

Representative LaVar Christensen proposes the following substitute bill:

**CHILD AND FAMILY SERVICES AND
RELATED JUDICIAL CODE AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: LaVar Christensen

LONG TITLE

General Description:

This bill amends child welfare provisions in Child and Family Services and the Judicial Code.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ exempts health care decisions of a mature minor from the definition of neglect;
- ▶ requires the legislative auditor general to complete an audit of child welfare cases to measure compliance by attorney guardians ad litem with their statutory duties;
- ▶ requires the Child Welfare Legislative Oversight Panel to study and make recommendations on specified child abuse, neglect, and dependency issues;
- ▶ requires the juvenile court to recognize the rights of parents and children and the limits placed on the Division of Child and Family Services;
- ▶ clarifies how a petition before a juvenile court may be dismissed at any stage of the court proceedings;
- ▶ makes amendments regarding appointment of a guardian ad litem;
- ▶ modifies reunification services provisions;

⌘ [~~amends the evidentiary standard for the presumption of reunification services;~~] ⌘



26 ~~Ĥ [specifies that termination of parental rights proceedings are subject to Utah Rules of~~
27 **Evidence;**

28 ~~amends the evidentiary standard in a proceeding to terminate a parent's rights to~~
29 **beyond a reasonable doubt;]** ĥ

30 ▶ requires the court to advise an attorney guardian ad litem of his duties;

31 ▶ requires an attorney guardian ad litem to timely communicate with the parents or
32 guardian of a minor;

33 ▶ prohibits an attorney guardian ad litem from making public statements ~~Ĥ [outside of~~
34 **the juvenile court]** ĥ about a child abuse, neglect, or dependency case; and

35 ▶ makes technical corrections.

36 **Monies Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 This bill takes effect on July 1, 2004.

40 **Utah Code Sections Affected:**

41 AMENDS:

42 **62A-4a-101**, as last amended by Chapters 281 and 283, Laws of Utah 2002

43 **62A-4a-118**, as last amended by Chapters 94 and 232, Laws of Utah 2003

44 **62A-4a-207**, as last amended by Chapter 93, Laws of Utah 2003

45 **78-3a-102**, as last amended by Chapter 329, Laws of Utah 1997

46 **78-3a-103 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003

47 **78-3a-109**, as last amended by Chapter 180, Laws of Utah 2001

48 **78-3a-112**, as renumbered and amended by Chapter 365, Laws of Utah 1997

49 **78-3a-311**, as last amended by Chapter 246, Laws of Utah 2002

50 ~~Ĥ [78-3a-406, as last amended by Chapter 332, Laws of Utah 2003]~~ ĥ

51 **78-3a-912**, as last amended by Chapter 168, Laws of Utah 2002

52 **78-7-45**, as last amended by Chapter 168, Laws of Utah 2002

53 ENACTS:

54 **78-3a-103.5**, Utah Code Annotated 1953

55 REPEALS:

56 **78-3a-305.1**, as enacted by Chapter 274, Laws of Utah 1998

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

Section 1. Section **62A-4a-101** is amended to read:

62A-4a-101. Definitions.

As used in this chapter:

(1) "Abuse" means:

(a) actual or threatened nonaccidental physical or mental harm;

(b) negligent treatment;

(c) sexual exploitation; or

(d) any sexual abuse.

(2) "Adoption services" means placing children for adoption, subsidizing adoptions under Section 62A-4a-105, supervising adoption placements until the adoption is finalized by the court, conducting adoption studies, preparing adoption reports upon request of the court, and providing postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible disruptive placement.

(3) "Board" means the Board of Child and Family Services established in accordance with Sections 62A-1-105, 62A-1-107, and 62A-4a-102.

(4) "Child" has the same meaning as "minor," as defined in this section.

(5) "Consumer" means a person who receives services offered by the division in accordance with this chapter.

(6) "Chronic physical abuse" means repeated or patterned physical abuse.

(7) "Chronic neglect" means a repeated or patterned failure or refusal by a parent, guardian, or custodian to provide necessary care for a minor's safety, morals, or well-being.

(8) "Chronic emotional abuse" means repeated or patterned emotional abuse.

(9) "Custody," with regard to the division, means the custody of a child in the division as of the date of disposition.

(10) "Day-care services" means care of a child for a portion of the day which is less than 24 hours, in ~~his~~ the child's own home by a responsible person, or outside of ~~his~~ the child's home in a day-care center, family group home, or family child care home.

(11) "Dependent child" or "dependency" means a child, or the condition of a child, who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

88 (12) "Director" means the director of the Division of Child and Family Services.

89 (13) "Division" means the Division of Child and Family Services.

90 (14) (a) "Domestic violence services" means temporary shelter, treatment, and related
91 services to persons who are victims of abuse and their dependent children and treatment
92 services for domestic violence perpetrators.

93 (b) As used in this Subsection (14) "abuse" means the same as that term is defined in
94 Section 30-6-1, and "domestic violence perpetrator" means a person who is alleged to have
95 committed, has been convicted of, or has pled guilty to an act of domestic violence as defined
96 in Subsection 77-36-1(2).

97 (15) "Homemaking service" means the care of individuals in their domiciles, and help
98 given to individual caretaker relatives to achieve improved household and family management
99 through the services of a trained homemaker.

100 (16) "Mature minor" means a person less than 18 years of age whom the court
101 determines is of an age and maturity and who reasonably demonstrates the capacity to make
102 reasonable health care decisions on the minor's own behalf.

103 [~~(16)~~] (17) "Minor" means a person under 18 years of age. "Minor" may also include a
104 person under 21 years of age for whom the division has been specifically ordered by the
105 juvenile court to provide services.

106 [~~(17)~~] (18) "Natural parent" means a minor's biological or adoptive parent, and
107 includes a minor's noncustodial parent.

108 [~~(18)~~] (19) (a) "Neglect" means:

109 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
110 Relinquishment of a Newborn Child;

111 (ii) subjecting a child to mistreatment or abuse;

112 (iii) lack of proper parental care by reason of the fault or habits of the parent, guardian,
113 or custodian;

114 (iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
115 subsistence, education, or medical care, including surgery or psychiatric services when
116 required, or any other care necessary for [his] the health, safety, morals, or well-being of the
117 parent's or guardian's child; or

118 (v) a child at risk of being neglected or abused because another child in the same home

119 is neglected or abused.

120 (b) The aspect of neglect relating to education, described in Subsection [~~(18)~~
121 (19)(a)(iv), means that, after receiving notice that a child has been frequently absent from
122 school without good cause, or that the child has failed to cooperate with school authorities in a
123 reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the child
124 receives an appropriate education.

125 (c) A parent or guardian legitimately practicing religious beliefs and who, for that
126 reason, does not provide specified medical treatment for a child, is not guilty of neglect.

127 (d) A parent or guardian may not be found guilty of neglect for the medical decisions
128 made by a mature minor.

129 [~~(19)~~ (20) "Protective custody," with regard to the division, means the shelter of a
130 child by the division from the time the child is removed from the child's home until the shelter
131 hearing, or the child's return home, whichever occurs earlier.

132 [~~(20)~~ (21) "Protective services" means expedited services that are provided:

133 (a) in response to evidence of neglect, abuse, or dependency of a minor;

134 (b) in an effort to substantiate evidence of neglect, abuse, or dependency;

135 (c) to a cohabitant who is neglecting or abusing a child, in order to help the cohabitant
136 develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse, and
137 to strengthen the cohabitant's ability to provide safe and acceptable care; and

138 (d) in cases where the child's welfare is endangered:

139 (i) to bring the situation to the attention of the appropriate juvenile court and law
140 enforcement agency;

141 (ii) to cause a protective order to be issued for the protection of the minor, when
142 appropriate; and

143 (iii) to protect the child from the circumstances that endanger the child's welfare
144 including, when appropriate, removal from the child's home, placement in substitute care, and
145 petitioning the court for termination of parental rights.

146 [~~(21)~~ (22) "Services to unwed parents" means social, educational, and medical
147 services arranged for or provided to unwed parents to help them plan for themselves and the
148 unborn child.

149 [~~(22)~~ (23) "Severe neglect" means neglect that causes or threatens to cause serious

150 harm to a minor.

151 [~~(23)~~] (24) "Shelter care" means the temporary care of minors in nonsecure facilities.

152 [~~(24)~~] (25) "State" means a state of the United States, the District of Columbia, the
153 Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern
154 Mariana Islands, or a territory or possession administered by the United States.

155 [~~(25)~~] (26) "Severe emotional abuse" means emotional abuse that causes or threatens to
156 cause serious harm to a minor.

157 [~~(26)~~] (27) "Severe physical abuse" means physical abuse that causes or threatens to
158 cause serious harm to a minor.

159 [~~(27)~~] (28) "State plan" means the written description of the programs for children,
160 youth, and family services administered by the division in accordance with federal law.

161 [~~(28)~~] (29) "Status offense" means a violation of the law that would not be a violation
162 but for the age of the offender.

163 [~~(29)~~] (30) "Substantiated" or "substantiation" means a judicial finding based on a
164 preponderance of the evidence that abuse or neglect occurred. Each allegation made or
165 identified in a given case shall be considered separately in determining whether there should be
166 a finding of substantiated.

167 [~~(30)~~] (31) "Substitute care" means:

168 (a) the placement of a minor in a family home, group care facility, or other placement
169 outside the minor's own home, either at the request of a parent or other responsible relative, or
170 upon court order, when it is determined that continuation of care in the child's own home
171 would be contrary to the child's welfare;

172 (b) services provided for a child awaiting placement; and

173 (c) the licensing and supervision of a substitute care facility.

174 [~~(31)~~] (32) "Supported" means a finding by the division based on the evidence
175 available at the completion of an investigation that there is a reasonable basis to conclude that
176 abuse, neglect, or dependency occurred. Each allegation made or identified during the course
177 of the investigation shall be considered separately in determining whether there should be a
178 finding of supported.

179 [~~(32)~~] (33) "Temporary custody," with regard to the division, means the custody of a
180 child in the division from the date of the shelter hearing until disposition.

181 ~~[(33)]~~ (34) "Transportation services" means travel assistance given to an individual
182 with escort service, if necessary, to and from community facilities and resources as part of a
183 service plan.

184 ~~[(34)]~~ (35) "Unsubstantiated" means a judicial finding that there is insufficient
185 evidence to conclude that abuse or neglect occurred.

186 ~~[(35)]~~ (36) "Unsupported" means a finding at the completion of an investigation that
187 there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.

188 However, a finding of unsupported means also that the division worker did not conclude that
189 the allegation was without merit.

190 ~~[(36)]~~ (37) "Without merit" means a finding at the completion of an investigation by
191 the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur,
192 or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

193 Section 2. Section **62A-4a-118** is amended to read:

194 **62A-4a-118. Annual review of child welfare referrals and cases by executive**
195 **director -- Accountability to the Legislature -- Review by legislative auditor general.**

196 (1) The division shall use principles of quality management systems, including
197 statistical measures of processes of service, and the routine reporting of performance data to
198 employees.

199 (2) (a) In addition to development of quantifiable outcome measures and performance
200 measures in accordance with Section 62A-4a-117, the executive director, or ~~[his]~~ the executive
201 director's designee, shall annually review a randomly selected sample of child welfare referrals
202 to and cases handled by the division. The purpose of that review shall be to assess whether the
203 division is adequately protecting children and providing appropriate services to families, in
204 accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, and Title
205 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 4, Termination
206 of Parental Rights Act. The review shall focus directly on the outcome of cases to children and
207 families, and not simply on procedural compliance with specified criteria.

208 (b) The executive director shall report, regarding ~~[his]~~ the review of those cases, to the
209 Legislative Auditor General and the Child Welfare Legislative Oversight Panel.

210 (c) Information obtained as a result of the review shall be provided to caseworkers,
211 supervisors, and division personnel involved in the respective cases, for purposes of education,

212 training, and performance evaluation.

213 (3) The executive director's review and report to the Legislature shall include:

214 (a) the criteria used by the executive director, or [~~his~~] the executive director's designee,
215 in making the evaluation;

216 (b) findings regarding whether state statutes, division policy, and legislative policy
217 were followed in each sample case;

218 (c) findings regarding whether, in each sample case, referrals, removals, or cases were
219 appropriately handled by the division and its employees, and whether children were adequately
220 and appropriately protected and appropriate services provided to families, in accordance with
221 the provisions of Title 62A, Chapter 4a, Child and Family Services, Title 78, Chapter 3a, Part
222 3, Abuse, Neglect, and Dependency Proceedings, and Part 4, Termination of Parental Rights
223 Act, and division policy;

224 (d) an assessment of the division's intake procedures and decisions, including an
225 assessment of the appropriateness of decisions not to accept referrals; and

226 (e) an assessment of the appropriateness of the division's assignment of priority.

227 (4) (a) In addition to the review conducted by the executive director, beginning July 1,
228 2004, the Legislative Auditor General shall audit a sample of child welfare referrals to and
229 cases handled by the division and report his findings to the Child Welfare Legislative Oversight
230 Panel.

231 (b) An audit under Subsection (4)(a) shall be conducted at least once every three years,
232 but may be conducted more frequently pursuant to Subsection (4)(d).

233 (c) With regard to the sample of referrals, removals, and cases, the Legislative Auditor
234 General's report may include:

235 (i) findings regarding whether state statutes, division policy, and legislative policy were
236 followed by the division and its employees;

237 (ii) a determination regarding whether referrals, removals, and cases were appropriately
238 handled by the division and its employees, and whether children were adequately and
239 appropriately protected and appropriate services provided for families, in accordance with the
240 provisions of Title 62A, Chapter 4a, Child and Family Services, Title 78, Chapter 3a, Part 3,
241 Abuse, Neglect, and Dependency Proceedings, and Part 4, Termination of Parental Rights Act,
242 and division policy;

243 (iii) an assessment of the division's intake procedures and decisions, including an
244 assessment of the appropriateness of decisions not to accept referrals;

245 (iv) an assessment of the appropriateness of the division's assignment of priority;

246 (v) a determination regarding whether the department's review process is effecting
247 beneficial change within the division and accomplishing the mission established by the
248 Legislature and the department for that review process; and

249 (vi) findings regarding any other issues identified by the auditor or others under
250 Subsection (4)(d).

251 (d) An audit under Subsection (4)(a) may be initiated by:

252 (i) the Audit Subcommittee of the Legislative Management Committee;

253 (ii) the Child Welfare Legislative Oversight Panel; or

254 (iii) the Legislative Auditor General, based on the results of the executive director's
255 review under Subsection (2).

256 (e) (i) Prior to the 2005 Annual General Session of the Legislature, the legislative
257 auditor general shall complete an audit of child welfare cases to measure compliance by
258 attorney guardians ad litem with their statutory duties.

259 (ii) This audit shall be considered one of the periodic audits required by Subsection
260 (4)(b).

261 Section 3. Section **62A-4a-207** is amended to read:

262 **62A-4a-207. Child Welfare Legislative Oversight Panel -- Responsibilities.**

263 (1) (a) There is created the Child Welfare Legislative Oversight Panel composed of the
264 following members:

265 (i) two members of the Senate, one from the majority party and one from the minority
266 party, appointed by the president of the Senate; and

267 (ii) three members of the House of Representatives, two from the majority party and
268 one from the minority party, appointed by the speaker of the House of Representatives.

269 (b) Members of the panel shall serve for two-year terms, or until their successors are
270 appointed.

271 (c) A vacancy exists whenever a member ceases to be a member of the Legislature, or
272 when a member resigns from the panel. Vacancies shall be filled by the appointing authority,
273 and the replacement shall fill the unexpired term.

274 (2) The president of the Senate shall designate one of the senators appointed to the
275 panel under Subsection (1) as the Senate chair of the panel. The speaker of the House of
276 Representatives shall designate one of the representatives appointed to the panel under
277 Subsection (1) as the House chair of the panel.

278 (3) The panel shall follow the interim committee rules established by the Legislature.

279 (4) The panel shall:

280 (a) examine and observe the process and execution of laws governing the child welfare
281 system by the executive branch and the judicial branch;

282 (b) upon request, receive testimony from the public, the juvenile court, and from all
283 state agencies involved with the child welfare system including, but not limited to, the division,
284 other offices and agencies within the department, the attorney general's office, the Office of the
285 Guardian Ad Litem Director, and school districts;

286 (c) before October 1, 2002, and before October 1 of each year thereafter receive reports
287 from the division, the attorney general, and the judicial branch identifying the cases not in
288 compliance with the time limits established in Section 78-3a-308, regarding pretrial and
289 adjudication hearings, Section 78-3a-311, regarding dispositional hearings and reunification
290 services, and Section 78-3a-312, regarding permanency hearings and petitions for termination,
291 and the reasons for the noncompliance;

292 (d) receive recommendations from, and make recommendations to the governor, the
293 Legislature, the attorney general, the division, the Office of the Guardian Ad Litem Director,
294 the juvenile court, and the public;

295 (e) (i) receive reports from the executive branch and the judicial branch on budgetary
296 issues impacting the child welfare system; and

297 (ii) recommend, as it considers advisable, budgetary proposals to the Health and
298 Human Services Joint Appropriations Subcommittee, the Executive Offices and Criminal
299 Justice Appropriations Subcommittee, and the Executive Appropriations Committee, which
300 recommendation should be made before December 1 of each year;

301 (f) study and recommend proposed changes to laws governing the child welfare
302 system;

303 (g) study actions the state can take to preserve, unify, and strengthen the child's family
304 ties whenever possible in the child's best interest, including recognizing the constitutional

305 rights and claims of parents whenever those family ties are severed or infringed;

306 (h) during the 2004 interim, study and make recommendations to the Legislature on:

307 (i) the feasibility of requiring the juvenile court, except in exigent circumstances, to

308 adjudicate a petition alleging child abuse, neglect, or dependency prior to ordering a child into

309 protective custody;

310 (ii) establishing a right to a jury trial in a juvenile court proceeding:

311 (A) to adjudicate a petition alleging child abuse, neglect, or dependency; or

312 (B) to terminate a parent's rights;

313 (iii) the adequacy of warrant provisions in protecting children balanced against

314 preserving and strengthening family ties to the fullest possible extent under the law;

315 (iv) whether a presumption of parental fitness and competence in judicial proceedings

316 should be made in determining whether a parent's rights should be terminated;

317 (v) except in clear and verifiable exigent circumstances, how to otherwise strengthen

318 procedural due process safeguards, including notice and an opportunity to be heard, for the

319 parents of children that come under the jurisdiction of the juvenile court for possible child

320 abuse, neglect, or dependency;

321 (vi) how to strengthen defense counsel for parents of children taken into protective

322 custody; ~~H~~ **[and]** ~~h~~

323 (vii) whether compliance with 42 U.S.C. Sec. 5106a, the federal Child Abuse

324 Prevention and Treatment and Adoption Reform requirements which include the mandatory

325 appointment of a guardian ad litem in child abuse, neglect, and dependency cases with the

326 approximately \$250,000 in federal child abuse prevention and treatment grant monies for

327 which the state annually qualifies provides a sufficient comparative benefit to the state in

328 relation to its strong interest in preserving and strengthening family ties to the fullest extent

329 possible under the law; ~~H~~ **AND**

329a **(viii) WHETHER THE EVIDENTIARY STANDARD FOR THE REUNIFICATION SERVICES**

329b **PRESUMPTION AND PROCEEDINGS TO TERMINATE A PARENT'S RIGHTS SHOULD BE CHANGED**

329c **FROM CLEAR AND CONVINCING TO BEYOND A REASONABLE DOUBT. ~~h~~**

330 ~~(h)~~ (i) perform such other duties related to the oversight of the child welfare system

331 as the panel considers appropriate; and

332 ~~(i)~~ (j) annually report its findings and recommendations to the president of the

333 Senate, the speaker of the House of Representatives, the Health and Human Services Interim

334 Committee, and the Judiciary Interim Committee.

335 (5) (a) The panel has authority to review and discuss individual cases.

336 (b) When an individual case is discussed, the panel's meeting may be closed pursuant
337 to Title 52, Chapter 4, Open and Public Meetings.

338 (c) When discussing an individual case, the panel shall make reasonable efforts to
339 identify and consider the concerns of all parties to the case.

340 (6) (a) (i) The panel has authority to make recommendations to the Legislature, the
341 governor, the Board of Juvenile Court Judges, the division, and any other statutorily created
342 entity related to the policies and procedures of the child welfare system.

343 (ii) The panel does not have authority to make recommendations to the court, the
344 division, or any other public or private entity regarding the disposition of any individual case.

345 (b) The panel may hold public hearings, as it considers advisable, in various locations
346 within the state in order to afford all interested persons an opportunity to appear and present
347 their views regarding the child welfare system in this state.

348 (7) (a) All records of the panel regarding individual cases shall be classified private,
349 and may be disclosed only in accordance with federal law and the provisions of Title 63,
350 Chapter 2, Government Records Access and Management Act.

351 (b) (i) The panel shall have access to all of the division's records, including those
352 regarding individual cases.

353 (ii) In accordance with Title 63, Chapter 2, Government Records Access Management
354 Act, all documents and information received by the panel shall maintain the same classification
355 that was designated by the division.

356 (8) In order to accomplish its oversight functions, the panel has:

357 (a) all powers granted to legislative interim committees in Section 36-12-11; and

358 (b) legislative subpoena powers under Title 36, Chapter 14, Legislative Subpoena
359 Powers.

360 (9) Members of the panel shall receive salary and expenses in accordance with Section
361 36-2-2.

362 (10) (a) The Office of Legislative Research and General Counsel shall provide staff
363 support to the panel.

364 (b) The panel is authorized to employ additional professional assistance and other staff
365 members as it considers necessary and appropriate.

366 Section 4. Section **78-3a-102** is amended to read:

367 **78-3a-102. Establishment of juvenile court -- Organization and status of court --**
368 **Purpose.**

369 (1) There is established for the state a juvenile court.

370 (2) The juvenile court is a court of record. It shall have a seal, and its judges, clerks,
371 and referees have the power to administer oaths and affirmations.

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

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

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

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

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

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

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

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

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

391 (g) consistent with the ends of justice, [~~strive to~~] act in the best interests of the
392 [~~minor's~~] minor in all cases and [~~attempt to~~] preserve and strengthen family ties [~~where~~
393 ~~possible~~].

394 Section 5. Section **78-3a-103 (Effective 07/01/04)** is amended to read:

395 **78-3a-103 (Effective 07/01/04). Definitions.**

396 (1) As used in this chapter:

397 (a) "Abused child" includes a minor less than 18 years of age who:

398 (i) has suffered or been threatened with nonaccidental physical or mental harm,
399 negligent treatment, or sexual exploitation; or

400 (ii) has been the victim of any sexual abuse.

401 (b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
402 alleged in the petition have been proved.

403 (c) "Adult" means a person 18 years of age or over, except that persons 18 years or
404 over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall
405 be referred to as minors.

406 (d) "Board" means the Board of Juvenile Court Judges.

407 (e) "Child placement agency" means:

408 (i) a private agency licensed to receive minors for placement or adoption under this
409 code; or

410 (ii) a private agency receiving minors for placement or adoption in another state, which
411 agency is licensed or approved where such license or approval is required by law.

412 (f) "Commit" means to transfer legal custody.

413 (g) "Court" means the juvenile court.

414 (h) "Dependent child" includes a minor who is homeless or without proper care
415 through no fault of [~~his~~] the child's parent, guardian, or custodian.

416 (i) "Deprivation of custody" means transfer of legal custody by the court from a parent
417 or the parents or a previous legal custodian to another person, agency, or institution.

418 (j) "Detention" means home detention and secure detention as defined in Section
419 62A-7-101 for the temporary care of minors who require secure custody in physically
420 restricting facilities:

421 (i) pending court disposition or transfer to another jurisdiction; or

422 (ii) while under the continuing jurisdiction of the court.

423 (k) "Division" means the Division of Child and Family Services.

424 (l) "Formal referral" means a written report from a peace officer or other person
425 informing the court that a minor is or appears to be within the court's jurisdiction and that a
426 petition may be filed.

427 (m) "Group rehabilitation therapy" means psychological and social counseling of one
428 or more persons in the group, depending upon the recommendation of the therapist.

429 (n) "Guardianship of the person" includes the authority to consent to marriage, to
430 enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal
431 custody, if legal custody is not vested in another person, agency, or institution.

432 (o) "Habitual truant" is a school-age minor who has received more than two truancy
433 citations within one school year from the school in which the minor is or should be enrolled
434 and eight absences without a legitimate or valid excuse or who, in defiance of efforts on the
435 part of school authorities as required under Section 53A-11-103, refuses to regularly attend
436 school or any scheduled period of the school day.

437 (p) "Legal custody" means a relationship embodying the following rights and duties:

438 (i) the right to physical custody of the minor;

439 (ii) the right and duty to protect, train, and discipline the minor;

440 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary
441 medical care;

442 (iv) the right to determine where and with whom the minor shall live; and

443 (v) the right, in an emergency, to authorize surgery or other extraordinary care.

444 (q) "Mature minor" means a person less than 18 years of age whom the court
445 determines is of an age and maturity and who reasonably demonstrates the capacity to make
446 reasonable health care decisions on the minor's own behalf.

447 [~~(r)~~] (r) "Minor" means a person under the age of 18 years. It includes the term "child"
448 as used in other parts of this chapter.

449 [~~(s)~~] (s) "Natural parent" means a minor's biological or adoptive parent, and includes
450 the minor's noncustodial parent.

451 [~~(t)~~] (t) (i) "Neglected child" means a minor:

452 (A) whose parent, guardian, or custodian has abandoned the minor, except as provided
453 in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

454 (B) whose parent, guardian, or custodian has subjected the minor to mistreatment or
455 abuse;

456 (C) who lacks proper parental care by reason of the fault or habits of the parent,
457 guardian, or custodian;

458 (D) whose parent, guardian, or custodian fails or refuses to provide proper or necessary
459 subsistence, education, or medical care, including surgery or psychiatric services when

460 required, or any other care necessary for health, safety, morals, or well-being; or

461 (E) who is at risk of being a neglected or abused child as defined in this chapter
462 because another minor in the same home is a neglected or abused child as defined in this
463 chapter.

464 (ii) The aspect of neglect related to education, described in Subsection (1)~~(s)~~(t)(i)(D),
465 means that, after receiving notice that a minor has been frequently absent from school without
466 good cause, or that the minor has failed to cooperate with school authorities in a reasonable
467 manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives
468 an appropriate education.

469 (iii) A parent or guardian legitimately practicing religious beliefs and who, for that
470 reason, does not provide specified medical treatment for a minor, is not guilty of neglect.

471 (iv) A parent or guardian may not be found guilty of neglect for the medical decisions
472 made by a mature minor.

473 ~~(t)~~ (u) "Nonjudicial adjustment" means closure of the case by the assigned probation
474 officer without judicial determination upon the consent in writing of the minor, the parent,
475 legal guardian or custodian, and the assigned probation officer.

476 ~~(u)~~ (v) "Probation" means a legal status created by court order following an
477 adjudication on the ground of a violation of law or under Section 78-3a-104, whereby the
478 minor is permitted to remain in ~~his~~ the minor's home under prescribed conditions and under
479 supervision by the probation department or other agency designated by the court, subject to
480 return to the court for violation of any of the conditions prescribed.

481 ~~(v)~~ (w) "Protective supervision" means a legal status created by court order following
482 an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted
483 to remain in ~~his~~ the minor's home, and supervision and assistance to correct the abuse,
484 neglect, or dependency is provided by the probation department or other agency designated by
485 the court.

486 ~~(w)~~ (x) (i) "Residual parental rights and duties" means those rights and duties
487 remaining with the parent after legal custody or guardianship, or both, have been vested in
488 another person or agency, including the responsibility for support, the right to consent to
489 adoption, the right to determine the child's religious affiliation, and the right to reasonable
490 parent-time unless restricted by the court.

491 (ii) If no guardian has been appointed, "residual parental rights and duties" also include
492 the right to consent to marriage, to enlistment, and to major medical, surgical, or psychiatric
493 treatment.

494 ~~(x)~~ (y) "Secure facility" means any facility operated by or under contract with the
495 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
496 youth offenders committed to the division for custody and rehabilitation.

497 ~~(y)~~ (z) "Shelter" means the temporary care of minors in physically unrestricted
498 facilities pending court disposition or transfer to another jurisdiction.

499 ~~(z)~~ (aa) "State supervision" means a disposition which provides a more intensive
500 level of intervention than standard probation but is less intensive or restrictive than a
501 community placement with the Division of Juvenile Justice Services.

502 ~~(aa)~~ (bb) "Substantiated" has the same meaning as defined in Section 62A-4a-101.

503 ~~(bb)~~ (cc) "Supported" has the same meaning as defined in Section 62A-4a-101.

504 ~~(cc)~~ (dd) "Termination of parental rights" means the permanent elimination of all
505 parental rights and duties, including residual parental rights and duties, by court order.

506 ~~(dd)~~ (ee) "Therapist" means a person employed by a state division or agency for the
507 purpose of conducting psychological treatment and counseling of a minor in its custody, or any
508 other person licensed or approved by the state for the purpose of conducting psychological
509 treatment and counseling.

510 ~~(ee)~~ (ff) "Unsubstantiated" has the same meaning as defined in Section 62A-4a-101.

511 ~~(ff)~~ (gg) "Without merit" has the same meaning as defined in Section 62A-4a-101.

512 (2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the
513 Division of Child and Family Services:

514 (a) "Custody" means the custody of a minor in the Division of Child and Family
515 Services as of the date of disposition.

516 (b) "Protective custody" means the shelter of a minor by the Division of Child and
517 Family Services from the time the minor is removed from home until the shelter hearing, or the
518 minor's return home, whichever occurs earlier.

519 (c) "Temporary custody" means the custody of a minor in the Division of Child and
520 Family Services from the date of the shelter hearing until disposition.

521 Section 6. Section **78-3a-103.5** is enacted to read:

522 **78-3a-103.5. Parents' and children's rights -- Division limits.**

523 In all child abuse, neglect, and dependency proceedings under this chapter, the court
524 shall recognize, as provided in Section 62A-4a-201, the rights of parents and children and the
525 limits placed on the division.

526 Section 7. Section **78-3a-109** is amended to read:

527 **78-3a-109. Title of petition and other court documents -- Form and contents of**
528 **petition -- Order for temporary custody -- Physical or psychological examination of**
529 **minor, parent, or guardian -- Dismissal of petition.**

530 (1) The petition and all subsequent court documents in the proceeding shall be entitled:
531 "State of Utah, in the interest of....., a person under 18 years of age (or a
532 person under 21 years of age)."

533 (2) The petition shall be verified and statements in the petition may be made upon
534 information and belief.

535 (3) The petition shall be written in simple and brief language and include the facts
536 which bring the minor within the jurisdiction of the court, as provided in Section 78-3a-104.

537 (4) The petition shall further state:

538 (a) the name, age, and residence of the minor;

539 (b) the names and residences of the minor's parents;

540 (c) the name and residence of the guardian, if there is one;

541 (d) the name and address of the nearest known relative, if no parent or guardian is
542 known; and

543 (e) the name and residence of the person having physical custody of the minor. If any
544 of the facts required are not known by the petitioner, the petition shall so state.

545 (5) At any time after a petition is filed, the court may make an order providing for
546 temporary custody of the minor.

547 (6) The court may order that a minor concerning whom a petition has been filed shall
548 be examined by a physician, surgeon, psychiatrist, or psychologist and may place the minor in a
549 hospital or other facility for examination. After notice and a hearing set for the specific
550 purpose, the court may order a similar examination of a parent or guardian whose ability to care
551 for a minor is at issue, if the court finds from the evidence presented at the hearing that the
552 parent's or guardian's physical, mental, or emotional condition may be a factor in causing the

553 neglect, dependency, or delinquency of the minor.

554 (7) Pursuant to Rule 506(d)(3), Utah Rules of Evidence, examinations conducted
555 pursuant to Subsection (6) are not privileged communications, but are exempt from the general
556 rule of privilege.

557 (8) The court may, upon its own motion or a motion from any party to the proceeding,
558 dismiss a petition at any stage of the proceedings.

559 (9) If the petition is filed under Section 78-3a-305 or 78-3a-405 or if the matter is
560 referred to the court under Subsection 78-3a-105(3)(b):

561 (a) the court may require the parties to participate in mediation in accordance with Title
562 78, Chapter 31b, Alternative Dispute Resolution; and

563 (b) the division [~~of Child and Family Services~~] or a party to the petition may request
564 and the court may order the parties to participate in a family unity conference under the
565 authority of the division [~~of Child and Family Services~~] in accordance with Subsection (10).

566 (10) (a) A family unity conference may be ordered by the court for any of the following
567 purposes:

568 (i) discussing and reviewing the case history;

569 (ii) designing a service plan for the child and family, including concurrent planning;

570 (iii) discussing a visitation schedule and rules for visitation;

571 (iv) identifying possible kinship placements under the requirements of Subsection
572 78-3a-307(5), and designing services to support the kinship placement;

573 (v) conflict resolution between the family and division [~~of Child and Family Services~~]
574 staff;

575 (vi) discussing child custody issues; or

576 (vii) crisis clinical intervention to reduce trauma to the child and family.

577 (b) The family unity conference may be attended by individuals chosen by the family
578 and the division [~~of Child and Family Services~~], and may include extended family members,
579 friends, clergy, service providers, and others who may support the family in keeping the child
580 safe.

581 (c) A family unity conference may not be held in the following circumstances:

582 (i) when there is a criminal charge pending in the case;

583 (ii) to resolve petition disputes; and

584 (iii) when a family unity conference may pose a threat to the safety of a child or other
585 family member.

586 (d) With regard to a family unity conference ordered by a court under Subsection
587 (9)(b):

588 (i) the requirements of Subsection 78-31b-7(3)(b) apply except all parties to the
589 proceeding:

590 (A) shall be given no less than five days notice of any recommendation made to the
591 court from the family unity conference; and

592 (B) shall be given an opportunity to be heard by the court; and

593 (ii) the confidentiality requirements of Section 78-31b-8 apply, except that admissions
594 by a party to the allegations on the petition are admissible at any proceeding.

595 Section 8. Section **78-3a-112** is amended to read:

596 **78-3a-112. Appearances -- Parents to appear with minor -- Failure to appear --**
597 **Contempt -- Warrant of arrest, when authorized -- Parent's employer to grant time off --**
598 **Appointment of guardian ad litem.**

599 (1) Any person required to appear who, without reasonable cause, fails to appear may
600 be proceeded against for contempt of court, and the court may cause a bench warrant to issue to
601 produce the person in court.

602 (2) In all cases when a minor is required to appear in court, the parents, guardian, or
603 other person with legal custody of the minor shall appear with the minor unless excused by the
604 judge.

605 (a) An employee may request permission to leave the workplace for the purpose of
606 attending court if the employee has been notified by the juvenile court that his minor is
607 required to appear before the court.

608 (b) An employer must grant permission to leave the workplace with or without pay if
609 the employee has requested permission at least seven days in advance or within 24 hours of the
610 employee receiving notice of the hearing.

611 (3) If a parent or other person who signed a written promise to appear and bring the
612 minor to court under Section 78-3a-113 or 78-3a-114, fails to appear and bring the minor to
613 court on the date set in the promise, or, if the date was to be set, after notification by the court,
614 a warrant may be issued for the apprehension of that person or the minor, or both.

615 (4) Willful failure to perform the promise is a misdemeanor if, at the time of the
616 execution of the promise, the promisor is given a copy of the promise which clearly states that
617 failure to appear and have the minor appear as promised is a misdemeanor. The juvenile court
618 shall have jurisdiction to proceed against the promisor in adult proceedings pursuant to Part 8,
619 Adult Offenses.

620 (5) (a) The court shall endeavor, through use of the warrant of arrest if necessary, as
621 provided in Subsection (6), or by other means, to ensure the presence at all hearings of one or
622 both parents or of the guardian of the minor.

623 (b) If neither a parent nor guardian is present at the court proceedings, the court may
624 appoint a guardian ad litem to protect the interest of the minor. [~~A guardian ad litem may also
625 be appointed whenever necessary for the welfare of the minor, whether or not a parent or
626 guardian is present.~~]

627 (6) A warrant may be issued for the parent, the guardian, the custodian, or the minor if:

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

629 (b) it is made to appear to the court that the person to be served will not obey the
630 summons;

631 (c) serving the summons will be ineffectual; or

632 (d) the welfare of the minor requires that ~~[he]~~ the minor be brought immediately into
633 the custody of the court.

634 Section 9. Section **78-3a-311** is amended to read:

635 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

636 (1) The court may make any of the dispositions described in Section 78-3a-118, place
637 the child in the custody or guardianship of any individual or public or private entity or agency,
638 order protective supervision, family preservation, medical or mental health treatment, or other
639 services.

640 (2) (a) (i) Whenever the court orders continued removal at the dispositional hearing,
641 and that the minor remain in the custody of the division [~~of Child and Family Services~~], it shall
642 first establish a primary permanency goal for the minor and determine whether, in view of the
643 primary permanency goal, reunification services are appropriate for the child and the child's
644 family, pursuant to Subsection (3).

645 (ii) When the court determines that reunification services are appropriate for the child

646 and the child's family, the court shall provide for reasonable parent-time with the parent or
647 parents from whose custody the child was removed, unless parent-time is not in the best
648 interest of the child.

649 (iii) In cases where obvious sexual abuse, abandonment, or serious physical abuse or
650 neglect are involved, neither the division nor the court has any duty to make "reasonable
651 efforts" or to, in any other way, attempt to provide reunification services, or to attempt to
652 rehabilitate the offending parent or parents. In all cases, the child's health, safety, and welfare
653 shall be the court's paramount concern in determining whether reasonable efforts to reunify
654 should be made.

655 (b) (i) In addition to the primary permanency goal, the court shall establish a
656 concurrent permanency goal. The concurrent permanency goal shall include a representative
657 list of the conditions under which the primary permanency goal will be abandoned in favor of
658 the concurrent permanency goal and an explanation of the effect of abandoning or modifying
659 the primary permanency goal.

660 (ii) A permanency hearing shall be conducted in accordance with Subsection
661 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
662 child's primary permanency goal.

663 (iii) (A) The court may amend a child's primary permanency goal before the
664 establishment of a final permanency plan under Section 78-3a-312. The court is not limited to
665 the terms of the concurrent permanency goal in the event that the primary permanency goal is
666 abandoned.

667 (B) If, at anytime, the court determines that reunification is no longer a child's primary
668 permanency goal, the court shall conduct a permanency hearing in accordance with Section
669 78-3a-312 within the earlier of 30 days of the court's determination or 12 months from the
670 original removal of the child.

671 (c) (i) If the court determines that reunification services are appropriate, it shall order
672 that the division make reasonable efforts to provide services to the child and the child's parent
673 for the purpose of facilitating reunification of the family, for a specified period of time. In
674 providing those services, the child's health, safety, and welfare shall be the division's
675 paramount concern, and the court shall so order.

676 (ii) The court shall determine whether the services offered or provided by the division

677 under the treatment plan constitute "reasonable efforts" on the part of the division. The court
678 shall also determine and define the responsibilities of the parent under the treatment plan.
679 Those duties and responsibilities shall be identified on the record, for the purpose of assisting
680 in any future determination regarding the provision of reasonable efforts, in accordance with
681 state and federal law.

682 (iii) (A) The time period for reunification services may not exceed 12 months from the
683 date that the child was initially removed from the child's home.

684 (B) Nothing in this section may be construed to entitle any parent to an entire 12
685 months of reunification services.

686 (iv) If reunification services have been ordered, the court may terminate those services
687 at any time.

688 (v) If, at any time, continuation of reasonable efforts to reunify a child is determined to
689 be inconsistent with the final permanency plan for the child established pursuant to Subsection
690 78-3a-312, then measures shall be taken, in a timely manner, to place the child in accordance
691 with the permanency plan, and to complete whatever steps are necessary to finalize the
692 permanent placement of the child.

693 (d) Any physical custody of the minor by the parent or a relative during the period
694 described in Subsection (2)(c) does not interrupt the running of the period.

695 (e) (i) If reunification services have been ordered, a permanency hearing shall be
696 conducted by the court in accordance with Section 78-3a-312 at the expiration of the time
697 period for reunification services. The permanency hearing shall be held no later than 12
698 months after the original removal of the child.

699 (ii) If reunification services have not been ordered, a permanency hearing shall be
700 conducted within 30 days, in accordance with Section 78-3a-312.

701 (f) With regard to a child who is 36 months of age or younger at the time the child is
702 initially removed from the home, the court shall:

703 (i) hold a permanency hearing eight months after the date of the initial removal,
704 pursuant to Section 78-3a-312; and

705 (ii) order the discontinuance of those services after eight months from the initial
706 removal of the child from the home if the parent or parents have not made substantial efforts to
707 comply with the treatment plan.

708 (g) With regard to a child in the custody of the division whose parent or parents have
 709 been ordered to receive reunification services but who have abandoned that child for a period
 710 of six months since the date that reunification services were ordered, the court shall terminate
 711 reunification services, and the division shall petition the court for termination of parental
 712 rights.

713 ~~[(3)(a) Because of the state's interest in and responsibility to protect and provide~~
 714 ~~permanency for children who are abused, neglected, or dependent, the Legislature finds that a~~
 715 ~~parent's interest in receiving reunification services is limited. The court may determine that~~
 716 ~~efforts to reunify a child with the child's family are not reasonable or appropriate, based on the~~
 717 ~~individual circumstances, and that reunification services should not be provided. In~~
 718 ~~determining "reasonable efforts" to be made with respect to a child, and in making "reasonable~~
 719 ~~efforts," the child's health, safety, and welfare shall be the paramount concern.]~~

720 ~~[(b)]~~ (3) (a) There is a presumption that reunification services should not be provided
 721 to a parent if the court finds ~~it~~ [f] , by clear and convincing [f] ~~it~~ evidence ~~it~~ [f] , [f] [that
 721a establishes beyond a
 722 reasonable doubt] ~~it~~ that any of the following circumstances exist:

723 (i) the whereabouts of the parents are unknown, based upon a verified affidavit
 724 indicating that a reasonably diligent search has failed to locate the parent;

725 (ii) the parent is suffering from a mental illness of such magnitude that it renders ~~him~~
 726 the parent incapable of utilizing reunification services; ~~[that finding shall be based on~~
 727 ~~competent evidence from mental health professionals establishing that, even with the provision~~
 728 ~~of services, the parent is unlikely to be capable of adequately caring for the child within 12~~
 729 ~~months;]~~

730 (iii) (A) the minor has been previously adjudicated as an abused child due to physical
 731 or sexual abuse~~[-that];~~

732 (B) following the adjudication the child was removed from the custody of ~~his~~ the
 733 child's parent~~[-];~~ and was subsequently returned to the custody of that parent~~[-];~~ and

734 (C) the minor is being removed due to additional physical or sexual abuse;

735 (iv) the parent has caused the death of another child through abuse or neglect or has
 736 committed, aided, abetted, attempted, conspired, or solicited to commit murder or
 737 manslaughter of a child or child abuse homicide;

738 (v) the minor has suffered severe abuse by the parent or by any person known by the

739 parent, if the parent knew or reasonably should have known that the person was abusing the
740 minor;

741 (vi) (A) the minor has been adjudicated an abused child as a result of severe abuse by
742 the parent[;]; and

743 (B) the court finds that it would not benefit the child to pursue reunification services
744 with the offending parent;

745 (vii) the parent's rights have been terminated with regard to any other child;

746 (viii) (A) the child has been removed from [~~his~~] the child's home on at least two
747 previous occasions; and

748 (B) reunification services were offered or provided to the family at those times; [~~or~~]

749 (ix) the parent has abandoned the child for a period of six months or longer; or

750 (x) any other circumstance that the court determines should preclude reunification
751 efforts or services.

752 (b) For purposes of Subsection (3)(a)(ii), the court's finding that a parent is suffering
753 from a mental illness of such magnitude that it renders the parent incapable of utilizing
754 reunification services shall be based on competent evidence from mental health professionals
755 establishing that, even with the provision of services, the parent is unlikely to be capable of
756 adequately caring for the child within 12 months.

757 (4) (a) The following shall be considered in determining whether reunification services
758 are appropriate:

759 [~~(4) (a) Failure~~] (i) failure of the parent to respond to previous services or comply with
760 any previous treatment plan[;];

761 (ii) the fact that the child was abused while the parent was under the influence of drugs
762 or alcohol[;];

763 (iii) a past history of violent behavior[;];

764 (iv) whether a parent continues to live with an individual who abused the child[;];

765 (v) any patterns of the parent's behavior that have exposed the child to repeated abuse[;
766 ~~or~~]; and

767 (vi) testimony by a competent professional that the parent's behavior is unlikely to be
768 successful[; ~~shall be considered in determining whether reunification services are appropriate~~].

769 (b) The court shall also consider whether the parent has expressed an interest in

770 reunification with the child, in determining whether reunification services are appropriate.

771 (5) If reunification services are not ordered pursuant to Subsection (3)(a), and the
772 whereabouts of a parent become known within six months of the out-of-home placement of the
773 minor, the court may order the division to provide reunification services. The time limits
774 described in Subsection (2), however, are not tolled by the parent's absence.

775 (6) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable
776 services unless it determines that those services would be detrimental to the minor. In
777 determining detriment, the court shall consider the age of the child, the degree of parent-child
778 bonding, the length of the sentence, the nature of the treatment, the nature of the crime or
779 illness, the degree of detriment to the child if services are not offered and, for minors ten years
780 of age or older, the minor's attitude toward the implementation of family reunification services,
781 and any other appropriate factors.

782 (b) Reunification services for an incarcerated parent are subject to the 12-month
783 limitation imposed in Subsection (2).

784 (c) Reunification services for an institutionalized parent are subject to the 12-month
785 limitation imposed in Subsection (2), unless the court determines that continued reunification
786 services would be in the child's best interest.

787 (7) If, pursuant to Subsection [(3)(b)(ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), or (x)]
788 (3)(a), the court does not order reunification services, a permanency hearing shall be conducted
789 within 30 days, in accordance with Section 78-3a-312.

790 **¶ [Section 10. Section 78-3a-406 is amended to read:**

791 ~~78-3a-406. Notice -- Nature of proceedings.~~

792 ~~(1) After a petition for termination of parental rights has been filed, notice of that fact~~
793 ~~and of the time and place of the hearing shall be provided, in accordance with the Utah Rules~~
794 ~~of Civil Procedure, to the parents, the guardian, the person or agency having legal custody of~~
795 ~~the child, and to any person acting in loco parentis to the child.~~

796 ~~(2) (a) A hearing shall be held specifically on the question of termination of parental~~
797 ~~rights no sooner than ten days after service of summons is complete. A verbatim record of the~~
798 ~~proceedings shall be taken and the parties shall be advised of their right to counsel.~~

799 ~~(b) The summons shall contain a statement to the effect that the rights of the parent or~~
800 ~~parents are proposed to be permanently terminated in the proceedings. That statement may be~~

801 contained in the summons originally issued in the proceeding or in a separate summons
802 subsequently issued.

803 ~~—— (3) (a) The proceedings are civil in nature and are governed by the Utah Rules of Civil
804 Procedure and the Utah Rules of Evidence.~~

805 ~~—— (b) The court shall in all cases require the petitioner to establish the facts [by clear and
806 convincing evidence] beyond a reasonable doubt, and shall give full and careful consideration
807 to all of the evidence presented with regard to the constitutional rights and claims of the parent
808 and, if a parent is found, by reason of [his] the parent's conduct or condition, to be unfit or
809 incompetent based upon any of the grounds for termination described in this part, the court
810 shall then consider the welfare and best interest of the child of paramount importance in
811 determining whether termination of parental rights shall be ordered.] ^h~~

812 Section ~~H~~ ^H [H] ~~10~~ ^h . Section 78-3a-912 is amended to read:

813 **78-3a-912. Appointment of attorney guardian ad litem -- Duties and
814 responsibilities -- Training -- Trained staff and court-appointed special advocate
815 volunteers -- Costs -- Immunity.**

816 (1) The court may appoint an attorney guardian ad litem to represent the best interest of
817 a minor involved in any case before the court and shall consider only the best interest of a
818 minor in determining whether to appoint a guardian ad litem.

819 (2) ~~[An]~~ (a) The court shall appoint an attorney guardian ad litem [shall] to represent
820 the best interest of each minor who [may become] is the subject of a petition alleging abuse,
821 neglect, or dependency, from the date the minor is removed from the minor's home by the
822 division [of Child and Family Services], or the date the petition is filed, whichever occurs
823 earlier.

824 (b) The appointment of an attorney guardian ad litem under Subsection (2)(a) shall be
825 made in a hearing where the parents of the minor:

826 (i) have been given notice to be present; and

827 (ii) have the opportunity to express their preferences and any concerns they may have
828 relating to the appointment of an attorney guardian ad litem.

829 ~~§ [(c) H (i) h The minor's parents or guardian have the right to H [refuse] OBJECT TO h the~~
829a ~~appointment of a~~
830 ~~particular individual to act as an attorney guardian ad litem as provided in this Subsection~~
831 ~~(2) H [(c)] h .] §~~

832 § ~~[(i)] (ii) h~~ If a parent ~~h~~ [refuses] OBJECTS TO ~~h~~ the appointment by the court of a
832a particular individual to act as an
833 attorney guardian ad litem on behalf of the minor, the court ~~h~~ [shall] MAY ~~h~~ appoint another
833a individual to
834 act as an attorney guardian ad litem ~~h~~ [as designated] , INCLUDING A PERSON REQUESTED ~~h~~ by
834a the parent or guardian:
835 ~~h~~ [(ii)] The court may refuse the appointment of an individual designated by the parent or
836 guardian:
837 ~~h~~ [(A)] who does not meet the minimum qualifications and requirements established in
838 Subsection 78-7-45(6)(a); or
839 ~~h~~ [(B)] for good cause shown on the record;
840 ~~h~~ [(iii)] If the court refuses to appoint an individual under Subsection (2)(c)(ii), the court
841 may appoint another individual not previously refused by the parent or guardian.] ~~h~~
842 ~~h~~ [(iv)] [(iii)] h An individual ~~h~~ APPOINTED AS AN ATTORNEY GUARDIAN AD LITEM UNDER
842a THIS SUBSECTION (2):
842b ~~h~~ [(A)] h is not required to be employed by or under contract with the Office
843 of the Guardian Ad Litem ~~h~~ [to be appointed as an attorney guardian ad litem in an abuse, neglect,
844 or dependency case:
845 ~~h~~ [(d)] Except as provided in Subsection (9)(b)(ii), if a parent or guardian refuses the
846 appointment of a guardian ad litem employed by or under contract with the Office of the
847 Guardian Ad Litem, the parent is responsible for all costs incurred from the appointment of a
848 private attorney guardian ad litem to represent the best interest of the minor.] ; AND
848a ~~h~~ [(B)] SHALL MEET THE MINIMUM QUALIFICATIONS AND REQUIREMENTS ESTABLISHED IN
848b SUBSECTION 78-7-45(6)(a). ~~h~~
849 ~~h~~ [(e) (i)] [(d)(i)] h At any time the minor's parents or guardian may:
850 ~~h~~ [(A)] petition the court to release a particular attorney guardian ad litem from a case; and
851 ~~h~~ [(B)] [(A)] h petition the court for a report of the activities of the attorney guardian ad litem
852 relating to the minor ~~h~~ ; AND
852a ~~h~~ [(B)] PETITION THE COURT TO RELEASE A PARTICULAR ATTORNEY GUARDIAN AD LITEM
852b FROM A CASE ~~h~~ .
853 ~~h~~ [(ii)] If a petition is made under Subsection (2) ~~h~~ [(e)(i)(B)] [(d)(i)] ([B]) (A) ~~h~~ , the court
853a shall order
853a the
854 guardian ad litem to provide the information to the parents or guardian in a timely manner.] §
855 (3) [The] If the court appoints an attorney guardian ad litem employed by or under
856 contract with the Office of the Guardian Ad Litem, the Office of the Guardian Ad Litem

857 Director, through ~~an~~ the attorney guardian ad litem, shall:

858 (a) represent the best interest of the minor in all proceedings;

859 (b) be trained in applicable statutory, regulatory, and case law, and in accordance with

860 the United States Department of Justice National Court Appointed Special Advocate

861 Association guidelines, prior to representing any minor before the court;

862 (c) conduct or supervise an independent investigation in order to obtain first-hand, a

863 clear understanding of the situation and needs of the child;

864 (d) personally meet with the minor, personally interview the minor if the minor is old
865 enough to communicate, determine the minor's goals and concerns regarding placement, and
866 personally assess or supervise an assessment of the appropriateness and safety of the minor's
867 environment in each placement;

868 (e) file written motions, responses, or objections at all stages of a proceeding when
869 necessary to protect the best interest of a minor;

870 (f) personally or through a trained volunteer, paralegal, or other trained staff, attend all
871 administrative and foster care citizen review board hearings pertaining to the minor's case;

872 (g) participate in all appeals unless excused by order of the court;

873 (h) be familiar with local experts who can provide consultation and testimony
874 regarding the reasonableness and appropriateness of efforts made by the division [~~of Child and~~
875 ~~Family Services~~] to maintain a minor in the minor's home or to reunify a minor with the
876 minor's parent;

877 (i) to the extent possible, and unless it would be detrimental to the minor, personally or
878 through a trained volunteer, paralegal, or other trained staff, keep the minor advised of the
879 status of the minor's case, all court and administrative proceedings, discussions, and proposals
880 made by other parties, court action, and psychiatric, medical, or other treatment or diagnostic
881 services that are to be provided to the minor;

882 (j) review proposed orders for, and as requested by the court, prepare proposed orders
883 with clear and specific directions regarding services, treatment, and evaluation, assessment, and
884 protection of the minor and the minor's family; [~~and~~]

885 (k) personally or through a trained volunteer, paralegal, or other trained staff, monitor
886 implementation of a minor's treatment plan and any dispositional orders;

887 (i) to determine whether services ordered by the court;

888 (A) are actually provided[-]; and

889 (B) are provided in a timely manner[-]; and

890 (ii) attempt to assess whether they are accomplishing their intended goal[-]; and

891 (l) unless otherwise directed by the court, communicate with the parents or guardian of
892 the minor and give consideration to their concerns and goals for the minor.

893 (4) If the court appoints an attorney guardian ad litem who is not employed by or under

894 contract with the Office of the Guardian Ad Litem, the attorney guardian ad litem shall § [meet]
 894a COMPLY WITH §

895 the requirements of Subsection (3).

896 (5) An attorney guardian ad litem appointed under Subsection (2) ~~H~~ [(a)] ~~h~~ may not be the
 897 attorney responsible for presenting the evidence alleging child abuse, neglect, or dependency.

898 (6) Upon appointment of an attorney guardian ad litem under Subsection (2) ~~H~~ [(a)] ~~h~~ , the
 899 court shall advise the attorney guardian ad litem of his duty:

900 (a) to represent the best interest of the minor in all proceedings; and

901 (b) to fulfill the duties set forth in Subsection (3).

902 ~~[(4)]~~ (7) (a) An attorney guardian ad litem may use trained volunteers, in accordance
 903 with Title 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other
 904 trained staff to assist in investigation and preparation of information regarding the cases of
 905 individual minors before the court. An attorney guardian ad litem may not, however, delegate
 906 the attorney's responsibilities described in Subsection (3).

907 (b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained
 908 in and follow, at a minimum, the guidelines established by the United States Department of
 909 Justice Court Appointed Special Advocate Association.

910 (c) The court may use volunteers trained in accordance with the requirements of
 911 Subsection ~~[(4)]~~ (7)(b) to assist in investigation and preparation of information regarding the
 912 cases of individual minors within the jurisdiction.

913 (d) When possible and appropriate, the court may use a volunteer who is a peer of the
 914 minor appearing before the court, in order to provide assistance to that minor, under the
 915 supervision of an attorney guardian ad litem or the attorney's trained volunteer, paralegal, or
 916 other trained staff.

917 ~~[(5)]~~ (8) The attorney guardian ad litem shall continue to represent the best interest of
 918 the minor until released from duties by the court.

919 ~~[(6)]~~ (9) (a) ~~H~~ [(f)] ~~The~~ [(j)] ~~[Except as provided in Subsection (2)(c)(i), the]~~ ~~h~~ juvenile court is
 920 responsible for all costs resulting from the appointment of an attorney guardian ad litem and
 921 the costs of volunteer, paralegal, and other staff appointment and training, and shall use funds
 922 appropriated by the Legislature for the guardian ad litem program to cover those costs.

923 (b) (i) When the court appoints an attorney guardian ad litem under this section, the
 924 court may assess all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer

925 expenses against the minor's parents, parent, or legal guardian in a proportion that the court
926 determines to be just and appropriate.

927 (ii) The court may not assess those fees or costs against a legal guardian, when that
928 guardian is the state, or against a parent who is found to be impecunious. If a person claims to
929 be impecunious, the court shall require of that person an affidavit of impecuniosity as provided
930 in Section 78-7-36 and the court shall follow the procedures and make the determinations as
931 provided in Section 78-7-36.

932 [~~(7)~~] (10) An attorney guardian ad litem appointed under this section, when serving in
933 the scope of ~~his~~ the attorney guardian ad litem's duties as guardian ad litem is considered an
934 employee of the state for purposes of indemnification under Title 63, Chapter 30, Utah
935 Governmental Immunity Act.

936 [~~(8)~~] (11) (a) An attorney guardian ad litem shall represent the best interest of a minor.

937 (b) If the minor's wishes differ from the attorney's determination of the minor's best
938 interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in
939 addition to presenting the attorney's determination of the minor's best interest. A difference
940 between the minor's wishes and the attorney's determination of best interest may not be
941 considered a conflict of interest for the attorney.

942 [~~(b)~~] (c) The court may appoint one attorney guardian ad litem to represent the best
943 interests of more than one minor child of a marriage.

944 [~~(9)~~] (12) An attorney guardian ad litem shall be provided access to all division [~~of~~
945 ~~Child and Family Services~~] records regarding the minor at issue and the minor's family.

946 [~~(10)~~] (13) An attorney guardian ad litem shall maintain current and accurate records
947 regarding the number of times the attorney has had contact with each minor and the actions the
948 attorney has taken in representation of the minor's best interest.

949 [~~(11)~~] (14) (a) Except as provided in Subsection [~~(11)~~] (14)(b), all records of an
950 attorney guardian ad litem are confidential and may not be released or made public upon
951 subpoena, search warrant, discovery proceedings, by authorization or order of a court, or
952 otherwise. This Subsection (14)(a) supersedes Title 63, Chapter 2, Government Records
953 Access and Management Act.

954 (b) All records of an attorney guardian ad litem are subject to legislative subpoena,
955 under Title 36, Chapter 14, Legislative Subpoena Powers, and shall be released to the

956 Legislature.

957 (c) Records released in accordance with Subsection [~~(H)~~] (14)(b) shall be maintained
 958 as confidential by the Legislature. The Office of the Legislative Auditor General may,
 959 however, include summary data and nonidentifying information in its audits and reports to the
 960 Legislature.

961 (d) Because of the unique role of an attorney guardian ad litem described in Subsection
 962 [~~(8)~~] (11), and the state's role and responsibility to provide a guardian ad litem program and, as
 963 parens patriae, to protect minors, Subsection [~~(H)~~] (14)(b) constitutes an exception to Rules of
 964 Professional Conduct, Rule 1.6, as provided by Rule 1.6(b)(4). A claim of attorney-client
 965 privilege does not bar access to the records of an attorney guardian ad litem by the Legislature,
 966 through legislative subpoena. This is the only exception to the Rules of Professional Conduct
 967 for an attorney guardian ad litem.

968 (15) An attorney guardian ad litem may not make public statements, ~~H~~ OR ~~h~~ grant
 968a interviews ~~H~~ [;
 969 or otherwise communicate information] ~~h~~ that will be disclosed publicly outside of the juvenile
 970 court ~~H~~, ~~h~~ about a child abuse, neglect, or dependency case, even if the ~~H~~ [communication]
 970a STATEMENT OR INTERVIEW ~~h~~ does not
 971 involve the disclosure of a record that is private, controlled, or protected under Title 63,
 972 Chapter 2, Government Records Access and Management Act.

973 Section ~~H~~ [~~12~~] 11 ~~h~~ . Section 78-7-45 is amended to read:

974 **78-7-45. Private attorney guardian ad litem -- Appointment -- Costs and fees --**
 975 **Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum**
 976 **qualifications.**

977 (1) (a) The court may appoint a private attorney as guardian ad litem to represent the
 978 best interests of the minor in any district court action in which the custody of or visitation with
 979 a minor is at issue. The attorney guardian ad litem shall be certified by the Director of the
 980 Office of the Guardian Ad Litem as having met the minimum qualifications for appointment,
 981 but shall not be employed by or under contract with the Office of the Guardian Ad Litem.

982 (b) If an attorney guardian ad litem has been appointed for the minor in any prior or
 983 concurrent action and that attorney guardian ad litem is available, the court shall appoint that
 984 attorney guardian ad litem, unless good cause is shown why another attorney guardian ad litem
 985 should be appointed.

986 (c) If, after appointment of the attorney guardian ad litem, an allegation of abuse,

987 neglect, or dependency of the minor is made the court shall:

988 (i) determine whether it is in the best interests of the minor to continue the
989 appointment; or

990 (ii) order the withdrawal of the private attorney guardian ad litem and [appoint], in the
991 manner set forth in Subsection 78-3a-912(2), appoint either:

992 (A) the Office of the Guardian Ad Litem[-]; or

993 (B) another private attorney guardian ad litem.

994 (2) (a) The court shall assess all or part of the attorney guardian ad litem fees, courts
995 costs, and paralegal, staff, and volunteer expenses against the parties in a proportion the court
996 determines to be just.

997 (b) If the court finds a party to be impecunious, under the provisions of Section
998 78-7-36, the court may direct the impecunious party's share of the assessment to be covered by
999 the attorney guardian ad litem pro bono obligation established in Subsection (6)(b).

1000 (3) The attorney guardian ad litem appointed under the provisions of this section shall:

1001 (a) represent the best interests of the minor from the date of the appointment until
1002 released by the court;

1003 (b) conduct or supervise an independent investigation in order to obtain a clear
1004 understanding of the situation and needs of the minor;

1005 (c) interview witnesses and review relevant records pertaining to the minor and the
1006 minor's family, including medical, psychological, and school records;

1007 (d) if the minor is old enough to communicate and unless it would be detrimental to the
1008 minor:

1009 (i) meet with and interview the minor;

1010 (ii) determine the minor's goals and concerns regarding custody or visitation; and

1011 (iii) counsel the minor regarding the nature, purpose, status, and implications of the
1012 case, of hearings, of recommendations, and proposals by parties and of court orders;

1013 (e) conduct discovery, file pleadings and other papers, prepare and review orders, and
1014 otherwise comply with the Utah Rules of Civil Procedure as necessary to protect the best
1015 interest of the minor;

1016 (f) unless excused by the court, prepare for and attend all mediation hearings and all
1017 court conferences and hearings, and present witnesses and exhibits as necessary to protect the

1018 best interests of the minor;

1019 (g) identify community resources to protect the best interests of the minor and advocate
1020 for those resources; and

1021 (h) participate in all appeals unless excused by the court.

1022 (4) (a) The attorney guardian ad litem shall represent the best interests of a minor. If
1023 the minor's wishes differ from the attorney's determination of the minor's best interests, the
1024 attorney guardian ad litem shall communicate to the court the minor's wishes and the attorney's
1025 determination of the minor's best interests. A difference between the minor's wishes and the
1026 attorney's determination of best interests is not sufficient to create a conflict of interest.

1027 (b) The court may appoint one attorney guardian ad litem to represent the best interests
1028 of more than one minor child of a marriage.

1029 (5) An attorney guardian ad litem appointed under this section is immune from any
1030 civil liability that might result by reason of acts performed within the scope of duties of the
1031 attorney guardian ad litem.

1032 (6) (a) Upon the advice of the Director of the Office of the Guardian Ad Litem, the
1033 Judicial Council shall by rule establish the minimum qualifications and requirements for
1034 appointment by the court as an attorney guardian ad litem.

1035 (b) An attorney guardian ad litem may be required to appear pro bono in one case for
1036 every five cases in which the attorney is appointed with compensation.

1037 (7) This section shall be effective in the Second, Third, and Fourth Judicial Districts on
1038 July 1, 2001, and in the remaining judicial districts of the state on July 1, 2002.

1039 Section 13. **Repealer.**

1040 This bill repeals:

1041 Section **78-3a-305.1, Presumption of responsibility.**

1042 Section 14. **Effective date.**

1043 This bill takes effect on July 1, 2004.

Fiscal Note

Child and Family Services and Related Judicial Code Amendments 03-Mar-04

Bill Number HB0140S038:09 AM

AMENDED BILL**State Impact**

As amended, there is no fiscal impact from the provisions in this bill.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst