

CHILD WELFARE AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends Title 62A, Utah Human Services Code, Title 78A, Judiciary and Judicial Administration, and Title 78B, Judicial Code, relating to child welfare.

Highlighted Provisions:

This bill:

- ▶ defines the term "relative";
- ▶ amends Division of Child and Family Services caseworker training requirements;
- ▶ requires a caseworker to file a report explaining why a particular placement is in the child's best interest when a child is removed from the child's immediate family but not placed with kin;
- ▶ requires a licensee under the Medical Practice or Nurse Practice Act to report a determination of fetal alcohol spectrum disorder to the Division of Child and Family Services;
- ▶ requires that appellate courts apply de novo review to legal issues raised in an appeal of a lower court's decision to terminate parental rights;
- ▶ prohibits taking a child into protective custody solely on the basis of educational neglect, truancy, or failure to comply with a court order to attend school;
- ▶ requires a fingerprint-based background check on any adult residing in the home of a foster parent or potential foster parent;
- ▶ creates a presumption that reunification services not be provided to:



- 28 • a parent who commits sexual abuse of a child;
- 29 • a parent who is a registered sex offender; or
- 30 • a birth mother whose child is born with fetal alcohol spectrum disorder, unless
- 31 she enrolls in a substance abuse program;
- 32 ▶ requires a court to consider costs already borne by a parent or legal guardian before
- 33 assessing guardian ad litem attorney fees, court costs, or expenses against a parent
- 34 or legal guardian;
- 35 ▶ permits a parent or legal guardian to appeal a court's determination of guardian ad
- 36 litem attorney fees, costs, and expenses;
- 37 ▶ requires a guardian ad litem to:
- 38 • disclose the minor's wishes to the court;
- 39 • conduct an independent investigation regarding a minor client, the minor's
- 40 family, and what constitutes the best interest of the minor;
- 41 • keep records regarding how many times the guardian ad litem has had contact
- 42 with each minor client and make those records available when making a
- 43 recommendation regarding the client's welfare; and
- 44 • file a memorandum with the court before recommending that a child be
- 45 removed from a parent's custody or that a parent's rights be terminated
- 46 explaining why that action is in the best interest of the child;
- 47 ▶ permits a parent to file a memorandum in response to a guardian ad litem's
- 48 memorandum;
- 49 ▶ creates a preference for the adoption of a child by a relative following a termination
- 50 of parental rights; and
- 51 ▶ makes technical changes.

52 **Money Appropriated in this Bill:**

53 None

54 **Other Special Clauses:**

55 None

56 **Utah Code Sections Affected:**

57 AMENDS:

58 **62A-2-120**, as last amended by Laws of Utah 2011, Chapters 320 and 366

- 59 **62A-4a-102**, as last amended by Laws of Utah 2009, Chapter 75
- 60 **62A-4a-107**, as last amended by Laws of Utah 2007, Chapter 306
- 61 **62A-4a-202.1**, as last amended by Laws of Utah 2008, Chapters 3 and 17
- 62 **62A-4a-202.6**, as last amended by Laws of Utah 2010, Chapter 239
- 63 **62A-4a-209**, as last amended by Laws of Utah 2008, Chapters 3 and 17
- 64 **62A-4a-404**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 65 **78A-6-302**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 66 **78A-6-306**, as last amended by Laws of Utah 2010, Chapter 368
- 67 **78A-6-308**, as last amended by Laws of Utah 2009, Chapter 32
- 68 **78A-6-312**, as last amended by Laws of Utah 2011, Chapters 98 and 167
- 69 **78A-6-511**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 70 **78A-6-902**, as last amended by Laws of Utah 2011, Chapter 158
- 71 **78B-6-131**, as enacted by Laws of Utah 2008, Chapter 3 and last amended by Laws of

72 Utah 2008, Chapter 17

73 ENACTS:

- 74 **78A-4-201**, Utah Code Annotated 1953
- 75 **78A-6-902.1**, Utah Code Annotated 1953



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

78 Section 1. Section **62A-2-120** is amended to read:

79 **62A-2-120. Criminal background checks -- Direct access to children or**
80 **vulnerable adults.**

81 (1) (a) Except as provided in Subsection (7), an applicant for an initial license or a
82 license renewal under this chapter shall submit to the office the names and other identifying
83 information, which may include fingerprints, of all persons associated with the licensee, as
84 defined in Section 62A-2-101, with direct access to children or vulnerable adults.

85 (b) The Criminal Investigations and Technical Services Division of the Department of
86 Public Safety, or the office as authorized under Section 53-10-108, shall process the
87 information described in Subsection (1)(a) to determine whether the [~~individual~~] applicant has
88 been convicted of any crime.

89 (c) Except as provided in Subsection (1)(d), if an [~~individual~~] applicant has not

90 continuously lived in Utah for the five years immediately preceding the day on which the
91 information referred to in Subsection (1)(a) is submitted to the office, the ~~[individual]~~ applicant
92 shall submit fingerprints for a FBI national criminal history record check. The fingerprints
93 shall be submitted to the FBI through the Criminal Investigations and Technical Services
94 Division.

95 (d) An ~~[individual]~~ applicant is not required to comply with Subsection (1)(c) if:

96 (i) the ~~[individual]~~ applicant continuously lived in Utah for the five years immediately
97 preceding the day on which the information described in Subsection (1)(a) is submitted to the
98 office, except for time spent outside of the United States and its territories; and

99 (ii) the background check of the ~~[individual]~~ applicant is being conducted for a purpose
100 other than a purpose described in Subsection (1)(f).

101 (e) If an applicant described in Subsection (1)(a) spent time outside of the United
102 States and its territories during the five years immediately preceding the day on which the
103 information described in Subsection (1)(a) is submitted to the office, the office shall require the
104 applicant to submit documentation establishing whether the applicant was convicted of a crime
105 during the time that the applicant spent outside of the United States and its territories.

106 (f) Notwithstanding Subsections (1)(a) through (e), and except as provided in
107 Subsection (1)(h), an applicant described in Subsection (1)(a) shall submit fingerprints for an
108 FBI national criminal history records check, through the Criminal Investigations and Technical
109 Services Division, if the background check of the applicant is being conducted for the purpose
110 of:

111 (i) licensing a prospective foster home; or

112 (ii) approving a prospective adoptive placement of a child in state custody.

113 (g) Except as provided in Subsection (1)(h), in addition to the other requirements of
114 this section, if the background check of an applicant described in Subsection (1)(a) is being
115 conducted for the purpose of licensing a prospective foster home or approving a prospective
116 adoptive placement of a child in state custody, the office shall:

117 (i) check the child abuse and neglect registry in each state where each ~~[prospective~~
118 ~~foster parent or prospective adoptive parent]~~ applicant resided in the five years immediately
119 preceding the day on which the ~~[prospective foster parent or prospective adoptive parent]~~
120 applicant applied to be a foster parent or adoptive parent, to determine whether the prospective

121 foster parent or prospective adoptive parent is listed in the registry as having a substantiated or
122 supported finding of child abuse or neglect; and

123 (ii) check the child abuse and neglect registry in each state where each adult living in
124 the home of the [~~prospective foster parent or prospective adoptive parent~~] applicant described
125 in Subsection (1)(g)(i) resided in the five years immediately preceding the day on which the
126 [~~prospective foster parent or prospective adoptive parent~~] applicant applied to be a foster parent
127 or adoptive parent, to determine whether the adult is listed in the registry as having a
128 substantiated or supported finding of child abuse or neglect.

129 (h) The requirements under Subsections (1)(f) and (g) do not apply to the extent that:

130 (i) federal law or rule permits otherwise; or

131 (ii) the requirements would prohibit the Division of Child and Family Services or a
132 court from placing a child with:

133 (A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

134 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,
135 or 78A-6-307.5, pending completion of the background check described in Subsections (1)(f)
136 and (g).

137 (i) The office shall make rules, in accordance with Title 63G, Chapter 3, Utah
138 Administrative Rulemaking Act, to implement the provisions of this Subsection (1) relating to
139 background checks.

140 (2) The office shall approve [~~a person~~] an applicant for whom identifying information
141 is submitted under Subsection (1) to have direct access to children or vulnerable adults in the
142 licensee program if:

143 (a) (i) the [~~person~~] applicant is found to have no criminal history record; or

144 (ii) (A) the only convictions in the [~~person's~~] applicant's criminal history record are
145 misdemeanors or infractions not involving any of the offenses described in Subsection (3); and

146 (B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years
147 before the date of the search;

148 (b) the [~~person~~] applicant is not listed in the statewide database of the Division of
149 Aging and Adult Services created by Section 62A-3-311.1;

150 (c) juvenile court records do not show that a court made a substantiated finding, under
151 Section 78A-6-323, that the [~~person~~] applicant committed a severe type of child abuse or

152 neglect;

153 (d) the ~~[person]~~ applicant is not listed in the Licensing Information System of the
154 Division of Child and Family Services created by Section 62A-4a-1006;

155 (e) the ~~[person]~~ applicant has not pled guilty or no contest to a pending charge for any:

156 (i) felony;

157 (ii) misdemeanor listed in Subsection (3); or

158 (iii) infraction listed in Subsection (3); and

159 (f) for ~~[a person]~~ an applicant described in Subsection (1)(g), the registry check

160 described in Subsection (1)(g) does not indicate that the ~~[person]~~ applicant is listed in a child
161 abuse and neglect registry of another state as having a substantiated or supported finding of a
162 severe type of child abuse or neglect as defined in Section 62A-4a-1002.

163 (3) Except as provided in Subsection (8), unless at least 10 years have passed since the
164 date of conviction, the office may not approve ~~[a person]~~ an applicant to have direct access to
165 children or vulnerable adults in the licensee's human services program if ~~[that person]~~ the
166 applicant has been convicted of an offense, whether a felony, misdemeanor, or infraction, that
167 is:

168 (a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;

169 (b) a violation of any pornography law, including sexual exploitation of a minor;

170 (c) prostitution;

171 (d) included in:

172 (i) Title 76, Chapter 5, Offenses Against the Person;

173 (ii) Section 76-5b-201, Sexual Exploitation of a Minor; or

174 (iii) Title 76, Chapter 7, Offenses Against the Family;

175 (e) a violation of Section 76-6-103, aggravated arson;

176 (f) a violation of Section 76-6-203, aggravated burglary;

177 (g) a violation of Section 76-6-302, aggravated robbery; or

178 (h) a conviction for an offense committed outside of the state that, if committed in the
179 state, would constitute a violation of an offense described in Subsections (3)(d) through (g).

180 (4) (a) Except as provided in Subsection (8), if ~~[a person]~~ an applicant for whom
181 identifying information is submitted under Subsection (1) is not approved by the office under
182 Subsection (2) or (3) to have direct access to children or vulnerable adults in the licensee

183 program, the office shall conduct a comprehensive review of criminal and court records and
184 related circumstances if the reason the approval is not granted is due solely to one or more of
185 the following:

186 (i) a conviction for:

187 (A) any felony not listed in Subsection (3);

188 (B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the
189 date of the search;

190 (C) a protective order or ex parte protective order violation under Section 76-5-108 or
191 a similar statute in another state; or

192 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least 10 years
193 have passed since the date of conviction;

194 (ii) a plea of guilty or no contest to a pending:

195 (A) felony;

196 (B) misdemeanor listed in Subsection (3); or

197 (C) infraction listed in Subsection (3);

198 (iii) the [person] applicant is listed in the statewide database of the Division of Aging
199 and Adult Services created by Section 62A-3-311.1;

200 (iv) juvenile court records show that a court made a substantiated finding, under
201 Section 78A-6-323, that the [person] applicant committed a severe type of child abuse or
202 neglect;

203 (v) the [person] applicant is listed in the Licensing Information System of the Division
204 of Child and Family Services created by Section 62A-4a-1006; or

205 (vi) the [person] applicant is listed in a child abuse or neglect registry of another state
206 as having a substantiated or supported finding of a severe type of child abuse or neglect as
207 defined in Section 62A-4a-1002.

208 (b) The comprehensive review under Subsection (4)(a) shall include an examination of:

209 (i) the date of the offense or incident;

210 (ii) the nature and seriousness of the offense or incident;

211 (iii) the circumstances under which the offense or incident occurred;

212 (iv) the age of the perpetrator when the offense or incident occurred;

213 (v) whether the offense or incident was an isolated or repeated incident;

214 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
215 adult, including:

216 (A) actual or threatened, nonaccidental physical or mental harm;

217 (B) sexual abuse;

218 (C) sexual exploitation; and

219 (D) negligent treatment;

220 (vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric
221 treatment received, or additional academic or vocational schooling completed, by the person;

222 and

223 (viii) any other pertinent information.

224 (c) At the conclusion of the comprehensive review under Subsection (4)(a), the office
225 shall approve the ~~[person]~~ applicant who is the subject of the review to have direct access to
226 children or vulnerable adults, unless it finds that approval will likely create a risk of harm to a
227 child or vulnerable adult.

228 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
229 office may make rules, consistent with this chapter, defining procedures for the comprehensive
230 review described in this Subsection (4).

231 (5) (a) For purposes of this Subsection (5), "directly supervised" means that the person
232 being supervised is under the uninterrupted visual and auditory surveillance of the person doing
233 the supervising.

234 (b) A licensee may not permit any person to have direct access to a child or a
235 vulnerable adult unless, subject to Subsection (5)(c), that person is:

236 (i) associated with the licensee and:

237 (A) approved by the office to have direct access to children or vulnerable adults under
238 this section; or

239 (B) (I) the office has not determined whether to approve that person to have direct
240 access to children or vulnerable adults;

241 (II) the information described in Subsection (1)(a), relating to that person, is submitted
242 to the department; and

243 (III) that person is directly supervised by a person associated with the licensee who is
244 approved by the office to have direct access to children or vulnerable adults under this section;

245 (ii) (A) not associated with the licensee; and
246 (B) directly supervised by a person associated with the licensee who is approved by the
247 office to have direct access to children or vulnerable adults under this section;
248 (iii) the parent or guardian of the child or vulnerable adult; or
249 (iv) a person approved by the parent or guardian of the child or vulnerable adult to
250 have direct access to the child or vulnerable adult.

251 (c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child
252 or a vulnerable adult if that person is prohibited by court order from having that access.

253 (6) (a) Within 30 days after receiving the identifying information for a person under
254 Subsection (1), the office shall give written notice to the person and to the licensee or applicant
255 with whom the person is associated of:

256 (i) the office's decision regarding its background screening clearance and findings; and
257 (ii) a list of any convictions found in the search.

258 (b) With the notice described in Subsection (6)(a), the office shall also give ~~[to]~~ the
259 ~~[person]~~ applicant the details of any comprehensive review conducted under Subsection (4).

260 (c) If the notice under Subsection (6)(a) states that the ~~[person]~~ applicant is not
261 approved to have direct access to children or vulnerable adults, the notice shall further advise
262 the persons to whom the notice is given that either the person or the licensee or applicant with
263 whom the person is associated, or both, may, under Subsection 62A-2-111(2), request a hearing
264 in the department's Office of Administrative Hearings, to challenge the office's decision.

265 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
266 office shall make rules, consistent with this chapter:

267 (i) defining procedures for the challenge of its background screening decision
268 described in this Subsection (6); and
269 (ii) expediting the process for renewal of a license under the requirements of this
270 section and other applicable sections.

271 (7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for
272 an initial license, or license renewal, to operate a substance abuse program that provides
273 services to adults only.

274 (8) (a) Notwithstanding Subsections (2) through (4), the office may not approve or
275 license a person as a prospective foster parent or a prospective adoptive parent if the person has

276 been convicted of:

277 (i) a felony involving conduct that constitutes any of the following:

278 (A) child abuse, as described in Section 76-5-109;

279 (B) commission of domestic violence in the presence of a child, as described in Section
280 76-5-109.1;

281 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

282 (D) endangerment of a child, as described in Section 76-5-112.5;

283 (E) aggravated murder, as described in Section 76-5-202;

284 (F) murder, as described in Section 76-5-203;

285 (G) manslaughter, as described in Section 76-5-205;

286 (H) child abuse homicide, as described in Section 76-5-208;

287 (I) homicide by assault, as described in Section 76-5-209;

288 (J) kidnapping, as described in Section 76-5-301;

289 (K) child kidnapping, as described in Section 76-5-301.1;

290 (L) aggravated kidnapping, as described in Section 76-5-302;

291 (M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

292 (N) an offense described in Section 76-5b-201, Sexual Exploitation of a Minor;

293 (O) aggravated arson, as described in Section 76-6-103;

294 (P) aggravated burglary, as described in Section 76-6-203;

295 (Q) aggravated robbery, as described in Section 76-6-302; or

296 (R) domestic violence, as described in Section 77-36-1; or

297 (ii) an offense committed outside the state that, if committed in the state, would
298 constitute a violation of an offense described in Subsection (8)(a)(i).

299 (b) Notwithstanding Subsections (2) through (4), the office may not approve or license
300 a person as a prospective foster parent or a prospective adoptive parent if, within the five years
301 immediately preceding the day on which the person would otherwise be approved or licensed,
302 the person has been convicted of a felony involving conduct that constitutes any of the
303 following:

304 (i) aggravated assault, as described in Section 76-5-103;

305 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;

306 (iii) mayhem, as described in Section 76-5-105;

307 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
308 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
309 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
310 Act;

311 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
312 Precursor Act; or

313 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

314 (9) If any provision of this section conflicts with a provision of Section 62A-2-120.5,
315 the conflicting provision of Section 62A-2-120.5 shall govern.

316 Section 2. Section **62A-4a-102** is amended to read:

317 **62A-4a-102. Policy responsibilities of division.**

318 (1) The Division of Child and Family Services, created in Section 62A-4a-103, is
319 responsible for establishing policies for the division, by rule, under Title 63G, Chapter 3, Utah
320 Administrative Rulemaking Act, in accordance with the requirements of this chapter and Title
321 78A, Chapter 6, Juvenile Court Act of 1996, regarding abuse, neglect, and dependency
322 proceedings, and domestic violence services. The division is responsible to see that the
323 legislative purposes for the division are carried out.

324 (2) The division shall:

325 (a) approve fee schedules for programs within the division;

326 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
327 establish, by rule, policies to ensure that private citizens, consumers, foster parents, private
328 contract providers, allied state and local agencies, and others are provided with an opportunity
329 to comment and provide input regarding any new policy or proposed revision of an existing
330 policy; and

331 (c) provide a mechanism for:

332 (i) systematic and regular review of existing ~~[policy]~~ policies, including an annual
333 review of all division policies to ensure that policies comply with the Utah Code; and

334 (ii) consideration of policy changes proposed by the persons and agencies described in
335 Subsection (2)(b).

336 (3) (a) The division shall establish rules for the determination of eligibility for services
337 offered by the division in accordance with this chapter.

338 (b) The division may, by rule, establish eligibility standards for consumers.

339 (4) The division shall adopt and maintain rules regarding placement for adoption or
340 foster care that are consistent with, and no more restrictive than, applicable statutory
341 provisions.

342 Section 3. Section **62A-4a-107** is amended to read:

343 **62A-4a-107. Mandatory education and training of caseworkers -- Development of**
344 **curriculum.**

345 (1) There is created within the division a full-time position of Child Welfare Training
346 Coordinator, who shall be appointed by and serve at the pleasure of the director. The employee
347 in that position is not responsible for direct casework services or the supervision of those
348 services, but is required to:

349 (a) develop child welfare curriculum that:

350 (i) is current and effective, consistent with the division's mission and purpose for child
351 welfare; and

352 (ii) utilizes curriculum and resources from a variety of sources including those from:

353 (A) the public sector;

354 (B) the private sector; and

355 (C) inside and outside of the state;

356 (b) recruit, select, and supervise child welfare trainers;

357 (c) develop a statewide training program, including a budget and identification of
358 sources of funding to support that training;

359 (d) evaluate the efficacy of training in improving job performance;

360 (e) assist child protective services and foster care workers in developing and fulfilling
361 their individual training plans;

362 (f) monitor staff compliance with division training requirements and individual training
363 plans; and

364 (g) expand the collaboration between the division and schools of social work within
365 institutions of higher education in developing child welfare services curriculum, and in
366 providing and evaluating training.

367 (2) (a) The director shall, with the assistance of the child welfare training coordinator,
368 establish a core curriculum for child welfare services that is substantially equivalent to the

369 Child Welfare League of America's Core Training for Child Welfare Caseworkers Curriculum.

370 (b) Any child welfare caseworker who is employed by the division for the first time
371 after July 1, 1999, shall, before assuming significant independent casework responsibilities,
372 successfully complete:

373 (i) the core curriculum; and

374 (ii) except as provided in Subsection (2)(c), on-the-job training that consists of
375 observing and accompanying at least two capable and experienced child welfare caseworkers
376 as they perform work-related functions:

377 (A) for three months if the caseworker has less than six months of on-the-job
378 experience as a child welfare caseworker; or

379 (B) for two months if the caseworker has six months or more but less than 24 months
380 of on-the-job experience as a child welfare caseworker.

381 (c) A child welfare caseworker with at least 24 months of on-the-job experience is not
382 required to receive on-the-job training under Subsection (2)(b)(ii).

383 (3) Child welfare caseworkers shall complete training in:

384 (a) the legal duties of a child welfare caseworker;

385 (b) the responsibility of a child welfare caseworker to protect the safety and legal rights
386 of children, parents, and families at all stages of a case, including:

387 (i) initial contact;

388 (ii) investigation; and

389 (iii) treatment;

390 (c) recognizing situations involving:

391 (i) substance abuse;

392 (ii) domestic violence;

393 (iii) abuse; and

394 (iv) neglect; and

395 (d) the relationship of the Fourth and Fourteenth Amendments of the Constitution of
396 the United States to the child welfare caseworker's job, including:

397 (i) search and seizure of evidence;

398 (ii) the warrant requirement;

399 (iii) exceptions to the warrant requirement; and

400 (iv) removing a child from the custody of the child's parent or guardian.

401 (4) The division shall train its child welfare caseworkers to apply the risk assessment
402 tools and rules described in Subsection 62A-4a-1002(2).

403 (5) The division shall use the training of child welfare caseworkers to emphasize:

404 (a) the importance of maintaining the parent-child relationship whenever possible;

405 (b) the preference for providing in-home services over taking a child into protective
406 custody, both for the emotional well-being of the child and the efficient allocation of resources;
407 and

408 (c) the importance and priority of kinship placement in the event a child must be taken
409 into protective custody.

410 [~~5~~] (6) When a child welfare caseworker is hired, before assuming significant
411 independent casework responsibilities, the child welfare caseworker shall complete the training
412 described in Subsections (3) [~~and (4)~~] through (5).

413 Section 4. Section **62A-4a-202.1** is amended to read:

414 **62A-4a-202.1. Entering home of a child -- Taking a child into protective custody**
415 **-- Caseworker accompanied by peace officer -- Preventive services -- Shelter facility or**
416 **emergency placement.**

417 (1) A peace officer or child welfare worker may not:

418 (a) enter the home of a child who is not under the jurisdiction of the court, remove a
419 child from the child's home or school, or take a child into protective custody unless authorized
420 under Subsection 78A-6-106(2)[~~7~~]; or

421 (b) remove a child from the child's home or take a child into custody under this section
422 solely on the basis of educational neglect, truancy, or failure to comply with a court order to
423 attend school.

424 (2) A child welfare worker within the division may take action under Subsection (1)
425 accompanied by a peace officer, or without a peace officer when a peace officer is not
426 reasonably available.

427 (3) (a) If possible, consistent with the child's safety and welfare, before taking a child
428 into protective custody, the child welfare worker shall also determine whether there are
429 services available that, if provided to a parent or guardian of the child, would eliminate the
430 need to remove the child from the custody of the child's parent or guardian.

431 (b) If the services described in Subsection (3)(a) are reasonably available, they shall be
432 utilized.

433 (c) In determining whether the services described in Subsection (3)(a) are reasonably
434 available, and in making reasonable efforts to provide those services, the child's health, safety,
435 and welfare shall be the child welfare worker's paramount concern.

436 (4) (a) A child removed or taken into custody under this section may not be placed or
437 kept in a secure detention facility pending court proceedings unless the child is detainable
438 based on guidelines promulgated by the Division of Juvenile Justice Services.

439 (b) A child removed from the custody of the child's parent or guardian but who does
440 not require physical restriction shall be given temporary care in:

441 (i) a shelter facility; or

442 (ii) an emergency placement in accordance with Section 62A-4a-209.

443 (c) When making a placement under Subsection (4)(b), the Division of Child and
444 Family Services shall give priority to a placement with a noncustodial parent, relative, or
445 friend, in accordance with Section 62A-4a-209.

446 (d) If the child is not placed with a noncustodial parent, a relative, or a designated
447 friend, the caseworker assigned to the child shall file a report with the caseworker's supervisor
448 explaining why a different placement was in the child's best interest.

449 Section 5. Section **62A-4a-202.6** is amended to read:

450 **62A-4a-202.6. Conflict child protective services investigations -- Authority of**
451 **investigators.**

452 (1) (a) The division shall contract with an independent child protective service
453 investigator from the private sector to investigate reports of abuse or neglect of a child that
454 occur while the child is in the custody of the division.

455 (b) The executive director shall designate an entity within the department, other than
456 the division, to monitor the contract for the investigators described in Subsection (1)(a).

457 (c) [~~When~~] Subject to Subsection (4), when a report is made that a child is abused or
458 neglected while in the custody of the division:

459 (i) the attorney general may, in accordance with Section 67-5-16, and with the consent
460 of the division, employ a child protective services investigator to conduct a conflict
461 investigation of the report; or

462 (ii) a law enforcement officer, as defined in Section 53-13-103, may, with the consent
463 of the division, conduct a conflict investigation of the report.

464 (d) Subsection (1)(c)(ii) does not prevent a law enforcement officer from, without the
465 consent of the division, conducting a criminal investigation of abuse or neglect under Title 53,
466 Public Safety Code.

467 (2) The investigators described in Subsections (1)(c) and (d) may also investigate
468 allegations of abuse or neglect of a child by a department employee or a licensed substitute care
469 provider.

470 (3) The investigators described in Subsection (1), if not peace officers, shall have the
471 same rights, duties, and authority of a child protective services investigator employed by the
472 division to:

473 (a) make a thorough investigation upon receiving either an oral or written report of
474 alleged abuse or neglect of a child, with the primary purpose of that investigation being the
475 protection of the child;

476 (b) make an inquiry into the child's home environment, emotional, or mental health, the
477 nature and extent of the child's injuries, and the child's physical safety;

478 (c) make a written report of their investigation, including determination regarding
479 whether the alleged abuse or neglect was substantiated, unsubstantiated, or without merit, and
480 forward a copy of that report to the division within the time mandates for investigations
481 established by the division; and

482 (d) immediately consult with school authorities to verify the child's status in
483 accordance with Sections 53A-11-101 through 53A-11-103 when a report is based upon or
484 includes an allegation of educational neglect.

485 (4) If there is a lapse in the contract with a private child protective service investigator
486 and no other investigator is available under Subsection (1)(a) or (c), the department may
487 conduct an independent investigation.

488 Section 6. Section **62A-4a-209** is amended to read:

489 **62A-4a-209. Emergency placement.**

490 (1) As used in this section:

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

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

493 (2) The division may use an emergency placement under Subsection
494 62A-4a-202.1(4)(b)(ii) when:
495 (a) the case worker has made the determination that:
496 (i) the child's home is unsafe;
497 (ii) removal is necessary under the provisions of Section 62A-4a-202.1; and
498 (iii) the child's custodial parent or guardian will agree to not remove the child from the
499 home of the person that serves as the placement and not have any contact with the child until
500 after the shelter hearing required by Section 78A-6-306;
501 (b) a person, with preference being given in accordance with Subsection (4), can be
502 identified who has the ability and is willing to provide care for the child who would otherwise
503 be placed in shelter care, including:
504 (i) taking the child to medical, mental health, dental, and educational appointments at
505 the request of the division; and
506 (ii) making the child available to division services and the guardian ad litem; and
507 (c) the person described in Subsection (2)(b) agrees to care for the child on an
508 emergency basis under the following conditions:
509 (i) the person meets the criteria for an emergency placement under Subsection (3);
510 (ii) the person agrees to not allow the custodial parent or guardian to have any contact
511 with the child until after the shelter hearing unless authorized by the division in writing;
512 (iii) the person agrees to contact law enforcement and the division if the custodial
513 parent or guardian attempts to make unauthorized contact with the child;
514 (iv) the person agrees to allow the division and the child's guardian ad litem to have
515 access to the child;
516 (v) the person has been informed and understands that the division may continue to
517 search for other possible placements for long-term care, if needed;
518 (vi) the person is willing to assist the custodial parent or guardian in reunification
519 efforts at the request of the division, and to follow all court orders; and
520 (vii) the child is comfortable with the person.
521 (3) Except as otherwise provided in Subsection (5), before the division places a child
522 in an emergency placement, the division:
523 (a) may request the name of a reference and may contact the reference to determine the

524 answer to the following questions:

525 (i) would the person identified as a reference place a child in the home of the
526 emergency placement; and

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

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

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

533 (ii) if the emergency placement will be with a person other than a noncustodial parent
534 or a relative, shall comply with the criminal background check provisions described in Section
535 78A-6-308 for adults living in the household where the child will be placed;

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

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

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

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

543 (ii) a relative of the child;

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

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

548 (b) Unless the division agrees otherwise, the custodial parent or guardian described in
549 Subsection (4)(a)(iii) may only designate one friend as a potential emergency placement.

550 (c) Before placing the child with a shelter facility, former foster placement, or other
551 foster placement under Subsection (4)(a)(iv), the caseworker assigned to the child shall submit
552 a report to the division:

553 (i) explaining why placement with a noncustodial parent, family member, or friend
554 designated under Subsection (4)(a)(iii) is not possible; and

555 (ii) that shall be made available upon request to the child's parent or family member.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

585 (ii) a completed search of the Management Information System described in Section

586 62A-4a-1003.

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

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

592 Section 7. Section **62A-4a-404** is amended to read:

593 **62A-4a-404. Fetal alcohol syndrome and drug dependency -- Reporting**
594 **requirements.**

595 When [~~any person~~] an individual, including a licensee under the Medical Practice Act
596 or the Nurse Practice Act, attends the birth of a child or cares for a child, and determines that
597 the child, at the time of birth, has fetal alcohol syndrome [~~or~~], fetal alcohol spectrum disorder,
598 or fetal drug dependency, [~~he~~] the individual shall report that determination to the division as
599 soon as possible.

600 Section 8. Section **78A-4-201** is enacted to read:

601 **78A-4-201. Appellate review of juvenile courts.**

602 The court shall apply de novo review to legal issues raised in an appeal of a lower
603 court's decision to terminate parental rights.

604 Section 9. Section **78A-6-302** is amended to read:

605 **78A-6-302. Court-ordered protective custody of a child following petition filing --**
606 **Grounds.**

607 (1) After a petition has been filed under Section 78A-6-304, if the child who is the
608 subject of the petition is not in the protective custody of the division, a court may order that the
609 child be removed from the child's home or otherwise taken into protective custody if the court
610 finds, by a preponderance of the evidence, that any one or more of the following circumstances
611 exist:

612 (a) (i) there is an imminent danger to the physical health or safety of the child; and

613 (ii) the child's physical health or safety may not be protected without removing the
614 child from the custody of the child's parent or guardian;

615 (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct
616 that causes the child to suffer emotional damage; and

617 (ii) there are no reasonable means available by which the child's emotional health may
618 be protected without removing the child from the custody of the child's parent or guardian;

619 (c) the child or another child residing in the same household has been, or is considered
620 to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a
621 parent or guardian, a member of the parent's or guardian's household, or other person known to
622 the parent or guardian;

623 (d) the parent or guardian is unwilling to have physical custody of the child;

624 (e) the child is abandoned or left without any provision for the child's support;

625 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged
626 or cannot arrange for safe and appropriate care for the child;

627 (g) (i) a relative or other adult custodian with whom the child is left by the parent or
628 guardian is unwilling or unable to provide care or support for the child;

629 (ii) the whereabouts of the parent or guardian are unknown; and

630 (iii) reasonable efforts to locate the parent or guardian are unsuccessful;

631 (h) the child is in immediate need of medical care;

632 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an
633 environment that poses a threat to the child's health or safety; or

634 (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose
635 a threat to the child's health or safety;

636 (j) the child or another child residing in the same household has been neglected;

637 (k) an infant has been abandoned, as defined in Section 78A-6-316;

638 (l) (i) the parent or guardian, or an adult residing in the same household as the parent or
639 guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act;
640 and

641 (ii) any clandestine laboratory operation was located in the residence or on the property
642 where the child resided; or

643 (m) the child's welfare is otherwise endangered.

644 (2) (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as
645 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
646 occurs involving the same substantiated abuser or under similar circumstance as the previous
647 abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the

648 custody of the child's parent.

649 (b) For purposes of Subsection (1)(c):

650 (i) another child residing in the same household may not be removed from the home
651 unless that child is considered to be at substantial risk of being physically abused, sexually
652 abused, or sexually exploited as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

653 (ii) if a parent or guardian has received actual notice that physical abuse, sexual abuse,
654 or sexual exploitation by a person known to the parent has occurred, and there is evidence that
655 the parent or guardian failed to protect the child, after having received the notice, by allowing
656 the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie
657 evidence that the child is at substantial risk of being physically abused, sexually abused, or
658 sexually exploited.

659 (3) In the absence of one of the factors described in Subsection (1), a court may not
660 remove a child from the parent's or guardian's custody on the basis of:

661 (a) educational neglect, truancy, or failure to comply with a court order to attend
662 school;

663 (b) mental illness or poverty of the parent or guardian; or

664 (c) disability of the parent or guardian, as defined in Section 57-21-2.

665 (4) A child removed from the custody of the child's parent or guardian under this
666 section may not be placed or kept in a secure detention facility pending further court
667 proceedings unless the child is detainable based on guidelines promulgated by the Division of
668 Juvenile Justice Services.

669 (5) This section does not preclude removal of a child from the child's home without a
670 warrant or court order under Section 62A-4a-202.1.

671 (6) (a) Except as provided in Subsection (6)(b), a court or the Division of Child and
672 Family Services may not remove a child from the custody of the child's parent or guardian on
673 the sole or primary basis that the parent or guardian refuses to consent to:

674 (i) the administration of a psychotropic medication to a child;

675 (ii) a psychiatric, psychological, or behavioral treatment for a child; or

676 (iii) a psychiatric or behavioral health evaluation of a child.

677 (b) Notwithstanding Subsection (6)(a), a court or the Division of Child and Family
678 Services may remove a child under conditions that would otherwise be prohibited under

679 Subsection (6)(a) if failure to take an action described under Subsection (6)(a) would present a
680 serious, imminent risk to the child's physical safety or the physical safety of others.

681 Section 10. Section **78A-6-306** is amended to read:

682 **78A-6-306. Shelter hearing.**

683 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays
684 after any one or all of the following occur:

685 (a) removal of the child from the child's home by the division;

686 (b) placement of the child in the protective custody of the division;

687 (c) emergency placement under Subsection 62A-4a-202.1(4);

688 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter
689 at the request of the division; or

690 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under
691 Subsection 78A-6-106(4).

692 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)
693 through (e), the division shall issue a notice that contains all of the following:

694 (a) the name and address of the person to whom the notice is directed;

695 (b) the date, time, and place of the shelter hearing;

696 (c) the name of the child on whose behalf a petition is being brought;

697 (d) a concise statement regarding:

698 (i) the reasons for removal or other action of the division under Subsection (1); and

699 (ii) the allegations and code sections under which the proceeding has been instituted;

700 (e) a statement that the parent or guardian to whom notice is given, and the child, are
701 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
702 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
703 provided in accordance with the provisions of Section 78A-6-1111; and

704 (f) a statement that the parent or guardian is liable for the cost of support of the child in
705 the protective custody, temporary custody, and custody of the division, and the cost for legal
706 counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial
707 ability of the parent or guardian.

708 (3) The notice described in Subsection (2) shall be personally served as soon as
709 possible, but no later than one business day after removal of the child from the child's home, or

710 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection
711 78A-6-106(4), on:

- 712 (a) the appropriate guardian ad litem; and
- 713 (b) both parents and any guardian of the child, unless the parents or guardians cannot
714 be located.

715 (4) The following persons shall be present at the shelter hearing:

- 716 (a) the child, unless it would be detrimental for the child;
- 717 (b) the child's parents or guardian, unless the parents or guardian cannot be located, or
718 fail to appear in response to the notice;
- 719 (c) counsel for the parents, if one is requested;
- 720 (d) the child's guardian ad litem;
- 721 (e) the caseworker from the division who is assigned to the case; and
- 722 (f) the attorney from the attorney general's office who is representing the division.

723 (5) (a) At the shelter hearing, the court shall:

- 724 (i) provide an opportunity to provide relevant testimony to:
725 (A) the child's parent or guardian, if present; and
726 (B) any other person having relevant knowledge; and
- 727 (ii) subject to Section 78A-6-305, provide an opportunity for the child to testify.

728 (b) The court:

- 729 (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile
730 Procedure;
- 731 (ii) shall hear relevant evidence presented by the child, the child's parent or guardian,
732 the requesting party, or their counsel; and
- 733 (iii) may in its discretion limit testimony and evidence to only that which goes to the
734 issues of removal and the child's need for continued protection.

735 (6) If the child is in the protective custody of the division, the division shall report to
736 the court:

- 737 (a) the reason why the child was removed from the parent's or guardian's custody;
- 738 (b) any services provided to the child and the child's family in an effort to prevent
739 removal;
- 740 (c) the need, if any, for continued shelter;

741 (d) the available services that could facilitate the return of the child to the custody of
742 the child's parent or guardian; and

743 (e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the
744 child or friends of the child's parents may be able and willing to accept temporary placement of
745 the child.

746 (7) The court shall consider all relevant evidence provided by persons or entities
747 authorized to present relevant evidence pursuant to this section.

748 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good
749 cause shown, the court may grant no more than one continuance, not to exceed five judicial
750 days.

751 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for
752 a continuance under Subsection (8)(a).

753 (9) (a) If the child is in the protective custody of the division, the court shall order that
754 the child be released from the protective custody of the division unless it finds, by a
755 preponderance of the evidence, that any one of the following exist:

756 (i) subject to Subsection (9)(b)(i), there is a substantial danger to the physical health or
757 safety of the child and the child's physical health or safety may not be protected without
758 removing the child from the custody of the child's parent;

759 (ii) (A) the child is suffering emotional damage; and

760 (B) there are no reasonable means available by which the child's emotional health may
761 be protected without removing the child from the custody of the child's parent;

762 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is
763 not removed from the custody of the child's parents;

764 (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same
765 household has been, or is considered to be at substantial risk of being, physically abused,
766 sexually abused, or sexually exploited by a:

767 (A) parent;

768 (B) member of the parent's household; or

769 (C) person known to the parent;

770 (v) the parent is unwilling to have physical custody of the child;

771 (vi) the child is without any provision for the child's support;

772 (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe
773 and appropriate care for the child;

774 (viii) (A) a relative or other adult custodian with whom the child is left by the parent is
775 unwilling or unable to provide care or support for the child;

776 (B) the whereabouts of the parent are unknown; and

777 (C) reasonable efforts to locate the parent are unsuccessful;

778 (ix) the child is in urgent need of medical care;

779 (x) the physical environment or the fact that the child is left unattended beyond a
780 reasonable period of time poses a threat to the child's health or safety;

781 (xi) the child or a minor residing in the same household has been neglected;

782 (xii) the parent, or an adult residing in the same household as the parent, is charged or
783 arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine
784 laboratory operation was located in the residence or on the property where the child resided; or

785 (xiii) the child's welfare is substantially endangered.

786 (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is
787 established if:

788 (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency
789 involving the parent; and

790 (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

791 (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly
792 allowed the child to be in the physical care of a person after the parent received actual notice
793 that the person physically abused, sexually abused, or sexually exploited the child, that fact
794 constitutes prima facie evidence that there is a substantial risk that the child will be physically
795 abused, sexually abused, or sexually exploited.

796 (10) (a) (i) The court shall also make a determination on the record as to whether
797 reasonable efforts were made to prevent or eliminate the need for removal of the child from the
798 child's home and whether there are available services that would prevent the need for continued
799 removal.

800 (ii) If the court finds that the child can be safely returned to the custody of the child's
801 parent or guardian through the provision of those services, the court shall place the child with
802 the child's parent or guardian and order that those services be provided by the division.

803 (b) In making the determination described in Subsection (10)(a), and in ordering and
804 providing services, the child's health, safety, and welfare shall be the paramount concern, in
805 accordance with federal law.

806 (11) Where the division's first contact with the family occurred during an emergency
807 situation in which the child could not safely remain at home, the court shall make a finding that
808 any lack of preplacement preventive efforts was appropriate.

809 (12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe
810 abuse, or severe neglect are involved, neither the division nor the court has any duty to make
811 "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home,
812 return a child to the child's home, provide reunification services, or attempt to rehabilitate the
813 offending parent or parents.

814 (13) The court may not order continued removal of a child solely on the basis of
815 educational neglect as described in Subsection 78A-6-105(25)(b) truancy, or failure to comply
816 with a court order to attend school.

817 (14) (a) Whenever a court orders continued removal of a child under this section, the
818 court shall state the facts on which that decision is based.

819 (b) If no continued removal is ordered and the child is returned home, the court shall
820 state the facts on which that decision is based.

821 (15) If the court finds that continued removal and temporary custody are necessary for
822 the protection of a child because harm may result to the child if the child were returned home,
823 the court shall order continued removal regardless of:

824 (a) any error in the initial removal of the child;

825 (b) the failure of a party to comply with notice provisions; or

826 (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child
827 and Family Services.

828 Section 11. Section **78A-6-308** is amended to read:

829 **78A-6-308. Criminal background checks necessary prior to out-of-home**
830 **placement.**

831 (1) Subject to Subsection (3), upon ordering removal of a child from the custody of the
832 child's parent and placing that child in the custody of the Division of Child and Family
833 Services, prior to the division's placement of that child in out-of-home care, the court shall

834 require the completion of a nonfingerprint-based background check by the Utah Bureau of
835 Criminal Identification regarding the proposed placement.

836 (2) (a) Except as provided in Subsection (4), the division and the Office of Guardian ad
837 Litem may request, or the court upon the court's own motion may order, the Department of
838 Public Safety to conduct a complete Federal Bureau of Investigation criminal background
839 check through the national criminal history system (NCIC).

840 (b) Except as provided in Subsection (4), upon request by the division or the Office of
841 Guardian ad Litem, or upon the court's order, persons subject to the requirements of Subsection
842 (1) shall submit fingerprints and shall be subject to an FBI fingerprint background check. The
843 child may be temporarily placed, pending the outcome of that background check.

844 (c) The cost of those investigations shall be borne by whoever is to receive placement
845 of the child, except that the Division of Child and Family Services may pay all or part of the
846 cost of those investigations.

847 (3) Except as provided in Subsection (5), a child who is in the legal custody of the state
848 may not be placed with a prospective foster parent or a prospective adoptive parent, unless,
849 before the child is placed with the prospective foster parent or the prospective adoptive parent:

850 (a) a fingerprint based FBI national criminal history records check is conducted on the
851 prospective foster parent or prospective adoptive parent and any other adult residing in the
852 household;

853 (b) the Department of Human Services conducts a check of the abuse and neglect
854 registry in each state where the prospective foster parent or prospective adoptive parent resided
855 in the five years immediately preceding the day on which the prospective foster parent or
856 prospective adoptive parent applied to be a foster parent or adoptive parent, to determine
857 whether the prospective foster parent or prospective adoptive parent is listed in the registry as
858 having a substantiated or supported finding of a severe type of abuse or neglect as defined in
859 Section 62A-4a-1002;

860 (c) the Department of Human Services conducts a check of the abuse and neglect
861 registry of each state where each adult living in the home of the prospective foster parent or
862 prospective adoptive parent described in Subsection (3)(b) resided in the five years
863 immediately preceding the day on which the prospective foster parent or prospective adoptive
864 parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed

865 in the registry as having a substantiated or supported finding of a severe type of abuse or
866 neglect as defined in Section 62A-4a-1002; and

867 (d) each person required to undergo a background check described in this Subsection
868 (3) passes the background check, pursuant to the provisions of Section 62A-2-120.

869 (4) Subsections (2)(a) and (b) do not apply to a child who is placed with a noncustodial
870 parent or relative under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, unless the court
871 finds that compliance with Subsection (2)(a) or (b) is necessary to ensure the safety of the
872 child.

873 (5) The requirements under Subsection (3) do not apply to the extent that:

874 (a) federal law or rule permits otherwise; or

875 (b) the requirements would prohibit the division or a court from placing a child with:

876 (i) a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

877 (ii) a relative, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending
878 completion of the background check described in Subsection (3).

879 Section 12. Section **78A-6-312** is amended to read:

880 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

881 (1) The court may:

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

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

884 (i) individual; or

885 (ii) public or private entity or agency; or

886 (c) order:

887 (i) protective supervision;

888 (ii) family preservation;

889 (iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or

890 (iv) other services.

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

893 (a) establish a primary permanency goal for the minor; and

894 (b) determine whether, in view of the primary permanency goal, reunification services
895 are appropriate for the minor and the minor's family, pursuant to Subsections (20) through (22).

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

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

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

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

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

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

- 914 (a) prove that the parent has not used legal or illegal substances; or
- 915 (b) comply with an aspect of the child and family plan that is ordered by the court.

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

- 918 (a) a representative list of the conditions under which the primary permanency goal
919 will be abandoned in favor of the concurrent permanency goal; and
- 920 (b) an explanation of the effect of abandoning or modifying the primary permanency
921 goal.

922 (9) A permanency hearing shall be conducted in accordance with Subsection
923 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if
924 something other than reunification is initially established as a minor's primary permanency
925 goal.

926 (10) (a) The court may amend a minor's primary permanency goal before the

927 establishment of a final permanency plan under Section 78A-6-314.

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

930 (c) If, at any time, the court determines that reunification is no longer a minor's primary
931 permanency goal, the court shall conduct a permanency hearing in accordance with Section
932 78A-6-314 on or before the earlier of:

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

935 (ii) the day on which the provision of reunification services, described in Section
936 78A-6-314, ends.

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

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

942 (12) The court shall:

943 (a) determine whether the services offered or provided by the division under the child
944 and family plan constitute "reasonable efforts" on the part of the division;

945 (b) determine and define the responsibilities of the parent under the child and family
946 plan in accordance with Subsection 62A-4a-205(6)(e); and

947 (c) identify verbally on the record, or in a written document provided to the parties, the
948 responsibilities described in Subsection (12)(b), for the purpose of assisting in any future
949 determination regarding the provision of reasonable efforts, in accordance with state and
950 federal law.

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

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

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

958 (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined
959 to be inconsistent with the final permanency plan for the minor established pursuant to Section
960 78A-6-314, then measures shall be taken, in a timely manner, to:

- 961 (i) place the minor in accordance with the permanency plan; and
- 962 (ii) complete whatever steps are necessary to finalize the permanent placement of the
963 minor.

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

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

969 (b) The permanency hearing shall be held no later than 12 months after the original
970 removal of the minor.

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

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

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

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

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

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

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

985 (19) When a court conducts a permanency hearing for a minor under Section
986 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the
987 sibling group together is:

988 (a) practicable; and

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

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

993 (b) The court may determine that:

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

996 (ii) reunification services should not be provided.

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

1000 (21) There is a presumption that reunification services should not be provided to a
1001 parent if the court finds, by clear and convincing evidence, that any of the following
1002 circumstances exist:

1003 (a) the whereabouts of the parents are unknown, based upon a verified affidavit
1004 indicating that a reasonably diligent search has failed to locate the parent;

1005 (b) subject to Subsection (22)(a), the parent is suffering from a mental illness of such
1006 magnitude that it renders the parent incapable of utilizing reunification services;

1007 (c) the minor was previously adjudicated as an abused child due to physical abuse,
1008 sexual abuse, or sexual exploitation, and following the adjudication the minor:

1009 (i) was removed from the custody of the minor's parent;

1010 (ii) was subsequently returned to the custody of the parent; and

1011 (iii) is being removed due to additional physical abuse, sexual abuse, or sexual
1012 exploitation;

1013 (d) the parent:

1014 (i) caused the death of another minor through abuse or neglect; [or]

1015 (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

1016 (A) murder or manslaughter of a child; or

1017 (B) child abuse homicide;

1018 (iii) committed sexual abuse against the child; or

1019 (iv) is a registered sex offender;

1020 (e) the minor suffered severe abuse by the parent or by any person known by the
1021 parent, if the parent knew or reasonably should have known that the person was abusing the
1022 minor;

1023 (f) the minor is adjudicated an abused child as a result of severe abuse by the parent,
1024 and the court finds that it would not benefit the minor to pursue reunification services with the
1025 offending parent;

1026 (g) the parent's rights are terminated with regard to any other minor;

1027 (h) the minor is removed from the minor's home on at least two previous occasions and
1028 reunification services were offered or provided to the family at those times;

1029 (i) the parent has abandoned the minor for a period of six months or longer;

1030 (j) the parent permitted the child to reside, on a permanent or temporary basis, at a
1031 location where the parent knew or should have known that a clandestine laboratory operation
1032 was located;

1033 (k) except as provided in Subsection (22)(b), with respect to a parent who is the child's
1034 birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was
1035 exposed to an illegal or prescription drug that was abused by the child's mother while the child
1036 was in utero, if the child was taken into division custody for that reason, unless the mother
1037 agrees to enroll in, is currently enrolled in, or has recently and successfully completed a
1038 substance abuse treatment program approved by the department; or

1039 (l) any other circumstance that the court determines should preclude reunification
1040 efforts or services.

1041 (22) (a) The finding under Subsection (21)(b) shall be based on competent evidence
1042 from at least two medical or mental health professionals, who are not associates, establishing
1043 that, even with the provision of services, the parent is not likely to be capable of adequately
1044 caring for the minor within 12 months after the day on which the court finding is made.

1045 (b) A judge may disregard the provisions of Subsection (21)(k) if the court finds, under
1046 the circumstances of the case, that the substance abuse treatment described in Subsection
1047 (21)(k) is not warranted.

1048 (23) In determining whether reunification services are appropriate, the court shall take
1049 into consideration:

1050 (a) failure of the parent to respond to previous services or comply with a previous child

1051 and family plan;

1052 (b) the fact that the minor was abused while the parent was under the influence of
1053 drugs or alcohol;

1054 (c) any history of violent behavior directed at the child or an immediate family
1055 member;

1056 (d) whether a parent continues to live with an individual who abused the minor;

1057 (e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

1058 (f) testimony by a competent professional that the parent's behavior is unlikely to be
1059 successful; and

1060 (g) whether the parent has expressed an interest in reunification with the minor.

1061 (24) (a) If reunification services are not ordered pursuant to Subsections (20) through
1062 (22), and the whereabouts of a parent become known within six months after the day on which
1063 the out-of-home placement of the minor is made, the court may order the division to provide
1064 reunification services.

1065 (b) The time limits described in Subsections (2) through (19) are not tolled by the
1066 parent's absence.

1067 (25) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable
1068 services unless it determines that those services would be detrimental to the minor.

1069 (b) In making the determination described in Subsection (25)(a), the court shall
1070 consider:

1071 (i) the age of the minor;

1072 (ii) the degree of parent-child bonding;

1073 (iii) the length of the sentence;

1074 (iv) the nature of the treatment;

1075 (v) the nature of the crime or illness;

1076 (vi) the degree of detriment to the minor if services are not offered;

1077 (vii) for a minor 10 years of age or older, the minor's attitude toward the
1078 implementation of family reunification services; and

1079 (viii) any other appropriate factors.

1080 (c) Reunification services for an incarcerated parent are subject to the time limitations
1081 imposed in Subsections (2) through (19).

1082 (d) Reunification services for an institutionalized parent are subject to the time
1083 limitations imposed in Subsections (2) through (19), unless the court determines that continued
1084 reunification services would be in the minor's best interest.

1085 (26) If, pursuant to Subsections (21)(b) through (l), the court does not order
1086 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
1087 with Section 78A-6-314.

1088 Section 13. Section **78A-6-511** is amended to read:

1089 **78A-6-511. Court disposition of child upon termination.**

1090 (1) As used in this section, "relative" means:

1091 (a) an adult who is a grandparent, great-grandparent, aunt, great aunt, uncle, great
1092 uncle, brother-in-law, sister-in-law, stepparent, first cousin, sibling, or stepsibling of a child;
1093 and

1094 (b) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25
1095 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that
1096 statute.

1097 [(+) (2) Upon entry of an order under this part the court may:

1098 (a) place the child in the legal custody and guardianship of a licensed child placement
1099 agency or the division for adoption; or

1100 (b) make any other disposition of the child authorized under Section 78A-6-117.

1101 [~~(2)~~ AH] (3) Subject to the requirements of Subsections (4) through (7), all adoptable
1102 children shall be placed for adoption.

1103 (4) If the parental rights of all parents of an adoptable child have been terminated, the
1104 court:

1105 (a) shall determine whether there is a relative who desires to adopt the child; and

1106 (b) may order the division to conduct a reasonable search to determine whether there
1107 are relatives who are willing to adopt the child.

1108 (5) A relative of an adoptable child shall receive preference in adoption placement,
1109 unless the placement is not in the best interest of the child. If a relative desires to adopt the
1110 child, the court shall:

1111 (a) make a specific finding regarding the fitness of the relative to adopt the child; and

1112 (b) place the child for adoption with that relative unless it finds that adoption by the

1113 relative is not in the best interest of the child.

1114 (6) This section does not guarantee that a relative will be permitted to adopt the child.

1115 (7) If the court does not place the child with a relative, the court shall make a specific
1116 finding, on the record, explaining why the relative was not a suitable adoptive parent.

1117 (8) If no suitable relative is found to adopt the child, the court shall consider the child's
1118 foster parents, in accordance with Section 78B-6-132, or any other adult in accordance with
1119 Section 78B-6-117.

1120 Section 14. Section **78A-6-902** is amended to read:

1121 **78A-6-902. Appointment of attorney guardian ad litem -- Duties and**
1122 **responsibilities -- Training -- Trained staff and court-appointed special advocate**
1123 **volunteers -- Costs -- Immunity -- Annual report.**

1124 (1) (a) The court:

1125 (i) may appoint an attorney guardian ad litem to represent the best interest of a minor
1126 involved in any case before the court; and

1127 (ii) shall consider the best interest of a minor, consistent with the provisions of Section
1128 62A-4a-201, in determining whether to appoint a guardian ad litem.

1129 (b) In all cases where an attorney guardian ad litem is appointed, the court shall make a
1130 finding that establishes the necessity of the appointment.

1131 (2) An attorney guardian ad litem shall represent the best interest of each child who
1132 may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of
1133 the day that:

1134 (a) the child is removed from the child's home by the division; or

1135 (b) the petition is filed.

1136 (3) The director shall ensure that each attorney guardian ad litem employed by the
1137 office:

1138 (a) represents the best interest of each client of the office in all venues, including:

1139 (i) court proceedings; and

1140 (ii) meetings to develop, review, or modify the child and family plan with the Division
1141 of Child and Family Services in accordance with Section 62A-4a-205;

1142 (b) prior to representing any minor before the court, be trained in:

1143 (i) applicable statutory, regulatory, and case law; and

- 1144 (ii) nationally recognized standards for an attorney guardian ad litem;
- 1145 (c) conducts or supervises an ongoing, independent investigation in order to obtain,
- 1146 first-hand, a clear understanding of the situation and needs of the minor;
- 1147 (d) (i) personally meets with the minor, unless:
- 1148 (A) the minor is outside of the state; or
- 1149 (B) meeting with the minor would be detrimental to the minor;
- 1150 (ii) personally interviews the minor, unless:
- 1151 (A) the minor is not old enough to communicate;
- 1152 (B) the minor lacks the capacity to participate in a meaningful interview; or
- 1153 (C) the interview would be detrimental to the minor; and
- 1154 (iii) if the minor is placed in an out-of-home placement, or is being considered for
- 1155 placement in an out-of-home placement, unless it would be detrimental to the minor:
- 1156 (A) to the extent possible, determines the minor's goals and concerns regarding
- 1157 placement; and
- 1158 (B) personally assesses or supervises an assessment of the appropriateness and safety
- 1159 of the minor's environment in each placement;
- 1160 (e) personally attends all review hearings pertaining to the minor's case;
- 1161 (f) participates in all appeals, unless excused by order of the court;
- 1162 (g) is familiar with local experts who can provide consultation and testimony regarding
- 1163 the reasonableness and appropriateness of efforts made by the Division of Child and Family
- 1164 Services to:
- 1165 (i) maintain a minor in the minor's home; or
- 1166 (ii) reunify a child with the child's parent;
- 1167 (h) to the extent possible, and unless it would be detrimental to the minor, personally
- 1168 or through a trained volunteer, paralegal, or other trained staff, keeps the minor advised of:
- 1169 (i) the status of the minor's case;
- 1170 (ii) all court and administrative proceedings;
- 1171 (iii) discussions with, and proposals made by, other parties;
- 1172 (iv) court action; and
- 1173 (v) the psychiatric, medical, or other treatment or diagnostic services that are to be
- 1174 provided to the minor; and

1175 (i) in cases where a child and family plan is required, personally or through a trained
1176 volunteer, paralegal, or other trained staff, monitors implementation of a minor's child and
1177 family plan and any dispositional orders to:

1178 (i) determine whether services ordered by the court:

1179 (A) are actually provided; and

1180 (B) are provided in a timely manner; and

1181 (ii) attempt to assess whether services ordered by the court are accomplishing the
1182 intended goal of the services.

1183 (4) (a) Consistent with this Subsection (4), an attorney guardian ad litem may use
1184 trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers
1185 Act, trained paralegals, and other trained staff to assist in investigation and preparation of
1186 information regarding the cases of individual minors before the court.

1187 (b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained
1188 in and follow, at a minimum, the guidelines established by the United States Department of
1189 Justice Court Appointed Special Advocate Association.

1190 (5) The attorney guardian ad litem shall continue to represent the best interest of the
1191 minor until released from that duty by the court.

1192 (6) (a) Consistent with Subsection (6)(b), the juvenile court is responsible for:

1193 (i) all costs resulting from the appointment of an attorney guardian ad litem; and

1194 (ii) the costs of volunteer, paralegal, and other staff appointment and training.

1195 (b) The court shall use funds appropriated by the Legislature for the guardian ad litem
1196 program to cover the costs described in Subsection (6)(a).

1197 (c) (i) When the court appoints an attorney guardian ad litem under this section, the
1198 court may assess all or part of the attorney fees, court costs, and paralegal, staff, and volunteer
1199 expenses against the child's parents, parent, or legal guardian in a proportion that the court
1200 determines to be just and appropriate[-], taking into consideration costs already borne by the
1201 parents, parent, or legal guardian, including:

1202 (A) private attorney fees;

1203 (B) counseling for the child;

1204 (C) counseling for the parent, if mandated by the court or recommended by the

1205 Division of Child and Family Services; and

1206 (D) any other cost the court determines to be relevant.
1207 (ii) The court may not assess those fees or costs against:
1208 (A) a legal guardian, when that guardian is the state; or
1209 (B) consistent with Subsection (6)(d), a parent who is found to be impecunious.
1210 (d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the
1211 court shall:

1212 (i) require that person to submit an affidavit of impecuniosity as provided in Section
1213 78A-2-302; and

1214 (ii) follow the procedures and make the determinations as provided in Section
1215 78A-2-304.

1216 (e) The child's parents, parent, or legal guardian may appeal the court's determination,
1217 under Subsection (6)(c), of fees, costs, and expenses.

1218 (7) An attorney guardian ad litem appointed under this section, when serving in the
1219 scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee
1220 of the state for purposes of indemnification under Title 63G, Chapter 7, Governmental
1221 Immunity Act of Utah.

1222 (8) (a) An attorney guardian ad litem shall represent the best interest of a minor.

1223 (b) If the minor's wishes differ from the attorney's determination of the minor's best
1224 interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in
1225 addition to presenting the attorney's determination of the minor's best interest.

1226 (c) A difference between the minor's wishes and the attorney's determination of best
1227 interest;

1228 (i) may not be considered a conflict of interest for the attorney[-]; and

1229 (ii) shall be disclosed by the attorney to the court.

1230 (d) The court may appoint one attorney guardian ad litem to represent the best interests
1231 of more than one child of a marriage.

1232 ~~[(9) An attorney guardian ad litem shall be provided access to all Division of Child and~~
1233 ~~Family Services records regarding the minor at issue and the minor's family.]~~

1234 (9) (a) An attorney guardian ad litem shall conduct an independent investigation
1235 regarding the minor at issue, the minor's family, and what constitutes the best interest of the
1236 minor.

- 1237 (b) An attorney guardian ad litem may interview the minor's Division of Child and
1238 Family Services caseworker, but may not:
- 1239 (i) rely exclusively on the conclusions and findings of the Division of Child and Family
1240 Services;
- 1241 (ii) have access to Division of Child and Family Services records; or
1242 (iii) conduct a visit with the client in conjunction with the visit of a Division of Child
1243 and Family Services caseworker.
- 1244 (10) (a) An attorney guardian ad litem shall maintain current and accurate records
1245 regarding:
- 1246 ~~[(a)]~~ (i) the number of times the attorney has had contact with each minor; and
1247 ~~[(b)]~~ (ii) the actions the attorney has taken in representation of the minor's best interest.
- 1248 (b) Whenever an attorney guardian ad litem makes a recommendation regarding the
1249 client's welfare to the court, the attorney shall make the records described in Subsection (10)(a)
1250 available to:
- 1251 (i) the court; and
1252 (ii) an attorney representing the minor's parent.
- 1253 (11) (a) Except as provided in ~~[Subsection]~~ Subsections (10) and (11)(b), all records of
1254 an attorney guardian ad litem are confidential and may not be released or made public upon
1255 subpoena, search warrant, discovery proceedings, or otherwise. This subsection supersedes
1256 Title 63G, Chapter 2, Government Records Access and Management Act.
- 1257 (b) Consistent with Subsection (11)(d), all records of an attorney guardian ad litem:
1258 (i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative
1259 Subpoena Powers; and
1260 (ii) shall be released to the Legislature.
- 1261 (c) (i) Except as provided in Subsection (11)(c)(ii), records released in accordance with
1262 Subsection (11)(b) shall be maintained as confidential by the Legislature.
1263 (ii) Notwithstanding Subsection (11)(c)(i), the Office of the Legislative Auditor
1264 General may include summary data and nonidentifying information in its audits and reports to
1265 the Legislature.
- 1266 (d) (i) Subsection (11)(b) constitutes an exception to Rules of Professional Conduct,
1267 Rule 1.6, as provided by Rule 1.6(b)(4), because of:

- 1268 (A) the unique role of an attorney guardian ad litem described in Subsection (8); and
- 1269 (B) the state's role and responsibility:
- 1270 (I) to provide a guardian ad litem program; and
- 1271 (II) as parens patriae, to protect minors.
- 1272 (ii) A claim of attorney-client privilege does not bar access to the records of an attorney
- 1273 guardian ad litem by the Legislature, through legislative subpoena.

1274 Section 15. Section **78A-6-902.1** is enacted to read:

1275 **78A-6-902.1. Placement findings.**

1276 (1) Before a guardian ad litem recommends that a child be removed from a parent's

1277 custody or that a parent's parental rights be terminated, the guardian ad litem shall file a

1278 memorandum with the court explaining why the action is in the best interest of the child.

1279 (2) The child's parent shall have an opportunity to file a memorandum in response to

1280 the attorney guardian ad litem's memorandum.

1281 (3) The court shall consider all memoranda filed under Subsection (1) before making a

1282 ruling in a child's custody case.

1283 Section 16. Section **78B-6-131** is amended to read:

1284 **78B-6-131. Child in custody of state -- Placement.**

1285 (1) Notwithstanding Sections 78B-6-128 through 78B-6-130, and except as provided in

1286 Subsection (2), a child who is in the legal custody of the state may not be placed with a

1287 prospective foster parent or a prospective adoptive parent, unless, before the child is placed

1288 with the prospective foster parent or the prospective adoptive parent:

1289 (a) a fingerprint based FBI national criminal history records check is conducted on the

1290 prospective foster parent ~~[or]~~, prospective adoptive parent, and any other adult residing in the

1291 household;

1292 (b) the Department of Human Services conducts a check of the child abuse and neglect

1293 registry in each state where the prospective foster parent or prospective adoptive parent resided

1294 in the five years immediately preceding the day on which the prospective foster parent or

1295 prospective adoptive parent applied to be a foster parent or adoptive parent, to determine

1296 whether the prospective foster parent or prospective adoptive parent is listed in the registry as

1297 having a substantiated or supported finding of child abuse or neglect;

1298 (c) the Department of Human Services conducts a check of the child abuse and neglect

1299 registry of each state where each adult living in the home of the prospective foster parent or
1300 prospective adoptive parent described in Subsection (1)(b) resided in the five years
1301 immediately preceding the day on which the prospective foster parent or prospective adoptive
1302 parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed
1303 in the registry as having a substantiated or supported finding of child abuse or neglect; and
1304 (d) each person required to undergo a background check described in this section
1305 passes the background check, pursuant to the provisions of Section 62A-2-120.
1306 (2) The requirements under Subsection (1) do not apply to the extent that:
1307 (a) federal law or rule permits otherwise; or
1308 (b) the requirements would prohibit the division or a court from placing a child with:
1309 (i) a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or
1310 (ii) a relative, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending
1311 completion of the background check described in Subsection (1).

Legislative Review Note
as of 1-30-12 9:18 AM

Office of Legislative Research and General Counsel