

Senator Bill Wright proposes the following substitute bill:

CHILD WELFARE PROCESSES

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Mike Thompson

LONG TITLE

General Description:

This bill amends Child and Family Services and the Judicial Code and creates the Office of Child Welfare Parental Defense.

Highlighted Provisions:

This bill:

- ▶ amends the definition of "protective services";
- ▶ requires notice to parents of their statutory and constitutional rights before conducting a child abuse, neglect, or dependency investigation;
- ▶ sets forth definitions;
- ▶ creates within the Department of Administrative Services the Office of Child Welfare Parental Defense;
- ▶ appoints a director to have supervision, direction, and control over the office;
- ▶ sets forth the duties, functions, and responsibilities of the division;
- ▶ outlines the qualifications, responsibilities, and standards for a parental defense attorney;
- ▶ classifies records of a contracted parental defense attorney as protected and indicates that the records may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise;
- ▶ creates the Child Welfare Parental Defense Fund;



- 26 ▶ makes technical corrections to the terms "unsubstantiated" and "substantiated";
- 27 ▶ prohibits a juvenile court from using disability of a parent as a basis for removing a
- 28 child from the custody of the parent;
- 29 ▶ imposes district court limits on any juvenile court using a parent's disability as a
- 30 basis for changing a custody award made in district court;
- 31 ▶ expands interdisciplinary child protection team membership;
- 32 ▶ amends preferential placement provisions for children removed from their homes
- 33 due to abuse, neglect, or dependency;
- 34 ▶ requires the Division of Child and Family Services to accommodate and honor the
- 35 moral and religious beliefs of those it serves;
- 36 ▶ requires the Division of Child and Family Services to design treatment plans in a
- 37 manner that minimizes disruption to the normal activities of the child's family;
- 38 ▶ modifies access to juvenile court proceedings;
- 39 ▶ limits the types of identifying information that may be stricken from a record
- 40 released by the Division of Child and Family Services to specified individuals;
- 41 ▶ requires the Office of the Guardian Ad Litem to make an annual report to the Child
- 42 Welfare Legislative Oversight Panel;
- 43 ▶ requires recording of unauthorized ex parte communications concerning an ongoing
- 44 case between a judge and other parties to an abuse, neglect, or dependency
- 45 proceeding; and
- 46 ▶ makes conforming changes and technical corrections.

47 Monies Appropriated in this Bill:

48 This bill appropriates:

- 49 ▶ (\$239,000), as an ongoing appropriation, for fiscal year 2004-05 from the General
- 50 Fund in the Department of Human Services Executive Director Operations --
- 51 Services Review; and
- 52 ▶ \$239,000, as an ongoing appropriation for fiscal year 2004-05 from the General
- 53 Fund to the Child Welfare Parental Defense Fund.

54 Other Special Clauses:

55 This bill takes effect on July 1, 2004.

56 Utah Code Sections Affected:

57 AMENDS:

- 58 **30-3-10**, as last amended by Chapter 269, Laws of Utah 2003
- 59 **62A-4a-101**, as last amended by Chapters 281 and 283, Laws of Utah 2002
- 60 **62A-4a-205**, as last amended by Chapter 306, Laws of Utah 2002
- 61 **62A-4a-409**, as last amended by Chapter 265, Laws of Utah 2002
- 62 **62A-4a-412**, as last amended by Chapter 68, Laws of Utah 2003
- 63 **63A-1-109**, as last amended by Chapter 5, Laws of Utah 2003
- 64 **78-3a-105**, as last amended by Chapter 68, Laws of Utah 2003
- 65 **78-3a-115**, as last amended by Chapter 332, Laws of Utah 2003
- 66 **78-3a-301 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003
- 67 **78-3a-304.5**, as enacted by Chapter 302, Laws of Utah 1995
- 68 **78-3a-307**, as last amended by Chapters 153 and 255, Laws of Utah 2001
- 69 **78-3a-311**, as last amended by Chapter 246, Laws of Utah 2002
- 70 **78-3a-412**, as renumbered and amended by Chapter 260, Laws of Utah 1994
- 71 **78-3a-912**, as last amended by Chapter 168, Laws of Utah 2002
- 72 **78-3a-913**, as last amended by Chapter 256, Laws of Utah 1999

73 ENACTS:

- 74 **62A-4a-120**, Utah Code Annotated 1953
- 75 **63A-11-101**, Utah Code Annotated 1953
- 76 **63A-11-102**, Utah Code Annotated 1953
- 77 **63A-11-103**, Utah Code Annotated 1953
- 78 **63A-11-104**, Utah Code Annotated 1953
- 79 **63A-11-105**, Utah Code Annotated 1953
- 80 **63A-11-106**, Utah Code Annotated 1953
- 81 **63A-11-107**, Utah Code Annotated 1953
- 82 **63A-11-108**, Utah Code Annotated 1953
- 83 **63A-11-201**, Utah Code Annotated 1953
- 84 **63A-11-202**, Utah Code Annotated 1953
- 85 **63A-11-203**, Utah Code Annotated 1953



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

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

89 **30-3-10. Custody of children in case of separation or divorce -- Custody**
90 **consideration.**

91 (1) If a husband and wife having minor children are separated, or their marriage is
92 declared void or dissolved, the court shall make an order for the future care and custody of the
93 minor children as it considers appropriate.

94 (a) In determining any form of custody, the court shall consider the best interests of the
95 child and, among other factors the court finds relevant, the following:

96 (i) the past conduct and demonstrated moral standards of each of the parties;

97 (ii) which parent is most likely to act in the best interest of the child, including
98 allowing the child frequent and continuing contact with the noncustodial parent; and

99 (iii) those factors outlined in Section 30-3-10.2.

100 (b) The court shall, in every case, consider joint custody but may award any form of
101 custody which is determined to be in the best interest of the child.

102 (c) The children may not be required by either party to testify unless the trier of fact
103 determines that extenuating circumstances exist that would necessitate the testimony of the
104 children be heard and there is no other reasonable method to present their testimony.

105 (d) The court may inquire of the children and take into consideration the children's
106 desires regarding future custody or parent-time schedules, but the expressed desires are not
107 controlling and the court may determine the children's custody or parent-time otherwise. The
108 desires of a child 16 years of age or older shall be given added weight, but is not the single
109 controlling factor.

110 (e) If interviews with the children are conducted by the court pursuant to Subsection
111 (1)(d), they shall be conducted by the judge in camera. The prior consent of the parties may be
112 obtained but is not necessary if the court finds that an interview with the children is the only
113 method to ascertain the child's desires regarding custody.

114 (2) In awarding custody, the court shall consider, among other factors the court finds
115 relevant, which parent is most likely to act in the best interests of the child, including allowing
116 the child frequent and continuing contact with the noncustodial parent as the court finds
117 appropriate.

118 (3) If the court finds that one parent does not desire custody of the child, or has

119 attempted to permanently relinquish custody to a third party, it shall take that evidence into
120 consideration in determining whether to award custody to the other parent.

121 (4) (a) [A] Except as provided in Subsection (4)(b), a court may not discriminate
122 against a parent due to a disability, as defined in Section 57-21-2, in awarding custody or
123 determining whether a substantial change has occurred for the purpose of modifying an award
124 of custody.

125 (b) If a court takes a parent's disability into account in awarding custody or determining
126 whether a substantial change has occurred for the purpose of modifying an award of custody,
127 the parent with a disability may rebut any evidence, presumption, or inference arising
128 ~~[therefrom]~~ from the disability by showing that:

129 (i) the disability does not significantly or substantially inhibit the parent's ability to
130 provide for the physical and emotional needs of the child at issue; or

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

134 (c) Nothing in this section may be construed to apply to ~~[(i) abuse, neglect, or~~
135 ~~dependency proceedings under Title 62A, Chapter 4a, Child and Family Services, or Title 78,~~
136 ~~Chapter 3a, Juvenile Court Act of 1996; or (ii)]~~ adoption proceedings under Title 78, Chapter
137 30, Adoption.

138 (5) This section establishes neither a preference nor a presumption for or against joint
139 legal custody, joint physical custody, or sole custody, but allows the court and the family the
140 widest discretion to choose a parenting plan that is in the best interest of the child.

141 Section 2. Section **62A-4a-101** is amended to read:

142 **62A-4a-101. Definitions.**

143 As used in this chapter:

144 (1) "Abuse" means:

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

146 (b) negligent treatment;

147 (c) sexual exploitation; or

148 (d) any sexual abuse.

149 (2) "Adoption services" means placing children for adoption, subsidizing adoptions

150 under Section 62A-4a-105, supervising adoption placements until the adoption is finalized by
151 the court, conducting adoption studies, preparing adoption reports upon request of the court,
152 and providing postadoptive placement services, upon request of a family, for the purpose of
153 stabilizing a possible disruptive placement.

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

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

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

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

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

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

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

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

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

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

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

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

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

179 (15) "Homemaking service" means the care of individuals in their domiciles, and help
180 given to individual caretaker relatives to achieve improved household and family management

181 through the services of a trained homemaker.

182 (16) "Minor" means a person under 18 years of age. "Minor" may also include a
183 person under 21 years of age for whom the division has been specifically ordered by the
184 juvenile court to provide services.

185 (17) "Natural parent" means a minor's biological or adoptive parent, and includes a
186 minor's noncustodial parent.

187 (18) (a) "Neglect" means:

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

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

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

193 (iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
194 subsistence, education, or medical care, including surgery or psychiatric services when
195 required, or any other care necessary for his health, safety, morals, or well-being; or

196 (v) a child at risk of being neglected or abused because another child in the same home
197 is neglected or abused.

198 (b) The aspect of neglect relating to education, described in Subsection (18)(a)(iv),
199 means that, after receiving notice that a child has been frequently absent from school without
200 good cause, or that the child has failed to cooperate with school authorities in a reasonable
201 manner, a parent or guardian fails to make a good faith effort to ensure that the child receives
202 an appropriate education.

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

205 (19) "Protective custody," with regard to the division, means the shelter of a child by
206 the division from the time the child is removed from the child's home until the shelter hearing,
207 or the child's return home, whichever occurs earlier.

208 (20) "Protective services" means expedited services that are provided:

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

210 [~~(b) in an effort to substantiate evidence of neglect, abuse, or dependency;~~]

211 [~~(c)~~] (b) to a cohabitant who is neglecting or abusing a child, in order to help the

212 cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or
213 abuse, and to strengthen the cohabitant's ability to provide safe and acceptable care; and

214 [~~(d)~~] (c) in cases where the child's welfare is endangered:

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

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

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

222 (21) "Services to unwed parents" means social, educational, and medical services
223 arranged for or provided to unwed parents to help them plan for themselves and the unborn
224 child.

225 (22) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
226 minor.

227 (23) "Shelter care" means the temporary care of minors in nonsecure facilities.

228 (24) "State" means a state of the United States, the District of Columbia, the
229 Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern
230 Mariana Islands, or a territory or possession administered by the United States.

231 (25) "Severe emotional abuse" means emotional abuse that causes or threatens to cause
232 serious harm to a minor.

233 (26) "Severe physical abuse" means physical abuse that causes or threatens to cause
234 serious harm to a minor.

235 (27) "State plan" means the written description of the programs for children, youth, and
236 family services administered by the division in accordance with federal law.

237 (28) "Status offense" means a violation of the law that would not be a violation but for
238 the age of the offender.

239 (29) "Substantiated" or "substantiation" means a judicial finding based on a
240 preponderance of the evidence that abuse or neglect occurred. Each allegation made or
241 identified in a given case shall be considered separately in determining whether there should be
242 a finding of substantiated.

243 (30) "Substitute care" means:

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

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

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

250 (31) "Supported" means a finding by the division based on the evidence available at the
251 completion of an investigation that there is a reasonable basis to conclude that abuse, neglect,
252 or dependency occurred. Each allegation made or identified during the course of the
253 investigation shall be considered separately in determining whether there should be a finding of
254 supported.

255 (32) "Temporary custody," with regard to the division, means the custody of a child in
256 the division from the date of the shelter hearing until disposition.

257 (33) "Transportation services" means travel assistance given to an individual with
258 escort service, if necessary, to and from community facilities and resources as part of a service
259 plan.

260 (34) "Unsubstantiated" means a judicial finding that there is insufficient evidence to
261 conclude that abuse or neglect occurred.

262 (35) "Unsupported" means a finding at the completion of an investigation that there is
263 insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a
264 finding of unsupported means also that the division worker did not conclude that the allegation
265 was without merit.

266 (36) "Without merit" means a finding at the completion of an investigation by the
267 division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or
268 that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

269 Section 3. Section **62A-4a-120** is enacted to read:

270 **62A-4a-120. Accommodation of moral and religious beliefs.**

271 (1) The division shall adopt rules in accordance with Title 63, Chapter 46a, Utah
272 Administrative Rulemaking Act, and establish procedures to accommodate the moral and
273 religious beliefs, and culture, of the children and families it serves, including:

274 (a) the immediate family and other relatives of a child in any type of custody or
275 otherwise under the jurisdiction of the court;

276 (b) foster and other out-of-home placement families; and

277 (c) adoptive families.

278 (2) The accommodation under Subsection (1) applies to placements, treatment plans,
279 services, and other activities of the division.

280 Section 4. Section **62A-4a-205** is amended to read:

281 **62A-4a-205. Treatment plans.**

282 (1) No more than 45 days after a child enters the temporary custody of the division, the
283 child's treatment plan shall be finalized.

284 (2) The division shall use an interdisciplinary team approach in developing each
285 treatment plan. An interdisciplinary team shall include, but is not limited to, representatives
286 from mental health, education, and, where appropriate, a representative of law enforcement.

287 (3) (a) The division shall involve all of the following in the development of a child's
288 treatment plan:

289 (i) both of the child's natural parents, unless the whereabouts of a parent are unknown;

290 (ii) the child;

291 (iii) the child's foster parents; and

292 (iv) where appropriate, the child's stepparent.

293 (b) In relation to all information considered by the division in developing a treatment
294 plan, additional weight and attention shall be given to the input of the child's natural and foster
295 parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

296 (4) A copy of the treatment plan shall be provided to the guardian ad litem, and to the
297 child's natural parents and foster parents immediately upon completion, or as soon as is
298 reasonably possible thereafter.

299 (5) Each treatment plan shall specifically provide for the safety of the child, in
300 accordance with federal law, and clearly define what actions or precautions will, or may be,
301 necessary to provide for the health, safety, protection, and welfare of the child.

302 (6) The plan shall set forth, with specificity, at least the following:

303 (a) the reason the child entered Division of Child and Family Services custody, and
304 documentation of the reasonable efforts made to prevent placement, or documentation of the

305 emergency situation that existed and that prevented reasonable efforts;

306 (b) the primary permanency goal for the child and the reason for selection of that goal;

307 (c) the concurrent permanency goal for the child and the reason for the selection of that
308 goal;

309 (d) if the plan is for the child to return to the child's family, specifically what the
310 parents must do in order to enable the child to be returned home, specifically how those
311 requirements may be accomplished, and how those requirements will be measured;

312 (e) the specific services needed to reduce the problems that necessitated placement in
313 the division's custody, and who will provide for and be responsible for case management;

314 (f) a parent-time schedule between the natural parent and the child;

315 (g) the health [~~care to be provided to the child,~~] and [~~the~~] mental health care to be
316 provided to address any known or diagnosed mental health needs of the child[~~-If~~] and, if
317 residential treatment[;] rather than a foster home[;] is the proposed placement, a requirement
318 for a specialized assessment of the child's health needs [~~shall be conducted,~~] including an
319 assessment of mental illness and behavior and conduct disorders; and

320 (h) social summaries that include case history information pertinent to case planning.

321 (7) (a) Each treatment plan shall be specific to each child and the child's family, rather
322 than general. The division shall train its workers to develop treatment plans that comply with
323 federal mandates and the specific needs of the particular child and the child's family.

324 (b) All treatment plans and expectations shall be individualized and contain specific
325 time frames.

326 (c) Treatment plans shall address problems that keep children in placement and keep
327 them from achieving permanence in their lives.

328 (d) Each treatment plan shall be designed to minimize disruption to the normal
329 activities of the child's family, including employment and school. In particular, the time, place,
330 and amount of services, hearings, and other requirements ordered by the court shall be
331 designed, as much as practicable, to help the child's parents maintain or obtain employment.

332 [~~(d)~~] (e) The child's natural parents, foster parents, and where appropriate, stepparents,
333 shall be kept informed of and supported to participate in important meetings and procedures
334 related to the child's placement.

335 (8) With regard to a child who is three years of age or younger, if the goal is not to

336 return the child home, the permanency plan for that child shall be adoption. However, if the
337 division documents to the court that there is a compelling reason that adoption, reunification,
338 guardianship, and kinship placement are not in the child's best interest, the court may order
339 another planned permanent living arrangement in accordance with federal law.

340 Section 5. Section **62A-4a-409** is amended to read:

341 **62A-4a-409. Investigation by division -- Temporary protective custody --**

342 **Preremoval interviews of children.**

343 (1) The division shall make a thorough preremoval investigation upon receiving either
344 an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug
345 dependency, when there is reasonable cause to suspect a situation of abuse, neglect, fetal
346 alcohol syndrome, or fetal drug dependency. The primary purpose of that investigation shall be
347 protection of the child.

348 (2) The preremoval investigation shall include the same investigative requirements
349 described in Section 62A-4a-202.3.

350 (3) The division shall make a written report of its investigation. The written report
351 shall include a determination regarding whether the alleged abuse or neglect was
352 [~~substantiated, unsubstantiated,~~] supported, unsupported, or without merit.

353 (4) (a) The division shall use an interdisciplinary approach whenever possible in
354 dealing with reports made under this part.

355 (b) For this purpose, the division shall convene appropriate interdisciplinary "child
356 protection teams" to assist it in its protective, diagnostic, assessment, treatment, and
357 coordination services.

358 (c) A representative of the division shall serve as the team's coordinator and chair.
359 Members of the team shall serve at the coordinator's invitation[~~, and whenever~~]. Whenever
360 possible, the team shall include representatives of:

361 (i) health, mental health, education, and law enforcement agencies[;];

362 (ii) the child;

363 (iii) parent and family support groups unless the parent is alleged to be the perpetrator;

364 and

365 (iv) other appropriate agencies or individuals.

366 (5) In any case where the division supervises, governs, or directs the affairs of any

367 individual, institution, or facility that has been alleged to be involved in acts or omissions of
368 child abuse or neglect, the investigation of the reported child abuse or neglect shall be
369 conducted by an agency other than the division.

370 (6) If a report of neglect is based upon or includes an allegation of educational neglect,
371 the division shall immediately consult with school authorities to verify the child's status in
372 accordance with Sections 53A-11-101 through 53A-11-103.

373 (7) When the division has completed its initial investigation under this part, it shall
374 give notice of that completion to the person who made the initial report.

375 (8) Division workers or other child protection team members have authority to enter
376 upon public or private premises, using appropriate legal processes, to investigate reports of
377 alleged child abuse or neglect, upon notice to parents of their rights under the Child Abuse
378 Prevention and Treatment Act, 42 U.S.C. Sec. 5106, or any successor thereof.

379 (9) With regard to any interview of a child prior to removal of that child from the
380 child's home:

381 (a) except as provided in Subsection (9)(b) or (c), the division shall notify a parent of
382 the child prior to the interview;

383 (b) if a child's parent or stepparent, or a parent's paramour has been identified as the
384 alleged perpetrator, the division need not notify a parent of the child prior to an initial interview
385 with the child;

386 (c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family
387 is unknown, the division may conduct a minimal interview, not to exceed 15 minutes, with the
388 child prior to notification of the child's parent;

389 (d) in all cases described in Subsection (9)(b) or (c), a parent of the child shall be
390 notified as soon as practicable after the child has been interviewed, but in no case later than 24
391 hours after the interview has taken place;

392 (e) a child's parents shall be notified of the time and place of all subsequent interviews
393 with the child; and

394 (f) (i) the child shall be allowed to have a support person of the child's choice present[-
395 That support person:-(i)]; and

396 (ii) the person described in Subsection (9)(f)(i):

397 (A) may include[-, but is not limited to,];

398 (I) a school teacher [or];

399 (II) an administrator[-];

400 (III) a guidance counselor[-or];

401 (IV) a child care provider[-and]; or

402 (V) clergy; and

403 ~~(iii)~~ (B) may not be a person who is alleged to be, or potentially may be, the
404 perpetrator.

405 (10) In accordance with the procedures and requirements of Sections 62A-4a-202.1
406 through 62A-4a-202.3, a division worker or child protection team member may take a child
407 into protective custody and deliver the child to a law enforcement officer, or place the child in
408 an emergency shelter facility approved by the juvenile court, at the earliest opportunity
409 subsequent to the child's removal from the child's original environment. Control and
410 jurisdiction over the child is determined by the provisions of Title 78, Chapter 3a, Juvenile
411 Court Act of 1996, and as otherwise provided by law.

412 (11) With regard to cases in which law enforcement has or is conducting an
413 investigation of alleged abuse or neglect of a child:

414 (a) the division shall coordinate with law enforcement to ensure that there is an
415 adequate safety plan to protect the child from further abuse or neglect; and

416 (b) the division is not required to duplicate an aspect of the investigation that, in the
417 division's determination, has been satisfactorily completed by law enforcement.

418 Section 6. Section **62A-4a-412** is amended to read:

419 **62A-4a-412. Reports and information confidential.**

420 (1) Except as otherwise provided in this chapter, reports made pursuant to this part, as
421 well as any other information in the possession of the division obtained as the result of a report
422 are private, protected, or controlled records under Title 63, Chapter 2, Government Records
423 Access and Management Act, and may only be made available to:

424 (a) a police or law enforcement agency investigating a report of known or suspected
425 child abuse or neglect;

426 (b) a physician who reasonably believes that a child may be the subject of abuse or
427 neglect;

428 (c) an agency that has responsibility or authority to care for, treat, or supervise a child

429 who is the subject of a report;

430 (d) a contract provider that has a written contract with the division to render services to
431 a child who is the subject of a report;

432 (e) any subject of the report, the natural parents of the minor, and the guardian ad
433 litem;

434 (f) a court, upon a finding that access to the records may be necessary for the
435 determination of an issue before ~~[it]~~ the court, provided that in a divorce, custody, or related
436 proceeding between private parties, the record alone is:

437 (i) limited to objective or undisputed facts that were verified at the time of the
438 investigation; and

439 (ii) devoid of conclusions drawn by the division or any of ~~[its]~~ the division's workers
440 on the ultimate issue of whether or not a person's acts or omissions constituted any level of
441 abuse or neglect of another person;

442 (g) an office of the public prosecutor or its deputies in performing an official duty;

443 (h) a person authorized by a Children's Justice Center, for the purposes described in
444 Section 67-5b-102;

445 (i) a person engaged in bona fide research, when approved by the director of the
446 division, if the information does not include names and addresses;

447 (j) the State Office of Education, acting on behalf of itself or on behalf of a school
448 district, for the purpose of evaluating whether an individual should be permitted to obtain or
449 retain a license as an educator or serve as an employee or volunteer in a school, limited to
450 information with substantiated findings involving an alleged sexual offense, an alleged felony
451 or class A misdemeanor drug offense, or any alleged offense against the person under Title 76,
452 Chapter 5, Offenses Against the Person, and with the understanding that the office must
453 provide the subject of a report received under Subsection (1)(k) with an opportunity to respond
454 to the report before making a decision concerning licensure or employment;

455 (k) any person identified in the report as a perpetrator or possible perpetrator of child
456 abuse or neglect, after being advised of the screening prohibition in Subsection (2); and

457 (l) a person filing a petition for a child protective order on behalf of a minor who is the
458 subject of the report.

459 (2) (a) ~~[No]~~ A person, unless listed in Subsection (1), may not request another person

460 to obtain or release a report or any other information in the possession of the division obtained
461 as a result of the report that is available under Subsection (1)(k) to screen for potential
462 perpetrators of child abuse or neglect.

463 (b) A person who requests information knowing that it is a violation of Subsection
464 (2)(a) to do so is subject to the criminal penalty in Subsection (4).

465 (3) (a) Except as provided in Section 62A-4a-116.3 and Subsection (3)(b), the division
466 and law enforcement officials shall ensure the anonymity of the person or persons making the
467 initial report and any others involved in its subsequent investigation.

468 (b) Notwithstanding any other provision of law, excluding Section 78-3a-314, but
469 including this chapter and Title 63, Chapter 2, Government Records Access and Management
470 Act, when the division makes a report or other information in its possession available under
471 Subsection (1)(e) to a subject of the report or a parent of a minor, the division shall remove
472 from the report or other information only the names, addresses, and telephone numbers of
473 individuals or specific information that could:

474 (i) identify the referent;

475 (ii) impede a criminal investigation; or

476 (iii) endanger a person's safety.

477 (4) Any person who wilfully permits, or aides and abets the release of data or
478 information obtained as a result of this part, in the possession of the division or contained on
479 any part of the Management Information System, in violation of this part or Sections
480 62A-4a-116 through 62A-4a-116.3, is guilty of a class C misdemeanor.

481 (5) The physician-patient privilege is not a ground for excluding evidence regarding a
482 child's injuries or the cause of those injuries, in any proceeding resulting from a report made in
483 good faith pursuant to this part.

484 Section 7. Section **63A-1-109** is amended to read:

485 **63A-1-109. Divisions of department -- Administration.**

486 (1) The department shall be composed of the following divisions:

487 (a) administrative rules;

488 (b) archives and records;

489 (c) facilities construction and management;

490 (d) finance;

- 491 (e) fleet operations;
- 492 (f) information technology services;
- 493 (g) office of state debt collection;
- 494 (h) state purchasing and general services; ~~and~~
- 495 (i) risk management[-]; and
- 496 (j) office of child welfare parental defense.

497 (2) Each division shall be administered and managed by a division director.

498 Section 8. Section **63A-11-101** is enacted to read:

499 **CHAPTER 11. OFFICE OF CHILD WELFARE PARENTAL DEFENSE**

500 **63A-11-101. Title.**

501 This chapter is known as the "Office of Child Welfare Parental Defense."

502 Section 9. Section **63A-11-102** is enacted to read:

503 **63A-11-102. Definitions.**

504 For purposes of this chapter:

505 (1) "Child welfare case" means a proceeding under Title 78, Chapter 3a, Juvenile
506 Courts, Part 3 or 4.

507 (2) "Contracted parental defense attorney" means an attorney or law firm authorized to
508 practice law in Utah who is under contract with the office to provide parental defense in child
509 welfare cases.

510 (3) "Director" means the director of the office.

511 (4) "Fund" means the Child Welfare Parental Defense Fund established in Section
512 63A-11-202.

513 (5) "Office" means the Office of Child Welfare Parental Defense created in Section
514 63A-11-103.

515 Section 10. Section **63A-11-103** is enacted to read:

516 **63A-11-103. Creation of office.**

517 There is created within the Department of Administrative Services, the Office of Child
518 Welfare Parental Defense.

519 Section 11. Section **63A-11-104** is enacted to read:

520 **63A-11-104. Office director -- Appointment -- Duties.**

521 (1) (a) The executive director of the department shall appoint the director of the office

522 with the approval of the governor.

523 (b) The director shall be an attorney licensed to practice law in the state.

524 (2) The director shall administer and enforce this chapter.

525 (3) The director may employ staff.

526 Section 12. Section **63A-11-105** is enacted to read:

527 **63A-11-105. Office -- Duties, functions, and responsibilities.**

528 The duties, functions, and responsibilities of the office include the following:

529 (1) to develop and enter into contracts with attorneys authorized to practice law in the

530 state, as independent contractors, to serve as parental defense attorneys;

531 (2) to provide assistance and advice to contracted parental defense attorneys;

532 (3) to develop and provide educational and training programs for contracted parental
533 defense attorneys; and

534 (4) to provide information and advice to assist contracted parental defense attorneys to
535 comply with their professional, contractual, and ethical duties.

536 Section 13. Section **63A-11-106** is enacted to read:

537 **63A-11-106. Annual report -- Budget.**

538 (1) On or before the 1st day of October each year, the director shall report to the
539 governor and the Child Welfare Legislative Oversight Panel of the Legislature regarding the
540 preceding fiscal year on the operations, activities, and goals of the division.

541 (2) The director shall prepare and submit to the executive director a budget of:

542 (a) the administrative expenses for the office; and

543 (b) the amount estimated to fund needed contracted parental defense attorneys and
544 other costs.

545 Section 14. Section **63A-11-107** is enacted to read:

546 **63A-11-107. Parental defense attorney.**

547 (1) With respect to child welfare cases, a contracted parental defense attorney shall:

548 (a) adequately prepare for and attend all court hearings, including initial and continued
549 shelter hearings and mediations;

550 (b) fully advise the client of the nature of the proceedings and of the client's rights,
551 communicate to the client any offers of settlement or compromise, and advise the client
552 regarding the reasonably foreseeable consequences of any course of action in the proceedings;

553 (c) be reasonably available to consult with the client outside of court proceedings;

554 (d) where attendance of a parental defense attorney is reasonably needed, attend
555 meetings regarding the client's case with representatives of one or more of the Division of
556 Child and Family Services, the Office of the Attorney General, and the Office of the Guardian
557 Ad Litem;

558 (e) represent the interest of the client at all stages of the proceedings before the trial
559 court;

560 (f) participate in the training courses and otherwise maintain the standards described in
561 Subsection (3).

562 (2) If the office enters into a contract with an attorney under Section 63A-11-105, the
563 contract shall require that each attorney in the firm who will provide representation of parents
564 in child welfare cases under the contract perform the duties described in Subsection (1).

565 (3) (a) Except as otherwise provided in Subsection (3)(b), a contracted parental defense
566 attorney shall meet the standards developed by the director which may include:

567 (i) completion of a basic training course provided by the office;

568 (ii) experience in child welfare cases; and

569 (iii) participation each calendar year in continuing legal education courses providing no
570 fewer than eight hours of instruction in child welfare law.

571 (b) In accordance with Title 62, Chapter 46a, Utah Administrative Rulemaking Act, the
572 director may, by rule, exempt from the requirements of Subsection (3)(a) an attorney who has
573 equivalent training or adequate experience.

574 (4) Payment for the representation, costs, and expenses of the contracted parental
575 defense attorney shall be made from the Child Welfare Parental Defense Fund as provided in
576 Section 63A-11-202.

577 Section 15. Section **63A-11-108** is enacted to read:

578 **63A-11-108. Records access.**

579 (1) (a) Notwithstanding Title 63, Chapter 2, Government Records Access and
580 Management Act, and except as provided in Subsection (1)(b), all records of a contracted
581 parental defense attorney are protected and may not be released or made public upon subpoena,
582 search warrant, discovery proceedings, or otherwise.

583 (b) All records of a contracted parental defense attorney are subject to legislative

584 subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers.

585 (2) Records released in accordance with Subsection (1)(b) shall be maintained as
586 confidential by the Legislature. The professional legislative staff may, however, include
587 summary data and nonidentifying information in its audits and reports to the Legislature.

588 Section 16. Section **63A-11-201** is enacted to read:

589 **63A-11-201. Child welfare parental defense contracts -- Qualifications -- Duties.**

590 (1) The office shall enter into contracts with qualified parental defense attorneys to
591 provide services for an indigent parent or parents who are the subject of a petition alleging
592 abuse, neglect, or dependency, and will require a parental defense attorney pursuant to Section
593 78-3a-913.

594 (2) Payment for the representation, costs, and expenses of legal defense counsel shall
595 be made from the Child Welfare Parental Defense Fund as provided in Section 63A-11-202.

596 (3) The parental defense attorney shall maintain the minimum qualifications as
597 provided by this chapter.

598 Section 17. Section **63A-11-202** is enacted to read:

599 **63A-11-202. Child Welfare Parental Defense Fund -- Creation.**

600 (1) There is created a restricted special revenue fund known as the "Child Welfare
601 Parental Defense Fund".

602 (2) Subject to availability, the director may make distributions from the fund as
603 required in this chapter for the following purposes:

604 (a) to pay for the representation, costs, expert witness fees, and expenses of contracted
605 parental defense attorneys who are under contract with the division to provide parental defense
606 in child welfare cases for the indigent parent or parents that are the subject of a petition
607 alleging abuse, neglect, or dependency; and

608 (b) for administrative costs pursuant to this chapter.

609 (3) The fund consists of:

610 (a) appropriations made to the fund by the Legislature;

611 (b) interest and earnings from the investment of fund monies;

612 (c) proceeds deposited by participating counties pursuant to Section 63A-11-203; and

613 (d) private contributions to the Child Welfare Parental Defense Fund.

614 (4) The state treasurer shall invest the money in the fund by following the procedures

615 and requirements of Title 51, Chapter 7, State Money Management Act.

616 (5) (a) If the director anticipates a deficit in the fund during any fiscal year:

617 (i) the director shall request an appropriation from the Legislature; and

618 (ii) the Legislature may fund the anticipated deficit through appropriation but is not
619 required to fund the deficit.

620 (b) If the anticipated deficit is not funded by the Legislature the director may request an
621 interim assessment to participating counties to fund the anticipated deficit.

622 Section 18. Section **63A-11-203** is enacted to read:

623 **63A-11-203. Agreements for coverage by the Child Welfare Parental Defense**
624 **Fund -- Eligibility -- County and state obligations -- Termination -- Revocation.**

625 (1) A county legislative body may annually enter into a written agreement with the
626 office to provide for payment of parental defense attorney costs out of the Child Welfare
627 Parental Defense Fund.

628 (2) An agreement for payment of parental defense costs from the fund shall provide
629 that the county shall pay into the fund an amount defined by a formula established in rule by
630 the office.

631 (3) (a) Except as provided in Subsection (3)(b), after the first year of operation of the
632 fund, any county that elects to initiate participation in the fund, or reestablish participation in
633 the fund after participation was terminated, shall be required to make an equity payment, in
634 addition to the assessment provided in Subsection (2).

635 (b) The equity payment shall be determined by the office in accordance with division
636 rules.

637 (4) The agreement shall provide for revocation of the agreement for failure to pay
638 assessments on the due date established by rule.

639 (5) Any county that elects to withdraw from participation in the fund, or whose
640 participation in the fund is revoked due to failure to pay its assessments when due, shall forfeit
641 any right to any previously paid assessments by the county or coverage from the fund.

642 Section 19. Section **78-3a-105** is amended to read:

643 **78-3a-105. Concurrent jurisdiction -- District court and juvenile court.**

644 (1) The district court or other court has concurrent jurisdiction with the juvenile court
645 as follows:

646 (a) when a person who is 18 years of age or older and who is under the continuing
647 jurisdiction of the juvenile court under Section 78-3a-118 violates any federal, state, or local
648 law or municipal ordinance; and

649 (b) in establishing paternity and ordering testing for the purposes of establishing
650 paternity, in accordance with Title 78, Chapter 45a, Uniform Act on Paternity, with regard to
651 proceedings initiated under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 4,
652 Termination of Parental Rights Act.

653 (2) The juvenile court has jurisdiction over petitions to modify a minor's birth
654 certificate if the court otherwise has jurisdiction over the minor.

655 (3) This section does not deprive the district court of jurisdiction to appoint a guardian
656 for a minor, or to determine the support, custody, and parent-time of a minor upon writ of
657 habeas corpus or when the question of support, custody, and parent-time is incidental to the
658 determination of a cause in the district court.

659 (4) (a) Where a support, custody, or parent-time award has been made by a district
660 court in a divorce action or other proceeding, and the jurisdiction of the district court in the
661 case is continuing, the juvenile court may acquire jurisdiction in a case involving the same
662 minor if the minor is dependent, abused, neglected, or otherwise comes within the jurisdiction
663 of the juvenile court under Section 78-3a-104.

664 (b) The juvenile court may, by order, change the custody, subject to Subsection
665 30-3-10(4), support, parent-time, and visitation rights previously ordered in the district court as
666 necessary to implement the order of the juvenile court for the safety and welfare of the minor.
667 The juvenile court order remains in effect so long as the jurisdiction of the juvenile court
668 continues.

669 (c) When a copy of the findings and order of the juvenile court has been filed with the
670 district court, the findings and order of the juvenile court are binding on the parties to the
671 divorce action as though entered in the district court.

672 (5) The juvenile court has jurisdiction over questions of custody, support, and
673 parent-time, of a minor who comes within the court's jurisdiction under this section or Section
674 78-3a-104.

675 Section 20. Section **78-3a-115** is amended to read:

676 **78-3a-115. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's**

677 **cases heard separately from adult cases -- Minor or parents or custodian heard**
678 **separately -- Continuance of hearing -- Consolidation of proceedings involving more than**
679 **one minor.**

680 (1) Hearings in minor's cases shall be held before the court without a jury and may be
681 conducted in an informal manner.

682 (a) In abuse, neglect, and dependency cases in all districts other than pilot districts
683 selected by the Judicial Council under Subsection 78-3-21(15)(a), the court shall exclude [~~all~~
684 ~~persons~~] the general public from hearings held prior to July 1, [~~2005 who do not have a direct~~
685 ~~interest in the proceedings~~] 2004.

686 (b) In delinquency cases the court shall admit all persons who have a direct interest in
687 the case and may admit persons requested by the parent or legal guardian to be present. The
688 court shall exclude all other persons except as provided in Subsection (1)(c).

689 (c) In delinquency cases in which the minor charged is 14 years of age or older, the
690 court shall admit any person unless the hearing is closed by the court upon findings on the
691 record for good cause if:

692 (i) the minor has been charged with an offense which would be a felony if committed
693 by an adult; or

694 (ii) the minor is charged with an offense that would be a class A or B misdemeanor if
695 committed by an adult, and the minor has been previously charged with an offense which
696 would be a misdemeanor or felony if committed by an adult.

697 (d) The victim of any act charged in a petition or information involving an offense
698 committed by a minor which if committed by an adult would be a felony or a class A or class B
699 misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter
700 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77,
701 Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not
702 apply to important juvenile justice hearings as defined in Section 77-38-2.

703 (e) A victim, upon request to appropriate juvenile court personnel, shall have the right
704 to inspect and duplicate juvenile court legal records that have not been expunged concerning:

705 (i) the scheduling of any court hearings on the petition;

706 (ii) any findings made by the court; and

707 (iii) any sentence or decree imposed by the court.

708 (2) Minor's cases shall be heard separately from adult cases. The minor or ~~[his]~~ the
709 minor's parents or custodian may be heard separately when considered necessary by the court.
710 The hearing may be continued from time to time to a date specified by court order.

711 (3) When more than one minor is involved in a home situation which may be found to
712 constitute neglect or dependency, or when more than one minor is alleged to be involved in the
713 same law violation, the proceedings may be consolidated, except that separate hearings may be
714 held with respect to disposition.

715 Section 21. Section **78-3a-301 (Effective 07/01/04)** is amended to read:

716 **78-3a-301 (Effective 07/01/04). Court-ordered protective custody of a minor**
717 **following petition filing -- Grounds.**

718 (1) After a petition has been filed under Subsection 78-3a-305(1), if the minor who is
719 the subject of the petition is not in the protective custody of the division, a court may order that
720 the minor be removed from the minor's home or otherwise taken into protective custody if the
721 court finds, by a preponderance of the evidence, that any one or more of the following
722 circumstances exist:

723 (a) there is an imminent danger to the physical health or safety of the minor and the
724 minor's physical health or safety may not be protected without removing the minor from the
725 custody of the minor's parent or guardian~~[-. If a minor has previously been adjudicated as~~
726 ~~abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency~~
727 ~~has occurred involving the same alleged abuser or under similar circumstance as the previous~~
728 ~~abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the~~
729 ~~custody of the minor's parent];~~

730 (b) a parent or guardian engages in or threatens the minor with unreasonable conduct
731 that causes the minor to suffer emotional damage and there are no reasonable means available
732 by which the minor's emotional health may be protected without removing the minor from the
733 custody of the minor's parent or guardian;

734 (c) ~~[(†)]~~ the minor or another minor residing in the same household has been physically
735 or sexually abused, or is considered to be at substantial risk of being physically or sexually
736 abused, by a parent or guardian, a member of the parent's or guardian's household, or other
737 person known to the parent or guardian~~[-];~~

738 ~~[(ii) For purposes of this Subsection (1)(c), another minor residing in the same~~

739 household may not be removed from the home unless that minor is considered to be at
740 substantial risk of being physically or sexually abused as described in Subsection (1)(c)(i) or
741 (iii);]

742 [~~(iii) If a parent or guardian has received actual notice that physical or sexual abuse by
743 a person known to the parent has occurred, and there is evidence that the parent or guardian
744 failed to protect the minor by allowing the minor to be in the physical presence of the alleged
745 abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being
746 physically or sexually abused;~~]

747 (d) the parent or guardian is unwilling to have physical custody of the minor;

748 (e) the minor has been abandoned or left without any provision for the minor's support;

749 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged
750 or cannot arrange for safe and appropriate care for the minor;

751 (g) a relative or other adult custodian with whom the minor has been left by the parent
752 or guardian is unwilling or unable to provide care or support for the minor, the whereabouts of
753 the parent or guardian are unknown, and reasonable efforts to locate the parent or guardian
754 have been unsuccessful;

755 (h) the minor is in immediate need of medical care;

756 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an
757 environment that poses a threat to the minor's health or safety; or

758 (ii) a parent's or guardian's action in leaving a minor unattended would reasonably pose
759 a threat to the minor's health or safety;

760 (j) [~~(j)~~] the minor or another minor residing in the same household has been neglected;
761 [and]

762 [~~(ii) for purposes of Subsection (1)(j)(i), another minor residing in the same household
763 may not be removed unless that minor is considered to be at substantial risk of being
764 neglected;~~]

765 (k) an infant has been abandoned, as defined in Section 78-3a-313.5;

766 (l) the parent or guardian, or an adult residing in the same household as the parent or
767 guardian, has been charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab
768 Act, and any clandestine laboratory operation, as defined in Section 58-37d-3, was located in
769 the residence or on the property where the minor resided; or

770 (m) the minor's welfare is otherwise endangered.

771 (2) (a) For purposes of Subsection (1)(a), if a minor has previously been adjudicated as
772 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
773 has occurred involving the same substantiated abuser or under similar circumstance as the
774 previous abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in
775 the custody of the minor's parent.

776 (b) For purposes of Subsection (1)(c):

777 (i) another minor residing in the same household may not be removed from the home
778 unless that minor is considered to be at substantial risk of being physically or sexually abused
779 as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

780 (ii) if a parent or guardian has received actual notice that physical or sexual abuse by a
781 person known to the parent has occurred, and there is evidence that the parent or guardian
782 failed to protect the minor, after having received the notice, by allowing the minor to be in the
783 physical presence of the alleged abuser, that fact constitutes prima facie evidence that the
784 minor is at substantial risk of being physically or sexually abused.

785 ~~[(2) A]~~ (3) In the absence of one of the factors described in Subsection (1), a court
786 may not remove a minor from the parent's or guardian's custody on the basis of:

787 (a) educational neglect~~[, in the absence of one of the factors described in Subsection~~
788 ~~(1). (3) A court may not remove a minor from the parent's or guardian's custody on the basis~~
789 ~~of];~~

790 (b) mental illness or poverty of the parent or guardian~~[, in the absence of one of the~~
791 ~~factors described in Subsection (1).]; or~~

792 (c) disability of the parent or guardian, as defined in Subsection 57-21-3(9).

793 (4) A minor removed from the custody of the minor's parent or guardian under this
794 section may not be placed or kept in a secure detention facility pending further court
795 proceedings unless the minor is detainable based on guidelines promulgated by the Division of
796 Juvenile Justice Services.

797 (5) This section does not preclude removal of a minor from the minor's home without a
798 warrant or court order under Section 62A-4a-202.1.

799 Section 22. Section **78-3a-304.5** is amended to read:

800 **78-3a-304.5. Rules of procedure -- Ex parte communications.**

801 (1) The Utah Rules of Civil Procedure and the Utah Rules of Juvenile Procedure apply
802 to abuse, neglect, and dependency proceedings unless the provisions of this part specify
803 otherwise.

804 (2) Any unauthorized ex parte communication concerning a pending case between a
805 judge and a party to an abuse, neglect, or dependency proceeding shall be recorded for
806 subsequent review, if necessary, by the Judicial Conduct Commission.

807 Section 23. Section **78-3a-307** is amended to read:

808 **78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative --**
809 **DCFS custody.**

810 (1) (a) At the shelter hearing, when the court orders that a child be removed from the
811 custody of his parent in accordance with the requirements of Section 78-3a-306, the court shall
812 first determine whether there is another natural parent as defined in Subsection (1)(b), with
813 whom the child was not residing at the time the events or conditions that brought him within
814 the court's jurisdiction occurred, who desires to assume custody of the child. If that parent
815 requests custody, the court shall place the minor with that parent unless it finds that the
816 placement would be unsafe or otherwise detrimental to the child. The provisions of this
817 Subsection (1) are limited by the provisions of Subsection (8)(b).

818 (b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section
819 "natural parent" includes only a biological or adoptive mother, an adoptive father, or a
820 biological father who was married to the child's biological mother at the time the child was
821 conceived or born, or who has strictly complied with the provisions of Section 78-30-4.14 prior
822 to removal of the child or voluntary surrender of the child by the custodial parent. This
823 definition applies regardless of whether the child has been or will be placed with adoptive
824 parents or whether adoption has been or will be considered as a long term goal for the child.

825 (c) (i) The court shall make a specific finding regarding the fitness of that parent to
826 assume custody, and the safety and appropriateness of the placement.

827 (ii) The court shall, at a minimum, order the division to visit the parent's home,
828 perform criminal background checks described in Sections 78-3a-307.1 and 62A-4a-202.4, and
829 check the division's management information system for any previous reports of abuse or
830 neglect received by the division regarding the parent at issue.

831 (iii) The court may order the Division of Child and Family Services to conduct any

832 further investigation regarding the safety and appropriateness of the placement.

833 (iv) The division shall report its findings in writing to the court.

834 (v) The court may place the child in the temporary custody of the division, pending its
835 determination regarding that placement.

836 (2) If the court orders placement with a parent under Subsection (1), the child and the
837 parent are under the continuing jurisdiction of the court. The court may order that the parent
838 assume custody subject to the supervision of the court, and order that services be provided to
839 the parent from whose custody the child was removed, the parent who has assumed custody, or
840 both. The court shall also provide for reasonable parent-time with the parent from whose
841 custody the child was removed, unless parent-time is not in the best interest of the child. The
842 court's order shall be periodically reviewed to determine whether:

843 (a) placement with the parent continues to be in the child's best interest;

844 (b) the child should be returned to the original custodial parent;

845 (c) the child should be placed with a relative, pursuant to Subsection (5); or

846 (d) the child should be placed in the custody of the division.

847 (3) The time limitations described in Section 78-3a-311 with regard to reunification
848 efforts, apply to children placed with a previously noncustodial parent in accordance with
849 Subsection (1).

850 (4) Legal custody of the child is not affected by an order entered under Subsection (1)
851 or (2). In order to affect a previous court order regarding legal custody, the party must petition
852 that court for modification of the order.

853 (5) (a) (i) If, at the time of the shelter hearing, a child is removed from the custody of
854 his parent and is not placed in the custody of his other parent, the court shall, at that time,
855 determine whether there is a relative who is able and willing to care for the child.

856 (ii) The court may order the Division of Child and Family Services to conduct a
857 reasonable search to determine whether there are relatives of the child who are willing and
858 appropriate, in accordance with the requirements of this part and Title 62A, Chapter 4a, Part 2,
859 Child Welfare Services, for placement of the child. The court shall order the parents to
860 cooperate with the division, within five working days, to provide information regarding
861 relatives who may be able and willing to care for the child.

862 (iii) The child may be placed in the temporary custody of the division pending [~~that~~]

863 the determination under Subsection (5)(a)(ii).

864 (iv) This section may not be construed as a guarantee that an identified relative will
865 receive custody of the child. However, preferential consideration [~~may~~] shall be given to a
866 relative's request for placement of the child, if it is in the best interest of the child, and the
867 provisions of this section are satisfied.

868 (b) (i) If a willing relative is identified pursuant to Subsection (5)(a), the court shall
869 make a specific finding regarding the fitness of that relative to assume custody, and the safety
870 and appropriateness of placement with that relative. In order to be considered a "willing
871 relative" under this section, the relative shall be willing to cooperate if the child's permanency
872 goal is reunification with his parent or parents, and be willing to adopt or take permanent
873 custody of the child if that is determined to be in the best interest of the child.

874 (ii) The court shall, at a minimum, order the division to conduct criminal background
875 checks described in Sections 78-3a-307.1 and 62A-4a-202.4, visit the relative's home, check
876 the division's management information system for any previous reports of abuse or neglect
877 regarding the relative at issue, report its findings in writing to the court, and provide sufficient
878 information so that the court may determine whether:

879 (A) the relative has any history of abusive or neglectful behavior toward other children
880 that may indicate or present a danger to this child;

881 (B) the child is comfortable with the relative;

882 (C) the relative recognizes the parent's history of abuse and is determined to protect the
883 child;

884 (D) the relative is strong enough to resist inappropriate requests by the parent for
885 access to the child, in accordance with court orders;

886 (E) the relative is committed to caring for the child as long as necessary; and

887 (F) the relative can provide a secure and stable environment for the child.

888 (iii) The court may order the Division of Child and Family Services to conduct any
889 further investigation regarding the safety and appropriateness of the placement.

890 (iv) The division shall complete and file its assessment regarding placement with a
891 relative as soon as practicable, in an effort to facilitate placement of the child with a relative.

892 (c) The court may place the child in the temporary custody of the division, pending the
893 division's investigation pursuant to Subsection (5)(b), and the court's determination regarding

894 that placement. The court shall ultimately base its determination regarding placement with a
895 relative on the best interest of the child.

896 (d) For purposes of this section, "relative" means an adult who is a grandparent, great
897 grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first
898 cousin, stepsibling, or sibling of the child. In the case of a child defined as an "Indian" under
899 the Indian Child Welfare Act, 25 U.S.C. Section 1903, "relative" also means an "extended
900 family member" as defined by that statute.

901 (6) (a) When the court vests physical custody of a child with a relative pursuant to
902 Subsection (5), it shall order that the relative assume custody subject to the continuing
903 supervision of the court, and shall order that any necessary services be provided to the minor
904 and the relative. That child is not within the temporary custody or custody of the Division of
905 Child and Family Services. The child and any relative with whom the child is placed are under
906 the continuing jurisdiction of the court. The court may enter any order that it considers
907 necessary for the protection and best interest of the child. The court shall provide for
908 reasonable parent-time with the parent or parents from whose custody the child was removed
909 unless parent-time is not in the best interest of the child.

910 (b) (i) Placement with a relative pursuant to Subsection (5) shall be periodically
911 reviewed by the court, no less often than every six months, to determine whether:

912 (A) placement with the relative continues to be in the child's best interest;

913 (B) the child should be returned home; or

914 (C) the child should be placed in the custody of the division.

915 (ii) No later than 12 months after placement with a relative the court shall schedule a
916 hearing for the purpose of entering a permanent order in accordance with the best interest of the
917 child.

918 (iii) The time limitations described in Section 78-3a-311, with regard to reunification
919 efforts, apply to children placed with a relative pursuant to Subsection (5).

920 (7) When the court orders that a child be removed from the custody of his parent and
921 does not vest custody in another parent or relative under this section, the court shall order that
922 the child be placed in the temporary custody of the Division of Child and Family Services, to
923 proceed to adjudication and disposition and to be provided with care and services in
924 accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.

925 (8) (a) Any preferential consideration that a relative [~~may be~~] is initially granted
926 pursuant to Subsection (5) expires 120 days from the date of the shelter hearing. After that
927 time period has expired, a relative who has not obtained custody or asserted an interest in a
928 child, may not be granted preferential consideration by the division or the court.

929 (b) When the time period described in Subsection (8)(a) has expired, the preferential
930 consideration which [~~may~~] is initially [~~be~~] granted to a natural parent in accordance with
931 Subsection (1), is limited. After that time the court shall base its custody decision on the best
932 interest of the child.

933 Section 24. Section **78-3a-311** is amended to read:

934 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

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

939 (2) (a) (i) Whenever the court orders continued removal at the dispositional hearing,
940 and that the minor remain in the custody of the Division of Child and Family Services, it shall
941 first establish a primary permanency goal for the minor and determine whether, in view of the
942 primary permanency goal, reunification services are appropriate for the child and the child's
943 family, pursuant to Subsection (3).

944 (ii) When the court determines that reunification services are appropriate for the child
945 and the child's family, the court shall provide for reasonable parent-time with the parent or
946 parents from whose custody the child was removed, unless parent-time is not in the best
947 interest of the child.

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

954 (b) (i) In addition to the primary permanency goal, the court shall establish a
955 concurrent permanency goal. The concurrent permanency goal shall include a representative

956 list of the conditions under which the primary permanency goal will be abandoned in favor of
957 the concurrent permanency goal and an explanation of the effect of abandoning or modifying
958 the primary permanency goal.

959 (ii) A permanency hearing shall be conducted in accordance with Subsection
960 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
961 child's primary permanency goal.

962 (iii) The court may amend a child's primary permanency goal before the establishment
963 of a final permanency plan under Section 78-3a-312. The court is not limited to the terms of
964 the concurrent permanency goal in the event that the primary permanency goal is abandoned.
965 If, at anytime, the court determines that reunification is no longer a child's primary permanency
966 goal, the court shall conduct a permanency hearing in accordance with Section 78-3a-312
967 within the earlier of 30 days of the court's determination or 12 months from the original
968 removal of the child.

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

974 (ii) The court shall determine whether the services offered or provided by the division
975 under the treatment plan constitute "reasonable efforts" on the part of the division. The court
976 shall also determine and define the responsibilities of the parent under the treatment plan in
977 accordance with Section 62A-4a-205. Those duties and responsibilities shall be identified on
978 the record, for the purpose of assisting in any future determination regarding the provision of
979 reasonable efforts, in accordance with state and federal law.

980 (iii) The time period for reunification services may not exceed 12 months from the date
981 that the child was initially removed from the child's home. Nothing in this section may be
982 construed to entitle any parent to an entire 12 months of reunification services.

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

985 (v) If, at any time, continuation of reasonable efforts to reunify a child is determined to
986 be inconsistent with the final permanency plan for the child established pursuant to Subsection

987 78-3a-312, then measures shall be taken, in a timely manner, to place the child in accordance
988 with the permanency plan, and to complete whatever steps are necessary to finalize the
989 permanent placement of the child.

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

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

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

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

1000 (i) hold a permanency hearing eight months after the date of the initial removal,
1001 pursuant to Section 78-3a-312; and

1002 (ii) order the discontinuance of those services after eight months from the initial
1003 removal of the child from the home if the parent or parents have not made substantial efforts to
1004 comply with the treatment plan.

1005 (g) With regard to a child in the custody of the division whose parent or parents have
1006 been ordered to receive reunification services but who have abandoned that child for a period
1007 of six months since the date that reunification services were ordered, the court shall terminate
1008 reunification services, and the division shall petition the court for termination of parental
1009 rights.

1010 (3) (a) Because of the state's interest in and responsibility to protect and provide
1011 permanency for children who are abused, neglected, or dependent, the Legislature finds that a
1012 parent's interest in receiving reunification services is limited. The court may determine that
1013 efforts to reunify a child with the child's family are not reasonable or appropriate, based on the
1014 individual circumstances, and that reunification services should not be provided. In
1015 determining "reasonable efforts" to be made with respect to a child, and in making "reasonable
1016 efforts," the child's health, safety, and welfare shall be the paramount concern.

1017 (b) There is a presumption that reunification services should not be provided to a

1018 parent if the court finds, by clear and convincing evidence, that any of the following
1019 circumstances exist:

1020 (i) the whereabouts of the parents are unknown, based upon a verified affidavit
1021 indicating that a reasonably diligent search has failed to locate the parent;

1022 (ii) the parent is suffering from a mental illness of such magnitude that it renders him
1023 incapable of utilizing reunification services; that finding shall be based on competent evidence
1024 from mental health professionals establishing that, even with the provision of services, the
1025 parent is unlikely to be capable of adequately caring for the child within 12 months;

1026 (iii) the minor has been previously adjudicated as an abused child due to physical or
1027 sexual abuse, that following the adjudication the child was removed from the custody of his
1028 parent, was subsequently returned to the custody of that parent, and the minor is being removed
1029 due to additional physical or sexual abuse;

1030 (iv) the parent has caused the death of another child through abuse or neglect or has
1031 committed, aided, abetted, attempted, conspired, or solicited to commit murder or
1032 manslaughter of a child or child abuse homicide;

1033 (v) the minor has suffered severe abuse by the parent or by any person known by the
1034 parent, if the parent knew or reasonably should have known that the person was abusing the
1035 minor;

1036 (vi) the minor has been adjudicated an abused child as a result of severe abuse by the
1037 parent, and the court finds that it would not benefit the child to pursue reunification services
1038 with the offending parent;

1039 (vii) the parent's rights have been terminated with regard to any other child;

1040 (viii) the child has been removed from his home on at least two previous occasions and
1041 reunification services were offered or provided to the family at those times; [or]

1042 (ix) the parent has abandoned the child for a period of six months or longer; or

1043 (x) any other circumstance that the court determines should preclude reunification
1044 efforts or services.

1045 (4) (a) Failure of the parent to respond to previous services or comply with any
1046 previous treatment plan, the fact that the child was abused while the parent was under the
1047 influence of drugs or alcohol, a past history of violent behavior, whether a parent continues to
1048 live with an individual who abused the child, any patterns of the parent's behavior that have

1049 exposed the child to repeated abuse, or testimony by a competent professional that the parent's
1050 behavior is unlikely to be successful, shall be considered in determining whether reunification
1051 services are appropriate.

1052 (b) The court shall also consider whether the parent has expressed an interest in
1053 reunification with the child, in determining whether reunification services are appropriate.

1054 (5) If reunification services are not ordered pursuant to Subsection (3)(a), and the
1055 whereabouts of a parent become known within six months of the out-of-home placement of the
1056 minor, the court may order the division to provide reunification services. The time limits
1057 described in Subsection (2), however, are not tolled by the parent's absence.

1058 (6) If a parent is incarcerated or institutionalized, the court shall order reasonable
1059 services unless it determines that those services would be detrimental to the minor. In
1060 determining detriment, the court shall consider the age of the child, the degree of parent-child
1061 bonding, the length of the sentence, the nature of the treatment, the nature of the crime or
1062 illness, the degree of detriment to the child if services are not offered and, for minors ten years
1063 of age or older, the minor's attitude toward the implementation of family reunification services,
1064 and any other appropriate factors. Reunification services for an incarcerated parent are subject
1065 to the 12-month limitation imposed in Subsection (2). Reunification services for an
1066 institutionalized parent are subject to the 12-month limitation imposed in Subsection (2),
1067 unless the court determines that continued reunification services would be in the child's best
1068 interest.

1069 (7) If, pursuant to Subsection (3)(b)(ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), or (x), the
1070 court does not order reunification services, a permanency hearing shall be conducted within 30
1071 days, in accordance with Section 78-3a-312.

1072 Section 25. Section **78-3a-412** is amended to read:

1073 **78-3a-412. Review following termination.**

1074 (1) At the conclusion of the hearing in which the court orders termination of the
1075 parent-child relationship, the court shall order that a review hearing be held within 90 days
1076 following the date of termination if the child has not been permanently placed.

1077 (2) At that review hearing, the agency or individual vested with custody of the child
1078 shall report to the court regarding the plan for permanent placement of the child. The guardian
1079 ad litem shall submit to the court a written report with recommendations, based on an

1080 independent investigation, for disposition meeting the best interests of the child.

1081 (3) The court may order the agency or individual vested with custody of the child to
1082 report, at appropriate intervals, on the status of the child until the plan for permanent placement
1083 of the child has been accomplished.

1084 Section 26. Section **78-3a-912** is amended to read:

1085 **78-3a-912. Appointment of attorney guardian ad litem -- Right of refusal --**
1086 **Duties and responsibilities -- Training -- Trained staff and court-appointed special**
1087 **advocate volunteers -- Costs -- Immunity.**

1088 (1) The court may appoint an attorney guardian ad litem to represent the best interest of
1089 a minor involved in any case before the court and shall consider only the best interest of a
1090 minor in determining whether to appoint a guardian ad litem.

1091 (2) An attorney guardian ad litem shall represent the best interest of each minor who
1092 may become the subject of a petition alleging abuse, neglect, or dependency, from the date the
1093 minor is removed from the minor's home by the [~~Division of Child and Family Services~~]
1094 division, or the date the petition is filed, whichever occurs earlier.

1095 (3) The Office of the Guardian Ad Litem Director, through an attorney guardian ad
1096 litem, shall:

1097 (a) represent the best interest of the minor in all proceedings;

1098 (b) be trained in applicable statutory, regulatory, and case law, and in accordance with
1099 the United States Department of Justice National Court Appointed Special Advocate
1100 Association guidelines, prior to representing any minor before the court;

1101 (c) conduct or supervise an independent investigation in order to obtain first-hand, a
1102 clear understanding of the situation and needs of the child;

1103 (d) (i) personally meet with the minor[;];

1104 (ii) personally interview the minor if the minor is old enough to communicate[;];

1105 (iii) determine the minor's goals and concerns regarding placement[;]; and

1106 (iv) personally assess or supervise an assessment of the appropriateness and safety of
1107 the minor's environment in each placement;

1108 (e) file written motions, responses, or objections at all stages of a proceeding when
1109 necessary to protect the best interest of a minor;

1110 (f) personally or through a trained volunteer, paralegal, or other trained staff, attend all

1111 administrative and foster care citizen review board hearings pertaining to the minor's case;
1112 (g) participate in all appeals unless excused by order of the court;
1113 (h) be familiar with local experts who can provide consultation and testimony
1114 regarding the reasonableness and appropriateness of efforts made by the Division of Child and
1115 Family Services to maintain a minor in the minor's home or to reunify a minor with the minor's
1116 parent;
1117 (i) to the extent possible, and unless it would be detrimental to the minor, personally or
1118 through a trained volunteer, paralegal, or other trained staff, keep the minor advised of the
1119 status of the minor's case, all court and administrative proceedings, discussions, and proposals
1120 made by other parties, court action, and psychiatric, medical, or other treatment or diagnostic
1121 services that are to be provided to the minor;
1122 (j) review proposed orders for, and as requested by the court, prepare proposed orders
1123 with clear and specific directions regarding services, treatment, and evaluation, assessment, and
1124 protection of the minor and the minor's family; and
1125 (k) personally or through a trained volunteer, paralegal, or other trained staff, monitor
1126 implementation of a minor's treatment plan and any dispositional orders to determine whether
1127 services ordered by the court are actually provided, are provided in a timely manner, and
1128 attempt to assess whether they are accomplishing their intended goal.
1129 (4) (a) An attorney guardian ad litem may use trained volunteers, in accordance with
1130 Title 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other trained
1131 staff to assist in investigation and preparation of information regarding the cases of individual
1132 minors before the court. An attorney guardian ad litem may not, however, delegate the
1133 attorney's responsibilities described in Subsection (3).
1134 (b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained
1135 in and follow, at a minimum, the guidelines established by the United States Department of
1136 Justice Court Appointed Special Advocate Association.
1137 (c) The court may use volunteers trained in accordance with the requirements of
1138 Subsection (4)(b) to assist in investigation and preparation of information regarding the cases
1139 of individual minors within the jurisdiction.
1140 (d) When possible and appropriate, the court may use a volunteer who is a peer of the
1141 minor appearing before the court, in order to provide assistance to that minor, under the

1142 supervision of an attorney guardian ad litem or the attorney's trained volunteer, paralegal, or
1143 other trained staff.

1144 (5) The attorney guardian ad litem shall continue to represent the best interest of the
1145 minor until released from duties by the court.

1146 (6) (a) The juvenile court is responsible for all costs resulting from the appointment of
1147 an attorney guardian ad litem and the costs of volunteer, paralegal, and other staff appointment
1148 and training, and shall use funds appropriated by the Legislature for the guardian ad litem
1149 program to cover those costs.

1150 (b) (i) When the court appoints an attorney guardian ad litem under this section, the
1151 court may assess all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer
1152 expenses against the minor's parents, parent, or legal guardian in a proportion that the court
1153 determines to be just and appropriate.

1154 (ii) The court may not assess those fees or costs against a legal guardian, when that
1155 guardian is the state, or against a parent who is found to be impecunious. If a person claims to
1156 be impecunious, the court shall require of that person an affidavit of impecuniosity as provided
1157 in Section 78-7-36 and the court shall follow the procedures and make the determinations as
1158 provided in Section 78-7-36.

1159 (7) An attorney guardian ad litem appointed under this section, when serving in the
1160 scope of ~~[his]~~ the attorney guardian ad litem's duties as guardian ad litem is considered an
1161 employee of the state for purposes of indemnification under Title 63, Chapter 30, Utah
1162 Governmental Immunity Act.

1163 (8) (a) An attorney guardian ad litem shall represent the best interest of a minor. If the
1164 minor's wishes differ from the attorney's determination of the minor's best interest, the attorney
1165 guardian ad litem shall communicate the minor's wishes to the court in addition to presenting
1166 the attorney's determination of the minor's best interest. A difference between the minor's
1167 wishes and the attorney's determination of best interest may not be considered a conflict of
1168 interest for the attorney.

1169 (b) The court may appoint one attorney guardian ad litem to represent the best interests
1170 of more than one minor child of a marriage.

1171 (9) An attorney guardian ad litem shall be provided access to all Division of Child and
1172 Family Services records regarding the minor at issue and the minor's family.

1173 (10) An attorney guardian ad litem shall maintain current and accurate records
1174 regarding the number of times the attorney has had contact with each minor and the actions the
1175 attorney has taken in representation of the minor's best interest.

1176 (11) (a) Except as provided in Subsection (11)(b), all records of an attorney guardian
1177 ad litem are confidential and may not be released or made public upon subpoena, search
1178 warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63, Chapter 2,
1179 Government Records Access and Management Act.

1180 (b) All records of an attorney guardian ad litem are subject to legislative subpoena,
1181 under Title 36, Chapter 14, Legislative Subpoena Powers, and shall be released to the
1182 Legislature.

1183 (c) Records released in accordance with Subsection (11)(b) shall be maintained as
1184 confidential by the Legislature. The Office of the Legislative Auditor General may, however,
1185 include summary data and nonidentifying information in its audits and reports to the
1186 Legislature.

1187 (d) Because of the unique role of an attorney guardian ad litem described in Subsection
1188 (8), and the state's role and responsibility to provide a guardian ad litem program and, as *parens*
1189 *patriae*, to protect minors, Subsection (11)(b) constitutes an exception to Rules of Professional
1190 Conduct, Rule 1.6, as provided by Rule 1.6(b)(4). A claim of attorney-client privilege does not
1191 bar access to the records of an attorney guardian ad litem by the Legislature, through legislative
1192 subpoena.

1193 (e) The Office of the Guardian Ad Litem shall present an annual report to the Child
1194 Welfare Legislative Oversight Panel detailing:

1195 (i) the development, policy, and management of the statewide guardian ad litem
1196 program;

1197 (ii) the training and evaluation of attorney guardians ad litem and volunteers; and

1198 (iii) the number of children served by the Office of the Guardian Ad Litem.

1199 Section 27. Section **78-3a-913** is amended to read:

1200 **78-3a-913. Right to counsel -- Appointment of counsel for indigent -- Cost --**
1201 **Court hearing to determine compelling reason to appoint a noncontracting attorney --**
1202 **Rate of pay.**

1203 (1) (a) The parents, guardian, custodian, and the minor, if competent, shall be informed

1204 that they have the right to be represented by counsel at every stage of the proceedings. They
1205 have the right to employ counsel of their own choice and if any of them requests an attorney
1206 and is found by the court to be indigent, counsel shall be appointed by the court as provided in
1207 Subsection (3). The court may appoint counsel without a request if it considers representation
1208 by counsel necessary to protect the interest of the minor or of other parties.

1209 (b) The cost of appointed counsel for an indigent minor or other indigent party,
1210 including the cost of counsel and expense of appeal, shall be paid by the county in which the
1211 ~~hearing is~~ trial court proceedings are held. Counties may levy and collect taxes for these
1212 purposes.

1213 (c) The court shall take into account the income and financial ability to retain counsel
1214 of the parents or guardian of a minor in determining the indigency of the minor.

1215 (2) If the state or county responsible to provide legal counsel for an indigent under
1216 Subsection (1)(b) has arranged by contract to provide services under Section 63A-11-109, the
1217 court if it has received notice or a copy of such contract shall appoint the contracting attorney
1218 as legal counsel to represent that indigent.

1219 (3) ~~The~~ In the absence of contrary contractual provisions regarding the selection and
1220 appointment of parental defense counsel, the court shall select and appoint the attorney or
1221 attorneys if:

1222 (a) the contract for indigent legal services is with multiple attorneys; or

1223 (b) the contract is with an additional attorney or attorneys in the event of a conflict of
1224 interest.

1225 (4) If the court considers the appointment of a noncontracting attorney to provide legal
1226 services to an indigent despite the existence of an indigent legal services contract and the court
1227 has a copy or notice of such contract, before the court may make the appointment, it shall:

1228 (a) set the matter for a hearing;

1229 (b) give proper notice to the attorney general ~~[or county attorney of the responsible~~
1230 ~~county of the hearing]~~ and the Division of Child Welfare Parental Defense created in Section
1231 62A-11-103; and

1232 (c) make findings that there is a compelling reason to appoint a noncontracting attorney
1233 before it may make such appointment.

1234 (5) The indigent's mere preference for other counsel shall not be considered a

1235 compelling reason justifying the appointment of a noncontracting attorney.

1236 (6) The court may order a minor, parent, guardian, or custodian for whom counsel is
1237 appointed and the parents or guardian of any minor for whom counsel is appointed to
1238 reimburse the county for the cost of appointed counsel.

1239 (7) If the minor and other parties were not represented by counsel, the court shall
1240 inform them at the conclusion of the proceedings that they have the right to appeal.

1241 **Section 28. Appropriation.**

1242 (1) There is appropriated (\$239,000), as an ongoing appropriation from the General
1243 Fund for fiscal year 2004-05 to the Department of Human Services - Executive Director
1244 Operations -- Services Review Program.

1245 (2) There is appropriated \$239,000, as an ongoing appropriation from the General Fund
1246 for fiscal year 2004-05 to the Child Welfare Parental Defense Fund created in this bill.

1247 **Section 29. Effective date.**

1248 This bill takes effect on July 1, 2004.