

# HB0372S02 compared with HB0372S01

{Omitted text} shows text that was in HB0372S01 but was omitted in HB0372S02  
inserted text shows text that was not in HB0372S01 but was inserted into HB0372S02

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## Child Welfare Changes

2026 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karianne Lisonbee**

Senate Sponsor: Wayne A. Harper

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### LONG TITLE

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#### General Description:

4 This bill addresses guardians ad litem and consideration of a minor's best interest.

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#### Highlighted Provisions:

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This bill:

7       ▶ makes modifications to the Guardian ad Litem Oversight Committee;

8       ▶ requires an attorney guardian ad litem and a private attorney guardian ad litem to communicate a  
9 minor's expressed interests to a court;

10       ▶ modifies the responsibilities of the director of the Office of Guardian ad Litem;

11       ▶ requires an attorney guardian ad litem and a private attorney guardian ad litem to represent the  
12 expressed interests of a minor that is at least 8 years old, rather than the minor's best interest;

13       ▶ requires an attorney guardian ad litem and a private attorney guardian ad litem to inform the  
14 court at each hearing:

15               • the minor's expressed wishes; and

16               • the date of the guardian ad litem's last interaction with the minor;

17       ▶

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requires an attorney guardian ad litem and a private attorney guardian ad litem to video record all interactions with a minor that is less than 14 years old;

- 21      ▶ addresses when a guardian ad litem is appointed;
- 22      ▶ adjusts the responsibilities and obligations of a guardian ad litem;
- 23      ▶ addresses records in child welfare cases; {**and**}
- 24      ▶ directs a court to consider the best interest of a minor within the context of the principles and provisions in Section 80-4-104{-} ;

26      ▶ **clarifies that the report provided to the Child Welfare Legislative Oversight Panel and the chairs of the Health and Human Services Interim Committee by the fatality review committee within the Division of Continuous Quality and Improvement should not be fully redacted; and**

- 30      ▶ **makes technical and conforming changes.**

### 31      Money Appropriated in this Bill:

32      None

### 33      Other Special Clauses:

34      None

### 35      Utah Code Sections Affected:

#### 36      AMENDS:

37      **26B-1-506 , as last amended by Laws of Utah 2024, Chapter 288**

38      **26B-1-507 , as last amended by Laws of Utah 2024, Chapter 288**

39      **78A-2-104 , as last amended by Laws of Utah 2023, Chapter 394**

40      **78A-2-702 , as last amended by Laws of Utah 2021, Chapter 262**

41      **78A-2-703 , as last amended by Laws of Utah 2019, Chapter 326**

42      **78A-2-704 , as last amended by Laws of Utah 2022, Chapter 335**

43      **78A-2-705 , as last amended by Laws of Utah 2022, Chapter 272**

44      **78A-2-801 , as last amended by Laws of Utah 2022, Chapter 334**

45      **78A-2-802 , as last amended by Laws of Utah 2023, Chapter 394**

46      **78A-2-803 , as last amended by Laws of Utah 2023, Chapter 280**

47      **80-2-102 , as last amended by Laws of Utah 2025, Chapter 48**

48      **80-2-301 , as last amended by Laws of Utah 2025, Chapters 173, 174**

49      **80-2a-101 , as last amended by Laws of Utah 2025, Chapter 426**

50      **80-3-102 , as last amended by Laws of Utah 2025, Chapter 426**

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51       **80-3-104** , as last amended by Laws of Utah 2022, Chapter 334

52       **80-4-102** , as last amended by Laws of Utah 2022, Chapter 335

53       **81-13-202** , as renumbered and amended by Laws of Utah 2025, Chapter 426

54       ENACTS:

55       **78A-2-104.5** , Utah Code Annotated 1953

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

58       Section 1. Section 26B-1-506 is amended to read:

59       **26B-1-506. Fatality review committee report -- Response to report.**

60       (1) Within 20 days after the day on which the committee proceedings described in Section 26B-1-505  
61       end, the committee shall submit:

62       (a) a written report to the executive director that includes:

63       (i) the advisory opinions made under Subsection 26B-1-505(6); and

64       (ii) any recommendations regarding action that should be taken in relation to an employee of the  
65       department or a person who contracts with the department; and

66       (b) a copy of the report described in Subsection (1)(a) to:

67       (i) the director, or the director's designee, of the office or division to which the near fatality or the death  
68       relates; and

69       (ii) the regional director, or the regional director's designee, of the region to which the near fatality or  
70       the death relates.

71       (2)

72       (a) Within 60 days after the day on which the director described in Subsection (1)(b)(i) receives a copy  
73       of the report described in Subsection (1)(a), the department shall provide a written response[~~, with  
74       only identifying information redacted~~] to the Office of Legislative Research and General Counsel,  
75       if the report:

76       [(a)] (i) indicates that a law, rule, policy, or procedure was not complied with;

77       [(b)] (ii) indicates that the near fatality or the death was not responded to properly;

78       [(e)] (iii) recommends that a law, rule, policy, or procedure be changed; or

79       [(d)] (iv) indicates that additional training is needed.

80       (b) The following information in the report shall be redacted:

81       (i) the names and contact information of a referent; and

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81 (ii) the surname and address of an individual that is not described in Subsection (2)(b)(i).

83 (3) The response described in Subsection (2) shall include:

84 (a) a plan of action to implement any recommended improvements within the department; and

86 (b) the approval of the executive director or the executive director's designee for the plan described in  
Subsection (3)(a).

88 (4) A report described in Subsection (1) and the response described in Subsection (2) is a protected  
record.

90 (5)

94 (a) As used in this Subsection (5), "fatality review document" means any document created in  
connection with, or as a result of, a formal review of a near fatality or a death, or a decision whether  
to conduct a formal review of a near fatality or a death, including:

95 (i) a report described in Subsection (1);

96 (ii) a response described in Subsection (2);

97 (iii) a recommendation regarding whether a formal review should be conducted;

98 (iv) a decision to conduct a formal review;

99 (v) notes of a person who participates in a formal review;

100 (vi) notes of a person who reviews a formal review report;

101 (vii) minutes of a formal review;

102 (viii) minutes of a meeting where a formal review report is reviewed; and

103 (ix) minutes of, documents received in relation to, and documents generated in relation to, the  
portion of a meeting of the Health and Human Services Interim Committee or the Child  
Welfare Legislative Oversight Panel that a formal review report or a document described in this  
Subsection (5)(a) is reviewed or discussed.

106 (b) A fatality review document is not subject to discovery, subpoena, or similar compulsory process in  
any civil, judicial, or administrative proceeding, nor shall any individual or organization with lawful  
access to the data be compelled to testify with regard to a report described in Subsection (1) or a  
response described in Subsection (2).

111 (c) The following are not admissible as evidence in a civil, judicial, or administrative proceeding:

113 (i) a fatality review document; and

114 (ii) an executive summary described in Subsection 26B-1-507(4).

115 Section 2. Section 26B-1-507 is amended to read:

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## **26B-1-507. Reporting to, and review by, legislative committees.**

(1)

(a) On or before September 1 of each year, the department shall provide[~~, with only identifying information redacted,~~] a copy of the report described in Subsection 26B-1-506(1)(b) and the response described in Subsection 26B-1-506(2) to the Office of Legislative Research and General Counsel and the chairs of:

[(a)] (i) the Health and Human Services Interim Committee; [or] and

[~~(b)~~] (ii) [if the qualified individual who is the subject of the report is an individual described in Subsection 26B-1-501(7)(e), (d), or (h),] the Child Welfare Legislative Oversight Panel, if the individual who is the subject of the report is a qualified individual described in Subsection 26B-1-501(7)(c), (d), or (h).

(b) The following information in the report shall be redacted:

(i) the names and contact information of a referent; and

(ii) the surname and address of an individual that is not described in Subsection (1)(b)(i).

(2)

(a) The Health and Human Services Interim Committee may, in a closed meeting, review a report described in Subsection 26B-1-506(1)[(b)].

(b) The Child Welfare Legislative Oversight Panel shall, in a closed meeting, review a report described in Subsection [(1)(b)] 26B-1-506(1).

(3)

(a) The Health and Human Services Interim Committee and the Child Welfare Legislative Oversight Panel may not interfere with, or make recommendations regarding, the resolution of a particular case.

(b) The purpose of a review described in Subsection (2) is to assist a committee or panel described in Subsection (2) in determining whether to recommend a change in the law.

(c) Any recommendation, described in Subsection (3)(b), by a committee or panel for a change in the law shall be made in an open meeting.

(4) On or before September 1 of each year, the department shall provide an executive summary of all formal review reports for the preceding state fiscal year to:

(a) the Office of Legislative Research and General Counsel;

(b) the Health and Human Services Interim Committee; and

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146 (c) the Child Welfare Legislative Oversight Panel.

147 (5) The executive summary described in Subsection (4):

148 (a) may not include any names or identifying information;

149 (b) shall include:

150 (i) all recommendations regarding changes to the law that were made during the preceding fiscal year under Subsection 26B-1-505(6);

152 (ii) all changes made, or in the process of being made, to a law, rule, policy, or procedure in response to a formal review that occurred during the preceding fiscal year;

155 (iii) a description of the training that has been completed in response to a formal review that occurred during the preceding fiscal year;

157 (iv) statistics for the preceding fiscal year regarding:

158 (A) the number of qualified individuals and the type of deaths and near fatalities that are known to the department;

160 (B) the number of formal reviews conducted;

161 (C) the categories described in Subsection 26B-1-501(7) of qualified individuals;

162 (D) the gender, age, race, and other significant categories of qualified individuals; and

164 (E) the number of fatalities of qualified individuals known to the department that are identified as suicides; and

166 (v) action taken by the Division of Licensing and Background Checks in response to the near fatality or the death of a qualified individual; and

168 (c) is a public document.

169 (6) The Division of Child and Family Services shall, to the extent required by the federal Child Abuse Prevention and Treatment Act of 1988, Pub. L. No. 93-247, as amended, allow public disclosure of the findings or information relating to a case of child abuse or neglect that results in a child fatality or a near fatality.

173 Section 3. Section **78A-2-104** is amended to read:

**78A-2-104. Judicial Council -- Creation -- Members -- Terms and election -- Responsibilities -- Reports.**

54 (1) The Judicial Council is composed of:

55 (a) the chief justice of the Supreme Court;

56 (b) one member elected by the justices of the Supreme Court;

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57 (c) one member elected by the judges of the Court of Appeals;

58 (d) one member elected by the judges of the Business and Chancery Court;

59 (e) six members elected by the judges of the district courts;

60 (f) three members elected by the judges of the juvenile courts;

61 (g) three members elected by the justice court judges; and

62 (h) a member or ex officio member of the Board of Commissioners of the Utah State Bar who is an active member of the Utah State Bar in good standing at the time of election by the Board of Commissioners.

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

66 (3)

68 (a) The chief justice of the Supreme Court shall act as presiding officer of the Judicial Council and chief administrative officer for the courts.

69 (b) The chief justice shall vote only in the case of a tie.

70 (4)

73 (a) All members of the Judicial Council shall serve for three-year terms.

75 (b) If a Judicial Council member should die, resign, retire, or otherwise fail to complete a term of office, the appropriate constituent group shall elect a member to complete the term of office.

79 (c) In courts having more than one member, the members shall be elected to staggered terms.

82 (d) The individual elected by the Board of Commissioners under Subsection (1)(h) may complete a three-year term of office on the Judicial Council even though the individual ceases to be a member or ex officio member of the Board of Commissioners.

83 (e) The individual elected by the Board of Commissioners under Subsection (1)(h) shall be an active member of the Utah State Bar in good standing for the entire term of the Judicial Council.

85 (f) Elections are held under rules made by the Judicial Council.

88 (5)

88 (a) The Judicial Council is responsible for the development of uniform administrative policy for the courts throughout the state.

88 (b) The presiding officer of the Judicial Council is responsible for the implementation of the policies developed by the Judicial Council and for the general management of the courts, with the aid of the state court administrator.

88 (c) The Judicial Council has authority and responsibility to:

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- 89 (i) establish and assure compliance with policies for the operation of the courts, including uniform rules  
and forms; and
- 91 (ii) publish and submit to the governor, the chief justice of the Supreme Court, and the Legislature an  
annual report of the operations of the courts, which shall include financial and statistical data and  
may include suggestions and recommendations for legislation.
- 95 (6) The Judicial Council shall establish standards for the operation of the courts of the state, including  
facilities, court security, support services, and staff levels for judicial and support personnel.
- 98 (7) The Judicial Council shall by rule:
  - 99 (a) establish the time and manner for destroying court records, including computer records; and
  - 101 (b) establish retention periods for court records.
- 102 (8)
  - 103 (a) Consistent with the requirements of judicial office and security policies, the Judicial Council shall  
establish procedures to govern the assignment of state vehicles to public officers of the judicial  
branch.
  - 105 (b) The vehicles shall be marked in a manner consistent with Section 41-1a-407 and may be assigned  
for unlimited use, within the state only.
- 107 (9)
  - 108 (a) The Judicial Council shall:
    - 109 (i) advise judicial officers and employees concerning ethical issues; and
    - 110 (ii) establish procedures for issuing informal and formal advisory opinions on ethical issues.
  - 111 (b) Compliance with an informal opinion is evidence of good faith compliance with the Code of  
Judicial Conduct.
  - 113 (c) A formal opinion constitutes a binding interpretation of the Code of Judicial Conduct.
- 114 (10)
  - 115 (a) The Judicial Council shall establish written procedures authorizing the presiding officer of the  
Judicial Council to appoint judges of courts of record by special or general assignment to serve  
temporarily in another level of court in a specific court or generally within that level.
  - 118 (b) The appointment under Subsection (10)(a) shall be:
    - 119 (i) for a specific period of time; and
    - 120 (ii) reported to the Judicial Council.

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(c) The Judicial Council shall develop the procedures described in this Subsection (10) in accordance with Subsection 78A-2-107(2) regarding the temporary appointment of judges.

124 (11)

(a) The Judicial Council may by rule designate municipalities in addition to those designated by statute as a location of a trial court of record.

126 (b) There shall be at least one court clerk's office open during regular court hours in each county.

128 (c) Any trial court of record may hold court in any municipality designated as a location of a court of record.

130 (12) The Judicial Council shall by rule determine whether the administration of a court is the obligation of the Administrative Office of the Courts or whether the Administrative Office of the Courts should contract with local government for court support services.

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

135 (14)

[~~(a)~~] The Judicial Council shall:

136 [~~(i)~~] (a) establish the Office of Guardian ~~[Ad]~~ ad Litem in accordance with Title 78A, Chapter 2, Part 8, Guardian Ad Litem; and

138 [~~(ii)~~] (b) establish and supervise a Guardian ~~[Ad]~~ ad Litem Oversight Committee~~[.]~~ in accordance with Section 78A-2-104.5.

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

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

271 Section 4. Section 4 is enacted to read:

272 **78A-2-104.5. Guardian ad Litem Oversight Committee.**

151 (1) There is established the Guardian ad Litem Oversight Committee, supervised by the Judicial Council.

153 (2) The committee shall consist of:

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154 (a) seven members appointed by the Judicial Council, including:

155 (i) a current or former juvenile court judge;

156 (ii) two attorneys with experience in child welfare cases, including at least one attorney with experience  
in representing parents;

158 (iii) a behavioral or mental health clinical provider with experience working with families involved in  
child welfare cases;

160 (iv) an individual with experience working with or advocating for youth in foster care;

161 (v) an individual with lived experience as a parent involved with the child welfare system; and

163 (vi) an individual with lived experience as a child or youth involved with the child welfare system;

165 (b) two members appointed by the Administrative Office of the Courts, including:

166 (i) a current or former court administrator; and

167 (ii) a current internal court auditor;

168 (c) a member of the Senate, whom the president of the Senate appoints;

169 (d) a member of the House of Representatives, whom the speaker of the House of Representatives  
appoints; and

171 (e) the guardian ad litem director, described in Section 78A-2-802, or the director's designee.

173 (3) The committee shall:

174 (a) oversee the statewide guardian ad litem program;

175 (b) evaluate the Office of Guardian ad Litem's compliance with the statutory obligations described in  
Section 78A-2-802;

177 (c) assess the effectiveness of the statewide guardian ad litem program, including in:

178 (i) cases in which the minor is the subject of an abuse, neglect, or dependency petition as described in  
Section 78A-2-803;

180 (ii) cases in which an attorney guardian ad litem is appointed by the district court as described in  
Section 78A-2-703;

182 (iii) cases in which a private guardian ad litem is appointed, as described in Section 78A-2-705; and

184 (iv) any other cases in which a guardian ad litem represents a minor, including as described in Section  
78B-7-202, 80-4-106, 80-7-104, or 81-13-203;

186 (d) annually review a randomly selected sample of the statewide guardian ad litem program cases,  
including attorney guardian ad litem and private guardian ad litem cases;

189 (e) review the reports described in Sections 78A-2-802 and 80-2-1104; and

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190 (f) make recommendations regarding the statewide guardian ad litem program.

191 (4) In reviewing cases as described in Subsection (3)(d), the committee shall assess:

192 (a) whether the office is adequately representing the minor's interests;

193 (b) compliance with the requirement to conduct an independent investigation, meet with the minor, and  
keep the minor informed regarding the case; and

195 (c) the outcomes of cases for children and families.

196 (5) The committee may:

197 (a) replace the guardian ad litem director in accordance with Section 78A-2-802;

198 (b) establish policies, requirements, or guidelines for guardians ad litem; and

199 (c) subject to Subsection (6), review and discuss individual cases assigned to the Office of Guardian ad  
Litem.

201 (6)

204 (a) If the committee discusses an individual case, the committee shall close the committee's meeting in  
accordance with Title 52, Chapter 4, Open and Public Meetings Act.

205 (b) A record of the committee regarding an individual case:

206 (i) is classified as private under Section 63G-2-302; and

208 (ii) may be disclosed only in accordance with federal law and Title 63G, Chapter 2, Government  
Records Access and Management Act.

210 (c) The committee shall have access to all of the Office of Guardian ad Litem's records, including  
records regarding individual cases.

214 (d) Except as provided in Subsection (6)(c), and notwithstanding Title 63G, Chapter 2, Government  
Records Access and Management Act, all records of an attorney guardian ad litem are confidential  
and may not be released or made public upon subpoena, search warrant, discovery proceedings, or  
otherwise.

219 (e) In accordance with Title 63G, Chapter 2, Government Records Access and Management Act, all  
documents and information received by the committee from the Office of Guardian ad Litem shall  
maintain the same classification under Title 63G, Chapter 2, Government Records Access and  
Management Act, that was designated by the Office of Guardian ad Litem.

219 (f) Subsection (6)(c) is an exception to Rules of Professional Conduct, Rule 1.6, as provided by Rule  
1.6(b)(4), because of:

221 (i) the unique role of an attorney guardian ad litem; and

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222 (ii) the state's role and responsibility to provide a guardian ad litem program, and as parens patriae, to  
protect minors.

224 (7) The committee shall meet at least quarterly.

225 (8) A member may not receive compensation or benefits for the member's service, but may receive per  
diem and travel expenses in accordance with:

227 (a) Section 63A-3-106;

228 (b) Section 63A-3-107; and

229 (c) rules made by the Division of Finance in accordance with Sections 63A-3-106 and 63A-3-107.

231 (9) On or before November 1, the committee shall provide an annual report to the Judicial Council and  
the Child Welfare Legislative Oversight Panel regarding the committee's activities, findings, and  
recommendations.

356 Section 5. Section **78A-2-702** is amended to read:

357 **78A-2-702. Definitions.**

236 (1) As used in this part:

237 [(1)] (a) "Attorney guardian ad litem" means an attorney employed by the office.

238 [(2)] (b) "Director" means the director of the office.

239 [(3)] (c) "Guardian ad litem" means an attorney guardian ad litem or a private attorney guardian ad litem.

241 [(4)] (d) "Office" means the Office of Guardian ad Litem, created in Section 78A-2-802.

242 [(5)] (e) "Private attorney guardian ad litem" means an attorney designated by the office in accordance with Section 78A-2-705 who is not an employee of the office.

244 (2) A determination of a minor's best interest under this part shall be made in accordance with Sections  
80-2a-201, 80-4-104, and any other section of this title consistent with those sections.

369 Section 6. Section **78A-2-703** is amended to read:

370 **78A-2-703. Appointment of attorney guardian ad litem in district court matters.**

249 (1)

251 (a) A district court may appoint an attorney guardian ad litem to represent [the best interests of] a minor  
in the following district court matters:

252 [(a)] (i) protective order proceedings; and

253 [(b)] (ii) district court actions when:

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[~~(i)~~] (A) child abuse, child sexual abuse, or neglect is alleged in a formal complaint, petition, or counterclaim;

255 [~~(ii)~~] (B) the child abuse, child sexual abuse, or neglect described in Subsection [~~(1)(b)(i)~~] (1)(a)(ii)(A) has been reported to Child Protective Services;

257 [~~(iii)~~] (C) the court makes a finding that the adult parties to the case are indigent individuals, as defined in Section 78B-22-102; and

259 [~~(iv)~~] (D) the district court determines that there are no private attorney guardians ad litem who are reasonably available to be appointed in the district court action.

262 (b) An attorney guardian ad litem that is appointed in accordance with Subsection (1)(a) shall:

264 (i) represent the child's best interest for a minor that is less than 8 years old; or

265 (ii) represent the child's expressed interest for a minor that is 8 years old or older.

266 (2)

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

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

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

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

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

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

273 (B) other proceedings that have occurred, or may occur, in the criminal case.

274 (3) If a court appoints an attorney guardian ad litem in a divorce or child custody case, the court shall:

275 (a) specify in the order appointing the attorney guardian ad litem the specific issues in the proceeding that the attorney guardian ad litem is required to be involved in resolving, which may include issues relating to the custody of children and parent-time schedules;

276 (b) to the extent possible, bifurcate the issues specified in the order described in Subsection (3)(a) from the other issues in the case, in order to minimize the time constraints placed upon the attorney guardian ad litem in the case; and

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(c) except as provided in Subsection (5), within one year after the day on which the attorney guardian ad litem is appointed in the case, issue a final order:

(i) resolving the issues in the order described in Subsection (3)(a); and

(ii) terminating the appointment of the attorney guardian ad litem in the case.

(4) A court shall issue an order terminating the appointment of an attorney guardian ad litem made under this section, if:

(a) the court determines that the allegations of abuse or neglect are unfounded;

(b) after receiving input from the attorney guardian ad litem, the court determines that the children are no longer at risk of abuse or neglect; or

(c) there has been no activity in the case for which the attorney guardian ad litem is appointed for a period of six consecutive months.

(5) A court may issue a written order extending the one-year period described in Subsection (3)(c) for a time certain, if the court makes a written finding that there is a compelling reason that the court cannot comply with the requirements described in Subsection (3)(c) within the one-year period.

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

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

(8) An attorney guardian ad litem appointed in accordance with the requirements of this section and Chapter 2, Part 8, Guardian Ad Litem, is, when serving in the scope of duties of an attorney guardian ad litem, considered an employee of this state for purposes of indemnification under the Governmental Immunity Act.

Section 7. Section **78A-2-704** is amended to read:

**78A-2-704. Public policy regarding attorney guardian ad litem -- Training.**

(1) An attorney guardian ad litem may not presume that a child and the child's parent are adversaries.

(2) An attorney guardian ad litem shall be trained on and implement into practice:

(a) the parental rights and child and family protection principles provided in Section 80-2a-201;

(b) the fundamental liberties of parents and the public policy of the state to support family unification to the fullest extent possible;

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322 (c) the constitutionally protected rights of parents, in cases where the state is a party;

323 (d) the use of a least restrictive means analysis regarding state claims of a compelling child welfare  
interest;

325 (e) the priority of maintaining a child safely in the child's home, whenever possible;

326 (f) the importance of:

327 (i) kinship placement, ~~[in the event]~~ if the child is removed from the home;~~[and]~~

328 (ii) keeping sibling groups together, whenever practicable and in the best interests of the children; and

330 (iii) understanding and communicating the minor's expressed interests to the court;

331 (g) the preference for kinship adoption over nonkinship adoption, if the parent-child relationship is  
legally terminated;

333 (h) the potential for a guardianship placement if the parent-child relationship is legally terminated and  
no appropriate adoption placement is available; and

335 (i) the use of an individualized permanency plan, only as a last resort.

336 (3) The office shall implement policies and practice guidelines that reflect the priorities described in  
Subsections (2)(e) through (i) for the placement of children.

460 Section 8. Section **78A-2-705** is amended to read:

**78A-2-705. Private attorney guardian ad litem -- Appointment -- Costs and fees -- Duties --  
Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum qualifications.**

342 (1)

344 (a) The court may appoint an attorney as a private attorney guardian ad litem to represent ~~[the best  
interests of the]~~ a minor in any district court action when:

347 ~~[**(a)**]~~ (i) child abuse, child sexual abuse, or neglect is alleged in any proceeding, and the court has  
made a finding that an adult party is not indigent as determined under Section 78B-22-202; or  
~~[**(b)**]~~ (ii) the custody of, or parent-time with, a child is at issue.

348 (b) A private guardian ad litem that is appointed in accordance with Subsection (1)(a) shall:

350 (i) represent the minor's best interest for a minor that is less than 8 years old; or

351 (ii) represent the minor's expressed interest for a minor that is 8 years old or older.

352 (2)

354 (a) The court shall consider the limited number of eligible private attorneys guardian ad litem, as well  
as the limited time and resources available to a private attorney guardian ad litem, when making an  
appointment under Subsection (1) and prioritize case assignments accordingly.

## HB0372S01 compared with HB0372S02

356 (b) The court shall make findings regarding the need and basis for the appointment of a private attorney  
guardian ad litem.

358 (c) A court may not appoint a private attorney guardian ad litem in a criminal case.

359 (3)

362 (a) If the parties stipulate to a private attorney guardian ad litem, the office shall assign the stipulated  
private attorney guardian ad litem to the case in accordance with this section.

366 (b) If, under Subsection (3)(a), the parties have not stipulated to a private attorney guardian ad litem, or  
if the stipulated private attorney guardian ad litem is unable to take the case, the court shall appoint  
a private attorney guardian ad litem in accordance with Subsection (3)(c).

369 (c) The court shall state in an order that the court is appointing a private attorney guardian ad litem,  
to be assigned by the office, to represent the best interests or expressed interests of the child in the  
matter.

371 (d) The court shall send the order described in Subsection (3)(c) to the office, in care of the Private  
Attorney Guardian ad Litem program.

372 (4) The court shall:

376 (a) specify in the order appointing a private attorney guardian ad litem the specific issues in the  
proceeding that the private attorney guardian ad litem shall be involved in resolving, which may  
include issues relating to the custody of the child and a parent-time schedule;

379 (b) to the extent possible, bifurcate the issues described in Subsection (4)(a) from the other issues in the  
case in order to minimize the time constraints placed upon the private attorney guardian ad litem;  
and

381 (c) except as provided in Subsection (6), issue a final order within one year after the day on which the  
private attorney guardian ad litem is appointed in the case:

382 (i) resolving the issues described in Subsection (4)(a); and

384 (ii) terminating the private attorney guardian ad litem from the appointment to the case.

386 (5) The court shall issue an order terminating the appointment of a private attorney guardian ad litem  
made under this section if:

389 (a) after receiving input from the private attorney guardian ad litem, the court determines that the minor  
no longer requires the services of the private attorney guardian ad litem; or

390 (b) there has been no activity in the case for a period of six consecutive months.

## HB0372S01 compared with HB0372S02

(6) A court may issue an order extending the one-year period described in Subsection (4)(c) for a specified amount of time if the court makes a written finding that there is a compelling reason that the court cannot comply with the requirements described in Subsection (4)(c) within the one-year period.

394 (7) When appointing a private attorney guardian ad litem under this section, a court may appoint the same private attorney guardian ad litem who represents the minor in another proceeding, or who has represented the minor in a previous proceeding, if that private attorney guardian ad litem is available.

398 (8)

(a) Upon receipt of the court's order, described in Subsections (3)(c) and (d), the office shall assign the case to a private attorney guardian ad litem, if available, in accordance with this section.

401 (b)

(i) If, after the initial assignment of a private attorney guardian ad litem, either party objects to the assigned private attorney guardian ad litem, that party may file an objection with the court within seven days after the day on which the party received notice of the assigned private attorney guardian ad litem.

405 (ii) If, after the initial assignment of a private attorney guardian ad litem, either attorney for a party discovers that the private attorney guardian ad litem represents an adverse party in a separate matter, that attorney may file an objection with the court within seven days after the day on which the attorney received notice of the private attorney guardian ad litem's representation of an adverse party in a separate matter.

411 (iii) Upon receipt of an objection, the court shall determine whether grounds exist for the objection, and if grounds exist, the court shall order, without a hearing, the office to assign a new private attorney guardian ad litem, in consultation with the parties and in accordance with this section.

415 (iv) If no alternative private attorney guardian ad litem is available, the office shall notify the court.

417 (9)

(a) When appointing a private attorney guardian ad litem, the court shall:

418 (i) assess all or part of the private attorney guardian ad litem fees, court costs, and paralegal, staff, and volunteer expenses against the parties in a proportion the court determines to be just; and

421 (ii) designate in the order whether the private attorney guardian ad litem shall, as established by rule under Subsection (17):

## HB0372S01 compared with HB0372S02

423 (A) be paid a set fee and initial retainer;

424 (B) not be paid and serve pro bono; or

425 (C) be paid at a rate less than the set fee established by court rule.

426 (b) If a party claims to be indigent, the court shall follow the procedure and make a determination, as described in Section 78A-2-302, to set the amount that the party is required to pay, if any, toward the private attorney guardian ad litem's fees and expenses.

430 (c) The private attorney guardian ad litem may adjust the court-ordered fees or retainer to an amount less than what was ordered by the court at any time before being released from representation by the court.

433 (10) Upon accepting the court's appointment, the assigned private attorney guardian ad litem shall:

435 (a) file a notice of appearance with the court within five business days of the day on which the attorney was assigned; and

437 (b) represent [the best interests of] the minor as described in Subsection (1)(b) until released by the court.

439 (11) The private attorney guardian ad litem:

440 (a) shall be certified by the director of the office as meeting the minimum qualifications for appointment; and

442 (b) may not be employed by, or under contract with, the office unless under contract as a conflict private attorney guardian ad litem in an unrelated case.

444 (12) The private attorney guardian ad litem appointed under the provisions of this section shall:

446 (a) represent the [best interests of the] minor as described in Subsection (1)(b) from the date of the appointment until released by the court;

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

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

452 (d)

453 (i) personally meet with the minor, unless:

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

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

455 (ii) personally interview the minor, unless:

## HB0372S01 compared with HB0372S02

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

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

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

459 (iii) to the extent possible, determine the minor's goals and concerns regarding custody or visitation; and

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

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

464 (B) all court and administrative proceedings;

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

466 (D) court action; and

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

469 (e) unless excused by the court, prepare for and attend all mediation hearings and all court conferences and hearings, and present witnesses and exhibits as necessary to protect the [best]interests of the minor;

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

474 (g) participate in all appeals unless excused by the court.

475 (13)

477 (a) [The] Except as described in Subsection (13)(b), a private attorney guardian ad litem shall represent the best interests of a minor.

477 (b)

479 (i) A private attorney guardian ad litem that is appointed to represent a minor that is 8 years old or older shall represent the minor's expressed interest.

479 (ii) A private attorney guardian ad litem that is representing a minor shall represent the minor's expressed interest after the minor turns 8 years old.

481 (c) At each hearing the private attorney guardian ad litem shall inform the court:

482 (i) of the minor's wishes and desired outcome;

483 (ii) whether the minor expressed a desire to be present at the hearing; and

484 (iii) of the date that the private attorney guardian ad litem most recently spoke with the minor, including whether the interaction was:

486 (A) directly with the minor client in person; or

## HB0372S01 compared with HB0372S02

487 (B) directly with the minor client through telephone, video, or writing.

488 [({b})] (d) If the minor's intent and desires differ from the [private attorney guardian ad litem's determination of the ]minor's best interests, the private attorney guardian ad litem shall [communicate to the court the minor's intent and desires and the private attorney guardian ad litem's determination of the minor's best interests] provide the basis for the private attorney guardian ad litem's determination to the court and the minor child.

494 [({e})] (e) A difference between the minor's intent and desires and the private attorney guardian ad litem's determination of best interests is not sufficient to create a conflict of interest.

497 [({d})] (f) The private attorney guardian ad litem shall disclose the intent and desires of the minor unless the minor:

499 (i) instructs the private attorney guardian ad litem to not disclose the minor's intent and desires; or

501 (ii) has not expressed an intent and desire.

502 [({e})] (g) The court may appoint one private attorney guardian ad litem to represent the best interests of more than one child of a marriage.

504 (h) A minor child may request a change in an appointed private guardian ad litem directly or through any party.

506 (14) In every court hearing where the private attorney guardian ad litem makes a recommendation regarding the best interest of the minor, the court shall require the private attorney guardian ad litem to disclose the activities and sources of the attorney guardian ad litem's independent investigation and factors that form the basis of the recommendation.

511 (15) A private attorney guardian ad litem appointed under this section is immune from any civil liability that might result by reason of acts performed within the scope of duties of the private attorney guardian ad litem.

514 (16) The office and the Guardian ad Litem Oversight Committee shall compile a list of attorneys willing to accept an appointment as a private attorney guardian ad litem.

516 (17) Upon the advice of the director and the Guardian ad Litem Oversight Committee, the Judicial Council shall establish by rule:

518 (a) the minimum qualifications and requirements for appointment by the court as a private attorney guardian ad litem;

520 (b) the standard fee rate and retainer amount for a private attorney guardian ad litem;

521 (c) the percentage of cases a private attorney guardian ad litem may be expected to take on pro bono;

## HB0372S01 compared with HB0372S02

523 (d) a system to:

524 (i) select a private attorney guardian ad litem for a given appointment; and

525 (ii) determine when a private attorney guardian ad litem shall be expected to accept an appointment pro  
bono; and

527 (e) the process for handling a complaint relating to the eligibility status of a private attorney guardian ad  
litem.

529 (18)

532 (a) Any savings that result from assigning a private attorney guardian ad litem in a district court case,  
instead of an office guardian ad litem, shall be applied to the office to recruit and train attorneys for  
the private attorney guardian ad litem program.

534 (b) After complying with Subsection (18)(a), the office shall use any additional savings to reduce  
caseloads and improve current practices in juvenile court.

535 (19)

536 (a) A private attorney guardian ad litem shall respond to case-related discovery.

538 (b) Interrogatories or requests for admissions may not be imposed on a minor.

540 (20)

543 (a) A private attorney guardian ad litem shall record, by video and audio, an interaction with a minor  
child that is less than 14 years old.

548 (b) A recording described in Subsection (20)(a) may be reviewed in camera by the judge in the matter.

549 (21)

551 (a) A private attorney guardian ad litem should make a best interest recommendation based on the  
private attorney guardian ad litem's direct knowledge and personal investigation.

552 (b) The Office of Guardian ad Litem director or a managing attorney may not direct a private attorney  
guardian ad litem to take a certain position or make a particular recommendation.

668 Section 9. Section **78A-2-801** is amended to read:

669 **78A-2-801. Definitions.**

548 (1) As used in this part:

549 [(1)] (a) "Abuse, neglect, or dependency petition" means the same as that term is defined in Section  
80-3-102.

551 [(2)] (b) "Attorney guardian ad litem" means an attorney employed by the office.

552 [(3)] (c) "Director" means the director of the office.

## HB0372S01 compared with HB0372S02

553 [4] (d) "Division" means the Division of Child and Family Services created in Section 80-2-201.

555 [5] (e) "Guardian ad litem" means an attorney guardian ad litem or a private attorney guardian ad litem.

557 [6] (f) "Indigent individual" means the same as that term is defined in Section 78B-22-102.

559 [7] (g) "Minor" means the same as that term is defined in Section 80-1-102.

560 [8] (h) "Office" means the Office of Guardian Ad Litem created in Section 78A-2-802.

561 [9] (i) "Private attorney guardian ad litem" means an attorney designated by the office in accordance with Section 78A-2-705 who is not an employee of the office.

563 (2) A determination of a minor's best interest under this part shall be made in accordance with Sections 80-2a-201, 80-4-104, and any other section of this title consistent with those sections.

688 Section 10. Section **78A-2-802** is amended to read:

689 **78A-2-802. Office of Guardian ad Litem -- Appointment of director -- Duties of director -- Contracts in second, third, and fourth districts.**

569 (1) There is created the Office of Guardian [Ad] ad Litem under the direct supervision of the Guardian [Ad] ad Litem Oversight Committee described in [Subsektion 78A-2-104(14)] Section 78A-2-104.5.

572 (2)

574 (a) The Guardian [Ad] ad Litem Oversight Committee shall appoint one individual to serve full time as the guardian ad litem director for the state.

575 (b) The guardian ad litem director shall:

577 (i) serve at the pleasure of the Guardian [Ad] ad Litem Oversight Committee, in consultation with the state court administrator;

578 (ii) be an attorney licensed to practice law in this state and selected on the basis of:

579 (A) professional ability;

579 (B) experience in abuse, neglect, and dependency proceedings;

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

582 (D) ability to develop training curricula and reliable methods for data collection and evaluation; and

584 (iii) before or immediately after the director's appointment, be trained in nationally recognized standards for an attorney guardian ad litem.

586 (3) The guardian ad litem director shall:

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

## HB0372S01 compared with HB0372S02

589 (b) manage the guardian ad litem program to assure that a minor receives qualified guardian ad litem  
services in an abuse, neglect, or dependency proceeding under Title 80, Chapter 3, Abuse, Neglect,  
and Dependency Proceedings, in accordance with state and federal law and policy;

593 (c) develop standards for contracts of employment and contracts with independent contractors, and  
employ or contract with attorneys licensed to practice law in this state, to act as attorney guardians  
ad litem in accordance with Section 78A-2-803;

596 (d) develop and provide training programs for volunteers in accordance with the United States  
Department of Justice National Court Appointed Special Advocates Association standards;

599 (e) develop, publish, and update a guardian ad litem manual that includes:

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

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

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

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

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

608 (i) design and implement evaluation tools based on specific objectives targeted in the needs assessments  
described in Subsection (3)(h);

610 (j) evaluate the performance of attorney guardians ad litem and private guardians ad litem, including  
tracking the frequency of a guardian ad litem's interactions with a minor client and whether the  
interaction was:

613 (i) directly with the minor client in person;

614 (ii) directly with the minor client through telephone, video, or writing; or

615 (iii) indirectly with the minor through an assigned trained volunteer, in accordance with Section  
78A-2-803;

617 [fj] (k) prepare and submit an annual report to the Guardian ad Litem Oversight Committee and the  
Child Welfare Legislative Oversight Panel created in Section 36-33-102 regarding:

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

622 (ii) the training and evaluation of attorney guardians ad litem and volunteers, including needs  
assessment surveys and evaluation tools described in Subsections (3)(h) and (i);

625 (iii) specific action the director has taken to:

## HB0372S01 compared with HB0372S02

626 (A) confirm that minor clients receive qualified guardian ad litem services; and  
627 (B) audit and review cases assigned to the office for statutory compliance, best practices, and outcomes;  
629 (iv) guardians ad litem client interaction data; and  
630 [(iii)] (v) the number of minors served by the office;  
631 [(k)] (l) hire, train, and supervise investigators; and  
632 [(t)] (m) administer the program of private attorney guardians ad litem established under Section  
78A-2-705.

634 (4) A contract of employment or independent contract described in Subsection (3)(c) shall provide that  
an attorney guardian ad litem in the second, third, and fourth judicial districts devote the attorney  
guardian's ad litem full time and attention to the role of attorney guardian ad litem, having no clients  
other than the minors whose interest the attorney guardian ad litem represents within the guardian ad  
litem program.

761 Section 11. Section **78A-2-803** is amended to read:

762 **78A-2-803. Appointment of attorney guardian ad litem -- Duties and responsibilities --**  
**Training -- Trained staff and court-appointed special advocate volunteers -- Costs -- Immunity --**  
**Annual report.**

643 (1)

(a) The court:

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

646 [(ii) (i) may appoint an attorney guardian ad litem to represent the best interest of a minor child  
that is less than 8 years old that has been removed from the custody of the minor child's parent  
or guardian;]

649 (ii) may appoint an attorney guardian ad litem to represent the expressed interest of a minor child  
that is 8 years old or older that has been removed from the custody of the minor child's parent or  
guardian; and

652 (iii) shall consider the best interest of a minor, consistent with the provisions of Section 80-2a-201,  
in determining whether to appoint a guardian ad litem.

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

## HB0372S01 compared with HB0372S02

(2) [An] Following appointment by the court, an attorney guardian ad litem shall represent the best interest of each minor who [may become] is the subject of an abuse, neglect, or dependency petition[ from the earlier of:] .

660 [({a}) the day on which the minor is removed from the minor's home by the division; or]  
661 [({b}) the day on which the abuse, negleet, or dependeney petition is filed.]

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

663 (a) represents the best interest of each client of the office in all venues, including:

664 (i) court proceedings; and

665 (ii) meetings to develop, review, or modify the child and family plan with the division in accordance with Section 80-3-307;

667 (b) before representing any minor before the court, be trained in:

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

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

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

673 (d)

674 (i) personally meets with the minor, unless:

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

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

677 (ii) personally interviews the minor, unless:

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

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

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

683 (iii) if the minor is placed in an out-of-home placement, or is being considered for placement in an out-of-home placement, unless it would be detrimental to the minor[~~and~~ ;

685 [({A})] to the extent possible, determines the minor's goals and concerns regarding placement[~~and~~ ;  
686 [({B}) personally assesses or supervises an assessment of the appropriateness and safety of the minor's environment in each placement;]

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

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

689

## HB0372S01 compared with HB0372S02

(g) is familiar with local experts who can provide consultation and testimony regarding the reasonableness and appropriateness of efforts made by the division to:

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

692 (ii) reunify a minor with a minor's parent;

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

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

697 (ii) all court and administrative proceedings;

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

699 (iv) court action; and

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

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

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

706 (A) are actually provided; and

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

708 (ii) [attempt to]assess whether services [ordered by the court are] ~~are~~ accomplishing the intended goal of the services] provided by the division are accomplishing the goals ordered by the court; and

711 (j) makes all necessary court filings to advance the [guardian's ad litem position regarding the best interest of the minor] orders and established goals of the court.

713 (4)

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

717 (b) A volunteer, paralegal, or other staff utilized under this section shall be trained in and follow, at a minimum, the guidelines established by the United States Department of Justice Court Appointed Special Advocates Association.

## HB0372S01 compared with HB0372S02

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

722 (6)

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

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

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

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

727 (c)

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

729 (A) private attorney fees;

730 (B) counseling for the minor;

731 (C) counseling for the parent, if mandated by the court or recommended by the division; and

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

733 (ii) The court may not assess the fees or costs described in Subsection (6)(c)(i) against:

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

735 (B) consistent with Subsection (6)(d), a parent who is found to be an indigent individual.

736 (d) For purposes of Subsection (6)(c)(ii)(B), if an individual claims to be an indigent individual, the court shall:

737 (i) require the individual to submit an affidavit of indigency as provided in Section 78A-2-302; and

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

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

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

741 (8)

## HB0372S01 compared with HB0372S02

(a) [An] Except as described in Subsection (8)(b), an attorney guardian ad litem shall represent the best interest of a minor.

757 (b)

(i) An attorney guardian ad litem that is appointed to represent a minor that is 8 years old or older shall represent the minor's expressed interest.

759 (ii) An attorney guardian ad litem that is representing a minor shall represent the minor's expressed interest after the minor turns 8 years old.

761 (c) At each hearing the attorney guardian ad litem shall inform the court:

762 (i) of the minor's wishes and desired outcome;

763 (ii) whether the minor expressed a desire to be present at the hearing; and

764 (iii) of the date that the attorney guardian ad litem most recently spoke with the minor, including whether the interaction was:

766 (A) directly with the minor client in person;

767 (B) directly with the minor client through telephone, video, or writing; or

768 (C) indirectly with the minor through an assigned trained volunteer, in accordance with Subsection (4).

770 [(b)] (d) If the minor's expressed wishes differ from the [attorney's determination of the] minor's best interest, the attorney guardian ad litem shall [communicate the minor's wishes to the court in addition to presenting the attorney's determination of the minor's best interest] provide the basis for the attorney's determination to the court and the minor child.

775 [(e)] (e) A difference between the minor's wishes and the attorney's determination of best interest may not be considered a conflict of interest for the attorney.

777 [(f)] (f) The guardian ad litem shall disclose the wishes of the minor unless the minor:

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

779 (ii) has not expressed any wishes.

780 [(e)] (g) The court may appoint one attorney guardian ad litem to represent the best interests of more than one minor of a marriage.

782 (h) A minor child may request a change in an appointed guardian ad litem directly or through any party.

784 (9) The division shall provide an attorney guardian ad litem access to all division records regarding the minor at issue and the minor's family.

786 (10)

## HB0372S01 compared with HB0372S02

- (a) An attorney guardian ad litem shall conduct an independent investigation regarding the minor at issue, the minor's family, and what is in the best interest of the minor.
- (b) An attorney guardian ad litem may interview the minor's child welfare caseworker, but may not:
  - (i) rely exclusively on the conclusions and findings of the division; or
  - (ii) except as provided in Subsection (10)(c), conduct a visit with the client in conjunction with the visit of a child welfare caseworker.
- (c)
  - (i) An attorney guardian ad litem may meet with a client during a team meeting, court hearing, or similar venue when a child welfare caseworker is present for a purpose other than the attorney guardian ad litem's meeting with the client.
  - (ii) A party and the party's counsel may attend a team meeting in accordance with the Utah Rules of Professional Conduct.

(11)

- (a) An attorney guardian ad litem shall maintain current and accurate records regarding:
  - (i) the number of times the attorney has had contact with each minor; and
  - (ii) the actions the attorney has taken in representation of the minor's best interest.
- (b) In every hearing where the attorney guardian ad litem makes a recommendation regarding the best interest of the minor, the court shall require the attorney guardian ad litem to disclose the activities and sources of the attorney guardian ad litem's independent investigation and factors that form the basis of the recommendation.

(12)

- (a) Except as provided in Subsection (12)(b), and notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, all records of an attorney guardian ad litem are confidential and may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise.
- (b) Consistent with Subsection (12)(d), all records of an attorney guardian ad litem:
  - (i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers; and
  - (ii) shall be released to the Legislature.
- (c)
  - (i) Except as provided in Subsection (12)(c)(ii), the Legislature shall maintain records released in accordance with Subsection (12)(b) as confidential.

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817 (ii) Notwithstanding Subsection (12)(c)(i), the Office of the Legislative Auditor General may include  
summary data and nonidentifying information in the office's audits and reports to the Legislature.

820 (d)

822 (i) Subsection (12)(b) is an exception to Rules of Professional Conduct, Rule 1.6, as provided by Rule  
1.6(b)(4), because of:

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

826 (B) the state's role and responsibility to provide a guardian ad litem program, and as parens patriae,  
to protect minors.

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

829 (13)

830 (a) An attorney guardian ad litem shall respond to case-related discovery.

831 (b) Interrogatories or requests for admissions may not be imposed on a minor.

832 (14)

833 (a) An attorney guardian ad litem shall record, by video and audio, an interaction with a minor child  
that is less than 14 years old.

834 (b) A recording described in Subsection (14)(a) may be reviewed in camera by the judge in the matter.

835 (15)

836 (a) An attorney guardian ad litem should make a best interest recommendation based on the attorney  
guardian ad litem's direct knowledge and personal investigation.

837 (b) The Office of Guardian ad Litem director or a managing attorney may not direct an attorney  
guardian ad litem to take a certain position or make a particular recommendation.

961 Section 12. Section **80-2-102** is amended to read:

962 **80-2-102. Definitions.**

841 (1) As used in this chapter:

842 [({1})] (a) "Consult" means an interaction between two persons in which the initiating person:

843 [({a})] (i) provides information to another person;

844 [({b})] (ii) provides the other person an opportunity to respond; and

845 [({e})] (iii) takes the other person's response, if any, into consideration.

846 [({2})] (b) "Consumer" means a person who receives services offered by the division in accordance with  
this chapter.

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849 [3] (c) "Council" means the Child Welfare Improvement Council created in Section 80-2-1101.

851 [4] (d) "Custody," with regard to the division, means the custody of a minor in the division as of the date of disposition.

853 [5] (e) "Day-care services" means care of a child for a portion of the day which is less than 24 hours:

855 [a] (i) in the child's own home by a responsible individual; or

856 [b] (ii) outside of the child's home in a:

857 [i] (A) day-care center;

858 [ii] (B) family group home; or

859 [iii] (C) family child care home.

860 [6] (f) "Director" means the director of the division appointed under Section 80-2-202.

861 [7] (g) "Division" means the Division of Child and Family Services created in Section 80-2-201.

863 [8] (h) "Domestic violence" means the same as that term is defined in Section 77-36-1.

864 [9] (i) "Domestic violence services" means:

865 [a] (i) temporary shelter, treatment, and related services provided to:

866 [i] (A) an individual who is a victim of abuse, as defined in Section 78B-7-102; and

868 [ii] (B) the dependent children of an individual who is a victim of abuse, as defined in Section 78B-7-102; and

870 [b] (ii) treatment services for an individual who is alleged to have committed, has been convicted of, or has pled guilty to domestic violence.

872 [10] (j) "Homemaking services" means the care of an individual in the individual's domicile, and help given to an individual caretaker relative to achieve improved household and family management through the services of a trained homemaker.

875 [11] (k) "Hormonal transgender treatment" means the same as that term is defined in Section 58-1-603.

877 [12] (l) "Mutual case" means a case that is:

878 [a] (i) opened by the division under the division's discretion and procedures;

879 [b] (ii) opened by the law enforcement agency with jurisdiction over the case; and

880 [e] (iii) accepted for investigation by a child protection team, as applicable.

881 [13] (m)

[a] (i) "Person responsible for the child's care" means the child's parent, guardian, or other person responsible for the child's care.

## HB0372S01 compared with HB0372S02

883 [({b})] (ii) "Person responsible for the child's care" includes a person responsible for the child's care in the same home as the child, a relative's home, a group, family, or day care facility, a foster care home, or a residential institution.

886 [({f4})] (n) "Primary sex characteristic surgical procedure" means the same as that term is defined in Section 58-67-102.

888 [({f5})] (o) "Secondary sex characteristic surgical procedure" means the same as that term is defined in Section 58-67-102.

890 [({f6})] (p) "Shelter care" means the temporary care of a minor in a nonsecure facility.

891 [({f7})] (q) "Sibling" means a child who shares or has shared at least one parent in common either by blood or adoption.

893 [({f8})] (r) "Sibling visitation" means services provided by the division to facilitate the interaction between a child in division custody with the child's sibling.

895 [({f9})] (s)

[({a})] (i) "Subject of the report" means a person reported under Part 6, Child Abuse and Neglect Reports.

897 [({b})] (ii) "Subject of the report" includes the child who is the alleged victim of the report and the person responsible for the child's care.

899 [({f20})] (t) "Temporary custody" means, with regard to the division, the custody of a child from the day on which the shelter hearing described in Section 80-3-301 is held until the day on which the juvenile court enters a disposition under Section 80-3-405.

902 [({f21})] (u) "Transportation services" means travel assistance given to an individual with escort service, if necessary, to and from community facilities and resources as part of a service plan.

905 (2) A determination of a minor's best interest under this chapter shall be made in accordance with Sections 80-2a-201, 80-4-104, and any other section of this title consistent with those sections.

1030 Section 13. Section **80-2-301** is amended to read:

1031 **80-2-301. Division responsibilities.**

910 (1) The division is the child, youth, and family services authority of the state.

911 (2) The division shall:

912 (a) administer services to minors and families, including:

913 (i) child welfare services;

914 (ii) domestic violence services; and

915

## HB0372S01 compared with HB0372S02

- (iii) all other responsibilities that the Legislature or the executive director of the department may assign to the division;
- 917 (b) provide the following services:
  - 918 (i) financial and other assistance to an individual adopting a child with special needs under Sections 80-2-806 through 80-2-809, not to exceed the amount the division would provide for the child as a legal ward of the state;
  - 921 (ii) non-custodial and in-home services in accordance with Section 80-2-306, including:
    - 923 (A) services designed to prevent family break-up; and
    - 924 (B) family preservation services;
  - 925 (iii) reunification services to families whose children are in substitute care in accordance with this chapter, Chapter 2a, Removal and Protective Custody of a Child, and Chapter 3, Abuse, Neglect, and Dependency Proceedings;
  - 928 (iv) protective supervision of a family, upon court order, in an effort to eliminate abuse or neglect of a child in that family;
  - 930 (v) shelter care in accordance with this chapter, Chapter 2a, Removal and Protective Custody of a Child, and Chapter 3, Abuse, Neglect, and Dependency Proceedings;
  - 932 (vi) domestic violence services, in accordance with the requirements of federal law;
  - 933 (vii) protective services to victims of domestic violence and the victims' children, in accordance with this chapter, Chapter 2a, Removal and Protective Custody of a Child, and Chapter 3, Abuse, Neglect, and Dependency Proceedings;
  - 936 (viii) substitute care for dependent, abused, and neglected children;
  - 937 (ix) services for minors who are victims of human trafficking or human smuggling, as described in Sections 76-5-308 through 76-5-310.1, or who have engaged in prostitution or sexual solicitation, as defined in Sections 76-5d-202 and 76-5d-209; and
  - 941 (x) training for staff and providers involved in the administration and delivery of services offered by the division in accordance with this chapter and Chapter 2a, Removal and Protective Custody of a Child;
- 944 (c) establish standards for all:
  - 945 (i) contract providers of out-of-home care for minors and families;
  - 946 (ii) facilities that provide substitute care for dependent, abused, or neglected children placed in the custody of the division; and

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- 948        (iii) direct or contract providers of domestic violence services described in Subsection (2)(b)(vi);
- 950        (d) have authority to:
  - 951            (i) contract with a private, nonprofit organization to recruit and train foster care families and child welfare volunteers in accordance with Section 80-2-405;
  - 953            (ii) approve facilities that meet the standards established under Subsection (2)(c) to provide substitute care for dependent, abused, or neglected children placed in the custody of the division; and
  - 956            (iii) approve an individual to provide short-term relief care to a foster parent if the individual:
    - 958              (A) provides the relief care for less than six consecutive nights;
    - 959              (B) provides the relief care in the short-term relief care provider's home;
    - 960              (C) is direct access qualified, as that term is defined in Section 26B-2-120; and
    - 961              (D) is an immediate family member or relative, as those terms are defined in Section 80-3-102, of the foster parent;
  - 963            (e) cooperate with the federal government in the administration of child welfare and domestic violence programs and other human service activities assigned by the department;
  - 966            (f) in accordance with Subsection (5)(a), promote and enforce state and federal laws enacted for the protection of abused, neglected, or dependent children, in accordance with this chapter and Chapter 2a, Removal and Protective Custody of a Child, unless administration is expressly vested in another division or department of the state;
  - 970            (g) cooperate with the Workforce Development Division within the Department of Workforce Services in meeting the social and economic needs of an individual who is eligible for public assistance;
  - 973            (h) compile relevant information, statistics, and reports on child and family service matters in the state;
  - 975            (i) prepare and submit to the department, the governor, and the Legislature reports of the operation and administration of the division in accordance with the requirements of Sections 80-2-1102 and 80-2-1103;
  - 978            (j) within appropriations from the Legislature, provide or contract for a variety of domestic violence services and treatment methods;
  - 980            (k) enter into contracts for programs designed to reduce the occurrence or recurrence of abuse and neglect in accordance with Section 80-2-503;
  - 982            (l) seek reimbursement of funds the division expends on behalf of a child in the protective custody, temporary custody, or custody of the division, from the child's parent or guardian in accordance with an order for child support under Section 78A-6-356;

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986 (m) ensure regular, periodic publication, including electronic publication, regarding the number of  
children in the custody of the division who:

988 (i) have a permanency goal of adoption; or

989 (ii) have a final plan of termination of parental rights, under Section 80-3-409, and promote adoption of  
the children;

991 (n) subject to Subsections (5) and (7), refer an individual receiving services from the division to the  
local substance abuse authority or other private or public resource for a court-ordered drug screening  
test;

994 (o) report before November 30, 2020, and every third year thereafter, to the Social Services  
Appropriations Subcommittee regarding:

996 (i) the daily reimbursement rate that is provided to licensed foster parents based on level of care;

998 (ii) the amount of money spent on daily reimbursements for licensed foster parents during the previous  
fiscal year; and

1000 (iii) any recommended changes to the division's budget to support the daily reimbursement rates  
described in Subsection (2)(o)(i);

1002 (p) when a division child welfare caseworker identifies a safety concern with the foster home, cooperate  
with the Office of Licensing and make a recommendation to the Office of Licensing concerning  
whether the foster home's license should be placed on conditions, suspended, or revoked;[-and]

1006 (q) provide an attorney that is representing a parent or guardian in a dependency, neglect, or abuse  
petition with access to division records regarding the parent or guardian or the parent or guardian's  
family; and

1009 [(q)] (r) perform other duties and functions required by law.

1010 (3)

1012 (a) The division may provide, directly or through contract, services that include the following:

1013 (i) adoptions;

1013 (ii) day-care services;

1014 (iii) out-of-home placements for minors;

1015 (iv) health-related services;

1016 (v) homemaking services;

1017 (vi) home management services;

1018 (vii) protective services for minors;

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1019 (viii) transportation services; or  
1020 (ix) domestic violence services.

1021 (b) The division shall monitor services provided directly by the division or through contract to ensure  
compliance with applicable law and rules made in accordance with Title 63G, Chapter 3, Utah  
Administrative Rulemaking Act.

1024 (c)  
(i) Except as provided in Subsection (3)(c)(ii), if the division provides a service through a private  
contract, the division shall post the name of the service provider on the division's website.

1027 (ii) Subsection (3)(c)(i) does not apply to a foster parent placement.

1028 (4)  
(a) The division may:  
(i) receive gifts, grants, devises, and donations;  
(ii) encourage merchants and service providers to:  
(A) donate goods or services; or  
(B) provide goods or services at a nominal price or below cost;  
(iii) distribute goods to applicants or consumers of division services free or for a nominal charge  
and tax free; and  
(iv) appeal to the public for funds to meet needs of applicants or consumers of division services that  
are not otherwise provided by law, including Sub-for-Santa programs, recreational programs for  
minors, and requests for household appliances and home repairs.

1035 (b) If requested by the donor and subject to state and federal law, the division shall use a gift, grant,  
devise, donation, or proceeds from the gift, grant, devise, or donation for the purpose requested by  
the donor.

1042 (5)  
(a) In carrying out the requirements of Subsection (2)(f), the division shall:  
(i) cooperate with the juvenile courts, the Division of Juvenile Justice and Youth Services, and with  
all public and private licensed child welfare agencies and institutions to develop and administer  
a broad range of services and support;  
(ii) take the initiative in all matters involving the protection of abused or neglected children, if  
adequate provisions have not been made or are not likely to be made; and

1049

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(iii) make expenditures necessary for the care and protection of the children described in Subsection (5)(a)(ii), within the division's budget.

1051 (b) If an individual is referred to a local substance abuse authority or other private or public resource for court-ordered drug screening under Subsection (2)(n), the court shall order the individual to pay all costs of the tests unless:

1054 (i) the cost of the drug screening is specifically funded or provided for by other federal or state programs;

1056 (ii) the individual is a participant in a drug court; or

1057 (iii) the court finds that the individual is an indigent individual.

1058 (6) Except to the extent provided by rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division is not required to investigate domestic violence in the presence of a child, as described in Section 76-5-114.

1061 (7)

1062 (a) Except as provided in Subsection (7)(b), the division may not:

1062 (i) require a parent who has a child in the custody of the division to pay for some or all of the cost of any drug testing the parent is required to undergo; or

1064 (ii) refer an individual who is receiving services from the division for drug testing by means of a hair, fingernail, or saliva test that is administered to detect the presence of drugs.

1067 (b) Notwithstanding Subsection (7)(a)(ii), the division may refer an individual who is receiving services from the division for drug testing by means of a saliva test if:

1069 (i) the individual consents to drug testing by means of a saliva test; or

1070 (ii) the court, based on a finding that a saliva test is necessary in the circumstances, orders the individual to complete drug testing by means of a saliva test.

1194 Section 14. Section **80-2a-101** is amended to read:

### **80-2a-101. Definitions.**

1074 (1) "Custody" means the same as that term is defined in Section 80-2-102.

1075 (2) "Division" means the Division of Child and Family Services created in Section 80-2-201.

1076 (3) "Friend" means an adult who:

1077 (a) has an established relationship with the child or a family member of the child; and

1078 (b) is not the parent of the child.

1079 (4) "Nonrelative" means an individual who is not a noncustodial parent or relative.

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1080 (5) "Relative" means an adult who:

1081 (a) is the child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law,  
sister-in-law, stepparent, first cousin, stepsibling, or sibling;

1083 (b) is the first cousin of the child's parent;

1084 (c) is a permanent guardian or parent of the child's sibling; or

1085 (d) in the case of a child who is an Indian child, is an extended family member as defined in the Indian  
Child Welfare Act, 25 U.S.C. Sec. 1903.

1087 (6) "Sibling" means the same as that term is defined in Section 80-2-102.

1088 (7) "Temporary custody" means the same as that term is defined in Section 80-2-102.

1089 (8) A determination of a minor's best interest under this chapter shall be made in accordance with  
Sections 80-2a-201, 80-4-104, and any other section of this title consistent with those sections.

1214 Section 80-3-102 is amended to read:

1215 **80-3-102. Definitions.**

1094 (1) As used in this chapter:

1095 [({1})] (a) "Abuse, neglect, or dependency petition" means a petition filed in accordance with this chapter  
to commence proceedings in a juvenile court alleging that a child is:

1097 [({a})] (i) abused;

1098 [({b})] (ii) neglected; or

1099 [({c})] (iii) dependent.

1100 [({2})] (b) "Custody" means the same as that term is defined in Section 80-2-102.

1101 [({3})] (c) "Division" means the Division of Child and Family Services created in Section 80-2-201.

1103 [({4})] (d) "Friend" means an adult who:

1104 [({a})] (i) has an established relationship with the child or a family member of the child; and

1106 [({b})] (ii) is not the parent of the child.

1107 [({5})] (e) "Immediate family member" means a spouse, child, parent, sibling, grandparent, or grandchild.

1109 [({6})] (f) "Relative" means an adult who:

1110 [({a})] (i) is the child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law,  
sister-in-law, stepparent, first cousin, stepsibling, or sibling;

1112 [({b})] (ii) is a first cousin of the child's parent;

1113 [({c})] (iii) is a permanent guardian or parent of the child's sibling; or

1114

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[~~d~~] (iv) in the case of a child who is an Indian child, is an extended family member as defined in the Indian Child Welfare Act, 25 U.S.C. Sec. 1903.

1116 [~~f~~] (g) "Sibling" means the same as that term is defined in Section 80-2-102.

1117 [~~g~~] (h) "Sibling visitation" means the same as that term is defined in Section 80-2-102.

1118 [~~h~~] (i) "Temporary custody" means the same as that term is defined in Section 80-2-102.

1119 (2) A determination of a minor's best interest under this chapter shall be made in accordance with Sections 80-2a-201, 80-4-104, and any other section of this title consistent with those sections.

1244 Section 16. Section **80-3-104** is amended to read:

1245 **80-3-104. Individuals entitled to be present at proceedings -- Legal representation -- Attorney general responsibilities.**

1125 (1)

(a) A minor who is the subject of a juvenile court hearing, any person entitled to notice under Section 80-3-201 or 80-3-301, preadoptive parents, foster parents, and any relative providing care for the minor, are:

(i) entitled to notice of, and to be present at, each hearing and proceeding held under this chapter, including administrative reviews; and

(ii) have a right to be heard at each hearing and proceeding described in Subsection (1)(a)(i).

(b) A child's right to be present at a hearing under Subsection (1)(a) is subject to the discretion of the guardian ad litem appointed under Subsection (3) or the juvenile court regarding any possible detriment to the child.

1135 (2)

(a) The parent or guardian of a minor who is the subject of an abuse, neglect, or dependency petition has the right to be represented by counsel, and to present evidence, at each hearing.

(b) If a parent or guardian is the subject of an abuse, neglect, or dependency petition, the juvenile court shall:

(i) appoint an indigent defense service provider for a parent or guardian determined to be an indigent individual in accordance with Title 78B, Chapter 22, Part 2, Appointment of Counsel; and

(ii) order indigent defense services for the parent or guardian who is determined to be an indigent individual in accordance with Title 78B, Chapter 22, Part 2, Appointment of Counsel.

1146 (3)

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- (a) In an abuse, neglect, or dependency proceeding under this chapter, the juvenile court shall order that the child be represented by an attorney guardian ad litem, in accordance with Section 78A-2-803.
- 1149 (b) A guardian ad litem appointed under Subsection (3)(a) shall represent the best interest of the minor, in accordance with the requirements of Section 78A-2-803:
- 1151 (i) at the shelter hearing and at all subsequent court and administrative proceedings, including any proceeding for termination of parental rights in accordance with Chapter 4, Termination and Restoration of Parental Rights; and
- 1154 (ii) in other actions initiated under this chapter when appointed by the court under Section 78A-2-803 or as otherwise provided by law.
- 1156 (4) Subject to Section 67-5-17 and the attorney general's prosecutorial discretion in civil enforcement actions, the attorney general shall, in accordance with Section 80-2-303, enforce this chapter, Chapter 2, Child Welfare Services, and Chapter 2a, Removal and Protective Custody of a Child, relating to protection or custody of an abused, neglected, or dependent minor and the termination of parental rights.
- 1161 (5)
  - (a) The juvenile court shall admit any individual to a hearing under this chapter, including a hearing under Section 80-3-205, unless the juvenile court makes a finding upon the record that the individual's presence at the hearing would:
    - 1164 (i) be detrimental to the best interest of a minor who is a party to the proceeding;
    - 1165 (ii) impair the fact-finding process; or
    - 1166 (iii) be otherwise contrary to the interests of justice.
  - (b) The juvenile court may exclude an individual from a hearing under Subsection (5)(a) on the juvenile court's own motion or by motion of a party to the proceeding.
- 1169 (6) A determination of a minor's best interest under this chapter shall be made in accordance with Sections 80-2a-201, 80-4-104, and any other section of this title consistent with those sections.  
1294 Section 17. Section **80-4-102** is amended to read:  
1295 **80-4-102. Definitions.**  
1174 (1) As used in this chapter:  
1175 [(1)] (a) "Division" means the Division of Child and Family Services created in Section 80-2-201.  
1177 [(2)] (b) "Failure of parental adjustment" means that a parent or parents are unable or unwilling within a reasonable time to substantially correct the circumstances, conduct, or conditions that led to

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placement of their child outside of their home, notwithstanding reasonable and appropriate efforts made by the division to return the child to the home.

1182 [§3] (c) "Former parent" means an individual whose legal parental rights were terminated under this chapter.

1184 [§4] (d) "Petition to restore parental rights" means a petition filed in accordance with this chapter to restore the rights of a parent with regard to a child.

1186 [§5] (e) "Petition for termination of parental rights" means a petition filed in accordance with this chapter to terminate the parental rights of a parent.

1188 [§6] (f) "Temporary custody" means the same as that term is defined in Section 80-2-102.

1189 (2) A determination of a minor's best interest under this chapter shall be made in accordance with Sections 80-2a-201, 80-4-104, and any other section of this title consistent with those sections.

1314 Section 81-13-202 is amended to read:

1315 **81-13-202. Legislative findings -- Best interest of the minor child -- Interests of each party.**

1195 (1)

(a) In every adoption of a minor child that, the best interest of the minor child should govern and be of foremost concern in a court's determination.

1197 (b) A determination of a minor child's best interest shall be made in accordance with Sections 80-2a-201, 80-4-104, and any other section of this title consistent with those sections.

1200 (2) The court shall make a specific finding regarding the best interest of the minor child, taking into consideration information provided to the court [pursuant to] in accordance with the requirements of this chapter relating to the health, safety, and welfare of the minor child and the moral climate of the potential adoptive placement.

1204 (3) The Legislature finds that the rights and interests of all parties affected by an adoption proceeding [must] shall be considered and balanced in determining what constitutional protections and processes are necessary and appropriate.

1207 (4)

(a) The Legislature specifically finds that it is not in a minor child's best interest to be adopted by a person or persons who are cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state.

1210

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(b) Nothing in this section limits or prohibits the court's placement of a minor child with a single adult who is not cohabiting or a person who is a relative of the minor child or a recognized placement under the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq.

1214 (5) The Legislature also finds that:

1215 (a) the state has a compelling interest in providing a stable and permanent home for a child adoptee in a prompt manner, in preventing the disruption of an adoptive placement, and in holding parents accountable for meeting the needs of a child adoptee;

1219 (b) an unmarried birth mother, faced with the responsibility of making crucial decisions about the future of a newborn child, is entitled to privacy, and has the right to make timely and appropriate decisions regarding her future and the future of the newborn child, and is entitled to assurance regarding the permanence of an adoptive placement;

1223 (c) a child adoptee has a right to permanence and stability in an adoptive placement;

1224 (d) adoptive parents have a constitutionally protected liberty and privacy interest in retaining custody of a child adoptee;

1226 (e) an unmarried biological father has an inchoate interest that acquires constitutional protection only when the unmarried biological father demonstrates a timely and full commitment to the responsibilities of parenthood, both during pregnancy and upon the child adoptee's birth; and

1230 (f) the state has a compelling interest in requiring an unmarried biological father to demonstrate commitment by providing appropriate medical care and financial support and by establishing legal parentage in accordance with the requirements of this chapter.

1234 (6)

(a) In enacting this chapter, the Legislature has prescribed the conditions for determining whether an unmarried biological father's action is sufficiently prompt and substantial to require constitutional protection.

1237 (b) If an unmarried biological father fails to grasp the opportunities to establish a relationship with the child adoptee that are available to the unmarried biological father, the unmarried biological father's parental interest may be lost entirely, or greatly diminished in constitutional significance by the unmarried biological father's failure to timely exercise the unmarried biological father's parental interest, or by the unmarried biological father's failure to strictly comply with the available legal steps to substantiate the parental interest.

1244 (c)

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- (i) A certain degree of finality is necessary in order to facilitate the state's compelling interest.
- 1246 (ii) The Legislature finds that the interests of the state, the birth mother, the child adoptee, and the adoptive parents described in this section outweigh the interest of an unmarried biological father who does not timely grasp the opportunity to establish and demonstrate a relationship with the child adoptee in accordance with the requirements of this chapter.
- 1251 (d)
  - (i) The Legislature finds no practical way to remove all risk of fraud or misrepresentation in adoption proceedings, and has provided a method for absolute protection of an unmarried biological father's rights by compliance with the provisions of this chapter.
  - 1255 (ii) In balancing the rights and interests of the state, and of all parties affected by fraud, specifically the child adoptee, the adoptive parents, and the unmarried biological father, the Legislature has determined that the unmarried biological father is in the best position to prevent or ameliorate the effects of fraud and that, therefore, the burden of fraud shall be borne by the unmarried biological father.
  - 1260 (e) An unmarried biological father has the primary responsibility to protect the unmarried biological father's rights.
  - 1262 (f) An unmarried biological father is presumed to know that the child adoptee may be adopted without the unmarried biological father's consent unless the unmarried biological father strictly complies with the provisions of this chapter, manifests a prompt and full commitment to the unmarried biological father's parental responsibilities, and establishes paternity.
  - 1267 (7) The Legislature finds that an unmarried birth mother has:
    - 1268 (a) a right of privacy with regard to the unmarried birth mother's pregnancy and adoption plan;
    - 1270 (b) no legal obligation to disclose the identity of an unmarried biological father before or during an adoption proceeding; and
    - 1272 (c) no obligation to volunteer information to the court with respect to the father.

### 1395 Section 19. **Effective date.**

Effective Date.

This bill takes effect on May 6, 2026.

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