

HB0272S05 compared with HB0272S04

~~text~~ shows text that was in HB0272S04 but was deleted in HB0272S05.

text shows text that was not in HB0272S04 but was inserted into HB0272S05.

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Senator Michael K. McKell proposes the following substitute bill:

CHILD CUSTODY PROCEEDINGS AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul A. Cutler

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

This bill concerns the protection of children in certain judicial proceedings.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ in certain proceedings involving child custody and parent-time:
 - specifies requirements for the admission of expert evidence; and
 - requires a court to consider specific evidence when determining custody and parent-time;
- ▶ amends provisions regarding the supervision of supervised parent-time;
- ▶ imposes certain requirements and limitations regarding orders to improve the relationship between a parent and a child;

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- ▶ requires the state court administrator to make recommendations regarding the education and training of court personnel involving child custody and related proceedings;
- ▶ requires that certain protective order proceedings comply with specific standards; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

30-3-10, as last amended by Laws of Utah 2023, Chapters 44, 327

30-3-10.1, as last amended by Laws of Utah 2023, Chapter 44

30-3-10.10, as enacted by Laws of Utah 2006, Chapter 287

30-3-34, as last amended by Laws of Utah 2021, Chapter 399

30-3-34.5, as last amended by Laws of Utah 2022, Chapter 430

ENACTS:

30-3-41, Utah Code Annotated 1953

78A-2-232, Utah Code Annotated 1953

78B-7-121, Utah Code Annotated 1953

Utah Code Sections Affected By Coordination Clause:

30-3-10, as last amended by Laws of Utah 2023, Chapters 44, 327

30-3-10.1, as last amended by Laws of Utah 2023, Chapter 44

30-3-10.2, as last amended by Laws of Utah 2019, Chapter 188

30-3-34, as last amended by Laws of Utah 2021, Chapter 399

30-3-34.5, as last amended by Laws of Utah 2022, Chapter 430

30-3-41, as Utah Code Annotated 1953

78B-7-121, as Utah Code Annotated 1953

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

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The following section is affected by a coordination clause at the end of this bill.

Section 1. Section **30-3-10** is amended to read:

30-3-10. Custody of a child -- Custody factors.

(1) If a married couple having one or more minor children are separated, or the married couple's marriage is declared void or dissolved, the court shall enter, and has continuing jurisdiction to modify, an order of custody and parent-time.

(2) In determining any form of custody and parent-time under Subsection (1), the court shall consider the best interest of the child [~~and may consider among other factors the court finds relevant, the following for each parent:~~].

(3) In determining any form of custody and parent-time under Subsection (1), the court shall consider:

(a) for each parent, and in accordance with Section 30-3-41, evidence of domestic violence, physical abuse, or sexual abuse involving the child, the parent, or a household member of the parent;

(b) whether the parent has intentionally exposed the child to pornography or material harmful to minors, as "material" and "harmful to minors" are defined in Section 76-10-1201; and

(c) whether custody and parent-time would endanger the child's health or physical or psychological safety.

(4) In determining any form of custody and parent-time under Subsection (1), the court may consider, among other factors the court finds relevant, the following for each parent:

(a) evidence of [~~domestic violence, neglect, physical abuse, sexual abuse, or emotional abuse, involving the child, the parent, or a household member of the parent~~] psychological maltreatment;

(b) the parent's demonstrated understanding of, responsiveness to, and ability to meet the developmental needs of the child, including the child's:

- (i) physical needs;
- (ii) emotional needs;
- (iii) educational needs;
- (iv) medical needs; and
- (v) any special needs;

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- (c) the parent's capacity and willingness to function as a parent, including:
 - (i) parenting skills;
 - (ii) co-parenting skills, including:
 - (A) ability to appropriately communicate with the other parent;
 - (B) ability to encourage the sharing of love and affection; and
 - (C) willingness to allow frequent and continuous contact between the child and the other parent, except that, if the court determines that the parent is acting to protect the child from domestic violence, neglect, or abuse, the parent's protective actions may be taken into consideration; and
 - (iii) ability to provide personal care rather than surrogate care;
 - (d) in accordance with Subsection ~~[(10)]~~ (12), the past conduct and demonstrated moral character of the parent;
 - (e) the emotional stability of the parent;
 - (f) the parent's inability to function as a parent because of drug abuse, excessive drinking, or other causes;
 - ~~[(g) whether the parent has intentionally exposed the child to pornography or material harmful to minors, as "material" and "harmful to minors" are defined in Section 76-10-1201;]~~
 - ~~[(h)]~~ (g) the parent's reasons for having relinquished custody or parent-time in the past;
 - ~~[(i)]~~ (h) duration and depth of desire for custody or parent-time;
 - ~~[(j)]~~ (i) the parent's religious compatibility with the child;
 - ~~[(k)]~~ (j) the parent's financial responsibility;
 - ~~[(l)]~~ (k) the child's interaction and relationship with step-parents, extended family members of other individuals who may significantly affect the child's best interests;
 - ~~[(m)]~~ (l) who has been the primary caretaker of the child;
 - ~~[(n)]~~ (m) previous parenting arrangements in which the child has been happy and well-adjusted in the home, school, and community;
 - ~~[(o)]~~ (n) the relative benefit of keeping siblings together;
 - ~~[(p)]~~ (o) the stated wishes and concerns of the child, taking into consideration the child's cognitive ability and emotional maturity;
 - ~~[(q)]~~ (p) the relative strength of the child's bond with the parent, meaning the depth, quality, and nature of the relationship between the parent and the child; and

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~~[(4)]~~ (q) any other factor the court finds relevant.

~~[(3)]~~ (5) There is a rebuttable presumption that joint legal custody, as defined in Section 30-3-10.1, is in the best interest of the child, except in cases when there is:

(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 member of the parent;

(b) special physical or mental needs of a parent or child, making joint legal custody unreasonable;

(c) physical distance between the residences of the parents, making joint decision making impractical in certain circumstances; or

(d) any other factor the court considers relevant including those listed in this section and Section 30-3-10.2.

~~[(4)]~~ (6) (a) The person who desires joint legal custody shall file a proposed parenting plan in accordance with Sections 30-3-10.8 and 30-3-10.9.

(b) A presumption for joint legal custody may be rebutted by a showing by a preponderance of the evidence that it is not in the best interest of the child.

~~[(5)]~~ (7) (a) A child may not be required by either party to testify unless the trier of fact determines that extenuating circumstances exist that would necessitate the testimony of the child be heard and there is no other reasonable method to present the child's testimony.

(b) (i) The court may inquire of the child's and take into consideration the child's desires regarding future custody or parent-time schedules, but the expressed desires are not controlling and the court may determine the child's custody or parent-time otherwise.

(ii) The desires of a child 14 years old or older shall be given added weight, but is not the single controlling factor.

(c) (i) If an interview with a child is conducted by the court pursuant to Subsection ~~[(5)(b)]~~ (7)(b), the interview shall be conducted by the judge in camera.

(ii) The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with a child is the only method to ascertain the child's desires regarding custody.

~~[(6)]~~ (8) (a) Except as provided in Subsection ~~[(6)(b)]~~ (8)(b), a court may not discriminate against a parent due to a disability, as defined in Section 57-21-2, in awarding

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custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.

(b) The court may not consider the disability of a parent as a factor in awarding custody or modifying an award of custody based on a determination of a substantial change in circumstances, unless the court makes specific findings that:

(i) the disability significantly or substantially inhibits the parent's ability to provide for the physical and emotional needs of the child at issue; and

(ii) the parent with a disability lacks sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of the child at issue.

(c) Nothing in this section may be construed to apply to adoption proceedings under Title 78B, Chapter 6, Part 1, Utah Adoption Act.

~~[(7)]~~ (9) This section does not establish a preference for either parent solely because of the gender of the parent.

~~[(8)]~~ (10) This section establishes neither a preference nor a presumption for or against joint physical custody or sole physical custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.

~~[(9)]~~ (11) When an issue before the court involves custodial responsibility in the event of a deployment of one or both parents who are service members and the service member has not yet been notified of deployment, the court shall resolve the issue based on the standards in Sections 78B-20-306 through 78B-20-309.

~~[(10)]~~ (12) In considering the past conduct and demonstrated moral standards of each party under Subsection ~~[(2)(d)]~~ (4)(c) or any other factor a court finds relevant, the court may not:

(a) consider or treat a parent's lawful possession or use of cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device, in accordance with Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies, Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, or Subsection 58-37-3.7(2) or (3) any differently than the court would consider or treat the lawful possession or use of any prescribed controlled substance; or

(b) discriminate against a parent because of the parent's status as a:

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- (i) cannabis production establishment agent, as that term is defined in Section 4-41a-102;
- (ii) medical cannabis pharmacy agent, as that term is defined in Section 26B-4-201;
- (iii) medical cannabis courier agent, as that term is defined in Section 26B-4-201; or
- (iv) medical cannabis cardholder in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.

The following section is affected by a coordination clause at the end of this bill.

Section 2. Section **30-3-10.1** is amended to read:

30-3-10.1. Definitions -- Joint legal custody -- Joint physical custody.

As used in this chapter:

- (1) "Abuse" means the same as that term is defined in Section 80-1-102.
- (2) (a) "Custodial responsibility" includes all powers and duties relating to caretaking authority and decision-making authority for a child.
- (b) "Custodial responsibility" includes physical custody, legal custody, parenting time, right to access, [~~visitation~~] parent-time, and authority to grant limited contact with a child.

~~(2)~~ (3) "Domestic violence" means the same as that term is defined in Section 77-36-1.

- (4) "Joint legal custody":
 - (a) means the sharing of the rights, privileges, duties, and powers of a parent by both parents, where specified;
 - (b) may include an award of exclusive authority by the court to one parent to make specific decisions;
 - (c) does not affect the physical custody of the child except as specified in the order of joint legal custody;
 - (d) is not based on awarding equal or nearly equal periods of physical custody of and access to the child to each of the parents, as the best interest of the child often requires that a primary physical residence for the child be designated; and
 - (e) does not prohibit the court from specifying one parent as the primary caretaker and one home as the primary residence of the child.

~~(3)~~ (5) "Joint physical custody":

- (a) means the child stays with each parent overnight for more than 30% of the year, and

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both parents contribute to the expenses of the child in addition to paying child support;

(b) can mean equal or nearly equal periods of physical custody of and access to the child by each of the parents, as required to meet the best interest of the child;

(c) may require that a primary physical residence for the child be designated; and

(d) does not prohibit the court from specifying one parent as the primary caretaker and one home as the primary residence of the child.

(6) "Protective order" means:

(a) a civil protective order, as that term is defined in Section 78B-7-102;

(b) an ex parte civil protective order, as that term is defined in Section 78B-7-102; or

(c) a foreign protection order, as that term is defined in Section 78B-7-302.

(7) "Psychological maltreatment" means a repeated pattern or extreme incident of caretaker behavior that:

(a) intentionally thwarts a child's basic psychological needs, including physical and psychological safety, cognitive stimulation, and respect;

(b) conveys that a child is worthless, defective, or expendable; and

(c) may terrorize a child.

~~[(4)]~~ (8) "Service member" means a member of a uniformed service.

(9) "Sexual abuse" means the same as that term is defined in Section 80-1-102.

~~[(5)]~~ (10) "Uniformed service" means:

(a) active and reserve components of the United States Armed Forces;

(b) the United States Merchant Marine;

(c) the commissioned corps of the United States Public Health Service;

(d) the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(e) the National Guard of a state.

Section 3. Section **30-3-10.10** is amended to read:

30-3-10.10. Parenting plan -- Domestic violence.

(1) In any proceeding regarding a parenting plan, the court shall consider evidence of domestic violence in accordance with Section 30-3-41, if presented.

(2) If there is a protective order, civil stalking injunction, or the court finds that a parent has committed domestic violence, the court shall consider the impact of domestic

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violence in awarding parent-time, and make specific findings regarding the award of parent-time.

(3) If the court orders parent-time and a protective order or civil stalking injunction is still in place, it shall consider whether to order the parents to conduct parent-time pick-up and transfer through a third party. The parent who is the stated victim in the order or injunction may submit to the court, and the court shall consider, the name of a person considered suitable to act as the third party.

(4) If the court orders the parents to conduct parent-time through a third party, the parenting plan shall specify the time, day, place, manner, and the third party to be used to implement the exchange.

The following section is affected by a coordination clause at the end of this bill.

Section 4. Section **30-3-34** is amended to read:

30-3-34. Parent-time -- Best interests -- Rebuttable presumption.

(1) If the parties are unable to agree on a parent-time schedule, the court may:

(a) establish a parent-time schedule; or

(b) order a parent-time schedule described in Section 30-3-35, 30-3-35.1, 30-3-35.2, or 30-3-35.5.

(2) The advisory guidelines as provided in Section 30-3-33 and the parent-time schedule as provided in Sections 30-3-35 and 30-3-35.5 shall be considered the minimum parent-time to which the noncustodial parent and the child shall be entitled.

(3) In accordance with Section 30-3-41, when ordering a parent-time schedule a court shall consider:

(a) evidence of domestic violence, physical abuse, or sexual abuse involving the child, a parent, or a household member of the parent; and

(b) whether parent-time would endanger the child's health or physical or psychological safety.

(4) A court may consider the following when ordering a parent-time schedule:

~~[(a) whether parent-time would endanger the child's physical health or mental health, or significantly impair the child's emotional development;]~~

~~[(b)] (a) evidence of [domestic violence, neglect, physical abuse, sexual abuse, or emotional abuse, involving the child, a parent, or a household member of the parent]~~

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psychological maltreatment;

~~[(c)]~~ (b) the distance between the residency of the child and the noncustodial parent;

~~[(d)]~~ ~~a credible allegation of child abuse has been made;~~

~~[(e)]~~ (c) the lack of demonstrated parenting skills without safeguards to ensure the child's well-being during parent-time;

~~[(f)]~~ (d) the financial inability of the noncustodial parent to provide adequate food and shelter for the child during periods of parent-time;

~~[(g)]~~ (e) the preference of the child if the court determines the child is of sufficient maturity;

~~[(h)]~~ (f) the incarceration of the noncustodial parent in a county jail, secure youth corrections facility, or an adult corrections facility;

~~[(i)]~~ (g) shared interests between the child and the noncustodial parent;

~~[(j)]~~ (h) the involvement or lack of involvement of the noncustodial parent in the school, community, religious, or other related activities of the child;

~~[(k)]~~ (i) the availability of the noncustodial parent to care for the child when the custodial parent is unavailable to do so because of work or other circumstances;

~~[(l)]~~ (j) a substantial and chronic pattern of missing, canceling, or denying regularly scheduled parent-time;

~~[(m)]~~ (k) the minimal duration of and lack of significant bonding in the parents' relationship before the conception of the child;

~~[(n)]~~ (l) the parent-time schedule of siblings;

~~[(o)]~~ (m) the lack of reasonable alternatives to the needs of a nursing child; and

~~[(p)]~~ (n) any other criteria the court determines relevant to the best interests of the child.

~~[(4)]~~ (5) The court shall enter the reasons underlying the court's order for parent-time that:

(a) incorporates a parent-time schedule provided in Section 30-3-35 or 30-3-35.5; or

(b) provides more or less parent-time than a parent-time schedule provided in Section 30-3-35 or 30-3-35.5.

~~[(5)]~~ (6) A court may not order a parent-time schedule unless the court determines by a preponderance of the evidence that the parent-time schedule is in the best interest of the child.

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~~[(6)] (7)~~ Once the parent-time schedule has been established, the parties may not alter the schedule except by mutual consent of the parties or a court order.

The following section is affected by a coordination clause at the end of this bill.

Section 5. Section **30-3-34.5** is amended to read:

30-3-34.5. Supervised parent-time.

(1) Considering the fundamental liberty interests of parents and children, it is the policy of this state that divorcing parents have unrestricted and unsupervised access to their children. When necessary to protect a child and no less restrictive means is reasonably available however, and in accordance with Section 30-3-41, a court may order supervised parent-time if the court finds evidence that the child would be subject to physical or emotional harm or child abuse, as described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, ~~[and]~~ 76-5-114, and 80-1-102, from the noncustodial parent if left unsupervised with the noncustodial parent.

(2) ~~[A court that]~~ If the court finds evidence of domestic violence, child abuse, or an ongoing risk to a child, and orders supervised parent-time, the court shall give preference to [persons suggested by the parties to supervise, including relatives] supervision by a professional individual or private agency trained in child abuse reporting laws, the developmental needs of a child, and the dynamics of domestic violence, child abuse, sexual abuse, and substance abuse.

(3) If a professional individual or private agency described in Subsection (2) is not available, affordable, or practicable under the circumstances, a court shall give preference to supervision by an individual who is:

(a) capable and willing to provide physical and psychological safety and security to the child, and to assist in the avoidance and prevention of domestic and family violence; and

(b) is trained in child abuse reporting laws, the developmental needs of a child, and the dynamics of domestic violence, child abuse, sexual abuse, and substance abuse.

(4) ~~[If the court finds that the persons suggested by the parties are]~~ If an individual described in Subsection (2) or (3) is not available, affordable, or practicable under the circumstances, or if the court does not find evidence of domestic violence, child abuse, or an ongoing risk to a child, a court may order supervised parent-time that is supervised by an individual who is willing to supervise, and [are] is capable of protecting the [children] child

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from physical or emotional harm, or child abuse, [~~the court shall authorize the persons to supervise parent-time~~] and the court shall give preference to individuals suggested by the parties, including relatives.

~~[(3) If the court is unable to authorize any persons to supervise parent-time pursuant to Subsection (2), the court may require that the noncustodial parent seek the services of a professional individual or agency to exercise their supervised parent-time.]~~

~~[(4)]~~ (5) At the time supervised parent-time is imposed, the court shall consider:

(a) whether the cost of professional or agency services is likely to prevent the noncustodial parent from exercising parent-time; and

(b) whether the requirement for supervised parent-time should expire after a set period of time.

~~[(5) The]~~

(6) Except when the court makes a finding that, due to abuse by or the incapacity of the noncustodial parent, supervised parent-time will be necessary indefinitely to ensure the physical or psychological safety and protection of the child, the court shall, in its order for supervised parent-time, provide specific goals and expectations for the noncustodial parent to accomplish before unsupervised parent-time may be granted. The court shall schedule one or more follow-up hearings to revisit the issue of supervised parent-time.

~~[(6)]~~ (7) A noncustodial parent may, at any time, petition the court to modify the order for supervised parent-time if the noncustodial parent can demonstrate that the specific goals and expectations set by the court in Subsection ~~[(5)]~~ (6) have been accomplished.

The following section is affected by a coordination clause at the end of this bill.

Section 6. Section **30-3-41** is enacted to read:

30-3-41. Definitions -- Expert evidence -- Violence or abuse findings -- Child relationship and reunification.

(1) As used in this section:

(a) (i) "Child custody proceeding" means a civil proceeding between the parents of a child that involves the care or custody of the child, including proceedings involving:

(A) divorce;

(B) separation;

(C) parent-time;

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(D) paternity;

(E) child support; or

(F) legal or physical custody of the child.

(ii) "Child custody proceeding" does not include:

(A) a child protective, abuse, or neglect proceeding;

(B) a juvenile justice proceeding; or

(C) a child placement proceeding in which a state, local, or tribal government, a designee of such a government, or any contracted child welfare agency or child protective services agency of such a government is a party to the proceeding.

(b) "Forensic" means professional activities undertaken pursuant to a court order or for use in litigation, including the evaluation or treatment of a parent, child, or other individual who is involved in a child custody proceeding.

(c) "Reunification treatment" means a treatment or therapy aimed at reuniting or reestablishing a relationship between a child and an estranged or rejected parent or other family member of the child.

(2) In a child custody proceeding, if a parent is alleged to have committed domestic violence or abuse, including sexual abuse:

(a) the court may admit expert evidence from a court-appointed or outside professional relating to alleged domestic violence or abuse only if the professional possesses demonstrated expertise and adequate experience in working with victims of domestic violence or abuse, including sexual abuse, that is not solely of a forensic nature; and

(b) in making a finding regarding an allegation of domestic violence or abuse, including sexual abuse, the court shall consider evidence of past domestic violence, sexual violence, or abuse committed by the accused parent, including:

(i) any past or current protective order against the accused parent; or

(ii) any charge, arrest, or conviction of the accused parent for domestic violence, sexual violence, or abuse.

(3) Subsection (2) does not preclude the court from:

(a) admitting expert evidence, subject to rules of evidence, from a court-appointed or outside professional relating to issues other than alleged domestic violence or abuse; or

(b) admitting evidence, subject to rules of evidence, that is discovered or otherwise

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becomes available through treatment or therapy after the court enters an order of custody or parent-time.

(4) As part of a child custody proceeding, a court may not, solely in order to improve a deficient relationship between ~~{the other}~~a parent and a child, including in the context of reunification treatment:

(a) remove the child from a parent or litigating party:

(i) who is competent and not physically or sexually abusive; and

(ii) with whom the child is bonded; or

(b) restrict reasonable contact between the child and a parent or litigating party:

(i) who is competent and not physically or sexually abusive; and

(ii) with whom the child is bonded.

(5) As part of a child custody proceeding where the court has reasonable cause to believe that there is domestic violence, child abuse, or an ongoing risk to the child:

(a) a court may not order a reunification treatment or program unless there is generally accepted proof:

(i) of the physical and psychological safety, effectiveness, and therapeutic value of the reunification treatment; and

(ii) that the reunification treatment is not associated with causing harm to a child;

(b) a court may not order a reunification treatment that is predicated on cutting off a child from a parent:

(i) who is competent and not physically or sexually abusive; and

(ii) with whom the child is bonded;

(c) any order to remediate the resistance of a child to have contact with a violent or abusive parent shall primarily address the behavior of that parent or the contributions of that parent to the resistance of the child; and

(d) any order to a parent who meets the criteria in Subsections (5)(b)(i) and (ii), and that requires the parent to take steps to potentially improve the child's relationship with a violent or abusive parent, shall:

(i) prioritize the child's physical and psychological safety and ~~{psychological}~~ needs; and

(ii) be narrowly tailored to address specific behavior.

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(6) Subject to Subsection (4), Subsection (5) does not preclude the court from ordering ~~{reunification}~~ mental health treatment by a licensed mental health professional that is generally accepted ~~{in research}~~ by and meets the standards of practice for ~~{relevant}~~ mental health professions if:

- (a) the court does not ~~{find evidence of domestic violence or child abuse; and~~
- ~~(b) the court does not find that there is}~~ have reasonable cause to believe that there is domestic violence, child abuse, or an ongoing risk to the child; and
- (b) the treatment does not pose a risk to the child or parent.

Section 7. Section 78A-2-232 is enacted to read:

78A-2-232. Child abuse and domestic abuse education and training for judges, court commissioners, and court personnel.

(1) As used in this section:

(a) "Advocacy services provider" means the same as that term is defined in Section 77-38-403.

(b) "Child custody proceeding" means a civil proceeding between the parents of a child that involves the care or custody of the child including proceedings involving:

- (i) divorce;
- (ii) separation;
- (iii) parent-time;
- (iv) paternity;
- (v) child support;
- (vi) legal or physical custody of a child; or
- (vii) a civil protective order as that term is defined in Section 78B-7-102.

(2) The state court administrator described in Section 78A-2-105 shall develop or recommend a proposed training and education program that:

(a) shall be designed to improve the ability of the courts to:

- (i) recognize domestic violence and child abuse in child custody proceedings; and
- (ii) make appropriate custody decisions that prioritize a child's physical and psychological safety and well-being;

(b) shall focus solely on domestic and sexual violence and child abuse, including:

- (i) child sexual abuse;

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(ii) physical abuse;

(iii) emotional abuse;

(iv) coercive control;

(v) implicit and explicit bias, including biases relating to parents with disabilities;

(vi) trauma;

(vii) long-term and short-term impacts of domestic violence and child abuse on children; and

(viii) victim and perpetrator behavior patterns and relationship dynamics within the cycle of violence;

(c) shall be based on evidence-based and peer-reviewed research by recognized experts in the types of abuse described in Subsection (2)(b);

(d) shall require training to be provided by a professional with substantial experience in assisting survivors of domestic violence or child abuse, including an advocacy services provider;

(e) may include input from a survivor of domestic violence or child physical or sexual abuse; and

(f) may incorporate curriculum, best practices, or other materials developed for or used in similar training and education programs.

(3) (a) The state court administrator shall present the proposed or recommended training and education program to the Judiciary Interim Committee on or before the committee's September 2024 interim meeting.

(b) The presentation described in Subsection (3)(a) shall include:

(i) recommendations for the specific personnel positions that will be required to participate in the program;

(ii) recommended performance metrics for the program and how those metrics may be tracked;

(iii) an estimate of the costs to implement the program; and

(iv) an identification of potential grant sources, if any, that may be available to fund the program in whole or in part.

The following section is affected by a coordination clause at the end of this bill.

Section 8. Section **78B-7-121** is enacted to read:

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78B-7-121. Requirements for proceedings between the parents of a child.

(1) (a) As used in this section, "relevant proceeding" means a civil proceeding under this chapter:

- (i) between the parents of a child;
- (ii) that involves the care or custody of the child; and
- (iii) that concerns a protective order under this chapter.

(b) "Relevant proceeding" does not include:

- (i) any child protective, abuse, or neglect proceeding;
- (ii) a juvenile justice proceeding; or
- (iii) any child placement proceeding in which a state, local, or tribal government, a designee of such a government, or any contracted child welfare agency or child protective services agency of such a government is a party to the proceeding.

(2) In a relevant proceeding, the court shall comply with the standards described in Section 30-3-41.

Section 9. **Effective date.**

This bill takes effect on May 1, 2024.

Section 10. **Coordinating H.B. 272 with S.B. 95.**

If H.B. 272, Child Custody Proceedings Amendments, and S.B. 95, Domestic Relations Recodification, both pass and become law, the Legislature intends that, on September 1, 2024:

(1) Subsections 30-3-10(1) through (4) in H.B. 272 be amended to read:

~~"[(1) If a married couple having one or more minor children are separated, or the married couple's marriage is declared void or dissolved, the court shall enter, and has continuing jurisdiction to modify, an order of custody and parent-time.]~~

~~[(2) In determining any form of custody and parent-time under Subsection (1), the court shall consider the best interest of the child and may consider among other factors the court finds relevant, the following for each parent:]~~

(1) In a proceeding between parents in which the custody and parent-time of a minor child is at issue, the court shall consider the best interests of the minor child in determining any form of custody and parent-time.

(2) The court shall determine whether an order for custody or parent-time is in the best interests of the minor child by a preponderance of the evidence.

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(3) In determining any form of custody and parent-time under Subsection (1), the court shall consider:

(a) for each parent, and in accordance with Section 81-9-103, evidence of domestic violence, physical abuse, or sexual abuse involving the minor child, the parent, or a household member of the parent;

(b) whether the parent has intentionally exposed the minor child to pornography or material harmful to minors, as "material" and "harmful to minors" are defined in Section 76-10-1201; and

(c) whether custody and parent-time would endanger the minor child's health or physical or psychological safety.

(4) In determining the form of custody and parent-time that is in the best interests of the minor child, the court may consider, among other factors the court finds relevant, the following for each parent:

(a) evidence of [~~domestic violence, neglect, physical abuse, sexual abuse, or emotional abuse, involving the child, the parent, or a household member of the parent;~~] psychological maltreatment;

(b) the parent's demonstrated understanding of, responsiveness to, and ability to meet the developmental needs of the minor child, including the minor child's:

(i) physical needs;

(ii) emotional needs;

(iii) educational needs;

(iv) medical needs; and

(v) any special needs;

(c) the parent's capacity and willingness to function as a parent, including:

(i) parenting skills;

(ii) co-parenting skills, including:

(A) ability to appropriately communicate with the other parent;

(B) ability to encourage the sharing of love and affection; and

(C) willingness to allow frequent and continuous contact between the minor child and the other parent, except that, if the court determines that the parent is acting to protect the minor child from domestic violence, neglect, or abuse, the parent's protective actions may be

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taken into consideration; and

(iii) ability to provide personal care rather than surrogate care;

(d) ~~[in accordance with Subsection (10);]~~ the past conduct and demonstrated moral character of the parent as described in Subsection (9);

(e) the emotional stability of the parent;

(f) the parent's inability to function as a parent because of drug abuse, excessive drinking, or other causes;

~~[(g) whether the parent has intentionally exposed the child to pornography or material harmful to minors, as "material" and "harmful to minors" are defined in Section 76-10-1201;]~~

~~[(h)]~~ (g) the parent's reasons for having relinquished custody or parent-time in the past;

~~[(i)]~~ (h) duration and depth of desire for custody or parent-time;

~~[(j)]~~ (i) the parent's religious compatibility with the minor child;

~~[(k)]~~ (j) the parent's financial responsibility;

~~[(l)]~~ (k) the child's interaction and relationship with step-parents, extended family members of other individuals who may significantly affect the minor child's best interests;

~~[(m)]~~ (l) who has been the primary caretaker of the minor child;

~~[(n)]~~ (m) previous parenting arrangements in which the minor child has been happy and well-adjusted in the home, school, and community;

~~[(o)]~~ (n) the relative benefit of keeping siblings together;

~~[(p)]~~ (o) the stated wishes and concerns of the minor child, taking into consideration the minor child's cognitive ability and emotional maturity;

~~[(q)]~~ (p) the relative strength of the minor child's bond with the parent, meaning the depth, quality, and nature of the relationship between the parent and the minor child; and

~~[(r)]~~ (q) any other factor the court finds relevant.";

(2) all references to "child" in Subsections 30-3-10.1(7) and 30-3-34(3) in H.B. 272 be changed to "minor child";

(3) the changes to Subsection 30-3-34(4)(a) in H.B. 272 supersede the changes to Subsection 81-9-206(3)(b) in S.B. 95;

(4) all references to "child" in Subsection 30-3-34.5(3)(a) in H.B. 272 be changed to "minor child";

(5) Subsection 30-3-34.5(4) in H.B. 272 be amended to read:

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"(4) [If the court finds that the persons suggested by the parties are] If an individual described in Subsection (2) or (3) is not available, affordable, or practicable under the circumstances, or if the court does not find evidence of domestic violence, child abuse, or an ongoing risk to a minor child, a court may order supervised parent-time that is supervised by an individual who is willing to supervise, and [are] is capable of protecting the [children] minor child from physical or emotional harm, or child abuse, [the court shall authorize the persons to supervise parent-time] and the court shall give preference to individuals suggested by the parties, including relatives.";

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

(7) Section 30-3-41 enacted in H.B. 272 be renumbered to 81-9-103 and be amended to read:

"~~30-3-41.~~ **81-9-103. Expert evidence -- Violence or abuse findings -- Child relationship and reunification.**

(1) As used in this section:

(a) (i) "Child custody proceeding" means a civil proceeding between the parents of a minor child that involves the care or custody of the minor child, including proceedings involving:

(A) divorce;

(B) separation;

(C) parent-time;

(D) paternity;

(E) child support; or

(F) legal or physical custody of the minor child.

(ii) "Child custody proceeding" does not include:

(A) a child protective, abuse, or neglect proceeding;

(B) a juvenile justice proceeding; or

(C) a child placement proceeding in which a state, local, or tribal government, a designee of such a government, or any contracted child welfare agency or child protective services agency of such a government is a party to the proceeding.

(b) "Forensic" means professional activities undertaken pursuant to a court order or for

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use in litigation, including the evaluation or treatment of a parent, minor child, or other individual who is involved in a child custody proceeding.

(c) "Reunification treatment" means a treatment or therapy aimed at reuniting or reestablishing a relationship between a minor child and an estranged or rejected parent or other family member of the minor child.

(2) In a child custody proceeding, if a parent is alleged to have committed domestic violence or abuse, including sexual abuse:

(a) the court may admit expert evidence from a court-appointed or outside professional relating to alleged domestic violence or abuse only if the professional possesses demonstrated expertise and adequate experience in working with victims of domestic violence or abuse, including sexual abuse, that is not solely of a forensic nature; and

(b) in making a finding regarding an allegation of domestic violence or abuse, including sexual abuse, the court shall consider evidence of past domestic violence, sexual violence, or abuse committed by the accused parent, including:

(i) any past or current protective order against the accused parent; or

(ii) any charge, arrest, or conviction of the accused parent for domestic violence, sexual violence, or abuse.

(3) Subsection (2) does not preclude the court from:

(a) admitting expert evidence, subject to rules of evidence, from a court-appointed or outside professional relating to issues other than alleged domestic violence or abuse; or

(b) admitting evidence, subject to rules of evidence, that is discovered or otherwise becomes available through treatment or therapy after the court enters an order of custody or parent-time.

(4) As part of a child custody proceeding, a court may not, solely in order to improve a deficient relationship between ~~the other~~ a parent and a minor child, including in the context of reunification treatment:

(a) remove the minor child from a parent or litigating party:

(i) who is competent and not physically or sexually abusive; and

(ii) with whom the minor child is bonded; or

(b) restrict reasonable contact between the minor child and a parent or litigating party:

(i) who is competent and not physically or sexually abusive; and

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(ii) with whom the minor child is bonded.

(5) As part of a child custody proceeding where the court has reasonable cause to believe that there is **domestic violence, child abuse, or** an ongoing risk to the child:

(a) a court may not order a reunification treatment **or program** unless there is generally accepted proof ~~of~~:

(i) **of** the physical and psychological safety, effectiveness, and therapeutic value of the reunification treatment; and

(ii) that the reunification treatment is not associated with causing harm to a child;

(b) a court may not order a reunification treatment that is predicated on cutting off a minor child from a parent:

(i) who is competent and not physically or sexually abusive; and

(ii) with whom the minor child is bonded;

(c) any order to remediate the resistance of a minor child to have contact with a violent or abusive parent shall primarily address the behavior of that parent or the contributions of that parent to the resistance of the minor child; and

(d) any order to a parent who meets the criteria in Subsections (5)(b)(i) and (ii), and that requires the parent to take steps to potentially improve the minor child's relationship with a violent or abusive parent, shall:

(i) prioritize the minor child's physical and psychological safety and ~~psychological~~ needs; and

(ii) be narrowly tailored to address specific behavior.

(6) Subject to Subsection (4), Subsection (5) does not preclude the court from ordering ~~reunification~~ **mental health** treatment **by a licensed mental health professional** that is generally accepted ~~in research~~ **by** and meets the standards of practice for ~~relevant~~ mental health professions if:

(a) the court does not ~~find evidence of domestic violence or child abuse; and~~

~~(b) the court does not find that there is~~ **have** reasonable cause to believe that there is **domestic violence, child abuse, or** an ongoing risk to the child; **and**

(b) the treatment does not pose a risk to the child or parent.";

(8) the reference in Subsection 78B-7-121(2) in H.B. 272 **be** changed from "Section 30-3-41" to "Section 81-9-103.";

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(9) Subsection 81-9-205(2)(a)(i) in S.B. 95 be amended to read:

"(i) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional abuse involving the minor child, a parent, or a household member of the parent in accordance with Section 81-9-103;" and

(10) Subsection 81-9-207(1) in S.B. 95 be amended to read:

"(1) If it is necessary to protect a minor child and there is no less restrictive means reasonably available, and in accordance with Section 81-9-103, a court may order supervised parent-time if the court finds evidence that the minor child would be subject to physical or emotional harm or child abuse, as described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, 76-5-114, and 80-1-102, from the noncustodial parent if left unsupervised with the noncustodial parent."