

AMENDMENTS TO GUARDIAN AD LITEM

STATUTES

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Matt Throckmorton

This act amends the Judicial Code. § ~~[The act eliminates the role of the Office of Guardian Ad Litem Director in juvenile delinquency cases and child custody cases unless there is an allegation of abuse, neglect, or dependency.]~~ § The act clarifies that the guardian ad litem director serves at the pleasure of the Judicial Council. The act clarifies the duties of an attorney guardian ad litem and removes from statute certain duties. The act removes the right and requirement of the attorneys guardian ad litem to provide a report and recommendations to the court. The act makes technical changes. The act provides an effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

30-3-11.2, as enacted by Chapter 72, Laws of Utah 1969

78-3a-112, as renumbered and amended by Chapter 365, Laws of Utah 1997

78-3a-312, as last amended by Chapter 21, Laws of Utah 2001

78-3a-350, as last amended by Chapter 274, Laws of Utah 1998

78-3a-911, as last amended by Chapter 244, Laws of Utah 2001

78-3a-912, as last amended by Chapter 244, Laws of Utah 2001

78-7-9, as last amended by Chapter 244, Laws of Utah 2001

78-7-45, as enacted by Chapter 244, Laws of Utah 2001

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

Section 1. Section **30-3-11.2** is amended to read:

30-3-11.2. Appointment of counsel for child.

If, in any action before any court of this state involving the custody or support of a child,



28 it shall appear in the best interests of the child to have a separate exposition of the issues and
29 personal representation for the child, the court may appoint counsel to represent the child
30 throughout the action, and the attorney's fee for such representation may be taxed as a cost of the
31 action. § ~~[However, counsel appointed under this section may not be from the Office of Guardian
32 Ad Litem Director, created under Section 78-3a-911, unless there is an allegation of child abuse,
33 neglect, or dependency.]~~ §

34 Section 2. Section **78-3a-112** is amended to read:

35 **78-3a-112. Appearances -- Parents to appear with minor -- Failure to appear --**
36 **Contempt -- Warrant of arrest, when authorized -- Parent's employer to grant time off --**
37 **Appointment of guardian ad litem.**

38 (1) Any person required to appear who, without reasonable cause, fails to appear may be
39 proceeded against for contempt of court, and the court may cause a bench warrant to issue to
40 produce the person in court.

41 (2) In all cases when a minor is required to appear in court, the parents, guardian, or other
42 person with legal custody of the minor shall appear with the minor unless excused by the judge.

43 (a) An employee may request permission to leave the workplace for the purpose of
44 attending court if the employee has been notified by the juvenile court that his minor is required
45 to appear before the court.

46 (b) An employer must grant permission to leave the workplace with or without pay if the
47 employee has requested permission at least seven days in advance or within 24 hours of the
48 employee receiving notice of the hearing.

49 (3) If a parent or other person who signed a written promise to appear and bring the minor
50 to court under Section 78-3a-113 or 78-3a-114, fails to appear and bring the minor to court on the
51 date set in the promise, or, if the date was to be set, after notification by the court, a warrant may
52 be issued for the apprehension of that person or the minor, or both.

53 (4) Willful failure to perform the promise is a misdemeanor if, at the time of the execution
54 of the promise, the promisor is given a copy of the promise which clearly states that failure to
55 appear and have the minor appear as promised is a misdemeanor. The juvenile court shall have
56 jurisdiction to proceed against the promisor in adult proceedings pursuant to Part 8, Adult
57 Offenses.

58 (5) The court shall endeavor, through use of the warrant of arrest if necessary, as provided

59 in Subsection (6), or by other means, to ensure the presence at all hearings of one or both parents
 60 or of the guardian of the minor. If neither a parent nor guardian is present at the court proceedings,
 61 the court may appoint a guardian ad litem to protect the interest of the minor. § [f] A guardian ad
 61a litem
 62 may also be appointed whenever necessary for the welfare of the minor, whether or not a parent
 63 or guardian is present. [~~g] A guardian ad litem appointed under this Subsection (5) may not be from
 64 the Office of Guardian Ad Litem Director, created under Section 78-3a-911, unless there is an
 65 allegation of child abuse, neglect, or dependency.] §~~

66 (6) A warrant may be issued for the parent, the guardian, the custodian, or the minor if:

67 (a) a summons is issued but cannot be served;

68 (b) it is made to appear to the court that the person to be served will not obey the
 69 summons;

70 (c) serving the summons will be ineffectual; or

71 (d) the welfare of the minor requires that he be brought immediately into the custody of
 72 the court.

73 Section 3. Section 78-3a-312 is amended to read:

74 **78-3a-312. Permanency hearing -- Final plan -- Petition for termination of parental**
 75 **rights filed -- Hearing on termination of parental rights.**

76 (1) (a) When reunification services have been ordered in accordance with Section
 77 78-3a-311, with regard to a child who is in the custody of the Division of Child and Family
 78 Services, a permanency hearing shall be held by the court no later than 12 months after the original
 79 removal of the child.

80 (b) When no reunification services were ordered at the dispositional hearing, a permanency
 81 hearing shall be held within 30 days from the date of the dispositional hearing.

82 (2) (a) If reunification services were ordered by the court in accordance with Section
 83 78-3a-311, the court shall, at the permanency hearing, determine whether the child may safely be
 84 returned to the custody of [his] the child's parent. If the court finds, by a preponderance of the
 85 evidence, that return of the child would create a substantial risk of detriment to the child's physical
 86 or emotional well-being, the child may not be returned to the custody of [his] the child's parent.
 87 The failure of a parent or guardian to participate in, comply with, in whole or in part, or to meet
 88 the goals of a court approved treatment plan constitutes prima facie evidence that return of the
 89 child to that parent would create a substantial risk of detriment.

90 (b) In making a determination under this Subsection (2), the court shall review the report
91 prepared by the Division of Child and Family Services, [~~a report prepared~~] any admissible
92 evidence offered by the child's guardian ad litem, any report prepared by a foster care citizen
93 review board pursuant to Section 78-3g-103, any evidence regarding the efforts or progress
94 demonstrated by the parent, and the extent to which the parent cooperated and availed himself of
95 services provided.

96 (3) (a) With regard to a case where reunification services were ordered by the court, if a
97 child is not returned to his parent or guardian at the permanency hearing, the court shall order
98 termination of reunification services to the parent, and make a final determination regarding
99 whether termination of parental rights, adoption, guardianship, or long-term foster care is the most
100 appropriate final plan for the child, taking into account the child's primary permanency goal
101 established by the court pursuant to Section 78-3a-311. If the child clearly desires contact with the
102 parent, the court shall take the child's desire into consideration in determining the final plan. In
103 addition, the court shall establish a concurrent plan that identifies the second most appropriate final
104 plan for the child. The court may not extend reunification services beyond 12 months from the
105 date the child was initially removed from his home, in accordance with the provisions of Section
106 78-3a-311, except that the court may extend reunification services for no more than 90 days if it
107 finds that there has been substantial compliance with the treatment plan, that reunification is
108 probable within that 90-day period, and that the extension is in the best interest of the child. In no
109 event may any reunification services extend beyond 15 months from the date the child was initially
110 removed from his home. Delay or failure of a parent to establish paternity or seek custody does
111 not provide a basis for the court to extend services for that parent beyond that 12-month period.

112 (b) The court may, in its discretion, enter any additional order that it determines to be in
113 the best interest of the child, so long as that order does not conflict with the requirements and
114 provisions of Subsection (3)(a). The court may order the division to provide protective supervision
115 or other services to a child and the child's family after the division's custody of a child has been
116 terminated.

117 (4) If the final plan for the child is to proceed toward termination of parental rights, the
118 petition for termination of parental rights shall be filed, and a pretrial held, within 45 calendar days
119 after the permanency hearing.

120 (5) Any party to an action may, at any time, petition the court for an expedited permanency

121 hearing on the basis that continuation of reunification efforts are inconsistent with the permanency
122 needs of the child. If the court so determines, it shall order, in accordance with federal law, that
123 the child be placed in accordance with the permanency plan, and that whatever steps are necessary
124 to finalize the permanent placement of the child be completed as quickly as possible.

125 (6) Nothing in this section may be construed to:

126 (a) entitle any parent to reunification services for any specified period of time;

127 (b) limit a court's ability to terminate reunification services at any time prior to a
128 permanency hearing; or

129 (c) limit or prohibit the filing of a petition for termination of parental rights by any party,
130 or a hearing on termination of parental rights, at any time prior to a permanency hearing. If a
131 petition for termination of parental rights is filed prior to the date scheduled for a permanency
132 hearing, the court may consolidate the hearing on termination of parental rights with the
133 permanency hearing. If the court consolidates the hearing on termination of parental rights with
134 the permanency hearing, it shall first make a finding whether reasonable efforts have been made
135 by the Division of Child and Family Services to finalize the permanency goal for the child, and any
136 reunification services shall be terminated in accordance with the time lines described in Section
137 78-3a-311. A decision on the petition for termination of parental rights shall be made within 18
138 months from the date of the child's removal.

139 Section 4. Section **78-3a-350** is amended to read:

140 **78-3a-350. Separate procedures for minors committed to the Division of Child and**
141 **Family Services on grounds other than abuse or neglect -- Attorney general responsibility.**

142 (1) The processes and procedures described in Part 3, Abuse, Neglect, and Dependency
143 Proceedings, designed to meet the needs of minors who are abused or neglected, are not applicable
144 to a minor who is committed to the custody of the Division of Child and Family Services on a
145 basis other than abuse or neglect and who are classified in the division's management information
146 system as having been placed in custody primarily on the basis of delinquent behavior or a status
147 offense.

148 (2) The procedures described in Subsection 78-3a-119(2)(a) are applicable to the minors
149 described in Subsection (1).

150 (3) The court may appoint a guardian ad litem to represent the interests of a minor
151 described in Subsection (1)[-], upon request of the minor or the minor's parent or guardian.

152 **§ ~~However, a guardian ad litem appointed under this Subsection (3) may not be from the Office of~~**
153 **~~Guardian Ad Litem Director, created under Section 78-3a-911, unless there is an allegation of~~**
154 **~~abuse, neglect, or dependency.] §~~**

155 (4) As of July 1, 1998, the attorney general's office shall represent the Division of Child
156 and Family Services with regard to actions involving minors who have not been adjudicated as
157 abused or neglected, but who are otherwise committed to the custody of the division by the
158 juvenile court, and who are classified in the division's management information system as having
159 been placed in custody primarily on the basis of delinquent behavior or a status offense. Nothing
160 in [this] Subsection [(4)] (3) may be construed to affect the responsibility of the county attorney
161 or district attorney to represent the state in those matters, in accordance with the provisions of
162 Section 78-3a-116.

163 Section 5. Section **78-3a-911** is amended to read:

164 **78-3a-911. Office of Guardian Ad Litem Director.**

165 (1) There is hereby created the Office of Guardian Ad Litem Director under the direct
166 supervision of the Judicial Council in accordance with Subsection 78-3-21(13).

167 (2) (a) The Judicial Council shall appoint one person to serve full time as the guardian ad
168 litem director for the state. The guardian ad litem director shall serve at the pleasure of the Judicial
169 Council.

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

172 (i) professional ability;

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

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

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

178 (c) The director shall be trained in the United States Department of Justice National Court
179 Appointed Special Advocate program prior to or immediately after his appointment.

180 (3) The guardian ad litem director shall:

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

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

186 (c) develop standards for contracts of employment and contracts with independent
187 contractors, and employ or contract with attorneys licensed to practice law in this state, to act as
188 attorney guardians ad litem in accordance with Section 78-3a-912;

189 (d) develop and provide training programs for attorney guardians ad litem and volunteers
190 in accordance with the United States Department of Justice National Court Appointed Special
191 Advocates Association standards;

192 (e) update and develop the guardian ad litem manual, combining elements of the National
193 Court Appointed Special Advocates Association manual with specific information about the law
194 and policy of this state;

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

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

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

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

202 (j) prepare and submit an annual report to the Judicial Council and the Health and Human
203 Services Interim Committee regarding the development, policy, and management of the statewide
204 guardian ad litem program, and the training and evaluation of attorney guardians ad litem and
205 volunteers;

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

207 (l) administer the program of private guardians ad litem established by Section 78-7-45.

208 (4) A contract of employment or independent contract described under Subsection (3)(c)
209 shall provide that attorney guardians ad litem in the second, third, and fourth judicial districts
210 devote their full time and attention to the role of attorney guardian ad litem, having no clients other
211 than the children whose interest they represent within the guardian ad litem program.

212 Section 6. Section **78-3a-912** is amended to read:

213 **78-3a-912. Appointment of attorney guardian ad litem -- Duties and responsibilities**

214 -- Training -- Trained staff and court-appointed special advocate volunteers -- Costs --
215 Immunity.

216 (1) The court may appoint an attorney guardian ad litem to represent the best interest of
217 a minor involved in any case before the court ~~§ [in which there is an allegation of abuse, neglect, or~~
218 ~~dependency] §~~ and shall consider only the best interest of a minor in determining whether to appoint
219 a guardian ad litem.

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

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

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

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

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

232 ~~[(d) personally or through a trained volunteer, paralegal, or other trained staff, determine~~
233 ~~the extent of contact the minor or his family has had with the Division of Child and Family~~
234 ~~Services;]~~

235 ~~[(e) personally or through a trained volunteer, paralegal, or other trained staff, assess~~
236 ~~whether kinship placements have been adequately explored and investigated by the Division of~~
237 ~~Child and Family Services, and make recommendations to the court regarding the best interests~~
238 ~~of a child in kinship placements;]~~

239 ~~[(f) personally or through a trained volunteer, paralegal, or other trained staff, assess~~
240 ~~whether there are alternatives to continued removal of the minor, including in-home services or~~
241 ~~removal of the perpetrator;]~~

242 ~~[(g) personally or through a trained volunteer, paralegal, or other trained staff, review the~~
243 ~~Division of Child and Family Services' records regarding the minor and his family, and all other~~
244 ~~necessary and relevant records pertaining to the minor, including medical, psychological, and~~

245 ~~school records;]~~

246 ~~[(h)] (d) personally meet with the minor, personally interview the minor if the minor is old~~
247 ~~enough to communicate, determine the minor's goals and concerns regarding placement, and~~
248 ~~personally assess or supervise an assessment of the appropriateness and safety of the minor's~~
249 ~~environment in each placement;~~

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

252 ~~[(j)] either personally or through a trained volunteer, paralegal, or other trained staff,~~
253 ~~conduct interviews, if appropriate and permitted by the Rules of Professional Conduct, with the~~
254 ~~minor's parents, foster parents, caseworkers, therapists, counselors, school personnel, mental health~~
255 ~~professionals, where applicable and, if any injuries or abuse have occurred or are alleged, review~~
256 ~~photographs, available video or audio tape of interviews with the minor, and contact appropriate~~
257 ~~health care facilities and health care providers;]~~

258 ~~[(k)] either personally or through a trained volunteer, paralegal, or other trained staff,~~
259 ~~identify appropriate community resources and advocate for those resources, when appropriate, to~~
260 ~~protect the best interest of the minor;]~~

261 ~~[(l)] personally attend all court hearings, and participate in all telephone conferences with~~
262 ~~the court unless the court waives that appearance or participation;]~~

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

265 ~~[(n)] prepare for hearings;]~~

266 ~~[(o)] present witnesses and exhibits when necessary to protect the best interest of the~~
267 ~~minor;]~~

268 ~~[(p)] (g) participate in all appeals unless excused by order of the court;~~

269 ~~[(q)] calculate the schedule for administrative or foster care citizen review board hearings~~
270 ~~and other hearings required by state and federal law and regulation, and notify the Division of~~
271 ~~Child and Family Services if those hearings are not held in accordance with those requirements;]~~

272 ~~[(r)] conduct interviews with potential witnesses and review relevant exhibits and reports;]~~

273 ~~[(s)] make clear and specific recommendations to the court concerning the best interest of~~
274 ~~the minor at every stage of the proceeding, including all placement decisions, and ask that clear~~
275 ~~and specific orders be entered for the provision of services, treatment provided, and for the~~

276 ~~evaluation, assessment, and protection of the minor and his family;]~~

277 ~~[(t)]~~ (h) be familiar with local experts who can provide consultation and testimony
278 regarding the reasonableness and appropriateness of efforts made by the Division of Child and
279 Family Services to maintain a minor in ~~[his]~~ the minor's home or to reunify a minor with ~~[his]~~ the
280 minor's parent;

281 ~~[(u)]~~ (i) to the extent possible, and unless it would be detrimental to the minor, personally
282 or through a trained volunteer, paralegal, or other trained staff, keep the minor advised of the status
283 of ~~[his]~~ the minor's case, all court and administrative proceedings, discussions, and proposals made
284 by other parties, court action, and psychiatric, medical, or other treatment or diagnostic services
285 that are to be provided to the minor;

286 ~~[(v)]~~ (j) review proposed orders for, and as requested by the court, prepare proposed orders
287 with clear and specific directions regarding services, treatment, and evaluation, assessment, and
288 protection of the minor and ~~[his]~~ the minor's family; and

289 ~~[(w)]~~ (k) personally or through a trained volunteer, paralegal, or other trained staff,
290 monitor implementation of a minor's treatment plan and any dispositional orders to determine
291 whether services ordered by the court are actually provided, are provided in a timely manner, and
292 attempt to assess whether they are accomplishing their intended goal~~[-and]~~.

293 ~~[(x)]~~ ~~inform the court promptly, orally or in writing, if:~~

294 ~~[(i)]~~ ~~court-ordered services are not being made available to the minor and his family;]~~

295 ~~[(ii)]~~ ~~the minor's family fails to take advantage of court-ordered services;]~~

296 ~~[(iii)]~~ ~~court-ordered services are not achieving their purpose;]~~

297 ~~[(iv)]~~ ~~the division fails to hold administrative hearings or reviews as required by state and~~
298 ~~federal law and regulation; or]~~

299 ~~[(v)]~~ ~~any violation of orders, new developments, or changes have occurred that justify a~~
300 ~~review of the case.]~~

301 (4) (a) An attorney guardian ad litem may use trained volunteers, in accordance with Title
302 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other trained staff to
303 assist in investigation and preparation of information regarding the cases of individual minors
304 before the court. An attorney guardian ad litem may not, however, delegate ~~[his]~~ the attorney's
305 responsibilities described in Subsection (3).

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

307 and follow, at a minimum, the guidelines established by the United States Department of Justice
308 Court Appointed Special Advocate Association.

309 (c) The court may use volunteers trained in accordance with the requirements of
310 Subsection (4)(b) to assist in investigation and preparation of information regarding the cases of
311 individual minors within the jurisdiction.

312 (d) When possible and appropriate, the court may use a volunteer who is a peer of the
313 minor appearing before the court, in order to provide assistance to that minor, under the
314 supervision of an attorney guardian ad litem or the attorney's trained volunteer, paralegal, or other
315 trained staff.

316 (5) The attorney guardian ad litem shall continue to represent the best interest of the minor
317 until released from [~~his~~] duties by the court.

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

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

326 (ii) The court may not assess those fees or costs against a legal guardian, when that
327 guardian is the state, or against a parent who is found to be impecunious. If a person claims to be
328 impecunious, the court shall require of that person an affidavit of impecuniosity as provided in
329 Section [~~21-7-3~~] 78-7-36 and the court shall follow the procedures and make the determinations
330 as provided in Section [~~21-7-4~~] 78-7-36.

331 (7) An attorney guardian ad litem appointed under this section, when serving in the scope
332 of his duties as guardian ad litem is considered an employee of the state for purposes of
333 indemnification under Title 63, Chapter 30, Utah Governmental Immunity Act.

334 (8) (a) An attorney guardian ad litem shall represent the best interest of a minor. If the
335 minor's wishes differ from the attorney's determination of the minor's best interest, the attorney
336 guardian ad litem shall communicate the minor's wishes to the court in addition to presenting [~~his~~]
337 the attorney's determination of the minor's best interest. A difference between the minor's wishes

338 and the attorney's determination of best interest may not be considered a conflict of interest for the
339 attorney.

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

342 ~~[(c) An attorney guardian ad litem shall formulate an independent position, after
343 considering all relevant evidence, in accordance with the requirements of Subsection (3). His
344 recommendations to the court shall be a result of his independent investigation.]~~

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

347 (10) An attorney guardian ad litem shall maintain current and accurate records regarding
348 the number of times [he] the attorney has had contact with each minor and the actions [he] the
349 attorney has taken in representation of the minor's best interest.

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

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

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

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

365 Section 7. Section **78-7-9** is amended to read:

366 **78-7-9. Appointment of attorney guardian ad litem in child abuse and neglect**
367 **proceedings.**

368 (1) If child abuse, child sexual abuse, or neglect is alleged in any proceeding in any state

369 court, the court may upon its own motion or shall upon the motion of any party to the proceeding
370 appoint an attorney guardian ad litem to represent the best interest of the child, in accordance with
371 Sections 78-3a-911 and 78-3a-912.

372 (2) The court may appoint an attorney guardian ad litem, when it considers it necessary
373 and appropriate, to represent the best interest of the child in all related proceedings conducted in
374 any state court involving the alleged abuse, child sexual abuse, or neglect.

375 (3) The attorney guardian ad litem shall be appointed in accordance with and meet the
376 requirements of Sections 78-3a-911 and 78-3a-912.

377 (4) If an attorney guardian ad litem has been appointed for the child by any court in the
378 state in any prior proceeding or related matter, the court may continue that appointment or may
379 reappoint that attorney guardian ad litem, if still available, to act on behalf of the child.

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

383 (6) (a) If the court appoints the Office of the Guardian Ad Litem in a civil case pursuant
384 to this section, the court may assess all or part of those attorney's fees, court costs, paralegal, staff,
385 and volunteer expenses against the minor's parent, parents, or legal guardian in an amount that the
386 court determines to be just and appropriate.

387 (b) The court may not assess those fees or costs against a legal guardian, when that
388 guardian is the state, or against a parent, parents, or legal guardian who is found to be impecunious.
389 If a person claims to be impecunious, the court shall require of that person an affidavit of
390 impecuniosity as provided in Section [~~21-7-3~~] 78-7-36 and the court shall follow the procedures
391 and make the determinations as provided in Section [~~21-7-4~~] 78-7-36.

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

396 (7) An attorney guardian ad litem appointed in accordance with the requirements of this
397 section and Sections 78-3a-911 and 78-3a-912 is, when serving in the scope of duties of an
398 attorney guardian ad litem, considered an employee of this state for purposes of indemnification
399 under the Governmental Immunity Act.

400 Section 8. Section **78-7-45** is amended to read:

401 **78-7-45. Private attorney guardian ad litem -- Appointment -- Costs and fees --**
402 **Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum**
403 **qualifications.**

404 (1) (a) The court may appoint a private attorney as guardian ad litem to represent the best
405 interests of the minor in any district court action in which the custody of or visitation with a minor
406 is at issue. The attorney guardian ad litem shall be certified by the Director of the Office of the
407 Guardian Ad Litem as having met the minimum qualifications for appointment, but shall not be
408 employed by or under contract with the Office of the Guardian Ad Litem.

409 (b) If an attorney guardian ad litem has been appointed for the minor in any prior or
410 concurrent action and that attorney guardian ad litem is available, the court shall appoint that
411 attorney guardian ad litem, unless good cause is shown why another attorney guardian ad litem
412 should be appointed.

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

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

416 or

417 (ii) order the withdrawal of the private attorney guardian ad litem and appoint the Office
418 of the Guardian Ad Litem.

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

422 (b) If the court finds a party to be impecunious, under the provisions of [~~Sections 21-7-3~~
423 ~~and 21-7-4~~] Section 78-7-36, the court may direct the impecunious party's share of the assessment
424 to be covered by the attorney guardian ad litem pro bono obligation established in Subsection
425 (6)(b).

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

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

429 (b) conduct or supervise an independent investigation in order to obtain a clear
430 understanding of the situation and needs of the minor;

431 ~~[(c) formulate an independent opinion of the best interests of the minor after considering~~
432 ~~all relevant evidence and make recommendations to the court concerning the best interest of the~~
433 ~~minor;]~~

434 ~~[(d)]~~ (c) interview witnesses and review relevant records pertaining to the minor and the
435 minor's family, including medical, psychological, and school records;

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

438 (i) meet with and interview the minor;

439 (ii) determine the minor's goals and concerns regarding custody or visitation; and

440 (iii) counsel the minor regarding the nature, purpose, status, and implications of the case,
441 of hearings, of recommendations, and proposals by parties and of court orders;

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

445 ~~[(g)]~~ (f) unless excused by the court, prepare for and attend all mediation hearings and all
446 court conferences and hearings, and present witnesses and exhibits as necessary to protect the best
447 interests of the minor;

448 ~~[(h)]~~ (g) identify community resources to protect the best interests of the minor and
449 advocate for those resources; and

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

451 (4) (a) The attorney guardian ad litem shall represent the best interests of a minor. If the
452 minor's wishes differ from the attorney's determination of the minor's best interests, the attorney
453 guardian ad litem shall communicate to the court the minor's wishes and the attorney's
454 determination of the minor's best interests. A difference between the minor's wishes and the
455 attorney's determination of best interests is not sufficient to create a conflict of interest.

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

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

461 (6) (a) Upon the advice of the Director of the Office of the Guardian Ad Litem, the Judicial

462 Council shall by rule establish the minimum qualifications and requirements for appointment by
463 the court as an attorney guardian ad litem.

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

466 (7) This section shall be effective in the Second, Third, and Fourth Judicial Districts on
467 July 1, 2001, and in the remaining judicial districts of the state on July 1, 2002.

468 Section 9. **Effective date.**

469 This act takes effect on July 1, 2002.

Legislative Review Note
as of 2-21-02 1:50 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel