

Representative Wayne A. Harper proposes the following substitute bill:

CHILD WELFARE AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill amends Title 62A, Utah Human Services Code, Title 78A, Judiciary and Judicial Administration, and Title 78B, Judicial Code, relating to child welfare.

Highlighted Provisions:

This bill:

- ▶ defines the term "relative";
- ▶ amends Division of Child and Family Services caseworker training requirements;
- ▶ requires a caseworker to file a report explaining why a particular placement is in the child's best interest when a child is removed from the child's immediate family but not placed with kin;
- ▶ requires a licensee under the Medical Practice or Nurse Practice Act to report a determination of fetal alcohol spectrum disorder to the Division of Child and Family Services;

~~§→ [§→ requires an appellate court to apply de novo review to issues presented in an appeal of a juvenile court's finding of abuse, neglect, or an order to terminate parental rights; ←§] ←§~~

- ▶ prohibits taking a child into protective custody solely on the basis of educational neglect, truancy, or failure to comply with a court order to attend school;
- ▶ requires a fingerprint-based background check on any adult residing in the home of a foster parent or potential foster parent;
- ▶ creates a presumption that reunification services not be provided to:

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- 26 • a parent who commits sexual abuse of a child;
- 27 • a parent who is a registered sex offender; or
- 28 • a birth mother whose child is born with fetal alcohol spectrum disorder, unless
- 29 she enrolls in a substance abuse program;
- 30 ▶ requires a court to consider costs already borne by a parent or legal guardian before
- 31 assessing guardian ad litem attorney fees, court costs, or expenses against a parent
- 32 or legal guardian;
- 33 ▶ permits a parent or legal guardian to appeal a court's determination of guardian ad
- 34 litem attorney fees, costs, and expenses;
- 35 ▶ requires a guardian ad litem to:
- 36 • disclose, in certain cases, the minor's wishes to the court;
- 37 • conduct an independent investigation regarding a minor client, the minor's
- 38 family, and what constitutes the best interest of the minor;
- 39 • keep records regarding how many times the guardian ad litem has had contact
- 40 with each minor client and make those records available when making a
- 41 recommendation regarding the client's welfare; and
- 42 • disclose to the court the basis for any recommendation regarding the best
- 43 interest of the child;
- 44 ▶ creates a preference for the adoption of a child by a relative following a termination
- 45 of parental rights; and
- 46 ▶ makes technical changes.

47 **Money Appropriated in this Bill:**

48 None

49 **Other Special Clauses:**

50 None

51 **Utah Code Sections Affected:**

52 AMENDS:

53 **62A-2-120**, as last amended by Laws of Utah 2011, Chapters 320 and 366

54 **62A-4a-102**, as last amended by Laws of Utah 2009, Chapter 75

55 **62A-4a-107**, as last amended by Laws of Utah 2007, Chapter 306

56 **62A-4a-202.1**, as last amended by Laws of Utah 2008, Chapters 3 and 17

57 **62A-4a-202.6**, as last amended by Laws of Utah 2010, Chapter 239
 58 **62A-4a-209**, as last amended by Laws of Utah 2008, Chapters 3 and 17
 59 **62A-4a-404**, as renumbered and amended by Laws of Utah 1994, Chapter 260
 60 **78A-6-302**, as renumbered and amended by Laws of Utah 2008, Chapter 3
 61 **78A-6-306**, as last amended by Laws of Utah 2010, Chapter 368
 62 **78A-6-308**, as last amended by Laws of Utah 2009, Chapter 32
 63 **78A-6-312**, as last amended by Laws of Utah 2011, Chapters 98 and 167
 64 **78A-6-511**, as renumbered and amended by Laws of Utah 2008, Chapter 3
 65 **78A-6-902**, as last amended by Laws of Utah 2011, Chapter 158
 66 **78B-6-131**, as enacted by Laws of Utah 2008, Chapter 3 and last amended by Laws of
 67 Utah 2008, Chapter 17

67a **Ŝ→ ENACTS:**

67b **78A-4-201, Utah Code Annotated 1953 ←Ŝ**

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

70 Section 1. Section **62A-2-120** is amended to read:

71 **62A-2-120. Criminal background checks -- Direct access to children or**
 72 **vulnerable adults.**

73 (1) (a) Except as provided in Subsection (7), an applicant for an initial license or a
 74 license renewal under this chapter shall submit to the office the names and other identifying
 75 information, which may include fingerprints, of all persons associated with the licensee, as
 76 defined in Section 62A-2-101, with direct access to children or vulnerable adults.

77 (b) The Criminal Investigations and Technical Services Division of the Department of
 78 Public Safety, or the office as authorized under Section 53-10-108, shall process the
 79 information described in Subsection (1)(a) to determine whether the [individual] applicant has
 80 been convicted of any crime.

81 (c) Except as provided in Subsection (1)(d), if an [individual] applicant has not
 82 continuously lived in Utah for the five years immediately preceding the day on which the
 83 information referred to in Subsection (1)(a) is submitted to the office, the [individual] applicant
 84 shall submit fingerprints for a FBI national criminal history record check. The fingerprints
 85 shall be submitted to the FBI through the Criminal Investigations and Technical Services
 86 Division.

87 (d) An [individual] applicant is not required to comply with Subsection (1)(c) if:

88 (i) the ~~[individual]~~ applicant continuously lived in Utah for the five years immediately
89 preceding the day on which the information described in Subsection (1)(a) is submitted to the
90 office, except for time spent outside of the United States and its territories; and

91 (ii) the background check of the ~~[individual]~~ applicant is being conducted for a purpose
92 other than a purpose described in Subsection (1)(f).

93 (e) If an applicant described in Subsection (1)(a) spent time outside of the United
94 States and its territories during the five years immediately preceding the day on which the
95 information described in Subsection (1)(a) is submitted to the office, the office shall require the
96 applicant to submit documentation establishing whether the applicant was convicted of a crime
97 during the time that the applicant spent outside of the United States and its territories.

98 (f) Notwithstanding Subsections (1)(a) through (e), and except as provided in
99 Subsection (1)(h), an applicant described in Subsection (1)(a) shall submit fingerprints for an
100 FBI national criminal history records check, through the Criminal Investigations and Technical
101 Services Division, if the background check of the applicant is being conducted for the purpose
102 of:

103 (i) licensing a prospective foster home; or

104 (ii) approving a prospective adoptive placement of a child in state custody.

105 (g) Except as provided in Subsection (1)(h), in addition to the other requirements of
106 this section, if the background check of an applicant described in Subsection (1)(a) is being
107 conducted for the purpose of licensing a prospective foster home or approving a prospective
108 adoptive placement of a child in state custody, the office shall:

109 (i) check the child abuse and neglect registry in each state where each ~~[prospective~~
110 ~~foster parent or prospective adoptive parent]~~ applicant resided in the five years immediately
111 preceding the day on which the ~~[prospective foster parent or prospective adoptive parent]~~
112 applicant applied to be a foster parent or adoptive parent, to determine whether the prospective
113 foster parent or prospective adoptive parent is listed in the registry as having a substantiated or
114 supported finding of child abuse or neglect; and

115 (ii) check the child abuse and neglect registry in each state where each adult living in
116 the home of the ~~[prospective foster parent or prospective adoptive parent]~~ applicant described
117 in Subsection (1)(g)(i) resided in the five years immediately preceding the day on which the
118 ~~[prospective foster parent or prospective adoptive parent]~~ applicant applied to be a foster parent

119 or adoptive parent, to determine whether the adult is listed in the registry as having a
120 substantiated or supported finding of child abuse or neglect.

121 (h) The requirements under Subsections (1)(f) and (g) do not apply to the extent that:

122 (i) federal law or rule permits otherwise; or

123 (ii) the requirements would prohibit the Division of Child and Family Services or a
124 court from placing a child with:

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

126 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,
127 or 78A-6-307.5, pending completion of the background check described in Subsections (1)(f)
128 and (g).

129 (i) The office shall make rules, in accordance with Title 63G, Chapter 3, Utah
130 Administrative Rulemaking Act, to implement the provisions of this Subsection (1) relating to
131 background checks.

132 (2) The office shall approve [~~a person~~] an applicant for whom identifying information
133 is submitted under Subsection (1) to have direct access to children or vulnerable adults in the
134 licensee program if:

135 (a) (i) the [~~person~~] applicant is found to have no criminal history record; or

136 (ii) (A) the only convictions in the [~~person's~~] applicant's criminal history record are
137 misdemeanors or infractions not involving any of the offenses described in Subsection (3); and

138 (B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years
139 before the date of the search;

140 (b) the [~~person~~] applicant is not listed in the statewide database of the Division of
141 Aging and Adult Services created by Section 62A-3-311.1;

142 (c) juvenile court records do not show that a court made a substantiated finding, under
143 Section 78A-6-323, that the [~~person~~] applicant committed a severe type of child abuse or
144 neglect;

145 (d) the [~~person~~] applicant is not listed in the Licensing Information System of the
146 Division of Child and Family Services created by Section 62A-4a-1006;

147 (e) the [~~person~~] applicant has not pled guilty or no contest to a pending charge for any:

148 (i) felony;

149 (ii) misdemeanor listed in Subsection (3); or

150 (iii) infraction listed in Subsection (3); and

151 (f) for ~~[a person]~~ an applicant described in Subsection (1)(g), the registry check
152 described in Subsection (1)(g) does not indicate that the ~~[person]~~ applicant is listed in a child
153 abuse and neglect registry of another state as having a substantiated or supported finding of a
154 severe type of child abuse or neglect as defined in Section 62A-4a-1002.

155 (3) Except as provided in Subsection (8), unless at least 10 years have passed since the
156 date of conviction, the office may not approve ~~[a person]~~ an applicant to have direct access to
157 children or vulnerable adults in the licensee's human services program if ~~[that person]~~ the
158 applicant has been convicted of an offense, whether a felony, misdemeanor, or infraction, that
159 is:

160 (a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;

161 (b) a violation of any pornography law, including sexual exploitation of a minor;

162 (c) prostitution;

163 (d) included in:

164 (i) Title 76, Chapter 5, Offenses Against the Person;

165 (ii) Section 76-5b-201, Sexual Exploitation of a Minor; or

166 (iii) Title 76, Chapter 7, Offenses Against the Family;

167 (e) a violation of Section 76-6-103, aggravated arson;

168 (f) a violation of Section 76-6-203, aggravated burglary;

169 (g) a violation of Section 76-6-302, aggravated robbery; or

170 (h) a conviction for an offense committed outside of the state that, if committed in the
171 state, would constitute a violation of an offense described in Subsections (3)(d) through (g).

172 (4) (a) Except as provided in Subsection (8), if ~~[a person]~~ an applicant for whom
173 identifying information is submitted under Subsection (1) is not approved by the office under
174 Subsection (2) or (3) to have direct access to children or vulnerable adults in the licensee
175 program, the office shall conduct a comprehensive review of criminal and court records and
176 related circumstances if the reason the approval is not granted is due solely to one or more of
177 the following:

178 (i) a conviction for:

179 (A) any felony not listed in Subsection (3);

180 (B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the

181 date of the search;

182 (C) a protective order or ex parte protective order violation under Section 76-5-108 or
183 a similar statute in another state; or

184 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least 10 years
185 have passed since the date of conviction;

186 (ii) a plea of guilty or no contest to a pending:

187 (A) felony;

188 (B) misdemeanor listed in Subsection (3); or

189 (C) infraction listed in Subsection (3);

190 (iii) the [person] applicant is listed in the statewide database of the Division of Aging
191 and Adult Services created by Section 62A-3-311.1;

192 (iv) juvenile court records show that a court made a substantiated finding, under
193 Section 78A-6-323, that the [person] applicant committed a severe type of child abuse or
194 neglect;

195 (v) the [person] applicant is listed in the Licensing Information System of the Division
196 of Child and Family Services created by Section 62A-4a-1006; or

197 (vi) the [person] applicant is listed in a child abuse or neglect registry of another state
198 as having a substantiated or supported finding of a severe type of child abuse or neglect as
199 defined in Section 62A-4a-1002.

200 (b) The comprehensive review under Subsection (4)(a) shall include an examination of:

201 (i) the date of the offense or incident;

202 (ii) the nature and seriousness of the offense or incident;

203 (iii) the circumstances under which the offense or incident occurred;

204 (iv) the age of the perpetrator when the offense or incident occurred;

205 (v) whether the offense or incident was an isolated or repeated incident;

206 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
207 adult, including:

208 (A) actual or threatened, nonaccidental physical or mental harm;

209 (B) sexual abuse;

210 (C) sexual exploitation; and

211 (D) negligent treatment;

212 (vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric
213 treatment received, or additional academic or vocational schooling completed, by the person;
214 and

215 (viii) any other pertinent information.

216 (c) At the conclusion of the comprehensive review under Subsection (4)(a), the office
217 shall approve the [person] applicant who is the subject of the review to have direct access to
218 children or vulnerable adults, unless it finds that approval will likely create a risk of harm to a
219 child or vulnerable adult.

220 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
221 office may make rules, consistent with this chapter, defining procedures for the comprehensive
222 review described in this Subsection (4).

223 (5) (a) For purposes of this Subsection (5), "directly supervised" means that the person
224 being supervised is under the uninterrupted visual and auditory surveillance of the person doing
225 the supervising.

226 (b) A licensee may not permit any person to have direct access to a child or a
227 vulnerable adult unless, subject to Subsection (5)(c), that person is:

228 (i) associated with the licensee and:

229 (A) approved by the office to have direct access to children or vulnerable adults under
230 this section; or

231 (B) (I) the office has not determined whether to approve that person to have direct
232 access to children or vulnerable adults;

233 (II) the information described in Subsection (1)(a), relating to that person, is submitted
234 to the department; and

235 (III) that person is directly supervised by a person associated with the licensee who is
236 approved by the office to have direct access to children or vulnerable adults under this section;

237 (ii) (A) not associated with the licensee; and

238 (B) directly supervised by a person associated with the licensee who is approved by the
239 office to have direct access to children or vulnerable adults under this section;

240 (iii) the parent or guardian of the child or vulnerable adult; or

241 (iv) a person approved by the parent or guardian of the child or vulnerable adult to
242 have direct access to the child or vulnerable adult.

243 (c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child
244 or a vulnerable adult if that person is prohibited by court order from having that access.

245 (6) (a) Within 30 days after receiving the identifying information for a person under
246 Subsection (1), the office shall give written notice to the person and to the licensee or applicant
247 with whom the person is associated of:

248 (i) the office's decision regarding its background screening clearance and findings; and

249 (ii) a list of any convictions found in the search.

250 (b) With the notice described in Subsection (6)(a), the office shall also give [~~to~~] the
251 [~~person~~] applicant the details of any comprehensive review conducted under Subsection (4).

252 (c) If the notice under Subsection (6)(a) states that the [~~person~~] applicant is not
253 approved to have direct access to children or vulnerable adults, the notice shall further advise
254 the persons to whom the notice is given that either the person or the licensee or applicant with
255 whom the person is associated, or both, may, under Subsection 62A-2-111(2), request a hearing
256 in the department's Office of Administrative Hearings, to challenge the office's decision.

257 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
258 office shall make rules, consistent with this chapter:

259 (i) defining procedures for the challenge of its background screening decision
260 described in this Subsection (6); and

261 (ii) expediting the process for renewal of a license under the requirements of this
262 section and other applicable sections.

263 (7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for
264 an initial license, or license renewal, to operate a substance abuse program that provides
265 services to adults only.

266 (8) (a) Notwithstanding Subsections (2) through (4), the office may not approve or
267 license a person as a prospective foster parent or a prospective adoptive parent if the person has
268 been convicted of:

269 (i) a felony involving conduct that constitutes any of the following:

270 (A) child abuse, as described in Section 76-5-109;

271 (B) commission of domestic violence in the presence of a child, as described in Section
272 76-5-109.1;

273 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

- 274 (D) endangerment of a child, as described in Section 76-5-112.5;
- 275 (E) aggravated murder, as described in Section 76-5-202;
- 276 (F) murder, as described in Section 76-5-203;
- 277 (G) manslaughter, as described in Section 76-5-205;
- 278 (H) child abuse homicide, as described in Section 76-5-208;
- 279 (I) homicide by assault, as described in Section 76-5-209;
- 280 (J) kidnapping, as described in Section 76-5-301;
- 281 (K) child kidnapping, as described in Section 76-5-301.1;
- 282 (L) aggravated kidnapping, as described in Section 76-5-302;
- 283 (M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 284 (N) an offense described in Section 76-5b-201, Sexual Exploitation of a Minor;
- 285 (O) aggravated arson, as described in Section 76-6-103;
- 286 (P) aggravated burglary, as described in Section 76-6-203;
- 287 (Q) aggravated robbery, as described in Section 76-6-302; or
- 288 (R) domestic violence, as described in Section 77-36-1; or
- 289 (ii) an offense committed outside the state that, if committed in the state, would
- 290 constitute a violation of an offense described in Subsection (8)(a)(i).

291 (b) Notwithstanding Subsections (2) through (4), the office may not approve or license
292 a person as a prospective foster parent or a prospective adoptive parent if, within the five years
293 immediately preceding the day on which the person would otherwise be approved or licensed,
294 the person has been convicted of a felony involving conduct that constitutes any of the
295 following:

- 296 (i) aggravated assault, as described in Section 76-5-103;
- 297 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 298 (iii) mayhem, as described in Section 76-5-105;
- 299 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 300 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 301 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
302 Act;
- 303 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
304 Precursor Act; or

305 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

306 (9) If any provision of this section conflicts with a provision of Section 62A-2-120.5,
307 the conflicting provision of Section 62A-2-120.5 shall govern.

308 Section 2. Section **62A-4a-102** is amended to read:

309 **62A-4a-102. Policy responsibilities of division.**

310 (1) The Division of Child and Family Services, created in Section 62A-4a-103, is
311 responsible for establishing policies for the division, by rule, under Title 63G, Chapter 3, Utah
312 Administrative Rulemaking Act, in accordance with the requirements of this chapter and Title
313 78A, Chapter 6, Juvenile Court Act of 1996, regarding abuse, neglect, and dependency
314 proceedings, and domestic violence services. The division is responsible to see that the
315 legislative purposes for the division are carried out.

316 (2) The division shall:

317 (a) approve fee schedules for programs within the division;

318 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
319 establish, by rule, policies to ensure that private citizens, consumers, foster parents, private
320 contract providers, allied state and local agencies, and others are provided with an opportunity
321 to comment and provide input regarding any new policy or proposed revision of an existing
322 policy; and

323 (c) provide a mechanism for:

324 (i) systematic and regular review of existing ~~[policy]~~ policies, including an annual
325 review of all division policies to ensure that policies comply with the Utah Code; and

326 (ii) consideration of policy changes proposed by the persons and agencies described in
327 Subsection (2)(b).

328 (3) (a) The division shall establish rules for the determination of eligibility for services
329 offered by the division in accordance with this chapter.

330 (b) The division may, by rule, establish eligibility standards for consumers.

331 (4) The division shall adopt and maintain rules regarding placement for adoption or
332 foster care that are consistent with, and no more restrictive than, applicable statutory
333 provisions.

334 Section 3. Section **62A-4a-107** is amended to read:

335 **62A-4a-107. Mandatory education and training of caseworkers -- Development of**

336 **curriculum.**

337 (1) There is created within the division a full-time position of Child Welfare Training
338 Coordinator, who shall be appointed by and serve at the pleasure of the director. The employee
339 in that position is not responsible for direct casework services or the supervision of those
340 services, but is required to:

341 (a) develop child welfare curriculum that:

342 (i) is current and effective, consistent with the division's mission and purpose for child
343 welfare; and

344 (ii) utilizes curriculum and resources from a variety of sources including those from:

345 (A) the public sector;

346 (B) the private sector; and

347 (C) inside and outside of the state;

348 (b) recruit, select, and supervise child welfare trainers;

349 (c) develop a statewide training program, including a budget and identification of
350 sources of funding to support that training;

351 (d) evaluate the efficacy of training in improving job performance;

352 (e) assist child protective services and foster care workers in developing and fulfilling
353 their individual training plans;

354 (f) monitor staff compliance with division training requirements and individual training
355 plans; and

356 (g) expand the collaboration between the division and schools of social work within
357 institutions of higher education in developing child welfare services curriculum, and in
358 providing and evaluating training.

359 (2) (a) The director shall, with the assistance of the child welfare training coordinator,
360 establish a core curriculum for child welfare services that is substantially equivalent to the
361 Child Welfare League of America's Core Training for Child Welfare Caseworkers Curriculum.

362 (b) Any child welfare caseworker who is employed by the division for the first time
363 after July 1, 1999, shall, before assuming significant independent casework responsibilities,
364 successfully complete:

365 (i) the core curriculum; and

366 (ii) except as provided in Subsection (2)(c), on-the-job training that consists of

367 observing and accompanying at least two capable and experienced child welfare caseworkers
368 as they perform work-related functions:

369 (A) for three months if the caseworker has less than six months of on-the-job
370 experience as a child welfare caseworker; or

371 (B) for two months if the caseworker has six months or more but less than 24 months
372 of on-the-job experience as a child welfare caseworker.

373 (c) A child welfare caseworker with at least 24 months of on-the-job experience is not
374 required to receive on-the-job training under Subsection (2)(b)(ii).

375 (3) Child welfare caseworkers shall complete training in:

376 (a) the legal duties of a child welfare caseworker;

377 (b) the responsibility of a child welfare caseworker to protect the safety and legal rights
378 of children, parents, and families at all stages of a case, including:

379 (i) initial contact;

380 (ii) investigation; and

381 (iii) treatment;

382 (c) recognizing situations involving:

383 (i) substance abuse;

384 (ii) domestic violence;

385 (iii) abuse; and

386 (iv) neglect; and

387 (d) the relationship of the Fourth and Fourteenth Amendments of the Constitution of
388 the United States to the child welfare caseworker's job, including:

389 (i) search and seizure of evidence;

390 (ii) the warrant requirement;

391 (iii) exceptions to the warrant requirement; and

392 (iv) removing a child from the custody of the child's parent or guardian.

393 (4) The division shall train its child welfare caseworkers to apply the risk assessment
394 tools and rules described in Subsection 62A-4a-1002(2).

395 (5) The division shall use the training of child welfare caseworkers to emphasize:

396 (a) the importance of maintaining the parent-child relationship whenever possible;

397 (b) the preference for providing in-home services over taking a child into protective

398 custody, both for the emotional well-being of the child and the efficient allocation of resources;
399 and

400 (c) the importance and priority of kinship placement in the event a child must be taken
401 into protective custody.

402 [~~(5)~~] (6) When a child welfare caseworker is hired, before assuming significant
403 independent casework responsibilities, the child welfare caseworker shall complete the training
404 described in Subsections (3) [~~and (4)~~] through (5).

405 Section 4. Section **62A-4a-202.1** is amended to read:

406 **62A-4a-202.1. Entering home of a child -- Taking a child into protective custody**
407 **-- Caseworker accompanied by peace officer -- Preventive services -- Shelter facility or**
408 **emergency placement.**

409 (1) A peace officer or child welfare worker may not:

410 (a) enter the home of a child who is not under the jurisdiction of the court, remove a
411 child from the child's home or school, or take a child into protective custody unless authorized
412 under Subsection 78A-6-106(2) [~~;~~]; or

413 (b) remove a child from the child's home or take a child into custody under this section
414 solely on the basis of educational neglect, truancy, or failure to comply with a court order to
415 attend school.

416 (2) A child welfare worker within the division may take action under Subsection (1)
417 accompanied by a peace officer, or without a peace officer when a peace officer is not
418 reasonably available.

419 (3) (a) If possible, consistent with the child's safety and welfare, before taking a child
420 into protective custody, the child welfare worker shall also determine whether there are
421 services available that, if provided to a parent or guardian of the child, would eliminate the
422 need to remove the child from the custody of the child's parent or guardian.

423 (b) If the services described in Subsection (3)(a) are reasonably available, they shall be
424 utilized.

425 (c) In determining whether the services described in Subsection (3)(a) are reasonably
426 available, and in making reasonable efforts to provide those services, the child's health, safety,
427 and welfare shall be the child welfare worker's paramount concern.

428 (4) (a) A child removed or taken into custody under this section may not be placed or

429 kept in a secure detention facility pending court proceedings unless the child is detainable
430 based on guidelines promulgated by the Division of Juvenile Justice Services.

431 (b) A child removed from the custody of the child's parent or guardian but who does
432 not require physical restriction shall be given temporary care in:

433 (i) a shelter facility; or

434 (ii) an emergency placement in accordance with Section 62A-4a-209.

435 (c) When making a placement under Subsection (4)(b), the Division of Child and
436 Family Services shall give priority to a placement with a noncustodial parent, relative, or
437 friend, in accordance with Section 62A-4a-209.

438 (d) If the child is not placed with a noncustodial parent, a relative, or a designated
439 friend, the caseworker assigned to the child shall file a report with the caseworker's supervisor
440 explaining why a different placement was in the child's best interest.

441 Section 5. Section **62A-4a-202.6** is amended to read:

442 **62A-4a-202.6. Conflict child protective services investigations -- Authority of**
443 **investigators.**

444 (1) (a) The division shall contract with an independent child protective service
445 investigator from the private sector to investigate reports of abuse or neglect of a child that
446 occur while the child is in the custody of the division.

447 (b) The executive director shall designate an entity within the department, other than
448 the division, to monitor the contract for the investigators described in Subsection (1)(a).

449 (c) [~~When~~] Subject to Subsection (4), when a report is made that a child is abused or
450 neglected while in the custody of the division:

451 (i) the attorney general may, in accordance with Section 67-5-16, and with the consent
452 of the division, employ a child protective services investigator to conduct a conflict
453 investigation of the report; or

454 (ii) a law enforcement officer, as defined in Section 53-13-103, may, with the consent
455 of the division, conduct a conflict investigation of the report.

456 (d) Subsection (1)(c)(ii) does not prevent a law enforcement officer from, without the
457 consent of the division, conducting a criminal investigation of abuse or neglect under Title 53,
458 Public Safety Code.

459 (2) The investigators described in Subsections (1)(c) and (d) may also investigate

460 allegations of abuse or neglect of a child by a department employee or a licensed substitute care
461 provider.

462 (3) The investigators described in Subsection (1), if not peace officers, shall have the
463 same rights, duties, and authority of a child protective services investigator employed by the
464 division to:

465 (a) make a thorough investigation upon receiving either an oral or written report of
466 alleged abuse or neglect of a child, with the primary purpose of that investigation being the
467 protection of the child;

468 (b) make an inquiry into the child's home environment, emotional, or mental health, the
469 nature and extent of the child's injuries, and the child's physical safety;

470 (c) make a written report of their investigation, including determination regarding
471 whether the alleged abuse or neglect was substantiated, unsubstantiated, or without merit, and
472 forward a copy of that report to the division within the time mandates for investigations
473 established by the division; and

474 (d) immediately consult with school authorities to verify the child's status in
475 accordance with Sections 53A-11-101 through 53A-11-103 when a report is based upon or
476 includes an allegation of educational neglect.

477 (4) If there is a lapse in the contract with a private child protective service investigator
478 and no other investigator is available under Subsection (1)(a) or (c), the department may
479 conduct an independent investigation.

480 Section 6. Section **62A-4a-209** is amended to read:

481 **62A-4a-209. Emergency placement.**

482 (1) As used in this section:

483 (a) "Nonrelative" means an individual, other than a noncustodial parent or a relative.

484 (b) "Relative" is as defined in Subsection 78A-6-307(1)(b).

485 (2) The division may use an emergency placement under Subsection

486 62A-4a-202.1(4)(b)(ii) when:

487 (a) the case worker has made the determination that:

488 (i) the child's home is unsafe;

489 (ii) removal is necessary under the provisions of Section 62A-4a-202.1; and

490 (iii) the child's custodial parent or guardian will agree to not remove the child from the

491 home of the person that serves as the placement and not have any contact with the child until
492 after the shelter hearing required by Section 78A-6-306;

493 (b) a person, with preference being given in accordance with Subsection (4), can be
494 identified who has the ability and is willing to provide care for the child who would otherwise
495 be placed in shelter care, including:

496 (i) taking the child to medical, mental health, dental, and educational appointments at
497 the request of the division; and

498 (ii) making the child available to division services and the guardian ad litem; and

499 (c) the person described in Subsection (2)(b) agrees to care for the child on an
500 emergency basis under the following conditions:

501 (i) the person meets the criteria for an emergency placement under Subsection (3);

502 (ii) the person agrees to not allow the custodial parent or guardian to have any contact
503 with the child until after the shelter hearing unless authorized by the division in writing;

504 (iii) the person agrees to contact law enforcement and the division if the custodial
505 parent or guardian attempts to make unauthorized contact with the child;

506 (iv) the person agrees to allow the division and the child's guardian ad litem to have
507 access to the child;

508 (v) the person has been informed and understands that the division may continue to
509 search for other possible placements for long-term care, if needed;

510 (vi) the person is willing to assist the custodial parent or guardian in reunification
511 efforts at the request of the division, and to follow all court orders; and

512 (vii) the child is comfortable with the person.

513 (3) Except as otherwise provided in Subsection (5), before the division places a child
514 in an emergency placement, the division:

515 (a) may request the name of a reference and may contact the reference to determine the
516 answer to the following questions:

517 (i) would the person identified as a reference place a child in the home of the
518 emergency placement; and

519 (ii) are there any other relatives or friends to consider as a possible emergency or
520 long-term placement for the child;

521 (b) shall have the custodial parent or guardian sign an emergency placement agreement

522 form during the investigation;

523 (c) (i) if the emergency placement will be with a relative of the child, shall comply with
524 the background check provisions described in Subsection (7); or

525 (ii) if the emergency placement will be with a person other than a noncustodial parent
526 or a relative, shall comply with the criminal background check provisions described in Section
527 78A-6-308 for adults living in the household where the child will be placed;

528 (d) shall complete a limited home inspection of the home where the emergency
529 placement is made; and

530 (e) shall have the emergency placement approved by a family service specialist.

531 (4) (a) The following order of preference shall be applied when determining the person
532 with whom a child will be placed in an emergency placement described in this section,
533 provided that the person is willing, and has the ability, to care for the child:

534 (i) a noncustodial parent of the child in accordance with Section 78A-6-307;

535 (ii) a relative of the child;

536 (iii) subject to Subsection (4)(b), a friend designated by the custodial parent or
537 guardian of the child, if the friend is a licensed foster parent; and

538 (iv) a shelter facility, former foster placement, or other foster placement designated by
539 the division.

540 (b) Unless the division agrees otherwise, the custodial parent or guardian described in
541 Subsection (4)(a)(iii) may only designate one friend as a potential emergency placement.

542 (5) (a) The division may, pending the outcome of the investigation described in
543 Subsections (5)(b) and (c), place a child in emergency placement with the child's noncustodial
544 parent if, based on a limited investigation, prior to making the emergency placement, the
545 division:

546 (i) determines that the noncustodial parent has regular, unsupervised visitation with the
547 child that is not prohibited by law or court order;

548 (ii) determines that there is not reason to believe that the child's health or safety will be
549 endangered during the emergency placement; and

550 (iii) has the custodial parent or guardian sign an emergency placement agreement.

551 (b) Either before or after making an emergency placement with the noncustodial parent
552 of the child, the division may conduct the investigation described in Subsection (3)(a) in

553 relation to the noncustodial parent.

554 (c) Before, or within one day, excluding weekends and holidays, after a child is placed
555 in an emergency placement with the noncustodial parent of the child, the division shall conduct
556 a limited:

557 (i) background check of the noncustodial parent, pursuant to Subsection (7); and

558 (ii) inspection of the home where the emergency placement is made.

559 (6) After an emergency placement, the division caseworker must:

560 (a) respond to the emergency placement's calls within one hour if the custodial parents
561 or guardians attempt to make unauthorized contact with the child or attempt to remove the
562 child;

563 (b) complete all removal paperwork, including the notice provided to the custodial
564 parents and guardians under Section 78A-6-306;

565 (c) contact the attorney general to schedule a shelter hearing;

566 (d) complete the placement procedures required in Section 78A-6-307; and

567 (e) continue to search for other relatives as a possible long-term placement, if needed.

568 (7) (a) The background check described in Subsection (3)(c)(i) shall include:

569 (i) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification
570 background check; and

571 (ii) a completed search of the Management Information System described in Section
572 62A-4a-1003.

573 (b) The division shall determine whether a person passes the background check
574 described in this Subsection (7) pursuant to the provisions of Subsections 62A-2-120(2), (3),
575 and (8).

576 (c) Notwithstanding Subsection (7)(b), the division may not place a child with an
577 individual who is prohibited by court order from having access to that child.

578 Section 7. Section **62A-4a-404** is amended to read:

579 **62A-4a-404. Fetal alcohol syndrome and drug dependency -- Reporting**
580 **requirements.**

581 When [~~any person~~] an individual, including a licensee under the Medical Practice Act
582 or the Nurse Practice Act, attends the birth of a child or cares for a child, and determines that
583 the child, at the time of birth, has fetal alcohol syndrome [~~or~~], fetal alcohol spectrum disorder,

584 or fetal drug dependency, [he] the individual shall report that determination to the division as
 585 soon as possible.

585a **§→ [§→ Section 8. Section 78A-4-201 is enacted to read:**

585b ~~78A-4-201. Appellate review of juvenile courts:~~

585c ~~(1) The court shall apply nondeferential de novo review to issues of fact and law raised~~
 585d ~~in an appeal of a juvenile court's:~~

585e ~~(a) finding of abuse;~~

585f ~~(b) finding of neglect; or~~

585g ~~(c) order terminating parental rights.~~

585h ~~(2) The issue of whether the evidence presented in a juvenile court, taken as a whole,~~
 585i ~~constitutes clear and convincing evidence shall be a matter of law subject to review by the~~

585j ~~court. ←§] ←§~~

586 Section **§→ [8] 9 ←§** . Section 78A-6-302 is amended to read:

587 **78A-6-302. Court-ordered protective custody of a child following petition filing --**
 588 **Grounds.**

589 (1) After a petition has been filed under Section 78A-6-304, if the child who is the
 590 subject of the petition is not in the protective custody of the division, a court may order that the
 591 child be removed from the child's home or otherwise taken into protective custody if the court
 592 finds, by a preponderance of the evidence, that any one or more of the following circumstances
 593 exist:

594 (a) (i) there is an imminent danger to the physical health or safety of the child; and

595 (ii) the child's physical health or safety may not be protected without removing the
 596 child from the custody of the child's parent or guardian;

597 (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct
 598 that causes the child to suffer emotional damage; and

599 (ii) there are no reasonable means available by which the child's emotional health may
 600 be protected without removing the child from the custody of the child's parent or guardian;

601 (c) the child or another child residing in the same household has been, or is considered
 602 to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a
 603 parent or guardian, a member of the parent's or guardian's household, or other person known to
 604 the parent or guardian;

605 (d) the parent or guardian is unwilling to have physical custody of the child;

606 (e) the child is abandoned or left without any provision for the child's support;

607 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged

608 or cannot arrange for safe and appropriate care for the child;

609 (g) (i) a relative or other adult custodian with whom the child is left by the parent or
610 guardian is unwilling or unable to provide care or support for the child;

611 (ii) the whereabouts of the parent or guardian are unknown; and

612 (iii) reasonable efforts to locate the parent or guardian are unsuccessful;

613 (h) the child is in immediate need of medical care;

614 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an

615 environment that poses a threat to the child's health or safety; or

616 (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose
617 a threat to the child's health or safety;

618 (j) the child or another child residing in the same household has been neglected;

619 (k) an infant has been abandoned, as defined in Section 78A-6-316;

620 (l) (i) the parent or guardian, or an adult residing in the same household as the parent or
621 guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act;
622 and

623 (ii) any clandestine laboratory operation was located in the residence or on the property
624 where the child resided; or

625 (m) the child's welfare is otherwise endangered.

626 (2) (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as
627 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
628 occurs involving the same substantiated abuser or under similar circumstance as the previous
629 abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the
630 custody of the child's parent.

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

632 (i) another child residing in the same household may not be removed from the home
633 unless that child is considered to be at substantial risk of being physically abused, sexually
634 abused, or sexually exploited as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

635 (ii) if a parent or guardian has received actual notice that physical abuse, sexual abuse,
636 or sexual exploitation by a person known to the parent has occurred, and there is evidence that
637 the parent or guardian failed to protect the child, after having received the notice, by allowing
638 the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie
639 evidence that the child is at substantial risk of being physically abused, sexually abused, or
640 sexually exploited.

641 (3) In the absence of one of the factors described in Subsection (1), a court may not
642 remove a child from the parent's or guardian's custody on the basis of:

643 (a) educational neglect, truancy, or failure to comply with a court order to attend
644 school;

645 (b) mental illness or poverty of the parent or guardian; or

646 (c) disability of the parent or guardian, as defined in Section 57-21-2.

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

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

653 (6) (a) Except as provided in Subsection (6)(b), a court or the Division of Child and
654 Family Services may not remove a child from the custody of the child's parent or guardian on
655 the sole or primary basis that the parent or guardian refuses to consent to:

- 656 (i) the administration of a psychotropic medication to a child;
- 657 (ii) a psychiatric, psychological, or behavioral treatment for a child; or
- 658 (iii) a psychiatric or behavioral health evaluation of a child.

659 (b) Notwithstanding Subsection (6)(a), a court or the Division of Child and Family
660 Services may remove a child under conditions that would otherwise be prohibited under
661 Subsection (6)(a) if failure to take an action described under Subsection (6)(a) would present a
662 serious, imminent risk to the child's physical safety or the physical safety of others.

663 Section 9. Section **78A-6-306** is amended to read:

664 **78A-6-306. Shelter hearing.**

665 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays
666 after any one or all of the following occur:

- 667 (a) removal of the child from the child's home by the division;
- 668 (b) placement of the child in the protective custody of the division;
- 669 (c) emergency placement under Subsection 62A-4a-202.1(4);
- 670 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter
671 at the request of the division; or

672 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under
673 Subsection 78A-6-106(4).

674 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)
675 through (e), the division shall issue a notice that contains all of the following:

- 676 (a) the name and address of the person to whom the notice is directed;

- 677 (b) the date, time, and place of the shelter hearing;
- 678 (c) the name of the child on whose behalf a petition is being brought;
- 679 (d) a concise statement regarding:
- 680 (i) the reasons for removal or other action of the division under Subsection (1); and
- 681 (ii) the allegations and code sections under which the proceeding has been instituted;
- 682 (e) a statement that the parent or guardian to whom notice is given, and the child, are
- 683 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
- 684 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
- 685 provided in accordance with the provisions of Section 78A-6-1111; and
- 686 (f) a statement that the parent or guardian is liable for the cost of support of the child in
- 687 the protective custody, temporary custody, and custody of the division, and the cost for legal
- 688 counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial
- 689 ability of the parent or guardian.
- 690 (3) The notice described in Subsection (2) shall be personally served as soon as
- 691 possible, but no later than one business day after removal of the child from the child's home, or
- 692 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection
- 693 78A-6-106(4), on:
- 694 (a) the appropriate guardian ad litem; and
- 695 (b) both parents and any guardian of the child, unless the parents or guardians cannot
- 696 be located.
- 697 (4) The following persons shall be present at the shelter hearing:
- 698 (a) the child, unless it would be detrimental for the child;
- 699 (b) the child's parents or guardian, unless the parents or guardian cannot be located, or
- 700 fail to appear in response to the notice;
- 701 (c) counsel for the parents, if one is requested;
- 702 (d) the child's guardian ad litem;
- 703 (e) the caseworker from the division who is assigned to the case; and
- 704 (f) the attorney from the attorney general's office who is representing the division.
- 705 (5) (a) At the shelter hearing, the court shall:
- 706 (i) provide an opportunity to provide relevant testimony to:
- 707 (A) the child's parent or guardian, if present; and

708 (B) any other person having relevant knowledge; and
709 (ii) subject to Section 78A-6-305, provide an opportunity for the child to testify.
710 (b) The court:
711 (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile
712 Procedure;
713 (ii) shall hear relevant evidence presented by the child, the child's parent or guardian,
714 the requesting party, or their counsel; and
715 (iii) may in its discretion limit testimony and evidence to only that which goes to the
716 issues of removal and the child's need for continued protection.
717 (6) If the child is in the protective custody of the division, the division shall report to
718 the court:
719 (a) the reason why the child was removed from the parent's or guardian's custody;
720 (b) any services provided to the child and the child's family in an effort to prevent
721 removal;
722 (c) the need, if any, for continued shelter;
723 (d) the available services that could facilitate the return of the child to the custody of
724 the child's parent or guardian; and
725 (e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the
726 child or friends of the child's parents may be able and willing to accept temporary placement of
727 the child.
728 (7) The court shall consider all relevant evidence provided by persons or entities
729 authorized to present relevant evidence pursuant to this section.
730 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good
731 cause shown, the court may grant no more than one continuance, not to exceed five judicial
732 days.
733 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for
734 a continuance under Subsection (8)(a).
735 (9) (a) If the child is in the protective custody of the division, the court shall order that
736 the child be released from the protective custody of the division unless it finds, by a
737 preponderance of the evidence, that any one of the following exist:
738 (i) subject to Subsection (9)(b)(i), there is a substantial danger to the physical health or

739 safety of the child and the child's physical health or safety may not be protected without
740 removing the child from the custody of the child's parent;

741 (ii) (A) the child is suffering emotional damage; and
742 (B) there are no reasonable means available by which the child's emotional health may
743 be protected without removing the child from the custody of the child's parent;

744 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is
745 not removed from the custody of the child's parents;

746 (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same
747 household has been, or is considered to be at substantial risk of being, physically abused,
748 sexually abused, or sexually exploited by a:

749 (A) parent;
750 (B) member of the parent's household; or
751 (C) person known to the parent;

752 (v) the parent is unwilling to have physical custody of the child;
753 (vi) the child is without any provision for the child's support;
754 (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe
755 and appropriate care for the child;

756 (viii) (A) a relative or other adult custodian with whom the child is left by the parent is
757 unwilling or unable to provide care or support for the child;
758 (B) the whereabouts of the parent are unknown; and
759 (C) reasonable efforts to locate the parent are unsuccessful;

760 (ix) the child is in urgent need of medical care;
761 (x) the physical environment or the fact that the child is left unattended beyond a
762 reasonable period of time poses a threat to the child's health or safety;

763 (xi) the child or a minor residing in the same household has been neglected;
764 (xii) the parent, or an adult residing in the same household as the parent, is charged or
765 arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine
766 laboratory operation was located in the residence or on the property where the child resided; or
767 (xiii) the child's welfare is substantially endangered.

768 (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is
769 established if:

770 (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency
771 involving the parent; and

772 (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

773 (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly
774 allowed the child to be in the physical care of a person after the parent received actual notice
775 that the person physically abused, sexually abused, or sexually exploited the child, that fact
776 constitutes prima facie evidence that there is a substantial risk that the child will be physically
777 abused, sexually abused, or sexually exploited.

778 (10) (a) (i) The court shall also make a determination on the record as to whether
779 reasonable efforts were made to prevent or eliminate the need for removal of the child from the
780 child's home and whether there are available services that would prevent the need for continued
781 removal.

782 (ii) If the court finds that the child can be safely returned to the custody of the child's
783 parent or guardian through the provision of those services, the court shall place the child with
784 the child's parent or guardian and order that those services be provided by the division.

785 (b) In making the determination described in Subsection (10)(a), and in ordering and
786 providing services, the child's health, safety, and welfare shall be the paramount concern, in
787 accordance with federal law.

788 (11) Where the division's first contact with the family occurred during an emergency
789 situation in which the child could not safely remain at home, the court shall make a finding that
790 any lack of preplacement preventive efforts was appropriate.

791 (12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe
792 abuse, or severe neglect are involved, neither the division nor the court has any duty to make
793 "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home,
794 return a child to the child's home, provide reunification services, or attempt to rehabilitate the
795 offending parent or parents.

796 (13) The court may not order continued removal of a child solely on the basis of
797 educational neglect as described in Subsection 78A-6-105(25)(b) truancy, or failure to comply
798 with a court order to attend school.

799 (14) (a) Whenever a court orders continued removal of a child under this section, the
800 court shall state the facts on which that decision is based.

801 (b) If no continued removal is ordered and the child is returned home, the court shall
802 state the facts on which that decision is based.

803 (15) If the court finds that continued removal and temporary custody are necessary for
804 the protection of a child because harm may result to the child if the child were returned home,
805 the court shall order continued removal regardless of:

806 (a) any error in the initial removal of the child;

807 (b) the failure of a party to comply with notice provisions; or

808 (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child
809 and Family Services.

810 Section 10. Section **78A-6-308** is amended to read:

811 **78A-6-308. Criminal background checks necessary prior to out-of-home**
812 **placement.**

813 (1) Subject to Subsection (3), upon ordering removal of a child from the custody of the
814 child's parent and placing that child in the custody of the Division of Child and Family
815 Services, prior to the division's placement of that child in out-of-home care, the court shall
816 require the completion of a nonfingerprint-based background check by the Utah Bureau of
817 Criminal Identification regarding the proposed placement.

818 (2) (a) Except as provided in Subsection (4), the division and the Office of Guardian ad
819 Litem may request, or the court upon the court's own motion may order, the Department of
820 Public Safety to conduct a complete Federal Bureau of Investigation criminal background
821 check through the national criminal history system (NCIC).

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

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

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

832 (a) a fingerprint based FBI national criminal history records check is conducted on the
833 prospective foster parent or prospective adoptive parent and any other adult residing in the
834 household;

835 (b) the Department of Human Services conducts a check of the abuse and neglect
836 registry in each state where the prospective foster parent or prospective adoptive parent resided
837 in the five years immediately preceding the day on which the prospective foster parent or
838 prospective adoptive parent applied to be a foster parent or adoptive parent, to determine
839 whether the prospective foster parent or prospective adoptive parent is listed in the registry as
840 having a substantiated or supported finding of a severe type of abuse or neglect as defined in
841 Section 62A-4a-1002;

842 (c) the Department of Human Services conducts a check of the abuse and neglect
843 registry of each state where each adult living in the home of the prospective foster parent or
844 prospective adoptive parent described in Subsection (3)(b) resided in the five years
845 immediately preceding the day on which the prospective foster parent or prospective adoptive
846 parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed
847 in the registry as having a substantiated or supported finding of a severe type of abuse or
848 neglect as defined in Section 62A-4a-1002; and

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

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

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

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

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

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

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

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

861 Section 11. Section **78A-6-312** is amended to read:

862 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

- 863 (1) The court may:
- 864 (a) make any of the dispositions described in Section 78A-6-117;
- 865 (b) place the minor in the custody or guardianship of any:
- 866 (i) individual; or
- 867 (ii) public or private entity or agency; or
- 868 (c) order:
- 869 (i) protective supervision;
- 870 (ii) family preservation;
- 871 (iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or
- 872 (iv) other services.
- 873 (2) Whenever the court orders continued removal at the dispositional hearing, and that
- 874 the minor remain in the custody of the division, the court shall first:
- 875 (a) establish a primary permanency goal for the minor; and
- 876 (b) determine whether, in view of the primary permanency goal, reunification services
- 877 are appropriate for the minor and the minor's family, pursuant to Subsections (20) through (22).
- 878 (3) Subject to Subsections (6) and (7), if the court determines that reunification
- 879 services are appropriate for the minor and the minor's family, the court shall provide for
- 880 reasonable parent-time with the parent or parents from whose custody the minor was removed,
- 881 unless parent-time is not in the best interest of the minor.
- 882 (4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe
- 883 abuse, or severe neglect are involved, neither the division nor the court has any duty to make
- 884 "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to
- 885 attempt to rehabilitate the offending parent or parents.
- 886 (5) In all cases, the minor's health, safety, and welfare shall be the court's paramount
- 887 concern in determining whether reasonable efforts to reunify should be made.
- 888 (6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless
- 889 the court makes a finding that it is necessary to deny parent-time in order to:
- 890 (a) protect the physical safety of the minor;
- 891 (b) protect the life of the minor; or
- 892 (c) prevent the minor from being traumatized by contact with the parent due to the
- 893 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

894 (7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a
895 parent's failure to:

896 (a) prove that the parent has not used legal or illegal substances; or

897 (b) comply with an aspect of the child and family plan that is ordered by the court.

898 (8) In addition to the primary permanency goal, the court shall establish a concurrent
899 permanency goal that shall include:

900 (a) a representative list of the conditions under which the primary permanency goal
901 will be abandoned in favor of the concurrent permanency goal; and

902 (b) an explanation of the effect of abandoning or modifying the primary permanency
903 goal.

904 (9) A permanency hearing shall be conducted in accordance with Subsection
905 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if
906 something other than reunification is initially established as a minor's primary permanency
907 goal.

908 (10) (a) The court may amend a minor's primary permanency goal before the
909 establishment of a final permanency plan under Section 78A-6-314.

910 (b) The court is not limited to the terms of the concurrent permanency goal in the event
911 that the primary permanency goal is abandoned.

912 (c) If, at any time, the court determines that reunification is no longer a minor's primary
913 permanency goal, the court shall conduct a permanency hearing in accordance with Section
914 78A-6-314 on or before the earlier of:

915 (i) 30 days after the day on which the court makes the determination described in this
916 Subsection (10)(c); or

917 (ii) the day on which the provision of reunification services, described in Section
918 78A-6-314, ends.

919 (11) (a) If the court determines that reunification services are appropriate, it shall order
920 that the division make reasonable efforts to provide services to the minor and the minor's
921 parent for the purpose of facilitating reunification of the family, for a specified period of time.

922 (b) In providing the services described in Subsection (11)(a), the minor's health, safety,
923 and welfare shall be the division's paramount concern, and the court shall so order.

924 (12) The court shall:

925 (a) determine whether the services offered or provided by the division under the child
926 and family plan constitute "reasonable efforts" on the part of the division;

927 (b) determine and define the responsibilities of the parent under the child and family
928 plan in accordance with Subsection 62A-4a-205(6)(e); and

929 (c) identify verbally on the record, or in a written document provided to the parties, the
930 responsibilities described in Subsection (12)(b), for the purpose of assisting in any future
931 determination regarding the provision of reasonable efforts, in accordance with state and
932 federal law.

933 (13) (a) The time period for reunification services may not exceed 12 months from the
934 date that the minor was initially removed from the minor's home, unless the time period is
935 extended under Subsection 78A-6-314(8).

936 (b) Nothing in this section may be construed to entitle any parent to an entire 12
937 months of reunification services.

938 (14) (a) If reunification services are ordered, the court may terminate those services at
939 any time.

940 (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined
941 to be inconsistent with the final permanency plan for the minor established pursuant to Section
942 78A-6-314, then measures shall be taken, in a timely manner, to:

943 (i) place the minor in accordance with the permanency plan; and

944 (ii) complete whatever steps are necessary to finalize the permanent placement of the
945 minor.

946 (15) Any physical custody of the minor by the parent or a relative during the period
947 described in Subsections (11) through (14) does not interrupt the running of the period.

948 (16) (a) If reunification services are ordered, a permanency hearing shall be conducted
949 by the court in accordance with Section 78A-6-314 at the expiration of the time period for
950 reunification services.

951 (b) The permanency hearing shall be held no later than 12 months after the original
952 removal of the minor.

953 (c) If reunification services are not ordered, a permanency hearing shall be conducted
954 within 30 days, in accordance with Section 78A-6-314.

955 (17) With regard to a minor who is 36 months of age or younger at the time the minor

956 is initially removed from the home, the court shall:

957 (a) hold a permanency hearing eight months after the date of the initial removal,
958 pursuant to Section 78A-6-314; and

959 (b) order the discontinuance of those services after eight months from the initial
960 removal of the minor from the home if the parent or parents have not made substantial efforts
961 to comply with the child and family plan.

962 (18) With regard to a minor in the custody of the division whose parent or parents are
963 ordered to receive reunification services but who have abandoned that minor for a period of six
964 months from the date that reunification services were ordered:

965 (a) the court shall terminate reunification services; and

966 (b) the division shall petition the court for termination of parental rights.

967 (19) When a court conducts a permanency hearing for a minor under Section
968 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the
969 sibling group together is:

970 (a) practicable; and

971 (b) in accordance with the best interest of the minor.

972 (20) (a) Because of the state's interest in and responsibility to protect and provide
973 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a
974 parent's interest in receiving reunification services is limited.

975 (b) The court may determine that:

976 (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate,
977 based on the individual circumstances; and

978 (ii) reunification services should not be provided.

979 (c) In determining "reasonable efforts" to be made with respect to a minor, and in
980 making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount
981 concern.

982 (21) There is a presumption that reunification services should not be provided to a
983 parent if the court finds, by clear and convincing evidence, that any of the following
984 circumstances exist:

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

987 (b) subject to Subsection (22)(a), the parent is suffering from a mental illness of such
988 magnitude that it renders the parent incapable of utilizing reunification services;

989 (c) the minor was previously adjudicated as an abused child due to physical abuse,
990 sexual abuse, or sexual exploitation, and following the adjudication the minor:

991 (i) was removed from the custody of the minor's parent;

992 (ii) was subsequently returned to the custody of the parent; and

993 (iii) is being removed due to additional physical abuse, sexual abuse, or sexual
994 exploitation;

995 (d) the parent:

996 (i) caused the death of another minor through abuse or neglect; [~~or~~]

997 (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

998 (A) murder or manslaughter of a child; or

999 (B) child abuse homicide;

1000 (iii) committed sexual abuse against the child; or

1001 (iv) is a registered sex offender or required to register as a sex offender;

1002 (e) the minor suffered severe abuse by the parent or by any person known by the
1003 parent, if the parent knew or reasonably should have known that the person was abusing the
1004 minor;

1005 (f) the minor is adjudicated an abused child as a result of severe abuse by the parent,
1006 and the court finds that it would not benefit the minor to pursue reunification services with the
1007 offending parent;

1008 (g) the parent's rights are terminated with regard to any other minor;

1009 (h) the minor is removed from the minor's home on at least two previous occasions and
1010 reunification services were offered or provided to the family at those times;

1011 (i) the parent has abandoned the minor for a period of six months or longer;

1012 (j) the parent permitted the child to reside, on a permanent or temporary basis, at a
1013 location where the parent knew or should have known that a clandestine laboratory operation
1014 was located;

1015 (k) except as provided in Subsection (22)(b), with respect to a parent who is the child's
1016 birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was
1017 exposed to an illegal or prescription drug that was abused by the child's mother while the child

1018 was in utero, if the child was taken into division custody for that reason, unless the mother
1019 agrees to enroll in, is currently enrolled in, or has recently and successfully completed a
1020 substance abuse treatment program approved by the department; or

1021 (l) any other circumstance that the court determines should preclude reunification
1022 efforts or services.

1023 (22) (a) The finding under Subsection (21)(b) shall be based on competent evidence
1024 from at least two medical or mental health professionals, who are not associates, establishing
1025 that, even with the provision of services, the parent is not likely to be capable of adequately
1026 caring for the minor within 12 months after the day on which the court finding is made.

1027 (b) A judge may disregard the provisions of Subsection (21)(k) if the court finds, under
1028 the circumstances of the case, that the substance abuse treatment described in Subsection
1029 (21)(k) is not warranted.

1030 (23) In determining whether reunification services are appropriate, the court shall take
1031 into consideration:

1032 (a) failure of the parent to respond to previous services or comply with a previous child
1033 and family plan;

1034 (b) the fact that the minor was abused while the parent was under the influence of
1035 drugs or alcohol;

1036 (c) any history of violent behavior directed at the child or an immediate family
1037 member;

1038 (d) whether a parent continues to live with an individual who abused the minor;

1039 (e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

1040 (f) testimony by a competent professional that the parent's behavior is unlikely to be
1041 successful; and

1042 (g) whether the parent has expressed an interest in reunification with the minor.

1043 (24) (a) If reunification services are not ordered pursuant to Subsections (20) through
1044 (22), and the whereabouts of a parent become known within six months after the day on which
1045 the out-of-home placement of the minor is made, the court may order the division to provide
1046 reunification services.

1047 (b) The time limits described in Subsections (2) through (19) are not tolled by the
1048 parent's absence.

1049 (25) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable
1050 services unless it determines that those services would be detrimental to the minor.

1051 (b) In making the determination described in Subsection (25)(a), the court shall
1052 consider:

1053 (i) the age of the minor;

1054 (ii) the degree of parent-child bonding;

1055 (iii) the length of the sentence;

1056 (iv) the nature of the treatment;

1057 (v) the nature of the crime or illness;

1058 (vi) the degree of detriment to the minor if services are not offered;

1059 (vii) for a minor 10 years of age or older, the minor's attitude toward the
1060 implementation of family reunification services; and

1061 (viii) any other appropriate factors.

1062 (c) Reunification services for an incarcerated parent are subject to the time limitations
1063 imposed in Subsections (2) through (19).

1064 (d) Reunification services for an institutionalized parent are subject to the time
1065 limitations imposed in Subsections (2) through (19), unless the court determines that continued
1066 reunification services would be in the minor's best interest.

1067 (26) If, pursuant to Subsections (21)(b) through (1), the court does not order
1068 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
1069 with Section 78A-6-314.

1070 Section 12. Section **78A-6-511** is amended to read:

1071 **78A-6-511. Court disposition of child upon termination.**

1072 (1) As used in this section, "relative" means:

1073 (a) an adult who is a grandparent, great-grandparent, aunt, great aunt, uncle, great
1074 uncle, brother-in-law, sister-in-law, stepparent, first cousin, sibling, or stepsibling of a child;
1075 and

1076 (b) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25
1077 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that
1078 statute.

1079 ~~(1)~~ (2) Upon entry of an order under this part the court may:

1080 (a) place the child in the legal custody and guardianship of a licensed child placement
1081 agency or the division for adoption; or

1082 (b) make any other disposition of the child authorized under Section 78A-6-117.

1083 ~~[(2) AH]~~ (3) Subject to the requirements of Subsections (4) and (5), all adoptable
1084 children placed in the custody of the division shall be placed for adoption.

1085 (4) If the parental rights of all parents of an adoptable child placed in the custody of the
1086 division have been terminated and a suitable adoptive placement is not already available, the
1087 court:

1088 (a) shall determine whether there is a relative who desires to adopt the child;

1089 (b) may order the division to conduct a reasonable search to determine whether there
1090 are relatives who are willing to adopt the child; and

1091 (c) shall, if a relative desires to adopt the child:

1092 (i) make a specific finding regarding the fitness of the relative to adopt the child; and

1093 (ii) place the child for adoption with that relative unless it finds that adoption by the
1094 relative is not in the best interest of the child.

1095 (5) This section does not guarantee that a relative will be permitted to adopt the child.

1096 Section 13. Section 78A-6-902 is amended to read:

1097 **78A-6-902. Appointment of attorney guardian ad litem -- Duties and**
1098 **responsibilities -- Training -- Trained staff and court-appointed special advocate**
1099 **volunteers -- Costs -- Immunity -- Annual report.**

1100 (1) (a) The court:

1101 (i) may appoint an attorney guardian ad litem to represent the best interest of a minor
1102 involved in any case before the court; and

1103 (ii) shall consider the best interest of a minor, consistent with the provisions of Section
1104 62A-4a-201, in determining whether to appoint a guardian ad litem.

1105 (b) In all cases where an attorney guardian ad litem is appointed, the court shall make a
1106 finding that establishes the necessity of the appointment.

1107 (2) An attorney guardian ad litem shall represent the best interest of each child who
1108 may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of
1109 the day that:

1110 (a) the child is removed from the child's home by the division; or

- 1111 (b) the petition is filed.
- 1112 (3) The director shall ensure that each attorney guardian ad litem employed by the
- 1113 office:
- 1114 (a) represents the best interest of each client of the office in all venues, including:
- 1115 (i) court proceedings; and
- 1116 (ii) meetings to develop, review, or modify the child and family plan with the Division
- 1117 of Child and Family Services in accordance with Section 62A-4a-205;
- 1118 (b) prior to representing any minor before the court, be trained in:
- 1119 (i) applicable statutory, regulatory, and case law; and
- 1120 (ii) nationally recognized standards for an attorney guardian ad litem;
- 1121 (c) conducts or supervises an ongoing, independent investigation in order to obtain,
- 1122 first-hand, a clear understanding of the situation and needs of the minor;
- 1123 (d) (i) personally meets with the minor, unless:
- 1124 (A) the minor is outside of the state; or
- 1125 (B) meeting with the minor would be detrimental to the minor;
- 1126 (ii) personally interviews the minor, unless:
- 1127 (A) the minor is not old enough to communicate;
- 1128 (B) the minor lacks the capacity to participate in a meaningful interview; or
- 1129 (C) the interview would be detrimental to the minor; and
- 1130 (iii) if the minor is placed in an out-of-home placement, or is being considered for
- 1131 placement in an out-of-home placement, unless it would be detrimental to the minor:
- 1132 (A) to the extent possible, determines the minor's goals and concerns regarding
- 1133 placement; and
- 1134 (B) personally assesses or supervises an assessment of the appropriateness and safety
- 1135 of the minor's environment in each placement;
- 1136 (e) personally attends all review hearings pertaining to the minor's case;
- 1137 (f) participates in all appeals, unless excused by order of the court;
- 1138 (g) is familiar with local experts who can provide consultation and testimony regarding
- 1139 the reasonableness and appropriateness of efforts made by the Division of Child and Family
- 1140 Services to:
- 1141 (i) maintain a minor in the minor's home; or

1142 (ii) reunify a child with the child's parent;

1143 (h) to the extent possible, and unless it would be detrimental to the minor, personally

1144 or through a trained volunteer, paralegal, or other trained staff, keeps the minor advised of:

1145 (i) the status of the minor's case;

1146 (ii) all court and administrative proceedings;

1147 (iii) discussions with, and proposals made by, other parties;

1148 (iv) court action; and

1149 (v) the psychiatric, medical, or other treatment or diagnostic services that are to be

1150 provided to the minor; and

1151 (i) in cases where a child and family plan is required, personally or through a trained

1152 volunteer, paralegal, or other trained staff, monitors implementation of a minor's child and

1153 family plan and any dispositional orders to:

1154 (i) determine whether services ordered by the court:

1155 (A) are actually provided; and

1156 (B) are provided in a timely manner; and

1157 (ii) attempt to assess whether services ordered by the court are accomplishing the

1158 intended goal of the services.

1159 (4) (a) Consistent with this Subsection (4), an attorney guardian ad litem may use

1160 trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers

1161 Act, trained paralegals, and other trained staff to assist in investigation and preparation of

1162 information regarding the cases of individual minors before the court.

1163 (b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained

1164 in and follow, at a minimum, the guidelines established by the United States Department of

1165 Justice Court Appointed Special Advocate Association.

1166 (5) The attorney guardian ad litem shall continue to represent the best interest of the

1167 minor until released from that duty by the court.

1168 (6) (a) Consistent with Subsection (6)(b), the juvenile court is responsible for:

1169 (i) all costs resulting from the appointment of an attorney guardian ad litem; and

1170 (ii) the costs of volunteer, paralegal, and other staff appointment and training.

1171 (b) The court shall use funds appropriated by the Legislature for the guardian ad litem

1172 program to cover the costs described in Subsection (6)(a).

1173 (c) (i) When the court appoints an attorney guardian ad litem under this section, the
1174 court may assess all or part of the attorney fees, court costs, and paralegal, staff, and volunteer
1175 expenses against the child's parents, parent, or legal guardian in a proportion that the court
1176 determines to be just and appropriate~~[-]~~, taking into consideration costs already borne by the
1177 parents, parent, or legal guardian, including:

1178 (A) private attorney fees;

1179 (B) counseling for the child;

1180 (C) counseling for the parent, if mandated by the court or recommended by the

1181 Division of Child and Family Services; and

1182 (D) any other cost the court determines to be relevant.

1183 (ii) The court may not assess those fees or costs against:

1184 (A) a legal guardian, when that guardian is the state; or

1185 (B) consistent with Subsection (6)(d), a parent who is found to be impecunious.

1186 (d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the
1187 court shall:

1188 (i) require that person to submit an affidavit of impecuniosity as provided in Section
1189 78A-2-302; and

1190 (ii) follow the procedures and make the determinations as provided in Section
1191 78A-2-304.

1192 (e) The child's parents, parent, or legal guardian may appeal the court's determination,
1193 under Subsection (6)(c), of fees, costs, and expenses.

1194 (7) An attorney guardian ad litem appointed under this section, when serving in the
1195 scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee
1196 of the state for purposes of indemnification under Title 63G, Chapter 7, Governmental
1197 Immunity Act of Utah.

1198 (8) (a) An attorney guardian ad litem shall represent the best interest of a minor.

1199 (b) If the minor's wishes differ from the attorney's determination of the minor's best
1200 interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in
1201 addition to presenting the attorney's determination of the minor's best interest.

1202 (c) A difference between the minor's wishes and the attorney's determination of best
1203 interest may not be considered a conflict of interest for the attorney.

1204 (d) the guardian ad litem shall disclose the wishes of the child unless the child:

1205 (i) instructs the guardian ad litem to not disclose the child's wishes; or

1206 (ii) has not expressed any wishes.

1207 ~~[(d)]~~ (e) The court may appoint one attorney guardian ad litem to represent the best
1208 interests of more than one child of a marriage.

1209 (9) An attorney guardian ad litem shall be provided access to all Division of Child and
1210 Family Services records regarding the minor at issue and the minor's family.

1211 (10) (a) An attorney guardian ad litem shall conduct an independent investigation
1212 regarding the minor at issue, the minor's family, and what constitutes the best interest of the
1213 minor.

1214 (b) An attorney guardian ad litem may interview the minor's Division of Child and
1215 Family Services caseworker, but may not:

1216 (i) rely exclusively on the conclusions and findings of the Division of Child and Family
1217 Services; or

1218 (ii) except as provided in Subsection (10)(c), conduct a visit with the client in
1219 conjunction with the visit of a Division of Child and Family Services caseworker.

1220 (c) A guardian ad litem may meet with a client during a team meeting, court hearing, or
1221 similar venue when a Division of Child and Family Services caseworker is present for a
1222 purpose other than the guardian ad litem's visit with the client.

1223 ~~[(10)]~~ (11) (a) An attorney guardian ad litem shall maintain current and accurate
1224 records regarding:

1225 ~~[(a)]~~ (i) the number of times the attorney has had contact with each minor; and

1226 ~~[(b)]~~ (ii) the actions the attorney has taken in representation of the minor's best interest.

1227 (b) In every hearing where the guardian ad litem makes a recommendation regarding
1228 the best interest of the child, the court shall require the guardian ad litem to disclose the factors
1229 that form the basis of the recommendation.

1230 ~~[(11)]~~ (12) (a) Except as provided in ~~[Subsection (11)(b)]~~ Subsection (12)(b), all
1231 records of an attorney guardian ad litem are confidential and may not be released or made
1232 public upon subpoena, search warrant, discovery proceedings, or otherwise. This subsection
1233 supersedes Title 63G, Chapter 2, Government Records Access and Management Act.

1234 (b) Consistent with Subsection ~~[(11)]~~ (12)(d), all records of an attorney guardian ad

1235 litem:

1236 (i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative
1237 Subpoena Powers; and

1238 (ii) shall be released to the Legislature.

1239 (c) (i) Except as provided in Subsection [~~(11)~~] (12)(c)(ii), records released in
1240 accordance with Subsection [~~(11)~~] (12)(b) shall be maintained as confidential by the
1241 Legislature.

1242 (ii) Notwithstanding Subsection [~~(11)~~] (12)(c)(i), the Office of the Legislative Auditor
1243 General may include summary data and nonidentifying information in its audits and reports to
1244 the Legislature.

1245 (d) (i) Subsection [~~(11)~~] (12)(b) constitutes an exception to Rules of Professional
1246 Conduct, Rule 1.6, as provided by Rule 1.6(b)(4), because of:

1247 (A) the unique role of an attorney guardian ad litem described in Subsection (8); and

1248 (B) the state's role and responsibility:

1249 (I) to provide a guardian ad litem program; and

1250 (II) as *parens patriae*, to protect minors.

1251 (ii) A claim of attorney-client privilege does not bar access to the records of an attorney
1252 guardian ad litem by the Legislature, through legislative subpoena.

1253 Section 14. Section **78B-6-131** is amended to read:

1254 **78B-6-131. Child in custody of state -- Placement.**

1255 (1) Notwithstanding Sections 78B-6-128 through 78B-6-130, and except as provided in
1256 Subsection (2), a child who is in the legal custody of the state may not be placed with a
1257 prospective foster parent or a prospective adoptive parent, unless, before the child is placed
1258 with the prospective foster parent or the prospective adoptive parent:

1259 (a) a fingerprint based FBI national criminal history records check is conducted on the
1260 prospective foster parent [~~or~~], prospective adoptive parent, and any other adult residing in the
1261 household;

1262 (b) the Department of Human Services conducts a check of the child abuse and neglect
1263 registry in each state where the prospective foster parent or prospective adoptive parent resided
1264 in the five years immediately preceding the day on which the prospective foster parent or
1265 prospective adoptive parent applied to be a foster parent or adoptive parent, to determine

1266 whether the prospective foster parent or prospective adoptive parent is listed in the registry as
1267 having a substantiated or supported finding of child abuse or neglect;

1268 (c) the Department of Human Services conducts a check of the child abuse and neglect
1269 registry of each state where each adult living in the home of the prospective foster parent or
1270 prospective adoptive parent described in Subsection (1)(b) resided in the five years
1271 immediately preceding the day on which the prospective foster parent or prospective adoptive
1272 parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed
1273 in the registry as having a substantiated or supported finding of child abuse or neglect; and

1274 (d) each person required to undergo a background check described in this section
1275 passes the background check, pursuant to the provisions of Section 62A-2-120.

1276 (2) The requirements under Subsection (1) do not apply to the extent that:

1277 (a) federal law or rule permits otherwise; or

1278 (b) the requirements would prohibit the division or a court from placing a child with:

1279 (i) a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

1280 (ii) a relative, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending

1281 completion of the background check described in Subsection (1).