Senator Michael K. McKell proposes the following substitute bill:

1	CHILD CUSTODY PROCEEDINGS AMENDMENTS
2	2024 GENERAL SESSION
3	STATE OF UTAH
4	Chief Sponsor: Paul A. Cutler
5	Senate Sponsor: Michael K. McKell
6	
7	LONG TITLE
8	General Description:
9	This bill concerns the protection of children in certain judicial proceedings.
10	Highlighted Provisions:
11	This bill:
12	 defines terms;
13	 in certain proceedings involving child custody and parent-time:
14	• specifies requirements for the admission of expert evidence; and
15	• requires a court to consider specific evidence when determining custody and
16	parent-time;
17	 amends provisions regarding the supervision of supervised parent-time;
18	 imposes certain requirements and limitations regarding orders to improve the
19	relationship between a parent and a child;
20	 requires the state court administrator to make recommendations regarding the
21	education and training of court personnel involving child custody and related
22	proceedings;
23	 requires that certain protective order proceedings comply with specific standards;
24	and
25	 makes technical and conforming changes.

26	Money Appropriated in this Bill:
27	None
28	Other Special Clauses:
29	This bill provides a coordination clause.
30	Utah Code Sections Affected:
31	AMENDS:
32	30-3-10 , as last amended by Laws of Utah 2023, Chapters 44, 327
33	30-3-10.1 , as last amended by Laws of Utah 2023, Chapter 44
34	30-3-10.10 , as enacted by Laws of Utah 2006, Chapter 287
35	30-3-34 , as last amended by Laws of Utah 2021, Chapter 399
36	30-3-34.5, as last amended by Laws of Utah 2022, Chapter 430
37	ENACTS:
38	30-3-41, Utah Code Annotated 1953
39	78A-2-232, Utah Code Annotated 1953
40	78B-7-121, Utah Code Annotated 1953
41	Utah Code Sections Affected By Coordination Clause:
42	30-3-10 , as last amended by Laws of Utah 2023, Chapters 44, 327
43	30-3-10.1 , as last amended by Laws of Utah 2023, Chapter 44
44	30-3-10.2, as last amended by Laws of Utah 2019, Chapter 188
45	30-3-34 , as last amended by Laws of Utah 2021, Chapter 399
46	30-3-34.5, as last amended by Laws of Utah 2022, Chapter 430
47	30-3-41 , as Utah Code Annotated 1953
48	78B-7-121, as Utah Code Annotated 1953
49 50	Be it enacted by the Legislature of the state of Utah:
51	The following section is affected by a coordination clause at the end of this bill.
52	Section 1. Section 30-3-10 is amended to read:
53	30-3-10. Custody of a child Custody factors.
54	(1) If a married couple having one or more minor children are separated, or the married
55	couple's marriage is declared void or dissolved, the court shall enter, and has continuing

56 jurisdiction to modify, an order of custody and parent-time.

57	(2) In determining any form of custody and parent-time under Subsection (1), the court
58	shall consider the best interest of the child [and may consider among other factors the court
59	finds relevant, the following for each parent:].
60	(3) In determining any form of custody and parent-time under Subsection (1), the court
61	shall consider:
62	(a) for each parent, and in accordance with Section 30-3-41, evidence of domestic
63	violence, physical abuse, or sexual abuse involving the child, the parent, or a household
64	member of the parent;
65	(b) whether the parent has intentionally exposed the child to pornography or material
66	harmful to minors, as "material" and "harmful to minors" are defined in Section 76-10-1201;
67	and
68	(c) whether custody and parent-time would endanger the child's health or physical or
69	psychological safety.
70	(4) In determining any form of custody and parent-time under Subsection (1), the court
71	may consider, among other factors the court finds relevant, the following for each parent:
72	(a) evidence of [domestic violence, neglect, physical abuse, sexual abuse, or emotional
73	abuse, involving the child, the parent, or a household member of the parent] psychological
74	maltreatment;
75	(b) the parent's demonstrated understanding of, responsiveness to, and ability to meet
76	the developmental needs of the child, including the child's:
77	(i) physical needs;
78	(ii) emotional needs;
79	(iii) educational needs;
80	(iv) medical needs; and
81	(v) any special needs;
82	(c) the parent's capacity and willingness to function as a parent, including:
83	(i) parenting skills;
84	(ii) co-parenting skills, including:
85	(A) ability to appropriately communicate with the other parent;
86	(B) ability to encourage the sharing of love and affection; and
87	(C) willingness to allow frequent and continuous contact between the child and the

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88 other parent, except that, if the court determines that the parent is acting to protect the child 89 from domestic violence, neglect, or abuse, the parent's protective actions may be taken into 90 consideration; and 91 (iii) ability to provide personal care rather than surrogate care; 92 (d) in accordance with Subsection [(10)] (12), the past conduct and demonstrated moral 93 character of the parent; 94 (e) the emotional stability of the parent; 95 (f) the parent's inability to function as a parent because of drug abuse, excessive 96 drinking, or other causes; 97 (g) whether the parent has intentionally exposed the child to pornography or material 98 harmful to minors, as "material" and "harmful to minors" are defined in Section 76-10-1201;] 99 [(h)] (g) the parent's reasons for having relinquished custody or parent-time in the past; 100 [(i)] (h) duration and depth of desire for custody or parent-time: [(i) the parent's religious compatibility with the child; 101 102 $\left[\frac{k}{k}\right]$ (j) the parent's financial responsibility; 103 $\left[\frac{1}{1}\right]$ (k) the child's interaction and relationship with step-parents, extended family 104 members of other individuals who may significantly affect the child's best interests; 105 $\left[\frac{m}{2}\right]$ (1) who has been the primary caretaker of the child: 106 [(m) previous parenting arrangements in which the child has been happy and 107 well-adjusted in the home, school, and community; 108 $\left[\frac{1}{100}\right]$ (n) the relative benefit of keeping siblings together; 109 $\left[\frac{(p)}{p}\right]$ (o) the stated wishes and concerns of the child, taking into consideration the 110 child's cognitive ability and emotional maturity; 111 $\left[\frac{d}{dt}\right]$ (p) the relative strength of the child's bond with the parent, meaning the depth, 112 quality, and nature of the relationship between the parent and the child; and 113 $\left[\frac{1}{1}\right]$ (q) any other factor the court finds relevant. 114 $\left[\frac{3}{3}\right]$ (5) There is a rebuttable presumption that joint legal custody, as defined in 115 Section 30-3-10.1, is in the best interest of the child, except in cases when there is: 116 (a) in accordance with Section 30-3-41, evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional abuse involving the child, a parent, or a household 117 118 member of the parent;

119	(b) special physical or mental needs of a parent or child, making joint legal custody
120	unreasonable;
121	(c) physical distance between the residences of the parents, making joint decision
122	making impractical in certain circumstances; or
123	(d) any other factor the court considers relevant including those listed in this section
124	and Section 30-3-10.2.
125	[(4)] (a) The person who desires joint legal custody shall file a proposed parenting
126	plan in accordance with Sections 30-3-10.8 and 30-3-10.9.
127	(b) A presumption for joint legal custody may be rebutted by a showing by a
128	preponderance of the evidence that it is not in the best interest of the child.
129	$\left[\frac{(5)}{(7)}\right]$ (a) A child may not be required by either party to testify unless the trier of fact
130	determines that extenuating circumstances exist that would necessitate the testimony of the
131	child be heard and there is no other reasonable method to present the child's testimony.
132	(b) (i) The court may inquire of the child's and take into consideration the child's
133	desires regarding future custody or parent-time schedules, but the expressed desires are not
134	controlling and the court may determine the child's custody or parent-time otherwise.
135	(ii) The desires of a child 14 years old or older shall be given added weight, but is not
136	the single controlling factor.
137	(c) (i) If an interview with a child is conducted by the court pursuant to Subsection
138	[(5)(b)] (7)(b), the interview shall be conducted by the judge in camera.
139	(ii) The prior consent of the parties may be obtained but is not necessary if the court
140	finds that an interview with a child is the only method to ascertain the child's desires regarding
141	custody.
142	[(6)] (a) Except as provided in Subsection $[(6)(b)]$ (8)(b), a court may not
143	discriminate against a parent due to a disability, as defined in Section 57-21-2, in awarding
144	custody or determining whether a substantial change has occurred for the purpose of modifying
145	an award of custody.
146	(b) The court may not consider the disability of a parent as a factor in awarding custody
147	or modifying an award of custody based on a determination of a substantial change in
148	circumstances, unless the court makes specific findings that:
149	(i) the disability significantly or substantially inhibits the parent's ability to provide for

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150 the physical and emotional needs of the child at issue; and 151 (ii) the parent with a disability lacks sufficient human, monetary, or other resources 152 available to supplement the parent's ability to provide for the physical and emotional needs of 153 the child at issue. 154 (c) Nothing in this section may be construed to apply to adoption proceedings under 155 Title 78B, Chapter 6, Part 1, Utah Adoption Act. 156 $\left[\frac{7}{7}\right]$ (9) This section does not establish a preference for either parent solely because of 157 the gender of the parent. 158 $\left[\frac{(8)}{(10)}\right]$ (10) This section establishes neither a preference nor a presumption for or against 159 joint physical custody or sole physical custody, but allows the court and the family the widest 160 discretion to choose a parenting plan that is in the best interest of the child. 161 $\left[\frac{(9)}{(11)}\right]$ (11) When an issue before the court involves custodial responsibility in the event 162 of a deployment of one or both parents who are service members and the service member has 163 not yet been notified of deployment, the court shall resolve the issue based on the standards in 164 Sections 78B-20-306 through 78B-20-309. 165 [(10)] (12) In considering the past conduct and demonstrated moral standards of each 166 party under Subsection $\left[\frac{(2)(d)}{(2)}\right]$ (4)(c) or any other factor a court finds relevant, the court may 167 not: 168 (a) consider or treat a parent's lawful possession or use of cannabis in a medicinal 169 dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device, in 170 accordance with Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies, 171 Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, or Subsection 172 58-37-3.7(2) or (3) any differently than the court would consider or treat the lawful possession 173 or use of any prescribed controlled substance; or 174 (b) discriminate against a parent because of the parent's status as a: 175 (i) cannabis production establishment agent, as that term is defined in Section 4-41a-102; 176 177 (ii) medical cannabis pharmacy agent, as that term is defined in Section 26B-4-201: 178 (iii) medical cannabis courier agent, as that term is defined in Section 26B-4-201; or 179 (iv) medical cannabis cardholder in accordance with Title 26B, Chapter 4, Part 2, 180 Cannabinoid Research and Medical Cannabis.

181	The following section is affected by a coordination clause at the end of this bill.
182	Section 2. Section 30-3-10.1 is amended to read:
183	30-3-10.1. Definitions Joint legal custody Joint physical custody.
184	As used in this chapter:
185	(1) <u>"Abuse" means the same as that term is defined in Section 80-1-102.</u>
186	(2) (a) "Custodial responsibility" includes all powers and duties relating to caretaking
187	authority and decision-making authority for a child.
188	(b) "Custodial responsibility" includes physical custody, legal custody, parenting time,
189	right to access, [visitation] parent-time, and authority to grant limited contact with a child.
190	[(2)] (3) "Domestic violence" means the same as that term is defined in Section
191	<u>77-36-1</u>
192	(4) "Joint legal custody":
193	(a) means the sharing of the rights, privileges, duties, and powers of a parent by both
194	parents, where specified;
195	(b) may include an award of exclusive authority by the court to one parent to make
196	specific decisions;
197	(c) does not affect the physical custody of the child except as specified in the order of
198	joint legal custody;
199	(d) is not based on awarding equal or nearly equal periods of physical custody of and
200	access to the child to each of the parents, as the best interest of the child often requires that a
201	primary physical residence for the child be designated; and
202	(e) does not prohibit the court from specifying one parent as the primary caretaker and
203	one home as the primary residence of the child.
204	[(3)] <u>(5)</u> "Joint physical custody":
205	(a) means the child stays with each parent overnight for more than 30% of the year, and
206	both parents contribute to the expenses of the child in addition to paying child support;
207	(b) can mean equal or nearly equal periods of physical custody of and access to the
208	child by each of the parents, as required to meet the best interest of the child;
209	(c) may require that a primary physical residence for the child be designated; and
210	(d) does not prohibit the court from specifying one parent as the primary caretaker and
211	one home as the primary residence of the child.

212	(6) "Protective order" means:
213	(a) a civil protective order, as that term is defined in Section 78B-7-102;
214	(b) an ex parte civil protective order, as that term is defined in Section 78B-7-102; or
215	(c) a foreign protection order, as that term is defined in Section 78B-7-302.
216	(7) "Psychological maltreatment" means a repeated pattern or extreme incident of
217	caretaker behavior that:
218	(a) intentionally thwarts a child's basic psychological needs, including physical and
219	psychological safety, cognitive stimulation, and respect;
220	(b) conveys that a child is worthless, defective, or expendable; and
221	(c) may terrorize a child.
222	[(4)] (8) "Service member" means a member of a uniformed service.
223	(9) "Sexual abuse" means the same as that term is defined in Section 80-1-102.
224	[(5)] (10) "Uniformed service" means:
225	(a) active and reserve components of the United States Armed Forces;
226	(b) the United States Merchant Marine;
227	(c) the commissioned corps of the United States Public Health Service;
228	(d) the commissioned corps of the National Oceanic and Atmospheric Administration
229	of the United States; or
230	(e) the National Guard of a state.
231	Section 3. Section 30-3-10.10 is amended to read:
232	30-3-10.10. Parenting plan Domestic violence.
233	(1) In any proceeding regarding a parenting plan, the court shall consider evidence of
234	domestic violence in accordance with Section 30-3-41, if presented.
235	(2) If there is a protective order, civil stalking injunction, or the court finds that a
236	parent has committed domestic violence, the court shall consider the impact of domestic
237	violence in awarding parent-time, and make specific findings regarding the award of
238	parent-time.
239	(3) If the court orders parent-time and a protective order or civil stalking injunction is
240	still in place, it shall consider whether to order the parents to conduct parent-time pick-up and
241	transfer through a third party. The parent who is the stated victim in the order or injunction
242	may submit to the court, and the court shall consider, the name of a person considered suitable

243	to act as the third party.
244	(4) If the court orders the parents to conduct parent-time through a third party, the
245	parenting plan shall specify the time, day, place, manner, and the third party to be used to
246	implement the exchange.
247	The following section is affected by a coordination clause at the end of this bill.
248	Section 4. Section 30-3-34 is amended to read:
249	30-3-34. Parent-time Best interests Rebuttable presumption.
250	(1) If the parties are unable to agree on a parent-time schedule, the court may:
251	(a) establish a parent-time schedule; or
252	(b) order a parent-time schedule described in Section 30-3-35, 30-3-35.1, 30-3-35.2, or
253	30-3-35.5.
254	(2) The advisory guidelines as provided in Section $30-3-33$ and the parent-time
255	schedule as provided in Sections 30-3-35 and 30-3-35.5 shall be considered the minimum
256	parent-time to which the noncustodial parent and the child shall be entitled.
257	(3) In accordance with Section 30-3-41, when ordering a parent-time schedule a court
258	shall consider:
259	(a) evidence of domestic violence, physical abuse, or sexual abuse involving the child,
260	a parent, or a household member of the parent; and
261	(b) whether parent-time would endanger the child's health or physical or psychological
262	safety.
263	(4) A court may consider the following when ordering a parent-time schedule:
264	[(a) whether parent-time would endanger the child's physical health or mental health,
265	or significantly impair the child's emotional development;]
266	[(b)] (a) evidence of [domestic violence, neglect, physical abuse, sexual abuse, or
267	emotional abuse, involving the child, a parent, or a household member of the parent]
268	psychological maltreatment;
269	[(c)] (b) the distance between the residency of the child and the noncustodial parent;
270	[(d) a credible allegation of child abuse has been made;]
271	[(e)] (c) the lack of demonstrated parenting skills without safeguards to ensure the
272	child's well-being during parent-time;
273	$\left[\frac{f}{d}\right]$ (d) the financial inability of the noncustodial parent to provide adequate food and

274	shelter for the child during periods of parent-time;
275	[(g)] (e) the preference of the child if the court determines the child is of sufficient
276	maturity;
277	$\left[\frac{h}{h}\right]$ (f) the incarceration of the noncustodial parent in a county jail, secure youth
278	corrections facility, or an adult corrections facility;
279	[(i)] (g) shared interests between the child and the noncustodial parent;
280	$\left[\frac{1}{(j)}\right]$ (h) the involvement or lack of involvement of the noncustodial parent in the
281	school, community, religious, or other related activities of the child;
282	$\left[\frac{k}{k}\right]$ (i) the availability of the noncustodial parent to care for the child when the
283	custodial parent is unavailable to do so because of work or other circumstances;
284	[(1)] (j) a substantial and chronic pattern of missing, canceling, or denying regularly
285	scheduled parent-time;
286	$\left[\frac{(m)}{(m)}\right]$ (k) the minimal duration of and lack of significant bonding in the parents'
287	relationship before the conception of the child;
288	[(n)] (1) the parent-time schedule of siblings;
289	$\left[\frac{(\mathbf{o})}{(\mathbf{m})}\right]$ the lack of reasonable alternatives to the needs of a nursing child; and
290	$\left[\frac{(p)}{(p)}\right]$ (n) any other criteria the court determines relevant to the best interests of the
291	child.
292	[(4)] (5) The court shall enter the reasons underlying the court's order for parent-time
293	that:
294	(a) incorporates a parent-time schedule provided in Section 30-3-35 or 30-3-35.5; or
295	(b) provides more or less parent-time than a parent-time schedule provided in Section
296	30-3-35 or 30-3-35.5.
297	[(5)] (6) A court may not order a parent-time schedule unless the court determines by a
298	preponderance of the evidence that the parent-time schedule is in the best interest of the child.
299	[(6)] (7) Once the parent-time schedule has been established, the parties may not alter
300	the schedule except by mutual consent of the parties or a court order.
301	The following section is affected by a coordination clause at the end of this bill.
302	Section 5. Section 30-3-34.5 is amended to read:
303	30-3-34.5. Supervised parent-time.
304	(1) Considering the fundamental liberty interests of parents and children, it is the

305	policy of this state that divorcing parents have unrestricted and unsupervised access to their
306	children. When necessary to protect a child and no less restrictive means is reasonably
307	available however, and in accordance with Section 30-3-41, a court may order supervised
308	parent-time if the court finds evidence that the child would be subject to physical or emotional
309	harm or child abuse, as described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, [and]
310	76-5-114, and 80-1-102, from the noncustodial parent if left unsupervised with the
311	noncustodial parent.
312	(2) [A court that] If the court finds evidence of domestic violence, child abuse, or an
313	ongoing risk to a child, and orders supervised parent-time, the court shall give preference to
314	[persons suggested by the parties to supervise, including relatives] supervision by a
315	professional individual or private agency trained in child abuse reporting laws, the
316	developmental needs of a child, and the dynamics of domestic violence, child abuse, sexual
317	abuse, and substance abuse.
318	(3) If a professional individual or private agency described in Subsection (2) is not
319	available, affordable, or practicable under the circumstances, a court shall give preference to
320	supervision by an individual who is:
321	(a) capable and willing to provide physical and psychological safety and security to the
322	child, and to assist in the avoidance and prevention of domestic and family violence; and
323	(b) is trained in child abuse reporting laws, the developmental needs of a child, and the
324	dynamics of domestic violence, child abuse, sexual abuse, and substance abuse.
325	(4) [If the court finds that the persons suggested by the parties are] If an individual
326	described in Subsection (2) or (3) is not available, affordable, or practicable under the
327	circumstances, or if the court does not find evidence of domestic violence, child abuse, or an
328	ongoing risk to a child, a court may order supervised parent-time that is supervised by an
329	individual who is willing to supervise, and [are] is capable of protecting the [children] child
330	from physical or emotional harm, or child abuse, [the court shall authorize the persons to
331	supervise parent-time] and the court shall give preference to individuals suggested by the
332	parties, including relatives.
333	[(3) If the court is unable to authorize any persons to supervise parent-time pursuant to
334	Subsection (2), the court may require that the noncustodial parent seek the services of a
335	professional individual or agency to exercise their supervised parent-time.]

336	[(4)] (5) At the time supervised parent-time is imposed, the court shall consider:
337	(a) whether the cost of professional or agency services is likely to prevent the
338	noncustodial parent from exercising parent-time; and
339	(b) whether the requirement for supervised parent-time should expire after a set period
340	of time.
341	[(5) The]
342	(6) Except when the court makes a finding that, due to abuse by or the incapacity of the
343	noncustodial parent, supervised parent-time will be necessary indefinitely to ensure the
344	physical or psychological safety and protection of the child, the court shall, in its order for
345	supervised parent-time, provide specific goals and expectations for the noncustodial parent to
346	accomplish before unsupervised parent-time may be granted. The court shall schedule one or
347	more follow-up hearings to revisit the issue of supervised parent-time.
348	[(6)] (7) A noncustodial parent may, at any time, petition the court to modify the order
349	for supervised parent-time if the noncustodial parent can demonstrate that the specific goals
350	and expectations set by the court in Subsection $[(5)]$ (6) have been accomplished.
351	The following section is affected by a coordination clause at the end of this bill.
352	Section 6. Section 30-3-41 is enacted to read:
353	<u>30-3-41.</u> Definitions Expert evidence Violence or abuse findings Child
354	relationship and reunification.
355	(1) As used in this section:
356	(a) (i) "Child custody proceeding" means a civil proceeding between the parents of a
357	child that involves the care or custody of the child, including proceedings involving:
358	(A) divorce;
359	(B) separation;
360	(C) parent-time;
361	(D) paternity;
362	(E) child support; or
363	(F) legal or physical custody of the child.
364	(ii) "Child custody proceeding" does not include:
365	(A) a child protective, abuse, or neglect proceeding;
366	(B) a juvenile justice proceeding; or

367	(C) a child placement proceeding in which a state, local, or tribal government, a
368	designee of such a government, or any contracted child welfare agency or child protective
369	services agency of such a government is a party to the proceeding.
370	(b) "Forensic" means professional activities undertaken pursuant to a court order or for
371	use in litigation, including the evaluation or treatment of a parent, child, or other individual
372	who is involved in a child custody proceeding.
373	(c) "Reunification treatment" means a treatment or therapy aimed at reuniting or
374	reestablishing a relationship between a child and an estranged or rejected parent or other family
375	member of the child.
376	(2) In a child custody proceeding, if a parent is alleged to have committed domestic
377	violence or abuse, including sexual abuse:
378	(a) the court may admit expert evidence from a court-appointed or outside professional
379	relating to alleged domestic violence or abuse only if the professional possesses demonstrated
380	expertise and adequate experience in working with victims of domestic violence or abuse,
381	including sexual abuse, that is not solely of a forensic nature; and
382	(b) in making a finding regarding an allegation of domestic violence or abuse,
383	including sexual abuse, the court shall consider evidence of past domestic violence, sexual
384	violence, or abuse committed by the accused parent, including:
385	(i) any past or current protective order against the accused parent; or
386	(ii) any charge, arrest, or conviction of the accused parent for domestic violence, sexual
387	violence, or abuse.
388	(3) Subsection (2) does not preclude the court from:
389	(a) admitting expert evidence, subject to rules of evidence, from a court-appointed or
390	outside professional relating to issues other than alleged domestic violence or abuse; or
391	(b) admitting evidence, subject to rules of evidence, that is discovered or otherwise
392	becomes available through treatment or therapy after the court enters an order of custody or
393	parent-time.
394	(4) As part of a child custody proceeding, a court may not, solely in order to improve a
395	deficient relationship between a parent and a child, including in the context of reunification
396	treatment:
397	(a) remove the child from a parent or litigating party:

398	(i) who is competent and not physically or sexually abusive; and
399	(ii) with whom the child is bonded; or
400	(b) restrict reasonable contact between the child and a parent or litigating party:
401	(i) who is competent and not physically or sexually abusive; and
402	(ii) with whom the child is bonded.
403	(5) As part of a child custody proceeding where the court has reasonable cause to
404	believe that there is domestic violence, child abuse, or an ongoing risk to the child:
405	(a) a court may not order a reunification treatment or program unless there is generally
406	accepted proof:
407	(i) of the physical and psychological safety, effectiveness, and therapeutic value of the
408	reunification treatment; and
409	(ii) that the reunification treatment is not associated with causing harm to a child;
410	(b) a court may not order a reunification treatment that is predicated on cutting off a
411	child from a parent:
412	(i) who is competent and not physically or sexually abusive; and
413	(ii) with whom the child is bonded;
414	(c) any order to remediate the resistance of a child to have contact with a violent or
415	abusive parent shall primarily address the behavior of that parent or the contributions of that
416	parent to the resistance of the child; and
417	(d) any order to a parent who meets the criteria in Subsections (5)(b)(i) and (ii), and
418	that requires the parent to take steps to potentially improve the child's relationship with a
419	violent or abusive parent, shall:
420	(i) prioritize the child's physical and psychological safety and needs; and
421	(ii) be narrowly tailored to address specific behavior.
422	(6) Subject to Subsection (4), Subsection (5) does not preclude the court from ordering
423	mental health treatment by a licensed mental health professional that is generally accepted by
424	and meets the standards of practice for mental health professions if:
425	(a) the court does not have reasonable cause to believe that there is domestic violence,
426	child abuse, or an ongoing risk to the child; and
427	(b) the treatment does not pose a risk to the child or parent.
428	Section 7. Section 78A-2-232 is enacted to read:

429	78A-2-232. Child abuse and domestic abuse education and training for judges,
430	court commissioners, and court personnel.
431	(1) As used in this section:
432	(a) "Advocacy services provider" means the same as that term is defined in Section
433	<u>77-38-403.</u>
434	(b) "Child custody proceeding" means a civil proceeding between the parents of a child
435	that involves the care or custody of the child including proceedings involving:
436	(i) divorce;
437	(ii) separation;
438	(iii) parent-time;
439	(iv) paternity;
440	(v) child support;
441	(vi) legal or physical custody of a child; or
442	(vii) a civil protective order as that term is defined in Section 78B-7-102.
443	(2) The state court administrator described in Section 78A-2-105 shall develop or
444	recommend a proposed training and education program that:
445	(a) shall be designed to improve the ability of the courts to:
446	(i) recognize domestic violence and child abuse in child custody proceedings; and
447	(ii) make appropriate custody decisions that prioritize a child's physical and
448	psychological safety and well-being;
449	(b) shall focus solely on domestic and sexual violence and child abuse, including:
450	(i) child sexual abuse;
451	(ii) physical abuse;
452	(iii) emotional abuse;
453	(iv) coercive control;
454	(v) implicit and explicit bias, including biases relating to parents with disabilities;
455	(vi) trauma;
456	(vii) long-term and short-term impacts of domestic violence and child abuse on
457	children; and
458	(viii) victim and perpetrator behavior patterns and relationship dynamics within the
459	cycle of violence;

460	(c) shall be based on evidence-based and peer-reviewed research by recognized experts
461	in the types of abuse described in Subsection (2)(b);
462	(d) shall require training to be provided by a professional with substantial experience in
463	assisting survivors of domestic violence or child abuse, including an advocacy services
464	provider;
465	(e) may include input from a survivor of domestic violence or child physical or sexual
466	abuse; and
467	(f) may incorporate curriculum, best practices, or other materials developed for or used
468	in similar training and education programs.
469	(3) (a) The state court administrator shall present the proposed or recommended
470	training and education program to the Judiciary Interim Committee on or before the
471	committee's September 2024 interim meeting.
472	(b) The presentation described in Subsection (3)(a) shall include:
473	(i) recommendations for the specific personnel positions that will be required to
474	participate in the program;
475	(ii) recommended performance metrics for the program and how those metrics may be
476	tracked;
477	(iii) an estimate of the costs to implement the program; and
478	(iv) an identification of potential grant sources, if any, that may be available to fund the
479	program in whole or in part.
480	The following section is affected by a coordination clause at the end of this bill.
481	Section 8. Section 78B-7-121 is enacted to read:
482	78B-7-121. Requirements for proceedings between the parents of a child.
483	(1) (a) As used in this section, "relevant proceeding" means a civil proceeding under
484	this chapter:
485	(i) between the parents of a child;
486	(ii) that involves the care or custody of the child; and
487	(iii) that concerns a protective order under this chapter.
488	(b) "Relevant proceeding" does not include:
489	(i) any child protective, abuse, or neglect proceeding;
490	(ii) a juvenile justice proceeding; or

491	(iii) any child placement proceeding in which a state, local, or tribal government, a
492	designee of such a government, or any contracted child welfare agency or child protective
493	services agency of such a government is a party to the proceeding.
494	(2) In a relevant proceeding, the court shall comply with the standards described in
495	<u>Section 30-3-41.</u>
496	Section 9. Effective date.
497	This bill takes effect on May 1, 2024.
498	Section 10. Coordinating H.B. 272 with S.B. 95.
499	If H.B. 272, Child Custody Proceedings Amendments, and S.B. 95, Domestic Relations
500	Recodification, both pass and become law, the Legislature intends that, on September 1, 2024:
501	(1) Subsections 30-3-10(1) through (4) in H.B. 272 be amended to read:
502	"[(1) If a married couple having one or more minor children are separated, or the
503	married couple's marriage is declared void or dissolved, the court shall enter, and has
504	continuing jurisdiction to modify, an order of custody and parent-time.]
505	[(2) In determining any form of custody and parent-time under Subsection (1), the court
506	shall consider the best interest of the child and may consider among other factors the court
507	finds relevant, the following for each parent:]
508	(1) In a proceeding between parents in which the custody and parent-time of a minor
509	child is at issue, the court shall consider the best interests of the minor child in determining any
510	form of custody and parent-time.
511	(2) The court shall determine whether an order for custody or parent-time is in the best
512	interests of the minor child by a preponderance of the evidence.
513	(3) In determining any form of custody and parent-time under Subsection (1), the court
514	shall consider:
515	(a) for each parent, and in accordance with Section 81-9-103, evidence of domestic
516	violence, physical abuse, or sexual abuse involving the minor child, the parent, or a household
517	member of the parent;
518	(b) whether the parent has intentionally exposed the minor child to pornography or
519	material harmful to minors, as "material" and "harmful to minors" are defined in Section
520	<u>76-10-1201; and</u>
521	(c) whether custody and parent-time would endanger the minor child's health or

522	physical or psychological safety.
523	(4) In determining the form of custody and parent-time that is in the best interests of
524	the minor child, the court may consider, among other factors the court finds relevant, the
525	following for each parent:
526	(a) evidence of [domestic violence, neglect, physical abuse, sexual abuse, or emotional
527	abuse, involving the child, the parent, or a household member of the parent;] psychological
528	maltreatment;
529	(b) the parent's demonstrated understanding of, responsiveness to, and ability to meet
530	the developmental needs of the minor child, including the minor child's:
531	(i) physical needs;
532	(ii) emotional needs;
533	(iii) educational needs;
534	(iv) medical needs; and
535	(v) any special needs;
536	(c) the parent's capacity and willingness to function as a parent, including:
537	(i) parenting skills;
538	(ii) co-parenting skills, including:
539	(A) ability to appropriately communicate with the other parent;
540	(B) ability to encourage the sharing of love and affection; and
541	(C) willingness to allow frequent and continuous contact between the minor child and
542	the other parent, except that, if the court determines that the parent is acting to protect the
543	minor child from domestic violence, neglect, or abuse, the parent's protective actions may be
544	taken into consideration; and
545	(iii) ability to provide personal care rather than surrogate care;
546	(d) [in accordance with Subsection (10),] the past conduct and demonstrated moral
547	character of the parent as described in Subsection (9);
548	(e) the emotional stability of the parent;
549	(f) the parent's inability to function as a parent because of drug abuse, excessive
550	drinking, or other causes;
551	[(g) whether the parent has intentionally exposed the child to pornography or material
552	harmful to minors, as "material" and "harmful to minors" are defined in Section 76-10-1201;]

553	[(h)] (g) the parent's reasons for having relinquished custody or parent-time in the past;
554	[(i)] (h) duration and depth of desire for custody or parent-time;
555	[(j)] (i) the parent's religious compatibility with the minor child;
556	[(k)] (j) the parent's financial responsibility;
557	$\left[\frac{(\mathbf{h})}{(\mathbf{k})}\right]$ the child's interaction and relationship with step-parents, extended family
558	members of other individuals who may significantly affect the minor child's best interests;
559	[(m)] (1) who has been the primary caretaker of the minor child;
560	[(n)] (m) previous parenting arrangements in which the minor child has been happy and
561	well-adjusted in the home, school, and community;
562	$\left[\frac{(\mathbf{o})}{(\mathbf{n})}\right]$ the relative benefit of keeping siblings together;
563	[(p)] (o) the stated wishes and concerns of the minor child, taking into consideration the
564	minor child's cognitive ability and emotional maturity;
565	$\left[\frac{(q)}{(q)}\right]$ (p) the relative strength of the minor child's bond with the parent, meaning the
566	depth, quality, and nature of the relationship between the parent and the minor child; and
567	[(r)] (q) any other factor the court finds relevant.";
568	(2) all references to "child" in Subsections 30-3-10.1(7) and 30-3-34(3) in H.B. 272 be
569	changed to "minor child";
570	(3) the changes to Subsection 30-3-34(4)(a) in H.B. 272 supersede the changes to
571	Subsection 81-9-206(3)(b) in S.B. 95;
572	(4) all references to "child" in Subsection 30-3-34.5(3)(a) in H.B. 272 be changed to
573	<u>"minor child";</u>
574	(5) Subsection 30-3-34.5(4) in H.B. 272 be amended to read:
575	"(4) [If the court finds that the persons suggested by the parties are] If an individual
576	described in Subsection (2) or (3) is not available, affordable, or practicable under the
577	circumstances, or if the court does not find evidence of domestic violence, child abuse, or an
578	ongoing risk to a minor child, a court may order supervised parent-time that is supervised by an
579	individual who is willing to supervise, and [are] is capable of protecting the [children] minor
580	child from physical or emotional harm, or child abuse, [the court shall authorize the persons to
581	supervise parent-time] and the court shall give preference to individuals suggested by the
582	parties, including relatives.";
583	(6) all references to "child" in Subsection 30-3-34,5(6) in H.B. 272 be changed to

583 (6) all references to "child" in Subsection 30-3-34.5(6) in H.B. 272 be changed to

584	<u>"minor child";</u>
585	(7) Section <u>30-3-41</u> enacted in H.B. 272 be renumbered to <u>81-9-103</u> and be amended to
586	read:
587	<u>"[30-3-41.]</u> <u>81-9-103.</u> Expert evidence Violence or abuse findings Child
588	relationship and reunification.
589	(1) As used in this section:
590	(a) (i) "Child custody proceeding" means a civil proceeding between the parents of a
591	minor child that involves the care or custody of the minor child, including proceedings
592	involving:
593	(A) divorce;
594	(B) separation;
595	(C) parent-time;
596	(D) paternity;
597	(E) child support; or
598	(F) legal or physical custody of the minor child.
599	(ii) "Child custody proceeding" does not include:
600	(A) a child protective, abuse, or neglect proceeding;
601	(B) a juvenile justice proceeding; or
602	(C) a child placement proceeding in which a state, local, or tribal government, a
603	designee of such a government, or any contracted child welfare agency or child protective
604	services agency of such a government is a party to the proceeding.
605	(b) "Forensic" means professional activities undertaken pursuant to a court order or for
606	use in litigation, including the evaluation or treatment of a parent, minor child, or other
607	individual who is involved in a child custody proceeding.
608	(c) "Reunification treatment" means a treatment or therapy aimed at reuniting or
609	reestablishing a relationship between a minor child and an estranged or rejected parent or other
610	family member of the minor child.
611	(2) In a child custody proceeding, if a parent is alleged to have committed domestic
612	violence or abuse, including sexual abuse:
613	(a) the court may admit expert evidence from a court-appointed or outside professional
614	relating to alleged domestic violence or abuse only if the professional possesses demonstrated

615	expertise and adequate experience in working with victims of domestic violence or abuse,
616	including sexual abuse, that is not solely of a forensic nature; and
617	(b) in making a finding regarding an allegation of domestic violence or abuse,
618	including sexual abuse, the court shall consider evidence of past domestic violence, sexual
619	violence, or abuse committed by the accused parent, including:
620	(i) any past or current protective order against the accused parent; or
621	(ii) any charge, arrest, or conviction of the accused parent for domestic violence, sexual
622	violence, or abuse.
623	(3) Subsection (2) does not preclude the court from:
624	(a) admitting expert evidence, subject to rules of evidence, from a court-appointed or
625	outside professional relating to issues other than alleged domestic violence or abuse; or
626	(b) admitting evidence, subject to rules of evidence, that is discovered or otherwise
627	becomes available through treatment or therapy after the court enters an order of custody or
628	parent-time.
629	(4) As part of a child custody proceeding, a court may not, solely in order to improve a
630	deficient relationship between a parent and a minor child, including in the context of
631	reunification treatment:
632	(a) remove the minor child from a parent or litigating party:
633	(i) who is competent and not physically or sexually abusive; and
634	(ii) with whom the minor child is bonded; or
635	(b) restrict reasonable contact between the minor child and a parent or litigating party:
636	(i) who is competent and not physically or sexually abusive; and
637	(ii) with whom the minor child is bonded.
638	(5) As part of a child custody proceeding where the court has reasonable cause to
639	believe that there is domestic violence, child abuse, or an ongoing risk to the child:
640	(a) a court may not order a reunification treatment or program unless there is generally
641	accepted proof:
642	(i) of the physical and psychological safety, effectiveness, and therapeutic value of the
643	reunification treatment; and
644	(ii) that the reunification treatment is not associated with causing harm to a child;
645	(b) a court may not order a reunification treatment that is predicated on cutting off a

646	minor child from a parent:
647	(i) who is competent and not physically or sexually abusive; and
648	(ii) with whom the minor child is bonded;
649	(c) any order to remediate the resistance of a minor child to have contact with a violent
650	or abusive parent shall primarily address the behavior of that parent or the contributions of that
651	parent to the resistance of the minor child; and
652	(d) any order to a parent who meets the criteria in Subsections (5)(b)(i) and (ii), and
653	that requires the parent to take steps to potentially improve the minor child's relationship with a
654	violent or abusive parent, shall:
655	(i) prioritize the minor child's physical and psychological safety and needs; and
656	(ii) be narrowly tailored to address specific behavior.
657	(6) Subject to Subsection (4), Subsection (5) does not preclude the court from ordering
658	mental health treatment by a licensed mental health professional that is generally accepted by
659	and meets the standards of practice for mental health professions if:
660	(a) the court does not have reasonable cause to believe that there is domestic violence,
661	child abuse, or an ongoing risk to the child; and
662	(b) the treatment does not pose a risk to the child or parent.";
663	(8) the reference in Subsection 78B-7-121(2) in H.B. 272 be changed from "Section
664	<u>30-3-41" to "Section 81-9-103.";</u>
665	(9) Subsection 81-9-205(2)(a)(i) in S.B. 95 be amended to read:
666	"(i) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional
667	abuse involving the minor child, a parent, or a household member of the parent in accordance
668	with Section 81-9-103;"; and
669	(10) Subsection 81-9-207(1) in S.B. 95 be amended to read:
670	"(1) If it is necessary to protect a minor child and there is no less restrictive means
671	reasonably available, and in accordance with Section 81-9-103, a court may order
672	supervised parent-time if the court finds evidence that the minor child would be subject to
673	physical or emotional harm or child abuse, as described in Sections 76-5-109, 76-5-109.2,
674	76-5-109.3, 76-5-114, and 80-1-102, from the noncustodial parent if left unsupervised with the
675	noncustodial parent.".