

1 **CHILD WELFARE MODIFICATIONS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne A. Harper**

5 House Sponsor: Ronda Rudd Menlove

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies Title 62A, Chapter 4a, Child and Family Services, and Title 78A,
10 Chapter 6, Juvenile Court Act, by amending procedures relating to child welfare, and
11 making clarifying changes to uncodified laws of Utah relating to the Office of the
12 Guardian ad Litem.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ prohibits the division from requiring a parent to pay for some or all of the cost of
16 mandatory drug testing;
- 17 ▶ states that a parent is not required to provide child support to the Division of Child
18 and Family Services for a child in the protective custody, temporary custody, or
19 custody of the division if the parent's only form of income is a government-issued
20 disability benefit;
- 21 ▶ permits a parent or guardian to name two friends as potential emergency
22 placements, if the division removes the child from the parent or guardian's home;
- 23 ▶ prohibits the court from ordering additional drug or alcohol testing beyond what is
24 recommended by a parent's substance abuse treatment program;
- 25 ▶ modifies the definition of a "relative" to include the first cousin of the child's parent;
- 26 ▶ beginning July 1, 2014, permits a parent whose rights were terminated, or a relative
27 of the child, to petition for guardianship of the parent's child if the child is not
28 adopted within a year of termination, and no adoption is likely to occur, or if the
29 child's adoptive parents return the child to the custody of the division;

30 ▶ requires the division to study options for creating a posttermination of parental
31 rights system and report the findings to the 2013 Health and Human Services
32 Interim Committee;

33 ▶ delays the effective date of Uncodified Section 10, Laws of Utah 2012, Chapter
34 223; and

35 ▶ makes technical changes.

36 **Money Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 This bill provides effective dates.

40 This bill coordinates with H.B. 156, Restoration of Terminated Parental Rights, by
41 providing superseding amendments.

42 **Utah Code Sections Affected:**

43 AMENDS:

44 **62A-4a-105**, as last amended by Laws of Utah 2012, Chapters 49 and 200

45 **62A-4a-114**, as last amended by Laws of Utah 2008, Chapter 3

46 **62A-4a-209**, as last amended by Laws of Utah 2008, Chapters 3 and 17

47 **63I-1-278**, as last amended by Laws of Utah 2012, Chapters 301 and 369

48 **78A-2-228 (Effective 07/01/13)**, as last amended by Laws of Utah 2012, Chapter 223

49 **78A-6-307**, as last amended by Laws of Utah 2008, Chapter 17 and renumbered and
50 amended by Laws of Utah 2008, Chapter 3

51 **78A-6-312**, as last amended by Laws of Utah 2012, Chapter 293

52 **78A-6-511**, as last amended by Laws of Utah 2012, Chapter 293

53 **78A-6-513**, as renumbered and amended by Laws of Utah 2008, Chapter 3

54 **78A-6-1106**, as renumbered and amended by Laws of Utah 2008, Chapter 3

55 **78B-7-106 (Effective 07/01/13)**, as last amended by Laws of Utah 2012, Chapters 120
56 and 223

57 **78B-7-202 (Effective 07/01/13)**, as last amended by Laws of Utah 2012, Chapter 223

58 ENACTS:

59 78A-2-227.1, Utah Code Annotated 1953

60 78A-6-511.1, Utah Code Annotated 1953

61 **Utah Code Sections Affected by Coordination Clause:**

62 78A-6-511, as last amended by Laws of Utah 2012, Chapter 293

63 78A-6-513, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

66 Section 1. Section **62A-4a-105** is amended to read:

67 **62A-4a-105. Division responsibilities.**

68 (1) The division shall:

69 (a) administer services to minors and families, including:

70 (i) child welfare services;

71 (ii) domestic violence services; and

72 (iii) all other responsibilities that the Legislature or the executive director may assign

73 to the division;

74 (b) provide the following services:

75 (i) financial and other assistance to an individual adopting a child with special needs

76 under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the

77 child as a legal ward of the state;

78 (ii) non-custodial and in-home preventative services, including:

79 (A) services designed to prevent family break-up; and

80 (B) family preservation services;

81 (iii) reunification services to families whose children are in substitute care in

82 accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act

83 of 1996;

84 (iv) protective supervision of a family, upon court order, in an effort to eliminate abuse

85 or neglect of a child in that family;

86 (v) shelter care in accordance with the requirements of this chapter and Title 78A,
87 Chapter 6, Juvenile Court Act of 1996;

88 (vi) domestic violence services, in accordance with the requirements of federal law;

89 (vii) protective services to victims of domestic violence, as defined in Section 77-36-1,
90 and their children, in accordance with the provisions of this chapter and Title 78A, Chapter 6,
91 Part 3, Abuse, Neglect, and Dependency Proceedings;

92 (viii) substitute care for dependent, abused, neglected, and delinquent children;

93 (ix) programs and services for minors who have been placed in the custody of the
94 division for reasons other than abuse or neglect, under Section 62A-4a-250; and

95 (x) training for staff and providers involved in the administration and delivery of
96 services offered by the division in accordance with this chapter;

97 (c) establish standards for all:

98 (i) contract providers of out-of-home care for minors and families;

99 (ii) facilities that provide substitute care for dependent, abused, neglected, and
100 delinquent children placed in the custody of the division; and

101 (iii) direct or contract providers of domestic violence services described in Subsection
102 (1)(b)(vi);

103 (d) have authority to:

104 (i) contract with a private, nonprofit organization to recruit and train foster care
105 families and child welfare volunteers in accordance with Section 62A-4a-107.5; and

106 (ii) approve facilities that meet the standards established under Subsection (1)(c) to
107 provide substitute care for dependent, abused, neglected, and delinquent children placed in the
108 custody of the division;

109 (e) cooperate with the federal government in the administration of child welfare and
110 domestic violence programs and other human service activities assigned by the department;

111 (f) in accordance with Subsection (2)(a), promote and enforce state and federal laws
112 enacted for the protection of abused, neglected, dependent, delinquent, ungovernable, and
113 runaway children, and status offenders, in accordance with the requirements of this chapter,

114 unless administration is expressly vested in another division or department of the state;

115 (g) cooperate with the Employment Development Division in the Department of
116 Workforce Services in meeting the social and economic needs of an individual who is eligible
117 for public assistance;

118 (h) compile relevant information, statistics, and reports on child and family service
119 matters in the state;

120 (i) prepare and submit to the department, the governor, and the Legislature reports of
121 the operation and administration of the division in accordance with the requirements of
122 Sections 62A-4a-117 and 62A-4a-118;

123 (j) provide social studies and reports for the juvenile court in accordance with Section
124 78A-6-605;

125 (k) within appropriations from the Legislature, provide or contract for a variety of
126 domestic violence services and treatment methods;

127 (l) ensure regular, periodic publication, including electronic publication, regarding the
128 number of children in the custody of the division who:

129 (i) have a permanency goal of adoption; or
130 (ii) have a final plan of termination of parental rights, pursuant to Section 78A-6-314,
131 and promote adoption of those children;

132 (m) subject to Subsection (2)(b), refer an individual receiving services from the
133 division to the local substance abuse authority or other private or public resource for a
134 court-ordered drug screening test; and

135 (n) perform other duties and functions required by law.

136 (2) (a) In carrying out the requirements of Subsection (1)(f), the division shall:

137 (i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and
138 with all public and private licensed child welfare agencies and institutions, to develop and
139 administer a broad range of services and support;

140 (ii) take the initiative in all matters involving the protection of abused or neglected
141 children, if adequate provisions have not been made or are not likely to be made; and

142 (iii) make expenditures necessary for the care and protection of the children described
143 in this Subsection (2)(a), within the division's budget.

144 (b) When an individual is referred to a local substance abuse authority or other private
145 or public resource for court-ordered drug screening under Subsection (1)(n), the court shall
146 order the individual to pay all costs of the tests unless:

147 (i) the cost of the drug screening is specifically funded or provided for by other federal
148 or state programs;

149 (ii) the individual is a participant in a drug court; or

150 (iii) the court finds that the individual is impecunious.

151 (3) Except to the extent provided by rule, the division is not responsible for
152 investigating domestic violence in the presence of a child, as described in Section 76-5-109.1.

153 (4) The division may not require a parent who has a child in the custody of the division
154 to pay for some or all of the cost of any drug testing the parent is required to undergo.

155 Section 2. Section **62A-4a-114** is amended to read:

156 **62A-4a-114. Financial reimbursement by parent or legal guardian.**

157 (1) ~~[The]~~ Except as provided in Subsection (5), the division shall seek reimbursement
158 of funds it has expended on behalf of a child in the protective custody, temporary custody, or
159 custody of the division, from the child's parents or legal guardians in accordance with an order
160 for child support under Section 78A-6-1106.

161 (2) A parent or any other obligated person is not responsible for support for periods of
162 time that a child is removed upon a finding by the juvenile court that there were insufficient
163 grounds for that removal and that child is returned to the home of the parent, parents, or legal
164 guardians based upon that finding.

165 (3) In the event that the juvenile court finds that there were insufficient grounds for the
166 initial removal, but that the child is to remain in the custody of the state, the juvenile court shall
167 order that the parents or any other obligated persons are responsible for support from the point
168 at which it became improper to return the child to the home of ~~[his or her]~~ the child's parent,
169 parents, or legal guardians.

170 (4) The attorney general shall represent the division in any legal action taken to enforce
171 this section.

172 (5) (a) A parent or any other obligated person is not responsible for support if:

173 (i) the parent or other obligated person's only source of income is a government-issued
174 disability benefit; and

175 (ii) the benefit described in Subsection (5)(a)(i) is issued because of the parent or other
176 person's disability, and not the child's disability.

177 (b) A person who seeks to be excused from providing support under Subsection (5)(a)
178 shall provide the division and the Office of Recovery Services with evidence that the person
179 meets the requirements of Subsection (5)(a).

180 Section 3. Section **62A-4a-209** is amended to read:

181 **62A-4a-209. Emergency placement.**

182 (1) As used in this section:

183 (a) "Nonrelative" means an individual, other than a noncustodial parent or a relative.

184 (b) "Relative" is as defined in Subsection 78A-6-307(1)(b).

185 (2) The division may use an emergency placement under Subsection
186 62A-4a-202.1(4)(b)(ii) when:

187 (a) the case worker has made the determination that:

188 (i) the child's home is unsafe;

189 (ii) removal is necessary under the provisions of Section 62A-4a-202.1; and

190 (iii) the child's custodial parent or guardian will agree to not remove the child from the
191 home of the person that serves as the placement and not have any contact with the child until
192 after the shelter hearing required by Section 78A-6-306;

193 (b) a person, with preference being given in accordance with Subsection (4), can be
194 identified who has the ability and is willing to provide care for the child who would otherwise
195 be placed in shelter care, including:

196 (i) taking the child to medical, mental health, dental, and educational appointments at
197 the request of the division; and

- 198 (ii) making the child available to division services and the guardian ad litem; and
199 (c) the person described in Subsection (2)(b) agrees to care for the child on an
200 emergency basis under the following conditions:
- 201 (i) the person meets the criteria for an emergency placement under Subsection (3);
 - 202 (ii) the person agrees to not allow the custodial parent or guardian to have any contact
203 with the child until after the shelter hearing unless authorized by the division in writing;
 - 204 (iii) the person agrees to contact law enforcement and the division if the custodial
205 parent or guardian attempts to make unauthorized contact with the child;
 - 206 (iv) the person agrees to allow the division and the child's guardian ad litem to have
207 access to the child;
 - 208 (v) the person has been informed and understands that the division may continue to
209 search for other possible placements for long-term care, if needed;
 - 210 (vi) the person is willing to assist the custodial parent or guardian in reunification
211 efforts at the request of the division, and to follow all court orders; and
 - 212 (vii) the child is comfortable with the person.
- 213 (3) Except as otherwise provided in Subsection (5), before the division places a child
214 in an emergency placement, the division:
- 215 (a) may request the name of a reference and may contact the reference to determine the
216 answer to the following questions:
 - 217 (i) would the person identified as a reference place a child in the home of the
218 emergency placement; and
 - 219 (ii) are there any other relatives or friends to consider as a possible emergency or
220 long-term placement for the child;
 - 221 (b) shall have the custodial parent or guardian sign an emergency placement agreement
222 form during the investigation;
 - 223 (c) (i) if the emergency placement will be with a relative of the child, shall comply with
224 the background check provisions described in Subsection (7); or
 - 225 (ii) if the emergency placement will be with a person other than a noncustodial parent

226 or a relative, shall comply with the criminal background check provisions described in Section
227 78A-6-308 for adults living in the household where the child will be placed;

228 (d) shall complete a limited home inspection of the home where the emergency
229 placement is made; and

230 (e) shall have the emergency placement approved by a family service specialist.

231 (4) (a) The following order of preference shall be applied when determining the person
232 with whom a child will be placed in an emergency placement described in this section,
233 provided that the person is willing, and has the ability, to care for the child:

234 (i) a noncustodial parent of the child in accordance with Section 78A-6-307;

235 (ii) a relative of the child;

236 (iii) subject to Subsection (4)(b), a friend designated by the custodial parent or
237 guardian of the child, if the friend is a licensed foster parent; and

238 (iv) a shelter facility, former foster placement, or other foster placement designated by
239 the division.

240 (b) Unless the division agrees otherwise, the custodial parent or guardian described in
241 Subsection (4)(a)(iii) may [~~only~~] designate [~~one friend~~] up to two friends as a potential
242 emergency placement.

243 (5) (a) The division may, pending the outcome of the investigation described in
244 Subsections (5)(b) and (c), place a child in emergency placement with the child's noncustodial
245 parent if, based on a limited investigation, prior to making the emergency placement, the
246 division:

247 (i) determines that the noncustodial parent has regular, unsupervised visitation with the
248 child that is not prohibited by law or court order;

249 (ii) determines that there is not reason to believe that the child's health or safety will be
250 endangered during the emergency placement; and

251 (iii) has the custodial parent or guardian sign an emergency placement agreement.

252 (b) Either before or after making an emergency placement with the noncustodial parent
253 of the child, the division may conduct the investigation described in Subsection (3)(a) in

254 relation to the noncustodial parent.

255 (c) Before, or within one day, excluding weekends and holidays, after a child is placed
256 in an emergency placement with the noncustodial parent of the child, the division shall conduct
257 a limited:

258 (i) background check of the noncustodial parent, pursuant to Subsection (7); and

259 (ii) inspection of the home where the emergency placement is made.

260 (6) After an emergency placement, the division caseworker must:

261 (a) respond to the emergency placement's calls within one hour if the custodial parents
262 or guardians attempt to make unauthorized contact with the child or attempt to remove the
263 child;

264 (b) complete all removal paperwork, including the notice provided to the custodial
265 parents and guardians under Section 78A-6-306;

266 (c) contact the attorney general to schedule a shelter hearing;

267 (d) complete the placement procedures required in Section 78A-6-307; and

268 (e) continue to search for other relatives as a possible long-term placement, if needed.

269 (7) (a) The background check described in Subsection (3)(c)(i) shall include:

270 (i) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification
271 background check; and

272 (ii) a completed search of the Management Information System described in Section
273 62A-4a-1003.

274 (b) The division shall determine whether a person passes the background check
275 described in this Subsection (7) pursuant to the provisions of Subsections 62A-2-120(2), (3),
276 and (8).

277 (c) Notwithstanding Subsection (7)(b), the division may not place a child with an
278 individual who is prohibited by court order from having access to that child.

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

280 **63I-1-278. Repeal dates, Title 78A and Title 78B.**

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

282 July 1, 2018.

283 (2) Section 78A-2-227.1 is repealed July 1, 2014.

284 [~~(2)~~] (3) Section 78B-3-421, regarding medical malpractice arbitration agreements, is
285 repealed July 1, 2019.

286 [~~(3)~~] (4) Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution is repealed July 1,
287 2016.

288 [~~(4)~~] (5) The following are repealed December 31, 2014:

289 (a) Subsection 78B-6-802(1)(i);

290 (b) the language in Subsection 78B-6-802(1)(a) that states "except as provided in
291 Subsection (1)(i)"; and

292 (c) the language in Subsection 78B-6-802(1)(b) that states "and except as provided in
293 Subsection (1)(i)".

294 [~~(5)~~] (6) Section 78B-6-901.5, regarding notice to tenants on residential rental property
295 to be foreclosed, is repealed December 31, 2014.

296 Section 5. Section **78A-2-227.1** is enacted to read:

297 **78A-2-227.1. Appointment of attorney guardian ad litem in district court matters.**

298 A district court may appoint the Office of Guardian ad Litem to represent the best
299 interests of a minor in the following district court matters:

300 (1) protective order proceedings; and

301 (2) district court actions when:

302 (a) child abuse, child sexual abuse, or neglect is alleged in a formal complaint, petition,
303 or counterclaim;

304 (b) the child abuse, child sexual abuse, or neglect described in Subsection (2)(a) has
305 been reported to Child Protective Services; and

306 (c) the court makes a finding that the adult parties to the case are indigent, as defined in
307 Section 77-32-202.

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

309 (b) Subsection (3)(a) does not prohibit the appointment of an attorney guardian ad

310 litem in a case where a court is determining whether to adjudicate a minor for committing an
311 act that would be a crime if committed by an adult.

312 (c) Subsection (3)(a) does not prohibit an attorney guardian ad litem from entering an
313 appearance, filing motions, or taking other action in a criminal case on behalf of a minor, if:

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

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

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

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

319 (4) If a court appoints an attorney guardian ad litem in a divorce or child custody case,
320 the court shall:

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

324 (b) to the extent possible, bifurcate the issues specified in the order described in
325 Subsection (4)(a) from the other issues in the case, in order to minimize the time constraints
326 placed upon the attorney guardian ad litem in the case; and

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

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

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

331 (5) The court shall issue an order terminating the appointment of an attorney guardian
332 ad litem made under this section, if:

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

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

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

338 (6) A court may issue a written order extending the one-year period described in
339 Subsection (4)(c) for a time certain, if the court makes a written finding that there is a
340 compelling reason that the court cannot comply with the requirements described in Subsection
341 (4)(c) within the one-year period.

342 (7) When appointing an attorney guardian ad litem for a minor under this section, a
343 court may appoint the same attorney guardian ad litem who represents the minor in another
344 proceeding, or who has represented the minor in a previous proceeding, if that attorney
345 guardian ad litem is available.

346 (8) The court is responsible for all costs resulting from the appointment of an attorney
347 guardian ad litem and shall use funds appropriated by the Legislature for the guardian ad litem
348 program to cover those costs.

349 (9) (a) If the court appoints the Office of Guardian ad Litem in a civil case pursuant to
350 this section, the court may assess all or part of those attorney fees, court costs, paralegal, staff,
351 and volunteer expenses against the minor's parent, parents, or legal guardian in an amount that
352 the court determines to be just and appropriate.

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

358 (10) An attorney guardian ad litem appointed in accordance with the requirements of
359 this section and Chapter 6, Part 9, Guardian Ad Litem, is, when serving in the scope of duties
360 of an attorney guardian ad litem, considered an employee of this state for purposes of
361 indemnification under the Governmental Immunity Act.

362 Section 6. Section **78A-2-228 (Effective 07/01/13)** is amended to read:

363 **78A-2-228 (Effective 07/01/13). Private attorney guardian ad litem --**
364 **Appointment -- Costs and fees -- Duties -- Conflicts of interest -- Pro bono obligation --**
365 **Indemnification -- Minimum qualifications.**

366 (1) The court may appoint a private attorney as guardian ad litem to represent the best
367 interests of the minor in any district court action when:

368 (a) child abuse, child sexual abuse, or neglect is alleged in any proceeding, and the
369 court has made a finding that an adult party is not indigent, as defined by Section 77-32-202; or

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

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

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

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

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

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

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

384 (4) The court shall:

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

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

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

- 394 (i) resolving the issues described in Subsection (4)(a); and
395 (ii) terminating the private attorney guardian ad litem from the appointment to the case.
396 (5) The court shall issue an order terminating the appointment of a private guardian ad
397 litem made under this section if:
398 (a) after receiving input from the private attorney guardian ad litem, the court
399 determines that the minor no longer requires the services of the private attorney guardian ad
400 litem; or
401 (b) there has been no activity in the case for a period of six consecutive months.
402 (6) A court may issue an order extending the one-year period described in Subsection
403 (4)(c) for a specified amount of time if the court makes a written finding that there is a
404 compelling reason that the court cannot comply with the requirements described in Subsection
405 (4)(c) within the one-year period.
406 (7) When appointing a private attorney guardian ad litem under this section, a court
407 may appoint the same private attorney guardian ad litem who represents the minor in another
408 proceeding, or who has represented the minor in a previous proceeding, if that private attorney
409 guardian ad litem is available.
410 (8) Upon receipt of the court's order, described in Subsection (3), the director or the
411 director's designee shall assign the case to an eligible private attorney guardian ad litem, if
412 available and as established by rule under Subsection (17).
413 (9) (a) When appointing a private attorney guardian ad litem, the court shall:
414 (i) assess all or part of the attorney guardian ad litem fees, courts costs, and paralegal,
415 staff, and volunteer expenses against the parties in a proportion the court determines to be just;
416 and
417 (ii) designate in the order whether the private attorney guardian ad litem shall, as
418 established by rule under Subsection (17):
419 (A) be paid a set fee and initial retainer;
420 (B) not be paid and serve pro bono; or
421 (C) be paid at a rate less than the set fee established by court rule.

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

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

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

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

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

432 (11) The private attorney guardian ad litem:

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

435 (b) may not be employed by, or under contract with, the Office of Guardian ad Litem
436 unless under contract as a conflict guardian ad litem in an unrelated case.

437 (12) The private attorney guardian ad litem appointed under the provisions of this
438 section shall:

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

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

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

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

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

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

448 (ii) personally interview the minor, unless:

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

- 450 (B) the minor lacks the capacity to participate in a meaningful interview; or
- 451 (C) the interview would be detrimental to the minor;
- 452 (iii) to the extent possible, determine the minor's goals and concerns regarding custody
- 453 or visitation; and
- 454 (iv) to the extent possible, and unless it would be detrimental to the minor, keep the
- 455 minor advised of:
 - 456 (A) the status of the minor's case;
 - 457 (B) all court and administrative proceedings;
 - 458 (C) discussions with, and proposals made by, other parties;
 - 459 (D) court action; and
 - 460 (E) the psychiatric, medical, or other treatment or diagnostic services that are to be
 - 461 provided to the minor;
 - 462 (e) unless excused by the court, prepare for and attend all mediation hearings and all
 - 463 court conferences and hearings, and present witnesses and exhibits as necessary to protect the
 - 464 best interests of the minor;
 - 465 (f) identify community resources to protect the best interests of the minor and advocate
 - 466 for those resources; and
 - 467 (g) participate in all appeals unless excused by the court.
- 468 (13) (a) The private attorney guardian ad litem shall represent the best interests of a
- 469 minor.
 - 470 (b) If the minor's intent and desires differ from the attorney's determination of the
 - 471 minor's best interests, the attorney guardian ad litem shall communicate to the court the minor's
 - 472 intent and desires and the attorney's determination of the minor's best interests.
 - 473 (c) A difference between the minor's intent and desires and the attorney's determination
 - 474 of best interests is not sufficient to create a conflict of interest.
 - 475 (d) The private attorney guardian ad litem shall disclose the intent and desires of the
 - 476 minor unless the minor:
 - 477 (i) instructs the private attorney guardian ad litem to not disclose the minor's intent and

478 desires; or

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

480 (e) The court may appoint one attorney guardian ad litem to represent the best interests
481 of more than one child of a marriage.

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

485 (15) An attorney guardian ad litem appointed under this section is immune from any
486 civil liability that might result by reason of acts performed within the scope of duties of the
487 attorney guardian ad litem.

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

491 (17) Upon the advice of the director of the Office of Guardian ad Litem and the
492 Guardian Ad Litem Oversight Committee, the Judicial Council shall establish by rule:

493 (a) the minimum qualifications and requirements for appointment by the court as an
494 attorney guardian ad litem;

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

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

498 (d) a system to:

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

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

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

504 (18) Any savings that result from assigning a private attorney guardian ad litem in a
505 district court case, instead of a guardian ad litem from the Office of Guardian ad Litem, shall

506 be applied to the [~~Office of Guardian ad Litem to reduce caseloads and improve current~~
507 ~~practices~~] private guardian ad litem program.

508 Section 7. Section **78A-6-307** is amended to read:

509 **78A-6-307. Shelter hearing -- Placement -- DCFS custody.**

510 (1) As used in this section:

511 (a) (i) "Natural parent," notwithstanding the provisions of Section 78A-6-105, means:

512 (A) a biological or adoptive mother;

513 (B) an adoptive father; or

514 (C) a biological father who:

515 (I) was married to the child's biological mother at the time the child was conceived or
516 born; or

517 (II) has strictly complied with the provisions of Sections 78B-6-120 through
518 78B-6-122, prior to removal of the child or voluntary surrender of the child by the custodial
519 parent.

520 (ii) The definition of "natural parent" described in Subsection (1)(a)(i) applies
521 regardless of whether the child has been or will be placed with adoptive parents or whether
522 adoption has been or will be considered as a long-term goal for the child.

523 (b) "Relative" means:

524 (i) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle,
525 brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, [or] sibling of a child, or a
526 first cousin of the child's parent; and

527 (ii) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25
528 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that
529 statute.

530 (2) (a) At the shelter hearing, when the court orders that a child be removed from the
531 custody of the child's parent in accordance with the requirements of Section 78A-6-306, the
532 court shall first determine whether there is another natural parent with whom the child was not
533 residing at the time the events or conditions that brought the child within the court's jurisdiction

534 occurred, who desires to assume custody of the child.

535 (b) If another natural parent requests custody under Subsection (2)(a), the court shall
536 place the child with that parent unless it finds that the placement would be unsafe or otherwise
537 detrimental to the child.

538 (c) The provisions of this Subsection (2) are limited by the provisions of Subsection
539 (18)(b).

540 (d) (i) The court shall make a specific finding regarding the fitness of the parent
541 described in Subsection (2)(b) to assume custody, and the safety and appropriateness of the
542 placement.

543 (ii) The court shall, at a minimum, order the division to visit the parent's home, comply
544 with the criminal background check provisions described in Section 78A-6-308, and check the
545 division's management information system for any previous reports of abuse or neglect
546 received by the division regarding the parent at issue.

547 (iii) The court may order the division to conduct any further investigation regarding the
548 safety and appropriateness of the placement.

549 (iv) The division shall report its findings in writing to the court.

550 (v) The court may place the child in the temporary custody of the division, pending its
551 determination regarding that placement.

552 (3) If the court orders placement with a parent under Subsection (2):

553 (a) the child and the parent are under the continuing jurisdiction of the court;

554 (b) the court may order:

555 (i) that the parent assume custody subject to the supervision of the court; and

556 (ii) that services be provided to the parent from whose custody the child was removed,
557 the parent who has assumed custody, or both; and

558 (c) the court shall order reasonable parent-time with the parent from whose custody the
559 child was removed, unless parent-time is not in the best interest of the child.

560 (4) The court shall periodically review an order described in Subsection (3) to
561 determine whether:

- 562 (a) placement with the parent continues to be in the child's best interest;
- 563 (b) the child should be returned to the original custodial parent;
- 564 (c) the child should be placed in the custody of a relative, pursuant to Subsections (7)
- 565 through (12); or
- 566 (d) the child should be placed in the custody of the division.
- 567 (5) The time limitations described in Section 78A-6-312 with regard to reunification
- 568 efforts, apply to children placed with a previously noncustodial parent in accordance with
- 569 Subsection (2).
- 570 (6) Legal custody of the child is not affected by an order entered under Subsection (2)
- 571 or (3). In order to affect a previous court order regarding legal custody, the party must petition
- 572 that court for modification of the order.
- 573 (7) If, at the time of the shelter hearing, a child is removed from the custody of the
- 574 child's parent and is not placed in the custody of the child's other parent, the court:
- 575 (a) shall, at that time, determine whether, subject to Subsections (18)(c) through (e),
- 576 there is a relative of the child or a friend of a parent of the child who is able and willing to care
- 577 for the child;
- 578 (b) may order the division to conduct a reasonable search to determine whether, subject
- 579 to Subsections (18)(c) through (e), there are relatives of the child or friends of a parent of the
- 580 child who are willing and appropriate, in accordance with the requirements of this part and
- 581 Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child;
- 582 (c) shall order the parents to cooperate with the division, within five working days, to,
- 583 subject to Subsections (18)(c) through (e), provide information regarding relatives of the child
- 584 or friends who may be able and willing to care for the child; and
- 585 (d) may order that the child be placed in the custody of the division pending the
- 586 determination under Subsection (7)(a).
- 587 (8) This section may not be construed as a guarantee that an identified relative or friend
- 588 will receive custody of the child.
- 589 (9) Subject to Subsections (18)(c) through (e), preferential consideration shall be given

590 to a relative's or a friend's request for placement of the child, if it is in the best interest of the
591 child, and the provisions of this section are satisfied.

592 (10) (a) If a willing relative or friend is identified under Subsection (7)(a), the court
593 shall make a specific finding regarding:

594 (i) the fitness of that relative or friend as a placement for the child; and

595 (ii) the safety and appropriateness of placement with that relative or friend.

596 (b) In order to be considered a "willing relative or friend" under this section, the
597 relative or friend shall be willing to cooperate with the child's permanency goal.

598 (11) (a) In making the finding described in Subsection (10)(a), the court shall, at a
599 minimum, order the division to:

600 (i) if the child may be placed with a relative of the child, conduct a background check
601 that includes:

602 (A) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification
603 background check of the relative;

604 (B) a completed search, relating to the relative, of the Management Information System
605 described in Section 62A-4a-1003; and

606 (C) a background check that complies with the criminal background check provisions
607 described in Section 78A-6-308, of each nonrelative, as defined in Subsection
608 62A-4a-209(1)(a), of the child who resides in the household where the child may be placed;

609 (ii) if the child will be placed with a noncustodial parent of the child, complete a
610 background check that includes:

611 (A) the background check requirements applicable to an emergency placement with a
612 noncustodial parent that are described in Subsections 62A-4a-209(5) and (7);

613 (B) a completed search, relating to the noncustodial parent of the child, of the
614 Management Information System described in Section 62A-4a-1003; and

615 (C) a background check that complies with the criminal background check provisions
616 described in Section 78A-6-308, of each nonrelative, as defined in Subsection
617 62A-4a-209(1)(a), of the child who resides in the household where the child may be placed;

618 (iii) if the child may be placed with an individual other than a noncustodial parent or a
619 relative of the child, conduct a criminal background check of the individual, and each adult that
620 resides in the household where the child may be placed, that complies with the criminal
621 background check provisions described in Section 78A-6-308;

622 (iv) visit the relative's or friend's home;

623 (v) check the division's management information system for any previous reports of
624 abuse or neglect regarding the relative or friend at issue;

625 (vi) report the division's findings in writing to the court; and

626 (vii) provide sufficient information so that the court may determine whether:

627 (A) the relative or friend has any history of abusive or neglectful behavior toward other
628 children that may indicate or present a danger to this child;

629 (B) the child is comfortable with the relative or friend;

630 (C) the relative or friend recognizes the parent's history of abuse and is committed to
631 protect the child;

632 (D) the relative or friend is strong enough to resist inappropriate requests by the parent
633 for access to the child, in accordance with court orders;

634 (E) the relative or friend is committed to caring for the child as long as necessary; and

635 (F) the relative or friend can provide a secure and stable environment for the child.

636 (b) The division may determine to conduct, or the court may order the division to
637 conduct, any further investigation regarding the safety and appropriateness of the placement.

638 (c) The division shall complete and file its assessment regarding placement with a
639 relative or friend as soon as practicable, in an effort to facilitate placement of the child with a
640 relative or friend.

641 (12) (a) The court may place a child described in Subsection (2)(a) in the temporary
642 custody of the division, pending the division's investigation pursuant to Subsections (10) and
643 (11), and the court's determination regarding the appropriateness of that placement.

644 (b) The court shall ultimately base its determination regarding the appropriateness of a
645 placement with a relative or friend on the best interest of the child.

646 (13) When the court awards custody and guardianship of a child with a relative or
647 friend:

648 (a) the court shall order that:

649 (i) the relative or friend assume custody, subject to the continuing supervision of the
650 court; and

651 (ii) any necessary services be provided to the child and the relative or friend;

652 (b) the child and any relative or friend with whom the child is placed are under the
653 continuing jurisdiction of the court;

654 (c) the court may enter any order that it considers necessary for the protection and best
655 interest of the child;

656 (d) the court shall provide for reasonable parent-time with the parent or parents from
657 whose custody the child was removed, unless parent-time is not in the best interest of the child;
658 and

659 (e) the court shall conduct a periodic review no less often than every six months, to
660 determine whether:

661 (i) placement with the relative or friend continues to be in the child's best interest;

662 (ii) the child should be returned home; or

663 (iii) the child should be placed in the custody of the division.

664 (14) No later than 12 months after placement with a relative or friend, the court shall
665 schedule a hearing for the purpose of entering a permanent order in accordance with the best
666 interest of the child.

667 (15) The time limitations described in Section 78A-6-312, with regard to reunification
668 efforts, apply to children placed with a relative or friend pursuant to Subsection (7).

669 (16) (a) If the court awards custody of a child to the division, and the division places
670 the child with a relative, the division shall:

671 (i) conduct a criminal background check of the relative that complies with the criminal
672 background check provisions described in Section 78A-6-308; and

673 (ii) if the results of the criminal background check described in Subsection (16)(a)(i)

674 would prohibit the relative from having direct access to the child under Section 62A-2-120, the
675 division shall:

676 (A) take the child into physical custody; and

677 (B) within three days, excluding weekends and holidays, after taking the child into
678 physical custody under Subsection (16)(a)(ii)(A), give written notice to the court, and all
679 parties to the proceedings, of the division's action.

680 (b) Nothing in Subsection (16)(a) prohibits the division from placing a child with a
681 relative, pending the results of the background check described in Subsection (16)(a) on the
682 relative.

683 (17) When the court orders that a child be removed from the custody of the child's
684 parent and does not award custody and guardianship to another parent, relative, or friend under
685 this section, the court shall order that the child be placed in the temporary custody of the
686 Division of Child and Family Services, to proceed to adjudication and disposition and to be
687 provided with care and services in accordance with this chapter and Title 62A, Chapter 4a,
688 Child and Family Services.

689 (18) (a) Any preferential consideration that a relative or friend is initially granted
690 pursuant to Subsection (9) expires 120 days from the date of the shelter hearing. After that
691 time period has expired, a relative or friend who has not obtained custody or asserted an
692 interest in a child, may not be granted preferential consideration by the division or the court.

693 (b) When the time period described in Subsection (18)(a) has expired, the preferential
694 consideration, which is initially granted to a natural parent in accordance with Subsection (2),
695 is limited. After that time the court shall base its custody decision on the best interest of the
696 child.

697 (c) Prior to the expiration of the 120-day period described in Subsection (18)(a), the
698 following order of preference shall be applied when determining the person with whom a child
699 will be placed, provided that the person is willing, and has the ability, to care for the child:

700 (i) a noncustodial parent of the child;

701 (ii) a relative of the child;

702 (iii) subject to Subsection (18)(d), a friend of a parent of the child, if the friend is a
703 licensed foster parent; and

704 (iv) other placements that are consistent with the requirements of law.

705 (d) In determining whether a friend is a willing and appropriate placement for a child,
706 neither the court, nor the division, is required to consider more than one friend designated by
707 each parent of the child.

708 (e) If a parent of the child is not able to designate a friend who is a licensed foster
709 parent for placement of the child, but is able to identify a friend who is willing to become
710 licensed as a foster parent:

711 (i) the department shall fully cooperate to expedite the licensing process for the friend;
712 and

713 (ii) if the friend becomes licensed as a foster parent within the time frame described in
714 Subsection (18)(a), the court shall determine whether it is in the best interests of the child to
715 place the child with the friend.

716 (19) If, following the shelter hearing, the child is placed with a person who is not a
717 parent of the child, a relative of the child, a friend of a parent of the child, or a former foster
718 parent of the child, priority shall be given to a foster placement with a man and a woman who
719 are married to each other, unless it is in the best interests of the child to place the child with a
720 single foster parent.

721 (20) In determining the placement of a child, neither the court, nor the division, may
722 take into account, or discriminate against, the religion of a person with whom the child may be
723 placed, unless the purpose of taking religion into account is to place the child with a person or
724 family of the same religion as the child.

725 Section 8. Section **78A-6-312** is amended to read:

726 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

727 (1) The court may:

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

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

- 730 (i) individual; or
- 731 (ii) public or private entity or agency; or
- 732 (c) order:
 - 733 (i) protective supervision;
 - 734 (ii) family preservation;
 - 735 (iii) subject to ~~[Subsection]~~ Subsections (12)(b) and 78A-6-117(2)(n)(iii), medical or
 - 736 mental health treatment; or
 - 737 (iv) other services.
- 738 (2) Whenever the court orders continued removal at the dispositional hearing, and that
- 739 the minor remain in the custody of the division, the court shall first:
 - 740 (a) establish a primary permanency goal for the minor; and
 - 741 (b) determine whether, in view of the primary permanency goal, reunification services
 - 742 are appropriate for the minor and the minor's family, pursuant to Subsections (20) through (22).
 - 743 (3) Subject to Subsections (6) and (7), if the court determines that reunification
 - 744 services are appropriate for the minor and the minor's family, the court shall provide for
 - 745 reasonable parent-time with the parent or parents from whose custody the minor was removed,
 - 746 unless parent-time is not in the best interest of the minor.
 - 747 (4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe
 - 748 abuse, or severe neglect are involved, neither the division nor the court has any duty to make
 - 749 "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to
 - 750 attempt to rehabilitate the offending parent or parents.
 - 751 (5) In all cases, the minor's health, safety, and welfare shall be the court's paramount
 - 752 concern in determining whether reasonable efforts to reunify should be made.
 - 753 (6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless
 - 754 the court makes a finding that it is necessary to deny parent-time in order to:
 - 755 (a) protect the physical safety of the minor;
 - 756 (b) protect the life of the minor; or
 - 757 (c) prevent the minor from being traumatized by contact with the parent due to the

758 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

759 (7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a
760 parent's failure to:

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

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

763 (8) In addition to the primary permanency goal, the court shall establish a concurrent
764 permanency goal that shall include:

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

767 (b) an explanation of the effect of abandoning or modifying the primary permanency
768 goal.

769 (9) A permanency hearing shall be conducted in accordance with Subsection
770 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if
771 something other than reunification is initially established as a minor's primary permanency
772 goal.

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

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

777 (c) If, at any time, the court determines that reunification is no longer a minor's primary
778 permanency goal, the court shall conduct a permanency hearing in accordance with Section
779 78A-6-314 on or before the earlier of:

780 (i) 30 days after the day on which the court makes the determination described in this
781 Subsection (10)(c); or

782 (ii) the day on which the provision of reunification services, described in Section
783 78A-6-314, ends.

784 (11) (a) If the court determines that reunification services are appropriate, it shall order
785 that the division make reasonable efforts to provide services to the minor and the minor's

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

787 (b) In providing the services described in Subsection (11)(a), the minor's health, safety,
788 and welfare shall be the division's paramount concern, and the court shall so order.

789 (12) (a) The court shall:

790 ~~[(a)]~~ (i) determine whether the services offered or provided by the division under the
791 child and family plan constitute "reasonable efforts" on the part of the division;

792 ~~[(b)]~~ (ii) determine and define the responsibilities of the parent under the child and
793 family plan in accordance with Subsection 62A-4a-205(6)(e); and

794 ~~[(c)]~~ (iii) identify verbally on the record, or in a written document provided to the
795 parties, the responsibilities described in Subsection (12)~~[(b)]~~(a)(ii), for the purpose of assisting
796 in any future determination regarding the provision of reasonable efforts, in accordance with
797 state and federal law.

798 (b) If the parent is in a substance abuse treatment program, other than a certified drug
799 court program:

800 (i) the court may order the parent to submit to supplementary drug or alcohol testing in
801 addition to the testing recommended by the parent's substance abuse program based on a
802 finding of reasonable suspicion that the parent is abusing drugs or alcohol; and

803 (ii) the court may order the parent to provide the results of drug or alcohol testing
804 recommended by the substance abuse program to the court or division.

805 (13) (a) The time period for reunification services may not exceed 12 months from the
806 date that the minor was initially removed from the minor's home, unless the time period is
807 extended under Subsection 78A-6-314(8).

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

810 (14) (a) If reunification services are ordered, the court may terminate those services at
811 any time.

812 (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined
813 to be inconsistent with the final permanency plan for the minor established pursuant to Section

814 78A-6-314, then measures shall be taken, in a timely manner, to:

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

816 (ii) complete whatever steps are necessary to finalize the permanent placement of the
817 minor.

818 (15) Any physical custody of the minor by the parent or a relative during the period
819 described in Subsections (11) through (14) does not interrupt the running of the period.

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

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

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

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

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

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

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

837 (a) the court shall terminate reunification services; and

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

839 (19) When a court conducts a permanency hearing for a minor under Section
840 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the
841 sibling group together is:

842 (a) practicable; and

843 (b) in accordance with the best interest of the minor.

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

847 (b) The court may determine that:

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

850 (ii) reunification services should not be provided.

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

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

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

859 (b) subject to Subsection (22)(a), the parent is suffering from a mental illness of such
860 magnitude that it renders the parent incapable of utilizing reunification services;

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

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

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

865 (iii) is being removed due to additional physical abuse, sexual abuse, or sexual
866 exploitation;

867 (d) the parent:

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

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

- 870 (A) murder or manslaughter of a child; or
871 (B) child abuse homicide;
872 (iii) committed sexual abuse against the child; or
873 (iv) is a registered sex offender or required to register as a sex offender;
874 (e) the minor suffered severe abuse by the parent or by any person known by the
875 parent, if the parent knew or reasonably should have known that the person was abusing the
876 minor;
877 (f) the minor is adjudicated an abused child as a result of severe abuse by the parent,
878 and the court finds that it would not benefit the minor to pursue reunification services with the
879 offending parent;
880 (g) the parent's rights are terminated with regard to any other minor;
881 (h) the minor [~~is~~] was removed from the minor's home on at least two previous
882 occasions and reunification services were offered or provided to the family at those times;
883 (i) the parent has abandoned the minor for a period of six months or longer;
884 (j) the parent permitted the child to reside, on a permanent or temporary basis, at a
885 location where the parent knew or should have known that a clandestine laboratory operation
886 was located;
887 (k) except as provided in Subsection (22)(b), with respect to a parent who is the child's
888 birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was
889 exposed to an illegal or prescription drug that was abused by the child's mother while the child
890 was in utero, if the child was taken into division custody for that reason, unless the mother
891 agrees to enroll in, is currently enrolled in, or has recently and successfully completed a
892 substance abuse treatment program approved by the department; or
893 (l) any other circumstance that the court determines should preclude reunification
894 efforts or services.
895 (22) (a) The finding under Subsection (21)(b) shall be based on competent evidence
896 from at least two medical or mental health professionals, who are not associates, establishing
897 that, even with the provision of services, the parent is not likely to be capable of adequately

898 caring for the minor within 12 months after the day on which the court finding is made.

899 (b) A judge may disregard the provisions of Subsection (21)(k) if the court finds, under
900 the circumstances of the case, that the substance abuse treatment described in Subsection
901 (21)(k) is not warranted.

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

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

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

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

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

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

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

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

915 (24) (a) If reunification services are not ordered pursuant to Subsections (20) through
916 (22), and the whereabouts of a parent become known within six months after the day on which
917 the out-of-home placement of the minor is made, the court may order the division to provide
918 reunification services.

919 (b) The time limits described in Subsections (2) through (19) are not tolled by the
920 parent's absence.

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

923 (b) In making the determination described in Subsection (25)(a), the court shall
924 consider:

925 (i) the age of the minor;

- 926 (ii) the degree of parent-child bonding;
- 927 (iii) the length of the sentence;
- 928 (iv) the nature of the treatment;
- 929 (v) the nature of the crime or illness;
- 930 (vi) the degree of detriment to the minor if services are not offered;
- 931 (vii) for a minor 10 years of age or older, the minor's attitude toward the
- 932 implementation of family reunification services; and
- 933 (viii) any other appropriate factors.
- 934 (c) Reunification services for an incarcerated parent are subject to the time limitations
- 935 imposed in Subsections (2) through (19).
- 936 (d) Reunification services for an institutionalized parent are subject to the time
- 937 limitations imposed in Subsections (2) through (19), unless the court determines that continued
- 938 reunification services would be in the minor's best interest.
- 939 (26) If, pursuant to Subsections (21)(b) through (1), the court does not order
- 940 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
- 941 with Section 78A-6-314.
- 942 Section 9. Section **78A-6-511** is amended to read:
- 943 **78A-6-511. Court disposition of child upon termination -- Posttermination**
- 944 **reunification.**
- 945 (1) As used in this section, "relative" means:
- 946 (a) an adult who is a grandparent, great-grandparent, aunt, great aunt, uncle, great
- 947 uncle, brother-in-law, sister-in-law, stepparent, first cousin, sibling, or stepsibling of a child;
- 948 and
- 949 (b) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25
- 950 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that
- 951 statute.
- 952 (2) Upon entry of an order under this part the court may:
- 953 (a) place the child in the legal custody and guardianship of a licensed child placement

954 agency or the division for adoption; or

955 (b) make any other disposition of the child authorized under Section 78A-6-117.

956 (3) Subject to the requirements of Subsections (4) and (5), all adoptable children
957 placed in the custody of the division shall be placed for adoption.

958 (4) If the parental rights of all parents of an adoptable child placed in the custody of the
959 division have been terminated and a suitable adoptive placement is not already available, the
960 court:

961 (a) shall determine whether there is a relative who desires to adopt the child;

962 (b) may order the division to conduct a reasonable search to determine whether there
963 are relatives who are willing to adopt the child; and

964 (c) shall, if a relative desires to adopt the child:

965 (i) make a specific finding regarding the fitness of the relative to adopt the child; and

966 (ii) place the child for adoption with that relative unless it finds that adoption by the
967 relative is not in the best interest of the child.

968 (5) This section does not guarantee that a relative will be permitted to adopt the child.

969 (6) A parent whose rights were terminated under this part, or a relative of the child, as
970 defined by Section 78A-6-307, may petition for guardianship of the child if:

971 (a) (i) following an adoptive placement, the child's adoptive parent returns the child to
972 the custody of the division; or

973 (ii) the child is in the custody of the division for one year following the day on which
974 the parent's rights were terminated, and no permanent placement has been found or is likely to
975 be found; and

976 (b) reunification with the child's parent, or guardianship by the child's relative, is in the
977 best interest of the child.

978 Section 10. Section **78A-6-511.1** is enacted to read:

979 **78A-6-511.1. Posttermination reunification study item.**

980 (1) The division shall study the potential of creating a posttermination of parental
981 rights reunification system, and present any viable proposals to the Health and Human Services

982 Interim Committee during the 2013 interim.

983 (2) In creating the proposals described in Subsection (1), the division shall consider the
984 best interest of the child standard and the fundamental rights of parents.

985 Section 11. Section **78A-6-513** is amended to read:

986 **78A-6-513. Effect of decree.**

987 (1) [~~After~~] Except as provided in Subsection 78A-6-511(6), an order for the termination
988 of the parent-child legal relationship divests the child and the parents of all legal rights, powers,
989 immunities, duties, and obligations with respect to each other, except the right of the child to
990 inherit from the parent.

991 (2) An order or decree entered pursuant to this part may not disentitle a child to any
992 benefit due [~~him~~] the child from any third person, including, but not limited to, any Indian
993 tribe, agency, state, or the United States.

994 (3) [~~After~~] Except as provided in Subsection 78A-6-511(6), after the termination of a
995 parent-child legal relationship, the former parent is neither entitled to any notice of proceedings
996 for the adoption of the child nor has any right to object to the adoption or to participate in any
997 other placement proceedings.

998 Section 12. Section **78A-6-1106** is amended to read:

999 **78A-6-1106. Child support obligation when custody of a child is vested in an**
1000 **individual or institution.**

1001 (1) [~~When~~] Except as provided in Subsection (11), when legal custody of a child is
1002 vested by the court in a secure youth corrections facility or any other state department, division,
1003 or agency other than the child's parents, or if the guardianship of the child has been granted to
1004 another party and an agreement for a guardianship subsidy has been signed by the guardian, the
1005 court shall order the parents, a parent, or any other obligated person to pay child support for
1006 each month the child is in custody. In the same proceeding the court shall inform the parents, a
1007 parent, or any other obligated person, verbally and in writing, of the requirement to pay child
1008 support in accordance with Title 78B, Chapter 12, Utah Child Support Act.

1009 (2) If legal custody of a child is vested by the court in a secure youth corrections

1010 facility, or any other state department, division, or agency, the court may refer the
1011 establishment of a child support order to the Office of Recovery Services. The referral shall be
1012 sent to the Office of Recovery Services within three working days of the hearing. Support
1013 obligation amounts shall be set by the Office of Recovery Services in accordance with Title
1014 78B, Chapter 12, Utah Child Support Act.

1015 (3) If referred to the Office of Recovery Services pursuant to Subsection (2), the court
1016 shall also inform the parties that they are required to contact the Office of Recovery Services
1017 within 30 days of the date of the hearing to establish a child support order and the penalty in
1018 Subsection (5) for failing to do so. If there is no existing child support order for the child, the
1019 liability for support shall accrue beginning on the 61st day following the hearing that occurs the
1020 first time the court vests custody of the child in a secure youth corrections facility, or any other
1021 state department, division, or agency other than ~~his~~ the child's parents.

1022 (4) If a child is returned home and legal custody is subsequently vested by the court in
1023 a secure youth corrections facility or any other state department, division, or agency other than
1024 ~~his~~ the child's parents, the liability for support shall accrue from the date the child is
1025 subsequently removed from the home, including time spent in detention or sheltered care.

1026 (5) (a) If the parents, parent, or other obligated person meets with the Office of
1027 Recovery Services within 30 days of the date of the hearing, the child support order may not
1028 include a judgment for past due support for more than two months.

1029 (b) Notwithstanding Subsection (5)(a), the court may order the liability of support to
1030 begin to accrue from the date of the proceeding referenced in Subsection (1) if:

1031 (i) the parents, parent, or any other person obligated fails to meet with the Office of
1032 Recovery Services within 30 days after being informed orally and in writing by the court of that
1033 requirement; and

1034 (ii) the Office of Recovery Services took reasonable steps under the circumstances to
1035 contact the parents, parent, or other person obligated within the subsequent 30-day period to
1036 facilitate the establishment of the child support order.

1037 (c) For purposes of Subsection (5)(b)(ii), the Office of Recovery Services shall be

1038 presumed to have taken reasonable steps if the office:

1039 (i) has a signed, returned receipt for a certified letter mailed to the address of the
1040 parents, parent, or other obligated person regarding the requirement that a child support order
1041 be established; or

1042 (ii) has had a documented conversation, whether by telephone or in person, with the
1043 parents, parent, or other obligated person regarding the requirement that a child support order
1044 be established.

1045 (6) In collecting arrears, the Office of Recovery Services shall comply with Section
1046 62A-11-320 in setting a payment schedule or demanding payment in full.

1047 (7) Unless otherwise ordered, the parents or other person shall pay the child support to
1048 the Office of Recovery Services. The clerk of the court, the Office of Recovery Services, or the
1049 Department of Human Services and its divisions shall have authority to receive periodic
1050 payments for the care and maintenance of the child, such as Social Security payments or
1051 railroad retirement payments made in the name of or for the benefit of the child.

1052 (8) No court order under this section against a parent or other person shall be entered,
1053 unless notice of hearing has been served within the state, a voluntary appearance is made, or a
1054 waiver of service given. The notice shall specify that a hearing with respect to the financial
1055 support of the child will be held.

1056 (9) An existing child support order payable to a parent or other obligated person shall
1057 be assigned to the Department of Human Services as provided in Section 62A-1-117.

1058 (10) (a) Subsections (3) through (9) shall not apply if legal custody of a child is vested
1059 by the court in an individual.

1060 (b) If legal custody of a child is vested by the court in an individual, the court may
1061 order the parents, a parent, or any other obligated person to pay child support to the individual.
1062 In the same proceeding the court shall inform the parents, a parent, or any other obligated
1063 person, verbally and in writing, of the requirement to pay child support in accordance with
1064 Title 78B, Chapter 12, Utah Child Support Act.

1065 (11) (a) The court may not order the parent or any other obligated person to pay child

1066 support for a child in state custody if:

1067 (i) the parent or other obligated person's only form of income is a government-issued
1068 disability benefit; and

1069 (ii) the benefit described in Subsection (11)(a)(i) is issued because of the parent or
1070 other person's disability, and not the child's disability.

1071 (b) If a person seeks to be excused from providing support under Subsection (11)(a),
1072 the person shall provide the court and the Office of Recovery Services with evidence that the
1073 person meets the requirements of Subsection (11)(a).

1074 Section 13. Section **78B-7-106 (Effective 07/01/13)** is amended to read:

1075 **78B-7-106 (Effective 07/01/13). Protective orders -- Ex parte protective orders --**
1076 **Modification of orders -- Service of process -- Duties of the court.**

1077 (1) If it appears from a petition for an order for protection or a petition to modify an
1078 order for protection that domestic violence or abuse has occurred or a modification of an order
1079 for protection is required, a court may:

1080 (a) without notice, immediately issue an order for protection ex parte or modify an
1081 order for protection ex parte as it considers necessary to protect the petitioner and all parties
1082 named to be protected in the petition; or

1083 (b) upon notice, issue an order for protection or modify an order after a hearing,
1084 whether or not the respondent appears.

1085 (2) A court may grant the following relief without notice in an order for protection or a
1086 modification issued ex parte:

1087 (a) enjoin the respondent from threatening to commit or committing domestic violence
1088 or abuse against the petitioner and any designated family or household member;

1089 (b) prohibit the respondent from harassing, telephoning, contacting, or otherwise
1090 communicating with the petitioner, directly or indirectly;

1091 (c) order that the respondent is excluded from the petitioner's residence and its
1092 premises, and order the respondent to stay away from the residence, school, or place of
1093 employment of the petitioner, and the premises of any of these, or any specified place

1094 frequented by the petitioner and any designated family or household member;

1095 (d) upon finding that the respondent's use or possession of a weapon may pose a
1096 serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or
1097 possessing a firearm or other weapon specified by the court;

1098 (e) order possession and use of an automobile and other essential personal effects, and
1099 direct the appropriate law enforcement officer to accompany the petitioner to the residence of
1100 the parties to ensure that the petitioner is safely restored to possession of the residence,
1101 automobile, and other essential personal effects, or to supervise the petitioner's or respondent's
1102 removal of personal belongings;

1103 (f) grant to the petitioner temporary custody of any minor children of the parties;

1104 (g) order the appointment of [~~a private attorney~~];

1105 (i) before July 1, 2014, a guardian ad litem under Section [78A-2-228] 78A-2-227.1, if
1106 appropriate; and

1107 (ii) on or after July 1, 2014, a private attorney guardian ad litem under Section
1108 78A-2-228, if appropriate;

1109 (h) order any further relief that the court considers necessary to provide for the safety
1110 and welfare of the petitioner and any designated family or household member; and

1111 (i) if the petition requests child support or spousal support, at the hearing on the
1112 petition order both parties to provide verification of current income, including year-to-date pay
1113 stubs or employer statements of year-to-date or other period of earnings, as specified by the
1114 court, and complete copies of tax returns from at least the most recent year.

1115 (3) A court may grant the following relief in an order for protection or a modification
1116 of an order after notice and hearing, whether or not the respondent appears:

1117 (a) grant the relief described in Subsection (2); and

1118 (b) specify arrangements for parent-time of any minor child by the respondent and
1119 require supervision of that parent-time by a third party or deny parent-time if necessary to
1120 protect the safety of the petitioner or child.

1121 (4) Following the protective order hearing, the court shall:

- 1122 (a) as soon as possible, deliver the order to the county sheriff for service of process;
- 1123 (b) make reasonable efforts to ensure that the order for protection is understood by the
1124 petitioner, and the respondent, if present;
- 1125 (c) transmit electronically, by the end of the next business day after the order is issued,
1126 a copy of the order for protection to the local law enforcement agency or agencies designated
1127 by the petitioner; and
- 1128 (d) transmit a copy of the order to the statewide domestic violence network described
1129 in Section 78B-7-113.
- 1130 (5) (a) Each protective order shall include two separate portions, one for provisions, the
1131 violation of which are criminal offenses, and one for provisions, the violation of which are civil
1132 violations, as follows:
 - 1133 (i) criminal offenses are those under Subsections (2)(a) through (e), and under
1134 Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and
 - 1135 (ii) civil offenses are those under Subsections (2)(f), (h), and (i), and Subsection (3)(a)
1136 as it refers to Subsections (2)(f), (h), and (i).
- 1137 (b) The criminal provision portion shall include a statement that violation of any
1138 criminal provision is a class A misdemeanor.
- 1139 (c) The civil provision portion shall include a notice that violation of or failure to
1140 comply with a civil provision is subject to contempt proceedings.
- 1141 (6) The protective order shall include:
 - 1142 (a) a designation of a specific date, determined by the court, when the civil portion of
1143 the protective order either expires or is scheduled for review by the court, which date may not
1144 exceed 150 days after the date the order is issued, unless the court indicates on the record the
1145 reason for setting a date beyond 150 days;
 - 1146 (b) information the petitioner is able to provide to facilitate identification of the
1147 respondent, such as Social Security number, driver license number, date of birth, address,
1148 telephone number, and physical description; and
 - 1149 (c) a statement advising the petitioner that:

1150 (i) after two years from the date of issuance of the protective order, a hearing may be
1151 held to dismiss the criminal portion of the protective order;

1152 (ii) the petitioner should, within the 30 days prior to the end of the two-year period,
1153 advise the court of the petitioner's current address for notice of any hearing; and

1154 (iii) the address provided by the petitioner will not be made available to the respondent.

1155 (7) Child support and spouse support orders issued as part of a protective order are
1156 subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income
1157 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non
1158 IV-D Cases, except when the protective order is issued ex parte.

1159 (8) (a) The county sheriff that receives the order from the court, pursuant to Subsection
1160 (5)(a), shall provide expedited service for orders for protection issued in accordance with this
1161 chapter, and shall transmit verification of service of process, when the order has been served, to
1162 the statewide domestic violence network described in Section 78B-7-113.

1163 (b) This section does not prohibit any law enforcement agency from providing service
1164 of process if that law enforcement agency:

1165 (i) has contact with the respondent and service by that law enforcement agency is
1166 possible; or

1167 (ii) determines that under the circumstances, providing service of process on the
1168 respondent is in the best interests of the petitioner.

1169 (9) (a) When an order is served on a respondent in a jail or other holding facility, the
1170 law enforcement agency managing the facility shall make a reasonable effort to provide notice
1171 to the petitioner at the time the respondent is released from incarceration.

1172 (b) Notification of the petitioner shall consist of a good faith reasonable effort to
1173 provide notification, including mailing a copy of the notification to the last-known address of
1174 the victim.

1175 (10) A court may modify or vacate an order of protection or any provisions in the order
1176 after notice and hearing, except that the criminal provisions of a protective order may not be
1177 vacated within two years of issuance unless the petitioner:

1178 (a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah
1179 Rules of Civil Procedure, and the petitioner personally appears before the court and gives
1180 specific consent to the vacation of the criminal provisions of the protective order; or

1181 (b) submits a verified affidavit, stating agreement to the vacation of the criminal
1182 provisions of the protective order.

1183 (11) A protective order may be modified without a showing of substantial and material
1184 change in circumstances.

1185 (12) Insofar as the provisions of this chapter are more specific than the Utah Rules of
1186 Civil Procedure, regarding protective orders, the provisions of this chapter govern.

1187 Section 14. Section **78B-7-202 (Effective 07/01/13)** is amended to read:

1188 **78B-7-202 (Effective 07/01/13). Petition -- Ex parte determination -- Guardian ad**
1189 **litem -- Referral to division.**

1190 (1) Any interested person may file a petition for a protective order on behalf of a child
1191 who is being abused or is in imminent danger of being abused. The petitioner shall first make
1192 a referral to the division.

1193 (2) Upon the filing of a petition, the clerk of the court shall:

1194 (a) review the records of the juvenile court, the district court, and the management
1195 information system of the division to find any petitions, orders, or investigations related to the
1196 child or the parties to the case;

1197 (b) request the records of any law enforcement agency identified by the petitioner as
1198 having investigated abuse of the child; and

1199 (c) identify and obtain any other background information that may be of assistance to
1200 the court.

1201 (3) Upon the filing of a petition, the court shall immediately determine, based on the
1202 evidence and information presented, whether the minor is being abused or is in imminent
1203 danger of being abused. If so, the court shall enter an ex parte child protective order.

1204 (4) The court may appoint [~~a private~~]:

1205 (a) an attorney guardian ad litem under Section [~~78A-2-228~~] 78A-2-227.1 for district

1206 court cases, ~~[or]~~ before July 1, 2014;

1207 (b) a private attorney guardian ad litem under Section 78A-2-228 for district court
1208 cases, on or after July 1, 2014; or

1209 (c) the Office of Guardian ad Litem for juvenile court cases under Section 78A-6-902,
1210 for the child who is the subject of the petition.

1211 Section 15. **Effective date.**

1212 (1) Except as provided in Subsections (2) and (3), this bill takes effect on May 14,
1213 2013.

1214 (2) The actions affecting the following sections take effect on July 1, 2013:

1215 (a) Section 78A-6-227.1;

1216 (b) Section 78B-7-106; and

1217 (c) Section 78A-7-202.

1218 (3) The actions affecting the following sections take effect on July 1, 2014:

1219 (a) Section 78A-6-511; and

1220 (b) Section 78A-6-513.

1221 Section 16. **Coordinating S.B. 49 with H.B. 156 -- Superseding amendments.**

1222 If this S.B. 49 and H.B. 156, Restoration of Terminated Parental Rights, both pass and
1223 become law, it is the intent of the Legislature that, as of July 1, 2014, the amendments to
1224 Sections 78A-6-511 and 78A-6-513 in H.B. 156 supersede the amendments to Section
1225 78A-6-511 and 78A-6-513 in S.B. 49, when the Office of Legislative Research and General
1226 Counsel prepares the Utah Code database for publication.