

GUARDIAN AD LITEM AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions of Title 78A, Chapter 2, Judicial Administration, Title ~~H~~→ [78A] 78B ←~~H~~, Chapter 7, ~~H~~→ [Justice Court] Protective Orders ←~~H~~, and Title 78B, Chapter 15, Utah Uniform Parentage Act, by amending the procedures for appointing a guardian ad litem to represent a minor.

Highlighted Provisions:

This bill:

- ▶ repeals provisions relating to the appointment of a guardian ad litem from the Office of Guardian ad Litem in a district court case;
- ▶ states the public policy in favor of a guardian ad litem balancing parental rights with the best interest of a child;
- ▶ describes the procedure for the appointment of a private attorney guardian ad litem to district court cases;
- ▶ requires the court to limit a private attorney guardian ad litem's representation to specific issues within a case, to the extent possible;
- ▶ provides a procedure for terminating a private attorney guardian ad litem's appointment;
- ▶ describes the duties of a private attorney guardian ad litem;
- ▶ authorizes the Office of Guardian ad Litem to establish, by rule, the system for appointing and paying a private attorney guardian ad litem;
- ▶ states that, if it appears from a petition for a protective order that domestic violence

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28 or abuse has occurred, a court may appoint a private attorney guardian ad litem;

29 ▶ authorizes the court to appoint a private attorney guardian ad litem for a child who
30 is the subject of a petition for protective order;

31 ▶ authorizes the court to appoint a private attorney guardian ad litem for district court
32 cases and the Office of Guardian ad Litem for juvenile cases; and

33 ▶ makes technical changes.

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 This bill provides effective dates.

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **30-3-5.2**, as last amended by Laws of Utah 2008, Chapter 3

41 **51-9-408**, as last amended by Laws of Utah 2010, Chapter 218

42 **78A-2-228**, as last amended by Laws of Utah 2009, Chapter 32

43 **78B-3-102**, as last amended by Laws of Utah 2009, Chapter 79

44 **78B-7-106**, as last amended by Laws of Utah 2009, Chapter 146

45 **78B-7-202**, as renumbered and amended by Laws of Utah 2008, Chapter 3

46 **78B-15-612**, as renumbered and amended by Laws of Utah 2008, Chapter 3

47 ENACTS:

48 **78A-2-227.5**, Utah Code Annotated 1953

49 REPEALS:

50 **78A-2-227**, as last amended by Laws of Utah 2009, Chapter 32

51

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

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

54 **30-3-5.2. Allegations of child abuse or child sexual abuse -- Investigation.**

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

59 62A, Chapter 4a, Child and Family Services. A final award of custody or parent-time may not
60 be rendered until a report on that investigation, consistent with Section 62A-4a-412, is received
61 by the court. That investigation shall be conducted by the Division of Child and Family
62 Services within 30 days of the court's notice and request for an investigation. In reviewing this
63 report, the court shall comply with [~~Section 78A-2-227~~] Sections 78A-2-228 and 78B-15-612.

64 Section 2. Section **51-9-408** is amended to read:

65 **51-9-408. Children's Legal Defense Account.**

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

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

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

72 (a) implementing the Mandatory Educational Course on Children's Needs for
73 Divorcing Parents relating to the effects of divorce on children as provided in Sections 30-3-4,
74 30-3-7, 30-3-10.3, 30-3-11.3, 30-3-15.3, and 30-3-18, and the Mediation Pilot Program - Child
75 Custody or Parent-time as provided in Sections 30-3-15.3 and 30-3-18;

76 (b) implementing the use of guardians ad litem as provided in Sections 30-3-5.2,
77 [~~78A-2-227~~] 78A-2-228, 78A-6-321, 78A-6-902, and 78B-3-102; the training of guardians ad
78 litem and volunteers as provided in Section 78A-6-902; and termination of parental rights as
79 provided in Sections 78A-6-117, 78A-6-118, and 78A-6-1103, and Title 78A, Chapter 6, Part
80 5, Termination of Parental Rights Act. This account may not be used to supplant funding for
81 the guardian ad litem program in the juvenile court as provided in Section 78A-6-902; and

82 (c) implementing and administering the Expedited Parent-time Enforcement Program
83 as provided in Section 30-3-38.

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

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

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

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

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

94 Section 3. Section 78A-2-227.5 is enacted to read:

95 **78A-2-227.5. Public policy regarding guardian ad litem -- Training.**

96 (1) A guardian ad litem may not presume that a child and the child's parent are
97 adversaries.

98 (2) A guardian ad litem shall be trained in:

99 (a) the parental rights and child and family protection principles provided in Section
100 62A-4a-201;

101 (b) the fundamental liberties of parents and the public policy of the state to support
102 family unification to the fullest extent possible;

103 (c) the constitutionally protected rights of parents, in cases where the state is a party;
104 and

105 (d) the use of a least restrictive means analysis regarding state claims of a compelling
106 child welfare interest.

107 Section 4. Section 78A-2-228 is amended to read:

108 **78A-2-228. Private attorney guardian ad litem -- Appointment -- Costs and fees --**
109 **Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum**
110 **qualifications.**

111 (1) ~~[(a)]~~ The court may appoint a private attorney as guardian ad litem to represent the
112 best interests of the minor in any district court action ~~[in which the custody of or visitation with~~
113 ~~a minor is at issue. The attorney guardian ad litem shall be certified by the Director of the~~
114 ~~Office of Guardian Ad Litem as having met the minimum qualifications for appointment, but~~
115 ~~may not be employed by or under contract with the Office of Guardian Ad Litem.]~~ when:

116 ~~[(b) When appointing an attorney guardian ad litem for a minor under this section, a~~
117 ~~court may appoint the same attorney guardian ad litem who represents the minor in another~~
118 ~~proceeding, or who has represented the minor in a previous proceeding, if that attorney~~
119 ~~guardian ad litem is available.]~~

120 ~~[(c) If, after appointment of the attorney guardian ad litem, an allegation of abuse,~~

121 ~~neglect, or dependency of the minor is made the court shall:]~~

122 ~~(i) determine whether it is in the best interests of the minor to continue the~~
123 ~~appointment; or]~~

124 ~~(ii) order the withdrawal of the private attorney guardian ad litem and appoint the~~
125 ~~Office of Guardian Ad Litem.]~~

126 (a) child abuse, child sexual abuse, or neglect is alleged in any proceeding; or

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

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

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

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

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

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

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

141 (4) The court shall:

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

146 (b) to the extent possible, bifurcate the issues described in Subsection (3)(a) from the
147 other issues in the case in order to minimize the time constraints placed upon the private
148 attorney guardian ad litem; and

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

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

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

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

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

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

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

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

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

170 ~~[(2)(a) The]~~ (9) (a) When appointing a private attorney guardian ad litem, the court
171 shall:

172 (i) assess all or part of the attorney guardian ad litem fees, courts costs, and paralegal,
173 staff, and volunteer expenses against the parties in a proportion the court determines to be
174 just[-]; and

175 ~~[(b) If the court finds a party to be impecunious, under the provisions of Section~~
176 ~~78A-2-302, the court may direct the impecunious party's share of the assessment to be covered~~
177 ~~by the attorney guardian ad litem pro bono obligation established in Subsection (6)(b).]~~

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

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

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

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

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

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

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

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

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

193 **(11) The private attorney guardian ad litem:**

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

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

198 ~~[(3)]~~ **(12) The private attorney guardian ad litem appointed under the provisions of this**
199 **section shall:**

200 **(a) represent the best interests of the minor from the date of the appointment until**
201 **released by the court;**

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

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

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

207 **(A) the minor is outside of the state; or**

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

209 **(ii) personally interview the minor, unless:**

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

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

212 **(C) the interview would be detrimental to the minor;**

213 **(iii) to the extent possible, determine the minor's goals and concerns regarding custody**

214 or visitation; and

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

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

218 (B) all court and administrative proceedings;

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

220 (D) court action; and

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

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

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

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

229 ~~[(4)]~~ (13) (a) The private attorney guardian ad litem shall represent the best interests of
230 a minor.

231 (b) If the minor's ~~[wishes]~~ intent and desires differ from the attorney's determination of
232 the minor's best interests, the attorney guardian ad litem shall communicate to the court the
233 minor's ~~[wishes]~~ intent and desires and the attorney's determination of the minor's best
234 interests.

235 (c) A difference between the minor's ~~[wishes]~~ intent and desires and the attorney's
236 determination of best interests is not sufficient to create a conflict of interest.

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

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

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

242 ~~[(b)]~~ (e) The court may appoint one attorney guardian ad litem to represent the best
243 interests of more than one ~~[minor]~~ child of a marriage.

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

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

247 ~~[(5)]~~ (15) An attorney guardian ad litem appointed under this section is immune from
 248 any civil liability that might result by reason of acts performed within the scope of duties of the
 249 attorney guardian ad litem.

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

253 ~~[(6)(a)]~~ (17) Upon the advice of the director of the Office of Guardian ad Litem and
 254 the Guardian Ad Litem Oversight Committee, the Judicial Council shall establish by rule
 255 [establish]:

256 (a) the minimum qualifications and requirements for appointment by the court as an
 257 attorney guardian ad litem[-];

258 ~~[(b) An attorney guardian ad litem may be required to appear pro bono in one case for~~
 259 ~~every five cases in which the attorney is appointed with compensation.]~~

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

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

263 (d) a system to:

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

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

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

268a **Ĥ→ (18) Any savings that result from assigning a private attorney guardian ad litem in a**
 268b **district court case, instead of a guardian ad litem from the Office of Guardian ad Litem, shall**
 268c **be applied to the Office of Guardian ad Litem to reduce caseloads and improve current**
 268d **practices. ←Ĥ**

269 Section 5. Section **78B-3-102** is amended to read:

270 **78B-3-102. Injury of a child -- Suit by parent or guardian.**

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

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

276 the employer.

277 (3) If a parent, stepparent, adoptive parent, or legal guardian is the alleged defendant in
278 an action for the injury of a child, a guardian ad litem may be appointed for the injured child
279 according to the procedures outlined in Section [~~78A-2-227~~] 78A-2-228.

280 Section 6. Section **78B-7-106** is amended to read:

281 **78B-7-106. Protective orders -- Ex parte protective orders -- Modification of**
282 **orders -- Service of process -- Duties of the court.**

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

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

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

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

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

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

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

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

304 (e) order possession and use of an automobile and other essential personal effects, and
305 direct the appropriate law enforcement officer to accompany the petitioner to the residence of
306 the parties to ensure that the petitioner is safely restored to possession of the residence,

307 automobile, and other essential personal effects, or to supervise the petitioner's or respondent's
308 removal of personal belongings;

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

310 (g) order the appointment of [~~the office of the Guardian Ad Litem to represent the~~
311 ~~interests of any minor children of the parties, if abuse or neglect of the minor children is~~
312 ~~alleged, or appoint a private guardian ad litem, if appropriate, pursuant to Section 78A-2-228] a
313 private attorney guardian ad litem under Section 78A-2-228, if appropriate;~~

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

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

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

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

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

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

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

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

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

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

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

338 (i) criminal offenses are those under Subsections (2)(a) through (e), and under
339 Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and
340 (ii) civil offenses are those under Subsections (2)(f), (h), and (i), and Subsection (3)(a)
341 as it refers to Subsections (2)(f), (h), and (i).
342 (b) The criminal provision portion shall include a statement that violation of any
343 criminal provision is a class A misdemeanor.
344 (c) The civil provision portion shall include a notice that violation of or failure to
345 comply with a civil provision is subject to contempt proceedings.
346 (6) The protective order shall include:
347 (a) a designation of a specific date, determined by the court, when the civil portion of
348 the protective order either expires or is scheduled for review by the court, which date may not
349 exceed 150 days after the date the order is issued, unless the court indicates on the record the
350 reason for setting a date beyond 150 days;
351 (b) information the petitioner is able to provide to facilitate identification of the
352 respondent, such as Social Security number, driver license number, date of birth, address,
353 telephone number, and physical description; and
354 (c) a statement advising the petitioner that:
355 (i) after two years from the date of issuance of the protective order, a hearing may be
356 held to dismiss the criminal portion of the protective order;
357 (ii) the petitioner should, within the 30 days prior to the end of the two-year period,
358 advise the court of the petitioner's current address for notice of any hearing; and
359 (iii) the address provided by the petitioner will not be made available to the respondent.
360 (7) Child support and spouse support orders issued as part of a protective order are
361 subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income
362 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non
363 IV-D Cases, except when the protective order is issued ex parte.
364 (8) (a) The county sheriff that receives the order from the court, pursuant to Subsection
365 (5)(a), shall provide expedited service for orders for protection issued in accordance with this
366 chapter, and shall transmit verification of service of process, when the order has been served, to
367 the statewide domestic violence network described in Section 78B-7-113.
368 (b) This section does not prohibit any law enforcement agency from providing service

369 of process if that law enforcement agency:

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

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

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

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

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

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

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

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

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

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

393 **78B-7-202. Petition -- Ex parte determination -- Guardian ad litem -- Referral to**
394 **division.**

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

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

399 (a) review the records of the juvenile court, the district court, and the management

400 information system of the division to find any petitions, orders, or investigations related to the
 401 child or the parties to the case;

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

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

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

409 (4) The court may appoint [~~an~~] a private attorney guardian ad litem

409a ~~H~~→ [~~as provided in~~] under ←~~H~~

410 Section 78A-2-228 ~~H~~→ [~~;~~] for district court cases, or the Office of Guardian ad Litem for

410a juvenile court cases under Section 78A-6-902, ←~~H~~ for the child who is the subject of the petition.

411 Section 8. Section **78B-15-612** is amended to read:

412 **78B-15-612. Minor as party -- Representation.**

413 (1) A minor [~~child~~] is a permissible party, but is not a necessary party to a proceeding
 414 under this part.

415 (2) The tribunal may appoint a private guardian ad litem for district court cases under
 416 Section 78A-2-228 or the Office of Guardian ad Litem for juvenile court cases under Section
 417 78A-6-902 to represent a minor or incapacitated child if the child is a party or the tribunal finds
 418 that the interests of the child are not adequately represented.

419 Section 9. **Repealer.**

420 This bill repeals:

421 Section **78A-2-227, Appointment of attorney guardian ad litem in child abuse and**
 422 **neglect proceedings.**

423 Section 10. **Effective date.**

424 (1) Except as provided in Subsection (2), this bill takes effect on May 8, 2012.

425 (2) The following sections take effect on July 1, 2013:

426 (a) Section 30-3-5.2;

427 (b) Section 51-9-408;

428 (c) Section 78A-2-227;

429 (d) Section 78A-2-228;

430 (e) Section 78B-3-102;

- 431 (f) Section 78B-7-106;
- 432 (g) Section 78B-7-202; and
- 433 (h) Section 78B-15-612.

Legislative Review Note
as of 2-10-12 10:56 AM

Office of Legislative Research and General Counsel