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H.B. 140
1st Sub. (Buff)

Representative LaVar Christensen proposes the following substitute bill:

CHILD AND FAMILY SERVICES AND RELATED JUDICIAL CODE AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: LaVar Christensen

LONG TITLE

General Description:

This bill amends child welfare provisions in Child and Family Services and the Judicial Code.

Highlighted Provisions:

This bill:

- ▸ requires the legislative auditor general to complete an audit of child welfare cases to measure compliance by attorney guardians ad litem with their statutory duties;
- ▸ requires the Child Welfare Legislative Oversight Panel to study and make recommendations on:
  - • the feasibility of requiring the juvenile court to adjudicate a petition alleging child abuse prior to ordering a child into protective custody;
  - • how to otherwise strengthen procedural due process safeguards for the parents of children that may be taken into protective custody; and
  - • how to strengthen defense counsel for parents of children taken into protective custody;
- ▸ amends the purpose of the juvenile court;
- ▸ requires the juvenile court to recognize the rights of parents and children and the limits placed on the Division of Child and Family Services;

- clarifies how a petition before a juvenile court may be dismissed at any stage of the court proceedings;
- modifies language indicating when an attorney guardian ad litem may be appointed;
- prohibits a court from removing a minor from the custody of the minor's parents or guardian without giving the parents or guardian notice and an opportunity to be heard, except in clear and verifiable exigent circumstances;
- modifies reunification services provisions;
- creates a presumption of parent fitness and competence in termination of parental rights proceedings;
- specifies that termination of parental rights proceedings are subject to Utah Rules of Evidence;
- makes the appointment of an attorney guardian ad litem in child abuse, neglect, and dependency cases optional;
- prohibits a court from appointing an attorney guardian ad litem unless the court makes a finding that the best interests of the minor may not reasonably be protected without the appointment;
- modifies the time at which the attorney guardian ad litem may begin representing a child;
- specifies that a parent or guardian has the right to object to the appointment of an attorney guardian ad litem;
- modifies when a parent or guardian is responsible for the costs of an attorney guardian ad litem;
- specifies that a parent or guardian may make specified petitions to the court concerning an attorney guardian ad litem;
- requires an attorney guardian ad litem to report to the parents or guardian of a child upon a petition by the parents or guardian to the court;
- requires an attorney guardian ad litem, if possible, to communicate with the parents or guardian of a minor;
- clarifies the prohibition on the release of attorney guardian ad litem records;
- specifies that an attorney guardian ad litem is bound by all of the Rules of Professional Conduct regarding client representation;

- prohibits an attorney guardian ad litem from making public statements outside of the juvenile court about a child abuse, neglect, or dependency case;
- repeals the presumption of caretaker responsibility for the occurrence of child abuse or neglect;
- makes conforming changes; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2004.

Utah Code Sections Affected:

AMENDS:

62A-4a-118, as last amended by Chapters 94 and 232, Laws of Utah 2003

62A-4a-207, as last amended by Chapter 93, Laws of Utah 2003

78-3a-102, as last amended by Chapter 329, Laws of Utah 1997

78-3a-109, as last amended by Chapter 180, Laws of Utah 2001

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

78-3a-301 (Effective 07/01/04), as last amended by Chapter 171, Laws of Utah 2003

78-3a-311, as last amended by Chapter 246, Laws of Utah 2002

78-3a-314, as last amended by Chapter 120, Laws of Utah 2001

78-3a-402, as renumbered and amended by Chapter 260, Laws of Utah 1994

78-3a-406, as last amended by Chapter 332, Laws of Utah 2003

78-3a-412, as renumbered and amended by Chapter 260, Laws of Utah 1994

78-3a-912, as last amended by Chapter 168, Laws of Utah 2002

78-7-45, as last amended by Chapter 168, Laws of Utah 2002

ENACTS:

78-3a-103.5, Utah Code Annotated 1953

REPEALS:

78-3a-305.1, as enacted by Chapter 274, Laws of Utah 1998

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

Section 1. Section **62A-4a-118** is amended to read:

62A-4a-118. Annual review of child welfare referrals and cases by executive director -- Accountability to the Legislature -- Review by legislative auditor general.

(1) The division shall use principles of quality management systems, including statistical measures of processes of service, and the routine reporting of performance data to employees.

(2) (a) In addition to development of quantifiable outcome measures and performance measures in accordance with Section 62A-4a-117, the executive director, or [~~his~~] the executive director's designee, shall annually review a randomly selected sample of child welfare referrals to and cases handled by the division. The purpose of that review shall be to assess whether the division is adequately protecting children and providing appropriate services to families, in accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, and Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 4, Termination of Parental Rights Act. The review shall focus directly on the outcome of cases to children and families, and not simply on procedural compliance with specified criteria.

(b) The executive director shall report, regarding [~~his~~] the review of those cases, to the Legislative Auditor General and the Child Welfare Legislative Oversight Panel.

(c) Information obtained as a result of the review shall be provided to caseworkers, supervisors, and division personnel involved in the respective cases, for purposes of education, training, and performance evaluation.

(3) The executive director's review and report to the Legislature shall include:

(a) the criteria used by the executive director, or [~~his~~] the executive director's designee, in making the evaluation;

(b) findings regarding whether state statutes, division policy, and legislative policy were followed in each sample case;

(c) findings regarding whether, in each sample case, referrals, removals, or cases were appropriately handled by the division and its employees, and whether children were adequately and appropriately protected and appropriate services provided to families, in accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 4, Termination of Parental Rights Act, and division policy;

(d) an assessment of the division's intake procedures and decisions, including an assessment of the appropriateness of decisions not to accept referrals; and

(e) an assessment of the appropriateness of the division's assignment of priority.

(4) (a) In addition to the review conducted by the executive director, beginning July 1, 2004, the Legislative Auditor General shall audit a sample of child welfare referrals to and cases handled by the division and report his findings to the Child Welfare Legislative Oversight Panel.

(b) An audit under Subsection (4)(a) shall be conducted at least once every three years, but may be conducted more frequently pursuant to Subsection (4)(d).

(c) With regard to the sample of referrals, removals, and cases, the Legislative Auditor General's report may include:

(i) findings regarding whether state statutes, division policy, and legislative policy were followed by the division and its employees;

(ii) a determination regarding whether referrals, removals, and cases were appropriately handled by the division and its employees, and whether children were adequately and appropriately protected and appropriate services provided for families, in accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 4, Termination of Parental Rights Act, and division policy;

(iii) an assessment of the division's intake procedures and decisions, including an assessment of the appropriateness of decisions not to accept referrals;

(iv) an assessment of the appropriateness of the division's assignment of priority;

(v) a determination regarding whether the department's review process is effecting beneficial change within the division and accomplishing the mission established by the Legislature and the department for that review process; and

(vi) findings regarding any other issues identified by the auditor or others under Subsection (4)(d).

(d) An audit under Subsection (4)(a) may be initiated by:

(i) the Audit Subcommittee of the Legislative Management Committee;

(ii) the Child Welfare Legislative Oversight Panel; or

(iii) the Legislative Auditor General, based on the results of the executive director's

review under Subsection (2).

(e) (i) Prior to the 2005 Annual General Session of the Legislature, the legislative auditor general shall complete an audit of child welfare cases to measure compliance by attorney guardians ad litem with their statutory duties.

(ii) This audit shall be considered one of the periodic audits required by Subsection (4)(b).

Section 2. Section **62A-4a-207** is amended to read:

62A-4a-207. Child Welfare Legislative Oversight Panel -- Responsibilities.

(1) (a) There is created the Child Welfare Legislative Oversight Panel composed of the following members:

(i) two members of the Senate, one from the majority party and one from the minority party, appointed by the president of the Senate; and

(ii) three members of the House of Representatives, two from the majority party and one from the minority party, appointed by the speaker of the House of Representatives.

(b) Members of the panel shall serve for two-year terms, or until their successors are appointed.

(c) A vacancy exists whenever a member ceases to be a member of the Legislature, or when a member resigns from the panel. Vacancies shall be filled by the appointing authority, and the replacement shall fill the unexpired term.

(2) The president of the Senate shall designate one of the senators appointed to the panel under Subsection (1) as the Senate chair of the panel. The speaker of the House of Representatives shall designate one of the representatives appointed to the panel under Subsection (1) as the House chair of the panel.

(3) The panel shall follow the interim committee rules established by the Legislature.

(4) The panel shall:

(a) examine and observe the process and execution of laws governing the child welfare system by the executive branch and the judicial branch;

(b) upon request, receive testimony from the public, the juvenile court, and from all state agencies involved with the child welfare system including, but not limited to, the division, other offices and agencies within the department, the attorney general's office, the Office of the Guardian Ad Litem Director, and school districts;

(c) before October 1, 2002, and before October 1 of each year thereafter receive reports from the division, the attorney general, and the judicial branch identifying the cases not in compliance with the time limits established in Section 78-3a-308, regarding pretrial and adjudication hearings, Section 78-3a-311, regarding dispositional hearings and reunification services, and Section 78-3a-312, regarding permanency hearings and petitions for termination, and the reasons for the noncompliance;

(d) receive recommendations from, and make recommendations to the governor, the Legislature, the attorney general, the division, the Office of the Guardian Ad Litem Director, the juvenile court, and the public;

(e) (i) receive reports from the executive branch and the judicial branch on budgetary issues impacting the child welfare system; and

(ii) recommend, as it considers advisable, budgetary proposals to the Health and Human Services Joint Appropriations Subcommittee, the Executive Offices and Criminal Justice Appropriations Subcommittee, and the Executive Appropriations Committee, which recommendation should be made before December 1 of each year;

(f) study and recommend proposed changes to laws governing the child welfare system;

(g) study actions the state can take to preserve, unify, and strengthen the child's family ties whenever possible in the child's best interest, including recognizing the constitutional rights and claims of parents whenever those family ties are severed or infringed;

(h) during the 2004 interim, study and make recommendations to the Legislature on:

(i) the feasibility of requiring the juvenile court, except in exigent circumstances, to adjudicate a petition alleging child abuse, neglect, or dependency prior to ordering a child into protective custody;

(ii) establishing a right to a jury trial in a juvenile court proceeding:

(A) to adjudicate a petition alleging child abuse, neglect, or dependency; or

(B) to terminate a parent's rights;

(iii) how to otherwise strengthen procedural due process safeguards for the parents of children that come under the jurisdiction of the juvenile court for possible child abuse, neglect, or dependency; and

(iv) how to strengthen defense counsel for parents of children taken into protective

custody;

[~~(h)~~] (i) perform such other duties related to the oversight of the child welfare system as the panel considers appropriate; and

[~~(i)~~] (j) annually report its findings and recommendations to the president of the Senate, the speaker of the House of Representatives, the Health and Human Services Interim Committee, and the Judiciary Interim Committee.

(5) (a) The panel has authority to review and discuss individual cases.

(b) When an individual case is discussed, the panel's meeting may be closed pursuant to Title 52, Chapter 4, Open and Public Meetings.

(c) When discussing an individual case, the panel shall make reasonable efforts to identify and consider the concerns of all parties to the case.

(6) (a) (i) The panel has authority to make recommendations to the Legislature, the governor, the Board of Juvenile Court Judges, the division, and any other statutorily created entity related to the policies and procedures of the child welfare system.

(ii) The panel does not have authority to make recommendations to the court, the division, or any other public or private entity regarding the disposition of any individual case.

(b) The panel may hold public hearings, as it considers advisable, in various locations within the state in order to afford all interested persons an opportunity to appear and present their views regarding the child welfare system in this state.

(7) (a) All records of the panel regarding individual cases shall be classified private, and may be disclosed only in accordance with federal law and the provisions of Title 63, Chapter 2, Government Records Access and Management Act.

(b) (i) The panel shall have access to all of the division's records, including those regarding individual cases.

(ii) In accordance with Title 63, Chapter 2, Government Records Access Management Act, all documents and information received by the panel shall maintain the same classification that was designated by the division.

(8) In order to accomplish its oversight functions, the panel has:

(a) all powers granted to legislative interim committees in Section 36-12-11; and

(b) legislative subpoena powers under Title 36, Chapter 14, Legislative Subpoena Powers.

(9) Members of the panel shall receive salary and expenses in accordance with Section 36-2-2.

(10) (a) The Office of Legislative Research and General Counsel shall provide staff support to the panel.

(b) The panel is authorized to employ additional professional assistance and other staff members as it considers necessary and appropriate.

Section 3. Section **78-3a-102** is amended to read:

78-3a-102. Establishment of juvenile court -- Organization and status of court -- Purpose.

(1) There is established for the state a juvenile court.

(2) The juvenile court is a court of record. It shall have a seal, and its judges, clerks, and referees have the power to administer oaths and affirmations.

(3) The juvenile court is of equal status with the district courts of the state.

(4) The juvenile court is established as a forum for the resolution of all matters properly brought before it, consistent with applicable constitutional and statutory requirements of due process.

(5) The purpose of the court under this chapter is to:

(a) promote public safety and individual accountability by the imposition of appropriate sanctions on persons who have committed acts in violation of law;

(b) order appropriate measures to promote guidance and control, preferably in the minor's own home, as an aid in the prevention of future unlawful conduct and the development of responsible citizenship;

(c) where appropriate, order rehabilitation, reeducation, and treatment for persons who have committed acts bringing them within the court's jurisdiction;

(d) adjudicate matters that relate to minors who are beyond parental or adult control and to establish appropriate authority over these minors by means of placement and control orders;

(e) adjudicate matters that relate to abused, neglected, and dependent minors and to provide care and protection for these minors by placement, protection, and custody orders;

(f) remove a minor from parental custody only where the minor's safety or welfare, or the public safety, may not otherwise be adequately safeguarded; and

(g) consistent with the ends of justice, [~~strive to~~] act in the best interests of the [~~minor's~~] minor in all cases and [~~attempt to~~] preserve and strengthen family ties [~~where possible~~].

Section 4. Section **78-3a-103.5** is enacted to read:

78-3a-103.5. Parents' and children's rights -- Division limits.

In all child abuse, neglect, and dependency proceedings under this chapter, the court shall recognize, as provided in Section 62A-4a-201, the rights of parents and children and the limits placed on the division.

Section 5. Section **78-3a-109** is amended to read:

78-3a-109. Title of petition and other court documents -- Form and contents of petition -- Order for temporary custody -- Physical or psychological examination of minor, parent, or guardian -- Dismissal of petition.

(1) The petition and all subsequent court documents in the proceeding shall be entitled:

"State of Utah, in the interest of....., a person under 18 years of age (or a person under 21 years of age)."

(2) The petition shall be verified and statements in the petition may be made upon information and belief.

(3) The petition shall be written in simple and brief language and include the facts which bring the minor within the jurisdiction of the court, as provided in Section 78-3a-104.

(4) The petition shall further state:

(a) the name, age, and residence of the minor;

(b) the names and residences of the minor's parents;

(c) the name and residence of the guardian, if there is one;

(d) the name and address of the nearest known relative, if no parent or guardian is known; and

(e) the name and residence of the person having physical custody of the minor. If any of the facts required are not known by the petitioner, the petition shall so state.

(5) At any time after a petition is filed, the court may make an order providing for temporary custody of the minor.

(6) The court may order that a minor concerning whom a petition has been filed shall be examined by a physician, surgeon, psychiatrist, or psychologist and may place the minor in a

hospital or other facility for examination. After notice and a hearing set for the specific purpose, the court may order a similar examination of a parent or guardian whose ability to care for a minor is at issue, if the court finds from the evidence presented at the hearing that the parent's or guardian's physical, mental, or emotional condition may be a factor in causing the neglect, dependency, or delinquency of the minor.

(7) Pursuant to Rule 506(d)(3), Utah Rules of Evidence, examinations conducted pursuant to Subsection (6) are not privileged communications, but are exempt from the general rule of privilege.

(8) The court may, upon its own motion or a motion from any party to the proceeding, dismiss a petition at any stage of the proceedings.

(9) If the petition is filed under Section 78-3a-305 or 78-3a-405 or if the matter is referred to the court under Subsection 78-3a-105(3)(b):

(a) the court may require the parties to participate in mediation in accordance with Title 78, Chapter 31b, Alternative Dispute Resolution; and

(b) the division [~~of Child and Family Services~~] or a party to the petition may request and the court may order the parties to participate in a family unity conference under the authority of the division [~~of Child and Family Services~~] in accordance with Subsection (10).

(10) (a) A family unity conference may be ordered by the court for any of the following purposes:

(i) discussing and reviewing the case history;

(ii) designing a service plan for the child and family, including concurrent planning;

(iii) discussing a visitation schedule and rules for visitation;

(iv) identifying possible kinship placements under the requirements of Subsection 78-3a-307(5), and designing services to support the kinship placement;

(v) conflict resolution between the family and division [~~of Child and Family Services~~] staff;

(vi) discussing child custody issues; or

(vii) crisis clinical intervention to reduce trauma to the child and family.

(b) The family unity conference may be attended by individuals chosen by the family and the division [~~of Child and Family Services~~], and may include extended family members, friends, clergy, service providers, and others who may support the family in keeping the child

safe.

(c) A family unity conference may not be held in the following circumstances:

(i) when there is a criminal charge pending in the case;

(ii) to resolve petition disputes; and

(iii) when a family unity conference may pose a threat to the safety of a child or other family member.

(d) With regard to a family unity conference ordered by a court under Subsection (9)(b):

(i) the requirements of Subsection 78-31b-7(3)(b) apply except all parties to the proceeding:

(A) shall be given no less than five days notice of any recommendation made to the court from the family unity conference; and

(B) shall be given an opportunity to be heard by the court; and

(ii) the confidentiality requirements of Section 78-31b-8 apply, except that admissions by a party to the allegations on the petition are admissible at any proceeding.

Section 6. Section **78-3a-112** is amended to read:

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

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

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

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

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

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

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

(5) (a) The court shall endeavor, through use of the warrant of arrest if necessary, as provided in Subsection (6), or by other means, to ensure the presence at all hearings of one or both parents or of the guardian of the minor.

(b) If neither a parent nor guardian is present at the court proceedings, the court may appoint a guardian ad litem to protect the interest of the minor. [~~A guardian ad litem may also be appointed whenever necessary for the welfare of the minor, whether or not a parent or guardian is present.~~]

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

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

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

(c) serving the summons will be ineffectual; or

(d) the welfare of the minor requires that [~~he~~] the minor be brought immediately into the custody of the court.

Section 7. Section **78-3a-301 (Effective 07/01/04)** is amended to read:

78-3a-301 (Effective 07/01/04). Court-ordered protective custody of a minor following petition filing -- Grounds.

(1) (a) After a petition has been filed under Subsection 78-3a-305(1), if the minor who is the subject of the petition is not in the protective custody of the division, a court may order that the minor be removed from the minor's home or otherwise taken into protective custody if the court finds, by a preponderance of the evidence, that any one or more of the following circumstances exist:

[~~(a)~~] (i) there is an imminent danger to the physical health or safety of the minor and the minor's physical health or safety may not be protected without removing the minor from the custody of the minor's parent or guardian[~~. If a minor has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency has occurred involving the same alleged abuser or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the custody of the minor's parent~~];

[~~(b)~~] (ii) a parent or guardian engages in or threatens the minor with unreasonable conduct that causes the minor to suffer emotional damage 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 the minor's parent or guardian;

[~~(c) (i)~~] (iii) the minor or another minor residing in the same household has been physically or sexually abused, or is considered to be at substantial risk of being physically or sexually abused, by a parent or guardian, a member of the parent's or guardian's household, or other person known to the parent or guardian[~~.~~];

[~~(ii) For purposes of this Subsection (1)(c), another minor residing in the same household may not be removed from the home unless that minor is considered to be at substantial risk of being physically or sexually abused as described in Subsection (1)(c)(i) or (iii).~~]

[~~(iii) If a parent or guardian 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 or guardian failed to protect the minor by allowing the minor to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being physically or sexually abused;~~]

[~~(d)~~] (iv) the parent or guardian is unwilling to have physical custody of the minor;

[~~(e)~~] (v) the minor has been abandoned or left without any provision for the minor's support;

[~~(f)~~] (vi) a parent or guardian who has been incarcerated or institutionalized has not arranged or cannot arrange for safe and appropriate care for the minor;

[~~(g)~~] (vii) (A) a relative or other adult custodian with whom the minor has been left by the parent or guardian is unwilling or unable to provide care or support for the minor[~~,~~];

(B) the whereabouts of the parent or guardian are unknown[~~,~~]; and

(C) reasonable efforts to locate the parent or guardian have been unsuccessful;

[~~(h)~~] (viii) the minor is in immediate need of medical care;

[~~(i) (i)~~] (ix) (A) a parent's or guardian's actions, omissions, or habitual action create an environment that poses a threat to the minor's health or safety; or

[~~(ii)~~] (B) a parent's or guardian's action in leaving a minor unattended would reasonably pose a threat to the minor's health or safety;

[~~(j) (i)~~] (x) the minor or another minor residing in the same household has been neglected; [~~and~~]

[~~(ii) for purposes of Subsection (1)(j)(i), another minor residing in the same household may not be removed unless that minor is considered to be at substantial risk of being neglected;~~]

[~~(k)~~] (xi) an infant has been abandoned, as defined in Section 78-3a-313.5;

[~~(l)~~] (xii) the parent or guardian, or an adult residing in the same household as the parent or guardian, 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 minor resided; or

[~~(m)~~] (xiii) the minor's welfare is otherwise endangered.

(b) (i) For purposes of Subsection (1)(a)(i), if a minor has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency has occurred involving the same alleged abuser or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the custody of the minor's parent.

(ii) For purposes of Subsection (1)(a)(iii):

(A) another minor residing in the same household may not be removed from the home unless that minor is considered to be at substantial risk of being physically or sexually abused as described in Subsections (1)(a)(iii) or (1)(b)(ii)(B); and

(B) if a parent or guardian 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 or guardian failed to protect the minor by allowing the minor to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being

physically or sexually abused.

(iii) For purposes of Subsection (1)(a)(x), another minor residing in the same household may not be removed unless that minor is considered to be at substantial risk of being neglected.

(2) [~~A~~] In the absence of one of the factors described in Subsection (1), a court may not remove a minor from the parent's or guardian's custody on the basis of:

(a) educational neglect[~~, in the absence of one of the factors described in Subsection (1). (3) A court may not remove a minor from the parent's or guardian's custody on the basis of~~]; or

(b) mental illness or poverty of the parent or guardian[~~, in the absence of one of the factors described in Subsection (1)~~].

(3) Except in clear and verifiable exigent circumstances, a court may not remove a minor from the custody of the minor's parents or guardian without giving the parent or guardian notice and an opportunity to be heard.

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

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

Section 8. 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) (A) 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.

(B) 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 child and 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) (A) The time period for reunification services may not exceed 12 months from the date that the child was initially removed from the child's home.

(B) 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 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)~~] (3) (a) There is a presumption that reunification services should not be provided to a parent if the court finds[~~, by clear and convincing~~] evidence[~~,~~] that establishes beyond a reasonable doubt 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~~] the parent 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) (A) the minor has been previously adjudicated as an abused child due to physical or sexual abuse[~~, that~~];

(B) following the adjudication the child was removed from the custody of [~~his~~] the child's parent[~~,~~] and was subsequently returned to the custody of that parent[~~,~~]; and

(C) 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) (A) the minor has been adjudicated an abused child as a result of severe abuse by the parent[~~,~~]; and

(B) 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) (A) the child has been removed from [~~his~~] the child's home on at least two previous occasions; and

(B) 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.

(b) For purposes of Subsection (3)(a)(ii), the court's finding that a parent is suffering from a mental illness of such magnitude that it renders the parent incapable of utilizing reunification services 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.

(4) (a) The following shall be considered in determining whether reunification services are appropriate:

[~~(4) (a) Failure~~] (i) failure of the parent to respond to previous services or comply with any previous treatment plan[~~,~~];

(ii) the fact that the child was abused while the parent was under the influence of drugs or alcohol[~~,~~];

(iii) a past history of violent behavior[~~,~~];

(iv) whether a parent continues to live with an individual who abused the child[~~,~~];

(v) any patterns of the parent's behavior that have exposed the child to repeated abuse[~~,~~ ~~or~~]; and

(vi) 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) (a) 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.

(b) Reunification services for an incarcerated parent are subject to the 12-month limitation imposed in Subsection (2).

(c) 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)~~] (3)(a), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78-3a-312.

Section 9. Section **78-3a-314** is amended to read:

78-3a-314. All proceedings -- Persons entitled to be present.

(1) A child who is the subject of a juvenile court hearing, any person entitled to notice pursuant to Section 78-3a-306 or 78-3a-309, preadoptive parents, and any relative providing care for the child, are entitled to notice, to be present at each hearing held under this part, including administrative and citizen reviews, and are entitled to an opportunity to be heard.

(2) Because the child's foster parents have the right to notice, pursuant to Section 78-3a-309, they have the right to be present at each and every hearing held under this part including administrative and citizen reviews, and are entitled to an opportunity to be heard.

(3) [~~A~~] (a) If the court has appointed a guardian ad litem for a child, the child shall be

represented at each hearing by the guardian ad litem [~~appointed to his case by the court~~].

(b) The child has a right to be present at each hearing, subject to the discretion of the guardian ad litem or the court regarding any possible detriment to the child.

(4) (a) The parent or guardian of a child who is the subject of a petition under this part has the right to be represented by counsel, and to present evidence, at each hearing.

(b) When it appears to the court that a parent or guardian of the child desires counsel but is financially unable to afford and cannot for that reason employ counsel, and the child has been placed in out-of-home care, or the petitioner is recommending that the child be placed in out-of-home care, the court shall appoint counsel.

(5) In every abuse, neglect, or dependency proceeding under this chapter, the court [~~shall~~] may order that the child be represented by a guardian ad litem, in accordance with Section 78-3a-912. [~~The~~] If appointed, the guardian ad litem, in accordance with Section 78-3a-912, shall represent the best interest of the child[~~, in accordance with the requirements of that section,~~] at the shelter hearing and at all subsequent court and administrative proceedings, including any proceeding for termination of parental rights in accordance with Part 4, Termination of Parental Rights Act.

(6) [~~Notwithstanding~~] (a) Except as provided in Subsection (6)(b), notwithstanding any other provision of law, counsel for all parties to the action shall be given access to all records, maintained by the division or any other state or local public agency, that are relevant to the abuse, neglect, or dependency proceeding under this chapter. If the natural parent of a child is representing himself[~~, he~~] or herself, the natural parent of the child shall have access to those records. [~~The above~~]

(b) The disclosures under Subsection (6)(a) are not required in the following circumstances:

[~~(a)~~] (i) [~~The~~] the division or other state or local public agency did not originally create the record being requested[~~. In those circumstances, the person making the request under this section shall be informed of the following:~~]; or

[~~(i) the existence of all records in the possession of the division or any other state or local public agency;~~]

[~~(ii) the name and address of the person or agency that originally created the record; and~~]

[~~(iii) that he must seek access to the record from the person or agency that originally created the record.~~]

[~~(b) Disclosure of the record would jeopardize the life or physical safety of a child who has been a victim of child abuse or neglect, or any person who provided substitute care for the child.~~]

[~~(c) Disclosure of the record would jeopardize the anonymity of the person or persons making the initial report of abuse or neglect or any others involved in the subsequent investigation.~~]

[~~(d) Disclosure~~] (ii) disclosure of the record would jeopardize:

(A) the life or physical safety of a child who has been a victim of child abuse or neglect, or any person who provided substitute care for the child;

(B) the anonymity of the person or persons making the initial report of abuse or neglect or any others involved in the subsequent investigation; or

(C) the life or physical safety of a person who has been a victim of domestic violence.

(c) In circumstances described in Subsection (6)(b)(i), the person making the request under this section shall be informed of the following:

(i) the existence of all records in the possession of the division or any other state or local public agency;

(ii) the name and address of the person or agency that originally created the record; and

(iii) that the person must seek access to the record from the person or agency that originally created the record.

(7) (a) The appropriate foster care citizen review board shall be given access to all records, maintained by the division or any other state or local public agency, that are relevant to an abuse, neglect, or dependency proceeding under this chapter.

(b) Representatives of the appropriate foster care citizen review board are entitled to be present at each hearing held under this part, but notice is not required to be provided.

Section 10. Section **78-3a-402** is amended to read:

78-3a-402. Judicial process for termination -- Parent unfit or incompetent -- Best interest of child -- Presumption of fitness.

(1) This part provides a judicial process for voluntary and involuntary severance of the parent-child relationship, designed to safeguard the rights and interests of all parties concerned

and promote their welfare and that of the state.

(2) Wherever possible family life should be strengthened and preserved, but if a parent is found, by reason of [~~his~~] the parent's 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.

(3) For purposes of this part, parents are presumed to be fit and competent.

Section 11. 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) 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.

(b) 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) (a) The proceedings are civil in nature and are governed by the Utah Rules of Civil Procedure and the Utah Rules of Evidence.

(b) The court shall in all cases require the petitioner to establish the facts [~~by clear and convincing evidence~~] beyond a reasonable doubt, 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~~] the parent's 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.

ĥ [~~(4) If a party requests a jury trial, the court shall transfer the case to the district court.~~] ĥ

Section 12. Section **78-3a-412** is amended to read:

78-3a-412. Review following termination.

(1) At the conclusion of the hearing in which the court orders termination of the parent-child relationship, the court shall order that a review hearing be held within 90 days following the date of termination if the child has not been permanently placed.

(2) At that review hearing, the agency or individual vested with custody of the child shall report to the court regarding the plan for permanent placement of the child. [~~The~~] If a guardian ad litem has been appointed, the guardian ad litem shall submit to the court a written report with recommendations, based on an independent investigation, for disposition meeting the best interests of the child.

(3) The court may order the agency or individual vested with custody of the child to report, at appropriate intervals, on the status of the child until the plan for permanent placement of the child has been accomplished.

Section 13. 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~~] (a) Subject to the provisions of Subsection (2)(b), the court may appoint an attorney guardian ad litem [~~shall~~] to 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 the minor's home by the division [~~of Child and Family Services~~], or the date the petition is [~~filed~~] adjudicated, whichever occurs earlier.

(b) The court may appoint an attorney guardian ad litem under Subsection (2)(a) only if it makes a finding on the record that the best interests of the minor may not reasonably be protected without the appointment.

(c) The appointment of an attorney guardian ad litem under Subsection (2)(a) shall be made in a hearing where the parents of the minor:

(i) have been given notice to be present; and

(ii) have the opportunity to express their preferences and any concerns they may have

relating to the appointment of an attorney guardian ad litem.

(d) The minor's parents have the right to object to the appointing of an attorney guardian ad litem.

(e) An individual is not required to be employed by or under contract with the Office of the Guardian ad Litem to be appointed as an attorney guardian ad litem in a child abuse, neglect, or dependency case.

(f) Except as provided in Subsection (7)(b)(ii), if a parent or guardian refuses the appointment of a guardian ad litem employed by or under contract with the Office of the Guardian ad Litem, the parent is responsible for all costs incurred from the appointment of a private attorney guardian ad litem to represent the best interest of the minor.

(g) (i) At any time the minor's parents or guardian may:

(A) petition the court to release an attorney guardian ad litem from a case; and

(B) petition the court for a report of the activities of the attorney guardian ad litem relating to the minor.

(ii) If a petition is made under Subsection (2)(g)(i)(B), the court shall order the guardian ad litem to provide the information to the parents or guardian in a timely manner.

(3) [~~The~~] If the court appoints an attorney guardian ad litem employed by or under contract with the Office of the Guardian Ad Litem, the Office of the Guardian Ad Litem Director, through [~~an~~] the 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 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;

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

(f) 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;

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

(h) 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 the minor's home or to reunify a minor with the minor's parent;

(i) 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 the minor's 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;

(j) 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 the minor's family; [~~and~~]

(k) personally or through a trained volunteer, paralegal, or other trained staff, monitor implementation of a minor's treatment plan and any dispositional orders:

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

(A) are actually provided[~~,~~]; and

(B) are provided in a timely manner[~~,~~]; and

(ii) attempt to assess whether they are accomplishing their intended goal[~~,~~]; and

(l) if possible, communicate with the parents or guardian of the minor and give consideration to their concerns and goals for the minor.

(4) If the court appoints an attorney guardian ad litem who is not employed by or under contract with the Office of the Guardian Ad Litem, the attorney guardian ad litem shall meet the requirements of Subsection (3).

[~~(4)~~] (5) (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 the attorney's 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)~~] (5)(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 the attorney's trained volunteer, paralegal, or other trained staff.

[~~(5)~~] (6) The attorney guardian ad litem shall continue to represent the best interest of the minor until released from duties by the court.

[~~(6)~~] (7) (a) [~~The~~] Except as provided in Subsection (2)(d), 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 78-7-36 and the court shall follow the procedures and make the determinations as provided in Section 78-7-36.

[~~(7)~~] (8) An attorney guardian ad litem appointed under this section, when serving in the scope of [~~his~~] the attorney guardian ad litem's 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)~~] (9) (a) An attorney guardian ad litem shall represent the best interest of a minor.

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

[~~(9)~~] (10) An attorney guardian ad litem shall be provided access to all division [~~of Child and Family Services~~] records regarding the minor at issue and the minor's family.

[~~(10)~~] (11) An attorney guardian ad litem shall maintain current and accurate records regarding the number of times the attorney has had contact with each minor and the actions the attorney has taken in representation of the minor's best interest.

[~~(11)~~] (12) (a) Except as provided in Subsection [~~(11)~~] (12)(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, by authorization or order of a court, or otherwise. This Subsection (12)(a) 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)~~] (12)(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)~~] (9), and the state's role and responsibility to provide a guardian ad litem program and, as parens patriae, to protect minors, Subsection [~~(11)~~] (12)(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.

(e) Notwithstanding Subsection (12)(d), an attorney guardian ad litem is bound by all of the Rules of Professional Conduct regarding client representation.

(13) An attorney guardian ad litem may not, on the attorney guardian ad litem's own initiative or by authorization or order of a court, make public statements, grant interviews, or otherwise communicate information that will be disclosed publicly outside of the juvenile court about a child abuse, neglect, or dependency case, even if the communication does not involve the disclosure of a record that is private, controlled, or protected under Title 63, Chapter 2, Government Records Access and Management Act.

Section 14. Section **78-7-45** is amended to read:

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

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

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

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

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

(ii) order the withdrawal of the private attorney guardian ad litem and [~~appoint~~]:

(A) in the manner set forth in Subsection 78-3a-912(2), appoint either:

(I) the Office of the Guardian Ad Litem[~~.~~]; or

(II) another attorney guardian ad litem; or

(B) make no further appointment.

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

(b) If the court finds a party to be impecunious, under the provisions of Section 78-7-36, the court may direct the impecunious party's share of the assessment to be covered by the attorney guardian ad litem pro bono obligation established in Subsection (6)(b).

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

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

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

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

(d) if the minor is old enough to communicate and unless it would be detrimental to the minor:

(i) meet with and interview the minor;

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

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

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

(f) 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;

(g) identify community resources to protect the best interests of the minor and advocate for those resources; and

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

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

(b) The court may appoint one attorney guardian ad litem to represent the best interests

of more than one minor child of a marriage.

(5) An 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 attorney guardian ad litem.

(6) (a) Upon the advice of the Director of the Office of the Guardian Ad Litem, the Judicial Council shall by rule establish the minimum qualifications and requirements for appointment by the court as an attorney guardian ad litem.

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

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

Section 15. **Repealer.**

This bill repeals:

Section **78-3a-305.1, Presumption of responsibility.**

Section 16. **Effective date.**

This bill takes effect on July 1, 2004.