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JURY TRIAL FOR TERMINATION OF PARENTAL RIGHTS CASES

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Bill Wright

This act modifies the Judicial Code. The act gives a parent the right to a jury trial in a termination of parental rights proceeding. The act provides for four jurors in such a proceeding. The act requires a juvenile court to follow the Utah Rules of Evidence at a shelter hearing. The act provides that an attorney guardian ad litem can be questioned in a case. The act provides that failure of a parent to complete a treatment plan is only one factor to be considered by a court in a parental termination case. The act requires that the court review the treatment plan of, and reunification efforts by, the Division of Child and Family Services in certain circumstances. The act makes technical changes.

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

AMENDS:

78-3a-306, as last amended by Chapter 250, Laws of Utah 2001

78-3a-311, as last amended by Chapters 21 and 153, Laws of Utah 2001

78-3a-406, as renumbered and amended by Chapter 260, Laws of Utah 1994

78-3a-407, as last amended by Chapter 134, Laws of Utah 2001

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

78-46-5, as last amended by Chapter 209, Laws of Utah 2001

ENACTS:

78-3a-311.5, Utah Code Annotated 1953

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

Section 1. Section **78-3a-306** is amended to read:

78-3a-306. Shelter hearing.

(1) A shelter hearing shall be held within 72 hours excluding weekends and holidays after

any one or all of the following occur:

(a) removal of the child from his home by the Division of Child and Family Services;

(b) placement of the child in the protective custody of the Division of Child and Family Services;

(c) emergency kinship placement under Subsection 78-3a-301[~~(4)~~](5)(b)(ii); or

(d) as an alternative to removal of the child, a parent has entered a domestic violence shelter at the request of the Division of Child and Family Services.

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

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

(b) the date, time, and place of the shelter hearing;

(c) the name of the minor on whose behalf a petition is being brought;

(d) a concise statement regarding:

(i) the reasons for removal or other action of the division under Subsection (1); and

(ii) the allegations and code sections under which the proceeding has been instituted;

(e) a statement that the parent or guardian to whom notice is given, and the minor, are entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided; and

(f) a statement that the parent or guardian is liable for the cost of support of the minor in the protective custody, temporary custody, and custody of the division, and the cost for legal counsel appointed for the parent or guardian under Subsection (2)(e), according to his financial ability.

(3) That notice shall be personally served as soon as possible, but no later than one business day after removal of a child from his home, on:

(a) the appropriate guardian ad litem; and

(b) both parents and any guardian of the minor, unless they cannot be located.

(4) The following persons shall be present at the shelter hearing:

(a) the child, unless it would be detrimental for the child;

(b) the child's parents or guardian, unless they cannot be located, or fail to appear in response to the notice;

(c) counsel for the parents, if one has been requested;

(d) the child's guardian ad litem;

(e) the caseworker from the Division of Child and Family Services who has been assigned to the case; and

(f) the attorney from the attorney general's office who is representing the division.

(5) (a) At the shelter hearing, the court shall provide an opportunity for the minor's parent or guardian, if present, and any other person having relevant knowledge, to provide relevant testimony. The court may also provide an opportunity for the minor to testify.

(b) The court may consider all relevant evidence, in accordance with the Utah Rules of [~~Juvenile Procedure~~] Evidence. The court shall hear relevant evidence presented by the minor, his parent or guardian, the requesting party, or their counsel, but may in its discretion limit testimony and evidence to only that which goes to the issues of removal and the child's need for continued protection.

(6) If the child is in the protective custody of the division, the division shall report to the court:

(a) the reasons why the minor was removed from the parent's or guardian's custody;

(b) any services provided to the child and his family in an effort to prevent removal;

(c) the need, if any, for continued shelter;

(d) the available services that could facilitate the return of the minor to the custody of his parent or guardian; and

(e) whether the child has any relatives who may be able and willing to take temporary custody.

(7) The court shall consider all relevant evidence provided by persons or entities authorized to present relevant evidence pursuant to this section.

(8) If necessary to protect the child, preserve the rights of a party, or for other good cause shown, the court may grant no more than one time-limited continuance, not to exceed five judicial days.

(9) If the child is in the protective custody of the division, the court shall order that the minor be released from the protective custody of the division unless it finds, by a preponderance of the evidence, that any one of the following exist:

(a) there is a substantial danger to the physical health or safety of the minor and the minor's

physical health or safety may not be protected without removing him from his parent's custody. If a minor has previously been adjudicated as abused, neglected, or dependent and a subsequent incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of his parent;

(b) the minor is suffering emotional damage, as may be indicated by, but is not limited to, extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or others, and there are no reasonable means available by which the minor's emotional health may be protected without removing the minor from the custody of his parent;

(c) the minor or another minor residing in the same household has been physically or sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by a parent, a member of the parent's household, or other person known to the parent. If a parent has received actual notice that physical or sexual abuse by a person known to the parent has occurred, and there is evidence that the parent has allowed the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically or sexually abused;

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

(e) the minor has been left without any provision for his support;

(f) a parent who has been incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the minor;

(g) a relative or other adult custodian with whom the minor has been left by the parent is unwilling or unable to provide care or support for the minor, the whereabouts of the parent are unknown, and reasonable efforts to locate him have been unsuccessful;

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

(i) the physical environment or the fact that the child is left unattended poses a threat to the child's health or safety;

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

(k) the parent, or an adult residing in the same household as the parent, has been charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation, as defined in Section 58-37d-3, was located in the residence or on the property where the child resided; or

(l) the child's welfare is otherwise endangered.

(10) (a) The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the minor from his home and whether there are available services that would prevent the need for continued removal. If the court finds that the minor can be safely returned to the custody of his parent or guardian through the provision of those services, it shall place the minor with his parent or guardian and order that those services be provided by the division.

(b) In making that determination, and in ordering and providing services, the child's health, safety, and welfare shall be the paramount concern, in accordance with federal law.

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

(12) In cases where actual sexual abuse or abandonment, or serious physical abuse or neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in his home, return a child to his home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

(13) The court may not order continued removal of a minor solely on the basis of educational neglect as described in Subsection 78-3a-103(1)(r)(ii).

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

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

(15) If the court finds that continued removal and temporary custody are necessary for the protection of a child because harm may result to the child if he were returned home, it shall order continued removal regardless of any error in the initial removal of the child, or the failure of a party to comply with notice provisions, or any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

Section 2. Section **78-3a-311** is amended to read:

78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.

(1) The court may make any of the dispositions described in Section 78-3a-118, place the child in the custody or guardianship of any individual or public or private entity or agency, order protective supervision, family preservation, medical or mental health treatment, or other services.

(2) (a) (i) Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the Division of Child and Family Services, it shall first establish a primary permanency goal for the minor and determine whether, in view of the primary permanency goal, reunification services are appropriate for the child and the child's family, pursuant to Subsection (3).

(ii) When the court determines that reunification services are appropriate for the child and the child's family, the court shall provide for reasonable parent-time with the parent or parents from whose custody the child was removed, unless parent-time is not in the best interest of the child.

(iii) In cases where obvious sexual abuse, abandonment, or serious physical abuse or neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the offending parent or parents. In all cases, the child's health, safety, and welfare shall be the court's paramount concern in determining whether reasonable efforts to reunify should be made.

(b) (i) In addition to the primary permanency goal, the court shall establish a concurrent permanency goal. The concurrent permanency goal shall include a representative list of the conditions under which the primary permanency goal will be abandoned in favor of the concurrent permanency goal and an explanation of the effect of abandoning or modifying the primary permanency goal.

(ii) A permanency hearing shall be conducted in accordance with Subsection 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a child's primary permanency goal.

(iii) The court may amend a child's primary permanency goal before the establishment of a final permanency plan under Section 78-3a-312. The court is not limited to the terms of the concurrent permanency goal in the event that the primary permanency goal is abandoned. If, at anytime, the court determines that reunification is no longer a child's primary permanency goal, the court shall conduct a permanency hearing in accordance with Section 78-3a-312 within the earlier of 30 days of the court's determination or 12 months from the original removal of the child.

(c) (i) If the court determines that reunification services are appropriate, it shall order that the division make reasonable efforts to provide services to the [~~minor~~] child and [~~his~~] the child's parent for the purpose of facilitating reunification of the family, for a specified period of time. In

providing those services, the child's health, safety, and welfare shall be the division's paramount concern, and the court shall so order.

(ii) The court shall determine whether the services offered or provided by the division under the treatment plan constitute "reasonable efforts" on the part of the division. The court shall also determine and define the responsibilities of the parent under the treatment plan. Those duties and responsibilities shall be identified on the record, for the purpose of assisting in any future determination regarding the provision of reasonable efforts, in accordance with state and federal law.

(iii) The time period for reunification services may not exceed 12 months from the date that the child was initially removed from [~~his~~] the child's home. Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services.

(iv) If reunification services have been ordered, the court may terminate those services at any time.

(v) If, at any time, continuation of reasonable efforts to reunify a child is determined to be inconsistent with the final permanency plan for the child established pursuant to Subsection 78-3a-312, then measures shall be taken, in a timely manner, to place the child in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(d) Any physical custody of the minor by the parent or a relative during the period described in Subsection (2)(c) does not interrupt the running of the period.

(e) (i) If reunification services have been ordered, a permanency hearing shall be conducted by the court in accordance with Section 78-3a-312 at the expiration of the time period for reunification services. The permanency hearing shall be held no later than 12 months after the original removal of the child.

(ii) If reunification services have not been ordered, a permanency hearing shall be conducted within 30 days, in accordance with Section 78-3a-312.

(f) With regard to a child who is 36 months of age or younger at the time the child is initially removed from the home, the court shall:

(i) hold a permanency hearing eight months after the date of the initial removal, pursuant to Section 78-3a-312; and

(ii) order the discontinuance of those services after eight months from the initial removal

of the child from the home if the parent or parents have not made substantial efforts to comply with the treatment plan.

(g) With regard to a child in the custody of the division whose parent or parents have been ordered to receive reunification services but who have abandoned that child for a period of six months since the date that reunification services were ordered, the court shall terminate reunification services, and the division shall petition the court for termination of parental rights.

(3) (a) Because of the state's interest in and responsibility to protect and provide permanency for children who are abused, neglected, or dependent, the Legislature finds that a parent's interest in receiving reunification services is limited. The court may determine that efforts to reunify a child with [~~his~~] the child's family are not reasonable or appropriate, based on the individual circumstances, and that reunification services should not be provided. In determining "reasonable efforts" to be made with respect to a child, and in making "reasonable efforts," the child's health, safety, and welfare shall be the paramount concern.

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

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

(ii) the parent is suffering from a mental illness of such magnitude that it renders him incapable of utilizing reunification services; that finding shall be based on competent evidence from mental health professionals establishing that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months;

(iii) the minor has been previously adjudicated as an abused child due to physical or sexual abuse, that following the adjudication the child was removed from the custody of his parent, was subsequently returned to the custody of that parent, and the minor is being removed due to additional physical or sexual abuse;

(iv) the parent has caused the death of another child through abuse or neglect or has committed, aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter of a child or child abuse homicide;

(v) the minor has suffered severe abuse by the parent or by any person known by the parent, if the parent knew or reasonably should have known that the person was abusing the minor;

(vi) the minor has been adjudicated an abused child as a result of severe abuse by the

parent, and the court finds that it would not benefit the child to pursue reunification services with the offending parent;

(vii) the parent's rights have been terminated with regard to any other child;

(viii) the child has been removed from his home on at least two previous occasions and reunification services were offered or provided to the family at those times; [~~or~~]

(ix) the parent has abandoned the child for a period of six months or longer; or

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

(4) (a) Failure of the parent to respond to previous services or comply with any previous treatment plan, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, whether a parent continues to live with an individual who abused the child, any patterns of the parent's behavior that have exposed the child to repeated abuse, or testimony by a competent professional that the parent's behavior is unlikely to be successful, shall be considered in determining whether reunification services are appropriate.

(b) The court shall also consider whether the parent has expressed an interest in reunification with the child, in determining whether reunification services are appropriate.

(5) If reunification services are not ordered pursuant to Subsection (3)(a), and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court may order the division to provide reunification services. The time limits described in Subsection (2), however, are not tolled by the parent's absence.

(6) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless it determines that those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for minors ten years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services for an incarcerated parent are subject to the 12-month limitation imposed in Subsection (2). Reunification services for an institutionalized parent are subject to the 12-month limitation imposed in Subsection (2), unless the court determines that continued reunification services would be in the child's best interest.

(7) If, pursuant to Subsection (3)(b)(ii), (iii), (iv),(v), (vi), (vii), (viii), (ix), or (x), the court

does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78-3a-312.

Section 3. Section **78-3a-311.5** is enacted to read:

78-3a-311.5. Six-month review hearing -- Court determination regarding reasonable efforts by the Division of Child and Family Services and parental compliance with treatment plan requirements

If reunification efforts have been ordered by the court, a hearing shall be held no more than six months after initial removal of a child from the child's home, in order for the court to determine whether:

(1) the division has provided and is providing "reasonable efforts" to reunify a family, in accordance with the treatment plan established under Section 62A-4a-205; and

(2) the parent has fulfilled or is fulfilling identified duties and responsibilities in order to comply with the requirements of the treatment plan.

Section 4. Section **78-3a-406** is amended to read:

78-3a-406. Notice -- Nature of proceedings.

(1) After a petition for termination of parental rights has been filed, notice of that fact and of the time and place of the hearing shall be provided, in accordance with the Utah Rules of Civil Procedure, to the parents, the guardian, the person or agency having legal custody of the child, and to any person acting in loco parentis to the child.

(2) A hearing shall be held specifically on the question of termination of parental rights no sooner than ten days after service of summons is complete. A verbatim record of the proceedings shall be taken and the parties shall be advised of their right to counsel. The summons shall contain a statement to the effect that the rights of the parent or parents are proposed to be permanently terminated in the proceedings. That statement may be contained in the summons originally issued in the proceeding or in a separate summons subsequently issued.

(3) The proceedings are civil in nature and are governed by the Utah Rules of Civil Procedure. The court shall in all cases require the petitioner to establish the facts by clear and convincing evidence, and shall give full and careful consideration to all of the evidence presented with regard to the constitutional rights and claims of the parent and, if a parent is found, by reason of his conduct or condition, to be unfit or incompetent based upon any of the grounds for termination described in this part, the court shall then consider the welfare and best interest of the

child of paramount importance in determining whether termination of parental rights shall be ordered.

(4) Any hearing held pursuant to this part shall be held in closed court without admittance of any person who is not necessary to the action or proceeding, unless the court determines that holding the hearing in open court will not be detrimental to the child.

(5) In a termination of parental rights case, the parent shall have a right to a jury trial, and a jury trial shall be provided unless the parent voluntarily waives the right.

Section 5. Section **78-3a-407** is amended to read:

78-3a-407. Grounds for termination of parental rights.

(1) The court may terminate all parental rights with respect to [~~one or both parents~~] a parent if it finds any one of the following:

[~~(1)~~] (a) that the parent [~~or parents have~~] has abandoned the child;

[~~(2)~~] (b) that the parent [~~or parents have~~] has neglected or abused the child;

[~~(3)~~] (c) that the parent [~~or parents are~~] is unfit or incompetent;

[~~(4)~~] (d) that the child is being cared for in an out-of-home placement under the supervision of the court or the division[~~, that the division or other responsible agency has made a diligent effort to provide appropriate services~~] and the parent has substantially neglected, wilfully refused, or has been unable or unwilling to remedy the circumstances that cause the child to be in an out-of-home placement, and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care in the near future;

[~~(5)~~] (e) failure of parental adjustment, as defined in this chapter;

[~~(6)~~] (f) that only token efforts have been made by the parent [~~or parents~~]:

[~~(a)~~] (i) to support or communicate with the child;

[~~(b)~~] (ii) to prevent neglect of the child;

[~~(c)~~] (iii) to eliminate the risk of serious physical, mental, or emotional abuse of the child; or

[~~(d)~~] (iv) to avoid being an unfit parent;

[~~(7)~~] (g) the parent [~~or parents have~~] has voluntarily relinquished [~~their~~] the parent's parental rights to the child, and the court finds that termination is in the child's best interest;

[~~(8)~~] (h) the parent [~~or parents~~], after a period of trial during which the child was returned to live in [~~his~~] the child's own home, substantially and continuously or repeatedly refused or failed

to give the child proper parental care and protection; or

[~~(9)~~] (i) the terms and conditions of safe relinquishment of a newborn child have been complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child.

(2) The court may not terminate the parental rights of a parent because the parent has failed to complete the requirements of a treatment plan.

(3) (a) In any case in which the court has directed the division to provide reunification services to a parent, the court must find that the division made reasonable efforts to provide those services before the court may terminate the parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).

(b) The court is not required to make the finding under Subsection (3)(a) before terminating a parent's rights under Subsection (1)(b) based upon abuse or neglect found by the court to have occurred subsequent to adjudication.

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

78-3a-912. Appointment of attorney guardian ad litem -- Duties and responsibilities -- Training -- Trained staff and court appointed special advocate volunteers -- Costs -- Immunity.

(1) The court may appoint an attorney guardian ad litem to represent the best interest of a minor involved in any case before the court and shall consider only the best interest of a minor in determining whether to appoint a guardian ad litem.

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

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

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

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

(c) conduct or supervise an independent investigation in order to obtain first-hand, a clear

understanding of the situation and needs of the child;

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

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

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

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

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

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

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

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

(l) personally attend all court hearings, and participate in all telephone conferences with

the court unless the court waives that appearance or participation;

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

(n) prepare for hearings;

(o) present witnesses and exhibits when necessary to protect the best interest of the minor;

(p) participate in all appeals unless excused by order of the court;

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

(r) conduct interviews with potential witnesses and review relevant exhibits and reports;

(s) make clear and specific recommendations to the court concerning the best interest of the minor at every stage of the proceeding, including all placement decisions, and ask that clear and specific orders be entered for the provision of services, treatment provided, and for the evaluation, assessment, and protection of the minor and his family;

(t) be familiar with local experts who can provide consultation and testimony regarding the reasonableness and appropriateness of efforts made by the Division of Child and Family Services to maintain a minor in his home or to reunify a minor with his parent;

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

(v) review proposed orders for, and as requested by the court, prepare proposed orders with clear and specific directions regarding services, treatment, and evaluation, assessment, and protection of the minor and his family;

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

(x) inform the court promptly, orally or in writing, if:

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

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

(iii) court-ordered services are not achieving their purpose;

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

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

(4) (a) 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. An attorney guardian ad litem may not, however, delegate his responsibilities described in Subsection (3).

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

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

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

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

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

(b) (i) When the court appoints an attorney guardian ad litem under this section, the court may assess all or part of the attorney's 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.

(ii) The court may not assess those fees or costs against a legal guardian, when that

guardian is the state, or against a parent who is found to be impecunious. If a person claims to be impecunious, the court shall require of that person an affidavit of impecuniosity [~~as provided in Section 21-7-3 and the court shall follow the procedures and make the determinations as provided in Section 21-7-4~~].

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

(8) (a) An attorney guardian ad litem shall represent the best interest of a minor. If the minor's 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 his determination of the minor's best interest. 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.

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

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

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

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

(11) (a) Except as provided in Subsection (11)(b), 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. This subsection supersedes Title 63, Chapter 2, Government Records Access and Management Act.

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

(c) Records released in accordance with Subsection (11)(b) shall be maintained as confidential by the Legislature. The Office of the Legislative Auditor General may, however,

include summary data and nonidentifying information in its audits and reports to the Legislature.

(d) Because of the unique role of an attorney guardian ad litem described in Subsection (8), and the state's role and responsibility to provide a guardian ad litem program and, as parens patriae, to protect minors, Subsection (11)(b) constitutes an exception to Rules of Professional Conduct, Rule 1.6, as provided by Rule 1.6(b)(4). 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.

(12) Nothing in this section shall be construed to deny a parent the right in a court proceeding to question an attorney guardian ad litem regarding the attorney's compliance with statutory duties or the basis of the attorney's recommendations.

Section 7. Section **78-46-5** is amended to read:

78-46-5. Trial by jury.

(1) A trial jury consists of:

(a) twelve persons in a capital case;

(b) eight persons in a criminal case which carries a term of incarceration of more than one year as a possible sentence for the most serious offense charged;

(c) six persons in a criminal case which carries a term of incarceration of more than six months but not more than one year as a possible sentence for the most serious offense charged;

(d) four persons in a criminal case which carries a term of incarceration of six months or less as a possible sentence for the most serious offense charged; [~~and~~]

(e) eight persons in a civil case at law except that the jury shall be four persons in a civil case for damages of less than $20,000, exclusive of costs, interest, and attorney fees[~~.~~]; and

(f) four persons in a parental termination rights case under Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

(2) Except in the trial of a capital felony, the parties may stipulate upon the record to a jury of a lesser number than established by this section.

(3) (a) The verdict in a criminal case shall be unanimous.

(b) The verdict in a civil case shall be by not less than three-fourths of the jurors.

(4) There is no jury in the trial of small claims cases.

(5) There is no jury in the adjudication of a minor charged with what would constitute a crime if committed by an adult.

Legislative Review Note
as of 2-7-02 12:55 PM

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

Office of Legislative Research and General Counsel