

CHILD WELFARE IN CUSTODY PROCEEDINGS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gene Davis

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **30-3-5.2**, as last amended by Laws of Utah 2014, Chapter 267

34 **30-3-11.2**, as enacted by Laws of Utah 1969, Chapter 72

35 **30-3-32**, as last amended by Laws of Utah 2017, Chapter 120

36 **30-3-34.5**, as enacted by Laws of Utah 2014, Chapter 239

37 **51-9-408**, as last amended by Laws of Utah 2014, Chapter 267

38 **62A-2-101**, as last amended by Laws of Utah 2018, Chapters 252 and 316

39 **78A-6-901**, as last amended by Laws of Utah 2014, Chapter 267

40 **78B-3-102**, as last amended by Laws of Utah 2014, Chapter 267

41 **78B-7-106**, as last amended by Laws of Utah 2018, Chapters 124 and 255

42 **78B-7-202**, as last amended by Laws of Utah 2014, Chapter 267

43 **78B-15-612**, as last amended by Laws of Utah 2015, Chapter 258

44 REPEALS:

45 **78A-2-701**, as enacted by Laws of Utah 2014, Chapter 267

46 **78A-2-702**, as enacted by Laws of Utah 2014, Chapter 267

47 **78A-2-703**, as renumbered and amended by Laws of Utah 2014, Chapter 267

48 **78A-2-704**, as renumbered and amended by Laws of Utah 2014, Chapter 267

49 **78A-2-705**, as renumbered and amended by Laws of Utah 2014, Chapter 267



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

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

53 **30-3-5.2. Allegations of child abuse, child neglect, or child sexual abuse --**

54 **Investigation.**

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

59 accordance with Title 62A, Chapter 4a, Child and Family Services. A final award of custody
60 or parent-time may not be rendered until a report on that investigation, consistent with Section
61 [62A-4a-412](#), is received by the court. That investigation shall be conducted by the Division of
62 Child and Family Services within 30 days of the court's notice and request for an investigation.
63 In reviewing this report, the court shall comply with [~~Sections [78A-2-703](#), [78A-2-705](#), and~~
64 Section [78B-15-612](#).

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

66 **30-3-11.2. Appointment of counsel for child.**

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

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

74 **30-3-32. Parent-time -- Intent -- Policy -- Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

108 (B) suggested by a party.

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

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

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

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

121 (5) A Christmas school vacation shall be divided equally as required by Section
122 30-3-35.

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

124 **30-3-34.5. Supervised parent-time.**

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

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

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

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

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

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

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

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

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

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

155 **51-9-408. Children's Legal Defense Account.**

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

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

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

162 (a) implementing the Mandatory Educational Course on Children's Needs for
163 Divorcing Parents relating to the effects of divorce on children as provided in Sections [30-3-4](#),
164 [30-3-10.3](#), and [30-3-11.3](#), [~~and 30-3-15.3;~~] and the Mediation Program - Child Custody or
165 Parent-time;

166 (b) implementing the use of guardians ad litem as provided in [~~Sections 78A-2-703;~~
167 ~~78A-2-705;~~] Section 78A-6-902, [~~and 78B-3-102;~~] the training of attorney guardians ad litem
168 and volunteers as provided in Section [78A-6-902](#)[;], and the termination of parental rights as
169 provided in Sections [78A-6-117](#) and [78A-6-118](#), and Title 78A, Chapter 6, Part 5, Termination
170 of Parental Rights Act[~~-This~~], except the account may not be used to supplant funding for the
171 guardian ad litem program in the juvenile court as provided in Section [78A-6-902](#);

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

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

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

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

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

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

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

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

186 **62A-2-101. Definitions.**

187 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

211 (i) uses a regionally accredited education program;

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

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

214 (B) as an ancillary service to educating the students at the school;
215 (iii) has the primary purpose of providing the school's students with an education, as
216 defined in Subsection (4)(b)(i); and

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

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

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

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

226 (B) the school does not:

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

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

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

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

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

235 (a) finding a person to adopt the child;

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

237 (c) foster home placement.

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

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

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

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

242 (b) four or more persons who:

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

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

245 dysfunctions, impairments, or chemical dependencies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

268 (20) ~~§~~ → ~~[(a)]~~ ← ~~§~~ "Health benefit plan" means the same as that term is defined in Section
269 ~~[31A-22-619.6]~~ [31A-1-301](#).

270 ~~§~~ → ~~[(b)]~~ ~~"Health benefit plan" includes:~~

271 ~~—— (i) a health maintenance organization;~~

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

274 ~~—— (iii) the Public Employees' Benefit and Insurance Program created in Section~~

275 ~~[49-20-103](#);☺~~

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

279 (21) "Health care provider" means the same as that term is defined in Section
 280 [78B-3-403](#).

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

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

283 (i) foster home;

284 (ii) therapeutic school;

285 (iii) youth program;

286 (iv) resource family home;

287 (v) recovery residence; or

288 (vi) facility or program that provides:

289 (A) secure treatment;

290 (B) inpatient treatment;

291 (C) residential treatment;

292 (D) residential support;

293 (E) adult day care;

294 (F) day treatment;

295 (G) outpatient treatment;

296 (H) domestic violence treatment;

297 (I) child-placing services;

298 (J) social detoxification; [or]

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

300 or

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

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

304 (i) a boarding school; or

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

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

307 (25) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.

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

309 (27) "Licensee" means an individual or a human services program licensed by the
310 office.

311 (28) "Local government" means a city, town, metro township, or county.

312 (29) "Minor" has the same meaning as "child."

313 (30) "Office" means the Office of Licensing within the Department of Human Services.

314 (31) "Outpatient treatment" means individual, family, or group therapy or counseling
315 designed to improve and enhance social or psychological functioning for those whose physical
316 and emotional status allows them to continue functioning in their usual living environment.

317 (32) "Practice group" or "group practice" means two or more health care providers
318 legally organized as a partnership, professional corporation, or similar association, for which:

319 (a) substantially all of the services of the health care providers who are members of the
320 group are provided through the group and are billed in the name of the group and amounts
321 received are treated as receipts of the group; and

322 (b) the overhead expenses of and the income from the practice are distributed in
323 accordance with methods previously determined by members of the group.

324 (33) (a) "Recovery residence" means a home, residence, or facility that meets at least
325 two of the following requirements:

326 (i) provides a supervised living environment for individuals recovering from a
327 substance use disorder;

328 (ii) provides a living environment in which more than half of the individuals in the
329 residence are recovering from a substance use disorder;

330 (iii) provides or arranges for residents to receive services related to their recovery from
331 a substance use disorder, either on or off site;

332 (iv) is held out as a living environment in which individuals recovering from substance
333 abuse disorders live together to encourage continued sobriety; or

334 (v) (A) receives public funding; or

335 (B) is run as a business venture, either for-profit or not-for-profit.

336 (b) "Recovery residence" does not mean:

337 (i) a residential treatment program;

338 (ii) residential support; or
339 (iii) a home, residence, or facility, in which:
340 (A) residents, by their majority vote, establish, implement, and enforce policies
341 governing the living environment, including the manner in which applications for residence are
342 approved and the manner in which residents are expelled;
343 (B) residents equitably share rent and housing-related expenses; and
344 (C) a landlord, owner, or operator does not receive compensation, other than fair
345 market rental income, for establishing, implementing, or enforcing policies governing the
346 living environment.
347 (34) "Regular business hours" means:
348 (a) the hours during which services of any kind are provided to a client; or
349 (b) the hours during which a client is present at the facility of a licensee.
350 (35) (a) "Residential support" means arranging for or providing the necessities of life
351 as a protective service to individuals or families who have a disability or who are experiencing
352 a dislocation or emergency that prevents them from providing these services for themselves or
353 their families.
354 (b) "Residential support" includes providing a supervised living environment for
355 persons with dysfunctions or impairments that are:
356 (i) emotional;
357 (ii) psychological;
358 (iii) developmental; or
359 (iv) behavioral.
360 (c) Treatment is not a necessary component of residential support.
361 (d) "Residential support" does not include:
362 (i) a recovery residence; or
363 (ii) residential services that are performed:
364 (A) exclusively under contract with the Division of Services for People with
365 Disabilities; or
366 (B) in a facility that serves fewer than four individuals.
367 (36) (a) "Residential treatment" means a 24-hour group living environment for four or
368 more individuals unrelated to the owner or provider that offers room or board and specialized

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

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

373 (i) boarding school;

374 (ii) foster home; or

375 (iii) recovery residence.

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

377 (a) residential treatment; or

378 (b) secure treatment.

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

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

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

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

391 (b) specialized rehabilitation to acquire sobriety; and

392 (c) aftercare services.

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

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

397 (a) designed to provide:

398 (i) specialized drug or alcohol treatment;

399 (ii) rehabilitation; or

400 (iii) habilitation services; and
401 (b) that provides the treatment or services described in Subsection [~~(40)~~] (41)(a) to
402 persons with:

- 403 (i) a diagnosed substance use disorder; or
- 404 (ii) chemical dependency disorder.

405 (42) "Therapeutic school" means a residential group living facility:

406 (a) for four or more individuals that are not related to:

- 407 (i) the owner of the facility; or
- 408 (ii) the primary service provider of the facility;

409 (b) that serves students who have a history of failing to function:

- 410 (i) at home;
- 411 (ii) in a public school; or
- 412 (iii) in a nonresidential private school; and

413 (c) that offers:

- 414 (i) room and board; and
- 415 (ii) an academic education integrated with:
 - 416 (A) specialized structure and supervision; or
 - 417 (B) services or treatment related to:
 - 418 (I) a disability;
 - 419 (II) emotional development;
 - 420 (III) behavioral development;
 - 421 (IV) familial development; or
 - 422 (V) social development.

423 (43) "Unrelated persons" means persons other than parents, legal guardians,
424 grandparents, brothers, sisters, uncles, or aunts.

425 (44) "Vulnerable adult" means an elder adult or an adult who has a temporary or
426 permanent mental or physical impairment that substantially affects the person's ability to:

- 427 (a) provide personal protection;
- 428 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 429 (c) obtain services necessary for health, safety, or welfare;
- 430 (d) carry out the activities of daily living;

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

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

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

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

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

447 **78A-6-901. Office of Guardian ad Litem -- Appointment of director -- Duties of**
448 **director -- Contracts in second, third, and fourth districts.**

449 (1) As used in this part:

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

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

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

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

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

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

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

462 on the basis of:

- 463 (i) professional ability;
- 464 (ii) experience in abuse, neglect, and dependency proceedings;
- 465 (iii) familiarity with the role, purpose, and function of guardians ad litem in both
- 466 juvenile and district courts; and
- 467 (iv) ability to develop training curricula and reliable methods for data collection and
- 468 evaluation.

469 (c) The director shall, prior to or immediately after the director's appointment, be

470 trained in nationally recognized standards for an attorney guardian ad litem.

471 (4) The guardian ad litem director shall:

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

473 program;

474 (b) manage the guardian ad litem program to assure that minors receive qualified

475 guardian ad litem services in abuse, neglect, and dependency proceedings in accordance with

476 state and federal law and policy;

477 (c) develop standards for contracts of employment and contracts with independent

478 contractors, and employ or contract with attorneys licensed to practice law in this state, to act

479 as attorney guardians ad litem in accordance with Section [78A-6-902](#);

480 (d) develop and provide training programs for volunteers in accordance with the United

481 States Department of Justice National Court Appointed Special Advocates Association

482 standards;

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

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

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

486 (f) develop and provide a library of materials for the continuing education of attorney

487 guardians ad litem and volunteers;

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

489 (h) develop needs assessment strategies, perform needs assessment surveys, and ensure

490 that guardian ad litem training programs correspond with actual and perceived needs for

491 training;

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

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

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

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

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

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

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

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

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

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

509 **78B-3-102. Injury of a child -- Suit by parent or guardian.**

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

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

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

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

520 **78B-7-106. Protective orders -- Ex parte protective orders -- Modification of**
521 **orders -- Service of process -- Duties of the court.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

605 (7) The protective order shall include:

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

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

613 (c) a statement advising the petitioner that:

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

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

617 advise the court of the petitioner's current address for notice of any hearing; and
618 (iii) the address provided by the petitioner will not be made available to the respondent.
619 (8) Child support and spouse support orders issued as part of a protective order are
620 subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income
621 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non
622 IV-D Cases, except when the protective order is issued ex parte.
623 (9) (a) The county sheriff that receives the order from the court, pursuant to Subsection
624 (6)(a), shall provide expedited service for orders for protection issued in accordance with this
625 chapter, and shall transmit verification of service of process, when the order has been served, to
626 the statewide domestic violence network described in Section 78B-7-113.
627 (b) This section does not prohibit any law enforcement agency from providing service
628 of process if that law enforcement agency:
629 (i) has contact with the respondent and service by that law enforcement agency is
630 possible; or
631 (ii) determines that under the circumstances, providing service of process on the
632 respondent is in the best interests of the petitioner.
633 (10) (a) When an order is served on a respondent in a jail or other holding facility, the
634 law enforcement agency managing the facility shall make a reasonable effort to provide notice
635 to the petitioner at the time the respondent is released from incarceration.
636 (b) Notification of the petitioner shall consist of a good faith reasonable effort to
637 provide notification, including mailing a copy of the notification to the last-known address of
638 the victim.
639 (11) A court may modify or vacate an order of protection or any provisions in the order
640 after notice and hearing, except that the criminal provisions of a protective order may not be
641 vacated within two years of issuance unless the petitioner:
642 (a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah
643 Rules of Civil Procedure, and the petitioner personally appears, in person or through court
644 video conferencing, before the court and gives specific consent to the vacation of the criminal
645 provisions of the protective order; or
646 (b) submits a verified affidavit, stating agreement to the vacation of the criminal
647 provisions of the protective order.

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

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

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

653 **78B-7-202. Petition -- Ex parte determination -- Guardian ad litem -- Referral to**
654 **division.**

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

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

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

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

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

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

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

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

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

674 **78B-15-612. Minor as party -- Representation.**

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

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

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

680 Section 12. **Repealer.**

681 This bill repeals:

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

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

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

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

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

689a **Ŝ→ Section 13. Coordinating S.B. 148 with H.B. 249 -- Technical amendments.**

689b **If this S.B. 148 and H.B. 249, Revisor's Technical Corrections to Utah Code, both pass**
689c **and become law, it is the intent of the Legislature that the amendments to Section 62A-2-101 in**
689d **this bill supersede the amendments to Section 62A-2-101 in H.B. 249 when the Office of**
689e **Legislative Research and General Counsel prepares the Utah Code database for publication.**

689f **←Ŝ**