

1 **GUARDIAN AD LITEM OFFICE REFERENCES**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: V. Lowry Snow**

5 Senate Sponsor: Lyle W. Hillyard

7 **LONG TITLE**

8 **General Description:**

9 This bill changes references to the Office of the Guardian Ad Litem.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ changes references to "Office of the Guardian Ad Litem," to "Office of Guardian Ad
13 Litem."

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 **AMENDS:**

20 **78A-2-227**, as last amended by Laws of Utah 2009, Chapter 32

21 **78A-6-515**, as renumbered and amended by Laws of Utah 2008, Chapter 3

22 **78B-7-106**, as last amended by Laws of Utah 2009, Chapter 146

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

25 Section 1. Section **78A-2-227** is amended to read:

26 **78A-2-227. Appointment of attorney guardian ad litem in child abuse and neglect**
27 **proceedings.**

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

30 (a) child abuse, child sexual abuse, or neglect is alleged in any proceeding; or
31 (b) the court considers it appropriate in any proceedings involving alleged abuse, child
32 sexual abuse, or neglect.

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

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

37 (c) Subsection (2)(a) does not prohibit an attorney guardian ad litem from entering an
38 appearance, filing motions, or taking other action in a criminal case on behalf of a minor, if:

39 (i) the attorney guardian ad litem is appointed to represent the minor in a case that is
40 not a criminal case; and

41 (ii) the interests of the minor may be impacted by:

42 (A) an order that has been, or may be, issued in the criminal case; or

43 (B) other proceedings that have occurred, or may occur, in the criminal case.

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

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

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

52 (c) except as provided in Subsection (5), within one year after the day on which the
53 attorney guardian ad litem is appointed in the case, issue a final order:

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

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

56 (4) The court shall issue an order terminating the appointment of an attorney guardian
57 ad litem made under this section, if:

- 58 (a) the court determines that the allegations of abuse or neglect are unfounded;
- 59 (b) after receiving input from the attorney guardian ad litem, the court determines that
60 the children are no longer at risk of abuse or neglect; or
- 61 (c) there has been no activity in the case for which the attorney guardian ad litem is
62 appointed for a period of six consecutive months.
- 63 (5) A court may issue a written order extending the one-year period described in
64 Subsection (3)(c) for a time-certain, if the court makes a written finding that there is a
65 compelling reason that the court cannot comply with the requirements described in Subsection
66 (3)(c) within the one-year period.
- 67 (6) When appointing an attorney guardian ad litem for a minor under this section, a
68 court may appoint the same attorney guardian ad litem who represents the minor in another
69 proceeding, or who has represented the minor in a previous proceeding, if that attorney
70 guardian ad litem is available.
- 71 (7) The court is responsible for all costs resulting from the appointment of an attorney
72 guardian ad litem and shall use funds appropriated by the Legislature for the guardian ad litem
73 program to cover those costs.
- 74 (8) (a) If the court appoints the Office of ~~[the]~~ Guardian Ad Litem in a civil case
75 pursuant to this section, the court may assess all or part of those attorney fees, court costs,
76 paralegal, staff, and volunteer expenses against the minor's parent, parents, or legal guardian in
77 an amount that the court determines to be just and appropriate.
- 78 (b) The court may not assess those fees or costs against a legal guardian, when that
79 guardian is the state, or against a parent, parents, or legal guardian who is found to be
80 impecunious. If a person claims to be impecunious, the court shall require of that person an
81 affidavit of impecuniosity as provided in Section 78A-2-302 and the court shall follow the
82 procedures and make the determinations as provided in Section 78A-2-302.
- 83 (9) An attorney guardian ad litem appointed in accordance with the requirements of
84 this section and ~~[Title 78A,]~~ Chapter 6, Part 9, Guardian Ad Litem is, when serving in the
85 scope of duties of an attorney guardian ad litem, considered an employee of this state for

86 purposes of indemnification under the Governmental Immunity Act.

87 Section 2. Section **78A-6-515** is amended to read:

88 **78A-6-515. Mental health therapist.**

89 (1) When a mental health practitioner is to be appointed in a parental rights action to
90 evaluate the mental health of a parent or a child, or to provide mental health services to a parent
91 or a child, the court:

92 (a) may appoint any mental health therapist, as defined in Section 58-60-102, which the
93 court finds to be qualified;

94 (b) may not refuse to appoint a mental health therapist for the reason that the therapist's
95 recommendations in another case have not followed the recommendations of the Division of
96 Child and Family Services or the Office of [the] Guardian Ad Litem; and

97 (c) shall give strong consideration to the parent's or guardian's wishes regarding the
98 selection of a mental health therapist.

99 (2) This section applies to all juvenile court proceedings involving:

100 (a) parents and children; or

101 (b) the Division of Child and Family Services.

102 Section 3. Section **78B-7-106** is amended to read:

103 **78B-7-106. Protective orders -- Ex parte protective orders -- Modification of**
104 **orders -- Service of process -- Duties of the court.**

105 (1) If it appears from a petition for an order for protection or a petition to modify an
106 order for protection that domestic violence or abuse has occurred or a modification of an order
107 for protection is required, a court may:

108 (a) without notice, immediately issue an order for protection ex parte or modify an
109 order for protection ex parte as it considers necessary to protect the petitioner and all parties
110 named to be protected in the petition; or

111 (b) upon notice, issue an order for protection or modify an order after a hearing,
112 whether or not the respondent appears.

113 (2) A court may grant the following relief without notice in an order for protection or a

114 modification issued ex parte:

115 (a) enjoin the respondent from threatening to commit or committing domestic violence
116 or abuse against the petitioner and any designated family or household member;

117 (b) prohibit the respondent from harassing, telephoning, contacting, or otherwise
118 communicating with the petitioner, directly or indirectly;

119 (c) order that the respondent is excluded from the petitioner's residence and its
120 premises, and order the respondent to stay away from the residence, school, or place of
121 employment of the petitioner, and the premises of any of these, or any specified place
122 frequented by the petitioner and any designated family or household member;

123 (d) upon finding that the respondent's use or possession of a weapon may pose a
124 serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or
125 possessing a firearm or other weapon specified by the court;

126 (e) order possession and use of an automobile and other essential personal effects, and
127 direct the appropriate law enforcement officer to accompany the petitioner to the residence of
128 the parties to ensure that the petitioner is safely restored to possession of the residence,
129 automobile, and other essential personal effects, or to supervise the petitioner's or respondent's
130 removal of personal belongings;

131 (f) grant to the petitioner temporary custody of any minor children of the parties;

132 (g) order the appointment of the ~~[office of the]~~ Office of Guardian Ad Litem to
133 represent the interests of any minor children of the parties, if abuse or neglect of the minor
134 children is alleged, or appoint a private guardian ad litem, if appropriate, pursuant to Section
135 78A-2-228;

136 (h) order any further relief that the court considers necessary to provide for the safety
137 and welfare of the petitioner and any designated family or household member; and

138 (i) if the petition requests child support or spousal support, at the hearing on the
139 petition order both parties to provide verification of current income, including year-to-date pay
140 stubs or employer statements of year-to-date or other period of earnings, as specified by the
141 court, and complete copies of tax returns from at least the most recent year.

142 (3) A court may grant the following relief in an order for protection or a modification
143 of an order after notice and hearing, whether or not the respondent appears:

144 (a) grant the relief described in Subsection (2); and

145 (b) specify arrangements for parent-time of any minor child by the respondent and
146 require supervision of that parent-time by a third party or deny parent-time if necessary to
147 protect the safety of the petitioner or child.

148 (4) Following the protective order hearing, the court shall:

149 (a) as soon as possible, deliver the order to the county sheriff for service of process;

150 (b) make reasonable efforts to ensure that the order for protection is understood by the
151 petitioner, and the respondent, if present;

152 (c) transmit electronically, by the end of the next business day after the order is issued,
153 a copy of the order for protection to the local law enforcement agency or agencies designated
154 by the petitioner; and

155 (d) transmit a copy of the order to the statewide domestic violence network described
156 in Section 78B-7-113.

157 (5) (a) Each protective order shall include two separate portions, one for provisions, the
158 violation of which are criminal offenses, and one for provisions, the violation of which are civil
159 violations, as follows:

160 (i) criminal offenses are those under Subsections (2)(a) through (e), and under
161 Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and

162 (ii) civil offenses are those under Subsections (2)(f), (h), and (i), and Subsection (3)(a)
163 as it refers to Subsections (2)(f), (h), and (i).

164 (b) The criminal provision portion shall include a statement that violation of any
165 criminal provision is a class A misdemeanor.

166 (c) The civil provision portion shall include a notice that violation of or failure to
167 comply with a civil provision is subject to contempt proceedings.

168 (6) The protective order shall include:

169 (a) a designation of a specific date, determined by the court, when the civil portion of

170 the protective order either expires or is scheduled for review by the court, which date may not
171 exceed 150 days after the date the order is issued, unless the court indicates on the record the
172 reason for setting a date beyond 150 days;

173 (b) information the petitioner is able to provide to facilitate identification of the
174 respondent, such as Social Security number, driver license number, date of birth, address,
175 telephone number, and physical description; and

176 (c) a statement advising the petitioner that:

177 (i) after two years from the date of issuance of the protective order, a hearing may be
178 held to dismiss the criminal portion of the protective order;

179 (ii) the petitioner should, within the 30 days prior to the end of the two-year period,
180 advise the court of the petitioner's current address for notice of any hearing; and

181 (iii) the address provided by the petitioner will not be made available to the respondent.

182 (7) Child support and spouse support orders issued as part of a protective order are
183 subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income
184 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non
185 IV-D Cases, except when the protective order is issued *ex parte*.

186 (8) (a) The county sheriff that receives the order from the court, pursuant to Subsection
187 (5)(a), shall provide expedited service for orders for protection issued in accordance with this
188 chapter, and shall transmit verification of service of process, when the order has been served, to
189 the statewide domestic violence network described in Section 78B-7-113.

190 (b) This section does not prohibit any law enforcement agency from providing service
191 of process if that law enforcement agency:

192 (i) has contact with the respondent and service by that law enforcement agency is
193 possible; or

194 (ii) determines that under the circumstances, providing service of process on the
195 respondent is in the best interests of the petitioner.

196 (9) (a) When an order is served on a respondent in a jail or other holding facility, the
197 law enforcement agency managing the facility shall make a reasonable effort to provide notice

198 to the petitioner at the time the respondent is released from incarceration.

199 (b) Notification of the petitioner shall consist of a good faith reasonable effort to
200 provide notification, including mailing a copy of the notification to the last-known address of
201 the victim.

202 (10) A court may modify or vacate an order of protection or any provisions in the order
203 after notice and hearing, except that the criminal provisions of a protective order may not be
204 vacated within two years of issuance unless the petitioner:

205 (a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah
206 Rules of Civil Procedure, and the petitioner personally appears before the court and gives
207 specific consent to the vacation of the criminal provisions of the protective order; or

208 (b) submits a verified affidavit, stating agreement to the vacation of the criminal
209 provisions of the protective order.

210 (11) A protective order may be modified without a showing of substantial and material
211 change in circumstances.

212 (12) Insofar as the provisions of this chapter are more specific than the Utah Rules of
213 Civil Procedure, regarding protective orders, the provisions of this chapter govern.