

Representative LaVar Christensen proposes the following substitute bill:

GUARDIAN AD LITEM AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: _____

LONG TITLE

General Description:

This bill transfers oversight of the Office of Guardian Ad Litem Director to the Commission on Criminal and Juvenile Justice and amends the Judicial Code and related provisions regarding the Office of Guardian Ad Litem Director and guardians ad litem.

Highlighted Provisions:

This bill:

- ▶ defines terms;
 - ▶ transfers oversight of the Office of Guardian Ad Litem Director, and rulemaking authority relating to guardians ad litem, from the Judicial Council to the Commission on Criminal and Juvenile Justice;
 - ▶ amends the Juvenile Court Act of 1996 by narrowing and modifying the authority of a court to appoint a guardian ad litem;
 - ▶ modifies the qualifications and duties of the guardian ad litem director;
 - ▶ requires the Commission on Criminal and Juvenile Justice to:
 - annually conduct a performance evaluation of the guardian ad litem director;
- and
- establish a procedure to receive and resolve complaints regarding the guardian



- 26 ad litem director, the Office of Guardian Ad Litem Director, or attorney guardians ad litem;
- 27 ▶ provides that a court may only appoint an attorney guardian ad litem:
- 28 • in cases involving an abused child, a neglected child, or a dependent child that
- 29 results in a judicial proceeding; or
- 30 • in any other case for which the appointment of an attorney guardian ad litem is
- 31 expressly authorized by law;
- 32 ▶ modifies the duties of guardians ad litem and the Office of Guardian Ad Litem
- 33 Director;
- 34 ▶ requires that, during the 2007 interim, the Health and Human Services Interim
- 35 Committee shall:
- 36 • consider a report from the guardian ad litem director regarding changes and
- 37 improvements made in response to the February 2005 performance audit and
- 38 recommendations for other legislative changes relating to guardians ad litem;
- 39 and
- 40 • conduct a study to determine whether the Office of Guardian Ad Litem Director
- 41 should be reauthorized or replaced with a system consisting solely of private
- 42 guardians ad litem;
- 43 ▶ requires the Health and Human Services Interim Committee to, during the 2006
- 44 interim, review the duties of guardians ad litem and determine whether the duties
- 45 should be modified;
- 46 ▶ removes obsolete language relating to a pilot program and to public access to
- 47 hearings and records for abuse, neglect, and dependency cases;
- 48 ▶ describes the circumstances under which fees and costs, incurred by the Office of
- 49 Guardian Ad Litem Director in a criminal case, may be recovered from a defendant
- 50 convicted of a crime committed against a child for whom the Office of Guardian Ad
- 51 Litem Director is appointed; and
- 52 ▶ makes technical changes.

53 **Monies Appropriated in this Bill:**

54 None

55 **Other Special Clauses:**

56 None

57 **Utah Code Sections Affected:**

58 AMENDS:

- 59 **63-25a-104**, as last amended by Chapter 220, Laws of Utah 2001
- 60 **78-3-21**, as last amended by Chapters 51 and 332, Laws of Utah 2003
- 61 **78-3a-112**, as renumbered and amended by Chapter 365, Laws of Utah 1997
- 62 **78-3a-115**, as last amended by Chapters 324 and 356, Laws of Utah 2004
- 63 **78-3a-115.1**, as last amended by Chapter 324, Laws of Utah 2004
- 64 **78-3a-116**, as last amended by Chapters 190 and 324, Laws of Utah 2004
- 65 **78-3a-911**, as last amended by Chapter 94, Laws of Utah 2003
- 66 **78-3a-912**, as last amended by Chapters 102, 286 and 304, Laws of Utah 2005
- 67 **78-7-9**, as last amended by Chapter 168, Laws of Utah 2002
- 68 **78-7-45**, as last amended by Chapter 168, Laws of Utah 2002

69

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

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

72 **63-25a-104. Duties of commission.**

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

- 74 (1) promote the commission's purposes as enumerated in Section 63-25a-101;
- 75 (2) promote the communication and coordination of all criminal and juvenile justice

76 agencies;

77 (3) study, evaluate, and report on the status of crime in the state and on the
 78 effectiveness of criminal justice policies, procedures, and programs that are directed toward the
 79 reduction of crime in the state;

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

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

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

87 (7) provide analysis, accountability, recommendations, and supervision for state and

88 federal criminal justice grant monies;

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

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

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

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

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

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

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

105 (c) defining and developing state and local programs and projects associated with the
106 improvement of information management for law enforcement and the administration of
107 justice; and

108 (d) establishing general policies concerning criminal and juvenile justice information
109 systems and making rules as necessary to carry out the duties under Subsection (10) and this
110 Subsection (12) [~~and Subsection (10)~~]; and

111 (13) supervise the Office of Guardian Ad Litem Director, in accordance with the
112 provisions of Sections 78-3a-911 and 78-3a-912, and assure compliance of the guardian ad
113 litem program with state and federal law, regulation, policy, and court rules.

114 Section 2. Section **78-3-21** is amended to read:

115 **78-3-21. Judicial Council -- Creation -- Members -- Terms and election --**

116 **Responsibilities -- Reports.**

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

119 (a) the chief justice of the Supreme Court;
120 (b) one member elected by the justices of the Supreme Court;
121 (c) one member elected by the judges of the Court of Appeals;
122 (d) five members elected by the judges of the district courts;
123 (e) two members elected by the judges of the juvenile courts;
124 (f) three members elected by the justice court judges; and
125 (g) a member or ex officio member of the Board of Commissioners of the Utah State
126 Bar who is an active member of the Bar in good standing elected by the Board of
127 Commissioners.

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

131 (b) All members of the council shall serve for three-year terms. If a council member
132 should die, resign, retire, or otherwise fail to complete a term of office, the appropriate
133 constituent group shall elect a member to complete the term of office. In courts having more
134 than one member, the members shall be elected to staggered terms. The person elected to the
135 Judicial Council by the Board of Commissioners shall be a member or ex officio member of
136 the Board of Commissioners and an active member of the Bar in good standing at the time the
137 person is elected. The person may complete a three-year term of office on the Judicial Council
138 even though the person ceases to be a member or ex officio member of the Board of
139 Commissioners. The person shall be an active member of the Bar in good standing for the
140 entire term of the Judicial Council.

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

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

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

148 (b) publish and submit to the governor, the chief justice of the Supreme Court, and the
149 Legislature an annual report of the operations of the courts, which shall include financial and

150 statistical data and may include suggestions and recommendations for legislation.

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

152 (i) standards for judicial competence; and

153 (ii) a formal program for the evaluation of judicial performance containing the

154 elements of and meeting the requirements of this Subsection (4).

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

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

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

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

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

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

165 (iii) a requirement that the judge receive a satisfactory score on questions identified by
166 the Judicial Council as relating to judicial certification on a survey of members of the Bar
167 developed by the Judicial Council in conjunction with the American Bar Association.

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

170 (i) integrity;

171 (ii) knowledge;

172 (iii) understanding of the law;

173 (iv) ability to communicate;

174 (v) punctuality;

175 (vi) preparation;

176 (vii) attentiveness;

177 (viii) dignity;

178 (ix) control over proceedings; and

179 (x) skills as a manager.

180 (e) (i) The Judicial Council shall provide the judicial performance evaluation

181 information and the disciplinary data required by Subsection 20A-7-702(2) to the Lieutenant
182 Governor for publication in the voter information pamphlet.

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

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

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

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

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

197 (8) (a) The council shall advise judicial officers and employees concerning ethical
198 issues and shall establish procedures for issuing informal and formal advisory opinions on
199 these issues.

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

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

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

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

210 (10) The Judicial Council may by rule designate municipalities in addition to those
211 designated by statute as a location of a trial court of record. There shall be at least one court

212 clerk's office open during regular court hours in each county. Any trial court of record may
213 hold court in any municipality designated as a location of a court of record. Designations by
214 the Judicial Council may not be made between July 1, 1997, and July 1, 1998.

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

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

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

224 [(14)] (13) The Judicial Council shall establish and maintain, in cooperation with the
225 Office of Recovery Services within the Department of Human Services, the part of the state
226 case registry that contains records of each support order established or modified in the state on
227 or after October 1, 1998, as is necessary to comply with the Social Security Act, 42 U.S.C. Sec.
228 654a.

229 ~~[(15) (a) On or before November 1, 2003, the Judicial Council, by rule, shall select one~~
230 ~~or more districts as pilot districts for purposes of Sections 78-3a-115, 78-3a-115.1, and~~
231 ~~78-3a-116.]~~

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

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

237 **78-3a-112. Appearances -- Parents to appear with minor -- Failure to appear --**
238 **Contempt -- Warrant of arrest, when authorized -- Parent's employer to grant time off --**
239 **Appointment of guardian ad litem.**

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

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

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

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

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

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

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

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

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

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

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

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

274 Section 4. Section **78-3a-115** is amended to read:

275 **78-3a-115. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's**
276 **cases heard separately from adult cases -- Minor or parents or custodian heard**
277 **separately -- Continuance of hearing -- Consolidation of proceedings involving more than**
278 **one minor.**

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

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

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

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

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

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

295 (d) The victim of any act charged in a petition or information involving an offense
296 committed by a minor which if committed by an adult would be a felony or a class A or class B
297 misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter
298 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77,
299 Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not
300 apply to important juvenile justice hearings as defined in Section 77-38-2.

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

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

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

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

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

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

313 Section 5. Section **78-3a-115.1** is amended to read:

314 **78-3a-115.1. Access to abuse, neglect, and dependency hearings.**

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

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

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

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

322 [~~(i)~~ (a) be detrimental to the best interest of a child who is a party to the proceeding;

323 [~~(ii)~~ (b) impair the fact-finding process; or

324 [~~(iii)~~ (c) be otherwise contrary to the interests of justice.

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

327 Section 6. Section **78-3a-116** is amended to read:

328 **78-3a-116. Hearings -- Record -- County attorney or district attorney**
329 **responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of**
330 **evidence.**

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

335 (b) (i) Notwithstanding any other provision, including Title 63, Chapter 2, Government

336 Records Access and Management Act, a record of a proceeding made under Subsection (1)(a)
337 shall be released by the court to any person upon a finding on the record for good cause.

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

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

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

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

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

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

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

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

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

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

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

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

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

364 (ii) petitions for termination of parental rights.

365 (c) The attorney general shall represent the Division of Child and Family Services in
366 actions involving minors who have not been adjudicated as abused or neglected, but who are

367 otherwise committed to the custody of that division by the juvenile court, and who are
368 classified in the division's management information system as having been placed in custody
369 primarily on the basis of delinquent behavior or a status offense. Nothing in this Subsection
370 (2)(c) may be construed to affect the responsibility of the county attorney or district attorney to
371 represent the state in those matters, in accordance with the provisions of Subsection (2)(a).

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

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

383 (b) For the purpose of determining proper disposition of a minor alleged to be or
384 adjudicated as abused, neglected, or dependent, dispositional reports prepared by Foster Care
385 Citizen Review Boards pursuant to Section 78-3g-103 may be received in evidence and may be
386 considered by the court along with other evidence. The court may require any person who
387 participated in preparing the dispositional report to appear as a witness, if the person is
388 reasonably available.

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

393 (i) plans to report to the court at the proceeding; or
394 (ii) could reasonably expect would be requested of the party by the court at the
395 proceeding.

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

397 (i) for dispositional hearings under Sections 78-3a-310 and 78-3a-311, no less than five

398 days before the proceeding;

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

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

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

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

406 (i) pretrial hearings; and

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

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

412 Section 7. Section **78-3a-911** is amended to read:

413 **78-3a-911. Office of Guardian Ad Litem Director -- Appointment of director --**
414 **Duties of director -- Contracts in second, third, and fourth districts.**

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

417 [~~(1)~~] (2) There is hereby created the Office of Guardian Ad Litem Director under the
418 direct supervision of the [~~Judicial Council~~] commission in accordance with Subsection
419 [~~78-3-21~~] 63-25a-104(13).

420 [~~(2)~~] (3) (a) The [~~Judicial Council~~] commission shall appoint one person to serve full
421 time as the guardian ad litem director for the state. The guardian ad litem director shall serve at
422 the pleasure of the [~~Judicial Council~~] commission.

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

425 (i) professional ability;

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

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

429 (iv) ability to develop training curricula and reliable methods for data collection and
430 evaluation[-]; and

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

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

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

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

438 (i) the guardian ad litem director;

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

440 (iii) attorney guardians ad litem.

441 [~~3~~] (4) The guardian ad litem director shall:

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

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

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

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

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

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

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

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

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

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

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

471 (l) administer the program of private guardians ad litem established by Section
472 78-7-45~~[-]~~;

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

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

477 ~~[(4)]~~ (5) A contract of employment or independent contract described under Subsection
478 ~~[(3)]~~ (4)(c) shall provide that attorney guardians ad litem in the second, third, and fourth
479 judicial districts devote their full time and attention to the role of attorney guardian ad litem,
480 having no clients other than the children whose interest they represent within the guardian ad
481 litem program.

482 Section 8. Section **78-3a-912** is amended to read:

483 **78-3a-912. Appointment of attorney guardian ad litem -- Duties and**
484 **responsibilities -- Training -- Trained staff and court-appointed special advocate**
485 **volunteers -- Costs -- Immunity -- Annual report -- Review by Child Welfare Legislative**
486 **Oversight Panel.**

487 (1) ~~[(a)]~~ The court~~[-(i)]~~ may appoint an attorney guardian ad litem to represent the best
488 interest of a minor ~~[involved in any case before the court; and (ii)]~~;

489 (a) in every case involving an abused child, a neglected child, or a dependent child that
490 results in a judicial proceeding; or

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

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

495 ~~[(b)]~~ (3) In all cases where an attorney guardian ad litem is appointed, the court shall
496 make a finding that establishes the necessity of the appointment.

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

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

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

502 ~~[(3)]~~ (4) The Office of ~~[the]~~ Guardian Ad Litem Director, through an attorney guardian
503 ad litem, shall:

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

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

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

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

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

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

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

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

516 (iv) ~~[personally assess or supervise an assessment of]~~ consistent with Subsection (5),
517 assess the appropriateness and safety of the minor's environment in each placement;

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

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

522 case;

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

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

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

526 Family Services to:

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

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

529 (i) to the extent possible, and unless it would be detrimental to the minor, personally or

530 through a trained volunteer, paralegal, or other trained staff, keep the minor advised of:

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

532 (ii) all court and administrative proceedings;

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

534 (iv) court action; and

535 (v) the psychiatric, medical, or other treatment or diagnostic services that are to be

536 provided to the minor;

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

538 (k) prepare proposed orders with clear and specific directions regarding services,

539 treatment, evaluation, assessment, and protection of the minor and the minor's family[~~and~~].

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

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

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

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

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

547 (5) In determining the appropriateness and safety of the minor's environment in each

548 placement under Subsection (4)(d)(iv), an attorney guardian ad litem may consider:

549 (a) any relevant reports or observations by:

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

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

552 (b) personal observation; or

553 (c) other relevant information.

554 [~~(4)~~] (6) (a) Consistent with this Subsection [~~(4)~~] (6), an attorney guardian ad litem may
555 use trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government
556 Workers Act, trained paralegals, and other trained staff to assist in investigation and
557 preparation of information regarding the cases of individual minors before the court.

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

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

563 (d) The court may use volunteers trained in accordance with the requirements of
564 Subsection [~~(4)~~] (6)(c) to assist in investigation and preparation of information regarding the
565 cases of individual minors within the jurisdiction.

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

570 [~~(5)~~] (7) The attorney guardian ad litem shall continue to represent the best interest of
571 the minor until released from that duty by the court.

572 [~~(6)~~] (8) (a) Consistent with Subsection [~~(6)~~] (8)(b), the juvenile court is responsible
573 for:

- 574 (i) all costs resulting from the appointment of an attorney guardian ad litem; and
575 (ii) the costs of volunteer, paralegal, and other staff appointment and training.

576 (b) The court shall use funds appropriated by the Legislature for the guardian ad litem
577 program to cover the costs described in Subsection [~~(6)~~] (8)(a).

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

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

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

584 (B) consistent with Subsection [~~(6)~~] (8)(d), a parent who is found to be impecunious.

585 (d) For purposes of Subsection [~~(6)~~] (8)(c)(ii)(B), if a person claims to be impecunious,
586 the court shall:

587 (i) require that person to submit an affidavit of impecuniosity as provided in Section
588 78-7-36; and

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

590 [~~(7)~~] (9) An attorney guardian ad litem appointed under this section, when serving in
591 the scope of the attorney guardian ad litem's duties as guardian ad litem is considered an
592 employee of the state for purposes of indemnification under Title 63, Chapter 30d,
593 Governmental Immunity Act of Utah.

594 [~~(8)~~] (10) (a) An attorney guardian ad litem shall represent the best interest of a minor.

595 (b) If the minor's wishes differ from the attorney's determination of the minor's best
596 interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in
597 addition to presenting the attorney's determination of the minor's best interest.

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

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

602 [~~(9)~~] (11) An attorney guardian ad litem shall be provided access to all Division of
603 Child and Family Services records regarding the minor at issue and the minor's family.

604 [~~(10)~~] (12) An attorney guardian ad litem shall maintain current and accurate records
605 regarding:

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

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

608 [~~(11)~~] (13) (a) Except as provided in Subsection [~~(11)~~] (13)(b), all records of an
609 attorney guardian ad litem are confidential and may not be released or made public upon
610 subpoena, search warrant, discovery proceedings, or otherwise. This Subsection (13)
611 supersedes Title 63, Chapter 2, Government Records Access and Management Act.

612 (b) Consistent with Subsection [~~(11)~~] (13)(d), all records of an attorney guardian ad
613 litem:

614 (i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative

615 Subpoena Powers; and

616 (ii) shall be released to the Legislature.

617 (c) (i) Except as provided in Subsection [~~(11)~~] (13)(c)(ii), records released in
618 accordance with Subsection [~~(11)~~] (13)(b) shall be maintained as confidential by the
619 Legislature.

620 (ii) Notwithstanding Subsection [~~(11)~~] (13)(c)(i), the Office of the Legislative Auditor
621 General may include summary data and nonidentifying information in its audits and reports to
622 the Legislature.

623 (d) (i) Subsection [~~(11)~~] (13)(b) constitutes an exception to Rules of Professional
624 Conduct, Rule 1.6, as provided by Rule 1.6(b)(4), because of:

625 (A) the unique role of an attorney guardian ad litem described in Subsection [~~(8)~~] (10);
626 and

627 (B) the state's role and responsibility:

628 (I) to provide a guardian ad litem program; and

629 (II) as parens patriae, to protect minors.

630 (ii) A claim of attorney-client privilege does not bar access to the records of an attorney
631 guardian ad litem by the Legislature, through legislative subpoena.

632 (e) The Office of [~~the~~] Guardian Ad Litem Director shall present an annual report to
633 the Child Welfare Legislative Oversight Panel detailing:

634 (i) the development, policy, and management of the statewide guardian ad litem
635 program;

636 (ii) the training and evaluation of attorney guardians ad litem and volunteers; and

637 (iii) the number of children served by the Office of [~~the~~] Guardian Ad Litem Director.

638 (14) (a) The guardian ad litem director shall report to the Health and Human Services
639 Interim Committee during the 2007 interim regarding:

640 (i) the progress of the Office of Guardian Ad Litem Director in making changes and
641 improvements in response to the February 2005 performance audit of the Office of Guardian
642 Ad Litem Director; and

643 (ii) recommendations for legislative changes relating to guardians ad litem.

644 (b) During the 2007 interim, the Health and Human Services Interim Committee shall:

645 (i) hear or review the report described in Subsection (14)(a); and

- 646 (ii) conduct a study to determine whether:
- 647 (A) the Office of Guardian Ad Litem Director should be:
- 648 (I) reauthorized; or
- 649 (II) replaced with a system consisting solely of private guardians ad litem; or
- 650 (B) other changes relating to guardians ad litem should be made by the Legislature.
- 651 (15) During the 2006 interim, the Health and Human Services Interim Committee shall
- 652 review the duties of guardians ad litem under this section to determine:
- 653 (a) whether guardians ad litem should perform each duty described in this section in
- 654 each case;
- 655 (b) whether any of the duties described in this section should be removed;
- 656 (c) whether all of the duties described in this section should be deleted and replaced
- 657 with a duty to represent the best interests of the minor in accordance with the ethical and
- 658 professional responsibilities of an attorney;
- 659 (d) the extent to which guardians ad litem should be involved in district court cases;
- 660 and
- 661 (e) whether a change should be made in the oversight of the Office of Guardian Ad
- 662 Litem Director.

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

664 **78-7-9. Appointment of attorney guardian ad litem in child abuse and neglect**

665 **proceedings.**

666 ~~[(1) If child abuse, child sexual abuse, or neglect is alleged in any proceeding in any~~

667 ~~state court, the court may upon its own motion or shall upon the motion of any party to the~~

668 ~~proceeding appoint an attorney guardian ad litem to represent the best interest of the child, in~~

669 ~~accordance with Sections 78-3a-911 and 78-3a-912.]~~

670 ~~[(2)]~~ (1) The court may appoint an attorney guardian ad litem, when it considers it

671 necessary and appropriate, to represent the best interest of ~~[the]~~ a child ~~[in all related~~

672 ~~proceedings conducted in any state court involving the alleged abuse, child sexual abuse, or~~

673 ~~neglect.];~~

674 (a) in any criminal case where the defendant is alleged to have committed a crime

675 involving child abuse, child sexual abuse, or neglect against the child; or

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

677 ~~[(3)]~~ (2) The attorney guardian ad litem shall be appointed in accordance with and meet
678 the requirements of Sections 78-3a-911 and 78-3a-912.

679 ~~[(4)]~~ (3) If an attorney guardian ad litem has been appointed for the child by any court
680 in the state in any prior proceeding or related matter, the court may continue that appointment
681 or may reappoint that attorney guardian ad litem, if still available, to act on behalf of the child.

682 ~~[(5)]~~ (4) The court is responsible for all costs resulting from the appointment of an
683 attorney guardian ad litem and shall use funds appropriated by the Legislature for the guardian
684 ad litem program to cover those costs.

685 ~~[(6)]~~ (5) (a) If the court appoints the Office of ~~[the]~~ Guardian Ad Litem Director in a
686 civil case pursuant to this section, the court may assess all or part of those attorney's fees, court
687 costs, paralegal, staff, and volunteer expenses against the minor's parent, parents, or legal
688 guardian in an amount that the court determines to be just and appropriate.

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

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

700 ~~[(7)]~~ (6) An attorney guardian ad litem appointed in accordance with the requirements
701 of this section and Sections 78-3a-911 and 78-3a-912 is, when serving in the scope of duties of
702 an attorney guardian ad litem, considered an employee of this state for purposes of
703 indemnification under the Governmental Immunity Act.

704 Section 10. Section **78-7-45** is amended to read:

705 **78-7-45. Private attorney guardian ad litem -- Appointment -- Costs and fees --**
706 **Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum**
707 **qualifications.**

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

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

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

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

722 (ii) order the withdrawal of the private attorney guardian ad litem and appoint the
723 Office of [~~the~~] Guardian Ad Litem Director.

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

727 (b) If the court finds a party to be impecunious, under the provisions of Section
728 78-7-36, the court may direct the impecunious party's share of the assessment to be covered by
729 the attorney guardian ad litem pro bono obligation established in Subsection (6)(b).

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

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

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

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

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

- 739 (i) meet with and interview the minor;
- 740 (ii) determine the minor's goals and concerns regarding custody or visitation; and
- 741 (iii) counsel the minor regarding the nature, purpose, status, and implications of the
- 742 case, of hearings, of recommendations, and proposals by parties and of court orders;
- 743 (e) conduct discovery, file pleadings and other papers, prepare and review orders, and
- 744 otherwise comply with the Utah Rules of Civil Procedure as necessary to protect the best
- 745 interest of the minor;
- 746 (f) unless excused by the court, prepare for and attend all mediation hearings and all
- 747 court conferences and hearings, and present witnesses and exhibits as necessary to protect the
- 748 best interests of the minor;
- 749 (g) identify community resources to protect the best interests of the minor and advocate
- 750 for those resources; and
- 751 (h) participate in all appeals unless excused by the court.
- 752 (4) (a) The attorney guardian ad litem shall represent the best interests of a minor. If
- 753 the minor's wishes differ from the attorney's determination of the minor's best interests, the
- 754 attorney guardian ad litem shall communicate to the court the minor's wishes and the attorney's
- 755 determination of the minor's best interests. A difference between the minor's wishes and the
- 756 attorney's determination of best interests is not sufficient to create a conflict of interest.
- 757 (b) The court may appoint one attorney guardian ad litem to represent the best interests
- 758 of more than one minor child of a marriage.
- 759 (5) An attorney guardian ad litem appointed under this section is immune from any
- 760 civil liability that might result by reason of acts performed within the scope of duties of the
- 761 attorney guardian ad litem.
- 762 (6) (a) Upon the advice of the Director of the Office of ~~[the]~~ Guardian Ad Litem
- 763 Director, the [Judicial Council] Commission on Criminal and Juvenile Justice, created in
- 764 Section 63-25a-101, shall by rule establish the minimum qualifications and requirements for
- 765 appointment by the court as an attorney guardian ad litem.
- 766 (b) An attorney guardian ad litem may be required to appear pro bono in one case for
- 767 every five cases in which the attorney is appointed with compensation.
- 768 (7) This section shall be effective in the Second, Third, and Fourth Judicial Districts on
- 769 July 1, 2001, and in the remaining judicial districts of the state on July 1, 2002.

State Impact

Passage will require additional ongoing funding of \$200,000, \$120,000, \$42,800, and \$205,900 for the Courts, Attorney General, Department of Human Services, and Commission on Criminal and Juvenile Justice (CCJJ) 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	\$568,700	\$568,700	\$0	\$0
TOTAL	\$568,700	\$568,700	\$0	\$0

Individual and Business Impact

No fiscal impact.
