

GUARDIAN AD LITEM RESPONSIBILITIES

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis Oda

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill requires that guardians ad litem participate in a child and family plan for a client.

Highlighted Provisions:

This bill:

requires guardians ad litem to participate in child and family plan meetings to represent the best interest of their client.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-205, as last amended by Laws of Utah 2009, Chapter 161

78A-6-902, as last amended by Laws of Utah 2009, Chapters 32 and 161

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

Section 1. Section **62A-4a-205** is amended to read:

62A-4a-205. Child and family plan -- Parent-time.

(1) No more than 45 days after a child enters the temporary custody of the division, the



28 child's child and family plan shall be finalized.

29 (2) (a) The division may use an interdisciplinary team approach in developing each
30 child and family plan.

31 (b) The interdisciplinary team described in Subsection (2)(a) may include
32 representatives from the following fields:

- 33 (i) mental health;
- 34 (ii) education; and
- 35 (iii) if appropriate, law enforcement.

36 (3) (a) The division shall involve all of the following in the development of a child's
37 child and family plan:

- 38 (i) both of the child's natural parents, unless the whereabouts of a parent are unknown;
- 39 (ii) the child;
- 40 (iii) the child's foster parents; [~~and~~]
- 41 (iv) if appropriate, the child's stepparent[-]; and
- 42 (v) the child's guardian ad litem, if one has been appointed by the court.

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

46 (c) (i) The division shall make a substantial effort to develop a child and family plan
47 with which the child's parents agree.

48 (ii) If a parent does not agree with a child and family plan:

49 (A) the division shall strive to resolve the disagreement between the division and the
50 parent; and

51 (B) if the disagreement is not resolved, the division shall inform the court of the
52 disagreement.

53 (4) A copy of the child and family plan shall, immediately upon completion, or as soon
54 as reasonably possible thereafter, be provided to the:

- 55 (a) guardian ad litem;
- 56 (b) child's natural parents; and
- 57 (c) child's foster parents.

58 (5) Each child and family plan shall:

- 59 (a) specifically provide for the safety of the child, in accordance with federal law; and
- 60 (b) clearly define what actions or precautions will, or may be, necessary to provide for
- 61 the health, safety, protection, and welfare of the child.
- 62 (6) The child and family plan shall set forth, with specificity, at least the following:
- 63 (a) the reason the child entered into the custody of the division;
- 64 (b) documentation of the:
 - 65 (i) reasonable efforts made to prevent placement of the child in the custody of the
 - 66 division; or
 - 67 (ii) emergency situation that existed and that prevented the reasonable efforts described
 - 68 in Subsection (6)(b)(i), from being made;
 - 69 (c) the primary permanency goal for the child and the reason for selection of that goal;
 - 70 (d) the concurrent permanency goal for the child and the reason for the selection of that
 - 71 goal;
 - 72 (e) if the plan is for the child to return to the child's family:
 - 73 (i) specifically what the parents must do in order to enable the child to be returned
 - 74 home;
 - 75 (ii) specifically how the requirements described in Subsection (6)(e)(i) may be
 - 76 accomplished; and
 - 77 (iii) how the requirements described in Subsection (6)(e)(i) will be measured;
 - 78 (f) the specific services needed to reduce the problems that necessitated placing the
 - 79 child in the division's custody;
 - 80 (g) the name of the person who will provide for and be responsible for case
 - 81 management;
 - 82 (h) subject to Subsection (10), a parent-time schedule between the natural parent and
 - 83 the child;
 - 84 (i) subject to Subsection (7), the health and mental health care to be provided to
 - 85 address any known or diagnosed mental health needs of the child;
 - 86 (j) if residential treatment rather than a foster home is the proposed placement, a
 - 87 requirement for a specialized assessment of the child's health needs including an assessment of
 - 88 mental illness and behavior and conduct disorders; and
 - 89 (k) social summaries that include case history information pertinent to case planning.

90 (7) (a) Subject to Subsection (7)(b), in addition to the information required under
91 Subsection (6)(i), the plan shall include a specialized assessment of the medical and mental
92 health needs of a child, if the child:

- 93 (i) is placed in residential treatment; and
- 94 (ii) has medical or mental health issues that need to be addressed.

95 (b) Notwithstanding Subsection (7)(a), a parent shall retain the right to seek a separate
96 medical or mental health diagnosis of the parent's child from a licensed practitioner of the
97 parent's choice.

98 (8) (a) Each child and family plan shall be specific to each child and the child's family,
99 rather than general.

100 (b) The division shall train its workers to develop child and family plans that comply
101 with:

- 102 (i) federal mandates; and
- 103 (ii) the specific needs of the particular child and the child's family.

104 (c) All child and family plans and expectations shall be individualized and contain
105 specific time frames.

106 (d) Subject to Subsection (8)(h), child and family plans shall address problems that:

- 107 (i) keep a child in placement; and
- 108 (ii) keep a child from achieving permanence in the child's life.

109 (e) Each child and family plan shall be designed to minimize disruption to the normal
110 activities of the child's family, including employment and school.

111 (f) In particular, the time, place, and amount of services, hearings, and other
112 requirements ordered by the court in the child and family plan shall be designed, as much as
113 practicable, to help the child's parents maintain or obtain employment.

114 (g) The child's natural parents, foster parents, and where appropriate, stepparents, shall
115 be kept informed of and supported to participate in important meetings and procedures related
116 to the child's placement.

117 (h) For purposes of Subsection (8)(d), a child and family plan may only include
118 requirements that:

- 119 (i) address findings made by the court; or
- 120 (ii) (A) are requested or consented to by a parent or guardian of the child; and

121 (B) are agreed to by the division and the guardian ad litem.

122 (9) (a) Except as provided in Subsection (9)(b), with regard to a child who is three
123 years of age or younger, if the goal is not to return the child home, the permanency plan for that
124 child shall be adoption.

125 (b) Notwithstanding Subsection (9)(a), if the division documents to the court that there
126 is a compelling reason that adoption, reunification, guardianship, and a placement described in
127 Subsection 78A-6-306(6)(e) are not in the child's best interest, the court may order another
128 planned permanent living arrangement in accordance with federal law.

129 (10) (a) Except as provided in Subsection (10)(b), parent-time may only be denied by a
130 court order issued pursuant to Subsections 78A-6-312(2)(a)(ii) and (b).

131 (b) Notwithstanding Subsection (10)(a), the person designated by the division or a
132 court to supervise a parent-time session may deny parent-time for that session if the supervising
133 person determines that, based on the parent's condition, it is necessary to deny parent-time in
134 order to:

135 (i) protect the physical safety of the child;

136 (ii) protect the life of the child; or

137 (iii) consistent with Subsection (10)(c), prevent the child from being traumatized by
138 contact with the parent.

139 (c) In determining whether the condition of the parent described in Subsection (10)(b)
140 will traumatize a child, the person supervising the parent-time session shall consider the impact
141 that the parent's condition will have on the child in light of:

142 (i) the child's fear of the parent; and

143 (ii) the nature of the alleged abuse or neglect.

144 Section 2. Section **78A-6-902** is amended to read:

145 **78A-6-902. Appointment of attorney guardian ad litem -- Duties and**
146 **responsibilities -- Training -- Trained staff and court-appointed special advocate**
147 **volunteers -- Costs -- Immunity -- Annual report.**

148 (1) (a) The court:

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

151 (ii) shall consider the best interest of a minor, consistent with the provisions of Section

152 62A-4a-201, in determining whether to appoint a guardian ad litem.

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

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

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

159 (b) the petition is filed.

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

162 (a) represents the best interest of each client of the office in all [~~proceedings~~] venues,
163 including:

164 (i) court proceedings; and

165 (ii) ~~H~~→ meetings to develop, review, or modify the ~~←H~~ child and family plan

165a ~~H~~→ [~~meetings~~] ~~←H~~ with the Division of Child and Family Services ~~H~~→ [f] in

166 accordance with Section 62A-4a-205 [H] ~~←H~~ ;

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

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

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

170 (c) conducts or supervises an ongoing, independent investigation in order to obtain,
171 first-hand, a clear understanding of the situation and needs of the minor;

172 (d) (i) personally meets with the minor, unless:

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

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

175 (ii) personally interviews the minor, unless:

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

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

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

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

181 (A) to the extent possible, determines the minor's goals and concerns regarding
182 placement; and

183 (B) personally assesses or supervises an assessment of the appropriateness and safety
184 of the minor's environment in each placement;

185 (e) personally attends all review hearings pertaining to the minor's case;

186 (f) participates in all appeals, unless excused by order of the court;

187 (g) is familiar with local experts who can provide consultation and testimony regarding
188 the reasonableness and appropriateness of efforts made by the Division of Child and Family
189 Services to:

190 (i) maintain a minor in the minor's home; or

191 (ii) reunify a child with the child's parent;

192 (h) to the extent possible, and unless it would be detrimental to the minor, personally
193 or through a trained volunteer, paralegal, or other trained staff, keeps the minor advised of:

194 (i) the status of the minor's case;

195 (ii) all court and administrative proceedings;

196 (iii) discussions with, and proposals made by, other parties;

197 (iv) court action; and

198 (v) the psychiatric, medical, or other treatment or diagnostic services that are to be
199 provided to the minor; and

200 (i) in cases where a child and family plan is required, personally or through a trained
201 volunteer, paralegal, or other trained staff, monitors implementation of a minor's child and
202 family plan and any dispositional orders to:

203 (i) determine whether services ordered by the court:

204 (A) are actually provided; and

205 (B) are provided in a timely manner; and

206 (ii) attempt to assess whether services ordered by the court are accomplishing the
207 intended goal of the services.

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

212 (b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained
213 in and follow, at a minimum, the guidelines established by the United States Department of

214 Justice Court Appointed Special Advocate Association.

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

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

218 (i) all costs resulting from the appointment of an attorney guardian ad litem; and

219 (ii) the costs of volunteer, paralegal, and other staff appointment and training.

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

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

226 (ii) The court may not assess those fees or costs against:

227 (A) a legal guardian, when that guardian is the state; or

228 (B) consistent with Subsection (6)(d), a parent who is found to be impecunious.

229 (d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the
230 court shall:

231 (i) require that person to submit an affidavit of impecuniosity as provided in Section
232 78A-2-302; and

233 (ii) follow the procedures and make the determinations as provided in Section
234 78A-2-304.

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

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

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

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

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

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

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

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

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

253 (11) (a) Except as provided in Subsection (11)(b), all records of an attorney guardian
254 ad litem are confidential and may not be released or made public upon subpoena, search
255 warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63G, Chapter
256 2, Government Records Access and Management Act.

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

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

260 (ii) shall be released to the Legislature.

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

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

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

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

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

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

271 (II) as *parens patriae*, to protect minors.

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

Legislative Review Note
as of 2-2-11 4:06 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 161

SHORT TITLE: **Guardian Ad Litem Responsibilities**

SPONSOR: **Oda, C.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.