) "Educational series" means an evidence-based instructional series:

(a) obtained at a substance abuse program that is approved by the Division of Integrated Healthcare in accordance with Section [~~62A-15-105~~] ~~{~~26B-5-105~~}~~26B-5-104; and

(b) designed to prevent substance use or the onset of a mental health disorder.

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

(31) "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.

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

(33) "Formal probation" means a minor is:

(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 80-6-607.

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

(35) "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.

(36) "Guardian ad litem" means the same as that term is defined in Section 78A-2-801.

(37) "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.

(38) "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 and Youth 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 and Youth Services or the juvenile court.

(39) (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) "Incest" includes:

(i) blood relationships of the whole or half blood, regardless of whether the relationship is legally recognized;

(ii) relationships of parent and child by adoption; and

(iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.

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

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

(42) "Indigent defense service provider" means the same as that term is defined in Section 78B-22-102.

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

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

(45) (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.

(46) "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.

(47) "Juvenile offender" means:

(a) a serious youth offender; or

(b) a youth offender.

(48) "Juvenile probation officer" means a probation officer appointed under Section 78A-6-205.

(49) "Juvenile receiving center" means a nonsecure, nonresidential program established by the Division of Juvenile Justice and Youth Services, or under contract with the Division of Juvenile Justice and Youth Services, that is responsible for minors taken into temporary custody under Section 80-6-201.

(50) "Legal custody" means a relationship embodying:

(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.

(51) "Licensing Information System" means the Licensing Information System maintained by the Division of Child and Family Services under Section 80-2-1002.

(52) "Management Information System" means the Management Information System developed by the Division of Child and Family Services under Section 80-2-1001.

(53) "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.

(54) "Minor" means, except as provided in Sections 80-6-501, 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;

(ii) (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 in accordance with Subsection 78A-6-103(1)(b); or

(iii) (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 in accordance with Subsection 78A-6-103(1)(c).

(55) "Mobile crisis outreach team" means the same as that term is defined in Section [~~62A-15-102~~] 26B-5-101.

(56) "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 76-5-401.1.

(57) (a) "Natural parent" means, except as provided in Section 80-3-302, a minor's biological or adoptive parent.

(b) "Natural parent" includes the minor's noncustodial parent.

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

(i) abandonment of a child, except as provided in Chapter 4, Part 5, 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 child custody transfer under Section 78B-24-203; or

(vi) educational neglect.

(b) "Neglect" does not include:

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

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

(iii) a parent or guardian exercising the right described in Section 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.

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

(60) "Nonjudicial adjustment" means closure of the case by the assigned juvenile probation officer, without 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, guardian, or custodian.

(61) "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.

(62) "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 and Youth Services, or another person designated by the Division of Juvenile Justice and Youth Services.

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

(64) (a) "Probation" means a legal status created by court order, following an adjudication 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.

(65) "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.

(66) "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.

(67) "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.

(68) "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 an agency designated by the juvenile court.

(69) (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.

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

(70) (a) "Residual parental rights and duties" means the rights and duties remaining with 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.

(71) "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.

(72) "Secure care" means placement of a minor, who is committed to the Division of Juvenile Justice and Youth Services for rehabilitation, in a facility operated by, or under contract with, the Division of Juvenile Justice and Youth Services, that provides 24-hour supervision and confinement of the minor.

(73) "Secure care facility" means a facility, established in accordance with Section 80-5-503, for juvenile offenders in secure care.

(74) "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 and Youth Services:

(a) before disposition of an offense that is alleged to have been committed by the minor; or

(b) under Section 80-6-704.

(75) "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 and Youth Services for secure care under Sections 80-6-703 and 80-6-705.

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

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

(78) (a) "Severe type of child abuse or neglect" means, except as provided in Subsection (78)(b):

(i) if committed by an individual who is 18 years old or older:

(A) chronic abuse;

(B) severe abuse;

(C) sexual abuse;

(D) sexual exploitation;

(E) abandonment;

(F) chronic neglect; or

(G) severe neglect; or

(ii) if committed by an individual who is under 18 years old:

(A) causing serious physical injury, as defined in Subsection 76-5-109(1), to another child that indicates a significant risk to other children; or

(B) sexual behavior with or upon another child that indicates a significant risk to other children.

(b) "Severe type of child abuse or neglect" does not include:

(i) the use of reasonable and necessary physical restraint by an educator in accordance with Subsection 53G-8-302(2) or Section 76-2-401;

(ii) an individual's conduct that is justified under Section 76-2-401 or constitutes the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the possession or under the control of a child or to protect the child or another individual from physical injury; or

(iii) a health care decision made for a child by a child's parent or guardian, unless, subject to Subsection (78)(c), the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(c) Subsection (78)(b)(iii) does not prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

(79) "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 (39), 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;

(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.

(80) "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, or Section 76-5b-201.1, aggravated sexual exploitation of a minor, regardless of whether the individual who engages in the conduct is actually charged with, or convicted of, the offense.

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

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

(83) "Significant risk" means a risk of harm that is determined to be significant in accordance with risk assessment tools and rules established by the Division of Child and Family Services in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that focus on:

(a) age;

(b) social factors;

(c) emotional factors;

(d) sexual factors;

(e) intellectual factors;

(f) family risk factors; and

(g) other related considerations.

(84) "Single criminal episode" means the same as that term is defined in Section 76-1-401.

(85) "Status offense" means an offense that would not be an offense but for the age of the offender.

(86) "Substance abuse" means, except as provided in Section 80-2-603, the misuse or excessive use of alcohol or other drugs or substances.

(87) "Substantiated" or "substantiation" means a judicial finding based on a preponderance of the evidence, and separate consideration of each allegation made or identified in the case, that abuse, neglect, or dependency occurred .

(88) "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 in the protective custody of the Division of Child and Family Services, or a minor in the temporary custody or custody of the Division of Child and Family Services, as those terms are defined in Section 80-2-102; or

(c) the licensing and supervision of a substitute care facility.

(89) "Supported" means a finding by the Division of Child and Family Services based on the evidence available at the completion of an investigation, and separate consideration of

each allegation made or identified during the investigation, that there is a reasonable basis to conclude that abuse, neglect, or dependency occurred.

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

(91) "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 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.

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

(93) "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 (93)(a) and (b).

(94) "Unsubstantiated" means a judicial finding that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.

(95) "Unsupported" means a finding by the Division of Child and Family Services at the completion of an investigation, after the day on which the Division of Child and Family Services concludes the alleged abuse, neglect, or dependency is not without merit, that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.

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

(97) "Without merit" means a finding at the completion of an investigation by the Division of Child and Family Services, 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.

(98) "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 and Youth Services for secure care under Sections 80-6-703 and 80-6-705.

Section 126. Section **80-1-103** is amended to read:

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~~] Health and Human Services, the Division of Juvenile Justice and Youth Services, the Division of Child and Family Services, [~~the Department of Health, the Division of Substance Abuse~~] the Office of Substance Use 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 provisions of this title.

(2) A juvenile court is authorized to seek the cooperation of all agencies and organizations, public or private, whose objective is the protection or aid of minors.

Section 127. Section **80-2-501** is amended to read:

80-2-501. Children's Account.

(1) There is created a restricted account within the General Fund known as the "Children's Account."

(2) The account shall be funded by:

(a) appropriations to the account by the Legislature;

(b) revenues received under Section [~~26-2-12.5~~] 26B-8-112; and

(c) transfers, grants, gifts, bequests, or any money made available from any source for the abuse and neglect prevention programs described in Subsection 80-2-503(3).

(3) The Legislature shall appropriate money in the account to the division.

(4) (a) The director shall consult with the executive director of the department before using the funds in the account as described in this section.

(b) Except as provided in Subsection (5), the account may be used only to implement prevention programs described in Section 80-2-503, and may only be allocated to an entity that provides a one-to-one match, comprising a match from the community of at least 50% in cash and up to 50% in in-kind donations, which is 25% of the total funding received from the account.

(5) Upon recommendation of the executive director of the department and the council, the division may reduce or waive the match requirements described in Subsection (4) for an entity, if the division determines that imposing the requirements would prohibit or limit the provision of services needed in a particular geographic area.

Section 128. Section **80-2-603** is amended to read:

80-2-603. Fetal alcohol syndrome or spectrum disorder and drug dependency reporting requirements.

(1) As used in this section:

(a) "Health care provider" means:

(i) an individual licensed under:

(A) Title 58, Chapter 31b, Nurse Practice Act;

(B) Title 58, Chapter 44a, Nurse Midwife Practice Act;

(C) Title 58, Chapter 67, Utah Medical Practice Act;

(D) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

(E) Title 58, Chapter 70a, Utah Physician Assistant Act; or

(F) Title 58, Chapter 77, Direct-Entry Midwife Act; or

(ii) an unlicensed individual who practices midwifery.

(b) "Newborn child" means a child who is 30 days old or younger.

(c) "Recommending medical provider" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(d) (i) "Substance abuse" means, except as provided in Subsection (1)(d)(ii), the same as that term is defined in Section 80-1-102.

(ii) "Substance abuse" does not include use of drugs or other substances that are:

(A) obtained by lawful prescription and used as prescribed; or

(B) obtained in accordance with [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, and used as recommended by a recommending medical provider.

(2) A health care provider who attends the birth of a newborn child or cares for a newborn child and determines the following, shall report the determination to the division as soon as possible:

(a) the newborn child:

(i) is adversely affected by the child's mother's substance abuse during pregnancy;

(ii) has fetal alcohol syndrome or fetal alcohol spectrum disorder; or

(iii) demonstrates drug or alcohol withdrawal symptoms; or

(b) the parent of the newborn child or a person responsible for the child's care demonstrates functional impairment or an inability to care for the child as a result of the parent's or person's substance abuse.

(3) The physician-patient privilege does not:

(a) excuse an individual who is licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, from reporting under this section; or

(b) constitute grounds for excluding evidence regarding the child's injuries, or the cause of the child's injuries, in a judicial or administrative proceeding resulting from a report under this section.

Section 129. Section **80-2-604** is amended to read:

80-2-604. Death of a child reporting requirements.

(1) A person who has reason to believe that a child has died as a result of abuse or neglect shall report that fact to:

(a) the local law enforcement agency; and

(b) the appropriate medical examiner in accordance with [~~Title 26, Chapter 4, Utah Medical Examiner Act~~] Title 26B, Chapter 8, Part 2, Utah Medical Examiner.

(2) After receiving a report described in Subsection (1):

(a) the local law enforcement agency shall report to the county attorney or district attorney as provided under Section 17-18a-202 or 17-18a-203; and

(b) the medical examiner shall investigate and report the medical examiner's findings to:

(i) the police;

(ii) the appropriate county attorney or district attorney;

(iii) the attorney general's office;

(iv) the division; and

(v) if the institution making the report is a hospital, to the hospital.

Section 130. Section **80-2-802** is amended to read:

80-2-802. Division child placing and adoption services -- Restrictions on placement of a child.

(1) Except as provided in Subsection (3), the division may provide adoption services and, as a licensed child-placing agency under [~~Title 62A, Chapter 2, Licensure of Programs and Facilities~~] Title 26B, Chapter 2, Part ~~(2)~~1, Human Services Programs and Facilities, engage in child placing in accordance with this chapter, Chapter 2a, Removal and Protective Custody of a Child, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Chapter 4, Termination and Restoration of Parental Rights.

(2) The division shall base the division's decision for placement of an adoptable child for adoption on the best interest of the adoptable child.

(3) The division may not:

(a) in accordance with Subsection [~~62A-2-108.6(6)~~] 26B-2-127(6), place a child for adoption, either temporarily or permanently, with an individual who does not qualify for adoptive placement under Sections 78B-6-102, 78B-6-117, and 78B-6-137;

(b) consider a potential adoptive parent's willingness or unwillingness to enter a postadoption contact agreement under Section 78B-6-146 as a condition of placing a child with a potential adoptive parent; or

(c) except as required under the Indian Child Welfare Act, 25 U.S.C. Secs. 1901 through 1963, base the division's decision for placement of an adoptable child on the race, color, ethnicity, or national origin of either the child or the potential adoptive parent.

(4) The division shall establish a rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, providing that, subject to Subsection (3) and Section 78B-6-117, priority of placement shall be provided to a family in which a couple is legally married under the laws of the state.

(5) Subsections (3) and (4) do not limit the placement of a child with the child's biological or adoptive parent, a relative, or in accordance with the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq.

Section 131. Section **80-2-803** is amended to read:

80-2-803. Division promotion of adoption -- Adoption research and informational pamphlet.

The division shall:

(1) [~~in accordance with Section 62A-2-126,~~] actively promote the adoption of all children in the division's custody who have a final plan for termination of parental rights under Section 80-3-409 or a primary permanency plan of adoption;

(2) develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children;

(3) obtain information or conduct research regarding prior adoptive families to determine what families may do to be successful with an adoptive child;

(4) make the information or research described in Subsection (3) available to potential adoptive parents;

(5) prepare a pamphlet that explains the information that a child-placing agency is required to provide a potential adoptive parent under Subsection [~~62A-2-126(2)(b)~~] 78B-24-303;

(6) regularly distribute copies of the pamphlet described in Subsection (5) to child-placing agencies; and

(7) respond to an inquiry made as a result of the notice provided by a child-placing agency under Subsection [~~62A-2-126(2)(b)~~] 78B-24-303.

Section 132. Section **80-2-804** is amended to read:

80-2-804. Adoptive placement time frame -- Division contracts with child-placing agencies.

(1) Subject to this part, for a child who has a primary permanency plan of adoption or for whom a final plan for pursuing termination of parental rights is approved in accordance with Section 80-3-409, the division shall make intensive efforts to place the child in an adoptive home within 30 days after the earlier of the day on which:

(a) the final plan is approved; or

(b) the primary permanency plan is established.

(2) If within the time periods described in Subsection (1) the division is unable to locate a suitable adoptive home, the division shall[~~, in accordance with Section 62A-2-126,~~]contract with a variety of child-placing agencies licensed under [~~Title 62A, Chapter 2, Licensure of Programs and Facilities~~] Title 26B, Chapter 2, Part 1, Human Services Programs and Facilities, to search for an appropriate adoptive home for the child, and to place the child for adoption.

Section 133. Section **80-2-909** is amended to read:

80-2-909. Existing authority for child placement continues.

Any person who, under any law of this state other than this part or the Interstate Compact on the Placement of Children established under Section 80-2-905, has authority to make or assist in making the placement of a child, shall continue to have the ability lawfully to make or assist in making that placement, and the provisions of Sections [~~62A-2-108.6, 62A-2-115.1, 62A-2-115.2, 62A-2-126, 62A-2-127~~] 26B-2-127, 26B-2-131, 26B-2-132, 26B-2-133, Subsections 80-2-802(3)(a) and (4) and 80-2-803(1), (2), and (5) through (7), and Title 78B, Chapter 6, Part 1, Utah Adoption Act, continue to apply.

Section 134. Section **80-2-1001** is amended to read:

80-2-1001. Management Information System -- Contents -- Classification of records -- Access.

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

(2) The Management Information System shall:

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

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

(ii) the number of times the parent failed the child and family plan; and

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

(b) alert child welfare caseworkers regarding deadlines for completion of and compliance with policy, including child and family plans.

(3) For a child welfare case, the Management Information System shall provide each child welfare caseworker and the Office of Licensing created in Section [~~62A-2-103~~] 26B-2-103, exclusively for the purposes of foster parent licensure and monitoring, with a complete history of each child in the child welfare caseworker's caseload, including:

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

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

(c) the number of times the child has been in the protective custody, temporary

custody, and custody of the division;

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

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

(i) for each report, documentation of the:

(A) latest status; or

(B) final outcome or determination; and

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

(A) supported;

(B) unsupported;

(C) substantiated;

(D) unsubstantiated; or

(E) without merit;

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

(g) the number of different child welfare caseworkers who have been assigned to the child in the past.

(4) For child protective services cases, the Management Information System shall:

(a) monitor the compliance of each case with:

(i) division rule;

(ii) state law; and

(iii) federal law and regulation; and

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

(5) Information or a record contained in the Management Information System is:

(a) a private, controlled, or protected record under Title 63G, Chapter 2, Government Records Access and Management Act; and

(b) available only:

(i) to a person or government entity with statutory authorization under Title 63G, Chapter 2, Government Records Access and Management Act, to review the information or record;

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

(iii) to the extent required by Title IV(b) or IV(e) of the Social Security Act:

(A) to comply with abuse and neglect registry checks requested by other states; or

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

(iv) to the department, upon the approval of the executive director of the department, on a need-to-know basis; or

(v) as provided in Subsection (6) or Section 80-2-1002.

(6) (a) The division may allow a division contract provider, court clerk designated by the Administrative Office of the Courts, the Office of Guardian Ad Litem, or Indian tribe to have limited access to the Management Information System.

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

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

(d) (i) The Office of Guardian Ad Litem may only access:

(A) the information that is entered into the Management Information System on or after July 1, 2004, and relates to a child or family where the Office of Guardian Ad Litem is appointed by a court to represent the interests of the child; or

(B) any abuse or neglect referral about a child or family where the office has been appointed by a court to represent the interests of the child, regardless of the date that the information is entered into the Management Information System.

(ii) The division may use the information in the Management Information System to screen an individual as described in Subsection 80-2-1002(4)(b)(ii)(A) at the request of the Office of Guardian Ad Litem.

(e) A contract provider or designated representative of the Office of Guardian Ad Litem or an Indian tribe who requests access to information contained in the Management

Information System shall:

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

(ii) train its employees regarding:

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

(B) the criminal penalties under Sections 63G-2-801 and 80-2-1005 for improper release of information; and

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

(7) The division shall take:

(a) all necessary precautions, including password protection and other appropriate and available technological techniques, to prevent unauthorized access to or release of information contained in the Management Information System; and

(b) reasonable precautions to ensure that the division's contract providers comply with Subsection (6).

Section 135. Section **80-2-1002** is amended to read:

80-2-1002. Licensing Information System -- Contents -- Classification of records -- Access -- Unlawful release -- Penalty.

(1) (a) The division shall maintain a sub-part of the Management Information System as the Licensing Information System to be used:

(i) for licensing purposes; or

(ii) as otherwise provided by law.

(b) Notwithstanding Subsection (1)(a), the department's access to information in the Management Information System for the licensure and monitoring of a foster parent is governed by Sections 80-2-1001 and [~~62A-2-121~~] 26B-2-121.

(2) The Licensing Information System shall include only the following information:

(a) the name and other identifying information of the alleged perpetrator in a supported finding, without identifying the alleged perpetrator as a perpetrator or alleged perpetrator;

(b) a notation to the effect that an investigation regarding the alleged perpetrator

described in Subsection (2)(a) is pending;

(c) the information described in Subsection (3);

(d) consented-to supported findings by an alleged perpetrator under Subsection 80-2-708(3)(a)(iii);

(e) a finding from the juvenile court under Section 80-3-404; and

(f) the information in the licensing part of the division's Management Information System as of May 6, 2002.

(3) Subject to Section 80-2-1003, upon receipt of a finding from the juvenile court under Section 80-3-404, the division shall:

(a) promptly amend the Licensing Information System to include the finding; and

(b) enter the finding in the Management Information System.

(4) Information or a record contained in the Licensing Information System is:

(a) a protected record under Title 63G, Chapter 2, Government Records Access and Management Act; and

(b) notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, accessible only:

(i) to the Office of Licensing created in Section [~~62A-2-103~~] 26B-2-103:

(A) for licensing purposes; or

(B) as otherwise specifically provided for by law;

(ii) to the division to:

(A) screen an individual at the request of the Office of Guardian Ad Litem at the time the individual seeks a paid or voluntary position with the Office of Guardian Ad Litem and annually throughout the time that the individual remains with the Office of Guardian Ad Litem; and

(B) respond to a request for information from an individual whose name is listed in the Licensing Information System;

(iii) to a person designated by the Department of Health and [~~approved by the Department of~~] Human Services, only for the following purposes:

(A) licensing a child care program or provider;

(B) determining whether an individual associated with a child care facility, program, or provider, who is exempt from being licensed or certified by the [~~Department of Health under~~

~~Title 26, Chapter 39, Utah Child Care Licensing Act~~] Department of Health and Human Services under Title 26B, Chapter 2, Part 4, Child Care Licensing, has a supported finding of a severe type of child abuse or neglect; or

(C) determining whether an individual who is seeking an emergency medical services license has a supported finding of a severe type of child abuse or neglect;

(iv) to a person designated by the Department of Workforce Services and approved by the Department of [~~Human Services~~] Health and Human Services for the purpose of qualifying a child care provider under Section 35A-3-310.5;

(v) as provided in Section [~~62A-2-121~~] 26B-2-121; or

(vi) to the department or another person, as provided in this chapter.

(5) A person designated by the Department of [~~Health~~] Health and Human Services or the Department of Workforce Services under Subsection (4) shall adopt measures to:

(a) protect the security of the Licensing Information System; and

(b) strictly limit access to the Licensing Information System to persons allowed access by statute.

(6) The department shall approve a person allowed access by statute to information or a record contained in the Licensing Information System and provide training to the person with respect to:

(a) accessing the Licensing Information System;

(b) maintaining strict security; and

(c) the criminal provisions of Sections 63G-2-801 and 80-2-1005 pertaining to the improper release of information.

(7) (a) Except as authorized by this chapter, a person may not request another person to obtain or release any other information in the Licensing Information System to screen for potential perpetrators of abuse or neglect.

(b) A person who requests information knowing that the request is a violation of this Subsection (7) is subject to the criminal penalties described in Sections 63G-2-801 and 80-2-1005.

Section 136. Section **80-2-1005** is amended to read:

80-2-1005. Classification of reports of alleged abuse or neglect -- Confidential identity of a person who reports -- Access -- Admitting reports into evidence -- Unlawful

release and use -- Penalty.

(1) Except as otherwise provided in this chapter or Chapter 2a, Removal and Protective Custody of a Child, a report made under Part 6, Child Abuse and Neglect Reports, and any other information in the possession of the division obtained as a result of the report is a private, protected, or controlled record under Title 63G, Chapter 2, Government Records Access and Management Act, and may only be made available to:

(a) a police or law enforcement agency investigating a report of known or suspected abuse or neglect, including members of a child protection team;

(b) a physician who reasonably believes that a child may be the subject of abuse or neglect;

(c) an agency that has responsibility or authority to care for, treat, or supervise a minor who is the subject of a report;

(d) a contract provider that has a written contract with the division to render services to a minor who is the subject of a report;

(e) the subject of the report, the natural parents of the child, and the guardian ad litem;

(f) a court, upon a finding that access to the records may be necessary for the determination of an issue before the court, provided that in a divorce, custody, or related proceeding between private parties, the record alone is:

(i) limited to objective or undisputed facts that were verified at the time of the investigation; and

(ii) devoid of conclusions drawn by the division or any of the division's workers on the ultimate issue of whether or not an individual's acts or omissions constituted any level of abuse or neglect of another individual;

(g) an office of the public prosecutor or the public prosecutor's deputies in performing an official duty;

(h) a person authorized by a Children's Justice Center, for the purposes described in Section 67-5b-102;

(i) a person engaged in bona fide research, when approved by the director of the division, if the information does not include names and addresses;

(j) the State Board of Education, acting on behalf of itself or on behalf of a local education agency, as defined in Section 63J-5-102, 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, limited to information with substantiated or supported findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Individual, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment;

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

(l) a person filing a petition for a child protective order on behalf of a child who is the subject of the report;

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

(n) an Indian tribe to:

(i) certify or license a foster home;

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

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

(o) the department or a local substance abuse authority, described in Section 17-43-201, for the purpose of providing substance abuse treatment to a pregnant woman or a parent of a newborn child, or the services described in Subsection [~~62A-15-103(2)(p~~] 26B-5-102(2)(p).

(2) In accordance with Section 80-2-608 and except as provided in Section 80-2-611, the division and a law enforcement agency shall ensure the anonymity of the person who makes the initial report under Part 6, Child Abuse and Neglect Reports, and any other person involved in the division's or law enforcement agency's subsequent investigation of the report.

(3) Notwithstanding any other provision of law, excluding Section 80-3-107, but including this chapter, Chapter 2a, Removal and Protective Custody of a Child, and Title 63G, Chapter 2, Government Records Access and Management Act, if the division makes a report or other information in the division's possession available under Subsection (1)(e) to a subject of the report or a parent of a child, the division shall remove from the report or other information

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

(a) identify the referent;

(b) impede a criminal investigation; or

(c) endanger an individual's safety.

(4) A child-placing agency or person who receives a report from the division under Subsection (1)(m) may provide the report to:

(a) the subject of the report;

(b) a person who is performing a preplacement adoptive evaluation in accordance with Sections 78B-6-128 and 78B-6-130;

(c) to a licensed child-placing agency; or

(d) an attorney seeking to facilitate an adoption.

(5) A member of a child protection team may, before the day on which the child is removed, share case-specific information obtained from the division under this section with other members of the child protection team.

(6) (a) Except as provided in Subsection (6)(b), in a divorce, custody, or related proceeding between private parties, a court may not receive into evidence a report that:

(i) is provided to the court:

(A) under Subsection (1)(f); or

(B) by a parent of the child after the record is made available to the parent under Subsection (1)(e);

(ii) describes a parent of the child as the alleged perpetrator; and

(iii) is found to be unsubstantiated, unsupported, or without merit.

(b) (i) After a motion to admit the report described in Subsection (6)(a) is made, the court shall allow sufficient time for all subjects of the record to respond before making a finding on the motion.

(ii) After considering the motion described in Subsection (6)(b)(i), the court may receive the report into evidence upon a finding on the record of good cause.

(7) (a) A person may not:

(i) willfully permit, or aid and abet, the release of data or information in the possession of the division or contained in the Management Information System in violation of this part or

Part 6, Child Abuse and Neglect Reports; or

(ii) if the person is not listed in Subsection (1), request another person to obtain or release a report or other information that the other person obtained under Subsection (1)(k) to screen for potential perpetrators of abuse or neglect.

(b) A person who violates Subsection (7)(a)(i), or violates Subsection (7)(a)(ii) knowing the person's actions are a violation of Subsection (7)(a)(ii), is guilty of a class C misdemeanor.

Section 137. Section **80-2a-202** is amended to read:

80-2a-202. Removal of a child by a peace officer or child welfare caseworker -- Search warrants -- Protective custody and temporary care of a child.

(1) A peace officer or child welfare caseworker may remove a child or take a child into protective custody, temporary custody, or custody in accordance with this section.

(2) (a) Except as provided in Subsection (2)(b), a peace officer or a child welfare caseworker may not enter the home of a child whose case is not under the jurisdiction of the juvenile court, remove a child from the child's home or school, or take a child into protective custody unless:

(i) there exist exigent circumstances sufficient to relieve the peace officer or the child welfare caseworker of the requirement to obtain a search warrant under Subsection (3);

(ii) the peace officer or child welfare caseworker obtains a search warrant under Subsection (3);

(iii) the peace officer or child welfare caseworker obtains a court order after the child's parent or guardian is given notice and an opportunity to be heard; or

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

(b) A peace officer or a child welfare caseworker may not take action under Subsection (2)(a) solely on the basis of:

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

(ii) the possession or use, in accordance with [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, 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~~] 26B-4-201.

(3) (a) The juvenile court may issue a warrant authorizing a peace officer or a child welfare caseworker 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 another 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 (3)(a)(i); and

(iii) it is likely that the child will suffer substantial harm if the child's parent or guardian 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 under Subsection (3)(a) may enter a house or premises by force, if necessary, in order to remove the child.

(4) (a) A child welfare caseworker may take action under Subsection (2) accompanied by a peace officer or without a peace officer if a peace officer is not reasonably available.

(b) (i) Before taking a child into protective custody, and if possible and consistent with the child's safety and welfare, a child welfare caseworker 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.

(ii) In determining whether the services described in Subsection (4)(b)(i) are reasonably available, the child welfare caseworker shall consider the child's health, safety, and welfare as the paramount concern.

(iii) If the child welfare caseworker determines the services described in Subsection (4)(b)(i) are reasonably available, the services shall be utilized.

(5) (a) If a peace officer or a child welfare caseworker takes a child into protective custody under Subsection (2), the peace officer or child welfare caseworker shall:

(i) notify the child's parent or guardian in accordance with Section 80-2a-203; and

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

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

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

(b) (i) If a peace officer or child welfare caseworker is executing a warrant under Subsection (3), the peace officer or child welfare caseworker shall take the child to:

(A) a shelter facility; or

(B) if the division makes an emergency placement under Section 80-2a-301, the emergency placement.

(ii) If a peace officer or a child welfare caseworker takes a child to a shelter facility under Subsection (5)(b)(i), the peace officer or the child welfare caseworker shall promptly file a written report that includes the child's information, on a form provided by the division, with the shelter facility.

(c) A child removed or taken into protective custody under this section may not be placed or kept in detention pending court proceedings, unless the child may be held in detention under Chapter 6, Part 2, Custody and Detention.

(6) (a) The 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 physical custody if the juvenile court determines that the child is missing, has been abducted, or has run away from the protective custody, temporary custody, or custody of the division.

(b) If the juvenile court issues a warrant under Subsection (6)(a):

(i) the division shall notify the child's parent or guardian who has a right to parent-time with the child in accordance with Subsection 80-2a-203(5)(a);

(ii) the court shall order:

(A) 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

(B) the division to notify the law enforcement agency described in Subsection (6)(b)(ii)(A) of the order described in Subsection (6)(b)(ii)(A); and

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

caseworker shall transport the child.

Section 138. Section **80-2a-301** is amended to read:

80-2a-301. Division's emergency placement of a child -- Background checks.

(1) The division may place a child in an emergency placement if:

(a) the child welfare caseworker makes the determination that:

(i) the child's home is unsafe;

(ii) removal is necessary under Section 80-2a-202; and

(iii) the child's custodial parent or guardian will agree to not remove the child from the home of the individual that serves as the placement and not have any contact with the child until after the time at which the shelter hearing is held under Section 80-3-301;

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

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

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

(c) the individual described in Subsection (1)(b) agrees to care for the child on an emergency basis under the following conditions:

(i) the individual meets the criteria for an emergency placement under Subsection (2);

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

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

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

(v) the individual is informed and understands that the division may continue to search for other possible placements for long-term care of the child, if needed;

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

(vii) the child is comfortable with the individual.

(2) Except as provided in Subsection (4), before the day on which the division places a child in an emergency placement, the division:

(a) may request the name of a reference and may contact the reference to determine whether:

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

(ii) there are any other relatives or friends to consider as a possible emergency or long-term placement for the child;

(b) in accordance with Subsection (4)(a), shall have the custodial parent or guardian sign an emergency placement agreement form during the investigation described in Subsection (2)(a);

(c) (i) if the emergency placement will be with a relative, shall comply with the background check provisions described in Subsection (6); or

(ii) if the emergency placement will be with an individual other than a noncustodial parent or relative, shall comply with the background check provisions described in Subsection (7) for adults living in the household where the child will be placed;

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

(e) shall require the child welfare caseworker to have the emergency placement approved by a supervisor designated by the division.

(3) (a) The division shall apply the following order of preference when determining the person with whom a child will be placed in an emergency placement, provided that the individual is able and willing to care for the child:

(i) a noncustodial parent of the child in accordance with Section 80-3-302;

(ii) a relative;

(iii) subject to Subsection (3)(b), a friend designated by the custodial parent, guardian, or the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement;

(iv) a former foster placement designated by the division;

(v) a foster placement, that is not a former foster placement, designated by the division; and

(vi) a shelter facility designated by the division.

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

(i) subject to Subsections (3)(b)(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 or legal guardian of the child and one friend designated by the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement;

(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 division's basis for removing the child under Section 80-2a-202 is sexual abuse of the child.

(4) (a) The division may, pending the outcome of the investigation described in Subsections (4)(b) and (c), place a child in emergency placement with the child's noncustodial parent if, based on a limited investigation before the day on which the division makes the emergency placement, the division:

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

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

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

(b) Either before or after the day on which the division makes an emergency placement with the noncustodial parent of the child, the division may conduct the investigation described in Subsection (2)(a) in relation to the noncustodial parent.

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

(i) background check of the noncustodial parent, under Subsection (6); and

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

(5) After an emergency placement, the child welfare caseworker must:

(a) respond to the emergency placement's calls within one hour after the call is received if the custodial parent or guardian attempts to make unauthorized contact with the child or attempts to remove the child from the emergency placement;

(b) complete all removal paperwork, including the notice provided to the child's custodial parent or guardian under Section 80-3-301;

(c) if the child is not placed with a noncustodial parent, relative, or friend, file a report with the child welfare caseworker's supervisor that explains why a different placement is in the child's best interest;

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

(e) complete the placement procedures required in Section 80-3-302; and

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

(6) (a) The background check described in Subsections (2)(c)(i) and (4)(c)(i) shall include completion of:

(i) a name-based, Utah Bureau of Criminal Identification background check; and

(ii) a search of the Management Information System.

(b) The division shall determine whether an individual passes the background check described in Subsection (6)(a) in accordance with Section [~~62A-2-120~~] 26B-2-120.

(c) Notwithstanding Subsection (6)(b), the division may not place a child with an individual who is prohibited by court order from having access to the child.

(7) (a) The background check described in Subsection (2)(c)(ii) shall include completion of:

(i) a name-based, Utah Bureau of Criminal Identification background check;

(ii) a federal name-based criminal background check; and

(iii) a search of the Management Information System.

(b) The division shall determine whether an individual passes the background check described in Subsection (7)(a) in accordance with Section [~~62A-2-120~~] 26B-2-120.

(c) If the division denies placement of a child as a result of a name-based criminal background check described in Subsection (7)(a), and the individual contests the denial, the

individual shall submit a complete set of fingerprints with written permission to the Utah Bureau of Criminal Identification for submission to the Federal Bureau of Investigation for a fingerprint-based criminal background check.

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

(ii) If the individual fails to provide the fingerprints and written permission described in Subsection (7)(d)(i), the child shall immediately be removed from the child's home.

Section 139. Section **80-3-110** is amended to read:

80-3-110. Consideration of cannabis during proceedings -- Drug testing.

(1) As used in this section:

(a) "Cannabis" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(b) "Cannabis product" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(c) (i) "Chronic" means repeated or patterned.

(ii) "Chronic" does not mean an isolated incident.

(d) "Directions of use" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(e) "Dosing guidelines" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(f) "Medical cannabis" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(g) "Medical cannabis cardholder" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(h) " Recommending medical provider" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(2) In a proceeding under this chapter, in which the juvenile court makes a finding, determination, or otherwise considers an individual's medical cannabis card, medical cannabis

recommendation from a recommending medical provider, or 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 medical cannabis card, recommendation, 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~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; and

(ii) the individual reasonably complies with the directions of use and dosing guidelines determined by the individual's recommending medical provider or through a consultation described in Subsection [~~26-61a-502{(4) or (5)}~~] 26B-4-230(4) or (5).

(3) In a 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 the 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), 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 the 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~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, 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 recommending medical provider or through a consultation described in Subsection [~~26-61a-502{(4) or (5)}~~] 26B-4-230(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.

(6) If an individual, who is party to a proceeding under this chapter, is ordered by the juvenile court to submit to drug testing, or is referred by the division or a guardian ad litem for drug testing, the individual may not be ordered or referred for drug testing by means of a hair or fingernail test that is administered to detect the presence of drugs.

Section 140. Section **80-3-204** is amended to read:

80-3-204. Protective custody of a child after a petition is filed -- Grounds.

(1) When an abuse, neglect, or dependency petition is filed, 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 80-2a-201(1) and (7)(a) and Section 80-4-104.

(2) After an abuse, neglect, or dependency petition is filed, if the child who is the subject of the petition is not in protective custody, 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 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 Subsection 80-1-102(58)(b) and 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 is an abandoned infant, as defined in Section 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

(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 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 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 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 an abuse, neglect, or dependency petition, the juvenile court shall consider the division's safety and risk assessments described in Section 80-2-403 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 80-2-403 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 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;

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

(d) the possession or use, in accordance with [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, 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~~] 26B-4-201.

(6) A child removed from the custody of the child's parent or guardian under this section may not be placed or kept in 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 80-2a-202.

(8) (a) Except as provided in Subsection (8)(b), 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 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 141. Section **80-3-302** is amended to read:

80-3-302. Shelter hearing -- Placement of a child.

(1) As used in this section:

(a) "Natural parent," notwithstanding Section 80-1-102, means:

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

(ii) an adoptive father of the child; or

(iii) a biological father of the child who:

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

(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.

(b) "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.

(2) (a) At the shelter hearing, if the juvenile court orders that a child be removed from the custody of the child's parent in accordance with Section 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) Subject to Subsection (7), 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) 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) shall, at a minimum, order the division to visit the parent's home, comply with the criminal background check provisions described in Section 80-3-305, and check the Management Information System for any previous reports of abuse or neglect received by the division regarding the parent at issue;

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

(iv) may place the child in the temporary custody of the division, pending the juvenile court's determination regarding the placement.

(d) The division shall report the division's findings from an investigation under Subsection (2)(c), 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 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.

(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 with a relative under Subsections (6) through (9); or

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

(5) (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 the court for modification of legal custody.

(6) Subject to Subsection (7), if, at the time of the shelter hearing, a child is removed from the custody of the child's parent and is not placed in the custody of the child's other parent, the juvenile court:

(a) shall, at that time, determine whether 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 there are relatives or friends who are willing and appropriate, in accordance with the requirements of this chapter, Chapter 2, Child Welfare Services, and Chapter 2a, Removal and Protective Custody of a Child, for placement of the child;

(c) shall order the parents to cooperate with the division, within five working days, to 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 (6)(a).

(7) (a) (i) Subject to Subsections (7)(b) through (d) and if the provisions of this section are satisfied, the division and the juvenile court shall give preferential consideration to a relative's or a friend's request for placement of the child, if the placement is in the best interest of the child.

(ii) For purposes of the preferential consideration under Subsection (7)(a)(i), there is a rebuttable presumption that placement of the child with a relative is in the best interest of the child.

(b) (i) The preferential consideration that the juvenile court or division initially grants a relative or friend under Subsection (7)(a)(i) expires 120 days after the day on which the shelter hearing occurs.

(ii) After the day on which the time period described in Subsection (7)(b)(i) expires, the division or the juvenile court may not grant preferential consideration to a relative or friend, who has not obtained custody or asserted an interest in the child.

(c) (i) The preferential consideration that the juvenile court initially grants a natural parent 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 (7)(c)(i), the juvenile court shall base the juvenile court's custody decision on the best interest of the child.

(d) Before the day on which the time period described in Subsection (7)(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:

(i) a noncustodial parent of the child;

(ii) a relative of the child;

(iii) subject to Subsection (7)(e), a friend if the friend is a licensed foster parent; and

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

(e) 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 (7)(e)(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 80-3-301 is sexual abuse of the

child.

(f) (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 (7)(f)(i) becomes licensed as a foster parent within the time frame described in Subsection (7)(b), the juvenile court shall determine whether it is in the best interest of the child to place the child with the friend.

(8) (a) If a relative or friend who is willing to cooperate with the child's permanency goal is identified under Subsection (6)(a), the juvenile court:

(i) shall make a specific finding regarding:

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

(B) the safety and appropriateness of placement with the relative or friend; and

(ii) may not consider a request for guardianship or adoption of the child by an individual who is not a relative of the child, or prevent the division from placing the child in the custody of a relative of the child in accordance with this part, until after the day on which the juvenile court makes the findings under Subsection (8)(a)(i).

(b) In making the finding described in Subsection (8)(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; and

(C) a background check that complies with the criminal background check provisions described in Section 80-3-305, of each nonrelative 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

noncustodial parent that are described in Subsections 80-2a-301(4) and (6);

(B) a completed search, relating to the noncustodial parent of the child, of the Management Information System; and

(C) a background check that complies with the criminal background check provisions described in Section 80-3-305, of each nonrelative 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 80-3-305;

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

(v) check the 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.

(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 (8)(a).

(d) The division shall complete and file the division's assessment regarding placement with a relative or friend under Subsections (8)(a) and (b) as soon as practicable, in an effort to facilitate placement of the child with a relative or friend.

(9) (a) The juvenile court may place a child described in Subsection (2)(a) in the

temporary custody of the division, pending the division's investigation under Subsection (8), and the juvenile court's determination regarding the appropriateness of 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.

(10) If a juvenile court places a child described in Subsection (6) with the child's relative or friend:

(a) the juvenile court shall:

(i) order the relative or friend take custody, subject to the continuing supervision of the juvenile court;

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

(iii) conduct a periodic review no less often than every six months, to determine whether:

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

(B) the child should be returned home; or

(C) the child should be placed in the custody of the division;

(b) the juvenile court may enter an order:

(i) requiring the division to provide necessary services to the child and the child's relative or friend, including the monitoring of the child's safety and well-being; or

(ii) that the juvenile court considers necessary for the protection and best interest of the child; and

(c) the child and the relative or friend in whose custody the child is placed are under the continuing jurisdiction of the juvenile court;

(11) No later than 12 months after the day on which the child is 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.

(12) The time limitations described in Section 80-3-406, with regard to reunification efforts, apply to a child placed with a previously noncustodial parent under Subsection (2) or with a relative or friend under Subsection (6).

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

(i) conduct a criminal background check of the relative that complies with the criminal background check provisions described in Section 80-3-305; and

(ii) if the results of the criminal background check described in Subsection (13)(a)(i) would prohibit the relative from having direct access to the child under Section [~~62A-2-120~~] 26B-2-120, the division shall:

(A) take the child into physical custody; and

(B) within three days, excluding weekends and holidays, after the day on which the child is taken into physical custody under Subsection (13)(a)(ii)(A), give written notice to the juvenile court, and all parties to the proceedings, of the division's action.

(b) Subsection (13)(a) does not prohibit the division from placing a child with a relative, pending the results of the background check described in Subsection (13)(a) on the relative.

(14) 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, Chapter 2, Child Welfare Services, and Chapter 2a, Removal and Protective Custody of a Child.

(15) (a) If a child reenters the temporary custody or the custody of the division and is placed in foster care, the division shall:

(i) notify the child's former foster parents; and

(ii) upon a determination of the former foster parents' willingness and ability to safely and appropriately care for the child, give the former foster parents preference for placement of the child.

(b) If, after 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 the child with a single foster parent.

(16) In determining the placement of a child, 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.

(17) 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.

(18) This section does not guarantee that an identified relative or friend will receive custody of the child.

Section 142. Section **80-3-305** is amended to read:

80-3-305. Criminal background checks necessary before out-of-home placement of a child.

(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 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 or 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, 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 the background check described in Subsection (2)(b)(i).

(c) (i) Except as provided in Subsection (2)(c)(ii), the cost of the investigations described in Subsection (2)(a) shall be borne by whoever is to receive placement of the child.

(ii) The division may pay all or part of the cost of the investigations described in Subsection (2)(a).

(3) Except as provided in Subsection (5), a child who is in the protective custody, temporary custody, or custody of the 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 prospective foster parent or prospective adoptive parent and any other adult residing in the household;

(b) the 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 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;

(c) the 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 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; and

(d) each individual required to undergo a background check described in this Subsection (3) passes the background check, in accordance with the provisions of Section [~~62A-2-120~~] 26B-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 80-2a-301, 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 80-2a-301, 80-3-302, or 80-3-303; or

(ii) a relative, under Section 80-2a-301, 80-3-302, or 80-3-303, pending completion of the background check described in Subsection (3).

Section 143. Section **80-3-404** is amended to read:

80-3-404. Finding of severe child abuse or neglect -- Order delivered to division -- Court records.

(1) If an abuse, neglect, or dependency petition is filed with the juvenile court that informs the juvenile court that the division has made a supported finding that an individual committed a severe type of child abuse or neglect, 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 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 under a written stipulation of the parties.

(3) In accordance with Section 80-2-707, a proceeding for adjudication of a supported finding 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.

(4) (a) The juvenile court shall make records of the juvenile court's findings under Subsection (1) available only to an individual with statutory authority to access the Licensing Information System for the purposes of licensing under Sections [~~26-39-402, 26B-1-211, and 62A-2-120~~] 26B-1-211, 26B-2-120, and 26B-2-404, or for the purposes described in Sections [~~26-8a-310, 62A-2-121, or Title 26, Chapter 21, Part 2, Clearance for Direct Patient Access~~] 26B-2-121, 26B-2-238 through 26B-2-241, or 26B-4-124.

(b) An appellate court shall make records of an appeal from the juvenile court's decision under Subsection (1) available only to an individual with statutory authority to access the Licensing Information System for the purposes described in Subsection (4)(a).

Section 144. Section **80-3-405** is amended 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

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.

(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~~] 26B-5-401, 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~~] Title 26B, Chapter 5, Part 4, Commitment of Persons Under Age 18.

(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~~] Title 26B, Chapter 6, Part 6, 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(58)(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 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 and Youth 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 145. Section **80-3-504** is amended to read:

80-3-504. Petition for substantiation -- Court findings -- Expedited hearing -- Records of an appeal.

(1) The division or an individual may file a petition for substantiation in accordance with Section 80-2-1004.

(2) If the division decides to file a petition for substantiation under Section 80-2-1004, the division shall file the petition no more than 14 days after the day on which the division makes the decision.

(3) At the conclusion of the hearing on a petition for substantiation, the juvenile court shall:

(a) make a finding of substantiated, unsubstantiated, or without merit;

(b) include the finding in a written order; and

(c) deliver a certified copy of the order to the division.

(4) If an individual whose name is listed on the Licensing Information System before May 6, 2002, files a petition for substantiation under Section 80-2-1004 during the time that an alleged perpetrator's application for clearance to work with children or vulnerable adults is pending, the juvenile court shall:

(a) hear the matter on an expedited basis; and

(b) enter a final decision no later than 60 days after the day on which the petition for substantiation is filed.

(5) An appellate court shall make a record of an appeal from the juvenile court's decision under Subsection (3) available only to an individual with statutory authority to access the Licensing Information System for the purposes of licensing under Sections [~~26-39-402, 62A-1-118, and 62A-2-120,~~] 26B-1-211, 26B-2-120, and 26B-2-404, or for the purposes described in Sections [~~26-8a-310, 62A-2-121, or Title 26, Chapter 21, Part 2, Clearance for Direct Patient Access~~] 26B-2-121, 26B-2-238 through 26B-2-241, or 26B-4-124.

Section 146. Section **80-4-109** is amended 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~~] 26B-4-201.

(b) "Cannabis product" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(c) (i) "Chronic" means repeated or patterned.

(ii) "Chronic" does not mean an isolated incident.

(d) "Directions of use" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(e) "Dosing guidelines" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(f) "Medical cannabis" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(g) "Medical cannabis cardholder" means the same as that term is defined in Section

[~~26-61a-102~~] 26B-4-201.

(h) "Qualified medical provider" means the same as that term is defined in Section [~~26-61a-102~~] 26B-4-201.

(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~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; 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)}~~] 26B-4-230(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~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, 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)}~~] 26B-4-230(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 147. Section **80-4-302** is amended to read:

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;

(c) failed to have shown the normal interest of a natural parent, without just cause; or

(d) have abandoned an infant, as described in Section 80-4-203.

(2) In determining whether a parent or parents are unfit or have neglected a child the juvenile court shall consider:

(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;

(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~~] 26B-4-201 or a medical cannabis device, in accordance with [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.

(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.

(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 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 148. Section **80-4-501** is amended to read:

80-4-501. Definitions.

As used in this part:

(1) "Hospital" means a general acute hospital, as that term is defined in Section [~~26-21-2~~] 26B-2-201, that is:

(a) equipped with an emergency room;

(b) open 24 hours a day, seven days a week; and

(c) employs full-time health care professionals who have emergency medical services training.

(2) "Newborn child" means a child who is approximately 30 days old or younger, as determined within a reasonable degree of medical certainty.

Section 149. Section **80-6-402** is amended to read:

80-6-402. Procedure -- Standard.

(1) When a written motion is filed 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 shall stay all proceedings under this chapter .

(2) (a) If a motion for inquiry is opposed by either party, the juvenile court shall, 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, the juvenile court shall:

(i) enter an order for an evaluation of the minor's competency to proceed; and

(ii) set a date for a hearing on the issue of the minor's competency.

(3) After the granting of a motion, and before a full competency hearing, the juvenile court may order the department to evaluate the minor and to report to the juvenile court concerning the minor's mental condition.

(4) The minor shall be evaluated by a forensic evaluator who:

(a) has experience in juvenile forensic evaluations and juvenile brain development;

(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.

(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 parent or guardian, the 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 rational understanding; and

(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 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) Regardless of whether a minor consents to a competency evaluation, any statement made by the minor in the course of the competency evaluation, any testimony by the forensic evaluator based upon any statement made by the minor in the competency evaluation, and any other fruits of the statement made by the minor in the competency evaluation:

(a) may not be admitted in evidence against the minor in a proceeding under this chapter, except the statement may be admitted 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 for a competency evaluation, a forensic evaluator shall specifically advise the minor, and the minor's parent or guardian if reasonably available, 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 described in Subsection (14)(a)(i), the juvenile court shall proceed with the proceedings in the minor's case.

(c) If the juvenile court enters a finding described in Subsection (14)(a)(ii), the juvenile court shall proceed in accordance with Section 80-6-403.

(d) (i) If the juvenile court enters a finding described in Subsection (14)(a)(iii), the juvenile court shall terminate the competency proceeding, dismiss the charges against the minor without prejudice, and release the minor from any custody order related to the pending proceeding, unless the prosecutor informs the court that commitment proceedings will be initiated in accordance with:

(A) [~~Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability~~] Title 26B, Chapter 6, Part 6, Admission to an Intermediate Care Facility for People with an Intellectual Disability;

(B) if the minor is 18 years old or older, [~~Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities~~] Title 26B, Chapter 5, Part 3, Utah State Hospital and Other Mental Health Facilities; or

(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~~] Title 26B, Chapter 5, Part 4, Commitment of Persons Under Age 18.

(ii) The commitment proceedings described in Subsection (14)(d)(i) shall be initiated within seven days after the 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 150. Section **80-6-403** is amended to read:

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.

(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, the prosecuting attorney, the defense attorney, and the attorney guardian ad litem at least three days 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 proceeding for a minor who is not competent to proceed in that matter if:

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

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

(iii) the minor has not attained competency.

(5) (a) At any time that the minor becomes competent to proceed during the attainment period, the department shall notify the juvenile court, 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 petition or information without prejudice, and release the minor from any custody order related to the pending proceeding, unless the prosecuting attorney or any other individual informs the juvenile court that commitment proceedings will be initiated in accordance with:

(i) [~~Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability~~] Title 26B, Chapter 6, Part 6, Admission to an Intermediate Care Facility for People with an Intellectual Disability;

(ii) if the minor is 18 years old or older, [~~Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities~~] Title 26B, Chapter 5, Part 3, Utah State Hospital and Other Mental Health Facilities; or

(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~~] Title 26B, Chapter 5, Part 4, Commitment of Persons Under Age 18~~{.}~~.

(b) The 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 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

(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 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.

(14) (a) Regardless of whether a minor consents to attainment, any statement made by the minor in the course of attainment, any testimony by the forensic evaluator based upon any statement made by the minor in the course of attainment, and any other fruits of a statement

made by the minor in the course of attainment:

(i) may not be admitted in evidence against the minor in a proceeding under this chapter, except the statement may be admitted on an issue respecting the mental condition on which the minor has introduced evidence; and

(ii) may be admitted where relevant to a determination of the minor's competency.

(b) Before evaluating the minor during the attainment period, a forensic evaluator shall specifically advise the minor, and the minor's parent or guardian if reasonably available, of the limits of confidentiality provided in Subsection (14)(a).

Section 151. Section **80-6-608** is amended to read:

80-6-608. When photographs, fingerprints, or HIV infection tests may be taken -- Distribution -- DNA collection -- Reimbursement.

(1) The division shall take a photograph and fingerprints of a minor who is:

(a) 14 years old or older 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 for the alleged commission of the offense.

(2) The juvenile court shall order a minor who is 14 years 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 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 old or older; or

(b) adjudicated for an offense that would be a felony if the minor were 18 years old or older and the minor was not admitted to a detention facility.

(3) The juvenile court shall take a photograph of a minor who is:

(a) 14 years old or older 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 the offense described in Subsection (3)(a).

(4) 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 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 old; or

(c) the guardian of the alleged victim if the victim is a vulnerable adult as defined in Section [~~62A-3-301~~] 26B-6-201.

(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 old; or

(iii) the guardian of the alleged victim if the victim is a vulnerable adult as defined in Section [~~62A-3-301~~] 26B-6-201; and

(b) in which:

(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

(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 old without the consent of the juvenile court.

(8) (a) Photographs taken under this section may be distributed or disbursed to:

(i) state and local law enforcement agencies;

(ii) the judiciary; and

(iii) the division.

(b) Fingerprints may be distributed or disbursed to:

(i) state and local law enforcement agencies;

(ii) the judiciary;

(iii) the division; and

(iv) agencies participating in the Western Identification Network.

(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 152. Section **80-6-706** is amended 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:

(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~~] 26B-5-401, 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~~] Title 26B, Chapter 5, Part 4, Commitment of Persons Under Age 18.

(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~~] Title 26B, Chapter 6, Part 6, 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 commitment under Subsection (6)(a).

Section 153. Section **80-6-801** is amended to read:

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~~] 26B-5-401, 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~~] Title 26B, Chapter 5, Part 4, Commitment of Persons Under Age 18, 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~~] Title 26B, Chapter 6, Part 4, Division of Services for People with Disabilities, shall govern the commitment and release of the minor.

Section 154. **Coordinating S.B. 209 with H.B. 72 -- Renumbering and superseding amendments.**

If this S.B. 209 and H.B. 72, Medical Cannabis Governance Revisions, both pass and become law, the Legislature intends that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication on July 1, 2023, by amending:

(1) Subsection 78A-2-231(2)(c)(ii) to read:

"(ii) the individual reasonably complies with the directions of use and dosing guidelines determined by the individual's recommending medical provider or through a consultation described in Subsection [~~26-61a-502(4) or (5)~~] 26B-4-230(5).";

(2) Subsection 80-3-110(2)(c)(ii) to read:

"(ii) the individual reasonably complies with the directions of use and dosing guidelines determined by the individual's recommending medical provider or through a consultation described in Subsection [~~26-61a-502(4) or (5)~~] 26B-4-230(5).";

(3) Subsection 80-3-110(4)(a) to read:

"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~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, 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 recommending medical provider or through a consultation described in Subsection [~~26-61a-502(4) or (5)~~] 26B-4-230(5) ; or";

(4) Subsection 80-4-109(2)(c)(ii) to read:

"(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)~~] 26B-4-230(5)."; and

(5) Subsection 80-4-109(4)(a) to read:

"(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~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, 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)~~] 26B-4-230(5); or".

Section 155. **Coordinating S.B. 209 with S.B. 272 -- Substantive and technical amendments.**

If this S.B. 209 and S.B. 272, Funds Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication on July 1, 2023, by omitting the changes to Subsection 63M-7-303(1)(h) in this bill.

Section ~~{154}~~156. **Revisor instructions.**

The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, not enroll this bill if any of the following bills do not pass:

(a) S.B. 38, Health and Human Services Recodification - Administration, Licensing, and Recovery Services;

(b) S.B. 39, Health and Human Services Recodification - ~~{Prevention, Supports, Substance Use }~~Health Care Assistance and ~~{Mental Health}~~Data;

(c) S.B. 40, Health and Human Services Recodification - Health Care ~~{Assistance}~~Delivery and ~~{Data}~~Repeals; or

(d) S.B. 41, Health and Human Services Recodification - Prevention, Supports, Substance Use and Mental Health~~{ Care Delivery and Repeals}~~.