

Representative Christine F. Watkins proposes the following substitute bill:

**CHILD WELFARE PROCEEDINGS TESTING
REQUIREMENTS**

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill addresses drug testing for certain individuals.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that a guardian ad litem may not refer an individual for drug testing that is administered through a sample of hair, fingernails, or saliva;
- ▶ provides that an individual who is receiving services from the Division of Child and Family Services, or is a party to an abuse, neglect, or dependency proceeding, may not be ordered or referred for drug testing that is administered through a sample of saliva, with certain exceptions; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 **78A-2-803**, as last amended by Laws of Utah 2022, Chapters 272, 334

28 **80-2-301**, as last amended by Laws of Utah 2022, Chapter 430 and renumbered and
29 amended by Laws of Utah 2022, Chapter 334

30 **80-3-110**, as last amended by Laws of Utah 2022, Chapter 256

31

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

33 Section 1. Section **78A-2-803** is amended to read:

34 **78A-2-803. Appointment of attorney guardian ad litem -- Duties and**
35 **responsibilities -- Training -- Trained staff and court-appointed special advocate**
36 **volunteers -- Costs -- Immunity -- Annual report.**

37 (1) (a) The court:

38 (i) may appoint an attorney guardian ad litem to represent the best interest of a minor
39 involved in any case before the court; and

40 (ii) shall consider the best interest of a minor, consistent with the provisions of Section
41 **80-2a-201**, in determining whether to appoint a guardian ad litem.

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

44 (2) An attorney guardian ad litem shall represent the best interest of each minor who
45 may become the subject of an abuse, neglect, or dependency petition from the earlier of:

46 (a) the day on which the minor is removed from the minor's home by the division; or

47 (b) the day on which the abuse, neglect, or dependency petition is filed.

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

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

51 (i) court proceedings; and

52 (ii) meetings to develop, review, or modify the child and family plan with the division
53 in accordance with Section **80-3-307**;

54 (b) before representing any minor before the court, be trained in:

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

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

- 57 (c) conducts or supervises an ongoing, independent investigation in order to obtain,
- 58 first-hand, a clear understanding of the situation and needs of the minor;
- 59 (d) (i) personally meets with the minor, unless:
- 60 (A) the minor is outside of the state; or
- 61 (B) meeting with the minor would be detrimental to the minor;
- 62 (ii) personally interviews the minor, unless:
- 63 (A) the minor is not old enough to communicate;
- 64 (B) the minor lacks the capacity to participate in a meaningful interview; or
- 65 (C) the interview would be detrimental to the minor; and
- 66 (iii) if the minor is placed in an out-of-home placement, or is being considered for
- 67 placement in an out-of-home placement, unless it would be detrimental to the minor:
- 68 (A) to the extent possible, determines the minor's goals and concerns regarding
- 69 placement; and
- 70 (B) personally assesses or supervises an assessment of the appropriateness and safety
- 71 of the minor's environment in each placement;
- 72 (e) personally attends all review hearings pertaining to the minor's case;
- 73 (f) participates in all appeals, unless excused by order of the court;
- 74 (g) is familiar with local experts who can provide consultation and testimony regarding
- 75 the reasonableness and appropriateness of efforts made by the division to:
- 76 (i) maintain a minor in the minor's home; or
- 77 (ii) reunify a minor with a minor's parent;
- 78 (h) to the extent possible, and unless it would be detrimental to the minor, personally
- 79 or through a trained volunteer, paralegal, or other trained staff, keeps the minor advised of:
- 80 (i) the status of the minor's case;
- 81 (ii) all court and administrative proceedings;
- 82 (iii) discussions with, and proposals made by, other parties;
- 83 (iv) court action; and
- 84 (v) the psychiatric, medical, or other treatment or diagnostic services that are to be
- 85 provided to the minor;
- 86 (i) in cases where a child and family plan is required, personally or through a trained
- 87 volunteer, paralegal, or other trained staff, monitors implementation of a minor's child and

88 family plan and any dispositional orders to:

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

90 (A) are actually provided; and

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

92 (ii) attempt to assess whether services ordered by the court are accomplishing the
93 intended goal of the services; and

94 (j) makes all necessary court filings to advance the guardian's ad litem position
95 regarding the best interest of the minor.

96 (4) (a) Consistent with this Subsection (4), an attorney guardian ad litem may use
97 trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers
98 Act, trained paralegals, and other trained staff to assist in investigation and preparation of
99 information regarding the cases of individual minors before the court.

100 (b) A volunteer, paralegal, or other staff utilized under this section shall be trained in
101 and follow, at a minimum, the guidelines established by the United States Department of
102 Justice Court Appointed Special Advocate Association.

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

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

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

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

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

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

115 (A) private attorney fees;

116 (B) counseling for the minor;

117 (C) counseling for the parent, if mandated by the court or recommended by the
118 division; and

- 119 (D) any other cost the court determines to be relevant.
- 120 (ii) The court may not assess the fees or costs described in Subsection (6)(c)(i) against:
- 121 (A) a legal guardian, when that guardian is the state; or
- 122 (B) consistent with Subsection (6)(d), a parent who is found to be an indigent
- 123 individual.
- 124 (d) For purposes of Subsection (6)(c)(ii)(B), if an individual claims to be an indigent
- 125 individual, the court shall:
- 126 (i) require the individual to submit an affidavit of indigency as provided in Section
- 127 [78A-2-302](#); and
- 128 (ii) follow the procedures and make the determinations as provided in Section
- 129 [78A-2-304](#).
- 130 (e) The minor's parents, parent, or legal guardian may appeal the court's determination,
- 131 under Subsection (6)(c), of fees, costs, and expenses.
- 132 (7) An attorney guardian ad litem appointed under this section, when serving in the
- 133 scope of the attorney guardian's ad litem duties as guardian ad litem is considered an employee
- 134 of the state for purposes of indemnification under Title 63G, Chapter 7, Governmental
- 135 Immunity Act of Utah.
- 136 (8) (a) An attorney guardian ad litem shall represent the best interest of a minor.
- 137 (b) If the minor's wishes differ from the attorney's determination of the minor's best
- 138 interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in
- 139 addition to presenting the attorney's determination of the minor's best interest.
- 140 (c) A difference between the minor's wishes and the attorney's determination of best
- 141 interest may not be considered a conflict of interest for the attorney.
- 142 (d) The guardian ad litem shall disclose the wishes of the minor unless the minor:
- 143 (i) instructs the guardian ad litem to not disclose the minor's wishes; or
- 144 (ii) has not expressed any wishes.
- 145 (e) The court may appoint one attorney guardian ad litem to represent the best interests
- 146 of more than one minor of a marriage.
- 147 (9) The division shall provide an attorney guardian ad litem access to all division
- 148 records regarding the minor at issue and the minor's family.
- 149 (10) (a) An attorney guardian ad litem shall conduct an independent investigation

150 regarding the minor at issue, the minor's family, and what is in the best interest of the minor.

151 (b) An attorney guardian ad litem may interview the minor's child welfare caseworker,
152 but may not:

153 (i) rely exclusively on the conclusions and findings of the division; or

154 (ii) except as provided in Subsection (10)(c), conduct a visit with the client in
155 conjunction with the visit of a child welfare caseworker.

156 (c) (i) An attorney guardian ad litem may meet with a client during a team meeting,
157 court hearing, or similar venue when a child welfare caseworker is present for a purpose other
158 than the attorney guardian ad litem's meeting with the client.

159 (ii) A party and the party's counsel may attend a team meeting in accordance with the
160 Utah Rules of Professional Conduct.

161 (11) (a) An attorney guardian ad litem shall maintain current and accurate records
162 regarding:

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

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

165 (b) In every hearing where the attorney guardian ad litem makes a recommendation
166 regarding the best interest of the minor, the court shall require the attorney guardian ad litem to
167 disclose the factors that form the basis of the recommendation.

168 (12) (a) Except as provided in Subsection (12)(b), and notwithstanding Title 63G,
169 Chapter 2, Government Records Access and Management Act, all records of an attorney
170 guardian ad litem are confidential and may not be released or made public upon subpoena,
171 search warrant, discovery proceedings, or otherwise.

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

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

175 (ii) shall be released to the Legislature.

176 (c) (i) Except as provided in Subsection (12)(c)(ii), the Legislature shall maintain
177 records released in accordance with Subsection (12)(b) as confidential.

178 (ii) Notwithstanding Subsection (12)(c)(i), the Office of the Legislative Auditor
179 General may include summary data and nonidentifying information in the office's audits and
180 reports to the Legislature.

181 (d) (i) Subsection (12)(b) is an exception to Rules of Professional Conduct, Rule 1.6,
182 as provided by Rule 1.6(b)(4), because of:

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

184 (B) the state's role and responsibility to provide a guardian ad litem program, and as
185 *parens patriae*, to protect minors.

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

188 (13) A guardian ad litem may not refer an individual for drug testing by means of a
189 hair, fingernail, or saliva test that is administered to detect the presence of drugs.

190 Section 2. Section **80-2-301** is amended to read:

191 **80-2-301. Division responsibilities.**

192 (1) The division is the child, youth, and family services authority of the state.

193 (2) The division shall:

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

195 (i) child welfare services;

196 (ii) domestic violence services; and

197 (iii) all other responsibilities that the Legislature or the executive director of the
198 department may assign to the division;

199 (b) provide the following services:

200 (i) financial and other assistance to an individual adopting a child with special needs
201 under Sections **80-2-806** through **80-2-809**, not to exceed the amount the division would
202 provide for the child as a legal ward of the state;

203 (ii) non-custodial and in-home services in accordance with Section **80-2-306**,
204 including:

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

206 (B) family preservation services;

207 (iii) reunification services to families whose children are in substitute care in
208 accordance with this chapter, Chapter 2a, Removal and Protective Custody of a Child, and
209 Chapter 3, Abuse, Neglect, and Dependency Proceedings;

210 (iv) protective supervision of a family, upon court order, in an effort to eliminate abuse
211 or neglect of a child in that family;

- 212 (v) shelter care in accordance with this chapter, Chapter 2a, Removal and Protective
213 Custody of a Child, and Chapter 3, Abuse, Neglect, and Dependency Proceedings;
- 214 (vi) domestic violence services, in accordance with the requirements of federal law;
- 215 (vii) protective services to victims of domestic violence and the victims' children, in
216 accordance with this chapter, Chapter 2a, Removal and Protective Custody of a Child, and
217 Chapter 3, Abuse, Neglect, and Dependency Proceedings;
- 218 (viii) substitute care for dependent, abused, and neglected children;
- 219 (ix) services for minors who are victims of human trafficking or human smuggling, as
220 described in Sections 76-5-308 through 76-5-310.1, or who have engaged in prostitution or
221 sexual solicitation, as defined in Sections 76-10-1302 and 76-10-1313; and
- 222 (x) training for staff and providers involved in the administration and delivery of
223 services offered by the division in accordance with this chapter and Chapter 2a, Removal and
224 Protective Custody of a Child;
- 225 (c) establish standards for all:
 - 226 (i) contract providers of out-of-home care for minors and families;
 - 227 (ii) facilities that provide substitute care for dependent, abused, or neglected children
228 placed in the custody of the division; and
 - 229 (iii) direct or contract providers of domestic violence services described in Subsection
230 (2)(b)(vi);
- 231 (d) have authority to:
 - 232 (i) contract with a private, nonprofit organization to recruit and train foster care
233 families and child welfare volunteers in accordance with Section 80-2-405; and
 - 234 (ii) approve facilities that meet the standards established under Subsection (2)(c) to
235 provide substitute care for dependent, abused, or neglected children placed in the custody of the
236 division;
- 237 (e) cooperate with the federal government in the administration of child welfare and
238 domestic violence programs and other human service activities assigned by the department;
- 239 (f) in accordance with Subsection (5)(a), promote and enforce state and federal laws
240 enacted for the protection of abused, neglected, or dependent children, in accordance with this
241 chapter and Chapter 2a, Removal and Protective Custody of a Child, unless administration is
242 expressly vested in another division or department of the state;

243 (g) cooperate with the Workforce Development Division within the Department of
244 Workforce Services in meeting the social and economic needs of an individual who is eligible
245 for public assistance;

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

248 (i) prepare and submit to the department, the governor, and the Legislature reports of
249 the operation and administration of the division in accordance with the requirements of
250 Sections 80-2-1102 and 80-2-1103;

251 (j) within appropriations from the Legislature, provide or contract for a variety of
252 domestic violence services and treatment methods;

253 (k) enter into contracts for programs designed to reduce the occurrence or recurrence of
254 abuse and neglect in accordance with Section 80-2-503;

255 (l) seek reimbursement of funds the division expends on behalf of a child in the
256 protective custody, temporary custody, or custody of the division, from the child's parent or
257 guardian in accordance with an order for child support under Section 78A-6-356;

258 (m) ensure regular, periodic publication, including electronic publication, regarding the
259 number of children in the custody of the division who:

260 (i) have a permanency goal of adoption; or

261 (ii) have a final plan of termination of parental rights, under Section 80-3-409, and
262 promote adoption of the children;

263 (n) subject to Subsections (5) and (7), refer an individual receiving services from the
264 division to the local substance abuse authority or other private or public resource for a
265 court-ordered drug screening test;

266 (o) report before November 30, 2020, and every third year thereafter, to the Social
267 Services Appropriations Subcommittee regarding:

268 (i) the daily reimbursement rate that is provided to licensed foster parents based on
269 level of care;

270 (ii) the amount of money spent on daily reimbursements for licensed foster parents
271 during the previous fiscal year; and

272 (iii) any recommended changes to the division's budget to support the daily
273 reimbursement rates described in Subsection (2)(o)(i); and

274 (p) perform other duties and functions required by law.

275 (3) (a) The division may provide, directly or through contract, services that include the
276 following:

277 (i) adoptions;

278 (ii) day-care services;

279 (iii) out-of-home placements for minors;

280 (iv) health-related services;

281 (v) homemaking services;

282 (vi) home management services;

283 (vii) protective services for minors;

284 (viii) transportation services; or

285 (ix) domestic violence services.

286 (b) The division shall monitor services provided directly by the division or through
287 contract to ensure compliance with applicable law and rules made in accordance with Title
288 63G, Chapter 3, Utah Administrative Rulemaking Act.

289 (c) (i) Except as provided in Subsection (3)(c)(ii), if the division provides a service
290 through a private contract, the division shall post the name of the service provider on the
291 division's website.

292 (ii) Subsection (3)(c)(i) does not apply to a foster parent placement.

293 (4) (a) The division may:

294 (i) receive gifts, grants, devises, and donations;

295 (ii) encourage merchants and service providers to:

296 (A) donate goods or services; or

297 (B) provide goods or services at a nominal price or below cost;

298 (iii) distribute goods to applicants or consumers of division services free or for a
299 nominal charge and tax free; and

300 (iv) appeal to the public for funds to meet needs of applicants or consumers of division
301 services that are not otherwise provided by law, including Sub-for-Santa programs, recreational
302 programs for minors, and requests for household appliances and home repairs.

303 (b) If requested by the donor and subject to state and federal law, the division shall use
304 a gift, grant, devise, donation, or proceeds from the gift, grant, devise, or donation for the

305 purpose requested by the donor.

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

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

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

312 (iii) make expenditures necessary for the care and protection of the children described
 313 in Subsection (5)(a)(ii), within the division's budget.

314 (b) If an individual is referred to a local substance abuse authority or other private or
 315 public resource for court-ordered drug screening under Subsection (2)(n), the court shall order
 316 the individual to pay all costs of the tests unless:

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

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

320 (iii) the court finds that the individual is an indigent individual.

321 (6) Except to the extent provided by rules made in accordance with Title 63G, Chapter
 322 3, Utah Administrative Rulemaking Act, the division is not required to investigate domestic
 323 violence in the presence of a child, as described in Section 76-5-114.

324 (7) (a) [The] Except as provided in Subsection (7)(b), the division may not:

325 [(a)] (i) require a parent who has a child in the custody of the division to pay for some
 326 or all of the cost of any drug testing the parent is required to undergo; or

327 [(b)] (ii) refer an individual who is receiving services from the division for drug testing
 328 by means of a hair [or], fingernail, or saliva test that is administered to detect the presence of
 329 drugs.

330 (b) Notwithstanding Subsection (7)(a)(ii), the division may refer an individual who is
 331 receiving services from the division for drug testing by means of a saliva test if:

332 (i) the individual consents to drug testing by means of a saliva test; or

333 (ii) the court, based on a finding that a saliva test is necessary in the circumstances,
 334 orders the individual to complete drug testing by means of a saliva test.

335 Section 3. Section **80-3-110** is amended to read:

336 **80-3-110. Consideration of cannabis during proceedings -- Drug testing.**
337 (1) As used in this section:
338 (a) "Cannabis" means the same as that term is defined in Section 26-61a-102.
339 (b) "Cannabis product" means the same as that term is defined in Section 26-61a-102.
340 (c) (i) "Chronic" means repeated or patterned.
341 (ii) "Chronic" does not mean an isolated incident.
342 (d) "Directions of use" means the same as that term is defined in Section 26-61a-102.
343 (e) "Dosing guidelines" means the same as that term is defined in Section 26-61a-102.
344 (f) "Medical cannabis" means the same as that term is defined in Section 26-61a-102.
345 (g) "Medical cannabis cardholder" means the same as that term is defined in Section
346 26-61a-102.
347 (h) " Recommending medical provider" means the same as that term is defined in
348 Section 26-61a-102.
349 (2) In a proceeding under this chapter, in which the juvenile court makes a finding,
350 determination, or otherwise considers an individual's medical cannabis card, medical cannabis
351 recommendation from a recommending medical provider, or possession or use of medical
352 cannabis, a cannabis product, or a medical cannabis device, the juvenile court may not consider
353 or treat the individual's medical cannabis card, recommendation, possession, or use any
354 differently than the lawful possession or use of any prescribed controlled substance if:
355 (a) the individual's possession or use complies with Title 4, Chapter 41a, Cannabis
356 Production Establishments;
357 (b) the individual's possession or use complies with Subsection 58-37-3.7(2) or (3); or
358 (c) (i) the individual's possession or use complies with Title 26, Chapter 61a, Utah
359 Medical Cannabis Act; and
360 (ii) the individual reasonably complies with the directions of use and dosing guidelines
361 determined by the individual's recommending medical provider or through a consultation
362 described in Subsection 26-61a-502(4) or (5).
363 (3) In a proceeding under this chapter, a child's parent's or guardian's use of cannabis or
364 a cannabis product is not abuse or neglect of the child unless there is evidence showing that:
365 (a) the child is harmed because of the child's inhalation or ingestion of cannabis, or
366 because of cannabis being introduced to the child's body in another manner; or

367 (b) the child is at an unreasonable risk of harm because of chronic inhalation or
368 ingestion of cannabis or chronic introduction of cannabis to the child's body in another manner.

369 (4) Unless there is harm or an unreasonable risk of harm to the child as described in
370 Subsection (3), in a child welfare proceeding under this chapter, a child's parent's or guardian's
371 use of medical cannabis or a cannabis product is not contrary to the best interests of the child
372 if:

373 (a) for a medical cannabis cardholder after January 1, 2021, the parent's or guardian's
374 possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act, and there
375 is no evidence that the parent's or guardian's use of medical cannabis unreasonably deviates
376 from the directions of use and dosing guidelines determined by the parent's or guardian's
377 recommending medical provider or through a consultation described in Subsection
378 [26-61a-502](#)(4) or (5); or

379 (b) before January 1, 2021, the parent's or guardian's possession or use complies with
380 Subsection [58-37-3.7](#)(2) or (3).

381 (5) Subsection (3) does not prohibit a finding of abuse or neglect of a child, and
382 Subsection (3) does not prohibit a finding that a parent's or guardian's use of medical cannabis
383 or a cannabis product is contrary to the best interests of a child, if there is evidence showing a
384 nexus between the parent's or guardian's use of cannabis or a cannabis product and behavior
385 that would separately constitute abuse or neglect of the child.

386 (6) (a) ~~[H] Except as provided in Subsection (6)(c), if an individual, who is party to a~~
387 ~~proceeding under this chapter, is ordered by the juvenile court to submit to drug testing, [or is~~
388 ~~referred by the division or a guardian ad litem for drug testing,]~~ the individual may not be
389 ordered ~~[or referred for]~~ to complete drug testing by means of a hair [or],² fingernail, or saliva
390 test that is administered to detect the presence of drugs.

391 (b) Except as provided in Subsection (6)(c), if an individual, who is party to a
392 proceeding under this chapter, is referred by the division or a guardian ad litem for drug testing,
393 the individual may not be referred for drug testing by means of a hair, fingernail, or saliva test
394 that is administered to detect the presence of drugs.

395 (c) Notwithstanding Subsections (6)(a) and (b), an individual who is party to a
396 proceeding under this chapter:

397 (i) may be ordered by the juvenile court to submit to drug testing by means of a saliva

398 test, if the court finds that such testing is necessary in the circumstances; or

399 (ii) may be referred by the division for drug testing by means of a saliva test if the

400 individual consents to drug testing by means of a saliva test.