

1 **SUPPORT OBLIGATION FOR CHILDREN IN STATE**

2 **CUSTODY**

3 2011 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Larry B. Wiley**

6 Senate Sponsor: _____

7

LONG TITLE

8 **General Description:**

9
10 This bill requires the court to provide a hearing upon request on whether a parent or
11 guardian should be required to pay child support for a child in state custody.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ allows a parent or guardian to request a hearing on child support for a child in state
- 15 custody;
- 16 ▶ requires the court to hold a hearing if requested by a parent or guardian; and
- 17 ▶ sets the standard for the court review at clear and convincing evidence.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **78A-6-1106**, as renumbered and amended by Laws of Utah 2008, Chapter 3

25

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

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



28 **78A-6-1106. Child support obligation when custody of a child is vested in an**
29 **individual or institution.**

30 (1) ~~[When]~~ Unless the court finds by clear and convincing evidence that requiring
31 payment would produce an unjust result, the court shall order the parents, a parent, guardian
32 subject to Subsection (2), or any other obligated person to pay child support for each month a
33 child is in custody when legal custody of a child is vested by the court in:

34 (a) a secure youth corrections facility; or

35 (b) any other state department, division, or agency other than the child's parents[;] or
36 ~~[if]~~ guardian.

37 (2) If the guardianship of the child has been granted to another party and an agreement
38 for a guardianship subsidy has been signed by the guardian, the court shall order the [parents, a
39 parent, or any other obligated person] guardian to pay child support for each month the child is
40 in custody. A court may not order payments from a guardian if no guardianship subsidy exists.

41 (3) (a) In the [same] proceeding in which the court vested legal custody of a child in a
42 person or agency other than the child's parents or guardian, the court shall inform the parents,
43 [a parent] guardian, or any other obligated person, verbally and in writing, [of the requirement]
44 that:

45 (i) they are required, if ordered, to pay child support in accordance with Title 78B,
46 Chapter 12, Utah Child Support Act[-]; and

47 (ii) they may make a written request for a hearing to determine whether child support
48 will be ordered.

49 (b) If requested in writing by a parent, guardian, or any other obligated person, the
50 court shall hold a separate hearing to determine whether support should be ordered.

51 (4) The court shall schedule a hearing requested under Subsection (3) as soon as
52 practicable. The court may not order payment until the hearing. If the court determines that
53 the parents or guardians are liable for support, the order may set the date for accrual of amounts
54 from the date on which the court vested legal custody of a child in a person or agency other
55 than the child's parents. Amounts may not accrue for more than 90 days.

56 ~~[(2)]~~ (5) If legal custody of a child is vested by the court in a secure youth corrections
57 facility, or any other state department, division, or agency, the court may refer the
58 establishment of a child support order to the Office of Recovery Services. The referral shall be

59 sent to the Office of Recovery Services within three working days of the hearing. Support
60 obligation amounts shall be set by the Office of Recovery Services in accordance with Title
61 78B, Chapter 12, Utah Child Support Act.

62 ~~[(3)]~~ (6) If referred to the Office of Recovery Services pursuant to Subsection ~~[(2)]~~ (5),
63 the court shall also inform the parties that they are required to contact the Office of Recovery
64 Services within 30 days of the date of the hearing to establish a child support order and the
65 penalty in Subsection ~~[(5)]~~ (8) for failing to do so. If there is no existing child support order
66 for the child, the liability for support shall accrue beginning on the 61st day following the
67 hearing that occurs the first time the court vests custody of the child in a secure youth
68 corrections facility, or any other state department, division, or agency other than his parents.

69 ~~[(4)]~~ (7) If a child is returned home and legal custody is subsequently vested by the
70 court in a secure youth corrections facility or any other state department, division, or agency
71 other than his parents, the liability for support shall accrue from the date the child is
72 subsequently removed from the home, including time spent in detention or sheltered care.

73 ~~[(5)]~~ (8) (a) If the parents, parent, or other obligated person meets with the Office of
74 Recovery Services within 30 days of the date of the hearing, the child support order may not
75 include a judgment for past due support for more than two months.

76 (b) Notwithstanding Subsection ~~[(5)]~~ (8)(a), the court may order the liability of support
77 to begin to accrue from the date of the proceeding referenced in Subsection (1) if:

78 (i) the parents, a parent, guardian, or any other person obligated fails to:

79 (A) attend a hearing scheduled in accordance with Subsection (3); or

80 (B) meet with the Office of Recovery Services within 30 days after being informed
81 orally and in writing by the court of that requirement; and

82 (ii) the Office of Recovery Services took reasonable steps under the circumstances to
83 contact the parents, parent, or other person obligated within the subsequent 30-day period to
84 facilitate the establishment of the child support order.

85 (c) For purposes of Subsection ~~[(5)]~~ (8)(b)(ii), the Office of Recovery Services shall be
86 presumed to have taken reasonable steps if the office:

87 (i) has a signed, returned receipt for a certified letter mailed to the address of the
88 parents, parent, or other obligated person regarding the requirement that a child support order
89 be established; or

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

93 ~~[(6)]~~ (9) In collecting arrears, the Office of Recovery Services shall comply with
94 Section 62A-11-320 in setting a payment schedule or demanding payment in full.

95 ~~[(7)]~~ (10) Unless otherwise ordered, the parents or other person shall pay the child
96 support to the Office of Recovery Services. The clerk of the court, the Office of Recovery
97 Services, or the Department of Human Services and its divisions shall have authority to receive
98 periodic payments for the care and maintenance of the child, such as Social Security payments
99 or railroad retirement payments made in the name of or for the benefit of the child.

100 ~~[(8)]~~ (11) No court order under this section against a parent or other person shall be
101 entered, unless notice of hearing has been served within the state, a voluntary appearance is
102 made, or a waiver of service given. The notice shall specify that a hearing with respect to the
103 financial support of the child will be held.

104 ~~[(9)]~~ (12) An existing child support order payable to a parent or other obligated person
105 shall be assigned to the Department of Human Services as provided in Section 62A-1-117.

106 ~~[(10)]~~ (13) (a) Subsections ~~[(3)]~~ (6) through ~~[(9) shall]~~ (12) do not apply if legal
107 custody of a child is vested by the court in an individual.

108 (b) If legal custody of a child is vested by the court in an individual, the court may
109 order the parents, a parent, or any other obligated person to pay child support to the individual.
110 In the same proceeding the court shall inform the parents, a parent, or any other obligated
111 person, verbally and in writing, of the requirement to pay child support in accordance with
112 Title 78B, Chapter 12, Utah Child Support Act.

Legislative Review Note
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Office of Legislative Research and General Counsel