# AMENDMENTS TO CHILD WELFARE

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

Senate Sponsor: Margaret Dayton

**LONG TITLE**

**General Description:**

This bill: amends education requirements in order to comply with the requirements of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008; amends the Child Welfare Services part of the Utah Human Services Code; and amends the Juvenile Court Act of 1996. This bill also repeals provisions relating to Foster Care Citizen Review Boards.

**Highlighted Provisions:**

This bill:

- amends education requirements related to enrollment and attendance in order to comply with the requirements of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008;
- makes the disciplinary team approach to developing a child and family plan optional;
- deletes obsolete provisions relating to records of juvenile court proceedings;
- deletes all provisions and references relating to Foster Care Citizen Review Boards;
- reassigns certain statutory provisions and responsibilities of Foster Care Citizen Review Boards to the Division of Child and Family Services;
- requires a court to attempt to keep sibling groups of minors in state custody together, if keeping the sibling group together is practicable and in accordance with the best interest of the minors;
- amends provisions relating to the conduct of periodic review hearings for a minor in state custody;

- provides that the intentional, knowing, or reckless killing by a child's parent of the child's other parent, without legal justification, constitutes primae facie evidence of parental unfitness; and
- makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53A-2-207**, as last amended by Laws of Utah 2008, Chapter 346

**53A-11-101.5**, as enacted by Laws of Utah 2007, Chapter 81

**62A-4a-205**, as last amended by Laws of Utah 2008, Chapter 3

**63I-1-278**, as last amended by Laws of Utah 2008, Chapters 3, 148 and renumbered and amended by Laws of Utah 2008, Chapter 382

**78A-6-115**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78A-6-312**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78A-6-314**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78A-6-315**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78A-6-317**, as last amended by Laws of Utah 2008, Chapter 87 and renumbered and amended by Laws of Utah 2008, Chapter 3

**78A-6-508**, as last amended by Laws of Utah 2008, Chapter 137 and renumbered and amended by Laws of Utah 2008, Chapter 3

**78A-6-902**, as renumbered and amended by Laws of Utah 2008, Chapter 3

REPEALS:

**78B-8-101**, as enacted by Laws of Utah 2008, Chapter 3

**78B-8-102**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-8-103**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-8-104**, as enacted by Laws of Utah 2008, Chapter 3

**78B-8-105**, as enacted by Laws of Utah 2008, Chapter 3

**78B-8-106**, as enacted by Laws of Utah 2008, Chapter 3

**78B-8-107**, as enacted by Laws of Utah 2008, Chapter 3

**78B-8-108**, as enacted by Laws of Utah 2008, Chapter 3

**78B-8-109**, as enacted by Laws of Utah 2008, Chapter 3

**78B-8-110**, as enacted by Laws of Utah 2008, Chapter 3

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

Section 1. Section **53A-2-207** is amended to read:

**53A-2-207. Open enrollment options -- Procedures -- Processing fee -- Continuing enrollment.**

(1) Each local school board is responsible for providing educational services consistent with Utah state law and rules of the State Board of Education for each student who resides in the district and, as provided in this section through Section 53A-2-213 and to the extent reasonably feasible, for any student who resides in another district in the state and desires to attend a school in the district.

(2) (a) A school is open for enrollment of nonresident students if the enrollment level is at or below the open enrollment threshold.

(b) If a school's enrollment falls below the open enrollment threshold, the local school board shall allow a nonresident student to enroll in the school.

(3) A local school board may allow enrollment of nonresident students in a school that is operating above the open enrollment threshold.

(4) (a) A local school board shall adopt policies describing procedures for nonresident students to follow in applying for entry into the district's schools.

(b) Those procedures shall provide, as a minimum, for:

(i) distribution to interested parties of information about the school or school district and how to apply for admission;

(ii) use of standard application forms prescribed by the State Board of Education;

(iii) submission of applications from December 1 through the third Friday in February by those seeking admission during the early enrollment period for the following year;

(iv) submission of applications by those seeking admission during the late enrollment period;

(v) written notification to the student's parent or legal guardian of acceptance or rejection of an application:

(A) within six weeks after receipt of the application by the district or by March 31, whichever is later, for applications submitted during the early enrollment period;

(B) within two weeks after receipt of the application by the district or by the Friday before the new school year begins, whichever is later, for applications submitted during the late enrollment period for admission in the next school year; and

(C) within two weeks after receipt of the application by the district, for applications submitted during the late enrollment period for admission in the current year; and

(vi) written notification to the resident school for intradistrict transfers or the resident district for interdistrict transfers upon acceptance of a nonresident student for enrollment.

(c) (i) Notwithstanding the dates established in Subsection (4)(b) for submitting applications and notifying parents of acceptance or rejection of an application, a local school board may delay the dates if a local school board is not able to make a reasonably accurate projection of the early enrollment school capacity or late enrollment school capacity of a school due to:

(A) school construction or remodeling;

(B) drawing or revision of school boundaries; or

(C) other circumstances beyond the control of the local school board.

(ii) The delay may extend no later than four weeks beyond the date the local school board is able to make a reasonably accurate projection of the early enrollment school capacity or late enrollment school capacity of a school.

(5) A school district may charge a one-time $5 processing fee, to be paid at the time of

application.

(6) An enrolled nonresident student shall be permitted to remain enrolled in a school, subject to the same rules and standards as resident students, without renewed applications in subsequent years unless one of the following occurs:

(a) the student graduates;

(b) the student is no longer a Utah resident;

(c) the student is suspended or expelled from school; or

(d) the district determines that enrollment within the school will exceed the school's open enrollment threshold.

(7) (a) Determination of which nonresident students will be excluded from continued enrollment in a school during a subsequent year under Subsection (6)(d) is based upon time in the school, with those most recently enrolled being excluded first and the use of a lottery system when multiple nonresident students have the same number of school days in the school.

(b) Nonresident students who will not be permitted to continue their enrollment shall be notified no later than March 15 of the current school year.

(8) The parent or guardian of a student enrolled in a school that is not the student's school of residence may withdraw the student from that school for enrollment in another public school by submitting notice of intent to enroll the student in:

(a) the district of residence; or

(b) another nonresident district.

(9) Unless provisions have previously been made for enrollment in another school, a nonresident district releasing a student from enrollment shall immediately notify the district of residence, which shall enroll the student in the resident district and take such additional steps as may be necessary to ensure compliance with laws governing school attendance.

(10) (a) Except as provided in Subsection (10)(c), a student who transfers between schools, whether effective on the first day of the school year or after the school year has begun, by exercising an open enrollment option under this section may not transfer to a different

school during the same school year by exercising an open enrollment option under this section.

(b) The restriction on transfers specified in Subsection (10)(a) does not apply to a student transfer made for health or safety reasons.

(c) A local school board may adopt a policy allowing a student to exercise an open enrollment option more than once in a school year.

(11) Notwithstanding Subsections (2) and (6)(d), a student who is enrolled in a school that is not the student's school of residence, because school bus service is not provided between the student's neighborhood and school of residence for safety reasons:

(a) shall be allowed to continue to attend the school until the student finishes the highest grade level offered; and

(b) shall be allowed to attend the middle school, junior high school, or high school into which the school's students feed until the student graduates from high school.

(12) Notwithstanding any other provision of this part, a student shall be allowed to enroll in any charter school or other public school in any district, including a district where the student does not reside, if the enrollment is necessary, as determined by the Division of Child and Family Services, to comply with the provisions of 42 U.S.C. Section 675.

Section 2. Section **53A-11-101.5** is amended to read:

**53A-11-101.5. Compulsory education.**

(1) For purposes of this section:

(a) "Intentionally" is as defined in Section 76-2-103[~~;~~].

(b) "Recklessly" is as defined in Section 76-2-103[~~;~~].

(c) "Remainder of the school year" means the portion of the school year beginning on the day after the day on which the notice of compulsory education violation described in Subsection (3) is served and ending on the last day of the school year[~~; and~~].

(d) "School-age child" means a school-age minor under the age of 14.

(2) Except as provided in Section 53A-11-102 or 53A-11-102.5, the parent of a school-age minor shall enroll and send the school-age minor to a public or regularly established private school [~~during the school year of the district in which the school-age minor~~

~~resides~~].

(3) A school administrator, a designee of a school administrator, or a truancy specialist may issue a notice of compulsory education violation to a parent of a school-age child if the school-age child is absent without a valid excuse at least five times during the school year.

(4) The notice of compulsory education violation, described in Subsection (3):

(a) shall direct the parent of the school-age child to:

(i) meet with school authorities to discuss the school-age child's school attendance problems; and

(ii) cooperate with the school board, local charter board, or school district in securing regular attendance by the school-age child;

(b) shall designate the school authorities with whom the parent is required to meet;

(c) shall state that it is a class B misdemeanor for the parent of the school-age child to intentionally or recklessly:

(i) fail to meet with the designated school authorities to discuss the school-age child's school attendance problems; or

(ii) fail to prevent the school-age child from being absent without a valid excuse five or more times during the remainder of the school year;

(d) shall be served on the school-age child's parent by personal service or certified mail; and

(e) may not be issued unless the school-age child has been truant at least five times during the school year.

(5) It is a class B misdemeanor for a parent of a school-age minor to intentionally or recklessly fail to enroll the school-age minor in school, unless the school-age minor is exempt from enrollment under Section 53A-11-102 or 53A-11-102.5.

(6) It is a class B misdemeanor for a parent of a school-age child to, after being served with a notice of compulsory education violation in accordance with Subsections (3) and (4), intentionally or recklessly:

(a) fail to meet with the school authorities designated in the notice of compulsory

education violation to discuss the school-age child's school attendance problems; or

(b) fail to prevent the school-age child from being absent without a valid excuse five or more times during the remainder of the school year.

(7) A local school board, local charter board, or school district shall report violations of this section to the appropriate county or district attorney.

(8) The juvenile court has jurisdiction over an action filed under this section.

Section 3. Section **62A-4a-205** is amended to read:

**62A-4a-205. Child and family plan -- Parent-time.**

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

(2) (a) The division [~~shall~~] may use an interdisciplinary team approach in developing each child and family plan.

(b) The interdisciplinary team described in Subsection (2)(a) [~~shall include, but is not limited to,~~] may include representatives from the following fields:

(i) mental health;

(ii) education; and

(iii) if appropriate, law enforcement.

(3) (a) The division shall involve all of the following in the development of a child's child and family plan:

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

(ii) the child;

(iii) the child's foster parents; and

(iv) if appropriate, the child's stepparent.

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

(c) (i) The division shall make a substantial effort to develop a child and family plan with which the child's parents agree.

(ii) If a parent does not agree with a child and family plan:

(A) the division shall strive to resolve the disagreement between the division and the parent; and

(B) if the disagreement is not resolved, the division shall inform the court of the disagreement.

(4) A copy of the child and family plan shall, immediately upon completion, or as soon as reasonably possible thereafter, be provided to the:

(a) guardian ad litem;

(b) child's natural parents; and

(c) child's foster parents.

(5) Each child and family plan shall:

(a) specifically provide for the safety of the child, in accordance with federal law; and

(b) clearly define what actions or precautions will, or may be, necessary to provide for the health, safety, protection, and welfare of the child.

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

(a) the reason the child entered into the custody of the division;

(b) documentation of the:

(i) reasonable efforts made to prevent placement of the child in the custody of the division; or

(ii) emergency situation that existed and that prevented the reasonable efforts described in Subsection (6)(b)(i), from being made;

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

(d) the concurrent permanency goal for the child and the reason for the selection of that goal;

(e) if the plan is for the child to return to the child's family:

(i) specifically what the parents must do in order to enable the child to be returned home;

(ii) specifically how the requirements described in Subsection (6)(e)(i) may be

accomplished; and

(iii) how the requirements described in Subsection (6)(e)(i) will be measured;

(f) the specific services needed to reduce the problems that necessitated placing the child in the division's custody;

(g) the name of the person who will provide for and be responsible for case management;

(h) subject to Subsection (10), a parent-time schedule between the natural parent and the child;

(i) subject to Subsection (7), the health and mental health care to be provided to address any known or diagnosed mental health needs of the child;

(j) if residential treatment rather than a foster home is the proposed placement, a requirement for a specialized assessment of the child's health needs including an assessment of mental illness and behavior and conduct disorders; and

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

(7) (a) Subject to Subsection (7)(b), in addition to the information required under Subsection (6)(i), the plan shall include a specialized assessment of the medical and mental health needs of a child, if the child:

(i) is placed in residential treatment; and

(ii) has medical or mental health issues that need to be addressed.

(b) Notwithstanding Subsection (7)(a), a parent shall retain the right to seek a separate medical or mental health diagnosis of the parent's child from a licensed practitioner of the parent's choice.

(8) (a) Each child and family plan shall be specific to each child and the child's family, rather than general.

(b) The division shall train its workers to develop child and family plans that comply with:

(i) federal mandates; and

(ii) the specific needs of the particular child and the child's family.

(c) All child and family plans and expectations shall be individualized and contain specific time frames.

(d) Subject to Subsection (8)(h), child and family plans shall address problems that:

(i) keep a child in placement; and

(ii) keep a child from achieving permanence in the child's life.

(e) Each child and family plan shall be designed to minimize disruption to the normal activities of the child's family, including employment and school.

(f) In particular, the time, place, and amount of services, hearings, and other requirements ordered by the court in the child and family plan shall be designed, as much as practicable, to help the child's parents maintain or obtain employment.

(g) The child's natural parents, foster parents, and where appropriate, stepparents, shall be kept informed of and supported to participate in important meetings and procedures related to the child's placement.

(h) For purposes of Subsection (8)(d), a child and family plan may only include requirements that:

(i) address findings made by the court; or

(ii) (A) are requested or consented to by a parent or guardian of the child; and

(B) are agreed to by the division and the guardian ad litem.

(9) (a) Except as provided in Subsection (9)(b), with regard to a child who is three years of age or younger, if the goal is not to return the child home, the permanency plan for that child shall be adoption.

(b) Notwithstanding Subsection (9)(a), if the division documents to the court that there is a compelling reason that adoption, reunification, guardianship, and a placement described in Subsection 78A-6-306(6)(e) are not in the child's best interest, the court may order another planned permanent living arrangement in accordance with federal law.

(10) (a) Except as provided in Subsection (10)(b), parent-time may only be denied by a court order issued pursuant to Subsections 78A-6-312(2)(a)(ii) and (b).

(b) Notwithstanding Subsection (10)(a), the person designated by the division or a

court to supervise a parent-time session may deny parent-time for that session if the supervising person determines that, based on the parent's condition, it is necessary to deny parent-time in order to:

(i) protect the physical safety of the child;

(ii) protect the life of the child; or

(iii) consistent with Subsection (10)(c), prevent the child from being traumatized by contact with the parent.

(c) In determining whether the condition of the parent described in Subsection (10)(b) will traumatize a child, the person supervising the parent-time session shall consider the impact that the parent's condition will have on the child in light of:

(i) the child's fear of the parent; and

(ii) the nature of the alleged abuse or neglect.

Section 4. Section **63I-1-278** is amended to read:

**63I-1-278. Repeal dates, Title 78A and Title 78B.**

(1) The Office of the Court Administrator, created in Section 78A-2-105, is repealed July 1, 2018.

[~~(2) Foster care citizen review boards and steering committee, created in Title 78B, Chapter 8, Part 1, is repealed July 1, 2012.~~]

[~~(3)~~] (2) Alternative Dispute Resolution Act, created in Title 78B, Chapter 6, Part 2, is repealed July 1, 2016.

[~~(4)~~] (3) Section 78B-3-421, regarding medical malpractice arbitration agreements, is repealed July 1, 2009.

[~~(5)~~] (4) The case management program coordinator in Subsection 78A-2-108(4) is repealed July 1, 2009.

Section 5. Section **78A-6-115** is amended to read:

**78A-6-115. Hearings -- Record -- County attorney or district attorney responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of evidence.**

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

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

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

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

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

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

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

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

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

[~~(v) This Subsection (1)(b) applies:~~]

[~~(A) to records of proceedings made on or after November 1, 2003 in districts selected by the Judicial Council as pilot districts under Subsection 78A-2-104(15); and~~]

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

(2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a

prosecution district, the district attorney shall represent the state in any proceeding in a minor's case.

(b) The attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child and Family Services, and this chapter, relating to:

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

(ii) petitions for termination of parental rights.

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

(3) The board may adopt special rules of procedure to govern proceedings involving violations of traffic laws or ordinances, wildlife laws, and boating laws. However, proceedings involving offenses under Section 78A-6-606 are governed by that section regarding suspension of driving privileges.

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

(b) For the purpose of determining proper disposition of a minor alleged to be or adjudicated as abused, neglected, or dependent, dispositional reports prepared by [~~Foster Care Citizen Review Boards pursuant to Section 78B-8-103~~] the division under Section 78A-6-315 may be received in evidence and may be considered by the court along with other evidence.

The court may require any person who participated in preparing the dispositional report to appear as a witness, if the person is reasonably available.

(5) (a) In an abuse, neglect, or dependency proceeding occurring after the commencement of a shelter hearing under Section 78A-6-306 or the filing of a petition under Section 78A-6-304, each party to the proceeding shall provide in writing to the other parties or their counsel any information which the party:

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

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

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

(i) for dispositional hearings under Sections 78A-6-311 and 78A-6-312, no less than five days before the proceeding;

(ii) for proceedings under Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, in accordance with Utah Rules of Civil Procedure; and

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

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

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

(i) pretrial hearings; and

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

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

Section 6. Section **78A-6-312** is amended to read:

**78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

(1) The court may:

(a) make any of the dispositions described in Section 78A-6-117;

(b) place the minor in the custody or guardianship of any:

(i) individual; or

(ii) public or private entity or agency; or

(c) order:

(i) protective supervision;

(ii) family preservation;

(iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or

(iv) other services.

(2) (a) (i) Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the division, the court shall first:

(A) establish a primary permanency goal for the minor; and

(B) determine whether, in view of the primary permanency goal, reunification services are appropriate for the minor and the minor's family, pursuant to Subsection (3).

(ii) Subject to Subsection (2)(b), if the court determines that reunification services are appropriate for the minor and the minor's family, the court shall provide for reasonable parent-time with the parent or parents from whose custody the minor was removed, unless parent-time is not in the best interest of the minor.

(iii) (A) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the offending parent or parents.

(B) In all cases, the minor's health, safety, and welfare shall be the court's paramount concern in determining whether reasonable efforts to reunify should be made.

(b) (i) For purposes of Subsection (2)(a)(ii), parent-time is in the best interests of a minor unless the court makes a finding that it is necessary to deny parent-time in order to:

(A) protect the physical safety of the minor;

(B) protect the life of the minor; or

(C) prevent the minor from being traumatized by contact with the parent due to the minor's fear of the parent in light of the nature of the alleged abuse or neglect.

(ii) Notwithstanding Subsection (2)(a)(ii), a court may not deny parent-time based solely on a parent's failure to:

(A) prove that the parent has not used legal or illegal substances; or

(B) comply with an aspect of the child and family plan that is ordered by the court.

(c) (i) In addition to the primary permanency goal, the court shall establish a concurrent permanency goal that shall include:

(A) a representative list of the conditions under which the primary permanency goal will be abandoned in favor of the concurrent permanency goal; and

(B) an explanation of the effect of abandoning or modifying the primary permanency goal.

(ii) A permanency hearing shall be conducted in accordance with Subsection 78A-6-314(1)(b) within 30 days if something other than reunification is initially established as a minor's primary permanency goal.

(iii) (A) The court may amend a minor's primary permanency goal before the establishment of a final permanency plan under Section 78A-6-314.

(B) The court is not limited to the terms of the concurrent permanency goal in the event that the primary permanency goal is abandoned.

(C) If, at any time, the court determines that reunification is no longer a minor's primary permanency goal, the court shall conduct a permanency hearing in accordance with Section 78A-6-314 on or before the earlier of:

(I) 30 days from the day on which the court makes the determination described in this Subsection (2)(c)(iii)(C); or

(II) 12 months from the day on which the minor was first removed from the minor's home.

(d) (i) (A) If the court determines that reunification services are appropriate, it shall order that the division make reasonable efforts to provide services to the minor and the minor's

parent for the purpose of facilitating reunification of the family, for a specified period of time.

(B) In providing the services described in Subsection (2)(d)(i)(A), the minor's health, safety, and welfare shall be the division's paramount concern, and the court shall so order.

(ii) The court shall:

(A) determine whether the services offered or provided by the division under the child and family plan constitute "reasonable efforts" on the part of the division;

(B) determine and define the responsibilities of the parent under the child and family plan in accordance with Subsection 62A-4a-205(6)(e); and

(C) identify on the record the responsibilities described in Subsection (2)(d)(ii)(B), for the purpose of assisting in any future determination regarding the provision of reasonable efforts, in accordance with state and federal law.

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

(B) Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services.

(iv) If reunification services are ordered, the court may terminate those services at any time.

(v) If, at any time, continuation of reasonable efforts to reunify a minor is determined to be inconsistent with the final permanency plan for the minor established pursuant to Section 78A-6-314, then measures shall be taken, in a timely manner, to:

(A) place the minor in accordance with the permanency plan; and

(B) complete whatever steps are necessary to finalize the permanent placement of the minor.

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

(f) (i) If reunification services are ordered, a permanency hearing shall be conducted by the court in accordance with Section 78A-6-314 at the expiration of the time period for reunification services.

(ii) The permanency hearing shall be held no later than 12 months after the original removal of the minor.

(iii) If reunification services are not ordered, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

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

(i) hold a permanency hearing eight months after the date of the initial removal, pursuant to Section 78A-6-314; and

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

(h) With regard to a minor in the custody of the division whose parent or parents are ordered to receive reunification services but who have abandoned that minor for a period of six months from the date that reunification services were ordered:

(i) the court shall terminate reunification services; and

(ii) the division shall petition the court for termination of parental rights.

(i) When a court conducts a permanency hearing for a minor under Section 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the sibling group together is:

(i) practicable; and

(ii) in accordance with the best interest of the minor.

(3) (a) Because of the state's interest in and responsibility to protect and provide permanency for minors who are abused, neglected, or dependent, the Legislature finds that a parent's interest in receiving reunification services is limited.

(b) The court may determine that:

(i) efforts to reunify a minor with the minor's family are not reasonable or appropriate, based on the individual circumstances; and

(ii) reunification services should not be provided.

(c) In determining "reasonable efforts" to be made with respect to a minor, and in making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount concern.

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

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

(B) subject to Subsection (3)(d)(ii), the parent is suffering from a mental illness of such magnitude that it renders the parent incapable of utilizing reunification services;

(C) the minor was previously adjudicated as an abused child due to physical abuse, sexual abuse, or sexual exploitation, and following the adjudication the minor:

(I) was removed from the custody of the minor's parent;

(II) was subsequently returned to the custody of the parent; and

(III) is being removed due to additional physical abuse, sexual abuse, or sexual exploitation;

(D) the parent:

(I) caused the death of another minor through abuse or neglect; or

(II) committed, aided, abetted, attempted, conspired, or solicited to commit:

(Aa) murder or manslaughter of a child; or

(Bb) child abuse homicide;

(E) the minor suffered severe abuse by the parent or by any person known by the parent, if the parent knew or reasonably should have known that the person was abusing the minor;

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

(G) the parent's rights are terminated with regard to any other minor;

(H) the minor is removed from the minor's home on at least two previous occasions and reunification services were offered or provided to the family at those times;

(I) the parent has abandoned the minor for a period of six months or longer;

(J) the parent permitted the child to reside, on a permanent or temporary basis, at a location where the parent knew or should have known that a clandestine laboratory operation was located; or

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

(ii) The finding under Subsection (3)(d)(i)(B) shall be based on competent evidence from at least two medical or mental health professionals, who are not associates, establishing that, even with the provision of services, the parent is not likely to be capable of adequately caring for the minor within 12 months from the day on which the court finding is made.

(4) In determining whether reunification services are appropriate, the court shall take into consideration:

(a) failure of the parent to respond to previous services or comply with a previous child and family plan;

(b) the fact that the minor was abused while the parent was under the influence of drugs or alcohol;

(c) any history of violent behavior directed at the child or an immediate family member;

(d) whether a parent continues to live with an individual who abused the minor;

(e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

(f) testimony by a competent professional that the parent's behavior is unlikely to be successful; and

(g) whether the parent has expressed an interest in reunification with the minor.

(5) (a) If reunification services are not ordered pursuant to Subsection (3)(a), and the whereabouts of a parent become known within six months of the out-of-home placement of the

minor, the court may order the division to provide reunification services.

(b) The time limits described in Subsection (2) are not tolled by the parent's absence.

(6) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless it determines that those services would be detrimental to the minor.

(b) In making the determination described in Subsection (6)(a), the court shall consider:

(i) the age of the minor;

(ii) the degree of parent-child bonding;

(iii) the length of the sentence;

(iv) the nature of the treatment;

(v) the nature of the crime or illness;

(vi) the degree of detriment to the minor if services are not offered;

(vii) for a minor ten years of age or older, the minor's attitude toward the implementation of family reunification services; and

(viii) any other appropriate factors.

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

(d) Reunification services for an institutionalized parent are subject to the 12-month limitation imposed in Subsection (2), unless the court determines that continued reunification services would be in the minor's best interest.

(7) If, pursuant to Subsections (3)(d)(i)(B) through (K), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

Section 7. Section **78A-6-314** is amended to read:

**78A-6-314. Permanency hearing -- Final plan -- Petition for termination of parental rights filed -- Hearing on termination of parental rights.**

(1) (a) When reunification services have been ordered in accordance with Section 78A-6-312, with regard to a minor who is in the custody of the Division of Child and Family

Services, a permanency hearing shall be held by the court no later than 12 months after the original removal of the minor.

(b) If reunification services were not ordered at the dispositional hearing, a permanency hearing shall be held within 30 days from the date of the dispositional hearing.

(2) (a) If reunification services were ordered by the court in accordance with Section 78A-6-312, the court shall, at the permanency hearing, determine, consistent with Subsection (3), whether the minor may safely be returned to the custody of the minor's parent.

(b) If the court finds, by a preponderance of the evidence, that return of the minor would create a substantial risk of detriment to the minor's physical or emotional well-being, the minor may not be returned to the custody of the minor's parent.

(c) Prima facie evidence that return of the minor to a parent or guardian would create a substantial risk of detriment to the minor is established if the parent or guardian fails to:

(i) participate in a court approved child and family plan;

(ii) comply with a court approved child and family plan in whole or in part; or

(iii) meet the goals of a court approved child and family plan.

(3) In making a determination under Subsection (2)(a), the court shall review and consider:

(a) the report prepared by the Division of Child and Family Services;

(b) any admissible evidence offered by the minor's guardian ad litem;

(c) any report [~~prepared by a foster care citizen review board pursuant to Section 78B-8-103~~] submitted by the division under Subsection 78A-6-315(3)(a)(i);

(d) any evidence regarding the efforts or progress demonstrated by the parent; and

(e) the extent to which the parent cooperated and availed himself of the services provided.

(4) (a) With regard to a case where reunification services were ordered by the court, if a minor is not returned to the minor's parent or guardian at the permanency hearing, the court shall:

(i) order termination of reunification services to the parent;

(ii) make a final determination regarding whether termination of parental rights, adoption, or permanent custody and guardianship is the most appropriate final plan for the minor, taking into account the minor's primary permanency goal established by the court pursuant to Section 78A-6-312; and

(iii) establish a concurrent plan that identifies the second most appropriate final plan for the minor.

(b) If the Division of Child and Family Services documents to the court that there is a compelling reason that adoption, reunification, guardianship, and a placement described in Subsection 78A-6-306(6)(e) are not in the minor's best interest, the court may order another planned permanent living arrangement, in accordance with federal law.

(c) If the minor clearly desires contact with the parent, the court shall take the minor's desire into consideration in determining the final plan.

(d) Consistent with Subsection (4)(e), the court may not extend reunification services beyond 12 months from the date the minor was initially removed from the minor's home, in accordance with the provisions of Section 78A-6-312, except that the court may extend reunification services for no more than 90 days if the court finds that:

(i) there has been substantial compliance with the child and family plan;

(ii) reunification is probable within that 90-day period; and

(iii) the extension is in the best interest of the minor.

(e) (i) In no event may any reunification services extend beyond 15 months from the date the minor was initially removed from the minor's home.

(ii) Delay or failure of a parent to establish paternity or seek custody does not provide a basis for the court to extend services for that parent beyond that 12-month period.

(f) The court may, in its discretion:

(i) enter any additional order that it determines to be in the best interest of the minor, so long as that order does not conflict with the requirements and provisions of Subsections (4)(a) through (e); or

(ii) order the division to provide protective supervision or other services to a minor

and the minor's family after the division's custody of a minor has been terminated.

(5) If the final plan for the minor is to proceed toward termination of parental rights, the petition for termination of parental rights shall be filed, and a pretrial held, within 45 calendar days after the permanency hearing.

(6) (a) Any party to an action may, at any time, petition the court for an expedited permanency hearing on the basis that continuation of reunification efforts are inconsistent with the permanency needs of the minor.

(b) If the court so determines, it shall order, in accordance with federal law, that:

(i) the minor be placed in accordance with the permanency plan; and

(ii) whatever steps are necessary to finalize the permanent placement of the minor be completed as quickly as possible.

(7) Nothing in this section may be construed to:

(a) entitle any parent to reunification services for any specified period of time;

(b) limit a court's ability to terminate reunification services at any time prior to a permanency hearing; or

(c) limit or prohibit the filing of a petition for termination of parental rights by any party, or a hearing on termination of parental rights, at any time prior to a permanency hearing.

(8) (a) Subject to Subsection (8)(b), if a petition for termination of parental rights is filed prior to the date scheduled for a permanency hearing, the court may consolidate the hearing on termination of parental rights with the permanency hearing.

(b) For purposes of Subsection (8)(a), if the court consolidates the hearing on termination of parental rights with the permanency hearing:

(i) the court shall first make a finding regarding whether reasonable efforts have been made by the Division of Child and Family Services to finalize the permanency goal for the minor; and

(ii) any reunification services shall be terminated in accordance with the time lines described in Section 78A-6-312.

(c) A decision on a petition for termination of parental rights shall be made within 18 months from the day on which the minor is removed from the minor's home.

(9) If a court determines that a child will not be returned to a parent of the child, the court shall consider appropriate placement options inside and outside of the state.

Section 8. Section **78A-6-315** is amended to read:

**78A-6-315. Periodic review hearings.**

[~~(1) Pursuant to federal law, periodic review hearings shall be held no less frequently than once every six months, either by the court or by a foster care citizen review board, in accordance with the provisions of Title 78B, Chapter 8, Part 1, Foster Care Citizen Review Board. In districts or areas where foster care citizen review boards have not been established, either the court or the Division of Child and Family Services shall conduct the review. In districts where they are established, foster care citizen review boards shall be considered to be the panels described in 42 U.S.C. Sections 675(5) and (6), which are required to conduct periodic reviews unless court reviews are conducted.~~]

(1) At least every six months, the division or the court shall conduct a periodic review of the status of each child in the custody of the division, until the court terminates the division's custody of the child.

(2) (a) The review described in Subsection (1) shall be conducted in accordance with the requirements of the case review system described in 42 U.S.C. Section 675.

(b) If a review described in Subsection (1) is conducted by the division, the division shall:

(i) conduct the review in accordance with the administrative review requirements of 42 U.S.C. Section 675; and

(ii) to the extent practicable, involve volunteer citizens in the administrative review process.

[~~(2)~~] (3) (a) Within 30 days after completion of a review[~~, a foster care citizen review board shall submit~~] conducted by the division, the division shall:

(i) submit a copy of its dispositional report to the court to be made a part of the court's

legal file[~~;~~]; and

(ii) provide [~~copies to all parties to an action. In districts or areas where the Division of Child and Family Services conducts a review, it shall provide copies of its report to the court and to all parties within 30 days after completion of its review~~] a copy of the dispositional report to each party in the case to which the review relates.

(b) [~~In accordance with Section 78B-8-103, dispositional reports of foster care citizen review boards shall be received and reviewed by the court~~] The court shall receive and review each dispositional report submitted under Subsection (3)(a)(i) in the same manner as the court receives and reviews [~~the reports~~] a report described in Section 78A-6-605. [~~The report by a board, if~~]

(c) If a report submitted under Subsection (3)(a)(i) is determined to be an ex parte communication with a judge, the report shall be considered a communication authorized by law. [~~Foster care citizen review board dispositional reports~~]

(d) A report described in Subsection (3)(a)(i) may be received as evidence, and may be considered by the court along with other evidence. The court may require any person who participated in the dispositional report to appear as a witness if the person is reasonably available.

Section 9. Section **78A-6-317** is amended to read:

**78A-6-317. All proceedings -- Persons entitled to be present.**

(1) A child who is the subject of a juvenile court hearing, any person entitled to notice pursuant to Section 78A-6-306 or 78A-6-310, preadoptive parents, foster parents, and any relative providing care for the child, are:

(a) entitled to notice of, and to be present at, each hearing and proceeding held under this part, including administrative [~~and citizen~~] reviews; and

(b) have a right to be heard at each hearing and proceeding described in Subsection (1)(a).

(2) A child shall be represented at each hearing by the guardian ad litem appointed to the child's case by the court. The child has a right to be present at each hearing, subject to the

discretion of the guardian ad litem or the court regarding any possible detriment to the child.

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

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

(4) In every abuse, neglect, or dependency proceeding under this chapter, the court shall order that the child be represented by a guardian ad litem, in accordance with Section 78A-6-902. The guardian ad litem shall represent the best interest of the child, in accordance with the requirements of that section, at the shelter hearing and at all subsequent court and administrative proceedings, including any proceeding for termination of parental rights in accordance with Part 5, Termination of Parental Rights Act.

(5) (a) Except as provided in Subsection (5)(b), and notwithstanding any other provision of law:

(i) counsel for all parties to the action shall be given access to all records, maintained by the division or any other state or local public agency, that are relevant to the abuse, neglect, or dependency proceeding under this chapter; and

(ii) if the natural parent of a child is not represented by counsel, the natural parent shall have access to the records described in Subsection (5)(a)(i).

(b) The disclosures described in Subsection (5)(a) are not required in the following circumstances:

(i) subject to Subsection (5)(c), the division or other state or local public agency did not originally create the record being requested;

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

(iii) disclosure of the record would jeopardize the anonymity of the person or persons making the initial report of abuse or neglect or any others involved in the subsequent

investigation;

(iv) disclosure of the record would jeopardize the life or physical safety of a person who has been a victim of domestic violence; or

(v) the record is a report maintained in the Management Information System, for which a finding of unsubstantiated, unsupported, or without merit has been made, unless the person requesting the information is the alleged perpetrator in the report or counsel for the alleged perpetrator in the report.

(c) If a disclosure is denied under Subsection (5)(b)(i), the division shall inform the person making the request of the following:

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

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

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

[~~(6) (a) The appropriate foster care citizen review board shall be given access to all records, maintained by the division or any other state or local public agency, that are relevant to an abuse, neglect, or dependency proceeding under this chapter.~~]

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

Section 10. Section **78A-6-508** is amended to read:

**78A-6-508. Evidence of grounds for termination.**

(1) In determining whether a parent or parents have abandoned a child, it is prima facie evidence of abandonment that the parent or parents:

(a) although having legal custody of the child, have surrendered physical custody of the child, and for a period of six months following the surrender have not manifested to the child or to the person having the physical custody of the child a firm intention to resume physical custody or to make arrangements for the care of the child;

(b) have failed to communicate with the child by mail, telephone, or otherwise for six months;

(c) failed to have shown the normal interest of a natural parent, without just cause; or

(d) have abandoned an infant, as described in Subsection 78A-6-316(1).

(2) In determining whether a parent or parents are unfit or have neglected a child the court shall consider, but is not limited to, the following circumstances, conduct, or conditions:

(a) emotional illness, mental illness, or mental deficiency of the parent that renders the parent unable to care for the immediate and continuing physical or emotional needs of the child for extended periods of time;

(b) conduct toward a child of a physically, emotionally, or sexually cruel or abusive nature;

(c) habitual or excessive use of intoxicating liquors, controlled substances, or dangerous drugs that render the parent unable to care for the child;

(d) repeated or continuous failure to provide the child with adequate food, clothing, shelter, education, or other care necessary for the child's physical, mental, and emotional health and development by a parent or parents who are capable of providing that care;

(e) whether the parent is incarcerated as a result of conviction of a felony, and the sentence is of such length that the child will be deprived of a normal home for more than one year; or

(f) a history of violent behavior.

(3) A parent who, legitimately practicing the parent's religious beliefs, does not provide specified medical treatment for a child is not, for that reason alone, a negligent or unfit parent.

(4) (a) Notwithstanding Subsection (2), a parent may not be considered neglectful or unfit because of a health care decision made for a child by the child's parent unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(b) Nothing in Subsection (4)(a) may prohibit a parent from exercising the right to

obtain a second health care opinion.

(5) If a child has been placed in the custody of the division and the parent or parents fail to comply substantially with the terms and conditions of a plan within six months after the date on which the child was placed or the plan was commenced, whichever occurs later, that failure to comply is evidence of failure of parental adjustment.

(6) The following circumstances constitute prima facie evidence of unfitness:

(a) sexual abuse, sexual exploitation, injury, or death of a sibling of the child, or of any child, due to known or substantiated abuse or neglect by the parent or parents;

(b) conviction of a crime, if the facts surrounding the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care to the extent necessary for the child's physical, mental, or emotional health and development;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child; [~~or~~]

(d) the parent has committed, aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter of a child or child abuse homicide[~~.~~]; or

(e) the parent intentionally, knowingly, or recklessly causes the death of another parent of the child, without legal justification.

Section 11. Section **78A-6-902** is amended to read:

**78A-6-902. Appointment of attorney guardian ad litem -- Right of refusal -- Duties and responsibilities -- Training -- Trained staff and court-appointed special advocate volunteers -- Costs -- Immunity -- Annual report.**

(1) (a) The court:

(i) may appoint an attorney guardian ad litem to represent the best interest of a minor involved in any case before the court; and

(ii) shall consider the best interest of a minor, consistent 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 represent the best interest of each child who may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of the day that:

(a) the child is removed from the child's home by the division; or

(b) the petition is filed.

(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

(ii) 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 interview the minor if the minor is old enough to communicate;

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

(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) reunify a child with the 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, evaluation, assessment, and protection of the minor and the minor's family; and

(l) 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) attempt to assess whether services ordered by the court are accomplishing the intended goal of the services.

(4) (a) Consistent with this Subsection (4), 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 attorney guardian ad litem described in Subsection (4)(a) may not delegate the attorney's responsibilities described in Subsection (3).

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

(e) 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 by the court.

(6) (a) Consistent with Subsection (6)(b), the juvenile court is responsible for:

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

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

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

(c) (i) When the court appoints an attorney guardian ad litem under this section, the court may assess all or part of the attorney fees, court costs, and paralegal, staff, and volunteer expenses against the 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; or

(B) consistent with Subsection (6)(d), a parent who is found to be impecunious.

(d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the court shall:

(i) require that person to submit an affidavit of impecuniosity as provided in Section 78A-2-302; and

(ii) follow the procedures and make the determinations as provided in Section 78A-2-304.

(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 63G, Chapter 7, 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) The court may appoint one attorney guardian ad litem to represent the best interests of more than one 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 63G, Chapter 2, Government Records Access and Management Act.

(b) Consistent with Subsection (11)(d), 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 released in accordance with Subsection (11)(b) shall be maintained as confidential by the Legislature.

(ii) Notwithstanding Subsection (11)(c)(i), the Office of the Legislative Auditor

General may include summary data and nonidentifying information in its audits and reports to the Legislature.

(d) (i) Subsection (11)(b) 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 minors served by the Office of the Guardian Ad Litem.

Section 12. **Repealer.**

This bill repeals:

Section **78B-8-101, Title.**

Section **78B-8-102, Definitions.**

Section **78B-8-103, Foster Care Citizen Review Board Steering Committee -- Membership -- Chair -- Duties.**

Section **78B-8-104, Compensation -- Expenses -- Per Diem.**

Section **78B-8-105, Rulemaking.**

Section **78B-8-106, Reports.**

Section **78B-8-107, Gifts -- Grants -- Donations.**

Section **78B-8-108, Foster care citizen review boards -- Membership -- Procedures -- Division responsibilities.**

Section **78B-8-109, Periodic reviews -- Notice -- Participants.**

Section **78B-8-110, Dispositional report.**