

Senator Wayne A. Harper proposes the following substitute bill:

CHILD WELFARE MODIFICATIONS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Ronda Rudd Menlove

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ prohibits the division from requiring a parent to pay for some or all of the cost of mandatory drug testing;
- ▶ states that a parent is not required to provide child support to the Division of Child and Family Services for a child in the protective custody, temporary custody, or custody of the division if the parent's only form of income is a government-issued disability benefit;
- ▶ permits a parent or guardian to name two friends as potential emergency placements, if the division removes the child from the parent or guardian's home;
- ▶ prohibits the court from ordering additional drug or alcohol testing beyond what is recommended by a parent's substance abuse treatment program;
- ▶ modifies the definition of a "relative" to include the first cousin of the child's parent;



26 ▶ beginning July 1, 2014, permits a parent whose rights were terminated, or a relative
27 of the child, to petition for guardianship of the parent's child if the child is not
28 adopted within a year of termination, and no adoption is likely to occur, or if the
29 child's adoptive parents return the child to the custody of the division;

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

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

35 ▶ makes technical changes.

36 **Money Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 This bill provides effective dates.

39a **Ĥ→ This bill coordinates with H.B. 156, Restoration of Terminated Parental Rights, by**
39b **providing superseding amendments. ←Ĥ**

40 **Utah Code Sections Affected:**

41 AMENDS:

42 **62A-4a-105**, as last amended by Laws of Utah 2012, Chapters 49 and 200

43 **62A-4a-114**, as last amended by Laws of Utah 2008, Chapter 3

44 **62A-4a-209**, as last amended by Laws of Utah 2008, Chapters 3 and 17

44a **Ĥ→ 63I-1-278, as last amended by Laws of Utah 2012, Chapters 301 and 369 ←Ĥ**

45 **78A-2-228 (Effective 07/01/13)**, as last amended by Laws of Utah 2012, Chapter 223

46 **78A-6-307**, as last amended by Laws of Utah 2008, Chapter 17 and renumbered and
47 amended by Laws of Utah 2008, Chapter 3

48 **78A-6-312**, as last amended by Laws of Utah 2012, Chapter 293

49 **78A-6-511**, as last amended by Laws of Utah 2012, Chapter 293

50 **78A-6-513**, as renumbered and amended by Laws of Utah 2008, Chapter 3

51 **78A-6-1106**, as renumbered and amended by Laws of Utah 2008, Chapter 3

52 **78B-7-106 (Effective 07/01/13)**, as last amended by Laws of Utah 2012, Chapters 120
53 and 223

54 **78B-7-202 (Effective 07/01/13)**, as last amended by Laws of Utah 2012, Chapter 223

55 ENACTS:

56 **78A-2-227.1**, Utah Code Annotated 1953

57 78A-6-511.1, Utah Code Annotated 1953

57a **H→ Utah Code Sections Affected by Coordination Clause:**

57b **78A-6-511, as last amended by the Laws of Utah 2012, Chapter 293**

57c **78A-6-513, as last amended by the Laws of Utah 2008, Chapter 3 ←H**

58

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

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

61 **62A-4a-105. Division responsibilities.**

62 (1) The division shall:

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

64 (i) child welfare services;

65 (ii) domestic violence services; and

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

67 to the division;

68 (b) provide the following services:

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

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

71 child as a legal ward of the state;

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

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

74 (B) family preservation services;

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

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

77 of 1996;

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

79 or neglect of a child in that family;

80 (v) shelter care in accordance with the requirements of this chapter and Title 78A,

81 Chapter 6, Juvenile Court Act of 1996;

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

83 (vii) protective services to victims of domestic violence, as defined in Section 77-36-1,

84 and their children, in accordance with the provisions of this chapter and Title 78A, Chapter 6,

85 Part 3, Abuse, Neglect, and Dependency Proceedings;

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

87 (ix) programs and services for minors who have been placed in the custody of the

88 division for reasons other than abuse or neglect, under Section 62A-4a-250; and
89 (x) training for staff and providers involved in the administration and delivery of
90 services offered by the division in accordance with this chapter;
91 (c) establish standards for all:
92 (i) contract providers of out-of-home care for minors and families;
93 (ii) facilities that provide substitute care for dependent, abused, neglected, and
94 delinquent children placed in the custody of the division; and
95 (iii) direct or contract providers of domestic violence services described in Subsection
96 (1)(b)(vi);
97 (d) have authority to:
98 (i) contract with a private, nonprofit organization to recruit and train foster care
99 families and child welfare volunteers in accordance with Section 62A-4a-107.5; and
100 (ii) approve facilities that meet the standards established under Subsection (1)(c) to
101 provide substitute care for dependent, abused, neglected, and delinquent children placed in the
102 custody of the division;
103 (e) cooperate with the federal government in the administration of child welfare and
104 domestic violence programs and other human service activities assigned by the department;
105 (f) in accordance with Subsection (2)(a), promote and enforce state and federal laws
106 enacted for the protection of abused, neglected, dependent, delinquent, ungovernable, and
107 runaway children, and status offenders, in accordance with the requirements of this chapter,
108 unless administration is expressly vested in another division or department of the state;
109 (g) cooperate with the Employment Development Division in the Department of
110 Workforce Services in meeting the social and economic needs of an individual who is eligible
111 for public assistance;
112 (h) compile relevant information, statistics, and reports on child and family service
113 matters in the state;
114 (i) prepare and submit to the department, the governor, and the Legislature reports of
115 the operation and administration of the division in accordance with the requirements of
116 Sections 62A-4a-117 and 62A-4a-118;
117 (j) provide social studies and reports for the juvenile court in accordance with Section
118 78A-6-605;

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

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

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

124 (ii) have a final plan of termination of parental rights, pursuant to Section 78A-6-314,
125 and promote adoption of those children;

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

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

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

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

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

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

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

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

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

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

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

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

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

150 **62A-4a-114. Financial reimbursement by parent or legal guardian.**

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

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

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

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

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

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

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

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

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

175 **62A-4a-209. Emergency placement.**

176 (1) As used in this section:

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

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

179 (2) The division may use an emergency placement under Subsection

180 62A-4a-202.1(4)(b)(ii) when:

- 181 (a) the case worker has made the determination that:
- 182 (i) the child's home is unsafe;
- 183 (ii) removal is necessary under the provisions of Section 62A-4a-202.1; and
- 184 (iii) the child's custodial parent or guardian will agree to not remove the child from the
- 185 home of the person that serves as the placement and not have any contact with the child until
- 186 after the shelter hearing required by Section 78A-6-306;
- 187 (b) a person, with preference being given in accordance with Subsection (4), can be
- 188 identified who has the ability and is willing to provide care for the child who would otherwise
- 189 be placed in shelter care, including:
- 190 (i) taking the child to medical, mental health, dental, and educational appointments at
- 191 the request of the division; and
- 192 (ii) making the child available to division services and the guardian ad litem; and
- 193 (c) the person described in Subsection (2)(b) agrees to care for the child on an
- 194 emergency basis under the following conditions:
- 195 (i) the person meets the criteria for an emergency placement under Subsection (3);
- 196 (ii) the person agrees to not allow the custodial parent or guardian to have any contact
- 197 with the child until after the shelter hearing unless authorized by the division in writing;
- 198 (iii) the person agrees to contact law enforcement and the division if the custodial
- 199 parent or guardian attempts to make unauthorized contact with the child;
- 200 (iv) the person agrees to allow the division and the child's guardian ad litem to have
- 201 access to the child;
- 202 (v) the person has been informed and understands that the division may continue to
- 203 search for other possible placements for long-term care, if needed;
- 204 (vi) the person is willing to assist the custodial parent or guardian in reunification
- 205 efforts at the request of the division, and to follow all court orders; and
- 206 (vii) the child is comfortable with the person.
- 207 (3) Except as otherwise provided in Subsection (5), before the division places a child
- 208 in an emergency placement, the division:
- 209 (a) may request the name of a reference and may contact the reference to determine the
- 210 answer to the following questions:
- 211 (i) would the person identified as a reference place a child in the home of the

212 emergency placement; and

213 (ii) are there any other relatives or friends to consider as a possible emergency or
214 long-term placement for the child;

215 (b) shall have the custodial parent or guardian sign an emergency placement agreement
216 form during the investigation;

217 (c) (i) if the emergency placement will be with a relative of the child, shall comply with
218 the background check provisions described in Subsection (7); or

219 (ii) if the emergency placement will be with a person other than a noncustodial parent
220 or a relative, shall comply with the criminal background check provisions described in Section
221 78A-6-308 for adults living in the household where the child will be placed;

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

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

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

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

229 (ii) a relative of the child;

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

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

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

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

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

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

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

246 (b) Either before or after making an emergency placement with the noncustodial parent
247 of the child, the division may conduct the investigation described in Subsection (3)(a) in
248 relation to the noncustodial parent.

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

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

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

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

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

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

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

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

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

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

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

266 (ii) a completed search of the Management Information System described in Section
267 62A-4a-1003.

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

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

272a **Ĥ→ Section 4. Section 63I-1-278 is amended to read:**

272b **63I-1-278. Repeal dates, Title 78A and Title 78B.**

272c **(1) The Office of the Court Administrator, created in Section 78A-2-105, is repealed**

272d **July 1, 2018. ←Ĥ**

272e **Ĥ→ (2) Section 78A-2-227.1 is repealed July 1, 2014.**
272f [~~2~~] **(3) Section 78B-3-421, regarding medical malpractice arbitration agreements, is**
272g **repealed July 1, 2019.**
272h [~~3~~] **(4) Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution is repealed July 1, 2016.**
272i [~~4~~] **(5) The following are repealed December 31, 2014:**
272j **(a) Subsection 78B-6-802(1)(i);**
272k **(b) the language in Subsection 78B-6-802(1)(a) that states "except as provided in Subsection**
272l **(1)(i)"; and**
272m **(c) the language in Subsection 78B-6-802(1)(b) that states "and except as provided in**
272n **Subsection (1)(i)".**
272o [~~5~~] **(6) Section 78B-6-901.5, regarding notice to tenants on residential rental**
272p **property to be foreclosed, is repealed December 31, 2014. ←Ĥ**
273 **Section Ĥ→ [4] 5 ←Ĥ . Section 78A-2-227.1 is enacted to read:**

274 **78A-2-227.1. Appointment of attorney guardian ad litem in district court matters.**

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

277 (1) protective order proceedings; and

278 (2) district court actions when:

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

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

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

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

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

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

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

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

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

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

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

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

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

304 (c) except as provided in Subsection (6), within one year after the day on which the

305 attorney guardian ad litem is appointed in the case, issue a final order:

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

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

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

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

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

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

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

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

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

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

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

335 (10) An attorney guardian ad litem appointed in accordance with the requirements of

336 this section and Chapter 6, Part 9, Guardian Ad Litem, is, when serving in the scope of duties
337 of an attorney guardian ad litem, considered an employee of this state for purposes of
338 indemnification under the Governmental Immunity Act.

339 Section 5. Section 78A-2-228 (Effective 07/01/13) is amended to read:

340 **78A-2-228 (Effective 07/01/13). Private attorney guardian ad litem --**
341 **Appointment -- Costs and fees -- Duties -- Conflicts of interest -- Pro bono obligation --**
342 **Indemnification -- Minimum qualifications.**

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

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

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

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

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

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

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

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

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

361 (4) The court shall:

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

366 (b) to the extent possible, bifurcate the issues described in Subsection (3)(a) from the

367 other issues in the case in order to minimize the time constraints placed upon the private
368 attorney guardian ad litem; and

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

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

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

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

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

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

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

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

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

390 (9) (a) When appointing a private attorney guardian ad litem, the court shall:

391 (i) assess all or part of the attorney guardian ad litem fees, courts costs, and paralegal,
392 staff, and volunteer expenses against the parties in a proportion the court determines to be just;
393 and

394 (ii) designate in the order whether the private attorney guardian ad litem shall, as
395 established by rule under Subsection (17):

396 (A) be paid a set fee and initial retainer;

397 (B) not be paid and serve pro bono; or

398 (C) be paid at a rate less than the set fee established by court rule.

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

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

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

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

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

409 (11) The private attorney guardian ad litem:

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

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

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

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

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

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

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

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

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

425 (ii) personally interview the minor, unless:

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

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

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

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

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

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

434 (B) all court and administrative proceedings;

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

436 (D) court action; and

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

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

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

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

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

447 (b) If the minor's intent and desires differ from the attorney's determination of the
448 minor's best interests, the attorney guardian ad litem shall communicate to the court the minor's
449 intent and desires and the attorney's determination of the minor's best interests.

450 (c) A difference between the minor's intent and desires and the attorney's determination
451 of best interests is not sufficient to create a conflict of interest.

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

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

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

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

459 (14) In every court hearing where the private attorney guardian ad litem makes a

460 recommendation regarding the best interest of the minor, the court shall require the private
 461 attorney guardian ad litem to disclose the factors that form the basis of the recommendation.

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

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

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

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

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

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

475 (d) a system to:

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

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

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

481 (18) Any savings that result from assigning a private attorney guardian ad litem in a
 482 district court case, instead of a guardian ad litem from the Office of Guardian ad Litem, shall
 483 be applied to the ~~Ĥ→ [Office of Guardian ad Litem to reduce caseloads and improve current~~

484 ~~practices.] private guardian ad litem program. ←Ĥ~~

485 Section ~~Ĥ→ [6] 7 ←Ĥ~~ . Section 78A-6-307 is amended to read:

486 **78A-6-307. Shelter hearing -- Placement -- DCFS custody.**

487 (1) As used in this section:

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

489 (A) a biological or adoptive mother;

490 (B) an adoptive father; or

491 (C) a biological father who:
492 (I) was married to the child's biological mother at the time the child was conceived or
493 born; or

494 (II) has strictly complied with the provisions of Sections 78B-6-120 through
495 78B-6-122, prior to removal of the child or voluntary surrender of the child by the custodial
496 parent.

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

500 (b) "Relative" means:

501 (i) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle,
502 brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, ~~or~~ sibling of a child, or a
503 first cousin of the child's parent; and

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

507 (2) (a) At the shelter hearing, when the court orders that a child be removed from the
508 custody of the child's parent in accordance with the requirements of Section 78A-6-306, the
509 court shall first determine whether there is another natural parent with whom the child was not
510 residing at the time the events or conditions that brought the child within the court's jurisdiction
511 occurred, who desires to assume custody of the child.

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

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

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

520 (ii) The court shall, at a minimum, order the division to visit the parent's home, comply
521 with the criminal background check provisions described in Section 78A-6-308, and check the

522 division's management information system for any previous reports of abuse or neglect
523 received by the division regarding the parent at issue.

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

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

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

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

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

531 (b) the court may order:

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

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

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

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

539 (a) placement with the parent continues to be in the child's best interest;

540 (b) the child should be returned to the original custodial parent;

541 (c) the child should be placed in the custody of a relative, pursuant to Subsections (7)
542 through (12); or

543 (d) the child should be placed in the custody of the division.

544 (5) The time limitations described in Section 78A-6-312 with regard to reunification
545 efforts, apply to children placed with a previously noncustodial parent in accordance with
546 Subsection (2).

547 (6) Legal custody of the child is not affected by an order entered under Subsection (2)
548 or (3). In order to affect a previous court order regarding legal custody, the party must petition
549 that court for modification of the order.

550 (7) If, at the time of the shelter hearing, a child is removed from the custody of the
551 child's parent and is not placed in the custody of the child's other parent, the court:

552 (a) shall, at that time, determine whether, subject to Subsections (18)(c) through (e),

553 there is a relative of the child or a friend of a parent of the child who is able and willing to care
554 for the child;

555 (b) may order the division to conduct a reasonable search to determine whether, subject
556 to Subsections (18)(c) through (e), there are relatives of the child or friends of a parent of the
557 child who are willing and appropriate, in accordance with the requirements of this part and
558 Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child;

559 (c) shall order the parents to cooperate with the division, within five working days, to,
560 subject to Subsections (18)(c) through (e), provide information regarding relatives of the child
561 or friends who may be able and willing to care for the child; and

562 (d) may order that the child be placed in the custody of the division pending the
563 determination under Subsection (7)(a).

564 (8) This section may not be construed as a guarantee that an identified relative or friend
565 will receive custody of the child.

566 (9) Subject to Subsections (18)(c) through (e), preferential consideration shall be given
567 to a relative's or a friend's request for placement of the child, if it is in the best interest of the
568 child, and the provisions of this section are satisfied.

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

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

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

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

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

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

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

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

583 (C) a background check that complies with the criminal background check provisions

584 described in Section 78A-6-308, of each nonrelative, as defined in Subsection
585 62A-4a-209(1)(a), of the child who resides in the household where the child may be placed;

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

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

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

592 (C) a background check that complies with the criminal background check provisions
593 described in Section 78A-6-308, of each nonrelative, as defined in Subsection
594 62A-4a-209(1)(a), of the child who resides in the household where the child may be placed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

625 (a) the court shall order that:

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

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

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

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

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

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

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

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

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

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

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

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

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

650 (ii) if the results of the criminal background check described in Subsection (16)(a)(i)
651 would prohibit the relative from having direct access to the child under Section 62A-2-120, the
652 division shall:

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

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

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

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

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

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

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

677 (i) a noncustodial parent of the child;
678 (ii) a relative of the child;
679 (iii) subject to Subsection (18)(d), a friend of a parent of the child, if the friend is a
680 licensed foster parent; and

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

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

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

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

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

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

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

702 Section 7. Section **78A-6-312** is amended to read:

703 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

704 (1) The court may:

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

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

707 (i) individual; or

- 708 (ii) public or private entity or agency; or
- 709 (c) order:
- 710 (i) protective supervision;
- 711 (ii) family preservation;
- 712 (iii) subject to ~~[Subsection]~~ Subsections (12)(b) and 78A-6-117(2)(n)(iii), medical or
- 713 mental health treatment; or
- 714 (iv) other services.

715 (2) Whenever the court orders continued removal at the dispositional hearing, and that
716 the minor remain in the custody of the division, the court shall first:

- 717 (a) establish a primary permanency goal for the minor; and
- 718 (b) determine whether, in view of the primary permanency goal, reunification services
719 are appropriate for the minor and the minor's family, pursuant to Subsections (20) through (22).

720 (3) Subject to Subsections (6) and (7), if the court determines that reunification
721 services are appropriate for the minor and the minor's family, the court shall provide for
722 reasonable parent-time with the parent or parents from whose custody the minor was removed,
723 unless parent-time is not in the best interest of the minor.

724 (4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe
725 abuse, or severe neglect are involved, neither the division nor the court has any duty to make
726 "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to
727 attempt to rehabilitate the offending parent or parents.

728 (5) In all cases, the minor's health, safety, and welfare shall be the court's paramount
729 concern in determining whether reasonable efforts to reunify should be made.

730 (6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless
731 the court makes a finding that it is necessary to deny parent-time in order to:

- 732 (a) protect the physical safety of the minor;
- 733 (b) protect the life of the minor; or
- 734 (c) prevent the minor from being traumatized by contact with the parent due to the
735 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

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

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

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

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

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

744 (b) an explanation of the effect of abandoning or modifying the primary permanency
745 goal.

746 (9) A permanency hearing shall be conducted in accordance with Subsection
747 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if
748 something other than reunification is initially established as a minor's primary permanency
749 goal.

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

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

754 (c) If, at any time, the court determines that reunification is no longer a minor's primary
755 permanency goal, the court shall conduct a permanency hearing in accordance with Section
756 78A-6-314 on or before the earlier of:

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

759 (ii) the day on which the provision of reunification services, described in Section
760 78A-6-314, ends.

761 (11) (a) If the court determines that reunification services are appropriate, it shall order
762 that the division make reasonable efforts to provide services to the minor and the minor's
763 parent for the purpose of facilitating reunification of the family, for a specified period of time.

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

766 (12) (a) The court shall:

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

769 [~~(b)~~] (ii) determine and define the responsibilities of the parent under the child and

770 family plan in accordance with Subsection 62A-4a-205(6)(e); and

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

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

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

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

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

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

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

789 (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined
790 to be inconsistent with the final permanency plan for the minor established pursuant to Section
791 78A-6-314, then measures shall be taken, in a timely manner, to:

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

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

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

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

800 (b) The permanency hearing shall be held no later than 12 months after the original

801 removal of the minor.

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

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

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

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

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

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

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

816 (19) When a court conducts a permanency hearing for a minor under Section
817 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the
818 sibling group together is:

819 (a) practicable; and

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

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

824 (b) The court may determine that:

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

827 (ii) reunification services should not be provided.

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

831 (21) There is a presumption that reunification services should not be provided to a

832 parent if the court finds, by clear and convincing evidence, that any of the following
833 circumstances exist:

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

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

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

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

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

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

844 (d) the parent:

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

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

847 (A) murder or manslaughter of a child; or

848 (B) child abuse homicide;

849 (iii) committed sexual abuse against the child; or

850 (iv) is a registered sex offender or required to register as a sex offender;

851 (e) the minor suffered severe abuse by the parent or by any person known by the

852 parent, if the parent knew or reasonably should have known that the person was abusing the
853 minor;

854 (f) the minor is adjudicated an abused child as a result of severe abuse by the parent,
855 and the court finds that it would not benefit the minor to pursue reunification services with the
856 offending parent;

857 (g) the parent's rights are terminated with regard to any other minor;

858 (h) the minor [~~is~~] was removed from the minor's home on at least two previous
859 occasions and reunification services were offered or provided to the family at those times;

860 (i) the parent has abandoned the minor for a period of six months or longer;

861 (j) the parent permitted the child to reside, on a permanent or temporary basis, at a

862 location where the parent knew or should have known that a clandestine laboratory operation

863 was located;

864 (k) except as provided in Subsection (22)(b), with respect to a parent who is the child's
865 birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was
866 exposed to an illegal or prescription drug that was abused by the child's mother while the child
867 was in utero, if the child was taken into division custody for that reason, unless the mother
868 agrees to enroll in, is currently enrolled in, or has recently and successfully completed a
869 substance abuse treatment program approved by the department; or

870 (l) any other circumstance that the court determines should preclude reunification
871 efforts or services.

872 (22) (a) The finding under Subsection (21)(b) shall be based on competent evidence
873 from at least two medical or mental health professionals, who are not associates, establishing
874 that, even with the provision of services, the parent is not likely to be capable of adequately
875 caring for the minor within 12 months after the day on which the court finding is made.

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

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

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

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

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

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

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

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

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

892 (24) (a) If reunification services are not ordered pursuant to Subsections (20) through
893 (22), and the whereabouts of a parent become known within six months after the day on which

894 the out-of-home placement of the minor is made, the court may order the division to provide
895 reunification services.

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

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

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

902 (i) the age of the minor;

903 (ii) the degree of parent-child bonding;

904 (iii) the length of the sentence;

905 (iv) the nature of the treatment;

906 (v) the nature of the crime or illness;

907 (vi) the degree of detriment to the minor if services are not offered;

908 (vii) for a minor 10 years of age or older, the minor's attitude toward the

909 implementation of family reunification services; and

910 (viii) any other appropriate factors.

911 (c) Reunification services for an incarcerated parent are subject to the time limitations
912 imposed in Subsections (2) through (19).

913 (d) Reunification services for an institutionalized parent are subject to the time
914 limitations imposed in Subsections (2) through (19), unless the court determines that continued
915 reunification services would be in the minor's best interest.

916 (26) If, pursuant to Subsections (21)(b) through (l), the court does not order
917 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
918 with Section 78A-6-314.

919 Section 8. Section **78A-6-511** is amended to read:

920 **78A-6-511. Court disposition of child upon termination -- Posttermination**
921 **reunification.**

922 (1) As used in this section, "relative" means:

923 (a) an adult who is a grandparent, great-grandparent, aunt, great aunt, uncle, great
924 uncle, brother-in-law, sister-in-law, stepparent, first cousin, sibling, or stepsibling of a child;

925 and

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

929 (2) Upon entry of an order under this part the court may:

930 (a) place the child in the legal custody and guardianship of a licensed child placement
931 agency or the division for adoption; or

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

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

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

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

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

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

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

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

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

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

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

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

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

955 Section 9. Section **78A-6-511.1** is enacted to read:

956 **78A-6-511.1. Posttermination reunification study item.**

957 (1) The division shall study the potential of creating a posttermination of parental
958 rights reunification system, and present any viable proposals to the Health and Human Service
959 Interim Committee during the 2013 interim.

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

962 Section 10. Section **78A-6-513** is amended to read:

963 **78A-6-513. Effect of decree.**

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

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

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

975 Section 11. Section **78A-6-1106** is amended to read:

976 **78A-6-1106. Child support obligation when custody of a child is vested in an**
977 **individual or institution.**

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

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

987 facility, or any other state department, division, or agency, the court may refer the
988 establishment of a child support order to the Office of Recovery Services. The referral shall be
989 sent to the Office of Recovery Services within three working days of the hearing. Support
990 obligation amounts shall be set by the Office of Recovery Services in accordance with Title
991 78B, Chapter 12, Utah Child Support Act.

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

999 (4) If a child is returned home and legal custody is subsequently vested by the court in
1000 a secure youth corrections facility or any other state department, division, or agency other than
1001 ~~his~~ the child's parents, the liability for support shall accrue from the date the child is
1002 subsequently removed from the home, including time spent in detention or sheltered care.

1003 (5) (a) If the parents, parent, or other obligated person meets with the Office of
1004 Recovery Services within 30 days of the date of the hearing, the child support order may not
1005 include a judgment for past due support for more than two months.

1006 (b) Notwithstanding Subsection (5)(a), the court may order the liability of support to
1007 begin to accrue from the date of the proceeding referenced in Subsection (1) if:

1008 (i) the parents, parent, or any other person obligated fails to meet with the Office of
1009 Recovery Services within 30 days after being informed orally and in writing by the court of that
1010 requirement; and

1011 (ii) the Office of Recovery Services took reasonable steps under the circumstances to
1012 contact the parents, parent, or other person obligated within the subsequent 30-day period to
1013 facilitate the establishment of the child support order.

1014 (c) For purposes of Subsection (5)(b)(ii), the Office of Recovery Services shall be
1015 presumed to have taken reasonable steps if the office:

1016 (i) has a signed, returned receipt for a certified letter mailed to the address of the
1017 parents, parent, or other obligated person regarding the requirement that a child support order

1018 be established; or

1019 (ii) has had a documented conversation, whether by telephone or in person, with the
1020 parents, parent, or other obligated person regarding the requirement that a child support order
1021 be established.

1022 (6) In collecting arrears, the Office of Recovery Services shall comply with Section
1023 62A-11-320 in setting a payment schedule or demanding payment in full.

1024 (7) Unless otherwise ordered, the parents or other person shall pay the child support to
1025 the Office of Recovery Services. The clerk of the court, the Office of Recovery Services, or the
1026 Department of Human Services and its divisions shall have authority to receive periodic
1027 payments for the care and maintenance of the child, such as Social Security payments or
1028 railroad retirement payments made in the name of or for the benefit of the child.

1029 (8) No court order under this section against a parent or other person shall be entered,
1030 unless notice of hearing has been served within the state, a voluntary appearance is made, or a
1031 waiver of service given. The notice shall specify that a hearing with respect to the financial
1032 support of the child will be held.

1033 (9) An existing child support order payable to a parent or other obligated person shall
1034 be assigned to the Department of Human Services as provided in Section 62A-1-117.

1035 (10) (a) Subsections (3) through (9) shall not apply if legal custody of a child is vested
1036 by the court in an individual.

1037 (b) If legal custody of a child is vested by the court in an individual, the court may
1038 order the parents, a parent, or any other obligated person to pay child support to the individual.
1039 In the same proceeding the court shall inform the parents, a parent, or any other obligated
1040 person, verbally and in writing, of the requirement to pay child support in accordance with
1041 Title 78B, Chapter 12, Utah Child Support Act.

1042 (11) (a) The court may not order the parent or any other obligated person to pay child
1043 support for a child in state custody if:

1044 (i) the parent or other obligated person's only form of income is a government-issued
1045 disability benefit; and

1046 (ii) the benefit described in Subsection (11)(a)(i) is issued because of the parent or
1047 other person's disability, and not the child's disability.

1048 (b) If a person seeks to be excused from providing support under Subsection (11)(a),

1049 the person shall provide the court and the Office of Recovery Services with evidence that the
1050 person meets the requirements of Subsection (11)(a).

1051 Section 12 . Section **78B-7-106 (Effective 07/01/13)** is amended to read:

1052 **78B-7-106 (Effective 07/01/13). Protective orders -- Ex parte protective orders --**
1053 **Modification of orders -- Service of process -- Duties of the court.**

1054 (1) If it appears from a petition for an order for protection or a petition to modify an
1055 order for protection that domestic violence or abuse has occurred or a modification of an order
1056 for protection is required, a court may:

1057 (a) without notice, immediately issue an order for protection ex parte or modify an
1058 order for protection ex parte as it considers necessary to protect the petitioner and all parties
1059 named to be protected in the petition; or

1060 (b) upon notice, issue an order for protection or modify an order after a hearing,
1061 whether or not the respondent appears.

1062 (2) A court may grant the following relief without notice in an order for protection or a
1063 modification issued ex parte:

1064 (a) enjoin the respondent from threatening to commit or committing domestic violence
1065 or abuse against the petitioner and any designated family or household member;

1066 (b) prohibit the respondent from harassing, telephoning, contacting, or otherwise
1067 communicating with the petitioner, directly or indirectly;

1068 (c) order that the respondent is excluded from the petitioner's residence and its
1069 premises, and order the respondent to stay away from the residence, school, or place of
1070 employment of the petitioner, and the premises of any of these, or any specified place
1071 frequented by the petitioner and any designated family or household member;

1072 (d) upon finding that the respondent's use or possession of a weapon may pose a
1073 serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or
1074 possessing a firearm or other weapon specified by the court;

1075 (e) order possession and use of an automobile and other essential personal effects, and
1076 direct the appropriate law enforcement officer to accompany the petitioner to the residence of
1077 the parties to ensure that the petitioner is safely restored to possession of the residence,
1078 automobile, and other essential personal effects, or to supervise the petitioner's or respondent's
1079 removal of personal belongings;

1080 (f) grant to the petitioner temporary custody of any minor children of the parties;

1081 (g) order the appointment of ~~H~~ :

1081a **(i) before July 1, 2014, ~~H~~ a [private attorney] guardian ad litem under Section**

1082 ~~[78A-2-228]~~ 78A-2-227.1, if appropriate; ~~H~~ **and**

1082a **(ii) on or after July 1, 2014, a private attorney guardian ad litem under Section**

1082b **78A-2-228, if appropriate; ~~H~~**

1083 (h) order any further relief that the court considers necessary to provide for the safety
1084 and welfare of the petitioner and any designated family or household member; and

1085 (i) if the petition requests child support or spousal support, at the hearing on the
1086 petition order both parties to provide verification of current income, including year-to-date pay
1087 stubs or employer statements of year-to-date or other period of earnings, as specified by the
1088 court, and complete copies of tax returns from at least the most recent year.

1089 (3) A court may grant the following relief in an order for protection or a modification
1090 of an order after notice and hearing, whether or not the respondent appears:

1091 (a) grant the relief described in Subsection (2); and

1092 (b) specify arrangements for parent-time of any minor child by the respondent and
1093 require supervision of that parent-time by a third party or deny parent-time if necessary to
1094 protect the safety of the petitioner or child.

1095 (4) Following the protective order hearing, the court shall:

1096 (a) as soon as possible, deliver the order to the county sheriff for service of process;

1097 (b) make reasonable efforts to ensure that the order for protection is understood by the
1098 petitioner, and the respondent, if present;

1099 (c) transmit electronically, by the end of the next business day after the order is issued,
1100 a copy of the order for protection to the local law enforcement agency or agencies designated
1101 by the petitioner; and

1102 (d) transmit a copy of the order to the statewide domestic violence network described
1103 in Section 78B-7-113.

1104 (5) (a) Each protective order shall include two separate portions, one for provisions, the
1105 violation of which are criminal offenses, and one for provisions, the violation of which are civil
1106 violations, as follows:

1107 (i) criminal offenses are those under Subsections (2)(a) through (e), and under
1108 Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and

1109 (ii) civil offenses are those under Subsections (2)(f), (h), and (i), and Subsection (3)(a)
1110 as it refers to Subsections (2)(f), (h), and (i).

1111 (b) The criminal provision portion shall include a statement that violation of any
1112 criminal provision is a class A misdemeanor.

1113 (c) The civil provision portion shall include a notice that violation of or failure to
1114 comply with a civil provision is subject to contempt proceedings.

1115 (6) The protective order shall include:

1116 (a) a designation of a specific date, determined by the court, when the civil portion of
1117 the protective order either expires or is scheduled for review by the court, which date may not
1118 exceed 150 days after the date the order is issued, unless the court indicates on the record the
1119 reason for setting a date beyond 150 days;

1120 (b) information the petitioner is able to provide to facilitate identification of the
1121 respondent, such as Social Security number, driver license number, date of birth, address,
1122 telephone number, and physical description; and

1123 (c) a statement advising the petitioner that:

1124 (i) after two years from the date of issuance of the protective order, a hearing may be
1125 held to dismiss the criminal portion of the protective order;

1126 (ii) the petitioner should, within the 30 days prior to the end of the two-year period,
1127 advise the court of the petitioner's current address for notice of any hearing; and

1128 (iii) the address provided by the petitioner will not be made available to the respondent.

1129 (7) Child support and spouse support orders issued as part of a protective order are
1130 subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income
1131 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non
1132 IV-D Cases, except when the protective order is issued ex parte.

1133 (8) (a) The county sheriff that receives the order from the court, pursuant to Subsection
1134 (5)(a), shall provide expedited service for orders for protection issued in accordance with this
1135 chapter, and shall transmit verification of service of process, when the order has been served, to
1136 the statewide domestic violence network described in Section 78B-7-113.

1137 (b) This section does not prohibit any law enforcement agency from providing service
1138 of process if that law enforcement agency:

1139 (i) has contact with the respondent and service by that law enforcement agency is
1140 possible; or

1141 (ii) determines that under the circumstances, providing service of process on the

1142 respondent is in the best interests of the petitioner.

1143 (9) (a) When an order is served on a respondent in a jail or other holding facility, the
1144 law enforcement agency managing the facility shall make a reasonable effort to provide notice
1145 to the petitioner at the time the respondent is released from incarceration.

1146 (b) Notification of the petitioner shall consist of a good faith reasonable effort to
1147 provide notification, including mailing a copy of the notification to the last-known address of
1148 the victim.

1149 (10) A court may modify or vacate an order of protection or any provisions in the order
1150 after notice and hearing, except that the criminal provisions of a protective order may not be
1151 vacated within two years of issuance unless the petitioner:

1152 (a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah
1153 Rules of Civil Procedure, and the petitioner personally appears before the court and gives
1154 specific consent to the vacation of the criminal provisions of the protective order; or

1155 (b) submits a verified affidavit, stating agreement to the vacation of the criminal
1156 provisions of the protective order.

1157 (11) A protective order may be modified without a showing of substantial and material
1158 change in circumstances.

1159 (12) Insofar as the provisions of this chapter are more specific than the Utah Rules of
1160 Civil Procedure, regarding protective orders, the provisions of this chapter govern.

1161 Section 13. Section **78B-7-202 (Effective 07/01/13)** is amended to read:

1162 **78B-7-202 (Effective 07/01/13). Petition -- Ex parte determination -- Guardian ad**
1163 **litem -- Referral to division.**

1164 (1) Any interested person may file a petition for a protective order on behalf of a child
1165 who is being abused or is in imminent danger of being abused. The petitioner shall first make
1166 a referral to the division.

1167 (2) Upon the filing of a petition, the clerk of the court shall:

1168 (a) review the records of the juvenile court, the district court, and the management
1169 information system of the division to find any petitions, orders, or investigations related to the
1170 child or the parties to the case;

1171 (b) request the records of any law enforcement agency identified by the petitioner as
1172 having investigated abuse of the child; and

1173 (c) identify and obtain any other background information that may be of assistance to
1174 the court.

1175 (3) Upon the filing of a petition, the court shall immediately determine, based on the
1176 evidence and information presented, whether the minor is being abused or is in imminent
1177 danger of being abused. If so, the court shall enter an ex parte child protective order.

1178 (4) The court may appoint ~~H~~→ :

1178a (a) [a] an ~~H~~ [private] attorney guardian ad litem
1178b under Section

1179 [~~78A-2-228~~] 78A-2-227.1 for district court cases, ~~H~~→ **before July 1, 2014;**

1179a **(b) a private attorney guardian ad litem under Section 78A-2-228 for district court**
1179b **cases, on or after July 1, 2014;** ~~H~~ or

1179c ~~H~~→ (c) ~~H~~ the Office of Guardian ad Litem for

1180 juvenile court cases under Section 78A-6-902, for the child who is the subject of the petition.

1181 Section 14. **Effective date.**

1182 (1) Except as provided in Subsections (2) and (3), this bill takes effect on May 14,
1183 2013.

1184 (2) The actions affecting the following sections take effect on July 1, 2013:

1185 (a) Section 78A-6-227.1;

1186 (b) Section 78B-7-106; and

1187 (c) Section 78A-7-202.

1188 (3) The actions affecting the following sections take effect on July 1, 2014:

1189 (a) Section 78A-6-511; and

1190 (b) Section 78A-6-513.

1190a ~~H~~→ **Section 15. Coordinating S.B. 49 with H. B. 156 -- Superseding amendments.**

1190b **If this S.B. 49 and H.B. 156, Restoration of Terminated Parental Rights, both pass and become**

1190c **law, it is the intent of the Legislature that, as of July 1, 2014, the amendments to Sections**

1190d **78A-6-511 and 78A-6-513 in H.B. 156 supersede the amendments to Section 78A-6-511 and**

1190e **78A-6-513 in S.B. 49, when the Office of Legislative Research and General Counsel prepares**

1190f **the Utah Code database for publication.** ~~H~~