

HUMAN SERVICES AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: LaVar Christensen

LONG TITLE

General Description:

This bill amends provisions of the Utah Code relating to the Office of Guardian ad Litem.

Highlighted Provisions:

This bill:

- ▶ removes the repeal date for Section 78A-2-227.1;
- ▶ renumbers the provisions in the Judicial Administration Act related to the Office of Guardian ad Litem;
- ▶ provides that the district court may appoint an office attorney guardian ad litem when the district court determines that no private attorney guardians ad litem are reasonably available;
- ▶ provides that any savings resulting from assigning private attorney guardians ad litem in a district court case shall be applied to the office to reduce caseloads and improve practices in juvenile court and to recruit and train attorneys for the private attorney guardian ad litem program;
- ▶ provides that the court may appoint only an office attorney guardian ad litem in protective order cases; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **30-3-5.2**, as last amended by Laws of Utah 2012, Chapter 223

33 **51-9-408**, as last amended by Laws of Utah 2013, Chapter 245

34 **63I-1-278**, as last amended by Laws of Utah 2013, Chapter 416

35 **78A-6-901**, as last amended by Laws of Utah 2009, Chapter 32

36 **78B-3-102**, as last amended by Laws of Utah 2012, Chapter 223

37 **78B-7-106**, as last amended by Laws of Utah 2013, Chapter 416

38 **78B-7-202**, as last amended by Laws of Utah 2013, Chapter 416

39 **78B-15-612**, as last amended by Laws of Utah 2012, Chapter 223

40 ENACTS:

41 **78A-2-701**, Utah Code Annotated 1953

42 **78A-2-702**, Utah Code Annotated 1953

43 RENUMBERS AND AMENDS:

44 **78A-2-703**, (Renumbered from 78A-2-227.1, as enacted by Laws of Utah 2013,
45 Chapter 416)

46 **78A-2-704**, (Renumbered from 78A-2-227.5, as last amended by Laws of Utah 2013,
47 Chapter 171)

48 **78A-2-705**, (Renumbered from 78A-2-228, as last amended by Laws of Utah 2013,
49 Chapter 416)



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

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

53 **30-3-5.2. Allegations of child abuse or child sexual abuse -- Investigation.**

54 When, in any divorce proceeding or upon a request for modification of a divorce
55 decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the
56 court, after making an inquiry, may order that an investigation be conducted by the Division of
57 Child and Family Services within the Department of Human Services in accordance with Title
58 62A, Chapter 4a, Child and Family Services. A final award of custody or parent-time may not

59 be rendered until a report on that investigation, consistent with Section [62A-4a-412](#), is received
60 by the court. That investigation shall be conducted by the Division of Child and Family
61 Services within 30 days of the court's notice and request for an investigation. In reviewing this
62 report, the court shall comply with Sections [[78A-2-228](#)] [78A-2-703](#), [78A-2-705](#), and
63 [78B-15-612](#).

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

65 **51-9-408. Children's Legal Defense Account.**

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

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

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

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

76 (b) implementing the use of guardians ad litem as provided in Sections [[78A-2-228](#)]
77 [78A-2-703](#), [78A-2-705](#), [78A-6-902](#), and [78B-3-102](#); the training of attorney guardians ad litem
78 and volunteers as provided in Section [78A-6-902](#); and termination of parental rights as
79 provided in Sections [78A-6-117](#) and [78A-6-118](#), and Title 78A, Chapter 6, Part 5, Termination
80 of Parental Rights Act. This account may not be used to supplant funding for the guardian ad
81 litem program in the juvenile court as provided in Section [78A-6-902](#);

82 (c) implementing and administering the Expedited Parent-time Enforcement Program
83 as provided in Section [30-3-38](#); and

84 (d) implementing and administering the Divorce Education for Children Program.

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 (d):

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 **63I-1-278** is amended to read:

96 **63I-1-278. Repeal dates, Title 78A and Title 78B.**

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

99 [~~(2)~~] Section **78A-2-227.1** is repealed July 1, 2014].

100 [~~(3)~~] (2) Section **78B-3-421**, regarding medical malpractice arbitration agreements, is
101 repealed July 1, 2019.

102 [~~(4)~~] (3) Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act is repealed
103 July 1, 2016.

104 [~~(5)~~] (4) The following are repealed December 31, 2014:

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

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

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

110 [~~(6)~~] (5) Section **78B-6-901.5**, regarding notice to tenants on residential rental property
111 to be foreclosed, is repealed December 31, 2014.

112 Section 4. Section **78A-2-701** is enacted to read:

113 **Part 7. District Court Guardian ad Litem Act**

114 **78A-2-701. Title.**

115 This part is known as the "District Court Guardian ad Litem Act."

116 Section 5. Section **78A-2-702** is enacted to read:

117 **78A-2-702. Definitions.**

118 As used in this part:

119 (1) "Attorney guardian ad litem" means an attorney employed by the office.

120 (2) "Director" means the director of the office.

121 (3) "Guardian ad litem" means either an attorney guardian ad litem or a private attorney
 122 guardian ad litem.

123 (4) "Office" means the Office of Guardian ad Litem, created in Section 78A-6-901.

124 (5) "Private attorney guardian ad litem" means an attorney designated by the office
 125 pursuant to Section 78A-2-705 who is not an employee of the office.

126 Section 6. Section **78A-2-703**, which is renumbered from Section 78A-2-227.1 is
 127 renumbered and amended to read:

128 **[78A-2-227.1]. 78A-2-703. Appointment of attorney guardian ad litem in**
 129 **district court matters.**

130 (1) A district court may appoint [the Office of Guardian ad Litem] an attorney guardian
 131 ad litem to represent the best interests of a minor in the following district court matters:

132 [(1)] (a) protective order proceedings; and

133 [(2)] (b) district court actions when:

134 [(a)] (i) child abuse, child sexual abuse, or neglect is alleged in a formal complaint,
 135 petition, or counterclaim;

136 [(b)] (ii) the child abuse, child sexual abuse, or neglect described in Subsection [(2)(a)]
 137 (1)(b)(i) has been reported to Child Protective Services; [and]

138 [(c)] (iii) the court makes a finding that the adult parties to the case are indigent, as
 139 defined in Section 77-32-202[-]; and

140 (iv) the district court determines that there are no private attorney guardians ad litem
 141 who are reasonably available to be appointed in the district court action.

142 [(3)] (2) (a) A court may not appoint an attorney guardian ad litem in a criminal case.

143 (b) Subsection [(3)] (2)(a) does not prohibit the appointment of an attorney guardian ad
 144 litem in a case where a court is determining whether to adjudicate a minor for committing an
 145 act that would be a crime if committed by an adult.

146 (c) Subsection [(3)] (2)(a) does not prohibit an attorney guardian ad litem from
 147 entering an appearance, filing motions, or taking other action in a criminal case on behalf of a
 148 minor, if:

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

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

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

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

154 ~~[(4)]~~ (3) If a court appoints an attorney guardian ad litem in a divorce or child custody
155 case, the court shall:

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

159 (b) to the extent possible, bifurcate the issues specified in the order described in
160 Subsection ~~[(4)]~~ (3)(a) from the other issues in the case, in order to minimize the time
161 constraints placed upon the attorney guardian ad litem in the case; and

162 (c) except as provided in Subsection ~~[(6)]~~ (5), within one year after the day on which
163 the attorney guardian ad litem is appointed in the case, issue a final order:

164 (i) resolving the issues ~~[described]~~ in the order described in Subsection ~~[(4)]~~ (3)(a); and

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

166 ~~[(5) The]~~ (4) A court shall issue an order terminating the appointment of an attorney
167 guardian ad litem made under this section, if:

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

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

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

173 ~~[(6)]~~ (5) A court may issue a written order extending the one-year period described in
174 Subsection ~~[(4)]~~ (3)(c) for a time certain, if the court makes a written finding that there is a
175 compelling reason that the court cannot comply with the requirements described in Subsection
176 ~~[(4)]~~ (3)(c) within the one-year period.

177 ~~[(7)]~~ (6) When appointing an attorney guardian ad litem for a minor under this section,
178 a court may appoint the same attorney guardian ad litem who represents the minor in another
179 proceeding, or who has represented the minor in a previous proceeding, if that attorney
180 guardian ad litem is available.

181 ~~[(8)]~~ (7) The court is responsible for all costs resulting from the appointment of an
182 attorney guardian ad litem and shall use funds appropriated by the Legislature for the guardian

183 ad litem program to cover those costs.

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

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

193 ~~[(10)]~~ (8) An attorney guardian ad litem appointed in accordance with the requirements
 194 of this section and Chapter 6, Part 9, Guardian ad Litem, is, when serving in the scope of duties
 195 of an attorney guardian ad litem, considered an employee of this state for purposes of
 196 indemnification under the Governmental Immunity Act.

197 Section 7. Section **78A-2-704**, which is renumbered from Section 78A-2-227.5 is
 198 renumbered and amended to read:

199 ~~[78A-2-227.5].~~ **78A-2-704. Public policy regarding attorney guardian ad**
 200 **litem -- Training.**

201 (1) ~~[A]~~ An attorney guardian ad litem may not presume that a child and the child's
 202 parent are adversaries.

203 (2) ~~[A]~~ An attorney guardian ad litem shall be trained on and implement into practice:

204 (a) the parental rights and child and family protection principles provided in Section
 205 62A-4a-201;

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

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

209 (d) the use of a least restrictive means analysis regarding state claims of a compelling
 210 child welfare interest;

211 (e) the priority of maintaining a child safely in the child's home, whenever possible;

212 (f) the importance of:

213 (i) kinship placement, in the event the child is removed from the home; and

214 (ii) keeping sibling groups together, whenever practicable and in the best interests of
215 the children;

216 (g) the preference for kinship adoption over nonkinship adoption, if the parent-child
217 relationship is legally terminated;

218 (h) the potential for a guardianship placement if the parent-child relationship is legally
219 terminated and no appropriate adoption placement is available; and

220 (i) the use of an individualized permanency plan, only as a last resort.

221 (3) The [~~Office of the Guardian ad Litem~~] office shall implement policies and practice
222 guidelines that reflect the priorities described in Subsections (2)(e) through (i) for the
223 placement of children.

224 Section 8. Section **78A-2-705**, which is renumbered from Section 78A-2-228 is
225 renumbered and amended to read:

226 ~~[78A-2-228]~~. **78A-2-705. Private attorney guardian ad litem --**
227 **Appointment -- Costs and fees -- Duties -- Conflicts of interest -- Pro bono obligation --**
228 **Indemnification -- Minimum qualifications.**

229 (1) The court may appoint [~~a private~~] an attorney as a private attorney guardian ad
230 litem to represent the best interests of the minor in any district court action when:

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

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

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

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

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

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

242 (a) state in its order that the court is appointing a private attorney guardian ad litem, to
243 be assigned by the [~~Office of Guardian ad Litem~~] office, to represent the best interests of the
244 child in the matter; and

245 (b) send the order described in Subsection (3)(a) to the ~~[Director of the Office of~~
246 ~~Guardian ad Litem]~~ director, in care of the Private Attorney Guardian ad Litem program.

247 (4) The court shall:

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

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

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

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

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

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

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

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

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

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

273 (8) Upon receipt of the court's order, described in Subsection (3), the director or the
274 director's designee shall assign the case to an eligible private attorney guardian ad litem, if
275 available and as established by rule under Subsection (17).

- 276 (9) (a) When appointing a private attorney guardian ad litem, the court shall:
- 277 (i) assess all or part of the private attorney guardian ad litem fees, [~~courts~~] court costs,
- 278 and paralegal, staff, and volunteer expenses against the parties in a proportion the court
- 279 determines to be just; and
- 280 (ii) designate in the order whether the private attorney guardian ad litem shall, as
- 281 established by rule under Subsection (17):
- 282 (A) be paid a set fee and initial retainer;
- 283 (B) not be paid and serve pro bono; or
- 284 (C) be paid at a rate less than the set fee established by court rule.
- 285 (b) If a party claims to be impecunious, the court shall follow the procedure and make a
- 286 determination, described in Section [78A-2-302](#), to set the amount that the party is required to
- 287 pay, if any, toward the private attorney guardian ad litem's fees and expenses.
- 288 (c) The private attorney guardian ad litem may adjust the court-ordered fees or retainer
- 289 to an amount less than what was ordered by the court at any time before being released from
- 290 representation by the court.
- 291 (10) Upon accepting the court's appointment, the assigned private attorney guardian ad
- 292 litem shall:
- 293 (a) file a notice of appearance with the court within five business days of the day on
- 294 which the attorney was assigned; and
- 295 (b) represent the best interests of the minor until released by the court.
- 296 (11) The private attorney guardian ad litem:
- 297 (a) shall be certified by the director of the [~~Office of Guardian ad Litem~~] office as
- 298 meeting the minimum qualifications for appointment; and
- 299 (b) may not be employed by, or under contract with, the [~~Office of Guardian ad Litem~~]
- 300 office unless under contract as a conflict private attorney guardian ad litem in an unrelated
- 301 case.
- 302 (12) The private attorney guardian ad litem appointed under the provisions of this
- 303 section shall:
- 304 (a) represent the best interests of the minor from the date of the appointment until
- 305 released by the court;
- 306 (b) conduct or supervise an ongoing, independent investigation in order to obtain,

307 first-hand, a clear understanding of the situation and needs of the minor;

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

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

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

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

313 (ii) personally interview the minor, unless:

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

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

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

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

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

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

322 (B) all court and administrative proceedings;

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

324 (D) court action; and

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

327 (e) unless excused by the court, prepare for and attend all mediation hearings and all
328 court conferences and hearings, and present witnesses and exhibits as necessary to protect the
329 best interests of the minor;

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

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

333 (13) (a) The private attorney guardian ad litem shall represent the best interests of a
334 minor.

335 (b) If the minor's intent and desires differ from the [attorney's] private attorney
336 guardian ad litem's determination of the minor's best interests, the private attorney guardian ad
337 litem shall communicate to the court the minor's intent and desires and the [attorney's] private

338 attorney guardian ad litem's determination of the minor's best interests.

339 (c) A difference between the minor's intent and desires and the [~~attorney's~~] private
340 attorney guardian ad litem's determination of best interests is not sufficient to create a conflict
341 of interest.

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

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

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

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

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

352 (15) [~~Am~~] A private attorney guardian ad litem appointed under this section is immune
353 from any civil liability that might result by reason of acts performed within the scope of duties
354 of the private attorney guardian ad litem.

355 (16) The [~~Office of Guardian ad Litem~~] office and the Guardian ad Litem Oversight
356 Committee shall compile a list of attorneys willing to accept an appointment as a private
357 attorney guardian ad litem.

358 (17) Upon the advice of the director [~~of the Office of Guardian ad Litem~~] and the
359 Guardian ad Litem Oversight Committee, the Judicial Council shall establish by rule:

360 (a) the minimum qualifications and requirements for appointment by the court as [~~an~~] a
361 private attorney guardian ad litem;

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

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

365 (d) a system to:

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

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

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

371 (18) (a) Any savings that result from assigning a private attorney guardian ad litem in a
372 district court case, instead of [a] an office guardian ad litem [~~from the Office of Guardian ad~~
373 ~~Litem~~], shall be applied to the [~~private guardian ad litem program~~] office to recruit and train
374 attorneys for the private attorney guardian ad litem program.

375 (b) After complying with Subsection (18)(a), the office shall use any additional savings
376 to reduce caseloads and improve current practices in juvenile court.

377 Section 9. Section **78A-6-901** is amended to read:

378 **78A-6-901. Office of Guardian ad Litem -- Appointment of director -- Duties of**
379 **director -- Contracts in second, third, and fourth districts.**

380 (1) As used in this part:

381 (a) "Attorney guardian ad litem" means an attorney employed by the office.

382 [~~(a)~~] (b) "Director" means the director of the office.

383 [~~(b)~~] (c) "Office" means the Office of Guardian ad Litem, created in this section.

384 (d) "Private attorney guardian ad litem" means an attorney designated by the office
385 pursuant to Section [78A-2-705](#) who is not an employee of the office.

386 (2) There is created the Office of Guardian ad Litem under the direct supervision of the
387 Guardian ad Litem Oversight Committee.

388 (3) (a) The Guardian ad Litem Oversight Committee shall appoint one person to serve
389 full time as the guardian ad litem director for the state. The guardian ad litem director shall
390 serve at the pleasure of the Guardian ad Litem Oversight Committee, in consultation with the
391 state court administrator.

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

394 (i) professional ability;

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

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

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

400 (c) The director shall, prior to or immediately after the director's appointment, be
401 trained in nationally recognized standards for an attorney guardian ad litem.

402 (4) The guardian ad litem director shall:

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

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

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

411 (d) develop and provide training programs for volunteers in accordance with the United
412 States Department of Justice National Court Appointed Special Advocates Association
413 standards;

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

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

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

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

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

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

423 (i) design and implement evaluation tools based on specific objectives targeted in the
424 needs assessments described in Subsection (4)(h);

425 (j) prepare and submit an annual report to the Guardian ad Litem Oversight Committee
426 and the Child Welfare Legislative Oversight Panel regarding:

427 (i) the development, policy, and management of the statewide guardian ad litem
428 program;

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

430 (iii) the number of minors served by the ~~[Office of Guardian ad Litem]~~ office;

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

432 (l) administer the program of private attorney guardians ad litem established by Section
433 [~~78A-2-228~~] 78A-2-705.

434 (5) A contract of employment or independent contract described under Subsection
435 (4)(c) shall provide that attorney guardians ad litem in the second, third, and fourth judicial
436 districts devote their full time and attention to the role of attorney guardian ad litem, having no
437 clients other than the minors whose interest they represent within the guardian ad litem
438 program.

439 Section 10. Section **78B-3-102** is amended to read:

440 **78B-3-102. Injury of a child -- Suit by parent or guardian.**

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

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

447 (3) If a parent, stepparent, adoptive parent, or legal guardian is the alleged defendant in
448 an action for the injury of a child, a guardian ad litem may be appointed for the injured child
449 according to the procedures outlined in [~~Section 78A-2-228~~] Sections 78A-2-703 and
450 78A-2-705.

451 Section 11. Section **78B-7-106** is amended to read:

452 **78B-7-106. Protective orders -- Ex parte protective orders -- Modification of**
453 **orders -- Service of process -- Duties of the court.**

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

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

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

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

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

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

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

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

475 (e) order possession and use of an automobile and other essential personal effects, and
476 direct the appropriate law enforcement officer to accompany the petitioner to the residence of
477 the parties to ensure that the petitioner is safely restored to possession of the residence,
478 automobile, and other essential personal effects, or to supervise the petitioner's or respondent's
479 removal of personal belongings;

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

481 (g) order the appointment of [~~:(i) before July 1, 2014, a~~ an attorney guardian ad litem
482 under [~~Section 78A-2-227.1, if appropriate; and~~ Sections 78A-2-703 and 78A-6-902;

483 [~~(ii) on or after July 1, 2014, a private attorney guardian ad litem under Section~~
484 78A-2-228, if appropriate;]

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

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

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

- 493 (a) grant the relief described in Subsection (2); and
- 494 (b) specify arrangements for parent-time of any minor child by the respondent and
495 require supervision of that parent-time by a third party or deny parent-time if necessary to
496 protect the safety of the petitioner or child.
- 497 (4) Following the protective order hearing, the court shall:
- 498 (a) as soon as possible, deliver the order to the county sheriff for service of process;
- 499 (b) make reasonable efforts to ensure that the order for protection is understood by the
500 petitioner, and the respondent, if present;
- 501 (c) transmit electronically, by the end of the next business day after the order is issued,
502 a copy of the order for protection to the local law enforcement agency or agencies designated
503 by the petitioner; and
- 504 (d) transmit a copy of the order to the statewide domestic violence network described
505 in Section [78B-7-113](#).
- 506 (5) (a) Each protective order shall include two separate portions, one for provisions, the
507 violation of which are criminal offenses, and one for provisions, the violation of which are civil
508 violations, as follows:
- 509 (i) criminal offenses are those under Subsections (2)(a) through (e), and under
510 Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and
- 511 (ii) civil offenses are those under Subsections (2)(f), (h), and (i), and Subsection (3)(a)
512 as it refers to Subsections (2)(f), (h), and (i).
- 513 (b) The criminal provision portion shall include a statement that violation of any
514 criminal provision is a class A misdemeanor.
- 515 (c) The civil provision portion shall include a notice that violation of or failure to
516 comply with a civil provision is subject to contempt proceedings.
- 517 (6) The protective order shall include:
- 518 (a) a designation of a specific date, determined by the court, when the civil portion of
519 the protective order either expires or is scheduled for review by the court, which date may not
520 exceed 150 days after the date the order is issued, unless the court indicates on the record the
521 reason for setting a date beyond 150 days;
- 522 (b) information the petitioner is able to provide to facilitate identification of the
523 respondent, such as Social Security number, driver license number, date of birth, address,

524 telephone number, and physical description; and

525 (c) a statement advising the petitioner that:

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

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

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

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

532 subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income

533 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non

534 IV-D Cases, except when the protective order is issued ex parte.

535 (8) (a) The county sheriff that receives the order from the court, pursuant to Subsection

536 (5)(a), shall provide expedited service for orders for protection issued in accordance with this

537 chapter, and shall transmit verification of service of process, when the order has been served, to

538 the statewide domestic violence network described in Section [78B-7-113](#).

539 (b) This section does not prohibit any law enforcement agency from providing service

540 of process if that law enforcement agency:

541 (i) has contact with the respondent and service by that law enforcement agency is

542 possible; or

543 (ii) determines that under the circumstances, providing service of process on the

544 respondent is in the best interests of the petitioner.

545 (9) (a) When an order is served on a respondent in a jail or other holding facility, the

546 law enforcement agency managing the facility shall make a reasonable effort to provide notice

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

548 (b) Notification of the petitioner shall consist of a good faith reasonable effort to

549 provide notification, including mailing a copy of the notification to the last-known address of

550 the victim.

551 (10) A court may modify or vacate an order of protection or any provisions in the order

552 after notice and hearing, except that the criminal provisions of a protective order may not be

553 vacated within two years of issuance unless the petitioner:

554 (a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah

555 Rules of Civil Procedure, and the petitioner personally appears before the court and gives
556 specific consent to the vacation of the criminal provisions of the protective order; or

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

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

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

563 Section 12. Section **78B-7-202** is amended to read:

564 **78B-7-202. Petition -- Ex parte determination -- Guardian ad litem -- Referral to**
565 **division.**

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

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

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

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

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

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

580 (4) The court may appoint~~[(a)]~~ an attorney guardian ad litem under ~~[Section~~
581 ~~78A-2-227.1 for district court cases, before July 1, 2014;]~~ Sections 78A-2-703 and 78A-6-902.

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

584 ~~[(c) the Office of Guardian ad Litem for juvenile court cases under Section 78A-6-902;~~
585 ~~for the child who is the subject of the petition.]~~

586 Section 13. Section **78B-15-612** is amended to read:

587 **78B-15-612. Minor as party -- Representation.**

588 (1) A minor is a permissible party, but is not a necessary party to a proceeding under
589 this part.

590 (2) The tribunal may appoint an attorney guardian ad litem under Sections [78A-2-703](#)
591 and [78A-6-902](#), or a private guardian ad litem [for district court cases] under Section
592 [[78A-2-228](#) or the Office of Guardian ad Litem for juvenile court cases under Section
593 [78A-6-902](#)] [78A-2-705](#), to represent a minor or incapacitated child if the child is a party [or the
594 tribunal finds that the interests of the child are not adequately represented].

Legislative Review Note
as of 1-13-14 5:38 PM

Office of Legislative Research and General Counsel