

28 and

29 • establish a procedure to receive and resolve complaints regarding the guardian
30 ad litem director, the Office of Guardian Ad Litem Director, or attorney
31 guardians ad litem;

32 ▶ provides that a court may only appoint an attorney guardian ad litem:

33 • in cases involving an abused child, a neglected child, or a dependent child that
34 results in a judicial proceeding; or

35 • in any other case for which the appointment of an attorney guardian ad litem is
36 expressly authorized by law;

37 ▶ provides that a parent or guardian of a minor may petition the court to determine
38 whether it is appropriate to release a guardian ad litem from the responsibility of
39 representing a minor;

40 ▶ provides that an attorney guardian ad litem may not be the attorney responsible for
41 presenting the evidence alleging abuse, neglect, or dependency of a child;

42 ▶ modifies the duties of guardians ad litem and the Office of Guardian Ad Litem
43 Director;

44 ▶ requires that, during the 2007 interim, the Child Welfare Legislative Oversight
45 Panel shall:

46 • consider a report from the guardian ad litem director regarding changes and
47 improvements made in response to the February 2005 performance audit and
48 recommendations for other legislative changes relating to guardians ad litem;

49 and

50 • conduct a study to determine whether the Office of Guardian Ad Litem Director
51 should be reauthorized or replaced with a system consisting solely of private
52 guardians ad litem;

53 ▶ requires the Child Welfare Legislative Oversight Panel to, during the 2006 interim,
54 review the duties of guardians ad litem and determine whether the duties should be
55 modified;

56 ▶ removes obsolete language relating to a pilot program and to public access to
57 hearings and records for abuse, neglect, and dependency cases;

58 ▶ provides for recovery of fees and costs, incurred by the Office of Guardian Ad

59 Litem Director in a criminal case, from a defendant convicted of a crime that includes child
 60 abuse, child sexual abuse, or neglect of a child for whom the Office of Guardian Ad Litem
 61 Director is appointed; and
 62 ▶ makes technical changes.

63 **Monies Appropriated in this Bill:**

64 None

65 **Other Special Clauses:**

66 None

67 **Utah Code Sections Affected:**

68 AMENDS:

- 69 **63-25a-104**, as last amended by Chapter 220, Laws of Utah 2001
- 70 **75-5-104**, as enacted by Chapter 150, Laws of Utah 1975
- 71 **78-3-21**, as last amended by Chapters 51 and 332, Laws of Utah 2003
- 72 **78-3a-112**, as renumbered and amended by Chapter 365, Laws of Utah 1997
- 73 **78-3a-115**, as last amended by Chapters 324 and 356, Laws of Utah 2004
- 74 **78-3a-115.1**, as last amended by Chapter 324, Laws of Utah 2004
- 75 **78-3a-116**, as last amended by Chapters 190 and 324, Laws of Utah 2004
- 76 **78-3a-911**, as last amended by Chapter 94, Laws of Utah 2003
- 77 **78-3a-912**, as last amended by Chapters 102, 286 and 304, Laws of Utah 2005
- 78 **78-7-9**, as last amended by Chapter 168, Laws of Utah 2002
- 79 **78-7-45**, as last amended by Chapter 168, Laws of Utah 2002



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

82 Section 1. Section **63-25a-104** is amended to read:

83 **63-25a-104. Duties of commission.**

84 The state commission on criminal and juvenile justice administration shall:

- 85 (1) promote the commission's purposes as enumerated in Section 63-25a-101;
- 86 (2) promote the communication and coordination of all criminal and juvenile justice
 87 agencies;
- 88 (3) study, evaluate, and report on the status of crime in the state and on the
 89 effectiveness of criminal justice policies, procedures, and programs that are directed toward the

90 reduction of crime in the state;

91 (4) study, evaluate, and report on policies, procedures, and programs of other
92 jurisdictions which have effectively reduced crime;

93 (5) identify and promote the implementation of specific policies and programs the
94 commission determines will significantly reduce crime in Utah;

95 (6) provide analysis and recommendations on all criminal and juvenile justice
96 legislation, state budget, and facility requests, including program and fiscal impact on all
97 components of the criminal and juvenile justice system;

98 (7) provide analysis, accountability, recommendations, and supervision for state and
99 federal criminal justice grant monies;

100 (8) provide public information on the criminal and juvenile justice system and give
101 technical assistance to agencies or local units of government on methods to promote public
102 awareness;

103 (9) promote research and program evaluation as an integral part of the criminal and
104 juvenile justice system;

105 (10) provide a comprehensive criminal justice plan annually;

106 (11) review agency forecasts regarding future demands on the criminal and juvenile
107 justice systems, including specific projections for secure bed space; [~~and~~]

108 (12) promote the development of criminal and juvenile justice information systems that
109 are consistent with common standards for data storage and are capable of appropriately sharing
110 information with other criminal justice information systems by:

111 (a) developing and maintaining common data standards for use by all state criminal
112 justice agencies;

113 (b) annually performing audits of criminal history record information maintained by
114 state criminal justice agencies to assess their accuracy, completeness, and adherence to
115 standards;

116 (c) defining and developing state and local programs and projects associated with the
117 improvement of information management for law enforcement and the administration of
118 justice; and

119 (d) establishing general policies concerning criminal and juvenile justice information
120 systems and making rules as necessary to carry out the duties under Subsection (10) and this

121 Subsection (12) [~~and Subsection (10).~~]; and
 122 (13) supervise the Office of Guardian Ad Litem Director, in accordance with the
 123 provisions of Sections 78-3a-911 and 78-3a-912, and assure compliance of the guardian ad
 124 litem program with state and federal law, regulation, policy, and court rules.

125 Section 2. Section **75-5-104** is amended to read:

126 **75-5-104. Power of court to appoint guardian ad litem not affected.**

127 Nothing contained in this chapter affects or impairs the power of any court to appoint a
 128 guardian ad litem to represent the interests of any minor [~~interested in any suit or matter~~
 129 ~~pending before it~~] for whom appointment of a guardian ad litem is authorized by law.

130 Section 3. Section **78-3-21** is amended to read:

131 **78-3-21. Judicial Council -- Creation -- Members -- Terms and election --**
 132 **Responsibilities -- Reports.**

133 (1) The Judicial Council, established by Article VIII, Section 12, Utah Constitution,
 134 shall be composed of:

- 135 (a) the chief justice of the Supreme Court;
- 136 (b) one member elected by the justices of the Supreme Court;
- 137 (c) one member elected by the judges of the Court of Appeals;
- 138 (d) five members elected by the judges of the district courts;
- 139 (e) two members elected by the judges of the juvenile courts;
- 140 (f) three members elected by the justice court judges; and
- 141 (g) a member or ex officio member of the Board of Commissioners of the Utah State

142 Bar who is an active member of the Bar in good standing elected by the Board of
 143 Commissioners.

144 (2) (a) The chief justice of the Supreme Court shall act as presiding officer of the
 145 council and chief administrative officer for the courts. The chief justice shall vote only in the
 146 case of a tie.

147 (b) All members of the council shall serve for three-year terms. If a council member
 148 should die, resign, retire, or otherwise fail to complete a term of office, the appropriate
 149 constituent group shall elect a member to complete the term of office. In courts having more
 150 than one member, the members shall be elected to staggered terms. The person elected to the
 151 Judicial Council by the Board of Commissioners shall be a member or ex officio member of

152 the Board of Commissioners and an active member of the Bar in good standing at the time the
153 person is elected. The person may complete a three-year term of office on the Judicial Council
154 even though the person ceases to be a member or ex officio member of the Board of
155 Commissioners. The person shall be an active member of the Bar in good standing for the
156 entire term of the Judicial Council.

157 (c) Elections shall be held under rules made by the Judicial Council.

158 (3) The council is responsible for the development of uniform administrative policy for
159 the courts throughout the state. The presiding officer of the Judicial Council is responsible for
160 the implementation of the policies developed by the council and for the general management of
161 the courts, with the aid of the administrator. The council has authority and responsibility to:

162 (a) establish and assure compliance with policies for the operation of the courts,
163 including uniform rules and forms; and

164 (b) publish and submit to the governor, the chief justice of the Supreme Court, and the
165 Legislature an annual report of the operations of the courts, which shall include financial and
166 statistical data and may include suggestions and recommendations for legislation.

167 (4) (a) The Judicial Council shall make rules establishing:

168 (i) standards for judicial competence; and

169 (ii) a formal program for the evaluation of judicial performance containing the
170 elements of and meeting the requirements of this Subsection (4).

171 (b) The Judicial Council shall ensure that the formal judicial performance evaluation
172 program has improvement in the performance of individual judges, court commissioners, and
173 the judiciary as its goal.

174 (c) The Judicial Council shall ensure that the formal judicial performance evaluation
175 program includes at least all of the following elements:

176 (i) a requirement that judges complete a certain number of hours of approved judicial
177 education each year;

178 (ii) a requirement that each judge certify that he is:

179 (A) physically and mentally competent to serve; and

180 (B) in compliance with the Codes of Judicial Conduct and Judicial Administration; and

181 (iii) a requirement that the judge receive a satisfactory score on questions identified by
182 the Judicial Council as relating to judicial certification on a survey of members of the Bar

183 developed by the Judicial Council in conjunction with the American Bar Association.

184 (d) The Judicial Council shall ensure that the formal judicial performance evaluation
185 program considers at least the following criteria:

- 186 (i) integrity;
- 187 (ii) knowledge;
- 188 (iii) understanding of the law;
- 189 (iv) ability to communicate;
- 190 (v) punctuality;
- 191 (vi) preparation;
- 192 (vii) attentiveness;
- 193 (viii) dignity;
- 194 (ix) control over proceedings; and
- 195 (x) skills as a manager.

196 (e) (i) The Judicial Council shall provide the judicial performance evaluation
197 information and the disciplinary data required by Subsection 20A-7-702(2) to the Lieutenant
198 Governor for publication in the voter information pamphlet.

199 (ii) Not later than August 1 of the year before the expiration of the term of office of a
200 justice court judge, the Judicial Council shall provide the judicial performance evaluation
201 information required by Subsection 20A-7-702(2) to the appointing authority of a justice court
202 judge.

203 (5) The council shall establish standards for the operation of the courts of the state
204 including, but not limited to, facilities, court security, support services, and staff levels for
205 judicial and support personnel.

206 (6) The council shall by rule establish the time and manner for destroying court
207 records, including computer records, and shall establish retention periods for these records.

208 (7) (a) Consistent with the requirements of judicial office and security policies, the
209 council shall establish procedures to govern the assignment of state vehicles to public officers
210 of the judicial branch.

211 (b) The vehicles shall be marked in a manner consistent with Section 41-1a-407 and
212 may be assigned for unlimited use, within the state only.

213 (8) (a) The council shall advise judicial officers and employees concerning ethical

214 issues and shall establish procedures for issuing informal and formal advisory opinions on
215 these issues.

216 (b) Compliance with an informal opinion is evidence of good faith compliance with the
217 Code of Judicial Conduct.

218 (c) A formal opinion constitutes a binding interpretation of the Code of Judicial
219 Conduct.

220 (9) (a) The council shall establish written procedures authorizing the presiding officer
221 of the council to appoint judges of courts of record by special or general assignment to serve
222 temporarily in another level of court in a specific court or generally within that level. The
223 appointment shall be for a specific period and shall be reported to the council.

224 (b) These procedures shall be developed in accordance with Subsection 78-3-24(10)
225 regarding temporary appointment of judges.

226 (10) The Judicial Council may by rule designate municipalities in addition to those
227 designated by statute as a location of a trial court of record. There shall be at least one court
228 clerk's office open during regular court hours in each county. Any trial court of record may
229 hold court in any municipality designated as a location of a court of record. Designations by
230 the Judicial Council may not be made between July 1, 1997, and July 1, 1998.

231 (11) The Judicial Council shall by rule determine whether the administration of a court
232 shall be the obligation of the administrative office of the courts or whether the administrative
233 office of the courts should contract with local government for court support services.

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

236 ~~[(13) The Judicial Council shall establish and supervise the Office of Guardian Ad~~
237 ~~Litem Director, in accordance with the provisions of Sections 78-3a-911 and 78-3a-912, and~~
238 ~~assure compliance of the guardian ad litem program with state and federal law, regulation, and~~
239 ~~policy, and court rules.]~~

240 [(14)] (13) The Judicial Council shall establish and maintain, in cooperation with the
241 Office of Recovery Services within the Department of Human Services, the part of the state
242 case registry that contains records of each support order established or modified in the state on
243 or after October 1, 1998, as is necessary to comply with the Social Security Act, 42 U.S.C. Sec.
244 654a.

245 ~~[(15) (a) On or before November 1, 2003, the Judicial Council, by rule, shall select one~~
246 ~~or more districts as pilot districts for purposes of Sections 78-3a-115, 78-3a-115.1, and~~
247 ~~78-3a-116.]~~

248 ~~[(b) Prior to the 2005 Annual General Session, the Judicial Council shall report to the~~
249 ~~Child Welfare Legislative Oversight Panel and the Judiciary Interim Committee on the effects~~
250 ~~of Chapter 332, Laws of Utah 2003 and recommend whether the provisions of Chapter 332,~~
251 ~~Laws of Utah 2003 should be continued, modified, or repealed.]~~

252 Section 4. Section **78-3a-112** is amended to read:

253 **78-3a-112. Appearances -- Parents to appear with minor -- Failure to appear --**
254 **Contempt -- Warrant of arrest, when authorized -- Parent's employer to grant time off --**
255 **Appointment of guardian ad litem.**

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

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

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

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

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

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

276 Adult Offenses.

277 (5) The court shall endeavor, through use of the warrant of arrest if necessary, as
278 provided in Subsection (6), or by other means, to ensure the presence at all hearings of one or
279 both parents or of the guardian of the minor. If neither a parent nor guardian is present at the
280 court proceedings, the court may appoint a guardian ad litem to protect the interest of the
281 minor. [~~A guardian ad litem may also be appointed whenever necessary for the welfare of the
282 minor, whether or not a parent or guardian is present.~~]

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

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

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

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

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

290 Section 5. Section **78-3a-115** is amended to read:

291 **78-3a-115. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's**
292 **cases heard separately from adult cases -- Minor or parents or custodian heard**
293 **separately -- Continuance of hearing -- Consolidation of proceedings involving more than**
294 **one minor.**

295 (1) (a) Hearings in minor's cases shall be held before the court without a jury and may
296 be conducted in an informal manner.

297 [~~(a) In abuse, neglect, and dependency cases in all districts other than pilot districts
298 selected by the Judicial Council under Subsection 78-3-21(15)(a), the court shall exclude the
299 general public from hearings held prior to July 1, 2004.~~]

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

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

306 (i) the minor has been charged with an offense which would be a felony if committed

307 by an adult; or

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

311 (d) The victim of any act charged in a petition or information involving an offense
312 committed by a minor which if committed by an adult would be a felony or a class A or class B
313 misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter
314 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77,
315 Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not
316 apply to important juvenile justice hearings as defined in Section 77-38-2.

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

- 319 (i) the scheduling of any court hearings on the petition;
320 (ii) any findings made by the court; and
321 (iii) any sentence or decree imposed by the court.

322 (2) Minor's cases shall be heard separately from adult cases. The minor or the minor's
323 parents or custodian may be heard separately when considered necessary by the court. The
324 hearing may be continued from time to time to a date specified by court order.

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

329 Section 6. Section **78-3a-115.1** is amended to read:

330 **78-3a-115.1. Access to abuse, neglect, and dependency hearings.**

331 [~~(1) This section applies:~~]

332 [~~(a) beginning November 1, 2003, to districts selected by the Judicial Council as pilot
333 districts under Subsection 78-3-21(15)(a), and]~~

334 [~~(b) beginning July 1, 2004, to all other districts.~~]

335 [(2)(a)] (1) In abuse, neglect, and dependency cases the court shall admit any person to
336 a hearing, including a hearing under Subsection 78-3a-320(3), unless the court makes a finding
337 upon the record that the person's presence at the hearing would:

338 [(i)] (a) be detrimental to the best interest of a child who is a party to the proceeding;
 339 [(ii)] (b) impair the fact-finding process; or
 340 [(iii)] (c) be otherwise contrary to the interests of justice.

341 [(b)] (2) The court may exclude a person from a hearing under Subsection [(2)(a)] (1)
 342 on its own motion or by motion of a party to the proceeding.

343 Section 7. Section **78-3a-116** is amended to read:

344 **78-3a-116. Hearings -- Record -- County attorney or district attorney**
 345 **responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of**
 346 **evidence.**

347 (1) (a) A verbatim record of the proceedings shall be taken by an official court reporter
 348 or by means of a mechanical recording device in all cases that might result in deprivation of
 349 custody as defined in this chapter. In all other cases a verbatim record shall also be made
 350 unless dispensed with by the court.

351 (b) (i) Notwithstanding any other provision, including Title 63, Chapter 2, Government
 352 Records Access and Management Act, a record of a proceeding made under Subsection (1)(a)
 353 shall be released by the court to any person upon a finding on the record for good cause.

354 (ii) Following a petition for a record of a proceeding made under Subsection (1)(a), the
 355 court shall:

356 (A) provide notice to all subjects of the record that a request for release of the record
 357 has been made; and

358 (B) allow sufficient time for the subjects of the record to respond before making a
 359 finding on the petition.

360 (iii) A record of a proceeding may not be released under this Subsection (1)(b) if the
 361 court's jurisdiction over the subjects of the proceeding ended more than 12 months prior to the
 362 request.

363 (iv) For purposes of this Subsection (1)(b):

364 (A) "record of a proceeding" does not include documentary materials of any type
 365 submitted to the court as part of the proceeding, including items submitted under Subsection
 366 (4)(a); and

367 (B) "subjects of the record" includes the child's guardian ad litem, the child's legal
 368 guardian, the Division of Child and Family Services, and any other party to the proceeding.

369 (v) This Subsection (1)(b) applies:

370 (A) to records of proceedings made on or after November 1, 2003 in districts selected
371 by the Judicial Council as pilot districts under [~~Subsection 78-3-21(15)(a)~~] Chapter 332,
372 Section 1, Laws of Utah 2003; and

373 (B) to records of proceedings made on or after July 1, 2004 in all other districts.

374 (2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a
375 prosecution district, the district attorney shall represent the state in any proceeding in a minor's
376 case.

377 (b) The attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child
378 and Family Services, and Title 78, Chapter 3a, Juvenile Courts, relating to:

379 (i) protection or custody of an abused, neglected, or dependent child; and

380 (ii) petitions for termination of parental rights.

381 (c) The attorney general shall represent the Division of Child and Family Services in
382 actions involving minors who have not been adjudicated as abused or neglected, but who are
383 otherwise committed to the custody of that division by the juvenile court, and who are
384 classified in the division's management information system as having been placed in custody
385 primarily on the basis of delinquent behavior or a status offense. Nothing in this Subsection
386 (2)(c) may be construed to affect the responsibility of the county attorney or district attorney to
387 represent the state in those matters, in accordance with the provisions of Subsection (2)(a).

388 (3) The board may adopt special rules of procedure to govern proceedings involving
389 violations of traffic laws or ordinances, fish and game laws, and boating laws. However,
390 proceedings involving offenses under Section 78-3a-506 are governed by that section regarding
391 suspension of driving privileges.

392 (4) (a) For the purposes of determining proper disposition of the minor in dispositional
393 hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and
394 in hearings upon petitions for termination of parental rights, written reports and other material
395 relating to the minor's mental, physical, and social history and condition may be received in
396 evidence and may be considered by the court along with other evidence. The court may require
397 that the person who wrote the report or prepared the material appear as a witness if the person
398 is reasonably available.

399 (b) For the purpose of determining proper disposition of a minor alleged to be or

400 adjudicated as abused, neglected, or dependent, dispositional reports prepared by Foster Care
401 Citizen Review Boards pursuant to Section 78-3g-103 may be received in evidence and may be
402 considered by the court along with other evidence. The court may require any person who
403 participated in preparing the dispositional report to appear as a witness, if the person is
404 reasonably available.

405 (5) (a) In an abuse, neglect, or dependency proceeding occurring after the
406 commencement of a shelter hearing under Section 78-3a-306 or the filing of a petition under
407 Section 78-3a-305, each party to the proceeding shall provide in writing to the other parties or
408 their counsel any information which the party:

409 (i) plans to report to the court at the proceeding; or

410 (ii) could reasonably expect would be requested of the party by the court at the
411 proceeding.

412 (b) The disclosure required under Subsection (5)(a) shall be made:

413 (i) for dispositional hearings under Sections 78-3a-310 and 78-3a-311, no less than five
414 days before the proceeding;

415 (ii) for proceedings under Title 78, Chapter 3a, Part 4, Termination of Parental Rights
416 Act, in accordance with Utah Rules of Civil Procedure; and

417 (iii) for all other proceedings, no less than five days before the proceeding.

418 (c) If a party to a proceeding obtains information after the deadline in Subsection
419 (5)(b), the information is exempt from the disclosure required under Subsection (5)(a) if the
420 party certifies to the court that the information was obtained after the deadline.

421 (d) Subsection (5)(a) does not apply to:

422 (i) pretrial hearings; and

423 (ii) the frequent, periodic review hearings held in a dependency drug court case to
424 assess and promote the parent's progress in substance abuse treatment.

425 (6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court
426 may, in its discretion, consider evidence of statements made by a minor under eight years of
427 age to a person in a trust relationship.

428 Section 8. Section **78-3a-911** is amended to read:

429 **78-3a-911. Office of Guardian Ad Litem Director -- Appointment of director --**
430 **Duties of director -- Contracts in second, third, and fourth districts.**

431 (1) As used in this section, "commission" means the Commission on Criminal and
432 Juvenile Justice, created in Section 63-25a-101.

433 ~~[(1)]~~ (2) There is hereby created the Office of Guardian Ad Litem Director under the
434 direct supervision of the ~~[Judicial Council]~~ commission in accordance with Subsection
435 ~~[78-3-21]~~ 63-25a-104(13).

436 ~~[(2)]~~ (3) (a) The ~~[Judicial Council]~~ commission shall appoint one person to serve full
437 time as the guardian ad litem director for the state. The guardian ad litem director shall serve at
438 the pleasure of the ~~[Judicial Council]~~ commission.

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

441 (i) professional ability;

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

443 (iii) familiarity with the role, purpose, and function of guardians ad litem in both
444 juvenile and district courts; ~~[and]~~

445 (iv) ability to develop training curricula and reliable methods for data collection and
446 evaluation~~[-]; and~~

447 (v) ability to fulfill the duties of the guardian ad litem director.

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

450 (d) The commission shall annually conduct a performance evaluation of the guardian
451 ad litem director.

452 (e) The commission shall establish a procedure to receive and resolve complaints
453 regarding:

454 (i) the guardian ad litem director;

455 (ii) the Office of Guardian Ad Litem Director; or

456 (iii) attorney guardians ad litem.

457 ~~[(3)]~~ (4) The guardian ad litem director shall:

458 (a) establish ~~[policy and procedure]~~ effective written policies and procedures for the
459 management of a statewide guardian ad litem program and the maintenance of records
460 regarding a guardian ad litem's representation of a child's best interest, so that guardians ad
461 litem will have a consistent understanding of the duties of guardians ad litem;

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

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

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

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

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

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

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

480 (i) design and implement evaluation tools based on specific objectives targeted in the
481 needs assessments described in Subsection [~~(3)~~] (4)(h);

482 (j) prepare and submit an annual report to the [~~Judicial Council~~] commission and the
483 Child Welfare Legislative Oversight Panel regarding the development, policy, and management
484 of the statewide guardian ad litem program, and the training and evaluation of attorney
485 guardians ad litem and volunteers;

486 (k) hire, train, and supervise investigators; [~~and~~]

487 (l) administer the program of private guardians ad litem established by Section
488 78-7-45[-];

489 (m) establish standard methods and forms for completing and documenting completion
490 of a guardian ad litem's duties in each case; and

491 (n) accurately track cases and implement management review procedures to determine
492 each guardian ad litem's productivity, case flow, case trends, and case resolution time.

493 ~~[(4)]~~ (5) A contract of employment or independent contract described under Subsection
 494 ~~[(3)]~~ (4)(c) shall provide that attorney guardians ad litem in the second, third, and fourth
 495 judicial districts devote their full time and attention to the role of attorney guardian ad litem,
 496 having no clients other than the children whose interest they represent within the guardian ad
 497 litem program.

498 Section 9. Section **78-3a-912** is amended to read:

499 **78-3a-912. Appointment of attorney guardian ad litem -- Duties and**
 500 **responsibilities -- Training -- Trained staff and court-appointed special advocate**
 501 **volunteers -- Costs -- Immunity -- Annual report -- Review by Child Welfare Legislative**
 502 **Oversight Panel.**

503 (1) ~~[(a)]~~ The court~~[-(i)]~~ may:

504 (a) appoint an attorney guardian ad litem to represent the best interest of a minor
 505 [involved in any case before the court, and (ii)] in every case involving an abused child, a
 506 neglected child, or a dependent child that results in a judicial proceeding; or

507 (b) in any other case for which the appointment of an attorney guardian ad litem is
 508 expressly authorized by law.

509 (2) A parent or guardian of a minor may petition the court to determine whether,
 510 consistent with the provisions of this section, it is appropriate to release a guardian ad litem
 511 from the responsibility of representing a minor.

512 (3) The court shall consider the best interest of a minor, consistent with the provisions
 513 of Section 62A-4a-201, in determining whether to appoint a guardian ad litem.

514 ~~[(b)]~~ (4) In all cases where an attorney guardian ad litem is appointed, the court shall
 515 make a finding that establishes the necessity of the appointment.

516 ~~[(2) An attorney guardian ad litem shall represent the best interest of each minor who~~
 517 ~~may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of~~
 518 ~~the day that:]~~

519 ~~[(a) the minor is removed from the minor's home by the division; or]~~

520 ~~[(b) the petition is filed.]~~

521 (5) An attorney guardian ad litem appointed under this section may not be the attorney
 522 responsible for presenting the evidence alleging abuse, neglect, or dependency of a child.

523 ~~[(3)]~~ (6) The Office of ~~[the]~~ Guardian Ad Litem Director, through an attorney guardian

524 ad litem, shall:

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

526 (b) prior to representing any minor before the court, be trained in:

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

528 (ii) accordance with the United States Department of Justice National Court Appointed
529 Special Advocate Association guidelines;

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

532 (d) (i) personally meet with the minor, unless the minor is less than 12 months of age;

533 (ii) personally interview the minor if the minor is ~~[old enough]~~ able to meaningfully
534 communicate;

535 (iii) determine the minor's goals and concerns regarding placement if the minor is able
536 to communicate the minor's goals and concerns; and

537 (iv) ~~[personally assess or supervise an assessment of]~~ consistent with Subsection (7),
538 assess the appropriateness and safety of the minor's environment in each placement;

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

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

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

545 (h) be familiar with local experts who can provide consultation and testimony
546 regarding the reasonableness and appropriateness of efforts made by the Division of Child and
547 Family Services to:

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

549 (ii) reunify a minor with the minor's parent;

550 (i) to the extent possible, and unless it would be detrimental to the minor, personally or
551 through a trained volunteer, paralegal, or other trained staff, keep the minor advised of:

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

553 (ii) all court and administrative proceedings;

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

555 (iv) court action; and

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

558 (j) review proposed orders for, and as requested by the court; and

559 (k) prepare proposed orders with clear and specific directions regarding services,
560 treatment, evaluation, assessment, and protection of the minor and the minor's family[~~;~~ and].

561 [~~(f) personally or through a trained volunteer, paralegal, or other trained staff, monitor~~
562 ~~implementation of a minor's child and family plan and any dispositional orders to:~~]

563 [~~(i) determine whether services ordered by the court:~~]

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

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

566 [~~(ii) attempt to assess whether services ordered by the court are accomplishing the~~
567 ~~intended goal of the services.]~~

568 (7) In determining the appropriateness and safety of the minor's environment in each
569 placement under Subsection (6)(d)(iv), an attorney guardian ad litem may consider:

570 (a) any relevant reports or observations by:

571 (i) the Division of Child and Family Services; or

572 (ii) a trained volunteer, paralegal, or other staff;

573 (b) personal observation; or

574 (c) other relevant information.

575 [~~(4)~~] (8) (a) Consistent with this Subsection [~~(4)~~] (8), an attorney guardian ad litem may
576 use trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government
577 Workers Act, trained paralegals, and other trained staff to assist in investigation and
578 preparation of information regarding the cases of individual minors before the court.

579 (b) The attorney guardian ad litem described in Subsection [~~(4)~~] (8)(a) may not
580 delegate the attorney's responsibilities described in Subsection [~~(3)~~] (6).

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

584 (d) The court may use volunteers trained in accordance with the requirements of
585 Subsection [~~(4)~~] (8)(c) to assist in investigation and preparation of information regarding the

586 cases of individual minors within the jurisdiction.

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

591 ~~[(5)]~~ (9) The attorney guardian ad litem shall continue to represent the best interest of
592 the minor until released from that duty by the court.

593 ~~[(6)]~~ (10) (a) Consistent with Subsection ~~[(6)]~~ (10)(b), the juvenile court is responsible
594 for:

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

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

597 (b) The court shall use funds appropriated by the Legislature for the guardian ad litem
598 program to cover the costs described in Subsection ~~[(6)]~~ (10)(a).

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

603 (ii) The court may not assess those fees or costs against:

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

605 (B) consistent with Subsection ~~[(6)]~~ (10)(d), a parent who is found to be impecunious.

606 (d) For purposes of Subsection ~~[(6)]~~ (10)(c)(ii)(B), if a person claims to be
607 impecunious, the court shall:

608 (i) require that person to submit an affidavit of impecuniosity as provided in Section
609 78-7-36; and

610 (ii) follow the procedures and make the determinations as provided in Section 78-7-37.

611 ~~[(7)]~~ (11) An attorney guardian ad litem appointed under this section, when serving in
612 the scope of the attorney guardian ad litem's duties as guardian ad litem is considered an
613 employee of the state for purposes of indemnification under Title 63, Chapter 30d,
614 Governmental Immunity Act of Utah.

615 ~~[(8)]~~ (12) (a) An attorney guardian ad litem shall represent the best interest of a minor.

616 (b) If the minor's wishes differ from the attorney's determination of the minor's best

617 interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in
618 addition to presenting the attorney's determination of the minor's best interest.

619 (c) A difference between the minor's wishes and the attorney's determination of best
620 interest may not be considered a conflict of interest for the attorney.

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

623 [~~(9)~~] (13) An attorney guardian ad litem shall be provided access to all Division of
624 Child and Family Services records regarding the minor at issue and the minor's family.

625 [~~(10)~~] (14) An attorney guardian ad litem shall maintain current and accurate records
626 regarding:

627 (a) the number of times the attorney has had contact with each minor; and

628 (b) the actions the attorney has taken in representation of the minor's best interest.

629 [~~(11)~~] (15) (a) Except as provided in Subsection [~~(11)~~] (15)(b), all records of an
630 attorney guardian ad litem are confidential and may not be released or made public upon
631 subpoena, search warrant, discovery proceedings, or otherwise. This Subsection (15)
632 supersedes Title 63, Chapter 2, Government Records Access and Management Act.

633 (b) Consistent with Subsection [~~(11)~~] (15)(d), all records of an attorney guardian ad
634 litem:

635 (i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative
636 Subpoena Powers; and

637 (ii) shall be released to the Legislature.

638 (c) (i) Except as provided in Subsection [~~(11)~~] (15)(c)(ii), records released in
639 accordance with Subsection [~~(11)~~] (15)(b) shall be maintained as confidential by the
640 Legislature.

641 (ii) Notwithstanding Subsection [~~(11)~~] (15)(c)(i), the Office of the Legislative Auditor
642 General may include summary data and nonidentifying information in its audits and reports to
643 the Legislature.

644 (d) (i) Subsection [~~(11)~~] (15)(b) constitutes an exception to Rules of Professional
645 Conduct, Rule 1.6, as provided by Rule 1.6(b)(4), because of:

646 (A) the unique role of an attorney guardian ad litem described in Subsection [~~(8)~~] (12);
647 and

648 (B) the state's role and responsibility:
649 (I) to provide a guardian ad litem program; and
650 (II) as parens patriae, to protect minors.
651 (ii) A claim of attorney-client privilege does not bar access to the records of an attorney
652 guardian ad litem by the Legislature, through legislative subpoena.
653 (e) The Office of [the] Guardian Ad Litem Director shall present an annual report to
654 the Child Welfare Legislative Oversight Panel detailing:
655 (i) the development, policy, and management of the statewide guardian ad litem
656 program;
657 (ii) the training and evaluation of attorney guardians ad litem and volunteers; and
658 (iii) the number of children served by the Office of [the] Guardian Ad Litem Director.
659 (16) (a) The guardian ad litem director shall report to the Child Welfare Legislative
660 Oversight Panel during the 2007 interim regarding:
661 (i) the progress of the Office of Guardian Ad Litem Director in making changes and
662 improvements in response to the February 2005 performance audit of the Office of Guardian
663 Ad Litem Director; and
664 (ii) recommendations for legislative changes relating to guardians ad litem.
665 (b) During the 2007 interim, the Child Welfare Legislative Oversight Panel shall:
666 (i) hear or review the report described in Subsection (16)(a); and
667 (ii) conduct a study to determine whether:
668 (A) the Office of Guardian Ad Litem Director should be:
669 (I) reauthorized; or
670 (II) replaced with a system consisting solely of private guardians ad litem; or
671 (B) other changes relating to guardians ad litem should be made by the Legislature.
672 (17) During the 2006 interim, the Child Welfare Legislative Oversight Panel shall
673 review the duties of guardians ad litem under this section to determine:
674 (a) whether guardians ad litem should perform each duty described in this section in
675 each case;
676 (b) whether any of the duties described in this section should be removed;
677 (c) whether all of the duties described in this section should be deleted and replaced
678 with a duty to represent the best interests of the minor in accordance with the ethical and

679 professional responsibilities of an attorney;

680 (d) the extent to which guardians ad litem should be involved in district court cases;

681 and

682 (e) whether a change should be made in the oversight of the Office of Guardian Ad

683 Litem Director.

684 Section 10. Section **78-7-9** is amended to read:

685 **78-7-9. Appointment of attorney guardian ad litem in child abuse and neglect**
686 **proceedings.**

687 ~~[(1) If child abuse, child sexual abuse, or neglect is alleged in any proceeding in any~~
688 ~~state court, the court may upon its own motion or shall upon the motion of any party to the~~
689 ~~proceeding appoint an attorney guardian ad litem to represent the best interest of the child, in~~
690 ~~accordance with Sections 78-3a-911 and 78-3a-912.]~~

691 [(2)] (1) The court may appoint an attorney guardian ad litem, when it considers it
692 necessary and appropriate, to represent the best interest of [the] a child [in all related
693 proceedings conducted in any state court involving the alleged abuse, child sexual abuse, or
694 neglect.];

695 (a) in any criminal case where the defendant is alleged to have committed a crime
696 involving child abuse, child sexual abuse, or neglect against the child; or

697 (b) in any case where the appointment is otherwise expressly authorized by law.

698 [(3)] (2) The attorney guardian ad litem shall be appointed in accordance with and meet
699 the requirements of Sections 78-3a-911 and 78-3a-912.

700 [(4)] (3) If an attorney guardian ad litem has been appointed for the child by any court
701 in the state in any prior proceeding or related matter, the court may continue that appointment
702 or may reappoint that attorney guardian ad litem, if still available, to act on behalf of the child.

703 [(5)] (4) The court is responsible for all costs resulting from the appointment of an
704 attorney guardian ad litem and shall use funds appropriated by the Legislature for the guardian
705 ad litem program to cover those costs.

706 [(6)] (5) (a) If the court appoints the Office of [the] Guardian Ad Litem Director in a
707 civil case pursuant to this section, the court may assess all or part of those attorney's fees, court
708 costs, paralegal, staff, and volunteer expenses against the minor's parent, parents, or legal
709 guardian in an amount that the court determines to be just and appropriate.

710 (b) The court may not assess [~~those~~] the fees or costs described in Subsection (5)(a)
711 against a legal guardian, when that guardian is the state, or against a parent, parents, or legal
712 guardian who is found to be impecunious. If a person claims to be impecunious, the court shall
713 require of that person an affidavit of impecuniosity as provided in Section 78-7-36 and the
714 court shall follow the procedures and make the determinations as provided in Section 78-7-36.

715 (c) If the court appoints the Office of [~~the~~] Guardian Ad Litem Director in a criminal
716 case pursuant to this section and if the defendant is convicted of a crime which includes child
717 abuse, child sexual abuse, or neglect of a child for whom the Office of Guardian Ad Litem
718 Director is appointed, the court shall include as part of the defendant's sentence all or part of
719 the attorney's fees, court costs, and paralegal, staff, and volunteer expenses of the Office of
720 [~~the~~] Guardian Ad Litem Director.

721 [~~(7)~~] (6) An attorney guardian ad litem appointed in accordance with the requirements
722 of this section and Sections 78-3a-911 and 78-3a-912 is, when serving in the scope of duties of
723 an attorney guardian ad litem, considered an employee of this state for purposes of
724 indemnification under the Governmental Immunity Act.

725 Section 11. Section **78-7-45** is amended to read:

726 **78-7-45. Private attorney guardian ad litem -- Appointment -- Costs and fees --**
727 **Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum**
728 **qualifications.**

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

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

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

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

743 (ii) order the withdrawal of the private attorney guardian ad litem and, consistent with
744 Subsection 78-3a-912:

745 (A) appoint the Office of [~~the~~] Guardian Ad Litem[-] Director; or
746 (B) another private attorney guardian ad litem.

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

750 (b) If the court finds a party to be impecunious, under the provisions of Section
751 78-7-36, the court may direct the impecunious party's share of the assessment to be covered by
752 the attorney guardian ad litem pro bono obligation established in Subsection (6)(b).

753 (3) The attorney guardian ad litem appointed under the provisions of this section shall:
754 (a) represent the best interests of the minor from the date of the appointment until
755 released by the court;

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

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

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

762 (i) meet with and interview the minor;

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

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

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

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

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

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

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

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

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

785 (6) (a) Upon the advice of the Director of the Office of ~~[the]~~ Guardian Ad Litem
786 Director, the [Judicial Council] Commission on Criminal and Juvenile Justice, created in
787 Section 63-25a-101, shall by rule establish the minimum qualifications and requirements for
788 appointment by the court as an attorney guardian ad litem.

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

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

Legislative Review Note
as of 2-2-06 2:50 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

Passage will require additional ongoing funding of \$250,000, \$120,000, \$42,800, and \$169,000 for the Courts, Attorney General, Department of Human Services, and Commission on Criminal and Juvenile Justice respectively. Approximately 6 new FTEs will be needed to handle added responsibilities.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
General Fund	\$581,800	\$581,800	\$0	\$0
TOTAL	\$581,800	\$581,800	\$0	\$0

Individual and Business Impact

Fiscal impacts will vary according to individual cases.
