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GUARDIAN AD LITEM AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill amends provisions of the Utah Code relating to attorneys guardian ad litem and the Office of Guardian Ad Litem Director.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that supervision of the Office of Guardian Ad Litem is the responsibility of the Guardian Ad Litem Oversight Committee, which is established by the Judicial Council;
- ▶ places limitations on, and establishes requirements regarding, the appointment of an attorney guardian ad litem in a district court proceeding;
- ▶ modifies provisions relating to the duties of an attorney guardian ad litem, a private attorney guardian ad litem, and the director of the Office of Guardian Ad Litem;
- ▶ changes the name of the "Office of Guardian Ad Litem Director" to the "Office of Guardian Ad Litem";
- ▶ modifies the qualifications of the director of the Office of Guardian Ad Litem;
- ▶ deletes provisions relating to the court's direct use of volunteers, and the use of peers, to assist in a minor's case; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

30 This bill provides an effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **51-9-409**, as last amended by Laws of Utah 2008, Chapter 3 and renumbered and
34 amended by Laws of Utah 2008, Chapter 382

35 **62A-4a-202.4**, as last amended by Laws of Utah 2008, Chapters 3 and 299

36 **62A-4a-207**, as last amended by Laws of Utah 2008, Chapters 3, 250, and 382

37 **62A-4a-1003**, as last amended by Laws of Utah 2008, Chapters 3, 299, and 382

38 **62A-4a-1006**, as last amended by Laws of Utah 2008, Chapters 3, 59, 299, and 382

39 **63A-11-202**, as last amended by Laws of Utah 2008, Chapter 382

40 **67-5b-105**, as last amended by Laws of Utah 1997, Chapter 377

41 **78A-2-104 (Superseded 01/01/12)**, as renumbered and amended by Laws of Utah
42 2008, Chapter 3

43 **78A-2-104 (Effective 01/01/12)**, as last amended by Laws of Utah 2008, Chapter 248
44 and renumbered and amended by Laws of Utah 2008, Chapter 3

45 **78A-2-227**, as renumbered and amended by Laws of Utah 2008, Chapter 3

46 **78A-2-228**, as renumbered and amended by Laws of Utah 2008, Chapter 3

47 **78A-6-308**, as last amended by Laws of Utah 2008, Chapter 17 and renumbered and
48 amended by Laws of Utah 2008, Chapter 3

49 **78A-6-512**, as renumbered and amended by Laws of Utah 2008, Chapter 3

50 **78A-6-901**, as renumbered and amended by Laws of Utah 2008, Chapter 3

51 **78A-6-902**, as renumbered and amended by Laws of Utah 2008, Chapter 3

52

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

54 Section 1. Section **51-9-409** is amended to read:

55 **51-9-409. Guardian Ad Litem Services Account established -- Funding -- Uses.**

56 (1) There is created in the General Fund a restricted account known as the Guardian
57 Ad Litem Services Account, for the purpose of funding the Office of [the] Guardian Ad Litem

58 [Director], in accordance with the provisions of Sections 78A-6-901 and 78A-6-902. [The]
59 (2) Except as provided in Subsection (3), the Division of Finance shall allocate 1.75%
60 of the collected surcharge established in Section 51-9-401 to the Guardian Ad Litem Services
61 Account. [~~That amount may not, however,~~]

62 (3) The amount allocated under Subsection (2) may not exceed the amount
63 appropriated to the Guardian Ad Litem Services Account by the Legislature.

64 Section 2. Section **62A-4a-202.4** is amended to read:

65 **62A-4a-202.4. Access to criminal background information.**

66 (1) For purposes of background screening and investigation of abuse or neglect under
67 this chapter and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings,
68 the division shall have direct access to criminal background information maintained pursuant
69 to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

70 (2) The division and the Office of [the] Guardian Ad Litem [Director] are [also]
71 authorized to request the Department of Public Safety to conduct a complete Federal Bureau of
72 Investigation criminal background check through the national criminal history system (NCIC).

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

74 **62A-4a-207. Legislative Oversight Panel -- Responsibilities.**

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

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

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

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

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

86 (2) The president of the Senate shall designate one of the senators appointed to the
87 panel under Subsection (1) as the Senate chair of the panel. The speaker of the House of
88 Representatives shall designate one of the representatives appointed to the panel under
89 Subsection (1) as the House chair of the panel.

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

91 (4) The panel shall:

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

94 (b) upon request, receive testimony from the public, the juvenile court, and from all
95 state agencies involved with the child welfare system, including~~[-, but not limited to,]~~ the
96 division, other offices and agencies within the department, the attorney general's office, the
97 Office of ~~[the]~~ Guardian Ad Litem ~~[Director]~~, and school districts;

98 (c) before ~~[October 1, 2002, and before]~~ October 1 of each year ~~[thereafter]~~, receive
99 reports from the division, the attorney general, and the judicial branch identifying the cases
100 not in compliance with the time limits established in Section 78A-6-309, regarding pretrial
101 and adjudication hearings, Section 78A-6-312, regarding dispositional hearings and
102 reunification services, and Section 78A-6-314, regarding permanency hearings and petitions
103 for termination, and the reasons for the noncompliance;

104 (d) receive recommendations from, and make recommendations to the governor, the
105 Legislature, the attorney general, the division, the Office of ~~[the]~~ Guardian Ad Litem
106 ~~[Director]~~, the juvenile court, and the public;

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

109 (ii) recommend, as ~~[it]~~ the panel considers advisable, budgetary proposals to the
110 Health and Human Services Appropriations Subcommittee, the Executive Offices and
111 Criminal Justice Appropriations Subcommittee, and the Executive Appropriations Committee,
112 which recommendation should be made before December 1 of each year;

113 (f) study and recommend proposed changes to laws governing the child welfare

114 system;

115 (g) study actions the state can take to preserve, unify, and strengthen the child's family
116 ties whenever possible in the child's best interest, including recognizing the constitutional
117 rights and claims of parents whenever those family ties are severed or infringed;

118 (h) perform such other duties related to the oversight of the child welfare system as the
119 panel considers appropriate; and

120 (i) annually report [~~its~~] the panel's findings and recommendations to the president of
121 the Senate, the speaker of the House of Representatives, the Health and Human Services
122 Interim Committee, and the Judiciary Interim Committee.

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

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

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

128 (6) (a) The panel has authority to make recommendations to the Legislature, the
129 governor, the Board of Juvenile Court Judges, the division, and any other statutorily created
130 entity related to the policies and procedures of the child welfare system. The panel does not
131 have authority to make recommendations to the court, the division, or any other public or
132 private entity regarding the disposition of any individual case.

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

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

139 (b) The panel shall have access to all of the division's records, including those
140 regarding individual cases. In accordance with Title 63G, Chapter 2, Government Records
141 Access and Management Act, all documents and information received by the panel shall

142 maintain the same classification that was designated by the division.

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

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

145 (b) legislative subpoena powers under Title 36, Chapter 14, Legislative Subpoena

146 Powers.

147 (9) Members of the panel shall receive salary and expenses in accordance with Section

148 36-2-2.

149 (10) (a) The Office of Legislative Research and General Counsel shall provide staff

150 support to the panel.

151 (b) The panel is authorized to employ additional professional assistance and other staff

152 members as it considers necessary and appropriate.

153 Section 4. Section **62A-4a-1003** is amended to read:

154 **62A-4a-1003. Management Information System -- Requirements -- Contents --**

155 **Purpose -- Access.**

156 (1) (a) The division shall develop and implement a Management Information System
157 that meets the requirements of this section and the requirements of federal law and regulation.

158 (b) The information and records contained in the Management Information System:

159 (i) are protected records under Title 63G, Chapter 2, Government Records Access and
160 Management Act; and

161 (ii) except as provided in Subsections (1)(c) and (d), are available only to a person
162 with statutory authorization under Title 63G, Chapter 2, Government Records Access and
163 Management Act, to review the information and records described in this Subsection (1)(b).

164 (c) Notwithstanding Subsection (1)(b)(ii), the information and records described in
165 Subsection (1)(b) are available to a person:

166 (i) as provided under Subsection (6) or Section 62A-4a-1006; or

167 (ii) who has specific statutory authorization to access the information or records for
168 the purpose of assisting the state with state and federal requirements to maintain information
169 solely for the purpose of protecting minors and providing services to families in need.

170 (d) Notwithstanding Subsection (1)(b)(ii), the information and records described in
171 Subsection (1)(b) may, to the extent required by Title IV-B or IV-E of the Social Security Act,
172 be provided by the division:

- 173 (i) to comply with abuse and neglect registry checks requested by other states; and
- 174 (ii) to the United States Department of Health and Human Services for purposes of
175 maintaining an electronic national registry of substantiated cases of abuse and neglect.

176 (2) With regard to all child welfare cases, the Management Information System shall
177 provide each caseworker and the department's office of licensing, exclusively for the purposes
178 of foster parent licensure and monitoring, with a complete history of each child in that
179 worker's caseload, including:

- 180 (a) a record of all past action taken by the division with regard to that child and the
181 child's siblings;
- 182 (b) the complete case history and all reports and information in the control or keeping
183 of the division regarding that child and the child's siblings;
- 184 (c) the number of times the child has been in the custody of the division;
- 185 (d) the cumulative period of time the child has been in the custody of the division;
- 186 (e) a record of all reports of abuse or neglect received by the division with regard to
187 that child's parent, parents, or guardian including:
 - 188 (i) for each report, documentation of the:
 - 189 (A) latest status; or
 - 190 (B) final outcome or determination; and
 - 191 (ii) information that indicates whether each report was found to be:
 - 192 (A) supported;
 - 193 (B) unsupported;
 - 194 (C) substantiated by a juvenile court;
 - 195 (D) unsubstantiated by a juvenile court; or
 - 196 (E) without merit;
 - 197 (f) the number of times the child's parent or parents failed any child and family plan;

198 and

199 (g) the number of different caseworkers who have been assigned to that child in the
200 past.

201 (3) The division's Management Information System shall:

202 (a) contain all key elements of each family's current child and family plan, including:

203 (i) the dates and number of times the plan has been administratively or judicially
204 reviewed;

205 (ii) the number of times the parent or parents have failed that child and family plan;

206 and

207 (iii) the exact length of time the child and family plan has been in effect; and

208 (b) alert caseworkers regarding deadlines for completion of and compliance with
209 policy, including child and family plans.

210 (4) With regard to all child protective services cases, the Management Information
211 System shall:

212 (a) monitor the compliance of each case with:

213 (i) division rule and policy;

214 (ii) state law; and

215 (iii) federal law and regulation; and

216 (b) include the age and date of birth of the alleged perpetrator at the time the abuse or
217 neglect is alleged to have occurred, in order to ensure accuracy regarding the identification of
218 the alleged perpetrator.

219 (5) Except as provided in Subsection (6) regarding contract providers and Section
220 62A-4a-1006 regarding limited access to the Licensing Information System, all information
221 contained in the division's Management Information System is available to the department,
222 upon the approval of the executive director, on a need-to-know basis.

223 (6) (a) Subject to this Subsection (6), the division may allow its contract providers,
224 court clerks designated by the Administrative Office of the Courts, and the Office of [the]
225 Guardian Ad Litem to have limited access to the Management Information System.

226 (b) A division contract provider has access only to information about a person who is
227 currently receiving services from that specific contract provider.

228 (c) (i) Designated court clerks may only have access to information necessary to
229 comply with Subsection 78B-7-202(2).

230 (ii) The Office of [~~the~~] Guardian Ad Litem may access only the information that:

231 (A) relates to children and families where the Office of [~~the~~] Guardian Ad Litem is
232 appointed by a court to represent the interests of the children; and

233 (B) except as provided in Subsection (6)(d), is entered into the Management
234 Information System on or after July 1, 2004.

235 (d) Notwithstanding Subsection (6)(c)(ii)(B), the Office of [~~the~~] Guardian Ad Litem
236 shall have access to all abuse and neglect referrals about children and families where the office
237 has been appointed by a court to represent the interests of the children, regardless of the date
238 that the information is entered into the Management Information System.

239 (e) Each contract provider and designated representative of the Office of [~~the~~]
240 Guardian Ad Litem who requests access to information contained in the Management
241 Information System shall:

242 (i) take all necessary precautions to safeguard the security of the information
243 contained in the Management Information System;

244 (ii) train its employees regarding:

245 (A) requirements for protecting the information contained in the Management
246 Information System as required by this chapter and under Title 63G, Chapter 2, Government
247 Records Access and Management Act; and

248 (B) the criminal penalties under Sections 62A-4a-412 and 63G-2-801 for improper
249 release of information; and

250 (iii) monitor its employees to ensure that they protect the information contained in the
251 Management Information System as required by law.

252 (f) The division shall take reasonable precautions to ensure that its contract providers
253 comply with the requirements of this Subsection (6).

254 (7) The division shall take all necessary precautions, including password protection
255 and other appropriate and available technological techniques, to prevent unauthorized access
256 to or release of information contained in the Management Information System.

257 Section 5. Section **62A-4a-1006** is amended to read:

258 **62A-4a-1006. Licensing Information System -- Contents -- Juvenile court finding**
259 **-- Protected record -- Access -- Criminal penalty.**

260 (1) (a) The division shall maintain a sub-part of the Management Information System
261 established pursuant to Section 62A-4a-1003, to be known as the Licensing Information
262 System, to be used:

263 (i) for licensing purposes; or

264 (ii) as otherwise specifically provided for by law.

265 (b) The Licensing Information System shall include only the following information:

266 (i) the information described in Subsections 62A-4a-1005(1)(b) and (3)(b);

267 (ii) consented-to supported findings by alleged perpetrators under Subsection
268 62A-4a-1005(3)(a)(iii); and

269 (iii) the information in the licensing part of the division's Management Information
270 System as of May 6, 2002.

271 (2) Notwithstanding Subsection (1), the department's access to information in the
272 Management Information System for the licensure and monitoring of foster parents is
273 governed by Sections 62A-4a-1003 and 62A-2-121.

274 (3) Subject to Subsection 62A-4a-1005(3)(e), upon receipt of a finding from the
275 juvenile court under Section 78A-6-323, the division shall:

276 (a) promptly amend the Licensing Information System; and

277 (b) enter the information in the Management Information System.

278 (4) (a) Information contained in the Licensing Information System is classified as a
279 protected record under Title 63G, Chapter 2, Government Records Access and Management
280 Act.

281 (b) Notwithstanding the disclosure provisions of Title 63G, Chapter 2, Government

282 Records Access and Management Act, the information contained in the Licensing Information
283 System may only be used or disclosed as specifically provided in this chapter and Section
284 62A-2-121.

285 (c) The information described in Subsection (4)(b) is accessible only to:

286 (i) the Office of Licensing within the department:

287 (A) for licensing purposes; or

288 (B) as otherwise specifically provided for by law;

289 (ii) the division to:

290 (A) screen a person at the request of the Office of [~~the~~] Guardian Ad Litem [~~Director~~]:

291 (I) at the time that person seeks a paid or voluntary position with the Office of [~~the~~

292 Guardian Ad Litem [~~Director~~]; and

293 (II) on an annual basis, throughout the time that the person remains with the Office of

294 Guardian Ad Litem [~~Director~~]; and

295 (B) respond to a request for information from a person whose name is listed in the

296 Licensing Information System;

297 (iii) persons designated by the Department of Health and approved by the Department
298 of Human Services, only for the following purposes:

299 (A) licensing a child care program or provider; or

300 (B) determining whether a person associated with a covered health care facility, as
301 defined by the Department of Health by rule, who provides direct care to a child, has a
302 supported finding of a severe type of child abuse or neglect;

303 (iv) persons designated by the Department of Workforce Services and approved by the
304 Department of Human Services for the purpose of qualifying child care providers under
305 Section 35A-3-310.5; and

306 (v) the department, as specifically provided in this chapter.

307 (5) The persons designated by the Department of Health under Subsection (4)(c)(iii)

308 and the persons designated by the Department of Workforce Services under Subsection

309 (4)(c)(iv) shall adopt measures to:

310 (a) protect the security of the Licensing Information System; and

311 (b) strictly limit access to the Licensing Information System to those persons
312 designated by statute.

313 (6) All persons designated by statute as having access to information contained in the
314 Licensing Information System shall be approved by the Department of Human Services and
315 receive training from the department with respect to:

316 (a) accessing the Licensing Information System;

317 (b) maintaining strict security; and

318 (c) the criminal provisions of Sections 62A-4a-412 and 63G-2-801 pertaining to the
319 improper release of information.

320 (7) (a) A person, except those authorized by this chapter, may not request another
321 person to obtain or release any other information in the Licensing Information System to
322 screen for potential perpetrators of abuse or neglect.

323 (b) A person who requests information knowing that it is a violation of this Subsection
324 (7) to do so is subject to the criminal penalty described in Sections 62A-4a-412 and
325 63G-2-801.

326 Section 6. Section **63A-11-202** is amended to read:

327 **63A-11-202. Contracted parental defense attorney.**

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

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

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

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

335 (d) where attendance of a parental defense attorney is reasonably needed, attend
336 meetings regarding the client's case with representatives of one or more of the Division of
337 Child and Family Services, the Office of the Attorney General, and the Office of [the]

338 Guardian Ad Litem;

339 (e) represent the interest of the client at all stages of the proceedings before the trial
340 court; and

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

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

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

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

349 (ii) experience in child welfare cases; and

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

352 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
353 the director may, by rule, exempt from the requirements of Subsection (3)(a) an attorney who
354 has equivalent training or adequate experience.

355 (4) Payment for the representation, costs, and expenses of the contracted parental
356 defense attorney shall be made from the Child Welfare Parental Defense Fund as provided in
357 Section 63A-11-203.

358 Section 7. Section **67-5b-105** is amended to read:

359 **67-5b-105. Local advisory boards -- Membership.**

360 (1) The cooperating public agencies and other persons shall make up each center's
361 local advisory board, which shall be composed of the following people from the county or
362 area:

363 (a) the local center director or the director's designee;

364 (b) a district attorney or county attorney having criminal jurisdiction or any designee;

365 (c) a representative of the attorney general's office, designated by the attorney general;

- 366 (d) a county sheriff or a chief of police or their designee;
- 367 (e) the county executive or the county executive's designee;
- 368 (f) a physician licensed to practice medicine and surgery under Section 58-67-301,
- 369 Utah Medical Practice Act, or Section 58-68-301, Utah Osteopathic Medical Practice Act;
- 370 (g) a licensed mental health professional;
- 371 (h) a criminal defense attorney;
- 372 (i) at least four members of the community at large provided, however, that the state
- 373 advisory board may authorize fewer members, although not less than two, if the local advisory
- 374 board so requests;
- 375 (j) a guardian ad litem or representative of the Office of Guardian Ad Litem
- 376 [~~Director~~], designated by the director; and
- 377 (k) a representative of the Division of Child and Family Services within the
- 378 Department of Human Services, designated by the employee of the division who has
- 379 supervisory responsibility for the county served by the center.

380 (2) The members on each local advisory board who serve due to public office as

381 provided in [~~Subsection~~] Subsections (1)(b) through (e) shall select the remaining members.

382 The members [~~shall select its chair~~] on each local advisory board shall select a chair of the

383 local advisory board.

384 (3) The local advisory board shall not supersede the authority of the contracting public

385 agency as designated in Section 67-5b-104.

386 (4) Appointees and designees shall serve a term or terms as designated in the bylaws

387 of the local advisory board.

388 Section 8. Section **78A-2-104 (Superseded 01/01/12)** is amended to read:

389 **78A-2-104 (Superseded 01/01/12). Judicial Council -- Creation -- Members --**

390 **Terms and election -- Responsibilities -- Reports -- Guardian Ad Litem Oversight**

391 **Committee.**

392 (1) The Judicial Council, established by Article VIII, Section 12, Utah Constitution,

393 shall be composed of:

394 (a) the chief justice of the Supreme Court;
395 (b) one member elected by the justices of the Supreme Court;
396 (c) one member elected by the judges of the Court of Appeals;
397 (d) five members elected by the judges of the district courts;
398 (e) two members elected by the judges of the juvenile courts;
399 (f) three members elected by the justice court judges; and
400 (g) a member or ex officio member of the Board of Commissioners of the Utah State
401 Bar who is an active member of the Bar in good standing at the time of election by the Board
402 of Commissioners.

403 (2) The Judicial Council shall have a seal.

404 (3) (a) The chief justice of the Supreme Court shall act as presiding officer of the
405 council and chief administrative officer for the courts. The chief justice shall vote only in the
406 case of a tie.

407 (b) All members of the council shall serve for three-year terms.

408 (i) If a council member should die, resign, retire, or otherwise fail to complete a term
409 of office, the appropriate constituent group shall elect a member to complete the term of office.

410 (ii) In courts having more than one member, the members shall be elected to staggered
411 terms.

412 (iii) The person elected by the Board of Commissioners may complete a three-year
413 term of office on the Judicial Council even though the person ceases to be a member or ex
414 officio member of the Board of Commissioners. The person shall be an active member of the
415 Bar in good standing for the entire term of the Judicial Council.

416 (c) Elections shall be held under rules made by the Judicial Council.

417 (4) The council is responsible for the development of uniform administrative policy
418 for the courts throughout the state. The presiding officer of the Judicial Council is responsible
419 for the implementation of the policies developed by the council and for the general
420 management of the courts, with the aid of the administrator. The council has authority and
421 responsibility to:

422 (a) establish and assure compliance with policies for the operation of the courts,
423 including uniform rules and forms; and

424 (b) publish and submit to the governor, the chief justice of the Supreme Court, and the
425 Legislature an annual report of the operations of the courts, which shall include financial and
426 statistical data and may include suggestions and recommendations for legislation.

427 (5) (a) The Judicial Council shall make rules establishing:

428 (i) standards for judicial competence; and

429 (ii) a formal program for the evaluation of judicial performance containing the
430 elements of and meeting the requirements of this Subsection (5).

431 (b) The Judicial Council shall ensure that the formal judicial performance evaluation
432 program has improvement in the performance of individual judges, court commissioners, and
433 the judiciary as [its] the Judicial Council's goal.

434 (c) The Judicial Council shall ensure that the formal judicial performance evaluation
435 program includes at least all of the following elements:

436 (i) a requirement that judges complete a certain number of hours of approved judicial
437 education each year;

438 (ii) a requirement that each judge certify that he is:

439 (A) physically and mentally competent to serve; and

440 (B) in compliance with the Codes of Judicial Conduct and Judicial Administration;

441 and

442 (iii) a requirement that the judge receive a satisfactory score on questions identified by
443 the Judicial Council as relating to judicial certification on a survey of members of the Bar
444 developed by the Judicial Council in conjunction with the American Bar Association.

445 (d) The Judicial Council shall ensure that the formal judicial performance evaluation
446 program considers at least the following criteria:

447 (i) integrity;

448 (ii) knowledge;

449 (iii) understanding of the law;

- 450 (iv) ability to communicate;
- 451 (v) punctuality;
- 452 (vi) preparation;
- 453 (vii) attentiveness;
- 454 (viii) dignity;
- 455 (ix) control over proceedings; and
- 456 (x) skills as a manager.

457 (e) (i) The Judicial Council shall provide the judicial performance evaluation
458 information and the disciplinary data required by Subsection 20A-7-702(2) to the Lieutenant
459 Governor for publication in the voter information pamphlet.

460 (ii) Not later than August 1 of the year before the expiration of the term of office of a
461 justice court judge, the Judicial Council shall provide the judicial performance evaluation
462 information required by Subsection 20A-7-702(2) to the appointing authority of a justice court
463 judge.

464 (6) The council shall establish standards for the operation of the courts of the state
465 including, but not limited to, facilities, court security, support services, and staff levels for
466 judicial and support personnel.

467 (7) The council shall by rule establish the time and manner for destroying court
468 records, including computer records, and shall establish retention periods for these records.

469 (8) (a) Consistent with the requirements of judicial office and security policies, the
470 council shall establish procedures to govern the assignment of state vehicles to public officers
471 of the judicial branch.

472 (b) The vehicles shall be marked in a manner consistent with Section 41-1a-407 and
473 may be assigned for unlimited use, within the state only.

474 (9) (a) The council shall advise judicial officers and employees concerning ethical
475 issues and shall establish procedures for issuing informal and formal advisory opinions on
476 these issues.

477 (b) Compliance with an informal opinion is evidence of good faith compliance with

478 the Code of Judicial Conduct.

479 (c) A formal opinion constitutes a binding interpretation of the Code of Judicial
480 Conduct.

481 (10) (a) The council shall establish written procedures authorizing the presiding
482 officer of the council to appoint judges of courts of record by special or general assignment to
483 serve temporarily in another level of court in a specific court or generally within that level.
484 The appointment shall be for a specific period and shall be reported to the council.

485 (b) These procedures shall be developed in accordance with Subsection
486 78A-2-107(10) regarding temporary appointment of judges.

487 (11) The Judicial Council may by rule designate municipalities in addition to those
488 designated by statute as a location of a trial court of record. There shall be at least one court
489 clerk's office open during regular court hours in each county. Any trial court of record may
490 hold court in any municipality designated as a location of a court of record. [~~Designations by~~
491 ~~the Judicial Council may not be made between July 1, 1997, and July 1, 1998.~~]

492 (12) The Judicial Council shall by rule determine whether the administration of a court
493 shall be the obligation of the administrative office of the courts or whether the administrative
494 office of the courts should contract with local government for court support services.

495 (13) The Judicial Council may by rule direct that a district court location be
496 administered from another court location within the county.

497 (14) (a) The Judicial Council shall [~~establish and supervise~~]:

498 (i) establish the Office of Guardian Ad Litem [~~Director~~], in accordance with Title 78A,
499 Chapter 6, Part 9, Guardian Ad Litem[;]; and [~~assure compliance of the guardian ad litem~~
500 ~~program~~]

501 (ii) establish and supervise a Guardian Ad Litem Oversight Committee.

502 (b) The Guardian Ad Litem Oversight Committee described in Subsection (14)(a)(ii)
503 shall oversee the Office of Guardian Ad Litem, established under Subsection (14)(a)(i), and
504 assure that the Office of Guardian Ad Litem complies with state and federal law, regulation,
505 policy, and court rules.

506 (15) The Judicial Council shall establish and maintain, in cooperation with the Office
507 of Recovery Services within the Department of Human Services, the part of the state case
508 registry that contains records of each support order established or modified in the state on or
509 after October 1, 1998, as is necessary to comply with the Social Security Act, 42 U.S.C. Sec.
510 654a.

511 Section 9. Section **78A-2-104 (Effective 01/01/12)** is amended to read:

512 **78A-2-104 (Effective 01/01/12). Judicial Council -- Creation -- Members --**
513 **Terms and election -- Responsibilities -- Reports -- Guardian Ad Litem Oversight**
514 **Committee.**

515 (1) The Judicial Council, established by Article VIII, Section 12, Utah Constitution,
516 shall be composed of:

- 517 (a) the chief justice of the Supreme Court;
- 518 (b) one member elected by the justices of the Supreme Court;
- 519 (c) one member elected by the judges of the Court of Appeals;
- 520 (d) five members elected by the judges of the district courts;
- 521 (e) two members elected by the judges of the juvenile courts;
- 522 (f) three members elected by the justice court judges; and
- 523 (g) a member or ex officio member of the Board of Commissioners of the Utah State
524 Bar who is an active member of the Bar in good standing at the time of election by the Board
525 of Commissioners.

526 (2) The Judicial Council shall have a seal.

527 (3) (a) The chief justice of the Supreme Court shall act as presiding officer of the
528 council and chief administrative officer for the courts. The chief justice shall vote only in the
529 case of a tie.

530 (b) All members of the council shall serve for three-year terms.

531 (i) If a council member should die, resign, retire, or otherwise fail to complete a term
532 of office, the appropriate constituent group shall elect a member to complete the term of office.

533 (ii) In courts having more than one member, the members shall be elected to staggered

534 terms.

535 (iii) The person elected by the Board of Commissioners may complete a three-year
536 term of office on the Judicial Council even though the person ceases to be a member or ex
537 officio member of the Board of Commissioners. The person shall be an active member of the
538 Bar in good standing for the entire term of the Judicial Council.

539 (c) Elections shall be held under rules made by the Judicial Council.

540 (4) The council is responsible for the development of uniform administrative policy
541 for the courts throughout the state. The presiding officer of the Judicial Council is responsible
542 for the implementation of the policies developed by the council and for the general
543 management of the courts, with the aid of the administrator. The council has authority and
544 responsibility to:

545 (a) establish and assure compliance with policies for the operation of the courts,
546 including uniform rules and forms; and

547 (b) publish and submit to the governor, the chief justice of the Supreme Court, and the
548 Legislature an annual report of the operations of the courts, which shall include financial and
549 statistical data and may include suggestions and recommendations for legislation.

550 (5) The council shall establish standards for the operation of the courts of the state
551 including, but not limited to, facilities, court security, support services, and staff levels for
552 judicial and support personnel.

553 (6) The council shall by rule establish the time and manner for destroying court
554 records, including computer records, and shall establish retention periods for these records.

555 (7) (a) Consistent with the requirements of judicial office and security policies, the
556 council shall establish procedures to govern the assignment of state vehicles to public officers
557 of the judicial branch.

558 (b) The vehicles shall be marked in a manner consistent with Section 41-1a-407 and
559 may be assigned for unlimited use, within the state only.

560 (8) (a) The council shall advise judicial officers and employees concerning ethical
561 issues and shall establish procedures for issuing informal and formal advisory opinions on

562 these issues.

563 (b) Compliance with an informal opinion is evidence of good faith compliance with
564 the Code of Judicial Conduct.

565 (c) A formal opinion constitutes a binding interpretation of the Code of Judicial
566 Conduct.

567 (9) (a) The council shall establish written procedures authorizing the presiding officer
568 of the council to appoint judges of courts of record by special or general assignment to serve
569 temporarily in another level of court in a specific court or generally within that level. The
570 appointment shall be for a specific period and shall be reported to the council.

571 (b) These procedures shall be developed in accordance with Subsection
572 78A-2-107(10) regarding temporary appointment of judges.

573 (10) The Judicial Council may by rule designate municipalities in addition to those
574 designated by statute as a location of a trial court of record. There shall be at least one court
575 clerk's office open during regular court hours in each county. Any trial court of record may
576 hold court in any municipality designated as a location of a court of record. [~~Designations by~~
577 ~~the Judicial Council may not be made between July 1, 1997, and July 1, 1998.~~]

578 (11) The Judicial Council shall by rule determine whether the administration of a court
579 shall be the obligation of the administrative office of the courts or whether the administrative
580 office of the courts should contract with local government for court support services.

581 (12) The Judicial Council may by rule direct that a district court location be
582 administered from another court location within the county.

583 (13) (a) The Judicial Council shall [~~establish and supervise~~]:

584 (i) establish the Office of Guardian Ad Litem [~~Director~~], in accordance with Title 78A,
585 Chapter 6, Part 9, Guardian Ad Litem[;]; and [~~assure compliance of the guardian ad litem~~
586 ~~program~~]

587 (ii) establish and supervise a Guardian Ad Litem Oversight Committee.

588 (b) The Guardian Ad Litem Oversight Committee described in Subsection (13)(a)(ii)
589 shall oversee the Office of Guardian Ad Litem, established under Subsection (13)(a)(i), and

590 assure that it complies with state and federal law, regulation, policy, and court rules.

591 (14) The Judicial Council shall establish and maintain, in cooperation with the Office
592 of Recovery Services within the Department of Human Services, the part of the state case
593 registry that contains records of each support order established or modified in the state on or
594 after October 1, 1998, as is necessary to comply with the Social Security Act, 42 U.S.C. Sec.
595 654a.

596 Section 10. Section **78A-2-227** is amended to read:

597 **78A-2-227. Appointment of attorney guardian ad litem in child abuse and**
598 **neglect proceedings.**

599 (1) ~~[An]~~ Except as provided in Subsection (2), a court may appoint an attorney
600 guardian ad litem ~~[may be appointed]~~ in accordance with Title 78A, Chapter 6, Part 9,
601 Guardian Ad Litem, if:

- 602 (a) child abuse, child sexual abuse, or neglect is alleged in any proceeding; or
- 603 (b) the court considers it appropriate in any proceedings involving alleged abuse, child
604 sexual abuse, or neglect.

605 ~~[(2) If an attorney guardian ad litem has been appointed for the child by any court in~~
606 ~~the state in any prior proceeding or related matter, the court may continue that appointment or~~
607 ~~may reappoint that attorney guardian ad litem, if still available, to act on behalf of the child.]~~

608 (2) (a) A court may not appoint an attorney guardian ad litem in a criminal case.

609 (b) Subsection (2)(a) does not prohibit the appointment of an attorney guardian ad
610 litem in a case where a court is determining whether to adjudicate a minor for committing an
611 act that would be a crime if committed by an adult.

612 (c) Subsection (2)(a) does not prohibit an attorney guardian ad litem from entering an
613 appearance, filing motions, or taking other action in a criminal case on behalf of a minor, if:

614 (i) the attorney guardian ad litem is appointed to represent the minor in a case that is
615 not a criminal case; and

616 (ii) the interests of the minor may be impacted by:

617 (A) an order that has been, or may be, issued in the criminal case; or

618 (B) other proceedings that have occurred, or may occur, in the criminal case.
619 (3) If a court appoints an attorney guardian ad litem in a divorce or child custody case,
620 the court shall:
621 (a) specify in the order appointing the attorney guardian ad litem the specific issues in
622 the proceeding that the attorney guardian ad litem is required to be involved in resolving,
623 which may include issues relating to the custody of children and parent-time schedules;
624 (b) to the extent possible, bifurcate the issues specified in the order described in
625 Subsection (3)(a) from the other issues in the case, in order to minimize the time constraints
626 placed upon the attorney guardian ad litem in the case; and
627 (c) except as provided in Subsection (5), within one year after the day on which the
628 attorney guardian ad litem is appointed in the case, issue a final order:
629 (i) resolving the issues described in the order described in Subsection (3)(a); and
630 (ii) terminating the appointment of the attorney guardian ad litem in the case.
631 (4) The court shall issue an order terminating the appointment of an attorney guardian
632 ad litem made under this section, if:
633 (a) the court determines that the allegations of abuse or neglect are unfounded;
634 (b) after receiving input from the attorney guardian ad litem, the court determines that
635 the children are no longer at risk of abuse or neglect; or
636 (c) there has been no activity in the case for which the attorney guardian ad litem is
637 appointed for a period of six consecutive months.
638 (5) A court may issue a written order extending the one-year period described in
639 Subsection (3)(c) for a time-certain, if the court makes a written finding that there is a
640 compelling reason that the court cannot comply with the requirements described in Subsection
641 (3)(c) within the one-year period.
642 (6) When appointing an attorney guardian ad litem for a minor under this section, a
643 court may appoint the same attorney guardian ad litem who represents the minor in another
644 proceeding, or who has represented the minor in a previous proceeding, if that attorney
645 guardian ad litem is available.

646 ~~[(3)]~~ (7) The court is responsible for all costs resulting from the appointment of an
647 attorney guardian ad litem and shall use funds appropriated by the Legislature for the guardian
648 ad litem program to cover those costs.

649 ~~[(4)]~~ (8) (a) If the court appoints the Office of the Guardian Ad Litem in a civil case
650 pursuant to this section, the court may assess all or part of those attorney fees, court costs,
651 paralegal, staff, and volunteer expenses against the minor's parent, parents, or legal guardian in
652 an amount that the court determines to be just and appropriate.

653 (b) The court may not assess those fees or costs against a legal guardian, when that
654 guardian is the state, or against a parent, parents, or legal guardian who is found to be
655 impecunious. If a person claims to be impecunious, the court shall require of that person an
656 affidavit of impecuniosity as provided in Section 78A-2-302 and the court shall follow the
657 procedures and make the determinations as provided in Section 78A-2-302.

658 ~~[(c) If the court appoints the Office of the Guardian Ad Litem in a criminal case
659 pursuant to this section and if the defendant is convicted of a crime which includes child
660 abuse or neglect, the court shall include as part of the defendant's sentence all or part of the
661 attorney fees, court costs, and paralegal, staff, and volunteer expenses of the Office of the
662 Guardian Ad Litem.]~~

663 ~~[(5)]~~ (9) An attorney guardian ad litem appointed in accordance with the requirements
664 of this section and Title 78A, Chapter 6, Part 9, Guardian Ad Litem is, when serving in the
665 scope of duties of an attorney guardian ad litem, considered an employee of this state for
666 purposes of indemnification under the Governmental Immunity Act.

667 Section 11. Section **78A-2-228** is amended to read:

668 **78A-2-228. Private attorney guardian ad litem -- Appointment -- Costs and fees**
669 **-- Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum**
670 **qualifications.**

671 (1) (a) The court may appoint a private attorney as guardian ad litem to represent the
672 best interests of the minor in any district court action in which the custody of or visitation with
673 a minor is at issue. The attorney guardian ad litem shall be certified by the Director of the

674 Office of [the] Guardian Ad Litem as having met the minimum qualifications for appointment,
675 but may not be employed by or under contract with the Office of [the] Guardian Ad Litem.

676 ~~[(b) If an attorney guardian ad litem has been appointed for the minor in any prior or
677 concurrent action and that attorney guardian ad litem is available, the court shall appoint that
678 attorney guardian ad litem, unless good cause is shown why another attorney guardian ad litem
679 should be appointed.]~~

680 (b) When appointing an attorney guardian ad litem for a minor under this section, a
681 court may appoint the same attorney guardian ad litem who represents the minor in another
682 proceeding, or who has represented the minor in a previous proceeding, if that attorney
683 guardian ad litem is available.

684 (c) If, after appointment of the attorney guardian ad litem, an allegation of abuse,
685 neglect, or dependency of the minor is made the court shall:

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

688 (ii) order the withdrawal of the private attorney guardian ad litem and appoint the
689 Office of [the] Guardian Ad Litem.

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

693 (b) If the court finds a party to be impecunious, under the provisions of Section
694 78A-2-302, the court may direct the impecunious party's share of the assessment to be covered
695 by the attorney guardian ad litem pro bono obligation established in Subsection (6)(b).

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

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

699 (b) conduct or supervise an ongoing, independent investigation in order to obtain,
700 first-hand, a clear understanding of the situation and needs of the minor;

701 (c) interview witnesses and review relevant records pertaining to the minor and the

702 minor's family, including medical, psychological, and school records;

703 ~~[(d) if the minor is old enough to communicate and unless it would be detrimental to~~
704 ~~the minor:]~~

705 ~~[(i) meet with and interview the minor;]~~

706 (d) (i) personally meet with the minor, unless:

707 (A) the minor is outside of the state; or

708 (B) meeting with the minor would be detrimental to the minor;

709 (ii) personally interview the minor, unless:

710 (A) the minor is not old enough to communicate;

711 (B) the minor lacks the capacity to participate in a meaningful interview; or

712 (C) the interview would be detrimental to the minor;

713 ~~[(i)]~~ (iii) to the extent possible, determine the minor's goals and concerns regarding
714 custody or visitation; and

715 ~~[(iii) counsel the minor regarding the nature, purpose, status, and implications of the~~
716 ~~case, of hearings, of recommendations, and proposals by parties and of court orders;]~~

717 ~~[(e) conduct discovery, file pleadings and other papers, prepare and review orders, and~~
718 ~~otherwise comply with the Utah Rules of Civil Procedure as necessary to protect the best~~
719 ~~interest of the minor;]~~

720 (iv) to the extent possible, and unless it would be detrimental to the minor, keep the
721 minor advised of:

722 (A) the status of the minor's case;

723 (B) all court and administrative proceedings;

724 (C) discussions with, and proposals made by, other parties;

725 (D) court action; and

726 (E) the psychiatric, medical, or other treatment or diagnostic services that are to be
727 provided to the minor;

728 ~~[(f)]~~ (e) unless excused by the court, prepare for and attend all mediation hearings and
729 all court conferences and hearings, and present witnesses and exhibits as necessary to protect

730 the best interests of the minor;

731 [~~(g)~~] (f) identify community resources to protect the best interests of the minor and
732 advocate for those resources; and

733 [~~(h)~~] (g) participate in all appeals unless excused by the court.

734 (4) (a) The attorney guardian ad litem shall represent the best interests of a minor. If
735 the minor's wishes differ from the attorney's determination of the minor's best interests, the
736 attorney guardian ad litem shall communicate to the court the minor's wishes and the
737 attorney's determination of the minor's best interests. A difference between the minor's wishes
738 and the attorney's determination of best interests is not sufficient to create a conflict of
739 interest.

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

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

745 (6) (a) Upon the advice of the Director of the Office of [~~the~~] Guardian Ad Litem and
746 the Guardian Ad Litem Oversight Committee, the Judicial Council shall by rule establish the
747 minimum qualifications and requirements for appointment by the court as an attorney
748 guardian ad litem.

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

751 Section 12. Section **78A-6-308** is amended to read:

752 **78A-6-308. Criminal background checks necessary prior to out-of-home**
753 **placement.**

754 (1) Subject to Subsection (3), upon ordering removal of a child from the custody of the
755 child's parent and placing that child in the custody of the Division of Child and Family
756 Services, prior to the division's placement of that child in out-of-home care, the court shall
757 require the completion of a nonfingerprint-based background check by the Utah Bureau of

758 Criminal Identification regarding the proposed placement.

759 (2) (a) Except as provided in Subsection (4), the division and the Office of [the]
760 Guardian ad Litem [Director] may request, or the court upon [its] the court's own motion may
761 order, the Department of Public Safety to conduct a complete Federal Bureau of Investigation
762 criminal background check through the national criminal history system (NCIC).

763 (b) Except as provided in Subsection (4), upon request by the division or the Office of
764 [the] Guardian ad Litem [Director], or upon the court's order, persons subject to the
765 requirements of Subsection (1) shall submit fingerprints and shall be subject to an FBI
766 fingerprint background check. The child may be temporarily placed, pending the outcome of
767 that background check.

768 (c) The cost of those investigations shall be borne by whoever is to receive placement
769 of the child, except that the Division of Child and Family Services may pay all or part of the
770 cost of those investigations.

771 (3) Except as provided in Subsection (5), a child who is in the legal custody of the
772 state may not be placed with a prospective foster parent or a prospective adoptive parent,
773 unless, before the child is placed with the prospective foster parent or the prospective adoptive
774 parent:

775 (a) a fingerprint based FBI national criminal history records check is conducted on the
776 prospective foster parent or prospective adoptive parent;

777 (b) the Department of Human Services conducts a check of the abuse and neglect
778 registry in each state where the prospective foster parent or prospective adoptive parent resided
779 in the five years immediately preceding the day on which the prospective foster parent or
780 prospective adoptive parent applied to be a foster parent or adoptive parent, to determine
781 whether the prospective foster parent or prospective adoptive parent is listed in the registry as
782 having a substantiated or supported finding of a severe type of abuse or neglect as defined in
783 Section 62A-4a-1002;

784 (c) the Department of Human Services conducts a check of the abuse and neglect
785 registry of each state where each adult living in the home of the prospective foster parent or

786 prospective adoptive parent described in Subsection (3)(b) resided in the five years
 787 immediately preceding the day on which the prospective foster parent or prospective adoptive
 788 parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed
 789 in the registry as having a substantiated or supported finding of a severe type of abuse or
 790 neglect as defined in Section 62A-4a-1002; and

791 (d) each person required to undergo a background check described in this Subsection
 792 (3) passes the background check, pursuant to the provisions of Section 62A-2-120.

793 (4) Subsections (2)(a) and (b) do not apply to a child who is placed with a
 794 noncustodial parent or relative under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, unless
 795 the court finds that compliance with Subsection (2)(a) or (b) is necessary to ensure the safety
 796 of the child.

797 (5) The requirements under Subsection (3) do not apply to the extent that:

798 (a) federal law or rule permits otherwise; or

799 (b) the requirements would prohibit the division or a court from placing a child with:

800 (i) a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

801 (ii) a relative, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending

802 completion of the background check described in Subsection (3).

803 Section 13. Section **78A-6-512** is amended to read:

804 **78A-6-512. Review following termination.**

805 (1) At the conclusion of the hearing in which the court orders termination of the
 806 parent-child relationship, the court shall order that a review hearing be held within 90 days
 807 [~~following the date of termination~~] after the day on which the parent-child relationship is
 808 terminated, if the child has not been permanently placed.

809 (2) At that review hearing, the agency or individual vested with custody of the child
 810 shall report to the court regarding the plan for permanent placement of the child. The guardian
 811 ad litem shall [~~submit~~] make recommendations to the court [~~a written report with~~
 812 ~~recommendations~~], based on an independent investigation, for disposition meeting the best
 813 interests of the child.

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

817 Section 14. Section **78A-6-901** is amended to read:

818 **78A-6-901. Office of Guardian Ad Litem -- Appointment of director -- Duties of**
819 **director -- Contracts in second, third, and fourth districts.**

820 (1) As used in this part:

821 (a) "Director" means the director of the office.

822 (b) "Office" means the Office of Guardian Ad Litem, created in this section.

823 ~~[(1)]~~ (2) There is ~~hereby~~ created the Office of Guardian Ad Litem ~~[Director]~~ under
824 the direct supervision of the ~~[Judicial Council in accordance with Subsection 78A-2-104(14)]~~
825 Guardian Ad Litem Oversight Committee.

826 ~~[(2)]~~ (3) (a) The ~~[Judicial Council]~~ Guardian Ad Litem Oversight Committee shall
827 appoint one person to serve full time as the guardian ad litem director for the state. The
828 guardian ad litem director shall serve at the pleasure of the ~~[Judicial Council]~~ Guardian Ad
829 Litem Oversight Committee, in consultation with the state court administrator.

830 (b) The director shall be an attorney licensed to practice law in this state and selected
831 on the basis of:

832 (i) professional ability;

833 (ii) experience in abuse, neglect, and dependency proceedings;

834 (iii) familiarity with the role, purpose, and function of guardians ad litem in both
835 juvenile and district courts; and

836 (iv) ability to develop training curricula and reliable methods for data collection and
837 evaluation.

838 (c) The director shall ~~[be trained in the United States Department of Justice National~~
839 ~~Court Appointed Special Advocate program]~~, prior to or immediately after the director's
840 appointment, be trained in nationally recognized standards for an attorney guardian ad litem.

841 ~~[(3)]~~ (4) The guardian ad litem director shall:

842 (a) establish policy and procedure for the management of a statewide guardian ad
843 litem program;

844 (b) manage the guardian ad litem program to assure that minors receive qualified
845 guardian ad litem services in abuse, neglect, and dependency proceedings in accordance with
846 state and federal law and policy;

847 (c) develop standards for contracts of employment and contracts with independent
848 contractors, and employ or contract with attorneys licensed to practice law in this state, to act
849 as attorney guardians ad litem in accordance with Section 78A-6-902;

850 (d) develop and provide training programs for [~~attorney guardians ad litem and~~]
851 volunteers in accordance with the United States Department of Justice National Court
852 Appointed Special Advocates Association standards;

853 [~~(e) update and develop the guardian ad litem manual, combining elements of the~~
854 ~~National Court Appointed Special Advocates Association manual with specific information~~
855 ~~about the law and policy of this state;~~]

856 (e) develop and update a guardian ad litem manual that includes:

857 (i) best practices for an attorney guardian ad litem; and

858 (ii) statutory and case law relating to an attorney guardian ad litem;

859 (f) develop and provide a library of materials for the continuing education of attorney
860 guardians ad litem and volunteers;

861 (g) educate court personnel regarding the role and function of guardians ad litem;

862 (h) develop needs assessment strategies, perform needs assessment surveys, and ensure
863 that guardian ad litem training programs correspond with actual and perceived needs for
864 training;

865 (i) design and implement evaluation tools based on specific objectives targeted in the
866 needs assessments described in Subsection [~~(3)~~] (4)(h);

867 (j) prepare and submit an annual report to the [~~Judicial Council~~] Guardian Ad Litem
868 Oversight Committee and the Child Welfare Legislative Oversight Panel regarding;

869 (i) the development, policy, and management of the statewide guardian ad litem

870 program~~[, and]~~;

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

872 (iii) the number of minors served by the Office of Guardian Ad Litem;

873 (k) hire, train, and supervise investigators; and

874 (l) administer the program of private guardians ad litem established by Section

875 78A-2-228.

876 ~~[(4)]~~ (5) A contract of employment or independent contract described under
877 Subsection ~~[(3)]~~ (4)(c) shall provide that attorney guardians ad litem in the second, third, and
878 fourth judicial districts devote their full time and attention to the role of attorney guardian ad
879 litem, having no clients other than the minors whose interest they represent within the
880 guardian ad litem program.

881 Section 15. Section 78A-6-902 is amended to read:

882 **78A-6-902. Appointment of attorney guardian ad litem -- Duties and**
883 **responsibilities -- Training -- Trained staff and court-appointed special advocate**
884 **volunteers -- Costs -- Immunity -- Annual report.**

885 (1) (a) The court:

886 (i) may appoint an attorney guardian ad litem to represent the best interest of a minor
887 involved in any case before the court; and

888 (ii) shall consider the best interest of a minor, consistent with the provisions of Section
889 62A-4a-201, in determining whether to appoint a guardian ad litem.

890 (b) In all cases where an attorney guardian ad litem is appointed, the court shall make
891 a finding that establishes the necessity of the appointment.

892 (2) An attorney guardian ad litem shall represent the best interest of each child who
893 may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier
894 of the day that:

895 (a) the child is removed from the child's home by the division; or

896 (b) the petition is filed.

897 ~~[(3) The Office of the Guardian Ad Litem Director, through an attorney guardian ad~~

898 ~~litem, shall:]~~

899 (3) The director shall ensure that each attorney guardian ad litem employed by the
 900 office:

901 (a) ~~[represent]~~ represents the best interest of ~~[the minor]~~ each client of the office in all
 902 proceedings, including court proceedings;

903 (b) prior to representing any minor before the court, be trained in:

904 (i) applicable statutory, regulatory, and case law; and

905 ~~[(ii) accordance with the United States Department of Justice National Court~~
 906 ~~Appointed Special Advocate Association guidelines;]~~

907 (ii) nationally recognized standards for an attorney guardian ad litem;

908 (c) ~~[conduct or supervise an]~~ conducts or supervises an ongoing, independent
 909 investigation in order to obtain, first-hand, a clear understanding of the situation and needs of
 910 the minor;

911 (d) (i) personally ~~[meet]~~ meets with the minor~~;~~, unless:

912 (A) the minor is outside of the state; or

913 (B) meeting with the minor would be detrimental to the minor;

914 (ii) personally ~~[interview]~~ interviews the minor ~~[if]~~, unless:

915 (A) the minor is not old enough to communicate;

916 (B) the minor lacks the capacity to participate in a meaningful interview; or

917 (C) the interview would be detrimental to the minor; and

918 (iii) if the minor is placed in an out-of-home placement, or is being considered for
 919 placement in an out-of-home placement, unless it would be detrimental to the minor:

920 ~~[(iii) determine]~~ (A) to the extent possible, determines the minor's goals and concerns
 921 regarding placement; and

922 ~~[(iv)]~~ (B) personally [assess or supervise] assesses or supervises an assessment of the
 923 appropriateness and safety of the minor's environment in each placement;

924 ~~[(e) file written motions, responses, or objections at all stages of a proceeding when~~
 925 necessary to protect the best interest of a minor;]

926 ~~[(f)]~~ (e) personally ~~[or through a trained volunteer, paralegal, or other trained staff,~~
927 ~~attend all administrative and foster care citizen]~~ attends all review ~~[board]~~ hearings pertaining
928 to the minor's case;

929 ~~[(g) participate]~~ (f) participates in all appeals, unless excused by order of the court;
930 ~~[(h) be]~~ (g) is familiar with local experts who can provide consultation and testimony
931 regarding the reasonableness and appropriateness of efforts made by the Division of Child and
932 Family Services to:

- 933 (i) maintain a minor in the minor's home; or
- 934 (ii) reunify a child with the child's parent;

935 ~~[(†)]~~ (h) to the extent possible, and unless it would be detrimental to the minor,
936 personally or through a trained volunteer, paralegal, or other trained staff, ~~[keep]~~ keeps the
937 minor advised of:

- 938 (i) the status of the minor's case;
- 939 (ii) all court and administrative proceedings;
- 940 (iii) discussions with, and proposals made by, other parties;
- 941 (iv) court action; and
- 942 (v) the psychiatric, medical, or other treatment or diagnostic services that are to be
943 provided to the minor; and

944 ~~[(j) review proposed orders for, and as requested by the court;]~~

945 ~~[(k) prepare proposed orders with clear and specific directions regarding services,~~
946 ~~treatment, evaluation, assessment, and protection of the minor and the minor's family; and]~~

947 ~~[(†)]~~ (i) in cases where a child and family plan is required, personally or through a
948 trained volunteer, paralegal, or other trained staff, ~~[monitor]~~ monitors implementation of a
949 minor's child and family plan and any dispositional orders to:

- 950 (i) determine whether services ordered by the court:
 - 951 (A) are actually provided; and
 - 952 (B) are provided in a timely manner; and
- 953 (ii) attempt to assess whether services ordered by the court are accomplishing the

954 intended goal of the services.

955 (4) (a) Consistent with this Subsection (4), an attorney guardian ad litem may use
956 trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers
957 Act, trained paralegals, and other trained staff to assist in investigation and preparation of
958 information regarding the cases of individual minors before the court.

959 ~~[(b) The attorney guardian ad litem described in Subsection (4)(a) may not delegate~~
960 ~~the attorney's responsibilities described in Subsection (3).]~~

961 ~~[(c)]~~ (b) All volunteers, paralegals, and staff utilized pursuant to this section shall be
962 trained in and follow, at a minimum, the guidelines established by the United States
963 Department of Justice Court Appointed Special Advocate Association.

964 ~~[(d) The court may use volunteers trained in accordance with the requirements of~~
965 ~~Subsection (4)(c) to assist in investigation and preparation of information regarding the cases~~
966 ~~of individual minors within the jurisdiction.]~~

967 ~~[(e) When possible and appropriate, the court may use a volunteer who is a peer of the~~
968 ~~minor appearing before the court, in order to provide assistance to that minor, under the~~
969 ~~supervision of an attorney guardian ad litem or the attorney's trained volunteer, paralegal, or~~
970 ~~other trained staff.]~~

971 (5) The attorney guardian ad litem shall continue to represent the best interest of the
972 minor until released from that duty by the court.

973 (6) (a) Consistent with Subsection (6)(b), the juvenile court is responsible for:

- 974 (i) all costs resulting from the appointment of an attorney guardian ad litem; and
975 (ii) the costs of volunteer, paralegal, and other staff appointment and training.

976 (b) The court shall use funds appropriated by the Legislature for the guardian ad litem
977 program to cover the costs described in Subsection (6)(a).

978 (c) (i) When the court appoints an attorney guardian ad litem under this section, the
979 court may assess all or part of the attorney fees, court costs, and paralegal, staff, and volunteer
980 expenses against the child's parents, parent, or legal guardian in a proportion that the court
981 determines to be just and appropriate.

982 (ii) The court may not assess those fees or costs against:
983 (A) a legal guardian, when that guardian is the state; or
984 (B) consistent with Subsection (6)(d), a parent who is found to be impecunious.
985 (d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the
986 court shall:

987 (i) require that person to submit an affidavit of impecuniosity as provided in Section
988 78A-2-302; and

989 (ii) follow the procedures and make the determinations as provided in Section
990 78A-2-304.

991 (7) An attorney guardian ad litem appointed under this section, when serving in the
992 scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee
993 of the state for purposes of indemnification under Title 63G, Chapter 7, Governmental
994 Immunity Act of Utah.

995 (8) (a) An attorney guardian ad litem shall represent the best interest of a minor.

996 (b) If the minor's wishes differ from the attorney's determination of the minor's best
997 interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in
998 addition to presenting the attorney's determination of the minor's best interest.

999 (c) A difference between the minor's wishes and the attorney's determination of best
1000 interest may not be considered a conflict of interest for the attorney.

1001 (d) The court may appoint one attorney guardian ad litem to represent the best
1002 interests of more than one child of a marriage.

1003 (9) An attorney guardian ad litem shall be provided access to all Division of Child and
1004 Family Services records regarding the minor at issue and the minor's family.

1005 (10) An attorney guardian ad litem shall maintain current and accurate records
1006 regarding:

1007 (a) the number of times the attorney has had contact with each minor; and

1008 (b) the actions the attorney has taken in representation of the minor's best interest.

1009 (11) (a) Except as provided in Subsection (11)(b), all records of an attorney guardian

1010 ad litem are confidential and may not be released or made public upon subpoena, search
1011 warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63G, Chapter
1012 2, Government Records Access and Management Act.

1013 (b) Consistent with Subsection (11)(d), all records of an attorney guardian ad litem:

1014 (i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative
1015 Subpoena Powers; and

1016 (ii) shall be released to the Legislature.

1017 (c) (i) Except as provided in Subsection (11)(c)(ii), records released in accordance with
1018 Subsection (11)(b) shall be maintained as confidential by the Legislature.

1019 (ii) Notwithstanding Subsection (11)(c)(i), the Office of the Legislative Auditor
1020 General may include summary data and nonidentifying information in its audits and reports to
1021 the Legislature.

1022 (d) (i) Subsection (11)(b) constitutes an exception to Rules of Professional Conduct,
1023 Rule 1.6, as provided by Rule 1.6(b)(4), because of:

1024 (A) the unique role of an attorney guardian ad litem described in Subsection (8); and

1025 (B) the state's role and responsibility:

1026 (I) to provide a guardian ad litem program; and

1027 (II) as parens patriae, to protect minors.

1028 (ii) A claim of attorney-client privilege does not bar access to the records of an
1029 attorney guardian ad litem by the Legislature, through legislative subpoena.

1030 ~~[(e) The Office of the Guardian Ad Litem shall present an annual report to the Child
1031 Welfare Legislative Oversight Panel detailing:]~~

1032 ~~[(i) the development, policy, and management of the statewide guardian ad litem
1033 program;]~~

1034 ~~[(ii) the training and evaluation of attorney guardians ad litem and volunteers; and]~~

1035 ~~[(iii) the number of minors served by the Office of the Guardian Ad Litem.]~~

1036 Section 16. **Effective date.**

1037 This bill takes effect on May 12, 2009, except that the amendments to Section

1038 78A-2-104 (Effective 01/01/12) take effect on January 1, 2012.