

**CHILD WELFARE PROCESSES**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Mike Thompson**

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**LONG TITLE**

**General Description:**

This bill amends Child and Family Services and the Judicial Code.

**Highlighted Provisions:**

This bill:

- ▶ amends the definition of "protective services";
- ▶ requires notice to parents of their statutory and constitutional rights before conducting a child abuse, neglect, or dependency investigation;
- ▶ prohibits a reporter of child abuse from acting as a support person in a preremoval interview;
- ▶ makes technical corrections to the terms "unsubstantiated" and "substantiated";
- ▶ prohibits a juvenile court from using disability of a parent as a basis for removing a child from the custody of the parent;
- ▶ imposes district court limits on any juvenile court using a parent's disability as a basis for changing a custody award made in district court;
- ▶ expands interdisciplinary child protection team membership;
- ▶ amends preferential placement provisions for children removed from their homes due to abuse, neglect, or dependency;
- ▶ makes appointment of a guardian ad litem in child abuse, neglect, and dependency cases optional;
- ▶ grants a right of refusal to the parent of a minor in the appointment of a guardian ad litem and allows the parent to designate a guardian ad litem, subject to court review;



- 28           ▶ requires the Division of Child and Family Services to accommodate and honor the
- 29 moral and religious beliefs of those it serves;
- 30           ▶ requires the Division of Child and Family Services to design treatment plans in a
- 31 manner that minimizes disruption to the normal activities of the child's family;
- 32           ▶ expands access to juvenile court proceedings;
- 33           ▶ limits the types of identifying information that may be stricken from a record
- 34 released by the Division of Child and Family Services to specified individuals;
- 35           ▶ requires recording of ex parte communications between a judge and other parties to
- 36 an abuse, neglect, or dependency proceeding; and
- 37           ▶ makes conforming changes and technical corrections.

**38 Monies Appropriated in this Bill:**

39           None

**40 Other Special Clauses:**

41           This bill takes effect on July 1, 2004.

**42 Utah Code Sections Affected:**

43 AMENDS:

- 44           **30-3-10**, as last amended by Chapter 269, Laws of Utah 2003
- 45           **62A-4a-101**, as last amended by Chapters 281 and 283, Laws of Utah 2002
- 46           **62A-4a-205**, as last amended by Chapter 306, Laws of Utah 2002
- 47           **62A-4a-409**, as last amended by Chapter 265, Laws of Utah 2002
- 48           **62A-4a-412**, as last amended by Chapter 68, Laws of Utah 2003
- 49           **78-3a-105**, as last amended by Chapter 68, Laws of Utah 2003
- 50           **78-3a-115**, as last amended by Chapter 332, Laws of Utah 2003
- 51           **78-3a-301 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003
- 52           **78-3a-304.5**, as enacted by Chapter 302, Laws of Utah 1995
- 53           **78-3a-307**, as last amended by Chapters 153 and 255, Laws of Utah 2001
- 54           **78-3a-311**, as last amended by Chapter 246, Laws of Utah 2002
- 55           **78-3a-314**, as last amended by Chapter 120, Laws of Utah 2001
- 56           **78-3a-412**, as renumbered and amended by Chapter 260, Laws of Utah 1994
- 57           **78-3a-912**, as last amended by Chapter 168, Laws of Utah 2002
- 58           **78-7-45**, as last amended by Chapter 168, Laws of Utah 2002

59 ENACTS:

60 **62A-4a-120**, Utah Code Annotated 1953

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

63 Section 1. Section **30-3-10** is amended to read:

64 **30-3-10. Custody of children in case of separation or divorce -- Custody**  
65 **consideration.**

66 (1) If a husband and wife having minor children are separated, or their marriage is  
67 declared void or dissolved, the court shall make an order for the future care and custody of the  
68 minor children as it considers appropriate.

69 (a) In determining any form of custody, the court shall consider the best interests of the  
70 child and, among other factors the court finds relevant, the following:

71 (i) the past conduct and demonstrated moral standards of each of the parties;

72 (ii) which parent is most likely to act in the best interest of the child, including  
73 allowing the child frequent and continuing contact with the noncustodial parent; and

74 (iii) those factors outlined in Section 30-3-10.2.

75 (b) The court shall, in every case, consider joint custody but may award any form of  
76 custody which is determined to be in the best interest of the child.

77 (c) The children may not be required by either party to testify unless the trier of fact  
78 determines that extenuating circumstances exist that would necessitate the testimony of the  
79 children be heard and there is no other reasonable method to present their testimony.

80 (d) The court may inquire of the children and take into consideration the children's  
81 desires regarding future custody or parent-time schedules, but the expressed desires are not  
82 controlling and the court may determine the children's custody or parent-time otherwise. The  
83 desires of a child 16 years of age or older shall be given added weight, but is not the single  
84 controlling factor.

85 (e) If interviews with the children are conducted by the court pursuant to Subsection  
86 (1)(d), they shall be conducted by the judge in camera. The prior consent of the parties may be  
87 obtained but is not necessary if the court finds that an interview with the children is the only  
88 method to ascertain the child's desires regarding custody.

89 (2) In awarding custody, the court shall consider, among other factors the court finds

90 relevant, which parent is most likely to act in the best interests of the child, including allowing  
91 the child frequent and continuing contact with the noncustodial parent as the court finds  
92 appropriate.

93 (3) If the court finds that one parent does not desire custody of the child, or has  
94 attempted to permanently relinquish custody to a third party, it shall take that evidence into  
95 consideration in determining whether to award custody to the other parent.

96 (4) (a) [~~A~~] Except as provided in Subsection (4)(b), a court may not discriminate  
97 against a parent due to a disability, as defined in Section 57-21-2, in awarding custody or  
98 determining whether a substantial change has occurred for the purpose of modifying an award  
99 of custody.

100 (b) If a court takes a parent's disability into account in awarding custody or determining  
101 whether a substantial change has occurred for the purpose of modifying an award of custody,  
102 the parent with a disability may rebut any evidence, presumption, or inference arising  
103 ~~[therefrom]~~ from the disability by showing that:

104 (i) the disability does not significantly or substantially inhibit the parent's ability to  
105 provide for the physical and emotional needs of the child at issue; or

106 (ii) the parent with a disability has sufficient human, monetary, or other resources  
107 available to supplement the parent's ability to provide for the physical and emotional needs of  
108 the child at issue.

109 (c) Nothing in this section may be construed to apply to [~~:(i) abuse, neglect, or~~  
110 ~~dependency proceedings under Title 62A, Chapter 4a, Child and Family Services, or Title 78,~~  
111 ~~Chapter 3a, Juvenile Court Act of 1996; or (ii)] adoption proceedings under Title 78, Chapter  
112 30, Adoption.~~

113 (5) This section establishes neither a preference nor a presumption for or against joint  
114 legal custody, joint physical custody, or sole custody, but allows the court and the family the  
115 widest discretion to choose a parenting plan that is in the best interest of the child.

116 Section 2. Section **62A-4a-101** is amended to read:

117 **62A-4a-101. Definitions.**

118 As used in this chapter:

119 (1) "Abuse" means:

120 (a) actual or threatened nonaccidental physical or mental harm;

121 (b) negligent treatment;

122 (c) sexual exploitation; or

123 (d) any sexual abuse.

124 (2) "Adoption services" means placing children for adoption, subsidizing adoptions  
125 under Section 62A-4a-105, supervising adoption placements until the adoption is finalized by  
126 the court, conducting adoption studies, preparing adoption reports upon request of the court,  
127 and providing postadoptive placement services, upon request of a family, for the purpose of  
128 stabilizing a possible disruptive placement.

129 (3) "Board" means the Board of Child and Family Services established in accordance  
130 with Sections 62A-1-105, 62A-1-107, and 62A-4a-102.

131 (4) "Child" has the same meaning as "minor," as defined in this section.

132 (5) "Consumer" means a person who receives services offered by the division in  
133 accordance with this chapter.

134 (6) "Chronic physical abuse" means repeated or patterned physical abuse.

135 (7) "Chronic neglect" means a repeated or patterned failure or refusal by a parent,  
136 guardian, or custodian to provide necessary care for a minor's safety, morals, or well-being.

137 (8) "Chronic emotional abuse" means repeated or patterned emotional abuse.

138 (9) "Custody," with regard to the division, means the custody of a child in the division  
139 as of the date of disposition.

140 (10) "Day-care services" means care of a child for a portion of the day which is less  
141 than 24 hours, in his own home by a responsible person, or outside of his home in a day-care  
142 center, family group home, or family child care home.

143 (11) "Dependent child" or "dependency" means a child, or the condition of a child, who  
144 is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

145 (12) "Director" means the director of the Division of Child and Family Services.

146 (13) "Division" means the Division of Child and Family Services.

147 (14) (a) "Domestic violence services" means temporary shelter, treatment, and related  
148 services to persons who are victims of abuse and their dependent children and treatment  
149 services for domestic violence perpetrators.

150 (b) As used in this Subsection (14) "abuse" means the same as that term is defined in  
151 Section 30-6-1, and "domestic violence perpetrator" means a person who is alleged to have

152 committed, has been convicted of, or has pled guilty to an act of domestic violence as defined  
153 in Subsection 77-36-1(2).

154 (15) "Homemaking service" means the care of individuals in their domiciles, and help  
155 given to individual caretaker relatives to achieve improved household and family management  
156 through the services of a trained homemaker.

157 (16) "Minor" means a person under 18 years of age. "Minor" may also include a  
158 person under 21 years of age for whom the division has been specifically ordered by the  
159 juvenile court to provide services.

160 (17) "Natural parent" means a minor's biological or adoptive parent, and includes a  
161 minor's noncustodial parent.

162 (18) (a) "Neglect" means:

163 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe  
164 Relinquishment of a Newborn Child;

165 (ii) subjecting a child to mistreatment or abuse;

166 (iii) lack of proper parental care by reason of the fault or habits of the parent, guardian,  
167 or custodian;

168 (iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary  
169 subsistence, education, or medical care, including surgery or psychiatric services when  
170 required, or any other care necessary for his health, safety, morals, or well-being; or

171 (v) a child at risk of being neglected or abused because another child in the same home  
172 is neglected or abused.

173 (b) The aspect of neglect relating to education, described in Subsection (18)(a)(iv),  
174 means that, after receiving notice that a child has been frequently absent from school without  
175 good cause, or that the child has failed to cooperate with school authorities in a reasonable  
176 manner, a parent or guardian fails to make a good faith effort to ensure that the child receives  
177 an appropriate education.

178 (c) A parent or guardian legitimately practicing religious beliefs and who, for that  
179 reason, does not provide specified medical treatment for a child, is not guilty of neglect.

180 (19) "Protective custody," with regard to the division, means the shelter of a child by  
181 the division from the time the child is removed from the child's home until the shelter hearing,  
182 or the child's return home, whichever occurs earlier.

- 183 (20) "Protective services" means expedited services that are provided:
- 184 (a) in response to evidence of neglect, abuse, or dependency of a minor;
- 185 [~~(b) in an effort to substantiate evidence of neglect, abuse, or dependency;~~]
- 186 [~~(c)~~] (b) to a cohabitant who is neglecting or abusing a child, in order to help the
- 187 cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or
- 188 abuse, and to strengthen the cohabitant's ability to provide safe and acceptable care; and
- 189 [~~(d)~~] (c) in cases where the child's welfare is endangered:
- 190 (i) to bring the situation to the attention of the appropriate juvenile court and law
- 191 enforcement agency;
- 192 (ii) to cause a protective order to be issued for the protection of the minor, when
- 193 appropriate; and
- 194 (iii) to protect the child from the circumstances that endanger the child's welfare
- 195 including, when appropriate, removal from the child's home, placement in substitute care, and
- 196 petitioning the court for termination of parental rights.
- 197 (21) "Services to unwed parents" means social, educational, and medical services
- 198 arranged for or provided to unwed parents to help them plan for themselves and the unborn
- 199 child.
- 200 (22) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
- 201 minor.
- 202 (23) "Shelter care" means the temporary care of minors in nonsecure facilities.
- 203 (24) "State" means a state of the United States, the District of Columbia, the
- 204 Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern
- 205 Mariana Islands, or a territory or possession administered by the United States.
- 206 (25) "Severe emotional abuse" means emotional abuse that causes or threatens to cause
- 207 serious harm to a minor.
- 208 (26) "Severe physical abuse" means physical abuse that causes or threatens to cause
- 209 serious harm to a minor.
- 210 (27) "State plan" means the written description of the programs for children, youth, and
- 211 family services administered by the division in accordance with federal law.
- 212 (28) "Status offense" means a violation of the law that would not be a violation but for
- 213 the age of the offender.

214 (29) "Substantiated" or "substantiation" means a judicial finding based on a  
215 preponderance of the evidence that abuse or neglect occurred. Each allegation made or  
216 identified in a given case shall be considered separately in determining whether there should be  
217 a finding of substantiated.

218 (30) "Substitute care" means:

219 (a) the placement of a minor in a family home, group care facility, or other placement  
220 outside the minor's own home, either at the request of a parent or other responsible relative, or  
221 upon court order, when it is determined that continuation of care in the child's own home  
222 would be contrary to the child's welfare;

223 (b) services provided for a child awaiting placement; and

224 (c) the licensing and supervision of a substitute care facility.

225 (31) "Supported" means a finding by the division based on the evidence available at the  
226 completion of an investigation that there is a reasonable basis to conclude that abuse, neglect,  
227 or dependency occurred. Each allegation made or identified during the course of the  
228 investigation shall be considered separately in determining whether there should be a finding of  
229 supported.

230 (32) "Temporary custody," with regard to the division, means the custody of a child in  
231 the division from the date of the shelter hearing until disposition.

232 (33) "Transportation services" means travel assistance given to an individual with  
233 escort service, if necessary, to and from community facilities and resources as part of a service  
234 plan.

235 (34) "Unsubstantiated" means a judicial finding that there is insufficient evidence to  
236 conclude that abuse or neglect occurred.

237 (35) "Unsupported" means a finding at the completion of an investigation that there is  
238 insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a  
239 finding of unsupported means also that the division worker did not conclude that the allegation  
240 was without merit.

241 (36) "Without merit" means a finding at the completion of an investigation by the  
242 division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or  
243 that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

244 Section 3. Section **62A-4a-120** is enacted to read:



245 **62A-4a-120. Accommodation of moral and religious beliefs.**

246 (1) The division shall adopt rules in accordance with Title 63, Chapter 46a, Utah  
247 Administrative Rulemaking Act, and establish procedures to accommodate the moral and  
248 religious beliefs of the children and families it serves, including:

249 (a) the immediate family and other relatives of a child in any type of custody or  
250 otherwise under the jurisdiction of the court;

251 (b) foster and other out-of-home placement families; and

252 (c) adoptive families.

253 (2) The accommodation under Subsection (1) applies to placements, treatment plans,  
254 services, and other activities of the division.

255 Section 4. Section **62A-4a-205** is amended to read:

256 **62A-4a-205. Treatment plans.**

257 (1) No more than 45 days after a child enters the temporary custody of the division, the  
258 child's treatment plan shall be finalized.

259 (2) The division shall use an interdisciplinary team approach in developing each  
260 treatment plan. An interdisciplinary team shall include, but is not limited to, representatives  
261 from mental health, education, and, where appropriate, a representative of law enforcement.

262 (3) (a) The division shall involve all of the following in the development of a child's  
263 treatment plan:

264 (i) both of the child's natural parents, unless the whereabouts of a parent are unknown;

265 (ii) the child;

266 (iii) the child's foster parents; and

267 (iv) where appropriate, the child's stepparent.

268 (b) In relation to all information considered by the division in developing a treatment  
269 plan, additional weight and attention shall be given to the input of the child's natural and foster  
270 parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

271 (4) A copy of the treatment plan shall be provided to the guardian ad litem, and to the  
272 child's natural parents and foster parents immediately upon completion, or as soon as is  
273 reasonably possible thereafter.

274 (5) Each treatment plan shall specifically provide for the safety of the child, in  
275 accordance with federal law, and clearly define what actions or precautions will, or may be,

276 necessary to provide for the health, safety, protection, and welfare of the child.

277 (6) The plan shall set forth, with specificity, at least the following:

278 (a) the reason the child entered Division of Child and Family Services custody, and  
279 documentation of the reasonable efforts made to prevent placement, or documentation of the  
280 emergency situation that existed and that prevented reasonable efforts;

281 (b) the primary permanency goal for the child and the reason for selection of that goal;

282 (c) the concurrent permanency goal for the child and the reason for the selection of that  
283 goal;

284 (d) if the plan is for the child to return to the child's family, specifically what the  
285 parents must do in order to enable the child to be returned home, specifically how those  
286 requirements may be accomplished, and how those requirements will be measured;

287 (e) the specific services needed to reduce the problems that necessitated placement in  
288 the division's custody, and who will provide for and be responsible for case management;

289 (f) a parent-time schedule between the natural parent and the child;

290 (g) the health [~~care to be provided to the child,~~] and [~~the~~] mental health care to be  
291 provided to address any known or diagnosed mental health needs of the child[~~-If~~] and, if  
292 residential treatment[~~;~~] rather than a foster home[~~;~~] is the proposed placement, a requirement  
293 for a specialized assessment of the child's health needs [~~shall be conducted,~~] including an  
294 assessment of mental illness and behavior and conduct disorders; and

295 (h) social summaries that include case history information pertinent to case planning.

296 (7) (a) Each treatment plan shall be specific to each child and the child's family, rather  
297 than general. The division shall train its workers to develop treatment plans that comply with  
298 federal mandates and the specific needs of the particular child and the child's family.

299 (b) All treatment plans and expectations shall be individualized and contain specific  
300 time frames.

301 (c) Treatment plans shall address problems that keep children in placement and keep  
302 them from achieving permanence in their lives.

303 (d) Each treatment plan shall be designed to minimize disruption to the normal  
304 activities of the child's family, including employment and school. In particular, the time, place,  
305 and amount of services, hearings, and other requirements ordered by the court shall be  
306 designed, as much as practicable, to help the child's parents maintain or obtain employment.

307           ~~[(d)]~~ (e) The child's natural parents, foster parents, and where appropriate, stepparents,  
308 shall be kept informed of and supported to participate in important meetings and procedures  
309 related to the child's placement.

310           (8) With regard to a child who is three years of age or younger, if the goal is not to  
311 return the child home, the permanency plan for that child shall be adoption. However, if the  
312 division documents to the court that there is a compelling reason that adoption, reunification,  
313 guardianship, and kinship placement are not in the child's best interest, the court may order  
314 another planned permanent living arrangement in accordance with federal law.

315           Section 5. Section **62A-4a-409** is amended to read:

316           **62A-4a-409. Investigation by division -- Temporary protective custody --**  
317 **Preremoval interviews of children.**

318           (1) The division shall make a thorough preremoval investigation upon receiving either  
319 an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug  
320 dependency, when there is reasonable cause to suspect a situation of abuse, neglect, fetal  
321 alcohol syndrome, or fetal drug dependency. The primary purpose of that investigation shall be  
322 protection of the child.

323           (2) The preremoval investigation shall include the same investigative requirements  
324 described in Section 62A-4a-202.3.

325           (3) The division shall make a written report of its investigation. The written report  
326 shall include a determination regarding whether the alleged abuse or neglect was  
327 ~~[substantiated, unsubstantiated,]~~ supported, unsupported, or without merit.

328           (4) (a) The division shall use an interdisciplinary approach whenever possible in  
329 dealing with reports made under this part.

330           (b) For this purpose, the division shall convene appropriate interdisciplinary "child  
331 protection teams" to assist it in its protective, diagnostic, assessment, treatment, and  
332 coordination services.

333           (c) A representative of the division shall serve as the team's coordinator and chair.  
334 Members of the team shall serve at the coordinator's invitation~~[-, and whenever]~~. Whenever  
335 possible, the team shall include representatives of:

336           (i) health, mental health, education, and law enforcement agencies~~[-];~~

337           (ii) child, parent, and family support groups; and

338           (iii) other appropriate agencies or individuals.

339           (5) In any case where the division supervises, governs, or directs the affairs of any  
340 individual, institution, or facility that has been alleged to be involved in acts or omissions of  
341 child abuse or neglect, the investigation of the reported child abuse or neglect shall be  
342 conducted by an agency other than the division.

343           (6) If a report of neglect is based upon or includes an allegation of educational neglect,  
344 the division shall immediately consult with school authorities to verify the child's status in  
345 accordance with Sections 53A-11-101 through 53A-11-103.

346           (7) When the division has completed its initial investigation under this part, it shall  
347 give notice of that completion to the person who made the initial report.

348           (8) Division workers or other child protection team members have authority to enter  
349 upon public or private premises, using appropriate legal processes, to investigate reports of  
350 alleged child abuse or neglect, upon notice to parents of their statutory and constitutional  
351 rights.

352           (9) With regard to any interview of a child prior to removal of that child from the  
353 child's home:

354           (a) except as provided in Subsection (9)(b) or (c), the division shall notify a parent of  
355 the child prior to the interview;

356           (b) if a child's parent or stepparent, or a parent's paramour has been identified as the  
357 alleged perpetrator, the division need not notify a parent of the child prior to an initial interview  
358 with the child;

359           (c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family  
360 is unknown, the division may conduct a minimal interview, not to exceed 15 minutes, with the  
361 child prior to notification of the child's parent;

362           (d) in all cases described in Subsection (9)(b) or (c), a parent of the child shall be  
363 notified as soon as practicable after the child has been interviewed, but in no case later than 24  
364 hours after the interview has taken place;

365           (e) a child's parents shall be notified of the time and place of all subsequent interviews  
366 with the child; and

367           (f) (i) the child shall be allowed to have a support person of the child's choice present[-  
368 ~~That support person: (i); and~~

369 (ii) the person described in Subsection (9)(f)(i):

370 (A) may include~~[-but is not limited to,];~~

371 (I) a school teacher ~~[or];~~

372 (II) an administrator~~[-];~~

373 (III) a guidance counselor~~[-or];~~

374 (IV) a child care provider~~[-and];~~ or

375 (V) clergy; and

376 ~~[(†)]~~ (B) may not be:

377 (I) the person who reported the allegation; or

378 (II) a person who is alleged to be, or potentially may be, the perpetrator.

379 (10) In accordance with the procedures and requirements of Sections 62A-4a-202.1

380 through 62A-4a-202.3, a division worker or child protection team member may take a child

381 into protective custody and deliver the child to a law enforcement officer, or place the child in

382 an emergency shelter facility approved by the juvenile court, at the earliest opportunity

383 subsequent to the child's removal from the child's original environment. Control and

384 jurisdiction over the child is determined by the provisions of Title 78, Chapter 3a, Juvenile

385 Court Act of 1996, and as otherwise provided by law.

386 (11) With regard to cases in which law enforcement has or is conducting an

387 investigation of alleged abuse or neglect of a child:

388 (a) the division shall coordinate with law enforcement to ensure that there is an

389 adequate safety plan to protect the child from further abuse or neglect; and

390 (b) the division is not required to duplicate an aspect of the investigation that, in the

391 division's determination, has been satisfactorily completed by law enforcement.

392 Section 6. Section **62A-4a-412** is amended to read:

393 **62A-4a-412. Reports and information confidential.**

394 (1) Except as otherwise provided in this chapter, reports made pursuant to this part, as

395 well as any other information in the possession of the division obtained as the result of a report

396 are private, protected, or controlled records under Title 63, Chapter 2, Government Records

397 Access and Management Act, and may only be made available to:

398 (a) a police or law enforcement agency investigating a report of known or suspected

399 child abuse or neglect;

400 (b) a physician who reasonably believes that a child may be the subject of abuse or  
401 neglect;

402 (c) an agency that has responsibility or authority to care for, treat, or supervise a child  
403 who is the subject of a report;

404 (d) a contract provider that has a written contract with the division to render services to  
405 a child who is the subject of a report;

406 (e) any subject of the report, the natural parents of the minor, and the guardian ad  
407 litem;

408 (f) a court, upon a finding that access to the records may be necessary for the  
409 determination of an issue before ~~[it]~~ the court, provided that in a divorce, custody, or related  
410 proceeding between private parties, the record alone is:

411 (i) limited to objective or undisputed facts that were verified at the time of the  
412 investigation; and

413 (ii) devoid of conclusions drawn by the division or any of ~~[its]~~ the division's workers  
414 on the ultimate issue of whether or not a person's acts or omissions constituted any level of  
415 abuse or neglect of another person;

416 (g) an office of the public prosecutor or its deputies in performing an official duty;

417 (h) a person authorized by a Children's Justice Center, for the purposes described in  
418 Section 67-5b-102;

419 (i) a person engaged in bona fide research, when approved by the director of the  
420 division, if the information does not include names and addresses;

421 (j) the State Office of Education, acting on behalf of itself or on behalf of a school  
422 district, for the purpose of evaluating whether an individual should be permitted to obtain or  
423 retain a license as an educator or serve as an employee or volunteer in a school, limited to  
424 information with substantiated findings involving an alleged sexual offense, an alleged felony  
425 or class A misdemeanor drug offense, or any alleged offense against the person under Title 76,  
426 Chapter 5, Offenses Against the Person, and with the understanding that the office must  
427 provide the subject of a report received under Subsection (1)(k) with an opportunity to respond  
428 to the report before making a decision concerning licensure or employment;

429 (k) any person identified in the report as a perpetrator or possible perpetrator of child  
430 abuse or neglect, after being advised of the screening prohibition in Subsection (2); and

431 (1) a person filing a petition for a child protective order on behalf of a minor who is the  
432 subject of the report.

433 (2) (a) ~~[No]~~ A person, unless listed in Subsection (1), may not request another person  
434 to obtain or release a report or any other information in the possession of the division obtained  
435 as a result of the report that is available under Subsection (1)(k) to screen for potential  
436 perpetrators of child abuse or neglect.

437 (b) A person who requests information knowing that it is a violation of Subsection  
438 (2)(a) to do so is subject to the criminal penalty in Subsection (4).

439 (3) (a) Except as provided in Section 62A-4a-116.3 and Subsection (3)(b), the division  
440 and law enforcement officials shall ensure the anonymity of the person or persons making the  
441 initial report and any others involved in its subsequent investigation.

442 (b) Notwithstanding any other provision of law, including this chapter and Title 63,  
443 Chapter 2, Government Records Access and Management Act, when the division makes a  
444 report or other information in its possession available under Subsection (1)(e) to a subject of  
445 the report or a parent of a minor, the division shall remove from the report or other information  
446 only the names, addresses, and telephone numbers of individuals.

447 (4) Any person who wilfully permits, or aides and abets the release of data or  
448 information obtained as a result of this part, in the possession of the division or contained on  
449 any part of the Management Information System, in violation of this part or Sections  
450 62A-4a-116 through 62A-4a-116.3, is guilty of a class C misdemeanor.

451 (5) The physician-patient privilege is not a ground for excluding evidence regarding a  
452 child's injuries or the cause of those injuries, in any proceeding resulting from a report made in  
453 good faith pursuant to this part.

454 Section 7. Section **78-3a-105** is amended to read:

455 **78-3a-105. Concurrent jurisdiction -- District court and juvenile court.**

456 (1) The district court or other court has concurrent jurisdiction with the juvenile court  
457 as follows:

458 (a) when a person who is 18 years of age or older and who is under the continuing  
459 jurisdiction of the juvenile court under Section 78-3a-118 violates any federal, state, or local  
460 law or municipal ordinance; and

461 (b) in establishing paternity and ordering testing for the purposes of establishing

462 paternity, in accordance with Title 78, Chapter 45a, Uniform Act on Paternity, with regard to  
463 proceedings initiated under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 4,  
464 Termination of Parental Rights Act.

465 (2) The juvenile court has jurisdiction over petitions to modify a minor's birth  
466 certificate if the court otherwise has jurisdiction over the minor.

467 (3) This section does not deprive the district court of jurisdiction to appoint a guardian  
468 for a minor, or to determine the support, custody, and parent-time of a minor upon writ of  
469 habeas corpus or when the question of support, custody, and parent-time is incidental to the  
470 determination of a cause in the district court.

471 (4) (a) Where a support, custody, or parent-time award has been made by a district  
472 court in a divorce action or other proceeding, and the jurisdiction of the district court in the  
473 case is continuing, the juvenile court may acquire jurisdiction in a case involving the same  
474 minor if the minor is dependent, abused, neglected, or otherwise comes within the jurisdiction  
475 of the juvenile court under Section 78-3a-104.

476 (b) The juvenile court may, by order, change the custody, subject to Subsection  
477 30-3-10(4), support, parent-time, and visitation rights previously ordered in the district court as  
478 necessary to implement the order of the juvenile court for the safety and welfare of the minor.  
479 The juvenile court order remains in effect so long as the jurisdiction of the juvenile court  
480 continues.

481 (c) When a copy of the findings and order of the juvenile court has been filed with the  
482 district court, the findings and order of the juvenile court are binding on the parties to the  
483 divorce action as though entered in the district court.

484 (5) The juvenile court has jurisdiction over questions of custody, support, and  
485 parent-time, of a minor who comes within the court's jurisdiction under this section or Section  
486 78-3a-104.

487 Section 8. Section **78-3a-115** is amended to read:

488 **78-3a-115. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's**  
489 **cases heard separately from adult cases -- Minor or parents or custodian heard**  
490 **separately -- Continuance of hearing -- Consolidation of proceedings involving more than**  
491 **one minor.**

492 (1) Hearings in minor's cases shall be held before the court without a jury and may be



493 conducted in an informal manner.

494 (a) In abuse, neglect, and dependency cases in all districts other than pilot districts  
495 selected by the Judicial Council under Subsection 78-3-21(15)(a), the court shall exclude [~~all~~  
496 persons] the general public from hearings held prior to July 1, 2005 and admit only those  
497 persons who [~~do not~~]:

498 (i) have a direct interest in the proceedings; or

499 (ii) have been requested by the parent or legal guardian to be present.

500 (b) In delinquency cases the court shall admit all persons who have a direct interest in  
501 the case and may admit persons requested by the parent or legal guardian to be present. The  
502 court shall exclude all other persons except as provided in Subsection (1)(c).

503 (c) In delinquency cases in which the minor charged is 14 years of age or older, the  
504 court shall admit any person unless the hearing is closed by the court upon findings on the  
505 record for good cause if:

506 (i) the minor has been charged with an offense which would be a felony if committed  
507 by an adult; or

508 (ii) the minor is charged with an offense that would be a class A or B misdemeanor if  
509 committed by an adult, and the minor has been previously charged with an offense which  
510 would be a misdemeanor or felony if committed by an adult.

511 (d) The victim of any act charged in a petition or information involving an offense  
512 committed by a minor which if committed by an adult would be a felony or a class A or class B  
513 misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter  
514 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77,  
515 Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not  
516 apply to important juvenile justice hearings as defined in Section 77-38-2.

517 (e) A victim, upon request to appropriate juvenile court personnel, shall have the right  
518 to inspect and duplicate juvenile court legal records that have not been expunged concerning:

519 (i) the scheduling of any court hearings on the petition;

520 (ii) any findings made by the court; and

521 (iii) any sentence or decree imposed by the court.

522 (2) Minor's cases shall be heard separately from adult cases. The minor or [~~his~~] the  
523 minor's parents or custodian may be heard separately when considered necessary by the court.

524 The hearing may be continued from time to time to a date specified by court order.

525 (3) When more than one minor is involved in a home situation which may be found to  
526 constitute neglect or dependency, or when more than one minor is alleged to be involved in the  
527 same law violation, the proceedings may be consolidated, except that separate hearings may be  
528 held with respect to disposition.

529 Section 9. Section **78-3a-301 (Effective 07/01/04)** is amended to read:

530 **78-3a-301 (Effective 07/01/04). Court-ordered protective custody of a minor**  
531 **following petition filing -- Grounds.**

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

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

544 (b) a parent or guardian engages in or threatens the minor with unreasonable conduct  
545 that causes the minor to suffer emotional damage and there are no reasonable means available  
546 by which the minor's emotional health may be protected without removing the minor from the  
547 custody of the minor's parent or guardian;

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

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

555 ~~(iii);]~~

556 ~~[(iii) If a parent or guardian has received actual notice that physical or sexual abuse by~~  
557 ~~a person known to the parent has occurred, and there is evidence that the parent or guardian~~  
558 ~~failed to protect the minor by allowing the minor to be in the physical presence of the alleged~~  
559 ~~abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being~~  
560 ~~physically or sexually abused;]~~

561 (d) the parent or guardian is unwilling to have physical custody of the minor;

562 (e) the minor has been abandoned or left without any provision for the minor's support;

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

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

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

570 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an  
571 environment that poses a threat to the minor's health or safety; or

572 (ii) a parent's or guardian's action in leaving a minor unattended would reasonably pose  
573 a threat to the minor's health or safety;

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

575 ~~[and]~~

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

579 (k) an infant has been abandoned, as defined in Section 78-3a-313.5;

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

584 (m) the minor's welfare is otherwise endangered.

585 (2) (a) For purposes of Subsection (1)(a), if a minor has previously been adjudicated as

586 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency  
587 has occurred involving the same alleged abuser or under similar circumstance as the previous  
588 abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the  
589 custody of the minor's parent.

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

591 (i) another minor residing in the same household may not be removed from the home  
592 unless that minor is considered to be at substantial risk of being physically or sexually abused  
593 as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

594 (ii) if a parent or guardian has received actual notice that physical or sexual abuse by a  
595 person known to the parent has occurred, and there is evidence that the parent or guardian  
596 failed to protect the minor by allowing the minor to be in the physical presence of the alleged  
597 abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being  
598 physically or sexually abused.

599 ~~[(2) A]~~ (3) In the absence of one of the factors described in Subsection (1), a court  
600 may not remove a minor from the parent's or guardian's custody on the basis of:

601 (a) educational neglect~~[, in the absence of one of the factors described in Subsection~~  
602 ~~(1). (3) A court may not remove a minor from the parent's or guardian's custody on the basis~~  
603 ~~of];~~

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

606 (c) disability of the parent or guardian, as defined in Subsection 57-21-3(9).

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

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

613 Section 10. Section **78-3a-304.5** is amended to read:

614 **78-3a-304.5. Rules of procedure -- Ex parte communications.**

615 (1) The Utah Rules of Civil Procedure and the Utah Rules of Juvenile Procedure apply  
616 to abuse, neglect, and dependency proceedings unless the provisions of this part specify

617 otherwise.

618 (2) Any ex parte communication between a judge and a party to an abuse, neglect, or  
619 dependency proceeding shall be recorded for subsequent review, if necessary, by the Judicial  
620 Conduct Commission.

621 Section 11. Section **78-3a-307** is amended to read:

622 **78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative --**  
623 **DCFS custody.**

624 (1) (a) At the shelter hearing, when the court orders that a child be removed from the  
625 custody of his parent in accordance with the requirements of Section 78-3a-306, the court shall  
626 first determine whether there is another natural parent as defined in Subsection (1)(b), with  
627 whom the child was not residing at the time the events or conditions that brought him within  
628 the court's jurisdiction occurred, who desires to assume custody of the child. If that parent  
629 requests custody, the court shall place the minor with that parent unless it finds that the  
630 placement would be unsafe or otherwise detrimental to the child. The provisions of this  
631 Subsection (1) are limited by the provisions of Subsection (8)(b).

632 (b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section  
633 "natural parent" includes only a biological or adoptive mother, an adoptive father, or a  
634 biological father who was married to the child's biological mother at the time the child was  
635 conceived or born, or who has strictly complied with the provisions of Section 78-30-4.14 prior  
636 to removal of the child or voluntary surrender of the child by the custodial parent. This  
637 definition applies regardless of whether the child has been or will be placed with adoptive  
638 parents or whether adoption has been or will be considered as a long term goal for the child.

639 (c) (i) The court shall make a specific finding regarding the fitness of that parent to  
640 assume custody, and the safety and appropriateness of the placement.

641 (ii) The court shall, at a minimum, order the division to visit the parent's home,  
642 perform criminal background checks described in Sections 78-3a-307.1 and 62A-4a-202.4, and  
643 check the division's management information system for any previous reports of abuse or  
644 neglect received by the division regarding the parent at issue.

645 (iii) The court may order the Division of Child and Family Services to conduct any  
646 further investigation regarding the safety and appropriateness of the placement.

647 (iv) The division shall report its findings in writing to the court.

648 (v) The court may place the child in the temporary custody of the division, pending its  
649 determination regarding that placement.

650 (2) If the court orders placement with a parent under Subsection (1), the child and the  
651 parent are under the continuing jurisdiction of the court. The court may order that the parent  
652 assume custody subject to the supervision of the court, and order that services be provided to  
653 the parent from whose custody the child was removed, the parent who has assumed custody, or  
654 both. The court shall also provide for reasonable parent-time with the parent from whose  
655 custody the child was removed, unless parent-time is not in the best interest of the child. The  
656 court's order shall be periodically reviewed to determine whether:

657 (a) placement with the parent continues to be in the child's best interest;

658 (b) the child should be returned to the original custodial parent;

659 (c) the child should be placed with a relative, pursuant to Subsection (5); or

660 (d) the child should be placed in the custody of the division.

661 (3) The time limitations described in Section 78-3a-311 with regard to reunification  
662 efforts, apply to children placed with a previously noncustodial parent in accordance with  
663 Subsection (1).

664 (4) Legal custody of the child is not affected by an order entered under Subsection (1)  
665 or (2). In order to affect a previous court order regarding legal custody, the party must petition  
666 that court for modification of the order.

667 (5) (a) (i) If, at the time of the shelter hearing, a child is removed from the custody of  
668 his parent and is not placed in the custody of his other parent, the court shall, at that time,  
669 determine whether there is a relative who is able and willing to care for the child.

670 (ii) The court may order the Division of Child and Family Services to conduct a  
671 reasonable search to determine whether there are relatives of the child who are willing and  
672 appropriate, in accordance with the requirements of this part and Title 62A, Chapter 4a, Part 2,  
673 Child Welfare Services, for placement of the child. The court shall order the parents to  
674 cooperate with the division, within five working days, to provide information regarding  
675 relatives who may be able and willing to care for the child.

676 (iii) The child may be placed in the temporary custody of the division pending [~~that~~]  
677 the determination under Subsection (5)(a)(ii).

678 (iv) This section may not be construed as a guarantee that an identified relative will

679 receive custody of the child. However, preferential consideration [~~may~~] shall be given to a  
680 relative's request for placement of the child, if it is in the best interest of the child, and the  
681 provisions of this section are satisfied.

682 (b) (i) If a willing relative is identified pursuant to Subsection (5)(a), the court shall  
683 make a specific finding regarding the fitness of that relative to assume custody, and the safety  
684 and appropriateness of placement with that relative. In order to be considered a "willing  
685 relative" under this section, the relative shall be willing to cooperate if the child's permanency  
686 goal is reunification with his parent or parents, and be willing to adopt or take permanent  
687 custody of the child if that is determined to be in the best interest of the child.

688 (ii) The court shall, at a minimum, order the division to conduct criminal background  
689 checks described in Sections 78-3a-307.1 and 62A-4a-202.4, visit the relative's home, check  
690 the division's management information system for any previous reports of abuse or neglect  
691 regarding the relative at issue, report its findings in writing to the court, and provide sufficient  
692 information so that the court may determine whether:

693 (A) the relative has any history of abusive or neglectful behavior toward other children  
694 that may indicate or present a danger to this child;

695 (B) the child is comfortable with the relative;

696 (C) the relative recognizes the parent's history of abuse and is determined to protect the  
697 child;

698 (D) the relative is strong enough to resist inappropriate requests by the parent for  
699 access to the child, in accordance with court orders;

700 (E) the relative is committed to caring for the child as long as necessary; and

701 (F) the relative can provide a secure and stable environment for the child.

702 (iii) The court may order the Division of Child and Family Services to conduct any  
703 further investigation regarding the safety and appropriateness of the placement.

704 (iv) The division shall complete and file its assessment regarding placement with a  
705 relative as soon as practicable, in an effort to facilitate placement of the child with a relative.

706 (c) The court may place the child in the temporary custody of the division, pending the  
707 division's investigation pursuant to Subsection (5)(b), and the court's determination regarding  
708 that placement. The court shall ultimately base its determination regarding placement with a  
709 relative on the best interest of the child.

710 (d) For purposes of this section, "relative" means an adult who is a grandparent, great  
711 grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first  
712 cousin, stepsibling, or sibling of the child. In the case of a child defined as an "Indian" under  
713 the Indian Child Welfare Act, 25 U.S.C. Section 1903, "relative" also means an "extended  
714 family member" as defined by that statute.

715 (6) (a) When the court vests physical custody of a child with a relative pursuant to  
716 Subsection (5), it shall order that the relative assume custody subject to the continuing  
717 supervision of the court, and shall order that any necessary services be provided to the minor  
718 and the relative. That child is not within the temporary custody or custody of the Division of  
719 Child and Family Services. The child and any relative with whom the child is placed are under  
720 the continuing jurisdiction of the court. The court may enter any order that it considers  
721 necessary for the protection and best interest of the child. The court shall provide for  
722 reasonable parent-time with the parent or parents from whose custody the child was removed  
723 unless parent-time is not in the best interest of the child.

724 (b) (i) Placement with a relative pursuant to Subsection (5) shall be periodically  
725 reviewed by the court, no less often than every six months, to determine whether:

- 726 (A) placement with the relative continues to be in the child's best interest;  
727 (B) the child should be returned home; or  
728 (C) the child should be placed in the custody of the division.

729 (ii) No later than 12 months after placement with a relative the court shall schedule a  
730 hearing for the purpose of entering a permanent order in accordance with the best interest of the  
731 child.

732 (iii) The time limitations described in Section 78-3a-311, with regard to reunification  
733 efforts, apply to children placed with a relative pursuant to Subsection (5).

734 (7) When the court orders that a child be removed from the custody of his parent and  
735 does not vest custody in another parent or relative under this section, the court shall order that  
736 the child be placed in the temporary custody of the Division of Child and Family Services, to  
737 proceed to adjudication and disposition and to be provided with care and services in  
738 accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.

739 (8) (a) Any preferential consideration that a relative [~~may be~~] is initially granted  
740 pursuant to Subsection (5) expires 120 days from the date of the shelter hearing. After that



741 time period has expired, a relative who has not obtained custody or asserted an interest in a  
742 child, may not be granted preferential consideration by the division or the court.

743 (b) When the time period described in Subsection (8)(a) has expired, the preferential  
744 consideration which [may] is initially [be] granted to a natural parent in accordance with  
745 Subsection (1), is limited. After that time the court shall base its custody decision on the best  
746 interest of the child.

747 Section 12. Section **78-3a-311** is amended to read:

748 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

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

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

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

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

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

772 the primary permanency goal.

773 (ii) A permanency hearing shall be conducted in accordance with Subsection  
774 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a  
775 child's primary permanency goal.

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

783 (c) (i) If the court determines that reunification services are appropriate, it shall order  
784 that the division make reasonable efforts to provide services to the child and the child's parent  
785 for the purpose of facilitating reunification of the family, for a specified period of time. In  
786 providing those services, the child's health, safety, and welfare shall be the division's  
787 paramount concern, and the court shall so order.

788 (ii) The court shall determine whether the services offered or provided by the division  
789 under the treatment plan constitute "reasonable efforts" on the part of the division. The court  
790 shall also determine and define the responsibilities of the parent under the treatment plan in  
791 accordance with Section 62A-4a-205. Those duties and responsibilities shall be identified on  
792 the record, for the purpose of assisting in any future determination regarding the provision of  
793 reasonable efforts, in accordance with state and federal law.

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

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

799 (v) If, at any time, continuation of reasonable efforts to reunify a child is determined to  
800 be inconsistent with the final permanency plan for the child established pursuant to Subsection  
801 78-3a-312, then measures shall be taken, in a timely manner, to place the child in accordance  
802 with the permanency plan, and to complete whatever steps are necessary to finalize the

803 permanent placement of the child.

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

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

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

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

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

816 (ii) order the discontinuance of those services after eight months from the initial  
817 removal of the child from the home if the parent or parents have not made substantial efforts to  
818 comply with the treatment plan.

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

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

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

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

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

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

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

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

850 (vi) the minor has been adjudicated an abused child as a result of severe abuse by the  
851 parent, and the court finds that it would not benefit the child to pursue reunification services  
852 with the offending parent;

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

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

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

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

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

865 services are appropriate.

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

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

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

883 (7) If, pursuant to Subsection (3)(b)(ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), or (x), the  
884 court does not order reunification services, a permanency hearing shall be conducted within 30  
885 days, in accordance with Section 78-3a-312.

886 Section 13. Section **78-3a-314** is amended to read:

887 **78-3a-314. All proceedings -- Persons entitled to be present.**

888 (1) A child who is the subject of a juvenile court hearing, any person entitled to notice  
889 pursuant to Section 78-3a-306 or 78-3a-309, preadoptive parents, and any relative providing  
890 care for the child, are entitled:

891 (a) to notice[;];

892 (b) to be present at each hearing held under this part, including administrative and  
893 citizen reviews[;]; and [~~are entitled~~]

894 (c) to an opportunity to be heard.

895 (2) Because the child's foster parents have the right to notice, pursuant to Section

896 78-3a-309, they have the right to be present at each and every hearing held under this part  
897 including administrative and citizen reviews, and are entitled to an opportunity to be heard.

898 (3) ~~[A]~~ If the court appoints a guardian ad litem for a child, the child shall be  
899 represented at each hearing by the guardian ad litem ~~[appointed to his case by the court]~~. The  
900 child has a right to be present at each hearing, subject to the discretion of the guardian ad litem,  
901 if appointed, or the court regarding any possible detriment to the child.

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

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

908 (5) (a) In every abuse, neglect, or dependency proceeding under this chapter, the court  
909 shall order that the child be represented by a guardian ad litem, in accordance with Section  
910 78-3a-912.

911 (b) The guardian ad litem shall represent the best interest of the child, in accordance  
912 with the requirements of that section, at the shelter hearing and at all subsequent court and  
913 administrative proceedings, including any proceeding for termination of parental rights in  
914 accordance with Part 4, Termination of Parental Rights Act.

915 (6) (a) (i) Notwithstanding any other provision of law, counsel for all parties to the  
916 action shall be given access to all records, maintained by the division or any other state or local  
917 public agency, that are relevant to the abuse, neglect, or dependency proceeding under this  
918 chapter.

919 (ii) If the natural parent of a child is representing himself, ~~[he]~~ the natural parent of the  
920 child shall have access to ~~[those]~~ the records described in Subsection (6)(a)(i).

921 (b) The ~~[above]~~ disclosures described in Subsection (6)(a) are not required in the  
922 following circumstances:

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

926 ~~[(i) the existence of all records in the possession of the division or any other state or~~

927 local public agency;]

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

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

932 ~~[(b)]~~ (ii) ~~[Disclosure]~~ if disclosure of the record would jeopardize the life or physical  
933 safety of a child who has been a victim of child abuse or neglect, or any person who provided  
934 substitute care for the child[-];

935 ~~[(c)]~~ (iii) ~~[Disclosure]~~ if disclosure of the record would jeopardize the anonymity of the  
936 person or persons making the initial report of abuse or neglect or any others involved in the  
937 subsequent investigation[-]; or

938 ~~[(d)]~~ (iv) ~~[Disclosure]~~ if disclosure of the record would jeopardize the life or physical  
939 safety of a person who has been a victim of domestic violence.

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

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

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

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

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

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

952 Section 14. Section **78-3a-412** is amended to read:

953 **78-3a-412. Review following termination.**

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

957 (2) At that review hearing, the agency or individual vested with custody of the child

958 shall report to the court regarding the plan for permanent placement of the child. ~~[The]~~ If a  
959 guardian ad litem has been appointed, the guardian ad litem shall submit to the court a written  
960 report with recommendations, based on an independent investigation, for disposition meeting  
961 the best interests of the child.

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

965 Section 15. Section **78-3a-912** is amended to read:

966 **78-3a-912. Appointment of attorney guardian ad litem -- Right of refusal --**  
967 **Duties and responsibilities -- Training -- Trained staff and court-appointed special**  
968 **advocate volunteers -- Costs -- Immunity.**

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

972 (2) ~~[An]~~ (a) The court may appoint an attorney guardian ad litem ~~[shall]~~ to represent  
973 the best interest of ~~[each]~~ a minor who ~~[may become]~~ becomes the subject of a petition alleging  
974 abuse, neglect, or dependency, from the date the minor is removed from the minor's home by  
975 the ~~[Division of Child and Family Services]~~ division, or the date the petition is filed, whichever  
976 occurs earlier.

977 (b) (i) The minor's parents or guardian have the right to refuse the appointment of a  
978 particular individual to act as an attorney guardian ad litem as provided in this Subsection  
979 (2)(b).

980 (ii) If the minor's natural parents are married, the parents may refuse one individual. If  
981 the minor's natural parents are not married, each parent has the opportunity to refuse the  
982 appointment of one individual.

983 (iii) If a parent refuses the appointment by the court of a particular individual to act as  
984 an attorney guardian ad litem on behalf of the minor:

985 (A) the court shall appoint another individual to act as an attorney guardian ad litem; or

986 (B) at the request of at least one of the minor's parents or guardian, the court shall  
987 appoint an attorney designated by the parent or guardian.

988 (iv) The court may refuse the appointment of an individual designated by the parent or



989 guardian:

990 (A) who does not meet the minimum qualifications and requirements established

991 pursuant to Subsection 78-7-45(6)(a); or

992 (B) for good cause shown on the record.

993 (v) If the court refuses to appoint an individual under Subsection (2)(b)(iv), the court

994 may appoint another individual not previously refused by the parent or guardian.

995 (c) An individual is not required to be employed by or under contract with the Office of

996 the Guardian Ad Litem to be appointed as an attorney guardian ad litem in an abuse, neglect, or

997 dependency case.

998 (3) [~~The~~] If the court appoints an attorney guardian ad litem employed by or under

999 contract with the Office of the Guardian Ad Litem, the Office of the Guardian Ad Litem

1000 Director, through [~~an~~] the attorney guardian ad litem, shall:

1001 (a) represent the best interest of the minor in all proceedings;

1002 (b) be trained in applicable statutory, regulatory, and case law, and in accordance with

1003 the United States Department of Justice National Court Appointed Special Advocate

1004 Association guidelines, prior to representing any minor before the court;

1005 (c) conduct or supervise an independent investigation in order to obtain first-hand, a

1006 clear understanding of the situation and needs of the child; and

1007 (d) (i) personally meet with the minor[;];

1008 (ii) personally interview the minor if the minor is old enough to communicate[;];

1009 (iii) determine the minor's goals and concerns regarding placement[;]; and

1010 (iv) personally assess or supervise an assessment of the appropriateness and safety of

1011 the minor's environment in each placement;

1012 (e) file written motions, responses, or objections at all stages of a proceeding when

1013 necessary to protect the best interest of a minor;

1014 (f) personally or through a trained volunteer, paralegal, or other trained staff, attend all

1015 administrative and foster care citizen review board hearings pertaining to the minor's case;

1016 (g) participate in all appeals unless excused by order of the court;

1017 (h) be familiar with local experts who can provide consultation and testimony

1018 regarding the reasonableness and appropriateness of efforts made by the Division of Child and

1019 Family Services to maintain a minor in the minor's home or to reunify a minor with the minor's

1020 parent;

1021 (i) to the extent possible, and unless it would be detrimental to the minor, personally or  
1022 through a trained volunteer, paralegal, or other trained staff, keep the minor advised of the  
1023 status of the minor's case, all court and administrative proceedings, discussions, and proposals  
1024 made by other parties, court action, and psychiatric, medical, or other treatment or diagnostic  
1025 services that are to be provided to the minor;

1026 (j) review proposed orders for, and as requested by the court, prepare proposed orders  
1027 with clear and specific directions regarding services, treatment, and evaluation, assessment, and  
1028 protection of the minor and the minor's family; and

1029 (k) personally or through a trained volunteer, paralegal, or other trained staff, monitor  
1030 implementation of a minor's treatment plan and any dispositional orders to determine whether  
1031 services ordered by the court are actually provided, are provided in a timely manner, and  
1032 attempt to assess whether they are accomplishing their intended goal.

1033 (4) If the court appoints an attorney guardian ad litem who is not employed by or under  
1034 contract with the Office of the Guardian Ad Litem, the attorney guardian ad litem shall comply  
1035 with the requirements of Subsection (3).

1036 [~~4~~] (5) (a) An attorney guardian ad litem may use trained volunteers, in accordance  
1037 with Title 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other  
1038 trained staff to assist in investigation and preparation of information regarding the cases of  
1039 individual minors before the court. An attorney guardian ad litem may not, however, delegate  
1040 the attorney's responsibilities described in Subsection (3).

1041 (b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained  
1042 in and follow, at a minimum, the guidelines established by the United States Department of  
1043 Justice Court Appointed Special Advocate Association.

1044 (c) The court may use volunteers trained in accordance with the requirements of  
1045 Subsection [~~4~~] (5)(b) to assist in investigation and preparation of information regarding the  
1046 cases of individual minors within the jurisdiction.

1047 (d) When possible and appropriate, the court may use a volunteer who is a peer of the  
1048 minor appearing before the court, in order to provide assistance to that minor, under the  
1049 supervision of an attorney guardian ad litem or the attorney's trained volunteer, paralegal, or  
1050 other trained staff.

1051           ~~[(5)]~~ (6) The attorney guardian ad litem shall continue to represent the best interest of  
1052 the minor until released from duties by the court.

1053           ~~[(6)]~~ (7) (a) The juvenile court is responsible for all costs resulting from the  
1054 appointment of an attorney guardian ad litem and the costs of volunteer, paralegal, and other  
1055 staff appointment and training, and shall use funds appropriated by the Legislature for the  
1056 guardian ad litem program to cover those costs.

1057           (b) (i) When the court appoints an attorney guardian ad litem under this section, the  
1058 court may assess all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer  
1059 expenses against the minor's parents, parent, or legal guardian in a proportion that the court  
1060 determines to be just and appropriate.

1061           (ii) The court may not assess those fees or costs against a legal guardian, when that  
1062 guardian is the state, or against a parent who is found to be impecunious. If a person claims to  
1063 be impecunious, the court shall require of that person an affidavit of impecuniosity as provided  
1064 in Section 78-7-36 and the court shall follow the procedures and make the determinations as  
1065 provided in Section 78-7-36.

1066           ~~[(7)]~~ (8) An attorney guardian ad litem appointed under this section, when serving in  
1067 the scope of ~~his~~ the attorney guardian ad litem's duties as guardian ad litem is considered an  
1068 employee of the state for purposes of indemnification under Title 63, Chapter 30, Utah  
1069 Governmental Immunity Act.

1070           ~~[(8)]~~ (9) (a) An attorney guardian ad litem shall represent the best interest of a minor.  
1071 If the minor's wishes differ from the attorney's determination of the minor's best interest, the  
1072 attorney guardian ad litem shall communicate the minor's wishes to the court in addition to  
1073 presenting the attorney's determination of the minor's best interest. A difference between the  
1074 minor's wishes and the attorney's determination of best interest may not be considered a  
1075 conflict of interest for the attorney.

1076           (b) The court may appoint one attorney guardian ad litem to represent the best interests  
1077 of more than one minor child of a marriage.

1078           ~~[(9)]~~ (10) An attorney guardian ad litem shall be provided access to all Division of  
1079 Child and Family Services records regarding the minor at issue and the minor's family.

1080           ~~[(10)]~~ (11) An attorney guardian ad litem shall maintain current and accurate records  
1081 regarding the number of times the attorney has had contact with each minor and the actions the

1082 attorney has taken in representation of the minor's best interest.

1083           ~~[(11)]~~ (12) (a) Except as provided in Subsection ~~[(11)]~~ (12)(b), all records of an  
1084 attorney guardian ad litem are confidential and may not be released or made public upon  
1085 subpoena, search warrant, discovery proceedings, or otherwise. This subsection supersedes  
1086 Title 63, Chapter 2, Government Records Access and Management Act.

1087           (b) All records of an attorney guardian ad litem are subject to legislative subpoena,  
1088 under Title 36, Chapter 14, Legislative Subpoena Powers, and shall be released to the  
1089 Legislature.

1090           (c) Records released in accordance with Subsection ~~[(11)]~~ (12)(b) shall be maintained  
1091 as confidential by the Legislature. The Office of the Legislative Auditor General may,  
1092 however, include summary data and nonidentifying information in its audits and reports to the  
1093 Legislature.

1094           (d) Because of the unique role of an attorney guardian ad litem described in Subsection  
1095 ~~[(8)]~~ (9), and the state's role and responsibility to provide a guardian ad litem program and, as  
1096 parens patriae, to protect minors, Subsection ~~[(11)]~~ (12)(b) constitutes an exception to Rules of  
1097 Professional Conduct, Rule 1.6, as provided by Rule 1.6(b)(4). A claim of attorney-client  
1098 privilege does not bar access to the records of an attorney guardian ad litem by the Legislature,  
1099 through legislative subpoena.

1100           Section 16. Section **78-7-45** is amended to read:

1101           **78-7-45. Private attorney guardian ad litem -- Appointment -- Costs and fees --**  
1102 **Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum**  
1103 **qualifications.**

1104           (1) (a) The court may appoint a private attorney as guardian ad litem to represent the  
1105 best interests of the minor in any district court action in which the custody of or visitation with  
1106 a minor is at issue. The attorney guardian ad litem shall be certified by the Director of the  
1107 Office of the Guardian Ad Litem as having met the minimum qualifications for appointment,  
1108 but shall not be employed by or under contract with the Office of the Guardian Ad Litem.

1109           (b) If an attorney guardian ad litem has been appointed for the minor in any prior or  
1110 concurrent action and that attorney guardian ad litem is available, the court shall appoint that  
1111 attorney guardian ad litem, unless good cause is shown why another attorney guardian ad litem  
1112 should be appointed.

- 1113 (c) If, after appointment of the attorney guardian ad litem, an allegation of abuse,  
1114 neglect, or dependency of the minor is made the court shall:
- 1115 (i) determine whether it is in the best interests of the minor to continue the  
1116 appointment; or
- 1117 (ii) order the withdrawal of the private attorney guardian ad litem and ~~appoint~~:  
1118 (A) in the manner set forth in Subsection 78-3a-912(2), appoint:
- 1119 (I) the Office of the Guardian Ad Litem[-]; or  
1120 (II) another attorney guardian ad litem; or  
1121 (B) make no further appointment.
- 1122 (2) (a) The court shall assess all or part of the attorney guardian ad litem fees, courts  
1123 costs, and paralegal, staff, and volunteer expenses against the parties in a proportion the court  
1124 determines to be just.
- 1125 (b) If the court finds a party to be impecunious, under the provisions of Section  
1126 78-7-36, the court may direct the impecunious party's share of the assessment to be covered by  
1127 the attorney guardian ad litem pro bono obligation established in Subsection (6)(b).
- 1128 (3) The attorney guardian ad litem appointed under the provisions of this section shall:  
1129 (a) represent the best interests of the minor from the date of the appointment until  
1130 released by the court;
- 1131 (b) conduct or supervise an independent investigation in order to obtain a clear  
1132 understanding of the situation and needs of the minor;
- 1133 (c) interview witnesses and review relevant records pertaining to the minor and the  
1134 minor's family, including medical, psychological, and school records;
- 1135 (d) if the minor is old enough to communicate and unless it would be detrimental to the  
1136 minor:
- 1137 (i) meet with and interview the minor;  
1138 (ii) determine the minor's goals and concerns regarding custody or visitation; and  
1139 (iii) counsel the minor regarding the nature, purpose, status, and implications of the  
1140 case, of hearings, of recommendations, and proposals by parties and of court orders;
- 1141 (e) conduct discovery, file pleadings and other papers, prepare and review orders, and  
1142 otherwise comply with the Utah Rules of Civil Procedure as necessary to protect the best  
1143 interest of the minor;

1144 (f) unless excused by the court, prepare for and attend all mediation hearings and all  
1145 court conferences and hearings, and present witnesses and exhibits as necessary to protect the  
1146 best interests of the minor;

1147 (g) identify community resources to protect the best interests of the minor and advocate  
1148 for those resources; and

1149 (h) participate in all appeals unless excused by the court.

1150 (4) (a) (i) The attorney guardian ad litem shall represent the best interests of a minor.

1151 (ii) If the minor's wishes differ from the attorney's determination of the minor's best  
1152 interests, the attorney guardian ad litem shall communicate to the court the minor's wishes and  
1153 the attorney's determination of the minor's best interests.

1154 (iii) A difference between the minor's wishes and the attorney's determination of best  
1155 interests is not sufficient to create a conflict of interest.

1156 (b) The court may appoint one attorney guardian ad litem to represent the best interests  
1157 of more than one minor child of a marriage.

1158 (5) An attorney guardian ad litem appointed under this section is immune from any  
1159 civil liability that might result by reason of acts performed within the scope of duties of the  
1160 attorney guardian ad litem.

1161 (6) (a) Upon the advice of the Director of the Office of the Guardian Ad Litem, the  
1162 Judicial Council shall by rule establish the minimum qualifications and requirements for  
1163 appointment by the court as an attorney guardian ad litem.

1164 (b) An attorney guardian ad litem may be required to appear pro bono in one case for  
1165 every five cases in which the attorney is appointed with compensation.

1166 (7) This section shall be effective in the Second, Third, and Fourth Judicial Districts on  
1167 July 1, 2001, and in the remaining judicial districts of the state on July 1, 2002.

1168 Section 17. **Effective date.**

1169 This bill takes effect on July 1, 2004.

**Legislative Review Note**  
as of 12-2-03 2:27 PM

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

**Office of Legislative Research and General Counsel**

**State Impact**

It is estimated that DCFS will need \$48,300 (\$39,600 General Fund) for costs associated with additional overtime pay expected. The Attorney General's Office will need \$37,700 (\$34,300 General Fund) for additional attorney costs due to disrupted hearings from anticipated requests for Guardian Ad Litem changes. Similarly, the Courts would require \$159,000 for additional court time due to disrupted hearings and for additional Guardian Ad Litem time. Federal revenues would be dependent upon expenditures of state funds.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$232,900	\$232,900	\$0	\$0
Federal Funds	\$12,100	\$12,100	\$12,100	\$12,100
<b>TOTAL</b>	<b>\$245,000</b>	<b>\$245,000</b>	<b>\$12,100</b>	<b>\$12,100</b>

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**Individual and Business Impact**

No fiscal impact.

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