

1                   **TERMINATION OF PARENTAL RIGHTS AMENDMENTS**

2                                   2018 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Todd Weiler**

5                                   House Sponsor: \_\_\_\_\_

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7                   **LONG TITLE**

8                   **General Description:**

9                   This bill amends provisions related to the termination of parental rights.

10                  **Highlighted Provisions:**

11                  This bill:

- 12                  ▶ clarifies the roles of the attorney general and the guardian ad litem regarding the  
13 termination of parental rights when a child is in the custody of the Division of Child  
14 and Family Services;
- 15                  ▶ clarifies the right to appointed counsel when an indigent parent's parental rights may  
16 be terminated in a private action;
- 17                  ▶ requires the state to pay the cost for appointed counsel when an indigent parent's  
18 parental rights may be terminated in a private action;
- 19                  ▶ requires that a parent whose parental rights may be terminated in a private action be  
20 given notice of the right to appointed counsel if the court determines that the parent  
21 is indigent; and
- 22                  ▶ makes technical changes.

23                  **Money Appropriated in this Bill:**

24                  None

25                  **Other Special Clauses:**

26                  None

27                  **Utah Code Sections Affected:**



28 AMENDS:

29 **62A-4a-113**, as last amended by Laws of Utah 2008, Chapters 3 and 299

30 **78A-6-115**, as last amended by Laws of Utah 2017, Chapter 330

31 **78A-6-314**, as last amended by Laws of Utah 2016, Chapter 231

32 **78A-6-506**, as renumbered and amended by Laws of Utah 2008, Chapter 3

33 **78A-6-902**, as last amended by Laws of Utah 2012, Chapter 293

34 **78A-6-1111**, as last amended by Laws of Utah 2016, Chapters 33 and 177

35 **78B-6-110**, as last amended by Laws of Utah 2014, Chapter 410

36 **78B-6-112**, as last amended by Laws of Utah 2012, Chapter 340

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

39 Section 1. Section **62A-4a-113** is amended to read:

40 **62A-4a-113. Division's enforcement authority -- Responsibility of attorney**  
41 **general to represent division.**

42 (1) The division shall take legal action that is necessary to enforce the provisions of  
43 this chapter.

44 (2) (a) Subject to ~~[the provisions of]~~ Section 67-5-17 and the attorney general's  
45 prosecutorial discretion in civil enforcement actions, the attorney general shall enforce all  
46 provisions of this chapter, in addition to the requirements of Title 78A, Chapter 6, Juvenile  
47 Court Act of 1996, relating to protection ~~[and]~~, custody ~~[of]~~, and parental rights termination for  
48 abused, neglected, or dependent minors. The attorney general may contract with the local  
49 county attorney to enforce the provisions of this chapter and Title 78A, Chapter 6, Juvenile  
50 Court Act of 1996.

51 (b) It is the responsibility of the attorney general's office to:

- 52 (i) advise the division regarding decisions to remove a minor from the minor's home;
- 53 (ii) represent the division in all court and administrative proceedings related to abuse,
- 54 neglect, and dependency including, but not limited to, shelter hearings, dispositional hearings,
- 55 dispositional review hearings, periodic review hearings, and petitions for termination of
- 56 parental rights; and

57 (iii) be available to and advise caseworkers on an ongoing basis.

58 (c) The attorney general shall designate no less than 16 full-time attorneys to advise

59 and represent the division in abuse, neglect, and dependency proceedings, including petitions  
60 for termination of parental rights. Those attorneys shall devote their full time and attention to  
61 that representation and, insofar as it is practicable, shall be housed in or near various offices of  
62 the division statewide.

63 (3) As of July 1, 1998, the attorney general's office shall represent the division with  
64 regard to actions involving minors who have not been adjudicated as abused or neglected, but  
65 who are otherwise committed to the custody of the division by the juvenile court, and who are  
66 classified in the division's management information system as having been placed in custody  
67 primarily on the basis of delinquent behavior or a status offense. Nothing in this section may  
68 be construed to affect the responsibility of the county attorney or district attorney to represent  
69 the state in those matters, in accordance with Section [78A-6-115](#).

70 Section 2. Section **78A-6-115** is amended to read:

71 **78A-6-115. Hearings -- Record -- County attorney or district attorney**  
72 **responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of**  
73 **evidence.**

74 (1) (a) A verbatim record of the proceedings shall be taken in all cases that might result  
75 in deprivation of custody as defined in this chapter. In all other cases a verbatim record shall  
76 also be made unless dispensed with by the court.

77 (b) (i) Notwithstanding any other provision, including Title 63G, Chapter 2,  
78 Government Records Access and Management Act, a record of a proceeding made under  
79 Subsection (1)(a) shall be released by the court to any person upon a finding on the record for  
80 good cause.

81 (ii) Following a petition for a record of a proceeding made under Subsection (1)(a), the  
82 court shall:

83 (A) provide notice to all subjects of the record that a request for release of the record  
84 has been made; and

85 (B) allow sufficient time for the subjects of the record to respond before making a  
86 finding on the petition.

87 (iii) A record of a proceeding may not be released under this Subsection (1)(b) if the  
88 court's jurisdiction over the subjects of the proceeding ended more than 12 months before the  
89 request.

90 (iv) For purposes of this Subsection (1)(b):

91 (A) "record of a proceeding" does not include documentary materials of any type  
92 submitted to the court as part of the proceeding, including items submitted under Subsection  
93 (4)(a); and

94 (B) "subjects of the record" includes the child's guardian ad litem, the child's legal  
95 guardian, the Division of Child and Family Services, and any other party to the proceeding.

96 (2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a  
97 prosecution district, the district attorney shall represent the state in any proceeding in a minor's  
98 case.

99 (b) ~~[The]~~ Subject to the attorney general's prosecutorial discretion in civil enforcement  
100 actions, the attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child and  
101 Family Services, and this chapter, relating to:

102 (i) protection or custody of an abused, neglected, or dependent child; and

103 (ii) petitions for termination of parental rights.

104 (c) The attorney general shall represent the Division of Child and Family Services in  
105 actions involving a minor who is not adjudicated as abused or neglected, but who is receiving  
106 in-home family services under Section 78A-6-117.5. Nothing in this Subsection (2)(c) may be  
107 construed to affect the responsibility of the county attorney or district attorney to represent the  
108 state in those matters, in accordance with Subsection (2)(a).

109 (3) The board may adopt special rules of procedure to govern proceedings involving  
110 violations of traffic laws or ordinances, wildlife laws, and boating laws. However, proceedings  
111 involving offenses under Section 78A-6-606 are governed by that section regarding suspension  
112 of driving privileges.

113 (4) (a) For the purposes of determining proper disposition of the minor in dispositional  
114 hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and  
115 in hearings upon petitions for termination of parental rights, written reports and other material  
116 relating to the minor's mental, physical, and social history and condition may be received in  
117 evidence and may be considered by the court along with other evidence. The court may require  
118 that the person who wrote the report or prepared the material appear as a witness if the person  
119 is reasonably available.

120 (b) For the purpose of determining proper disposition of a minor alleged to be or

121 adjudicated as abused, neglected, or dependent, dispositional reports prepared by the division  
122 under Section 78A-6-315 may be received in evidence and may be considered by the court  
123 along with other evidence. The court may require any person who participated in preparing the  
124 dispositional report to appear as a witness, if the person is reasonably available.

125 (5) (a) In an abuse, neglect, or dependency proceeding occurring after the  
126 commencement of a shelter hearing under Section 78A-6-306 or the filing of a petition under  
127 Section 78A-6-304, each party to the proceeding shall provide in writing to the other parties or  
128 their counsel any information which the party:

129 (i) plans to report to the court at the proceeding; or

130 (ii) could reasonably expect would be requested of the party by the court at the  
131 proceeding.

132 (b) The disclosure required under Subsection (5)(a) shall be made:

133 (i) for dispositional hearings under Sections 78A-6-311 and 78A-6-312, no less than  
134 five days before the proceeding;

135 (ii) for proceedings under Chapter 6, Part 5, Termination of Parental Rights Act, in  
136 accordance with Utah Rules of Civil Procedure; and

137 (iii) for all other proceedings, no less than five days before the proceeding.

138 (c) If a party to a proceeding obtains information after the deadline in Subsection  
139 (5)(b), the information is exempt from the disclosure required under Subsection (5)(a) if the  
140 party certifies to the court that the information was obtained after the deadline.

141 (d) Subsection (5)(a) does not apply to:

142 (i) pretrial hearings; and

143 (ii) the frequent, periodic review hearings held in a dependency drug court case to  
144 assess and promote the parent's progress in substance use disorder treatment.

145 (6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court  
146 may, in its discretion, consider evidence of statements made by a child under eight years of age  
147 to a person in a trust relationship.

148 Section 3. Section 78A-6-314 is amended to read:

149 **78A-6-314. Permanency hearing -- Final plan -- Petition for termination of**  
150 **parental rights filed -- Hearing on termination of parental rights.**

151 (1) (a) When reunification services have been ordered in accordance with Section

152 78A-6-312, with regard to a minor who is in the custody of the Division of Child and Family  
153 Services, a permanency hearing shall be held by the court no later than 12 months after the day  
154 on which the minor was initially removed from the minor's home.

155 (b) If reunification services were not ordered at the dispositional hearing, a permanency  
156 hearing shall be held within 30 days after the day on which the dispositional hearing ends.

157 (2) (a) If reunification services were ordered by the court in accordance with Section  
158 78A-6-312, the court shall, at the permanency hearing, determine, consistent with Subsection  
159 (3), whether the minor may safely be returned to the custody of the minor's parent.

160 (b) If the court finds, by a preponderance of the evidence, that return of the minor to  
161 the minor's parent would create a substantial risk of detriment to the minor's physical or  
162 emotional well-being, the minor may not be returned to the custody of the minor's parent.

163 (c) Prima facie evidence that return of the minor to a parent or guardian would create a  
164 substantial risk of detriment to the minor is established if:

165 (i) the parent or guardian fails to:

166 (A) participate in a court approved child and family plan;

167 (B) comply with a court approved child and family plan in whole or in part; or

168 (C) meet the goals of a court approved child and family plan; or

169 (ii) the child's natural parent:

170 (A) intentionally, knowingly, or recklessly causes the death of another parent of the  
171 child;

172 (B) is identified by a law enforcement agency as the primary suspect in an investigation  
173 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

174 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or  
175 recklessly causing the death of another parent of the child.

176 (3) In making a determination under Subsection (2)(a), the court shall review and  
177 consider:

178 (a) the report prepared by the Division of Child and Family Services;

179 (b) any admissible evidence offered by the minor's guardian ad litem;

180 (c) any report submitted by the division under Subsection 78A-6-315(3)(a)(i);

181 (d) any evidence regarding the efforts or progress demonstrated by the parent; and

182 (e) the extent to which the parent cooperated and utilized the services provided.

183 (4) With regard to a case where reunification services were ordered by the court, if a  
184 minor is not returned to the minor's parent or guardian at the permanency hearing, the court  
185 shall, unless the time for the provision of reunification services is extended under Subsection  
186 (8):

- 187 (a) order termination of reunification services to the parent;
- 188 (b) make a final determination regarding whether termination of parental rights,  
189 adoption, or permanent custody and guardianship is the most appropriate final plan for the  
190 minor, taking into account the minor's primary permanency plan established by the court  
191 pursuant to Section 78A-6-312; and
- 192 (c) establish a concurrent permanency plan that identifies the second most appropriate  
193 final plan for the minor, if appropriate.

194 (5) The court may order another planned permanent living arrangement for a minor 16  
195 years old or older upon entering the following findings:

- 196 (a) the Division of Child and Family Services has documented intensive, ongoing, and  
197 unsuccessful efforts to reunify the minor with the minor's parent or parents, or to secure a  
198 placement for the minor with a guardian, an adoptive parent, or an individual described in  
199 Subsection 78A-6-306(6)(e);
- 200 (b) the Division of Child and Family Services has demonstrated that the division has  
201 made efforts to normalize the life of the minor while in the division's custody, in accordance  
202 with Sections 62A-4a-210 through 62A-4a-212;
- 203 (c) the minor prefers another planned permanent living arrangement; and
- 204 (d) there is a compelling reason why reunification or a placement described in  
205 Subsection (5)(a) is not in the minor's best interest.

206 (6) Except as provided in Subsection (7), the court may not extend reunification  
207 services beyond 12 months after the day on which the minor was initially removed from the  
208 minor's home, in accordance with the provisions of Section 78A-6-312.

209 (7) (a) Subject to Subsection (7)(b), the court may extend reunification services for no  
210 more than 90 days if the court finds, beyond a preponderance of the evidence, that:

- 211 (i) there has been substantial compliance with the child and family plan;
- 212 (ii) reunification is probable within that 90-day period; and
- 213 (iii) the extension is in the best interest of the minor.

214 (b) (i) Except as provided in Subsection (7)(c), the court may not extend any  
215 reunification services beyond 15 months after the day on which the minor was initially  
216 removed from the minor's home.

217 (ii) Delay or failure of a parent to establish paternity or seek custody does not provide a  
218 basis for the court to extend services for that parent beyond the 12-month period described in  
219 Subsection (6).

220 (c) In accordance with Subsection (7)(d), the court may extend reunification services  
221 for one additional 90-day period, beyond the 90-day period described in Subsection (7)(a), if:

222 (i) the court finds, by clear and convincing evidence, that:

223 (A) the parent has substantially complied with the child and family plan;

224 (B) it is likely that reunification will occur within the additional 90-day period; and

225 (C) the extension is in the best interest of the child;

226 (ii) the court specifies the facts upon which the findings described in Subsection  
227 (7)(c)(i) are based; and

228 (iii) the court specifies the time period in which it is likely that reunification will occur.

229 (d) A court may not extend the time period for reunification services without  
230 complying with the requirements of this Subsection (7) before the extension.

231 (e) In determining whether to extend reunification services for a minor, a court shall  
232 take into consideration the status of the minor siblings of the minor.

233 (8) The court may, in its discretion:

234 (a) enter any additional order that it determines to be in the best interest of the minor,  
235 so long as that order does not conflict with the requirements and provisions of Subsections (4)  
236 through (7); or

237 (b) order the division to provide protective supervision or other services to a minor and  
238 the minor's family after the division's custody of a minor has been terminated.

239 (9) (a) If the final plan for the minor is to proceed toward termination of parental  
240 rights, the petition for termination of parental rights shall be filed, and a pretrial held, within 45  
241 calendar days after the permanency hearing.

242 (b) If the division opposes the plan to terminate parental rights, the court may not  
243 require the division to file a petition for the termination of parental rights, except as required  
244 under Subsection [78A-6-316\(2\)](#).



245 (10) (a) Any party to an action may, at any time, petition the court for an expedited  
246 permanency hearing on the basis that continuation of reunification efforts are inconsistent with  
247 the permanency needs of the minor.

248 (b) If the court so determines, it shall order, in accordance with federal law, that:

249 (i) the minor be placed in accordance with the permanency plan; and

250 (ii) whatever steps are necessary to finalize the permanent placement of the minor be  
251 completed as quickly as possible.

252 (11) Nothing in this section may be construed to:

253 (a) entitle any parent to reunification services for any specified period of time;

254 (b) limit a court's ability to terminate reunification services at any time prior to a  
255 permanency hearing; or

256 (c) limit or prohibit the filing of a petition for termination of parental rights by any  
257 party, or a hearing on termination of parental rights, at any time prior to a permanency hearing.

258 (12) (a) Subject to Subsection (12)(b), if a petition for termination of parental rights is  
259 filed prior to the date scheduled for a permanency hearing, the court may consolidate the  
260 hearing on termination of parental rights with the permanency hearing.

261 (b) For purposes of Subsection (12)(a), if the court consolidates the hearing on  
262 termination of parental rights with the permanency hearing:

263 (i) the court shall first make a finding regarding whether reasonable efforts have been  
264 made by the Division of Child and Family Services to finalize the permanency plan for the  
265 minor; and

266 (ii) any reunification services shall be terminated in accordance with the time lines  
267 described in Section [78A-6-312](#).

268 (c) A decision on a petition for termination of parental rights shall be made within 18  
269 months from the day on which the minor is removed from the minor's home.

270 (13) If a court determines that a child will not be returned to a parent of the child, the  
271 court shall consider appropriate placement options inside and outside of the state.

272 Section 4. Section **78A-6-506** is amended to read:

273 **78A-6-506. Notice -- Nature of proceedings.**

274 (1) After a petition for termination of parental rights has been filed, notice ~~[of that fact~~  
275 ~~and of the time and place of the hearing shall be provided, in accordance with the Utah Rules~~

276 of Civil Procedure,] shall:

277 (a) be provided to the parents, the guardian, the person or agency having legal custody  
278 of the child, and [~~to~~] any person acting in loco parentis to the child[~~;~~]; and

279 (b) indicate the:

280 (i) nature of the petition;

281 (ii) time and place of the hearing;

282 (iii) right to counsel; and

283 (iv) right to the appointment of counsel for a party whom the court determines is  
284 indigent and at risk of losing the party's parental rights.

285 (2) A hearing shall be held specifically on the question of termination of parental rights  
286 no sooner than 10 days after service of summons is complete. A verbatim record of the  
287 proceedings shall be taken and the parties shall be advised of their right to counsel, including  
288 the appointment of counsel for a party who is indigent and whose parental rights may be  
289 terminated as a result of the proceedings. The summons shall contain a statement to the effect  
290 that the rights of the parent or parents are proposed to be permanently terminated in the  
291 proceedings. That statement may be contained in the summons originally issued in the  
292 proceeding or in a separate summons subsequently issued.

293 (3) The proceedings are civil in nature and are governed by the Utah Rules of Civil  
294 Procedure. The court shall in all cases require the petitioner to establish the facts by clear and  
295 convincing evidence, and shall give full and careful consideration to all of the evidence  
296 presented with regard to the constitutional rights and claims of the parent and, if a parent is  
297 found, by reason of [~~his~~] the parent's conduct or condition, to be unfit or incompetent based  
298 upon any of the grounds for termination described in this part, the court shall then consider the  
299 welfare and best interest of the child of paramount importance in determining whether  
300 termination of parental rights shall be ordered.

301 Section 5. Section **78A-6-902** is amended to read:

302 **78A-6-902. Appointment of attorney guardian ad litem -- Duties and**  
303 **responsibilities -- Training -- Trained staff and court-appointed special advocate**  
304 **volunteers -- Costs -- Immunity -- Annual report.**

305 (1) (a) The court:

306 (i) may appoint an attorney guardian ad litem to represent the best interest of a minor

307 involved in any case before the court; and

308 (ii) shall consider the best interest of a minor, consistent with the provisions of Section  
309 [62A-4a-201](#), in determining whether to appoint a guardian ad litem.

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

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

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

316 (b) the petition is filed.

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

319 (a) represents the best interest of each client of the office in all venues, including:

320 (i) court proceedings; and

321 (ii) meetings to develop, review, or modify the child and family plan with the Division  
322 of Child and Family Services in accordance with Section [62A-4a-205](#);

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

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

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

326 (c) conducts or supervises an ongoing, independent investigation in order to obtain,  
327 first-hand, a clear understanding of the situation and needs of the minor;

328 (d) (i) personally meets with the minor, unless:

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

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

331 (ii) personally interviews the minor, unless:

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

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

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

335 (iii) if the minor is placed in an out-of-home placement, or is being considered for  
336 placement in an out-of-home placement, unless it would be detrimental to the minor:

337 (A) to the extent possible, determines the minor's goals and concerns regarding

338 placement; and

339 (B) personally assesses or supervises an assessment of the appropriateness and safety  
340 of the minor's environment in each placement;

341 (e) personally attends all review hearings pertaining to the minor's case;

342 (f) participates in all appeals, unless excused by order of the court;

343 (g) is familiar with local experts who can provide consultation and testimony regarding  
344 the reasonableness and appropriateness of efforts made by the Division of Child and Family  
345 Services to:

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

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

348 (h) to the extent possible, and unless it would be detrimental to the minor, personally  
349 or through a trained volunteer, paralegal, or other trained staff, keeps the minor advised of:

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

351 (ii) all court and administrative proceedings;

352 (iii) discussions with, and proposals made by, other parties;

353 (iv) court action; and

354 (v) the psychiatric, medical, or other treatment or diagnostic services that are to be  
355 provided to the minor; [~~and~~]

356 (i) in cases where a child and family plan is required, personally or through a trained  
357 volunteer, paralegal, or other trained staff, monitors implementation of a minor's child and  
358 family plan and any dispositional orders to:

359 (i) determine whether services ordered by the court:

360 (A) are actually provided; and

361 (B) are provided in a timely manner; and

362 (ii) attempt to assess whether services ordered by the court are accomplishing the  
363 intended goal of the services[-]; and

364 (j) makes all necessary court filings to advance the guardian ad litem's position  
365 regarding the best interest of the child.

366 (4) (a) Consistent with this Subsection (4), an attorney guardian ad litem may use  
367 trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers  
368 Act, trained paralegals, and other trained staff to assist in investigation and preparation of

369 information regarding the cases of individual minors before the court.

370 (b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained  
371 in and follow, at a minimum, the guidelines established by the United States Department of  
372 Justice Court Appointed Special Advocate Association.

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

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

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

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

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

380 (c) (i) When the court appoints an attorney guardian ad litem under this section, the  
381 court may assess all or part of the attorney fees, court costs, and paralegal, staff, and volunteer  
382 expenses against the child's parents, parent, or legal guardian in a proportion that the court  
383 determines to be just and appropriate, taking into consideration costs already borne by the  
384 parents, parent, or legal guardian, including:

385 (A) private attorney fees;

386 (B) counseling for the child;

387 (C) counseling for the parent, if mandated by the court or recommended by the  
388 Division of Child and Family Services; and

389 (D) any other cost the court determines to be relevant.

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

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

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

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

395 (i) require that person to submit an affidavit of impecuniosity as provided in Section  
396 78A-2-302; and

397 (ii) follow the procedures and make the determinations as provided in Section  
398 78A-2-304.

399 (e) The child's parents, parent, or legal guardian may appeal the court's determination,

400 under Subsection (6)(c), of fees, costs, and expenses.

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

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

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

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

411 (d) The guardian ad litem shall disclose the wishes of the child unless the child:

412 (i) instructs the guardian ad litem to not disclose the child's wishes; or

413 (ii) has not expressed any wishes.

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

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

418 (10) (a) An attorney guardian ad litem shall conduct an independent investigation  
419 regarding the minor at issue, the minor's family, and what constitutes the best interest of the  
420 minor.

421 (b) An attorney guardian ad litem may interview the minor's Division of Child and  
422 Family Services caseworker, but may not:

423 (i) rely exclusively on the conclusions and findings of the Division of Child and Family  
424 Services; or

425 (ii) except as provided in Subsection (10)(c), conduct a visit with the client in  
426 conjunction with the visit of a Division of Child and Family Services caseworker.

427 (c) A guardian ad litem may meet with a client during a team meeting, court hearing, or  
428 similar venue when a Division of Child and Family Services caseworker is present for a  
429 purpose other than the guardian ad litem's visit with the client.

430 (11) (a) An attorney guardian ad litem shall maintain current and accurate records

431 regarding:

432 (i) the number of times the attorney has had contact with each minor; and

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

434 (b) In every hearing where the guardian ad litem makes a recommendation regarding  
435 the best interest of the child, the court shall require the guardian ad litem to disclose the factors  
436 that form the basis of the recommendation.

437 (12) (a) Except as provided in Subsection (12)(b), all records of an attorney guardian  
438 ad litem are confidential and may not be released or made public upon subpoena, search  
439 warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63G, Chapter  
440 2, Government Records Access and Management Act.

441 (b) Consistent with Subsection (12)(d), all records of an attorney guardian ad litem:

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

444 (ii) shall be released to the Legislature.

445 (c) (i) Except as provided in Subsection (12)(c)(ii), records released in accordance with  
446 Subsection (12)(b) shall be maintained as confidential by the Legislature.

447 (ii) Notwithstanding Subsection (12)(c)(i), the Office of the Legislative Auditor  
448 General may include summary data and nonidentifying information in its audits and reports to  
449 the Legislature.

450 (d) (i) Subsection (12)(b) constitutes an exception to Rules of Professional Conduct,  
451 Rule 1.6, as provided by Rule 1.6(b)(4), because of:

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

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

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

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

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

458 Section 6. Section **78A-6-1111** is amended to read:

459 **78A-6-1111. Right to counsel -- Appointment of counsel for indigent -- Costs.**

460 (1) (a) In any action in juvenile court initiated by the state, a political subdivision of the  
461 state, or a private party, the parents, legal guardian, and the minor, where applicable, shall be

462 informed that they may be represented by counsel at every stage of the proceedings.

463 (b) In any action initiated by a private party[-];

464 (i) the parents or legal guardian shall have the right to employ counsel of their own  
465 choice at their own expense[-]; and

466 (ii) the court shall appoint counsel to represent a party whose parental rights are subject  
467 to termination, if the court determines that the party is indigent under Section [77-32-202](#).

468 (c) If, in any action initiated by the state or a political subdivision of the state under  
469 Part 3, Abuse, Neglect, and Dependency Proceedings; Part 5, Termination of Parental Rights  
470 Act; or Part 10, Adult Offenses, of this chapter or under Section [78A-6-1101](#), a parent or legal  
471 guardian requests an attorney and is found by the court to be indigent, counsel shall be  
472 appointed by the court to represent the parent or legal guardian in all proceedings directly  
473 related to the petition or motion filed by the state, or a political subdivision of the state, subject  
474 to the provisions of this section.

475 (d) In any action initiated by the state, a political subdivision of the state, or a private  
476 party under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of  
477 Parental Rights Act, of this chapter, the child shall be represented by a guardian ad litem in  
478 accordance with Sections [78A-6-317](#) and [78A-6-902](#). The child shall also be represented by an  
479 attorney guardian ad litem in other actions initiated under this chapter when appointed by the  
480 court under Section [78A-6-902](#) or as otherwise provided by law.

481 (e) In any action initiated by the state or a political subdivision of the state under Part  
482 6, Delinquency and Criminal Actions, or Part 7, Transfer of Jurisdiction, of this chapter, or  
483 against a minor under Section [78A-6-1101](#), the parents or legal guardian and the minor shall be  
484 informed that the minor has the right to be represented by counsel at every stage of the  
485 proceedings.

486 (i) In cases where a petition or information alleging a felony-level offense is filed, the  
487 court shall appoint counsel, who shall appear until counsel is retained on the minor's behalf.  
488 The minor may not waive counsel unless the minor has had a meaningful opportunity to  
489 consult with a defense attorney. The court shall make findings on the record, taking into  
490 consideration the minor's unique circumstances and attributes, that the waiver is knowing and  
491 voluntary and the minor understands the consequences of waiving the right to counsel.

492 (ii) In all other cases in which a petition is filed the right to counsel may not be waived



493 by a minor unless there has been a finding on the record, taking into consideration the minor's  
494 unique circumstances and attributes, that the waiver is knowing and voluntary, and the minor  
495 understands the consequences of waiving the right to counsel.

496 (iii) If the minor is found to be indigent, counsel shall be appointed by the court to  
497 represent the minor in all proceedings directly related to the petition or motion filed by the state  
498 or a political subdivision of the state, subject to the provisions of this section.

499 (f) Indigency of a parent, legal guardian, or minor shall be determined in accordance  
500 with the process and procedure defined in Section [77-32-202](#). The court shall take into account  
501 the income and financial ability of the parent or legal guardian to retain counsel in determining  
502 the indigency of the minor.

503 (g) ~~[The]~~ Except for counsel appointed under Subsection (1)(b), the cost of appointed  
504 counsel for a party found to be indigent, including the cost of counsel and expense of the first  
505 appeal, shall be paid by the county in which the trial court proceedings are held. Counties may  
506 levy and collect taxes for these purposes.

507 (2) Counsel appointed by the court may not provide representation as court-appointed  
508 counsel for a parent or legal guardian in any action initiated by, or in any proceeding to modify  
509 court orders in a proceeding initiated by, a private party, except ~~[that in a private action to~~  
510 ~~terminate parental rights the court may appoint counsel to represent an indigent parent if it~~  
511 ~~finds that the failure to appoint counsel will result in a deprivation of due process]~~ as provided  
512 under Subsection (1)(b).

513 (3) If the county responsible to provide legal counsel for an indigent under Subsection  
514 (1)(g) has arranged by contract to provide services, the court shall appoint the contracting  
515 attorney as legal counsel to represent that indigent.

516 (4) The court may order a parent or legal guardian for whom counsel is appointed, and  
517 the parents or legal guardian of any minor for whom counsel is appointed, to reimburse the  
518 county for the cost of appointed counsel.

519 (5) The state, or an agency of the state, may not be ordered to reimburse the county for  
520 expenses incurred under Subsection (1)(g).

521 (6) The state shall pay the cost of counsel appointed under Subsection (1)(b), including  
522 the expense of a first appeal.

523 Section 7. Section **78B-6-110** is amended to read:

524 **78B-6-110. Notice of adoption proceedings.**

525 (1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a  
526 sexual relationship with a woman:

527 (i) is considered to be on notice that a pregnancy and an adoption proceeding regarding  
528 the child may occur; and

529 (ii) has a duty to protect his own rights and interests.

530 (b) An unmarried biological father is entitled to actual notice of a birth or an adoption  
531 proceeding with regard to his child only as provided in this section or Section 78B-6-110.5.

532 (2) Notice of an adoption proceeding shall be served on each of the following persons:

533 (a) any person or agency whose consent or relinquishment is required under Section  
534 78B-6-120 or 78B-6-121, unless that right has been terminated by:

535 (i) waiver;

536 (ii) relinquishment;

537 (iii) actual consent, as described in Subsection (12); or

538 (iv) judicial action;

539 (b) any person who has initiated a paternity proceeding and filed notice of that action  
540 with the state registrar of vital statistics within the Department of Health, in accordance with  
541 Subsection (3);

542 (c) any legally appointed custodian or guardian of the adoptee;

543 (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the  
544 petition;

545 (e) the adoptee's spouse, if any;

546 (f) any person who, prior to the time the mother executes her consent for adoption or  
547 relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with  
548 the knowledge and consent of the mother;

549 (g) a person who is:

550 (i) openly living in the same household with the child at the time the consent is  
551 executed or relinquishment made; and

552 (ii) holding himself out to be the child's father; and

553 (h) any person who is married to the child's mother at the time she executes her consent  
554 to the adoption or relinquishes the child for adoption, unless the court finds that the mother's

555 spouse is not the child's father under Section 78B-15-607.

556 (3) (a) In order to preserve any right to notice, an unmarried biological father shall,  
557 consistent with Subsection (3)(d):

558 (i) initiate proceedings in a district court of Utah to establish paternity under Title 78B,  
559 Chapter 15, Utah Uniform Parentage Act; and

560 (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i)  
561 with the office of vital statistics within the Department of Health.

562 (b) If the unmarried, biological father does not know the county in which the birth  
563 mother resides, he may initiate his action in any county, subject to a change in trial pursuant to  
564 Section 78B-3-307.

565 (c) The Department of Health shall provide forms for the purpose of filing the notice  
566 described in Subsection (3)(a)(ii), and make those forms available in the office of the county  
567 health department in each county.

568 (d) When the state registrar of vital statistics receives a completed form, the registrar  
569 shall:

570 (i) record the date and time the form was received; and

571 (ii) immediately enter the information provided by the unmarried biological father in  
572 the confidential registry established by Subsection 78B-6-121(3)(c).

573 (e) The action and notice described in Subsection (3)(a):

574 (i) may be filed before or after the child's birth; and

575 (ii) shall be filed prior to the mother's:

576 (A) execution of consent to adoption of the child; or

577 (B) relinquishment of the child for adoption.

578 (4) Notice provided in accordance with this section need not disclose the name of the  
579 mother of the child who is the subject of an adoption proceeding.

580 (5) The notice required by this section:

581 (a) may be served at any time after the petition for adoption is filed, but may not be  
582 served on a birth mother before she has given birth to the child who is the subject of the  
583 petition for adoption;

584 (b) shall be served at least 30 days prior to the final dispositional hearing;

585 (c) shall specifically state that the person served shall fulfill the requirements of

586 Subsection (6)(a), within 30 days after the day on which the person receives service if the  
587 person intends to intervene in or contest the adoption;

588 (d) shall state the consequences, described in Subsection (6)(b), for failure of a person  
589 to file a motion for relief within 30 days after the day on which the person is served with notice  
590 of an adoption proceeding;

591 (e) is not required to include, nor be accompanied by, a summons or a copy of the  
592 petition for adoption; ~~and~~

593 (f) shall state where the person may obtain a copy of the petition for adoption[-]; and

594 (g) shall indicate the right to the appointment of counsel for a party whom the court  
595 determines is indigent and at risk of losing the party's parental rights.

596 (6) (a) A person who has been served with notice of an adoption proceeding and who  
597 wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:

598 (i) within 30 days after the day on which the person was served with notice of the  
599 adoption proceeding;

600 (ii) setting forth specific relief sought; and

601 (iii) accompanied by a memorandum specifying the factual and legal grounds upon  
602 which the motion is based.

603 (b) A person who fails to fully and strictly comply with all of the requirements  
604 described in Subsection (6)(a) within 30 days after the day on which the person was served  
605 with notice of the adoption proceeding:

606 (i) waives any right to further notice in connection with the adoption;

607 (ii) forfeits all rights in relation to the adoptee; and

608 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in  
609 the adoptee.

610 (7) Service of notice under this section shall be made as follows:

611 (a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary  
612 under Section [78B-6-120](#) or [78B-6-121](#) shall be in accordance with the provisions of the Utah  
613 Rules of Civil Procedure.

614 (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court  
615 shall designate the content of the notice regarding the identity of the parties.

616 (iii) The notice described in this Subsection (7)(a) may not include the name of a

617 person seeking to adopt the adoptee.

618 (b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice  
619 is required under this section, service by certified mail, return receipt requested, is sufficient.

620 (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two  
621 attempts, the court may issue an order providing for service by publication, posting, or by any  
622 other manner of service.

623 (c) Notice to a person who has initiated a paternity proceeding and filed notice of that  
624 action with the state registrar of vital statistics in the Department of Health in accordance with  
625 the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at  
626 the last address filed with the registrar.

627 (8) The notice required by this section may be waived in writing by the person entitled  
628 to receive notice.

629 (9) Proof of service of notice on all persons for whom notice is required by this section  
630 shall be filed with the court before the final dispositional hearing on the adoption.

631 (10) Notwithstanding any other provision of law, neither the notice of an adoption  
632 proceeding nor any process in that proceeding is required to contain the name of the person or  
633 persons seeking to adopt the adoptee.

634 (11) Except as to those persons whose consent to an adoption is required under Section  
635 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person  
636 served to:

637 (a) intervene in the adoption; and

638 (b) present evidence to the court relevant to the best interest of the child.

639 (12) In order to be excused from the requirement to provide notice as described in  
640 Subsection (2)(a) on the grounds that the person has provided consent to the adoption  
641 proceeding under Subsection (2)(a)(iii), the consent may not be implied consent, as described  
642 in Section 78B-6-120.1.

643 Section 8. Section 78B-6-112 is amended to read:

644 **78B-6-112. District court jurisdiction over termination of parental rights**  
645 **proceedings.**

646 (1) A district court has jurisdiction [~~to hear and decide a petition~~] to terminate parental  
647 rights in a child if the party who filed the petition is seeking to terminate parental rights in the

648 child for the purpose of facilitating the adoption of the child.

649 (2) A petition to terminate parental rights under this section may be:

650 (a) joined with a proceeding on an adoption petition; or

651 (b) filed as a separate proceeding before or after a petition to adopt the child is filed.

652 (3) A court may enter a final order terminating parental rights before a final decree of  
653 adoption is entered.

654 (4) (a) Nothing in this section limits the jurisdiction of a juvenile court relating to  
655 proceedings to terminate parental rights as described in Section 78A-6-103.

656 (b) This section does not grant jurisdiction to a district court to terminate parental  
657 rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse,  
658 neglect, dependency, or termination of parental rights proceeding.

659 (5) The district court may terminate ~~[a person's]~~ an individual's parental rights in a  
660 child if:

661 (a) the ~~[person]~~ individual executes a voluntary consent to adoption, or relinquishment  
662 for adoption, of the child, in accordance with:

663 (i) the requirements of this chapter; or

664 (ii) the laws of another state or country, if the consent is valid and irrevocable;

665 (b) the ~~[person]~~ individual is an unmarried biological father who is not entitled to  
666 consent to adoption, or relinquishment for adoption, under Section 78B-6-120 or 78B-6-121;

667 (c) the ~~[person]~~ individual:

668 (i) received notice of the adoption proceeding relating to the child under Section  
669 78B-6-110; and

670 (ii) failed to file a motion for relief, under Subsection 78B-6-110(6), within 30 days  
671 after the day on which the ~~[person]~~ individual was served with notice of the adoption  
672 proceeding;

673 (d) the court finds, under Section 78B-15-607, that the ~~[person]~~ individual is not a  
674 parent of the child; or

675 (e) the ~~[person's]~~ individual's parental rights are terminated on grounds described in  
676 Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, if terminating the person's  
677 parental rights is in the best interests of the child.

678 (6) The court shall appoint counsel to represent a party whose parental rights are

679 subject to termination, if the court determines that the party is indigent under Section  
680 [77-32-202](#).

681 (7) The state shall pay the cost of counsel appointed under Subsection (6), including  
682 the expense of a first appeal.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**