

GUARDIAN AD LITEM AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: John L. Valentine

LONG TITLE

Committee Note:

The Child Welfare Legislative Oversight Panel recommended this bill.

General Description:

This bill amends provisions of the Utah Code relating to attorneys guardian ad litem and the Office of Guardian Ad Litem Director.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that supervision of the Office of Guardian Ad Litem is the responsibility of the Guardian Ad Litem Oversight Committee, which is established by the Judicial Council;
- ▶ places limitations on, and establishes requirements regarding, the appointment of an attorney guardian ad litem in a district court proceeding;
- ▶ modifies provisions relating to the duties of an attorney guardian ad litem, a private attorney guardian ad litem, and the director of the Office of Guardian Ad Litem;
- ▶ changes the name of the "Office of Guardian Ad Litem Director" to the "Office of Guardian Ad Litem";
- ▶ modifies the qualifications of the director of the Office of Guardian Ad Litem;
- ▶ deletes provisions relating to the court's direct use of volunteers, and the use of peers, to assist in a minor's case; and



28 ▶ makes technical changes.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill provides an effective date.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **51-9-409**, as last amended by Laws of Utah 2008, Chapter 3 and renumbered and
36 amended by Laws of Utah 2008, Chapter 382

37 **62A-4a-202.4**, as last amended by Laws of Utah 2008, Chapters 3 and 299

38 **62A-4a-207**, as last amended by Laws of Utah 2008, Chapters 3, 250, and 382

39 **62A-4a-1003**, as last amended by Laws of Utah 2008, Chapters 3, 299, and 382

40 **62A-4a-1006**, as last amended by Laws of Utah 2008, Chapters 3, 59, 299, and 382

41 **63A-11-202**, as last amended by Laws of Utah 2008, Chapter 382

42 **67-5b-105**, as last amended by Laws of Utah 1997, Chapter 377

43 **78A-2-104 (Superseded 01/01/12)**, as renumbered and amended by Laws of Utah
44 2008, Chapter 3

45 **78A-2-104 (Effective 01/01/12)**, as last amended by Laws of Utah 2008, Chapter 248
46 and renumbered and amended by Laws of Utah 2008, Chapter 3

47 **78A-2-227**, as renumbered and amended by Laws of Utah 2008, Chapter 3

48 **78A-2-228**, as renumbered and amended by Laws of Utah 2008, Chapter 3

49 **78A-6-308**, as last amended by Laws of Utah 2008, Chapter 17 and renumbered and
50 amended by Laws of Utah 2008, Chapter 3

51 **78A-6-512**, as renumbered and amended by Laws of Utah 2008, Chapter 3

52 **78A-6-901**, as renumbered and amended by Laws of Utah 2008, Chapter 3

53 **78A-6-902**, as renumbered and amended by Laws of Utah 2008, Chapter 3

54

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

56 Section 1. Section **51-9-409** is amended to read:

57 **51-9-409. Guardian Ad Litem Services Account established -- Funding -- Uses.**

58 (1) There is created in the General Fund a restricted account known as the Guardian Ad

59 Litem Services Account, for the purpose of funding the Office of [the] Guardian Ad Litem
60 [Director], in accordance with the provisions of Sections 78A-6-901 and 78A-6-902. [The]

61 (2) Except as provided in Subsection (3), the Division of Finance shall allocate 1.75%
62 of the collected surcharge established in Section 51-9-401 to the Guardian Ad Litem Services
63 Account. [~~That amount may not, however,~~]

64 (3) The amount allocated under Subsection (2) may not exceed the amount
65 appropriated to the Guardian Ad Litem Services Account by the Legislature.

66 Section 2. Section **62A-4a-202.4** is amended to read:

67 **62A-4a-202.4. Access to criminal background information.**

68 (1) For purposes of background screening and investigation of abuse or neglect under
69 this chapter and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings,
70 the division shall have direct access to criminal background information maintained pursuant to
71 Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

72 (2) The division and the Office of [the] Guardian Ad Litem [Director] are [also]
73 authorized to request the Department of Public Safety to conduct a complete Federal Bureau of
74 Investigation criminal background check through the national criminal history system (NCIC).

75 Section 3. Section **62A-4a-207** is amended to read:

76 **62A-4a-207. Legislative Oversight Panel -- Responsibilities.**

77 (1) (a) There is created the Child Welfare Legislative Oversight Panel composed of the
78 following members:

79 (i) two members of the Senate, one from the majority party and one from the minority
80 party, appointed by the president of the Senate; and

81 (ii) three members of the House of Representatives, two from the majority party and
82 one from the minority party, appointed by the speaker of the House of Representatives.

83 (b) Members of the panel shall serve for two-year terms, or until their successors are
84 appointed.

85 (c) A vacancy exists whenever a member ceases to be a member of the Legislature, or
86 when a member resigns from the panel. Vacancies shall be filled by the appointing authority,
87 and the replacement shall fill the unexpired term.

88 (2) The president of the Senate shall designate one of the senators appointed to the
89 panel under Subsection (1) as the Senate chair of the panel. The speaker of the House of

90 Representatives shall designate one of the representatives appointed to the panel under
91 Subsection (1) as the House chair of the panel.

92 (3) The panel shall follow the interim committee rules established by the Legislature.

93 (4) The panel shall:

94 (a) examine and observe the process and execution of laws governing the child welfare
95 system by the executive branch and the judicial branch;

96 (b) upon request, receive testimony from the public, the juvenile court, and from all
97 state agencies involved with the child welfare system, including~~[-but not limited to,]~~ the
98 division, other offices and agencies within the department, the attorney general's office, the
99 Office of ~~[the]~~ Guardian Ad Litem ~~[Director]~~, and school districts;

100 (c) before ~~[October 1, 2002, and before]~~ October 1 of each year ~~[thereafter]~~, receive
101 reports from the division, the attorney general, and the judicial branch identifying the cases not
102 in compliance with the time limits established in Section 78A-6-309, regarding pretrial and
103 adjudication hearings, Section 78A-6-312, regarding dispositional hearings and reunification
104 services, and Section 78A-6-314, regarding permanency hearings and petitions for termination,
105 and the reasons for the noncompliance;

106 (d) receive recommendations from, and make recommendations to the governor, the
107 Legislature, the attorney general, the division, the Office of ~~[the]~~ Guardian Ad Litem
108 ~~[Director]~~, the juvenile court, and the public;

109 (e) (i) receive reports from the executive branch and the judicial branch on budgetary
110 issues impacting the child welfare system; and

111 (ii) recommend, as ~~[it]~~ the panel considers advisable, budgetary proposals to the Health
112 and Human Services Appropriations Subcommittee, the Executive Offices and Criminal Justice
113 Appropriations Subcommittee, and the Executive Appropriations Committee, which
114 recommendation should be made before December 1 of each year;

115 (f) study and recommend proposed changes to laws governing the child welfare
116 system;

117 (g) study actions the state can take to preserve, unify, and strengthen the child's family
118 ties whenever possible in the child's best interest, including recognizing the constitutional
119 rights and claims of parents whenever those family ties are severed or infringed;

120 (h) perform such other duties related to the oversight of the child welfare system as the

121 panel considers appropriate; and

122 (i) annually report [its] the panel's findings and recommendations to the president of
123 the Senate, the speaker of the House of Representatives, the Health and Human Services
124 Interim Committee, and the Judiciary Interim Committee.

125 (5) (a) The panel has authority to review and discuss individual cases.

126 (b) When an individual case is discussed, the panel's meeting may be closed pursuant
127 to Title 52, Chapter 4, Open and Public Meetings Act.

128 (c) When discussing an individual case, the panel shall make reasonable efforts to
129 identify and consider the concerns of all parties to the case.

130 (6) (a) The panel has authority to make recommendations to the Legislature, the
131 governor, the Board of Juvenile Court Judges, the division, and any other statutorily created
132 entity related to the policies and procedures of the child welfare system. The panel does not
133 have authority to make recommendations to the court, the division, or any other public or
134 private entity regarding the disposition of any individual case.

135 (b) The panel may hold public hearings, as it considers advisable, in various locations
136 within the state in order to afford all interested persons an opportunity to appear and present
137 their views regarding the child welfare system in this state.

138 (7) (a) All records of the panel regarding individual cases shall be classified private,
139 and may be disclosed only in accordance with federal law and the provisions of Title 63G,
140 Chapter 2, Government Records Access and Management Act.

141 (b) The panel shall have access to all of the division's records, including those
142 regarding individual cases. In accordance with Title 63G, Chapter 2, Government Records
143 Access and Management Act, all documents and information received by the panel shall
144 maintain the same classification that was designated by the division.

145 (8) In order to accomplish its oversight functions, the panel has:

146 (a) all powers granted to legislative interim committees in Section 36-12-11; and

147 (b) legislative subpoena powers under Title 36, Chapter 14, Legislative Subpoena
148 Powers.

149 (9) Members of the panel shall receive salary and expenses in accordance with Section
150 36-2-2.

151 (10) (a) The Office of Legislative Research and General Counsel shall provide staff

152 support to the panel.

153 (b) The panel is authorized to employ additional professional assistance and other staff
154 members as it considers necessary and appropriate.

155 Section 4. Section **62A-4a-1003** is amended to read:

156 **62A-4a-1003. Management Information System -- Requirements -- Contents --**
157 **Purpose -- Access.**

158 (1) (a) The division shall develop and implement a Management Information System
159 that meets the requirements of this section and the requirements of federal law and regulation.

160 (b) The information and records contained in the Management Information System:

161 (i) are protected records under Title 63G, Chapter 2, Government Records Access and
162 Management Act; and

163 (ii) except as provided in Subsections (1)(c) and (d), are available only to a person with
164 statutory authorization under Title 63G, Chapter 2, Government Records Access and
165 Management Act, to review the information and records described in this Subsection (1)(b).

166 (c) Notwithstanding Subsection (1)(b)(ii), the information and records described in
167 Subsection (1)(b) are available to a person:

168 (i) as provided under Subsection (6) or Section 62A-4a-1006; or

169 (ii) who has specific statutory authorization to access the information or records for the
170 purpose of assisting the state with state and federal requirements to maintain information solely
171 for the purpose of protecting minors and providing services to families in need.

172 (d) Notwithstanding Subsection (1)(b)(ii), the information and records described in
173 Subsection (1)(b) may, to the extent required by Title IV-B or IV-E of the Social Security Act,
174 be provided by the division:

175 (i) to comply with abuse and neglect registry checks requested by other states; and

176 (ii) to the United States Department of Health and Human Services for purposes of
177 maintaining an electronic national registry of substantiated cases of abuse and neglect.

178 (2) With regard to all child welfare cases, the Management Information System shall
179 provide each caseworker and the department's office of licensing, exclusively for the purposes
180 of foster parent licensure and monitoring, with a complete history of each child in that worker's
181 caseload, including:

182 (a) a record of all past action taken by the division with regard to that child and the

183 child's siblings;

184 (b) the complete case history and all reports and information in the control or keeping

185 of the division regarding that child and the child's siblings;

186 (c) the number of times the child has been in the custody of the division;

187 (d) the cumulative period of time the child has been in the custody of the division;

188 (e) a record of all reports of abuse or neglect received by the division with regard to

189 that child's parent, parents, or guardian including:

190 (i) for each report, documentation of the:

191 (A) latest status; or

192 (B) final outcome or determination; and

193 (ii) information that indicates whether each report was found to be:

194 (A) supported;

195 (B) unsupported;

196 (C) substantiated by a juvenile court;

197 (D) unsubstantiated by a juvenile court; or

198 (E) without merit;

199 (f) the number of times the child's parent or parents failed any child and family plan;

200 and

201 (g) the number of different caseworkers who have been assigned to that child in the

202 past.

203 (3) The division's Management Information System shall:

204 (a) contain all key elements of each family's current child and family plan, including:

205 (i) the dates and number of times the plan has been administratively or judicially

206 reviewed;

207 (ii) the number of times the parent or parents have failed that child and family plan;

208 and

209 (iii) the exact length of time the child and family plan has been in effect; and

210 (b) alert caseworkers regarding deadlines for completion of and compliance with

211 policy, including child and family plans.

212 (4) With regard to all child protective services cases, the Management Information

213 System shall:

214 (a) monitor the compliance of each case with:

215 (i) division rule and policy;

216 (ii) state law; and

217 (iii) federal law and regulation; and

218 (b) include the age and date of birth of the alleged perpetrator at the time the abuse or
219 neglect is alleged to have occurred, in order to ensure accuracy regarding the identification of
220 the alleged perpetrator.

221 (5) Except as provided in Subsection (6) regarding contract providers and Section
222 62A-4a-1006 regarding limited access to the Licensing Information System, all information
223 contained in the division's Management Information System is available to the department,
224 upon the approval of the executive director, on a need-to-know basis.

225 (6) (a) Subject to this Subsection (6), the division may allow its contract providers,
226 court clerks designated by the Administrative Office of the Courts, and the Office of [~~the~~]
227 Guardian Ad Litem to have limited access to the Management Information System.

228 (b) A division contract provider has access only to information about a person who is
229 currently receiving services from that specific contract provider.

230 (c) (i) Designated court clerks may only have access to information necessary to
231 comply with Subsection 78B-7-202(2).

232 (ii) The Office of [~~the~~] Guardian Ad Litem may access only the information that:

233 (A) relates to children and families where the Office of [~~the~~] Guardian Ad Litem is
234 appointed by a court to represent the interests of the children; and

235 (B) except as provided in Subsection (6)(d), is entered into the Management
236 Information System on or after July 1, 2004.

237 (d) Notwithstanding Subsection (6)(c)(ii)(B), the Office of [~~the~~] Guardian Ad Litem
238 shall have access to all abuse and neglect referrals about children and families where the office
239 has been appointed by a court to represent the interests of the children, regardless of the date
240 that the information is entered into the Management Information System.

241 (e) Each contract provider and designated representative of the Office of [~~the~~]
242 Guardian Ad Litem who requests access to information contained in the Management
243 Information System shall:

244 (i) take all necessary precautions to safeguard the security of the information contained

245 in the Management Information System;

246 (ii) train its employees regarding:

247 (A) requirements for protecting the information contained in the Management
248 Information System as required by this chapter and under Title 63G, Chapter 2, Government
249 Records Access and Management Act; and

250 (B) the criminal penalties under Sections 62A-4a-412 and 63G-2-801 for improper
251 release of information; and

252 (iii) monitor its employees to ensure that they protect the information contained in the
253 Management Information System as required by law.

254 (f) The division shall take reasonable precautions to ensure that its contract providers
255 comply with the requirements of this Subsection (6).

256 (7) The division shall take all necessary precautions, including password protection and
257 other appropriate and available technological techniques, to prevent unauthorized access to or
258 release of information contained in the Management Information System.

259 Section 5. Section **62A-4a-1006** is amended to read:

260 **62A-4a-1006. Licensing Information System -- Contents -- Juvenile court finding**
261 **-- Protected record -- Access -- Criminal penalty.**

262 (1) (a) The division shall maintain a sub-part of the Management Information System
263 established pursuant to Section 62A-4a-1003, to be known as the Licensing Information
264 System, to be used:

265 (i) for licensing purposes; or

266 (ii) as otherwise specifically provided for by law.

267 (b) The Licensing Information System shall include only the following information:

268 (i) the information described in Subsections 62A-4a-1005(1)(b) and (3)(b);

269 (ii) consented-to supported findings by alleged perpetrators under Subsection
270 62A-4a-1005(3)(a)(iii); and

271 (iii) the information in the licensing part of the division's Management Information
272 System as of May 6, 2002.

273 (2) Notwithstanding Subsection (1), the department's access to information in the
274 Management Information System for the licensure and monitoring of foster parents is governed
275 by Sections 62A-4a-1003 and 62A-2-121.

276 (3) Subject to Subsection 62A-4a-1005(3)(e), upon receipt of a finding from the
277 juvenile court under Section 78A-6-323, the division shall:

278 (a) promptly amend the Licensing Information System; and

279 (b) enter the information in the Management Information System.

280 (4) (a) Information contained in the Licensing Information System is classified as a
281 protected record under Title 63G, Chapter 2, Government Records Access and Management
282 Act.

283 (b) Notwithstanding the disclosure provisions of Title 63G, Chapter 2, Government
284 Records Access and Management Act, the information contained in the Licensing Information
285 System may only be used or disclosed as specifically provided in this chapter and Section
286 62A-2-121.

287 (c) The information described in Subsection (4)(b) is accessible only to:

288 (i) the Office of Licensing within the department:

289 (A) for licensing purposes; or

290 (B) as otherwise specifically provided for by law;

291 (ii) the division to:

292 (A) screen a person at the request of the Office of [~~the~~] Guardian Ad Litem [~~Director~~]:

293 (I) at the time that person seeks a paid or voluntary position with the Office of [~~the~~]

294 Guardian Ad Litem [~~Director~~]; and

295 (II) on an annual basis, throughout the time that the person remains with the Office of

296 Guardian Ad Litem [~~Director~~]; and

297 (B) respond to a request for information from a person whose name is listed in the

298 Licensing Information System;

299 (iii) persons designated by the Department of Health and approved by the Department
300 of Human Services, only for the following purposes:

301 (A) licensing a child care program or provider; or

302 (B) determining whether a person associated with a covered health care facility, as

303 defined by the Department of Health by rule, who provides direct care to a child, has a

304 supported finding of a severe type of child abuse or neglect;

305 (iv) persons designated by the Department of Workforce Services and approved by the

306 Department of Human Services for the purpose of qualifying child care providers under

307 Section 35A-3-310.5; and

308 (v) the department, as specifically provided in this chapter.

309 (5) The persons designated by the Department of Health under Subsection (4)(c)(iii)

310 and the persons designated by the Department of Workforce Services under Subsection

311 (4)(c)(iv) shall adopt measures to:

312 (a) protect the security of the Licensing Information System; and

313 (b) strictly limit access to the Licensing Information System to those persons

314 designated by statute.

315 (6) All persons designated by statute as having access to information contained in the

316 Licensing Information System shall be approved by the Department of Human Services and

317 receive training from the department with respect to:

318 (a) accessing the Licensing Information System;

319 (b) maintaining strict security; and

320 (c) the criminal provisions of Sections 62A-4a-412 and 63G-2-801 pertaining to the

321 improper release of information.

322 (7) (a) A person, except those authorized by this chapter, may not request another

323 person to obtain or release any other information in the Licensing Information System to screen

324 for potential perpetrators of abuse or neglect.

325 (b) A person who requests information knowing that it is a violation of this Subsection

326 (7) to do so is subject to the criminal penalty described in Sections 62A-4a-412 and 63G-2-801.

327 Section 6. Section **63A-11-202** is amended to read:

328 **63A-11-202. Contracted parental defense attorney.**

329 (1) With respect to child welfare cases, a contracted parental defense attorney shall:

330 (a) adequately prepare for and attend all court hearings, including initial and continued

331 shelter hearings and mediations;

332 (b) fully advise the client of the nature of the proceedings and of the client's rights,

333 communicate to the client any offers of settlement or compromise, and advise the client

334 regarding the reasonably foreseeable consequences of any course of action in the proceedings;

335 (c) be reasonably available to consult with the client outside of court proceedings;

336 (d) where attendance of a parental defense attorney is reasonably needed, attend

337 meetings regarding the client's case with representatives of one or more of the Division of

338 Child and Family Services, the Office of the Attorney General, and the Office of [the] Guardian
339 Ad Litem;

340 (e) represent the interest of the client at all stages of the proceedings before the trial
341 court; and

342 (f) participate in the training courses and otherwise maintain the standards described in
343 Subsection (3).

344 (2) If the office enters into a contract with an attorney under Section 63A-11-105, the
345 contract shall require that each attorney in the firm who will provide representation of parents
346 in child welfare cases under the contract perform the duties described in Subsection (1).

347 (3) (a) Except as otherwise provided in Subsection (3)(b), a contracted parental defense
348 attorney shall meet the standards developed by the director which may include:

349 (i) completion of a basic training course provided by the office;

350 (ii) experience in child welfare cases; and

351 (iii) participation each calendar year in continuing legal education courses providing no
352 fewer than eight hours of instruction in child welfare law.

353 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
354 director may, by rule, exempt from the requirements of Subsection (3)(a) an attorney who has
355 equivalent training or adequate experience.

356 (4) Payment for the representation, costs, and expenses of the contracted parental
357 defense attorney shall be made from the Child Welfare Parental Defense Fund as provided in
358 Section 63A-11-203.

359 Section 7. Section **67-5b-105** is amended to read:

360 **67-5b-105. Local advisory boards -- Membership.**

361 (1) The cooperating public agencies and other persons shall make up each center's local
362 advisory board, which shall be composed of the following people from the county or area:

363 (a) the local center director or the director's designee;

364 (b) a district attorney or county attorney having criminal jurisdiction or any designee;

365 (c) a representative of the attorney general's office, designated by the attorney general;

366 (d) a county sheriff or a chief of police or their designee;

367 (e) the county executive or the county executive's designee;

368 (f) a physician licensed to practice medicine and surgery under Section 58-67-301,

369 Utah Medical Practice Act, or Section 58-68-301, Utah Osteopathic Medical Practice Act;

370 (g) a licensed mental health professional;

371 (h) a criminal defense attorney;

372 (i) at least four members of the community at large provided, however, that the state
373 advisory board may authorize fewer members, although not less than two, if the local advisory
374 board so requests;

375 (j) a guardian ad litem or representative of the Office of Guardian Ad Litem [~~Director~~],
376 designated by the director; and

377 (k) a representative of the Division of Child and Family Services within the
378 Department of Human Services, designated by the employee of the division who has
379 supervisory responsibility for the county served by the center.

380 (2) The members on each local advisory board who serve due to public office as
381 provided in [~~Subsection~~] Subsections (1)(b) through (e) shall select the remaining members.
382 The members [~~shall select its chair~~] on each local advisory board shall select a chair of the
383 local advisory board.

384 (3) The local advisory board shall not supersede the authority of the contracting public
385 agency as designated in Section 67-5b-104.

386 (4) Appointees and designees shall serve a term or terms as designated in the bylaws of
387 the local advisory board.

388 Section 8. Section **78A-2-104 (Superseded 01/01/12)** is amended to read:

389 **78A-2-104 (Superseded 01/01/12). Judicial Council -- Creation -- Members --**
390 **Terms and election -- Responsibilities -- Reports -- Guardian Ad Litem Oversight**
391 **Committee.**

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

394 (a) the chief justice of the Supreme Court;

395 (b) one member elected by the justices of the Supreme Court;

396 (c) one member elected by the judges of the Court of Appeals;

397 (d) five members elected by the judges of the district courts;

398 (e) two members elected by the judges of the juvenile courts;

399 (f) three members elected by the justice court judges; and

400 (g) a member or ex officio member of the Board of Commissioners of the Utah State
401 Bar who is an active member of the Bar in good standing at the time of election by the Board of
402 Commissioners.

403 (2) The Judicial Council shall have a seal.

404 (3) (a) The chief justice of the Supreme Court shall act as presiding officer of the
405 council and chief administrative officer for the courts. The chief justice shall vote only in the
406 case of a tie.

407 (b) All members of the council shall serve for three-year terms.

408 (i) If a council member should die, resign, retire, or otherwise fail to complete a term
409 of office, the appropriate constituent group shall elect a member to complete the term of office.

410 (ii) In courts having more than one member, the members shall be elected to staggered
411 terms.

412 (iii) The person elected by the Board of Commissioners may complete a three-year
413 term of office on the Judicial Council even though the person ceases to be a member or ex
414 officio member of the Board of Commissioners. The person shall be an active member of the
415 Bar in good standing for the entire term of the Judicial Council.

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

417 (4) The council is responsible for the development of uniform administrative policy for
418 the courts throughout the state. The presiding officer of the Judicial Council is responsible for
419 the implementation of the policies developed by the council and for the general management of
420 the courts, with the aid of the administrator. The council has authority and responsibility to:

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

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

426 (5) (a) The Judicial Council shall make rules establishing:

427 (i) standards for judicial competence; and

428 (ii) a formal program for the evaluation of judicial performance containing the
429 elements of and meeting the requirements of this Subsection (5).

430 (b) The Judicial Council shall ensure that the formal judicial performance evaluation

431 program has improvement in the performance of individual judges, court commissioners, and
432 the judiciary as [its] the Judicial Council's goal.

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

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

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

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

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

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

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

445 (i) integrity;

446 (ii) knowledge;

447 (iii) understanding of the law;

448 (iv) ability to communicate;

449 (v) punctuality;

450 (vi) preparation;

451 (vii) attentiveness;

452 (viii) dignity;

453 (ix) control over proceedings; and

454 (x) skills as a manager.

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

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

462 (6) The council shall establish standards for the operation of the courts of the state
463 including, but not limited to, facilities, court security, support services, and staff levels for
464 judicial and support personnel.

465 (7) The council shall by rule establish the time and manner for destroying court
466 records, including computer records, and shall establish retention periods for these records.

467 (8) (a) Consistent with the requirements of judicial office and security policies, the
468 council shall establish procedures to govern the assignment of state vehicles to public officers
469 of the judicial branch.

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

472 (9) (a) The council shall advise judicial officers and employees concerning ethical
473 issues and shall establish procedures for issuing informal and formal advisory opinions on
474 these issues.

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

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

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

483 (b) These procedures shall be developed in accordance with Subsection 78A-2-107(10)
484 regarding temporary appointment of judges.

485 (11) The Judicial Council may by rule designate municipalities in addition to those
486 designated by statute as a location of a trial court of record. There shall be at least one court
487 clerk's office open during regular court hours in each county. Any trial court of record may
488 hold court in any municipality designated as a location of a court of record. [~~Designations by
489 the Judicial Council may not be made between July 1, 1997, and July 1, 1998.~~]

490 (12) The Judicial Council shall by rule determine whether the administration of a court
491 shall be the obligation of the administrative office of the courts or whether the administrative
492 office of the courts should contract with local government for court support services.

493 (13) The Judicial Council may by rule direct that a district court location be
494 administered from another court location within the county.

495 (14) ~~(a) The Judicial Council shall [establish and supervise];~~

496 ~~(i) establish the Office of Guardian Ad Litem [Director], in accordance with Title 78A,~~
497 ~~Chapter 6, Part 9, Guardian Ad Litem[;]; and [assure compliance of the guardian ad litem~~
498 ~~program]~~

499 ~~(ii) establish and supervise a Guardian Ad Litem Oversight Committee.~~

500 ~~(b) The Guardian Ad Litem Oversight Committee described in Subsection (14)(a)(ii)~~
501 ~~shall oversee the Office of Guardian Ad Litem, established under Subsection (14)(a)(i), and~~
502 ~~assure that the Office of Guardian Ad Litem complies with state and federal law, regulation,~~
503 ~~policy, and court rules.~~

504 (15) The Judicial Council shall establish and maintain, in cooperation with the Office
505 of Recovery Services within the Department of Human Services, the part of the state case
506 registry that contains records of each support order established or modified in the state on or
507 after October 1, 1998, as is necessary to comply with the Social Security Act, 42 U.S.C. Sec.
508 654a.

509 Section 9. Section **78A-2-104 (Effective 01/01/12)** is amended to read:

510 **78A-2-104 (Effective 01/01/12). Judicial Council -- Creation -- Members -- Terms**
511 **and election -- Responsibilities -- Reports -- Guardian Ad Litem Oversight Committee.**

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

514 (a) the chief justice of the Supreme Court;

515 (b) one member elected by the justices of the Supreme Court;

516 (c) one member elected by the judges of the Court of Appeals;

517 (d) five members elected by the judges of the district courts;

518 (e) two members elected by the judges of the juvenile courts;

519 (f) three members elected by the justice court judges; and

520 (g) a member or ex officio member of the Board of Commissioners of the Utah State
521 Bar who is an active member of the Bar in good standing at the time of election by the Board of
522 Commissioners.

523 (2) The Judicial Council shall have a seal.

524 (3) (a) The chief justice of the Supreme Court shall act as presiding officer of the
525 council and chief administrative officer for the courts. The chief justice shall vote only in the
526 case of a tie.

527 (b) All members of the council shall serve for three-year terms.

528 (i) If a council member should die, resign, retire, or otherwise fail to complete a term
529 of office, the appropriate constituent group shall elect a member to complete the term of office.

530 (ii) In courts having more than one member, the members shall be elected to staggered
531 terms.

532 (iii) The person elected by the Board of Commissioners may complete a three-year
533 term of office on the Judicial Council even though the person ceases to be a member or ex
534 officio member of the Board of Commissioners. The person shall be an active member of the
535 Bar in good standing for the entire term of the Judicial Council.

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

537 (4) The council is responsible for the development of uniform administrative policy for
538 the courts throughout the state. The presiding officer of the Judicial Council is responsible for
539 the implementation of the policies developed by the council and for the general management of
540 the courts, with the aid of the administrator. The council has authority and responsibility to:

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

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

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

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

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

554 (b) The vehicles shall be marked in a manner consistent with Section 41-1a-407 and

555 may be assigned for unlimited use, within the state only.

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

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

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

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

567 (b) These procedures shall be developed in accordance with Subsection 78A-2-107(10)
568 regarding temporary appointment of judges.

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

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

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

579 (13) (a) The Judicial Council shall [~~establish and supervise~~]:

580 (i) establish the Office of Guardian Ad Litem [~~Director~~], in accordance with Title 78A,
581 Chapter 6, Part 9, Guardian Ad Litem[-]; and [~~assure compliance of the guardian ad litem
582 program~~]

583 (ii) establish and supervise a Guardian Ad Litem Oversight Committee.

584 (b) The Guardian Ad Litem Oversight Committee described in Subsection (13)(a)(ii)
585 shall oversee the Office of Guardian Ad Litem, established under Subsection (13)(a)(i), and

586 assure that it complies with state and federal law, regulation, policy, and court rules.

587 (14) The Judicial Council shall establish and maintain, in cooperation with the Office
588 of Recovery Services within the Department of Human Services, the part of the state case
589 registry that contains records of each support order established or modified in the state on or
590 after October 1, 1998, as is necessary to comply with the Social Security Act, 42 U.S.C. Sec.
591 654a.

592 Section 10. Section **78A-2-227** is amended to read:

593 **78A-2-227. Appointment of attorney guardian ad litem in child abuse and neglect**
594 **proceedings.**

595 (1) ~~[An]~~ Except as provided in Subsection (2), a court may appoint an attorney
596 guardian ad litem ~~[may be appointed]~~ in accordance with Title 78A, Chapter 6, Part 9,
597 Guardian Ad Litem, if:

- 598 (a) child abuse, child sexual abuse, or neglect is alleged in any proceeding; or
- 599 (b) the court considers it appropriate in any proceedings involving alleged abuse, child
600 sexual abuse, or neglect.

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

604 (2) (a) A court may not appoint an attorney guardian ad litem in a criminal case.

605 (b) Subsection (2)(a) does not prohibit the appointment of an attorney guardian ad
606 litem in a case where a court is determining whether to adjudicate a minor for committing an
607 act that would be a crime if committed by an adult.

608 (3) If a court appoints an attorney guardian ad litem in a divorce or child custody case,
609 the court shall:

610 (a) specify in the order appointing the attorney guardian ad litem the specific issues in
611 the proceeding that the attorney guardian ad litem is required to be involved in resolving, which
612 may include issues relating to the custody of children and parent-time schedules;

613 (b) to the extent possible, bifurcate the issues specified in the order described in
614 Subsection (3)(a) from the other issues in the case, in order to minimize the time constraints
615 placed upon the attorney guardian ad litem in the case; and

616 (c) except as provided in Subsection (5), within one year after the day on which the

617 attorney guardian ad litem is appointed in the case, issue a final order:

618 (i) resolving the issues described in the order described in Subsection (3)(a); and

619 (ii) terminating the appointment of the attorney guardian ad litem in the case.

620 (4) The court shall issue an order terminating the appointment of an attorney guardian

621 ad litem made under this section, if:

622 (a) the court determines that the allegations of abuse or neglect are unfounded;

623 (b) after receiving input from the attorney guardian ad litem, the court determines that
624 the children are no longer at risk of abuse or neglect; or

625 (c) there has been no activity in the case for which the attorney guardian ad litem is
626 appointed for a period of six consecutive months.

627 (5) A court may issue a written order extending the one-year period described in
628 Subsection (3)(c) for a time-certain, if the court makes a written finding that there is a
629 compelling reason that the court cannot comply with the requirements described in Subsection
630 (3)(c) within the one-year period.

631 (6) When appointing an attorney guardian ad litem for a minor under this section, a
632 court may appoint the same attorney guardian ad litem who represents the minor in another
633 proceeding, or who has represented the minor in a previous proceeding, if that attorney
634 guardian ad litem is available.

635 ~~[(3)]~~ (7) The court is responsible for all costs resulting from the appointment of an
636 attorney guardian ad litem and shall use funds appropriated by the Legislature for the guardian
637 ad litem program to cover those costs.

638 ~~[(4)]~~ (8) (a) If the court appoints the Office of the Guardian Ad Litem in a civil case
639 pursuant to this section, the court may assess all or part of those attorney fees, court costs,
640 paralegal, staff, and volunteer expenses against the minor's parent, parents, or legal guardian in
641 an amount that the court determines to be just and appropriate.

642 (b) The court may not assess those fees or costs against a legal guardian, when that
643 guardian is the state, or against a parent, parents, or legal guardian who is found to be
644 impecunious. If a person claims to be impecunious, the court shall require of that person an
645 affidavit of impecuniosity as provided in Section 78A-2-302 and the court shall follow the
646 procedures and make the determinations as provided in Section 78A-2-302.

647 ~~[(e) If the court appoints the Office of the Guardian Ad Litem in a criminal case~~

648 ~~pursuant to this section and if the defendant is convicted of a crime which includes child abuse~~
649 ~~or neglect, the court shall include as part of the defendant's sentence all or part of the attorney~~
650 ~~fees, court costs, and paralegal, staff, and volunteer expenses of the Office of the Guardian Ad~~
651 ~~Litem.]~~

652 ~~[(5)]~~ (9) An attorney guardian ad litem appointed in accordance with the requirements
653 of this section and Title 78A, Chapter 6, Part 9, Guardian Ad Litem is, when serving in the
654 scope of duties of an attorney guardian ad litem, considered an employee of this state for
655 purposes of indemnification under the Governmental Immunity Act.

656 Section 11. Section **78A-2-228** is amended to read:

657 **78A-2-228. Private attorney guardian ad litem -- Appointment -- Costs and fees --**
658 **Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum**
659 **qualifications.**

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

665 ~~[(b) If an attorney guardian ad litem has been appointed for the minor in any prior or~~
666 ~~concurrent action and that attorney guardian ad litem is available, the court shall appoint that~~
667 ~~attorney guardian ad litem, unless good cause is shown why another attorney guardian ad litem~~
668 ~~should be appointed.]~~

669 (b) When appointing an attorney guardian ad litem for a minor under this section, a
670 court may appoint the same attorney guardian ad litem who represents the minor in another
671 proceeding, or who has represented the minor in a previous proceeding, if that attorney
672 guardian ad litem is available.

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

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

677 (ii) order the withdrawal of the private attorney guardian ad litem and appoint the
678 Office of [the] Guardian Ad Litem.

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

682 (b) If the court finds a party to be impecunious, under the provisions of Section
683 78A-2-302, the court may direct the impecunious party's share of the assessment to be covered
684 by the attorney guardian ad litem pro bono obligation established in Subsection (6)(b).

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

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

688 (b) conduct or supervise an ongoing, independent investigation in order to obtain,
689 first-hand, a clear understanding of the situation and needs of the minor;

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

692 ~~[(d) if the minor is old enough to communicate and unless it would be detrimental to~~
693 ~~the minor;]~~

694 ~~[(i) meet with and interview the minor;]~~

695 (d) (i) personally meet with the minor, unless:

696 (A) the minor is outside of the state; or

697 (B) meeting with the minor would be detrimental to the minor;

698 (ii) personally interview the minor, unless:

699 (A) the minor is not old enough to communicate;

700 (B) the minor lacks the capacity to participate in a meaningful interview; or

701 (C) the interview would be detrimental to the minor;

702 ~~[(ii) (iii) to the extent possible, determine the minor's goals and concerns regarding~~
703 ~~custody or visitation; and~~

704 ~~[(iii) counsel the minor regarding the nature, purpose, status, and implications of the~~
705 ~~case, of hearings, of recommendations, and proposals by parties and of court orders;]~~

706 ~~[(e) conduct discovery, file pleadings and other papers, prepare and review orders, and~~
707 ~~otherwise comply with the Utah Rules of Civil Procedure as necessary to protect the best~~
708 ~~interest of the minor;]~~

709 (iv) to the extent possible, and unless it would be detrimental to the minor, keep the

710 minor advised of:

711 (A) the status of the minor's case;

712 (B) all court and administrative proceedings;

713 (C) discussions with, and proposals made by, other parties;

714 (D) court action; and

715 (E) the psychiatric, medical, or other treatment or diagnostic services that are to be
716 provided to the minor;

717 [~~f~~] (e) unless excused by the court, prepare for and attend all mediation hearings and
718 all court conferences and hearings, and present witnesses and exhibits as necessary to protect
719 the best interests of the minor;

720 [~~g~~] (f) identify community resources to protect the best interests of the minor and
721 advocate for those resources; and

722 [~~h~~] (g) participate in all appeals unless excused by the court.

723 (4) (a) The attorney guardian ad litem shall represent the best interests of a minor. If
724 the minor's wishes differ from the attorney's determination of the minor's best interests, the
725 attorney guardian ad litem shall communicate to the court the minor's wishes and the attorney's
726 determination of the minor's best interests. A difference between the minor's wishes and the
727 attorney's determination of best interests is not sufficient to create a conflict of interest.

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

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

733 (6) (a) Upon the advice of the Director of the Office of [~~the~~] Guardian Ad Litem and
734 the Guardian Ad Litem Oversight Committee, the Judicial Council shall by rule establish the
735 minimum qualifications and requirements for appointment by the court as an attorney guardian
736 ad litem.

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

739 Section 12. Section **78A-6-308** is amended to read:

740 **78A-6-308. Criminal background checks necessary prior to out-of-home**

741 **placement.**

742 (1) Subject to Subsection (3), upon ordering removal of a child from the custody of the
743 child's parent and placing that child in the custody of the Division of Child and Family
744 Services, prior to the division's placement of that child in out-of-home care, the court shall
745 require the completion of a nonfingerprint-based background check by the Utah Bureau of
746 Criminal Identification regarding the proposed placement.

747 (2) (a) Except as provided in Subsection (4), the division and the Office of [the]
748 Guardian ad Litem [Director] may request, or the court upon [its] the court's own motion may
749 order, the Department of Public Safety to conduct a complete Federal Bureau of Investigation
750 criminal background check through the national criminal history system (NCIC).

751 (b) Except as provided in Subsection (4), upon request by the division or the Office of
752 [the] Guardian ad Litem [Director], or upon the court's order, persons subject to the
753 requirements of Subsection (1) shall submit fingerprints and shall be subject to an FBI
754 fingerprint background check. The child may be temporarily placed, pending the outcome of
755 that background check.

756 (c) The cost of those investigations shall be borne by whoever is to receive placement
757 of the child, except that the Division of Child and Family Services may pay all or part of the
758 cost of those investigations.

759 (3) Except as provided in Subsection (5), a child who is in the legal custody of the state
760 may not be placed with a prospective foster parent or a prospective adoptive parent, unless,
761 before the child is placed with the prospective foster parent or the prospective adoptive parent:

762 (a) a fingerprint based FBI national criminal history records check is conducted on the
763 prospective foster parent or prospective adoptive parent;

764 (b) the Department of Human Services conducts a check of the abuse and neglect
765 registry in each state where the prospective foster parent or prospective adoptive parent resided
766 in the five years immediately preceding the day on which the prospective foster parent or
767 prospective adoptive parent applied to be a foster parent or adoptive parent, to determine
768 whether the prospective foster parent or prospective adoptive parent is listed in the registry as
769 having a substantiated or supported finding of a severe type of abuse or neglect as defined in
770 Section 62A-4a-1002;

771 (c) the Department of Human Services conducts a check of the abuse and neglect

772 registry of each state where each adult living in the home of the prospective foster parent or
773 prospective adoptive parent described in Subsection (3)(b) resided in the five years
774 immediately preceding the day on which the prospective foster parent or prospective adoptive
775 parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed
776 in the registry as having a substantiated or supported finding of a severe type of abuse or
777 neglect as defined in Section 62A-4a-1002; and

778 (d) each person required to undergo a background check described in this Subsection
779 (3) passes the background check, pursuant to the provisions of Section 62A-2-120.

780 (4) Subsections (2)(a) and (b) do not apply to a child who is placed with a noncustodial
781 parent or relative under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, unless the court
782 finds that compliance with Subsection (2)(a) or (b) is necessary to ensure the safety of the
783 child.

784 (5) The requirements under Subsection (3) do not apply to the extent that:

785 (a) federal law or rule permits otherwise; or

786 (b) the requirements would prohibit the division or a court from placing a child with:

787 (i) a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

788 (ii) a relative, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending

789 completion of the background check described in Subsection (3).

790 Section 13. Section **78A-6-512** is amended to read:

791 **78A-6-512. Review following termination.**

792 (1) At the conclusion of the hearing in which the court orders termination of the
793 parent-child relationship, the court shall order that a review hearing be held within 90 days
794 ~~[following the date of termination]~~ after the day on which the parent-child relationship is
795 terminated, if the child has not been permanently placed.

796 (2) At that review hearing, the agency or individual vested with custody of the child
797 shall report to the court regarding the plan for permanent placement of the child. The guardian
798 ad litem shall ~~[submit]~~ make recommendations to the court ~~[a written report with~~
799 ~~recommendations]~~, based on an independent investigation, for disposition meeting the best
800 interests of the child.

801 (3) The court may order the agency or individual vested with custody of the child to
802 report, at appropriate intervals, on the status of the child until the plan for permanent placement

803 of the child has been accomplished.

804 Section 14. Section **78A-6-901** is amended to read:

805 **78A-6-901. Office of Guardian Ad Litem -- Appointment of director -- Duties of**
806 **director -- Contracts in second, third, and fourth districts.**

807 (1) As used in this part:

808 (a) "Director" means the director of the office.

809 (b) "Office" means the Office of Guardian Ad Litem, created in this section.

810 ~~[(+)]~~ (2) There is ~~[hereby]~~ created the Office of Guardian Ad Litem ~~[Director]~~ under
811 the direct supervision of the ~~[Judicial Council in accordance with Subsection 78A-2-104(14)]~~
812 Guardian Ad Litem Oversight Committee.

813 ~~[(2)]~~ (3) (a) The ~~[Judicial Council]~~ Guardian Ad Litem Oversight Committee shall
814 appoint one person to serve full time as the guardian ad litem director for the state. The
815 guardian ad litem director shall serve at the pleasure of the ~~[Judicial Council]~~ Guardian Ad
816 Litem Oversight Committee.

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

819 (i) professional ability;

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

821 (iii) familiarity with the role, purpose, and function of guardians ad litem in both
822 juvenile and district courts; and

823 (iv) ability to develop training curricula and reliable methods for data collection and
824 evaluation.

825 (c) The director shall ~~[be trained in the United States Department of Justice National~~
826 ~~Court Appointed Special Advocate program]~~, prior to or immediately after the director's
827 appointment, be trained in nationally recognized standards for an attorney guardian ad litem.

828 ~~[(3)]~~ (4) The guardian ad litem director shall:

829 (a) establish policy and procedure for the management of a statewide guardian ad litem
830 program;

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

834 (c) develop standards for contracts of employment and contracts with independent
835 contractors, and employ or contract with attorneys licensed to practice law in this state, to act
836 as attorney guardians ad litem in accordance with Section 78A-6-902;

837 (d) develop and provide training programs for ~~[attorney guardians ad litem and]~~
838 volunteers in accordance with the United States Department of Justice National Court
839 Appointed Special Advocates Association standards;

840 ~~[(e) update and develop the guardian ad litem manual, combining elements of the~~
841 ~~National Court Appointed Special Advocates Association manual with specific information~~
842 ~~about the law and policy of this state;]~~

843 (e) develop and update a guardian ad litem manual that includes:

844 (i) best practices for an attorney guardian ad litem; and

845 (ii) statutory and case law relating to an attorney guardian ad litem;

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

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

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

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

854 (j) prepare and submit an annual report to the ~~[Judicial Council]~~ Guardian Ad Litem
855 Oversight Committee and the Child Welfare Legislative Oversight Panel regarding:

856 (i) the development, policy, and management of the statewide guardian ad litem
857 program~~[-and];~~

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

859 (iii) the number of minors served by the Office of Guardian Ad Litem;

860 (k) hire, train, and supervise investigators; and

861 (l) administer the program of private guardians ad litem established by Section
862 78A-2-228.

863 ~~[(4)]~~ (5) A contract of employment or independent contract described under Subsection
864 ~~[(3)]~~ (4)(c) shall provide that attorney guardians ad litem in the second, third, and fourth

865 judicial districts devote their full time and attention to the role of attorney guardian ad litem,
 866 having no clients other than the minors whose interest they represent within the guardian ad
 867 litem program.

868 Section 15. Section **78A-6-902** is amended to read:

869 **78A-6-902. Appointment of attorney guardian ad litem -- Duties and**
 870 **responsibilities -- Training -- Trained staff and court-appointed special advocate**
 871 **volunteers -- Costs -- Immunity -- Annual report.**

872 (1) (a) The court:

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

875 (ii) shall consider the best interest of a minor, consistent with the provisions of Section
 876 62A-4a-201, in determining whether to appoint a guardian ad litem.

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

879 (2) An attorney guardian ad litem shall represent the best interest of each child who
 880 may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of
 881 the day that:

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

883 (b) the petition is filed.

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

886 (3) The director shall ensure that each attorney guardian ad litem employed by the
 887 office:

888 (a) [~~represent~~] represents the best interest of [~~the minor~~] each client of the office in all
 889 proceedings, including court proceedings;

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

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

892 [~~(ii) accordance with the United States Department of Justice National Court~~
 893 ~~Appointed Special Advocate Association guidelines;]~~

894 (ii) nationally recognized standards for an attorney guardian ad litem;

895 (c) [~~conduct or supervise an~~] conducts or supervises an ongoing, independent

896 investigation in order to obtain, first-hand, a clear understanding of the situation and needs of
897 the minor;

898 (d) (i) personally ~~[meet]~~ meets with the minor~~;~~, unless:

899 (A) the minor is outside of the state; or

900 (B) meeting with the minor would be detrimental to the minor;

901 (ii) personally ~~[interview]~~ interviews the minor ~~[if]~~, unless:

902 (A) the minor is not old enough to communicate;

903 (B) the minor lacks the capacity to participate in a meaningful interview; or

904 (C) the interview would be detrimental to the minor; and

905 (iii) if the minor is placed in an out-of-home placement, or is being considered for

906 placement in an out-of-home placement, unless it would be detrimental to the minor:

907 ~~[(iii) determine]~~ (A) to the extent possible, determines the minor's goals and concerns

908 regarding placement; and

909 ~~[(iv)]~~ (B) personally [assess or supervise] assesses or supervises an assessment of the

910 appropriateness and safety of the minor's environment in each placement;

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

912 ~~necessary to protect the best interest of a minor;]~~

913 ~~[(f)]~~ (e) personally [or through a trained volunteer, paralegal, or other trained staff,

914 ~~attend all administrative and foster care citizen]~~ attends all review ~~[board]~~ hearings pertaining

915 to the minor's case;

916 ~~[(g) participate]~~ (f) participates in all appeals, unless excused by order of the court;

917 ~~[(h) be]~~ (g) is familiar with local experts who can provide consultation and testimony

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

919 Family Services to:

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

921 (ii) reunify a child with the child's parent;

922 ~~[(i)]~~ (h) to the extent possible, and unless it would be detrimental to the minor,

923 personally or through a trained volunteer, paralegal, or other trained staff, ~~[keep]~~ keeps the

924 minor advised of:

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

926 (ii) all court and administrative proceedings;

927 (iii) discussions with, and proposals made by, other parties;
928 (iv) court action; and
929 (v) the psychiatric, medical, or other treatment or diagnostic services that are to be
930 provided to the minor; and
931 ~~[(j) review proposed orders for, and as requested by the court;]~~
932 ~~[(k) prepare proposed orders with clear and specific directions regarding services,~~
933 ~~treatment, evaluation, assessment, and protection of the minor and the minor's family; and]~~
934 ~~[(H) (i) in cases where a child and family plan is required, personally or through a~~
935 ~~trained volunteer, paralegal, or other trained staff, [monitor] monitors implementation of a~~
936 ~~minor's child and family plan and any dispositional orders to:~~
937 (i) determine whether services ordered by the court:
938 (A) are actually provided; and
939 (B) are provided in a timely manner; and
940 (ii) attempt to assess whether services ordered by the court are accomplishing the
941 intended goal of the services.
942 (4) (a) Consistent with this Subsection (4), an attorney guardian ad litem may use
943 trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers
944 Act, trained paralegals, and other trained staff to assist in investigation and preparation of
945 information regarding the cases of individual minors before the court.
946 ~~[(b) The attorney guardian ad litem described in Subsection (4)(a) may not delegate the~~
947 ~~attorney's responsibilities described in Subsection (3).]~~
948 ~~[(c)] (b) All volunteers, paralegals, and staff utilized pursuant to this section shall be~~
949 ~~trained in and follow, at a minimum, the guidelines established by the United States~~
950 ~~Department of Justice Court Appointed Special Advocate Association.~~
951 ~~[(d) The court may use volunteers trained in accordance with the requirements of~~
952 ~~Subsection (4)(c) to assist in investigation and preparation of information regarding the cases~~
953 ~~of individual minors within the jurisdiction.]~~
954 ~~[(e) When possible and appropriate, the court may use a volunteer who is a peer of the~~
955 ~~minor appearing before the court, in order to provide assistance to that minor, under the~~
956 ~~supervision of an attorney guardian ad litem or the attorney's trained volunteer, paralegal, or~~
957 ~~other trained staff.]~~

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

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

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

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

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

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

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

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

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

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

974 (i) require that person to submit an affidavit of impecuniosity as provided in Section
975 78A-2-302; and

976 (ii) follow the procedures and make the determinations as provided in Section
977 78A-2-304.

978 (7) An attorney guardian ad litem appointed under this section, when serving in the
979 scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee
980 of the state for purposes of indemnification under Title 63G, Chapter 7, Governmental
981 Immunity Act of Utah.

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

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

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

988 (d) The court may appoint one attorney guardian ad litem to represent the best interests

989 of more than one child of a marriage.

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

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

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

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

996 (11) (a) Except as provided in Subsection (11)(b), all records of an attorney guardian
997 ad litem are confidential and may not be released or made public upon subpoena, search
998 warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63G, Chapter
999 2, Government Records Access and Management Act.

1000 (b) Consistent with Subsection (11)(d), all records of an attorney guardian ad litem:

1001 (i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative
1002 Subpoena Powers; and

1003 (ii) shall be released to the Legislature.

1004 (c) (i) Except as provided in Subsection (11)(c)(ii), records released in accordance with
1005 Subsection (11)(b) shall be maintained as confidential by the Legislature.

1006 (ii) Notwithstanding Subsection (11)(c)(i), the Office of the Legislative Auditor
1007 General may include summary data and nonidentifying information in its audits and reports to
1008 the Legislature.

1009 (d) (i) Subsection (11)(b) constitutes an exception to Rules of Professional Conduct,
1010 Rule 1.6, as provided by Rule 1.6(b)(4), because of:

1011 (A) the unique role of an attorney guardian ad litem described in Subsection (8); and

1012 (B) the state's role and responsibility:

1013 (I) to provide a guardian ad litem program; and

1014 (II) as *parens patriae*, to protect minors.

1015 (ii) A claim of attorney-client privilege does not bar access to the records of an attorney
1016 guardian ad litem by the Legislature, through legislative subpoena.

1017 ~~[(e) The Office of the Guardian Ad Litem shall present an annual report to the Child
1018 Welfare Legislative Oversight Panel detailing:]~~

1019 ~~[(i) the development, policy, and management of the statewide guardian ad litem~~

1020 program;]
1021 ~~[(ii) the training and evaluation of attorney guardians ad litem and volunteers; and]~~
1022 ~~[(iii) the number of minors served by the Office of the Guardian Ad Litem.]~~
1023 Section 16. **Effective date.**
1024 This bill takes effect on May 12, 2009, except that the amendments to Section
1025 78A-2-104 (Effective 01/01/12) take effect on January 1, 2012.

Legislative Review Note
as of 12-17-08 10:46 AM

Office of Legislative Research and General Counsel

H.B. 69 - Guardian Ad Litem Amendments

Fiscal Note

2009 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
