

**CHILD WELFARE IN CUSTODY PROCEEDINGS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gene Davis**

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

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**LONG TITLE****General Description:**

This bill amends provisions relating to the welfare of a child in a custody proceeding.

**Highlighted Provisions:**

This bill:

- ▶ provides that a court, after review, may order the Division of Child and Family Services to conduct an investigation during a child custody proceeding based on an allegation of child neglect;
- ▶ requires that a professional provider of supervised parent-time be licensed by the Department of Human Services;
- ▶ provides that a judge may order supervised parent-time in a custody proceeding for child neglect;
- ▶ adds the child welfare definitions of child abuse, child neglect, and harm to the reasons why a judge may order supervised parent-time in a custody proceeding;
- ▶ includes "supervision to facilitate supervised parent-time" as a human services program, that requires licensure by the Office of Licensing within the Department of Human Services;
- ▶ repeals the private attorney guardian ad litem program;
- ▶ amends the terms under which a court may appoint counsel to represent a child; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**30-3-5.2**, as last amended by Laws of Utah 2014, Chapter 267

**30-3-11.2**, as enacted by Laws of Utah 1969, Chapter 72

**30-3-32**, as last amended by Laws of Utah 2017, Chapter 120

**30-3-34.5**, as enacted by Laws of Utah 2014, Chapter 239

**51-9-408**, as last amended by Laws of Utah 2014, Chapter 267

**62A-2-101**, as last amended by Laws of Utah 2018, Chapters 252 and 316

**78A-6-901**, as last amended by Laws of Utah 2014, Chapter 267

**78B-3-102**, as last amended by Laws of Utah 2014, Chapter 267

**78B-7-106**, as last amended by Laws of Utah 2018, Chapters 124 and 255

**78B-7-202**, as last amended by Laws of Utah 2014, Chapter 267

**78B-15-612**, as last amended by Laws of Utah 2015, Chapter 258

REPEALS:

**78A-2-701**, as enacted by Laws of Utah 2014, Chapter 267

**78A-2-702**, as enacted by Laws of Utah 2014, Chapter 267

**78A-2-703**, as renumbered and amended by Laws of Utah 2014, Chapter 267

**78A-2-704**, as renumbered and amended by Laws of Utah 2014, Chapter 267

**78A-2-705**, as renumbered and amended by Laws of Utah 2014, Chapter 267

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

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

**30-3-5.2. Allegations of child abuse, child neglect, or child sexual abuse --**

**Investigation.**

When, in any divorce proceeding or upon a request for modification of a divorce decree, an allegation of child abuse, child neglect, or child sexual abuse is made, implicating either party, the court, after making an inquiry, may order that an investigation be conducted by the Division of Child and Family Services within the Department of Human Services in

accordance with Title 62A, Chapter 4a, Child and Family Services. A final award of custody or parent-time may not be rendered until a report on that investigation, consistent with Section 62A-4a-412, is received by the court. That investigation shall be conducted by the Division of Child and Family Services within 30 days of the court's notice and request for an investigation. In reviewing this report, the court shall comply with [~~Sections 78A-2-703, 78A-2-705, and~~] Section 78B-15-612.

Section 2. Section 30-3-11.2 is amended to read:

**30-3-11.2. Appointment of counsel for child.**

If, in any action before any court of this state involving the custody or support of a child, ~~[it shall appear in the best interests of the child to have]~~ the court determines that a child's best interests are not able to be met without a separate exposition of the issues and personal representation for the child, the court may appoint counsel to represent the child throughout the action, and the attorney's fee for such representation may be taxed as a cost of the action.

Section 3. Section 30-3-32 is amended to read:

**30-3-32. Parent-time -- Intent -- Policy -- Definitions.**

(1) It is the intent of the Legislature to promote parent-time at a level consistent with all parties' interests.

(2) (a) A court shall consider as primary the safety and well-being of the child and the parent who experiences domestic or family violence.

(b) Absent a showing by a preponderance of evidence of real harm or substantiated potential harm to the child:

(i) it is in the best interests of the child of divorcing, divorced, or adjudicated parents to have frequent, meaningful, and continuing access to each parent following separation or divorce;

(ii) each divorcing, separating, or adjudicated parent is entitled to and responsible for frequent, meaningful, and continuing access with the parent's child consistent with the child's best interests; and

(iii) it is in the best interests of the child to have both parents actively involved in parenting the child.

(c) An order issued by a court pursuant to Title 78B, Chapter 7, Part 1, Cohabitant

Abuse Act, shall be considered evidence of real harm or substantiated potential harm to the child.

(3) For purposes of Sections 30-3-32 through 30-3-37:

(a) "Child" means the child or children of divorcing, separating, or adjudicated parents.

(b) Subject to Subsection (5), "Christmas school vacation" means:

(i) for a single child, the time period beginning on the evening the child is released from school for the Christmas or winter school break and ending the evening before the child returns to school; and

(ii) for multiple children when the children's school schedules differ, the time period beginning on the first evening all children's schools are released for the Christmas or winter school break and ending the evening before any of the children returns to school.

(c) "Extended parent-time" means a period of parent-time other than a weekend, holiday as provided in Subsections 30-3-35(2)(f) and (2)(g), religious holidays as provided in Subsections 30-3-33(3) and (17), and "Christmas school vacation."

(d) "Supervised parent-time" means parent-time that requires the noncustodial parent to be accompanied during parent-time by an individual:

(i) approved by the court[-]; and

(ii) (A) licensed by the Department of Human Services to supervise; or

(B) suggested by a party.

(e) "Surrogate care" means care by any individual other than the parent of the child.

(f) "Uninterrupted time" means parent-time exercised by one parent without interruption at any time by the presence of the other parent.

(g) "Virtual parent-time" means parent-time facilitated by tools such as telephone, email, instant messaging, video conferencing, and other wired or wireless technologies over the Internet or other communication media to supplement in-person visits between a noncustodial parent and a child or between a child and the custodial parent when the child is staying with the noncustodial parent. Virtual parent-time is designed to supplement, not replace, in-person parent-time.

(4) If a parent relocates because of an act of domestic violence or family violence by the other parent, the court shall make specific findings and orders with regards to the application of Section 30-3-37.

(5) A Christmas school vacation shall be divided equally as required by Section 30-3-35.

Section 4. Section 30-3-34.5 is amended to read:

**30-3-34.5. Supervised parent-time.**

(1) Considering the fundamental liberty interests of parents and children, it is the policy of this state that divorcing parents have unrestricted and unsupervised access to their children. When necessary to protect a child and no less restrictive means is reasonably available however, a court may order supervised parent-time if the court finds evidence that the child would be subject to physical ~~[or]~~ harm, emotional harm ~~[or]~~, child abuse, or child neglect, as described in Section 76-5-109 or Section 62A-4a-101, from the noncustodial parent if left unsupervised with the noncustodial parent.

(2) A court that orders supervised parent-time shall give preference to ~~[persons]~~ an individual suggested by ~~[the parties]~~ a party to supervise, including ~~[relatives]~~ a relative or a friend. If the court finds that ~~[the persons]~~ an individual suggested by ~~[the parties are]~~ a party is willing to supervise~~;~~ and ~~[are]~~ is capable of protecting the ~~[children]~~ child from physical ~~[or]~~ harm, emotional harm, ~~[or]~~ child abuse, or child neglect, the court shall authorize the ~~[persons]~~ individual to supervise parent-time.

(3) If the court is unable to authorize any ~~[persons]~~ individual to supervise parent-time ~~[pursuant to]~~ under Subsection (2), the court may require that the noncustodial parent seek the services of a professional individual or agency, licensed by the Department of Human Services, to exercise ~~[their]~~ the noncustodial parent's supervised parent-time.

(4) At the time supervised parent-time is imposed, the court shall consider:

(a) whether the cost of ~~[professional or agency services]~~ a professional individual or agency is likely to prevent the noncustodial parent from exercising parent-time; and

(b) whether the requirement for supervised parent-time should expire after a set period of time.

(5) The court shall, in its order for supervised parent-time, provide specific goals and expectations for the noncustodial parent to accomplish before unsupervised parent-time may be granted. The court shall schedule one or more follow-up hearings to revisit the issue of supervised parent-time.

(6) A noncustodial parent may, at any time, petition the court to modify the order for

supervised parent-time if the noncustodial parent can demonstrate that the specific goals and expectations set by the court in Subsection (5) have been accomplished.

Section 5. Section **51-9-408** is amended to read:

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

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

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

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

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

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

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

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

(4) The following withheld fees shall be allocated only to the Children's Legal Defense Account and used only for the purposes provided in Subsections (3)(a) through (d):

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

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

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

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

Section 6. Section **62A-2-101** is amended to read:

**62A-2-101. Definitions.**

As used in this chapter:

(1) "Adult day care" means nonresidential care and supervision:

(a) for three or more adults for at least four but less than 24 hours a day; and

(b) that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.

(2) "Applicant" means a person who applies for an initial license or a license renewal under this chapter.

(3) (a) "Associated with the licensee" means that an individual is:

(i) affiliated with a licensee as an owner, director, member of the governing body, employee, agent, provider of care, department contractor, or volunteer; or

(ii) applying to become affiliated with a licensee in a capacity described in Subsection (3)(a)(i).

(b) "Associated with the licensee" does not include:

(i) service on the following bodies, unless that service includes direct access to a child or a vulnerable adult:

(A) a local mental health authority described in Section 17-43-301;

(B) a local substance abuse authority described in Section 17-43-201; or

(C) a board of an organization operating under a contract to provide mental health or substance abuse programs, or services for the local mental health authority or substance abuse authority; or

(ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised at all times.

(4) (a) "Boarding school" means a private school that:

(i) uses a regionally accredited education program;

(ii) provides a residence to the school's students:

(A) for the purpose of enabling the school's students to attend classes at the school; and

(B) as an ancillary service to educating the students at the school;

(iii) has the primary purpose of providing the school's students with an education, as defined in Subsection (4)(b)(i); and

(iv) (A) does not provide the treatment or services described in Subsection (33)(a); or (B) provides the treatment or services described in Subsection (33)(a) on a limited basis, as described in Subsection (4)(b)(ii).

(b) (i) For purposes of Subsection (4)(a)(iii), "education" means a course of study for one or more of grades kindergarten through 12th grade.

(ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or services described in Subsection (33)(a) on a limited basis if:

(A) the treatment or services described in Subsection (33)(a) are provided only as an incidental service to a student; and

(B) the school does not:

(I) specifically solicit a student for the purpose of providing the treatment or services described in Subsection (33)(a); or

(II) have a primary purpose of providing the treatment or services described in Subsection (33)(a).

(c) "Boarding school" does not include a therapeutic school.

(5) "Child" means ~~[a person]~~ an individual under 18 years of age.

(6) "Child placing" means receiving, accepting, or providing custody or care for any child, temporarily or permanently, for the purpose of:

(a) finding a person to adopt the child;

(b) placing the child in a home for adoption; or

(c) foster home placement.

(7) "Child-placing agency" means a person that engages in child placing.

(8) "Client" means an individual who receives or has received services from a licensee.

(9) "Day treatment" means specialized treatment that is provided to:

(a) a client less than 24 hours a day; and

(b) four or more persons who:

(i) are unrelated to the owner or provider; and

(ii) have emotional, psychological, developmental, physical, or behavioral



dysfunctions, impairments, or chemical dependencies.

(10) "Department" means the Department of Human Services.

(11) "Department contractor" means an individual who:

(a) provides services under a contract with the department; and

(b) due to the contract with the department, has or will likely have direct access to a child or vulnerable adult.

(12) "Direct access" means that an individual has, or likely will have:

(a) contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch; or

(b) an opportunity to view medical, financial, or other confidential personal identifying information of the child, the child's parents or legal guardians, or the vulnerable adult.

(13) "Directly supervised" means that an individual is being supervised under the uninterrupted visual and auditory surveillance of another individual who has a current background screening approval issued by the office.

(14) "Director" means the director of the Office of Licensing.

(15) "Domestic violence" means the same as that term is defined in Section [77-36-1](#).

(16) "Domestic violence treatment program" means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence.

(17) "Elder adult" means a person 65 years of age or older.

(18) "Executive director" means the executive director of the department.

(19) "Foster home" means a residence that is licensed or certified by the Office of Licensing for the full-time substitute care of a child.

(20) (a) "Health benefit plan" means the same as that term is defined in Section [\[31A-22-619.6\]](#) [31A-1-301](#).

(b) "Health benefit plan" includes:

(i) a health maintenance organization;

(ii) a third party administrator that offers, sells, manages, or administers a health benefit plan; and

(iii) the Public Employees' Benefit and Insurance Program created in Section [49-20-103](#).

(c) "Health benefit plan" does not include a health benefit plan offered by an insurer that has a market share in the state's fully insured market that is less than 2%, as determined in the annual Market Share Report published by the Insurance Department.

(21) "Health care provider" means the same as that term is defined in Section 78B-3-403.

(22) "Health insurer" means the same as that term is defined in Section 31A-22-615.5.

(23) (a) "Human services program" means a:

(i) foster home;

(ii) therapeutic school;

(iii) youth program;

(iv) resource family home;

(v) recovery residence; or

(vi) facility or program that provides:

(A) secure treatment;

(B) inpatient treatment;

(C) residential treatment;

(D) residential support;

(E) adult day care;

(F) day treatment;

(G) outpatient treatment;

(H) domestic violence treatment;

(I) child-placing services;

(J) social detoxification; ~~[or]~~

(K) supervision to facilitate supervised parent-time, as described in Section 30-3-34.5;

or

~~[(K)]~~ (L) any other human services that are required by contract with the department to be licensed with the department.

(b) "Human services program" does not include:

(i) a boarding school; or

(ii) a residential, vocational and life skills program, as defined in Section 13-53-102.

(24) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.

- 307 (25) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.
- 308 (26) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 309 (27) "Licensee" means an individual or a human services program licensed by the  
310 office.
- 311 (28) "Local government" means a city, town, metro township, or county.
- 312 (29) "Minor" has the same meaning as "child."
- 313 (30) "Office" means the Office of Licensing within the Department of Human Services.
- 314 (31) "Outpatient treatment" means individual, family, or group therapy or counseling  
315 designed to improve and enhance social or psychological functioning for those whose physical  
316 and emotional status allows them to continue functioning in their usual living environment.
- 317 (32) "Practice group" or "group practice" means two or more health care providers  
318 legally organized as a partnership, professional corporation, or similar association, for which:
- 319 (a) substantially all of the services of the health care providers who are members of the  
320 group are provided through the group and are billed in the name of the group and amounts  
321 received are treated as receipts of the group; and
- 322 (b) the overhead expenses of and the income from the practice are distributed in  
323 accordance with methods previously determined by members of the group.
- 324 (33) (a) "Recovery residence" means a home, residence, or facility that meets at least  
325 two of the following requirements:
- 326 (i) provides a supervised living environment for individuals recovering from a  
327 substance use disorder;
- 328 (ii) provides a living environment in which more than half of the individuals in the  
329 residence are recovering from a substance use disorder;
- 330 (iii) provides or arranges for residents to receive services related to their recovery from  
331 a substance use disorder, either on or off site;
- 332 (iv) is held out as a living environment in which individuals recovering from substance  
333 abuse disorders live together to encourage continued sobriety; or
- 334 (v) (A) receives public funding; or  
335 (B) is run as a business venture, either for-profit or not-for-profit.
- 336 (b) "Recovery residence" does not mean:
- 337 (i) a residential treatment program;

338 (ii) residential support; or  
339 (iii) a home, residence, or facility, in which:  
340 (A) residents, by their majority vote, establish, implement, and enforce policies  
341 governing the living environment, including the manner in which applications for residence are  
342 approved and the manner in which residents are expelled;  
343 (B) residents equitably share rent and housing-related expenses; and  
344 (C) a landlord, owner, or operator does not receive compensation, other than fair  
345 market rental income, for establishing, implementing, or enforcing policies governing the  
346 living environment.

347 (34) "Regular business hours" means:  
348 (a) the hours during which services of any kind are provided to a client; or  
349 (b) the hours during which a client is present at the facility of a licensee.

350 (35) (a) "Residential support" means arranging for or providing the necessities of life  
351 as a protective service to individuals or families who have a disability or who are experiencing  
352 a dislocation or emergency that prevents them from providing these services for themselves or  
353 their families.

354 (b) "Residential support" includes providing a supervised living environment for  
355 persons with dysfunctions or impairments that are:  
356 (i) emotional;  
357 (ii) psychological;  
358 (iii) developmental; or  
359 (iv) behavioral.

360 (c) Treatment is not a necessary component of residential support.

361 (d) "Residential support" does not include:  
362 (i) a recovery residence; or  
363 (ii) residential services that are performed:  
364 (A) exclusively under contract with the Division of Services for People with  
365 Disabilities; or  
366 (B) in a facility that serves fewer than four individuals.

367 (36) (a) "Residential treatment" means a 24-hour group living environment for four or  
368 more individuals unrelated to the owner or provider that offers room or board and specialized

treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.

(b) "Residential treatment" does not include a:

(i) boarding school;

(ii) foster home; or

(iii) recovery residence.

(37) "Residential treatment program" means a human services program that provides:

(a) residential treatment; or

(b) secure treatment.

(38) (a) "Secure treatment" means 24-hour specialized residential treatment or care for persons whose current functioning is such that they cannot live independently or in a less restrictive environment.

(b) "Secure treatment" differs from residential treatment to the extent that it requires intensive supervision, locked doors, and other security measures that are imposed on residents with neither their consent nor control.

(39) "Social detoxification" means short-term residential services for persons who are experiencing or have recently experienced drug or alcohol intoxication, that are provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and that include:

(a) room and board for persons who are unrelated to the owner or manager of the facility;

(b) specialized rehabilitation to acquire sobriety; and

(c) aftercare services.

(40) "Substance abuse disorder" or "substance use disorder" mean the same as "substance use disorder" is defined in Section [62A-15-1202](#).

(41) "Substance abuse treatment program" or "substance use disorder treatment program" means a program:

(a) designed to provide:

(i) specialized drug or alcohol treatment;

(ii) rehabilitation; or

- 400 (iii) habilitation services; and  
401 (b) that provides the treatment or services described in Subsection ~~[(40)]~~ (41)(a) to  
402 persons with:
- 403 (i) a diagnosed substance use disorder; or
  - 404 (ii) chemical dependency disorder.
- 405 (42) "Therapeutic school" means a residential group living facility:
- 406 (a) for four or more individuals that are not related to:
    - 407 (i) the owner of the facility; or
    - 408 (ii) the primary service provider of the facility;
  - 409 (b) that serves students who have a history of failing to function:
    - 410 (i) at home;
    - 411 (ii) in a public school; or
    - 412 (iii) in a nonresidential private school; and
  - 413 (c) that offers:
    - 414 (i) room and board; and
    - 415 (ii) an academic education integrated with:
      - 416 (A) specialized structure and supervision; or
      - 417 (B) services or treatment related to:
        - 418 (I) a disability;
        - 419 (II) emotional development;
        - 420 (III) behavioral development;
        - 421 (IV) familial development; or
        - 422 (V) social development.
- 423 (43) "Unrelated persons" means persons other than parents, legal guardians,  
424 grandparents, brothers, sisters, uncles, or aunts.
- 425 (44) "Vulnerable adult" means an elder adult or an adult who has a temporary or  
426 permanent mental or physical impairment that substantially affects the person's ability to:
- 427 (a) provide personal protection;
  - 428 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
  - 429 (c) obtain services necessary for health, safety, or welfare;
  - 430 (d) carry out the activities of daily living;

(e) manage the adult's own resources; or  
(f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(45) (a) "Youth program" means a nonresidential program designed to provide behavioral, substance abuse, or mental health services to minors that:

- (i) serves adjudicated or nonadjudicated youth;
- (ii) charges a fee for its services;
- (iii) may or may not provide host homes or other arrangements for overnight accommodation of the youth;
- (iv) may or may not provide all or part of its services in the outdoors;
- (v) may or may not limit or censor access to parents or guardians; and
- (vi) prohibits or restricts a minor's ability to leave the program at any time of the minor's own free will.

(b) "Youth program" does not include recreational programs such as Boy Scouts, Girl Scouts, 4-H, and other such organizations.

Section 7. Section **78A-6-901** is amended to read:

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

(1) As used in this part:

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

(b) "Director" means the director of the office.

(c) "Office" means the Office of Guardian ad Litem, created in this section.

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

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

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

(b) The director shall be an attorney licensed to practice law in this state and selected

on the basis of:

(i) professional ability;

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

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

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

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

(4) The guardian ad litem director shall:

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

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

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

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

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

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

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

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

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

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

(i) design and implement evaluation tools based on specific objectives targeted in the



needs assessments described in Subsection (4)(h);

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

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

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

(iii) the number of minors served by the office; and

(k) hire, train, and supervise investigators[; ~~and~~].

~~[(4) administer the program of private attorney guardians ad litem established by Section 78A-2-705.]~~

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

Section 8. Section **78B-3-102** is amended to read:

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

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

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

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

Section 9. Section **78B-7-106** is amended to read:

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

(1) If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic violence or abuse has occurred, that there is a substantial

likelihood domestic violence or abuse will occur, or that a modification of an order for protection is required, a court may:

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

(b) upon notice, issue an order for protection or modify an order after a hearing, regardless of whether the respondent appears.

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

(a) enjoin the respondent from threatening to commit domestic violence or abuse, committing domestic violence or abuse, or harassing the petitioner or any designated family or household member;

(b) prohibit the respondent from telephoning, contacting, or otherwise communicating with the petitioner or any designated family or household member, directly or indirectly, with the exception of any parent-time provisions in the ex parte order;

(c) subject to Subsection (2)(e), prohibit the respondent from being within a specified distance of the petitioner;

(d) subject to Subsection (2)(e), order that the respondent is excluded from and is to stay away from the following places and their premises:

(i) the petitioner's residence or any designated family or household member's residence;

(ii) the petitioner's school or any designated family or household member's school;

(iii) the petitioner's or any designated family or household member's place of employment;

(iv) the petitioner's place of worship or any designated family or household member's place of worship; or

(v) any specified place frequented by the petitioner or any designated family or household member;

(e) if the petitioner or designated family or household member attends the same school as the respondent, is employed at the same place of employment as the respondent, or attends the same place of worship, the court:

(i) may not enter an order under Subsection (2)(c) or (d) that excludes the respondent

from the respondent's school, place of employment, or place of worship; and

(ii) may enter an order governing the respondent's conduct at the respondent's school, place of employment, or place of worship;

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

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

(h) order the respondent to maintain an existing wireless telephone contract or account;

(i) grant to the petitioner or someone other than the respondent temporary custody of a minor child of the parties;

(j) order the appointment of an attorney guardian ad litem under [~~Sections 78A-2-703 and~~] Section 78A-6-902;

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

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

(3) A court may grant the following relief in an order for protection or a modification of an order after notice and hearing, regardless of whether the respondent appears:

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

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

(4) In addition to the relief granted under Subsection (3), the court may order the transfer of a wireless telephone number in accordance with Section 77-36-5.3.

(5) Following the protective order hearing, the court shall:

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

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

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

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

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

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

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

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

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

(7) The protective order shall include:

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

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

(c) a statement advising the petitioner that:

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

(ii) the petitioner should, within the 30 days prior to the end of the two-year period,

advise the court of the petitioner's current address for notice of any hearing; and

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

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

(9) (a) The county sheriff that receives the order from the court, pursuant to Subsection (6)(a), shall provide expedited service for orders for protection issued in accordance with this chapter, and shall transmit verification of service of process, when the order has been served, to the statewide domestic violence network described in Section 78B-7-113.

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

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

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

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

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

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

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

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

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

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

Section 10. Section **78B-7-202** is amended to read:

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

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

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

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

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

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

(3) (a) Upon the filing of a petition, the court shall immediately determine, based on the evidence and information presented, whether the minor is being abused or is in imminent danger of being abused. ~~[If so,]~~

(b) If the court determines that the minor is being abused or is in imminent danger of being abused, the court shall enter an ex parte child protective order.

(4) The court may appoint an attorney guardian ad litem under ~~[Sections 78A-2-703 and] Section 78A-6-902.~~

Section 11. Section **78B-15-612** is amended to read:

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

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

(2) The tribunal may appoint an attorney guardian ad litem under ~~[Sections 78A-2-703 and] Section 78A-6-902~~~~[, or a private attorney guardian ad litem under Section 78A-2-705,]~~ to

679 represent a minor or incapacitated child if the child is a party.

680 Section 12. **Repealer.**

681 This bill repeals:

682 Section **78A-2-701**, Title.

683 Section **78A-2-702**, Definitions.

684 Section **78A-2-703**, Appointment of attorney guardian ad litem in district court  
685 matters.

686 Section **78A-2-704**, Public policy regarding attorney guardian ad litem -- Training.

687 Section **78A-2-705**, Private attorney guardian ad litem -- Appointment -- Costs and  
688 fees -- Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum  
689 qualifications.