

**GUARDIAN AD LITEM AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: LaVar Christensen**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**General Description:**

This bill modifies provisions of Title 78A, Chapter 2, Judicial Administration, Title 78B, Chapter 7, Protective Orders, and Title 78B, Chapter 15, Utah Uniform Parentage Act, by amending the procedures for appointing a guardian ad litem to represent a minor.

**Highlighted Provisions:**

This bill:

- ▶ repeals provisions relating to the appointment of a guardian ad litem from the Office of Guardian ad Litem in a district court case;
- ▶ states the public policy in favor of a guardian ad litem balancing parental rights with the best interest of a child;
- ▶ describes the procedure for the appointment of a private attorney guardian ad litem to district court cases;
- ▶ requires the court to limit a private attorney guardian ad litem's representation to specific issues within a case, to the extent possible;
- ▶ provides a procedure for terminating a private attorney guardian ad litem's appointment;
- ▶ describes the duties of a private attorney guardian ad litem;
- ▶ authorizes the Office of Guardian ad Litem to establish, by rule, the system for appointing and paying a private attorney guardian ad litem;
- ▶ states that, if it appears from a petition for a protective order that domestic violence or abuse has occurred, a court may appoint a private attorney guardian ad litem;

30           ▶ authorizes the court to appoint a private attorney guardian ad litem for a child who  
31 is the subject of a petition for protective order;

32           ▶ authorizes the court to appoint a private attorney guardian ad litem for district court  
33 cases and the Office of Guardian ad Litem for juvenile cases; and

34           ▶ makes technical changes.

35 **Money Appropriated in this Bill:**

36           None

37 **Other Special Clauses:**

38           This bill provides effective dates.

39 **Utah Code Sections Affected:**

40 AMENDS:

41           **30-3-5.2**, as last amended by Laws of Utah 2008, Chapter 3

42           **51-9-408**, as last amended by Laws of Utah 2010, Chapter 218

43           **78A-2-228**, as last amended by Laws of Utah 2009, Chapter 32

44           **78B-3-102**, as last amended by Laws of Utah 2009, Chapter 79

45           **78B-7-106**, as last amended by Laws of Utah 2009, Chapter 146

46           **78B-7-202**, as renumbered and amended by Laws of Utah 2008, Chapter 3

47           **78B-15-612**, as renumbered and amended by Laws of Utah 2008, Chapter 3

48 ENACTS:

49           **78A-2-227.5**, Utah Code Annotated 1953

50 REPEALS:

51           **78A-2-227**, as last amended by Laws of Utah 2009, Chapter 32



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

54           Section 1. Section **30-3-5.2** is amended to read:

55           **30-3-5.2. Allegations of child abuse or child sexual abuse -- Investigation.**

56           When, in any divorce proceeding or upon a request for modification of a divorce  
57 decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the

58 court, after making an inquiry, may order that an investigation be conducted by the Division of  
59 Child and Family Services within the Department of Human Services in accordance with Title  
60 62A, Chapter 4a, Child and Family Services. A final award of custody or parent-time may not  
61 be rendered until a report on that investigation, consistent with Section 62A-4a-412, is received  
62 by the court. That investigation shall be conducted by the Division of Child and Family  
63 Services within 30 days of the court's notice and request for an investigation. In reviewing this  
64 report, the court shall comply with [~~Section 78A-2-227~~] Sections 78A-2-228 and 78B-15-612.

65 Section 2. Section **51-9-408** is amended to read:

66 **51-9-408. Children's Legal Defense Account.**

67 (1) There is created a restricted account within the General Fund known as the  
68 Children's Legal Defense Account.

69 (2) The purpose of the Children's Legal Defense Account is to provide for programs  
70 that protect and defend the rights, safety, and quality of life of children.

71 (3) The Legislature shall appropriate money from the account for the administrative  
72 and related costs of the following programs:

73 (a) implementing the Mandatory Educational Course on Children's Needs for  
74 Divorcing Parents relating to the effects of divorce on children as provided in Sections 30-3-4,  
75 30-3-7, 30-3-10.3, 30-3-11.3, 30-3-15.3, and 30-3-18, and the Mediation Pilot Program - Child  
76 Custody or Parent-time as provided in Sections 30-3-15.3 and 30-3-18;

77 (b) implementing the use of guardians ad litem as provided in Sections 30-3-5.2,  
78 [~~78A-2-227~~] 78A-2-228, 78A-6-321, 78A-6-902, and 78B-3-102; the training of guardians ad  
79 litem and volunteers as provided in Section 78A-6-902; and termination of parental rights as  
80 provided in Sections 78A-6-117, 78A-6-118, and 78A-6-1103, and Title 78A, Chapter 6, Part  
81 5, Termination of Parental Rights Act. This account may not be used to supplant funding for  
82 the guardian ad litem program in the juvenile court as provided in Section 78A-6-902; and

83 (c) implementing and administering the Expedited Parent-time Enforcement Program  
84 as provided in Section 30-3-38.

85 (4) The following withheld fees shall be allocated only to the Children's Legal Defense

86 Account and used only for the purposes provided in Subsections (3)(a) through (c):

87 (a) the additional \$10 fee withheld on every marriage license issued in the state of Utah  
88 as provided in Section 17-16-21; and

89 (b) a fee of \$4 shall be withheld from the existing civil filing fee collected on any  
90 complaint, affidavit, or petition in a civil, probate, or adoption matter in every court of record.

91 (5) The Division of Finance shall allocate the money described in Subsection (4) from  
92 the General Fund to the Children's Legal Defense Account.

93 (6) Any funds in excess of \$200,000 remaining in the restricted account as of June 30  
94 of any fiscal year shall lapse into the General Fund.

95 Section 3. Section 78A-2-227.5 is enacted to read:

96 **78A-2-227.5. Public policy regarding guardian ad litem -- Training.**

97 (1) A guardian ad litem may not presume that a child and the child's parent are  
98 adversaries.

99 (2) A guardian ad litem shall be trained in:

100 (a) the parental rights and child and family protection principles provided in Section  
101 62A-4a-201;

102 (b) the fundamental liberties of parents and the public policy of the state to support  
103 family unification to the fullest extent possible;

104 (c) the constitutionally protected rights of parents, in cases where the state is a party;  
105 and

106 (d) the use of a least restrictive means analysis regarding state claims of a compelling  
107 child welfare interest.

108 Section 4. Section 78A-2-228 is amended to read:

109 **78A-2-228. Private attorney guardian ad litem -- Appointment -- Costs and fees --**  
110 **Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum**  
111 **qualifications.**

112 (1) [(a)] The court may appoint a private attorney as guardian ad litem to represent the  
113 best interests of the minor in any district court action [~~in which the custody of or visitation with~~

114 a minor is at issue. ~~The attorney guardian ad litem shall be certified by the Director of the~~  
115 ~~Office of Guardian Ad Litem as having met the minimum qualifications for appointment, but~~  
116 ~~may not be employed by or under contract with the Office of Guardian Ad Litem.]~~ when:

117 ~~[(b) When appointing an attorney guardian ad litem for a minor under this section, a~~  
118 ~~court may appoint the same attorney guardian ad litem who represents the minor in another~~  
119 ~~proceeding, or who has represented the minor in a previous proceeding, if that attorney~~  
120 ~~guardian ad litem is available.]~~

121 ~~[(c) If, after appointment of the attorney guardian ad litem, an allegation of abuse,~~  
122 ~~neglect, or dependency of the minor is made the court shall:]~~

123 ~~[(i) determine whether it is in the best interests of the minor to continue the~~  
124 ~~appointment; or]~~

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

127 (a) child abuse, child sexual abuse, or neglect is alleged in any proceeding; or

128 (b) the custody of, or parent-time with, a child is at issue.

129 (2) (a) The court shall consider the limited number of eligible private attorneys  
130 guardian ad litem, as well as the limited time and resources available to a private attorney  
131 guardian ad litem, when making an appointment under Subsection (1) and prioritize case  
132 assignments accordingly.

133 (b) The court shall make findings regarding the need and basis for the appointment of a  
134 private guardian ad litem.

135 (c) A court may not appoint a private guardian ad litem in a criminal case.

136 (3) When appointing a private attorney guardian ad litem, the court shall:

137 (a) state in its order that the court is appointing a private attorney guardian ad litem, to  
138 be assigned by the Office of Guardian ad Litem, to represent the best interests of the child in  
139 the matter; and

140 (b) send the order described in Subsection (3)(a) to the Director of the Office of  
141 Guardian ad Litem, in care of the Private Attorney Guardian ad Litem program.

142 (4) The court shall:

143 (a) specify in the order appointing a private attorney guardian ad litem the specific  
144 issues in the proceeding that the private attorney guardian ad litem shall be involved in  
145 resolving, which may include issues relating to the custody of the child and a parent-time  
146 schedule;

147 (b) to the extent possible, bifurcate the issues described in Subsection (3)(a) from the  
148 other issues in the case in order to minimize the time constraints placed upon the private  
149 attorney guardian ad litem; and

150 (c) except as provided in Subsection (6), issue a final order within one year after the  
151 day on which the private attorney guardian ad litem is appointed in the case:

152 (i) resolving the issues described in Subsection (4)(a); and

153 (ii) terminating the private attorney guardian ad litem from the appointment to the case.

154 (5) The court shall issue an order terminating the appointment of a private guardian ad  
155 litem made under this section if:

156 (a) after receiving input from the private attorney guardian ad litem, the court  
157 determines that the minor no longer requires the services of the private attorney guardian ad  
158 litem; or

159 (b) there has been no activity in the case for a period of six consecutive months.

160 (6) A court may issue an order extending the one-year period described in Subsection  
161 (4)(c) for a specified amount of time if the court makes a written finding that there is a  
162 compelling reason that the court cannot comply with the requirements described in Subsection  
163 (4)(c) within the one-year period.

164 (7) When appointing a private attorney guardian ad litem under this section, a court  
165 may appoint the same private attorney guardian ad litem who represents the minor in another  
166 proceeding, or who has represented the minor in a previous proceeding, if that private attorney  
167 guardian ad litem is available.

168 (8) Upon receipt of the court's order, described in Subsection (3), the director or the  
169 director's designee shall assign the case to an eligible private attorney guardian ad litem, if

170 available and as established by rule under Subsection (17).

171 ~~[(2)(a) The]~~ (9) (a) When appointing a private attorney guardian ad litem, the court  
172 shall;

173 (i) assess all or part of the attorney guardian ad litem fees, courts costs, and paralegal,  
174 staff, and volunteer expenses against the parties in a proportion the court determines to be  
175 just[-]; and

176 ~~[(b) If the court finds a party to be impecunious, under the provisions of Section~~  
177 ~~78A-2-302, the court may direct the impecunious party's share of the assessment to be covered~~  
178 ~~by the attorney guardian ad litem pro bono obligation established in Subsection (6)(b).]~~

179 (ii) designate in the order whether the private attorney guardian ad litem shall, as  
180 established by rule under Subsection (17):

181 (A) be paid a set fee and initial retainer;

182 (B) not be paid and serve pro bono; or

183 (C) be paid at a rate less than the set fee established by court rule.

184 (b) If a party claims to be impecunious, the court shall follow the procedure and make a  
185 determination, described in Section 78A-2-302, to set the amount that the party is required to  
186 pay, if any, toward the private attorney guardian ad litem's fees and expenses.

187 (c) The private attorney guardian ad litem may adjust the court-ordered fees or retainer  
188 to an amount less than what was ordered by the court at any time before being released from  
189 representation by the court.

190 (10) Upon accepting the court's appointment, the assigned attorney shall:

191 (a) file a notice of appearance with the court within five business days of the day on  
192 which the attorney was assigned; and

193 (b) represent the best interests of the minor until released by the court.

194 (11) The private attorney guardian ad litem:

195 (a) shall be certified by the director of the Office of Guardian ad Litem as meeting the  
196 minimum qualifications for appointment; and

197 (b) may not be employed by, or under contract with, the Office of Guardian ad Litem

198 unless under contract as a conflict guardian ad litem in an unrelated case.

199           ~~[(3)]~~ (12) The private attorney guardian ad litem appointed under the provisions of this  
200 section shall:

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

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

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

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

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

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

210           (ii) personally interview the minor, unless:

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

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

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

214           (iii) to the extent possible, determine the minor's goals and concerns regarding custody  
215 or visitation; and

216           (iv) to the extent possible, and unless it would be detrimental to the minor, keep the  
217 minor advised of:

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

219                   (B) all court and administrative proceedings;

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

221                   (D) court action; and

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

224           (e) unless excused by the court, prepare for and attend all mediation hearings and all  
225 court conferences and hearings, and present witnesses and exhibits as necessary to protect the



226 best interests of the minor;

227 (f) identify community resources to protect the best interests of the minor and advocate  
228 for those resources; and

229 (g) participate in all appeals unless excused by the court.

230 ~~[(4)]~~ (13) (a) The private attorney guardian ad litem shall represent the best interests of  
231 a minor.

232 (b) If the minor's ~~[wishes]~~ intent and desires differ from the attorney's determination of  
233 the minor's best interests, the attorney guardian ad litem shall communicate to the court the  
234 minor's ~~[wishes]~~ intent and desires and the attorney's determination of the minor's best  
235 interests.

236 (c) A difference between the minor's ~~[wishes]~~ intent and desires and the attorney's  
237 determination of best interests is not sufficient to create a conflict of interest.

238 (d) The private attorney guardian ad litem shall disclose the intent and desires of the  
239 minor unless the minor:

240 (i) instructs the private attorney guardian ad litem to not disclose the minor's intent and  
241 desires; or

242 (ii) has not expressed an intent and desire.

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

245 (14) In every court hearing where the private attorney guardian ad litem makes a  
246 recommendation regarding the best interest of the minor, the court shall require the private  
247 attorney guardian ad litem to disclose the factors that form the basis of the recommendation.

248 ~~[(5)]~~ (15) An attorney guardian ad litem appointed under this section is immune from  
249 any civil liability that might result by reason of acts performed within the scope of duties of the  
250 attorney guardian ad litem.

251 (16) The Office of Guardian ad Litem and the Guardian Ad Litem Oversight  
252 Committee shall compile a list of attorneys willing to accept an appointment as a private  
253 attorney guardian ad litem.

254            ~~[(6)-(a)]~~ (17) Upon the advice of the director of the Office of Guardian ad Litem and  
255 the Guardian Ad Litem Oversight Committee, the Judicial Council shall establish by rule  
256 [establish]:

257            (a) the minimum qualifications and requirements for appointment by the court as an  
258 attorney guardian ad litem[-];

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

261            (b) the standard fee rate and retainer amount for a private attorney guardian ad litem;

262            (c) the percentage of cases a private attorney guardian ad litem may be expected to take  
263 on pro bono;

264            (d) a system to:

265            (i) select a private attorney guardian ad litem for a given appointment; and

266            (ii) determine when a private attorney guardian ad litem shall be expected to accept an  
267 appointment pro bono; and

268            (e) the process for handling a complaint relating to the eligibility status of a private  
269 attorney guardian ad litem.

270            (18) Any savings that result from assigning a private attorney guardian ad litem in a  
271 district court case, instead of a guardian ad litem from the Office of Guardian ad Litem, shall  
272 be applied to the Office of Guardian ad Litem to reduce caseloads and improve current  
273 practices.

274            Section 5. Section **78B-3-102** is amended to read:

275            **78B-3-102. Injury of a child -- Suit by parent or guardian.**

276            (1) Except as provided in Title 34A, Chapter 2, Workers' Compensation Act, a parent  
277 or guardian may bring an action for the injury of a minor child when the injury is caused by the  
278 wrongful act or neglect of another.

279            (2) A civil action may be maintained against the person causing the injury or, if the  
280 person is employed by another person who is responsible for that person's conduct, also against  
281 the employer.

282 (3) If a parent, stepparent, adoptive parent, or legal guardian is the alleged defendant in  
283 an action for the injury of a child, a guardian ad litem may be appointed for the injured child  
284 according to the procedures outlined in Section [~~78A-2-227~~] 78A-2-228.

285 Section 6. Section **78B-7-106** is amended to read:

286 **78B-7-106. Protective orders -- Ex parte protective orders -- Modification of**  
287 **orders -- Service of process -- Duties of the court.**

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

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

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

296 (2) A court may grant the following relief without notice in an order for protection or a  
297 modification issued ex parte:

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

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

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

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

309 (e) order possession and use of an automobile and other essential personal effects, and

310 direct the appropriate law enforcement officer to accompany the petitioner to the residence of  
311 the parties to ensure that the petitioner is safely restored to possession of the residence,  
312 automobile, and other essential personal effects, or to supervise the petitioner's or respondent's  
313 removal of personal belongings;

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

315 (g) order the appointment of ~~[the office of the Guardian Ad Litem to represent the~~  
316 ~~interests of any minor children of the parties, if abuse or neglect of the minor children is~~  
317 ~~alleged, or appoint a private guardian ad litem, if appropriate, pursuant to Section 78A-2-228] a~~  
318 private attorney guardian ad litem under Section 78A-2-228, if appropriate;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

351 (6) The protective order shall include:

352 (a) a designation of a specific date, determined by the court, when the civil portion of  
353 the protective order either expires or is scheduled for review by the court, which date may not  
354 exceed 150 days after the date the order is issued, unless the court indicates on the record the  
355 reason for setting a date beyond 150 days;

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

359 (c) a statement advising the petitioner that:

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

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

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

365 (7) Child support and spouse support orders issued as part of a protective order are

366 subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income  
367 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non  
368 IV-D Cases, except when the protective order is issued ex parte.

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

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

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

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

379 (9) (a) When an order is served on a respondent in a jail or other holding facility, the  
380 law enforcement agency managing the facility shall make a reasonable effort to provide notice  
381 to the petitioner at the time the respondent is released from incarceration.

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

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

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

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

393 (11) A protective order may be modified without a showing of substantial and material

394 change in circumstances.

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

397 Section 7. Section **78B-7-202** is amended to read:

398 **78B-7-202. Petition -- Ex parte determination -- Guardian ad litem -- Referral to**  
399 **division.**

400 (1) Any interested person may file a petition for a protective order on behalf of a child  
401 who is being abused or is in imminent danger of being abused. The petitioner shall first make  
402 a referral to the division.

403 (2) Upon the filing of a petition, the clerk of the court shall:

404 (a) review the records of the juvenile court, the district court, and the management  
405 information system of the division to find any petitions, orders, or investigations related to the  
406 child or the parties to the case;

407 (b) request the records of any law enforcement agency identified by the petitioner as  
408 having investigated abuse of the child; and

409 (c) identify and obtain any other background information that may be of assistance to  
410 the court.

411 (3) Upon the filing of a petition, the court shall immediately determine, based on the  
412 evidence and information presented, whether the minor is being abused or is in imminent  
413 danger of being abused. If so, the court shall enter an ex parte child protective order.

414 (4) The court may appoint ~~an~~ a private attorney guardian ad litem under Section  
415 78A-2-228 for district court cases, or the Office of Guardian ad Litem for juvenile court cases  
416 under Section 78A-6-902, for the child who is the subject of the petition.

417 Section 8. Section **78B-15-612** is amended to read:

418 **78B-15-612. Minor as party -- Representation.**

419 (1) A minor ~~child~~ is a permissible party, but is not a necessary party to a proceeding  
420 under this part.

421 (2) The tribunal may appoint a private guardian ad litem for district court cases under

422 Section 78A-2-228 or the Office of Guardian ad Litem for juvenile court cases under Section  
423 78A-6-902 to represent a minor or incapacitated child if the child is a party or the tribunal finds  
424 that the interests of the child are not adequately represented.

425 Section 9. **Repealer.**

426 This bill repeals:

427 Section **78A-2-227, Appointment of attorney guardian ad litem in child abuse and**  
428 **neglect proceedings.**

429 Section 10. **Effective date.**

430 (1) Except as provided in Subsection (2), this bill takes effect on May 8, 2012.

431 (2) The following sections take effect on July 1, 2013:

432 (a) Section 30-3-5.2;

433 (b) Section 51-9-408;

434 (c) Section 78A-2-227;

435 (d) Section 78A-2-228;

436 (e) Section 78B-3-102;

437 (f) Section 78B-7-106;

438 (g) Section 78B-7-202; and

439 (h) Section 78B-15-612.