

S.B. 213
CLARIFICATIONS TO GUARDIAN AD LITEM

Senator **Dan R. Eastman** proposes the following amendments:

1. *Page 1, Lines 20 through 21:*

20 Other Special Clauses:

21 ~~{None}~~ **This bill coordinates with HB 103, Changes to Definitions of a Child and a Minor by providing superseding and technical amendments.**

2. *Page 3, Lines 84 through 89:*

84 ~~{(k)}~~ **{(k)}** personally or through a trained volunteer, paralegal, or other trained staff,
85 monitor implementation of a ~~{(k)}~~ **{(k)}** ~~minor's child and family~~ **{(k)}** ~~{child's treatment}~~ plan and any
86 dispositional orders to ~~{(k)}~~ determine whether services ordered by the court ~~{(A)}~~ are actually
87 provided ~~{(B)}~~, are provided in a timely manner ~~{(k)}~~, and attempt to assess whether
88 ~~services ordered by the court~~ they are accomplishing ~~the~~ their intended goal ~~of the~~
89 ~~services~~.

3. *Page 9, After Line 267, insert:*

Section 3. Coordinating S.B. 213 with H.B. 103 -- Superseding and technical amendments.
If this S.B. 213, Clarifications to Guardian Ad Litem, and H.B. 103, Changes to Definitions of a Child and a Minor, both pass, it is the intent of the Legislature that Section 78-3a-912 be modified to read as follows:

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

(1) ~~{(a)}~~ The court ~~{(k)}~~ may appoint an attorney guardian ad litem to represent the best interest of a minor involved in any case before the court ~~{(k)}~~ and ~~{(k)}~~ shall consider only the best interest of a minor ~~{(k)}~~ with the provisions of Section 62A-4a-201, in determining whether to appoint a guardian ad litem.

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

(2) An attorney guardian ad litem shall be appointed to represent the best interest of each minor child who may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of date the day that ~~{(a)}~~ the minor child is removed from the minor's child's home by the division ~~{(k)}~~, or ~~{(b)}~~ the date the petition is filed, whichever occurs earlier.

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

- (a) represent the best interest of the minor in all proceedings;
 - (b) ~~[prior to representing any minor before the court;]~~ be trained in ~~[-(i)]~~ applicable statutory, regulatory, ~~[and]~~ case law ~~[-];~~ and the curriculum established by the Office of the Guardian Ad Litem for representation of minors prior to representing any minor before the court;
~~[(i) accordance with the United States Department of Justice National Court Appointed Special Advocate Association guidelines;]~~
 - (c) conduct or supervise an independent investigation in order to obtain first-hand, a clear understanding of the situation and needs of the minor;
 - (d)(i) personally meet with the minor;
 - (ii) personally, or through a trained staff, interview the minor if the minor is old enough to communicate; and
 - (iii) determine the minor's goals and concerns regarding placement ~~[-; and]~~ when the minor is capable of expressing goals and desires, and when the guardian ad litem determines it would not be harmful to the minor to ask questions concerning the minor's desires relating to placement;
~~[(iv) personally assess or supervise an assessment of the appropriateness and safety of the minor's environment in each placement;]~~
 - (e) file written motions, responses, or objections at all stages of a proceeding when necessary to protect the best interest of a minor;
 - (f) personally or through a trained volunteer, paralegal, or other trained staff, attend all administrative and foster care citizen review board hearings pertaining to the minor's case;
 - (g) participate in all appeals unless excused by order of the court;
 - (h) be familiar with local experts who can provide consultation and testimony regarding the reasonableness and appropriateness of efforts made by the Division of Child and Family Services to ~~[-(i)]~~ maintain a minor in the minor's home ~~[-];~~ or ~~[(ii)]~~ to reunify a ~~[minor]~~ child with the ~~[minor's]~~ child's parent;
 - (i) to the extent possible, and unless it would be detrimental to the minor, personally or through a trained volunteer, paralegal, or other trained staff, keep the minor advised of ~~[-(i)]~~ the status of the minor's case;
~~[(ii) all court and administrative proceedings;~~
~~—(iii) discussions with and proposals made by other parties;~~
~~—(iv) court action; and~~
~~—(v) the psychiatric, medical, or other treatment or diagnostic services that are to be provided to the minor;]~~
 - (j) review proposed orders for, and as requested by the court ~~[-(k)]~~, prepare proposed orders with clear and specific directions regarding services, treatment, and evaluation, assessment, and protection of the minor and the minor's family; and
~~[(k)]~~ (k) personally or through a trained volunteer, paralegal, or other trained staff, monitor implementation of a minor's child and family plan and any dispositional orders to ~~[-(i)]~~ determine whether services ordered by the court ~~[-(A)]~~ are actually provided ~~[-; and (B)]~~, are provided in a timely manner ~~[-; and (ii)]~~, and attempt to assess whether ~~[services ordered by the court]~~ they are accomplishing ~~[the]~~ their intended goal ~~[-of the services]~~.
- (4)(a) ~~[Consistent with this Subsection (4), an]~~ An attorney guardian ad litem may use trained volunteers, in

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

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

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

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

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

(6)(a) ~~[Consistent with Subsection (6)(b), the]~~ The juvenile court is responsible for~~[(i)]~~ all costs resulting from the appointment of an attorney guardian ad litem~~[(i)]~~ and ~~[(ii)]~~ the costs of volunteer, paralegal, and other staff appointment and training~~[(b)The court]~~, and shall use funds appropriated by the Legislature for the guardian ad litem program to cover ~~[the]~~ those costs ~~[described in Subsection (6)(a)]~~.

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

(ii) The court may not assess those fees or costs against~~[(A)]~~ a legal guardian, when that guardian is the state~~[(B)]~~ or ~~[(B)consistent with Subsection (6)(d);]~~ against a parent who is found to be impecunious. ~~[(d)For purposes of Subsection (6)(c)(ii)(B), if]~~ If a person claims to be impecunious, the court shall~~[(i)]~~ require of that person ~~[to submit]~~ an affidavit of impecuniosity as provided in Section 78-7-36~~[(i)]~~ and ~~[(ii)]~~ follow the procedures and make the determinations as provided in Section ~~[78-7-37]~~ 78-7-36.

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

(8)(a) An attorney guardian ad litem shall represent the best interest of a minor.

~~[(b)]~~ If the minor's wishes differ from the attorney's determination of the minor's best interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in addition to presenting the attorney's determination of the minor's best interest. ~~[(c)]~~ A difference between the minor's wishes and the attorney's determination of best interest may not be considered a conflict of interest for the attorney.

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

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

(10) An attorney guardian ad litem shall maintain current and accurate records regarding:

- (a) the number of times the attorney has had contact with each minor; and
- (b) the actions the attorney has taken in representation of the minor's best interest.

(11)(a) Except as provided in Subsection (11)(b), all records of an attorney guardian ad litem are confidential and may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise.

This subsection supersedes Title 63, Chapter 2, Government Records Access and Management Act.

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

- (i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers; and
- (ii) shall be released to the Legislature.

(c) ~~[(i) Except as provided in Subsection (11)(c)(ii), records]~~ Records released in accordance with Subsection (11)(b) shall be maintained as confidential by the Legislature. ~~[-(ii) Notwithstanding Subsection (11)(c)(i), the]~~ The Office of the Legislative Auditor General may, however, include summary data and nonidentifying information in its audits and reports to the Legislature.

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

(e) The Office of the Guardian Ad Litem shall present an annual report to the Child Welfare Legislative Oversight Panel detailing:

- (i) the development, policy, and management of the statewide guardian ad litem program;
- (ii) the training and evaluation of attorney guardians ad litem and volunteers; and
- (iii) the number of ~~[children]~~ minors served by the Office of the Guardian Ad Litem.