

1 **TERMINATION OF PARENTAL RIGHTS AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: Michael K. McKell

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to the termination of parental rights.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ clarifies the roles of the attorney general and the guardian ad litem regarding the
- 13 termination of parental rights when a child is in the custody of the Division of Child
- 14 and Family Services;
- 15 ▶ clarifies the right to appointed counsel when an indigent parent's parental rights may
- 16 be terminated in a private action;
- 17 ▶ requires the state to pay the cost for appointed counsel when an indigent parent's
- 18 parental rights may be terminated in a private action;
- 19 ▶ requires that a parent whose parental rights may be terminated in a private action be
- 20 given notice of the right to appointed counsel if the court determines that the parent
- 21 is indigent; and
- 22 ▶ makes technical changes.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **62A-4a-113**, as last amended by Laws of Utah 2008, Chapters 3 and 299

- 30 78A-6-115, as last amended by Laws of Utah 2017, Chapter 330
- 31 78A-6-314, as last amended by Laws of Utah 2016, Chapter 231
- 32 78A-6-506, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 33 78A-6-902, as last amended by Laws of Utah 2012, Chapter 293
- 34 78A-6-1111, as last amended by Laws of Utah 2016, Chapters 33 and 177
- 35 78B-6-110, as last amended by Laws of Utah 2014, Chapter 410
- 36 78B-6-112, as last amended by Laws of Utah 2012, Chapter 340

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

39 Section 1. Section 62A-4a-113 is amended to read:

40 **62A-4a-113. Division's enforcement authority -- Responsibility of attorney**
 41 **general to represent division.**

42 (1) The division shall take legal action that is necessary to enforce the provisions of
 43 this chapter.

44 (2) (a) Subject to ~~[the provisions of]~~ Section 67-5-17 and the attorney general's
 45 prosecutorial discretion in civil enforcement actions, the attorney general shall enforce all
 46 provisions of this chapter, in addition to the requirements of Title 78A, Chapter 6, Juvenile
 47 Court Act of 1996, relating to protection ~~[and]~~, custody ~~[of]~~, and parental rights termination for
 48 abused, neglected, or dependent minors. The attorney general may contract with the local
 49 county attorney to enforce the provisions of this chapter and Title 78A, Chapter 6, Juvenile
 50 Court Act of 1996.

51 (b) It is the responsibility of the attorney general's office to:

- 52 (i) advise the division regarding decisions to remove a minor from the minor's home;
- 53 (ii) represent the division in all court and administrative proceedings related to abuse,
 54 neglect, and dependency including, but not limited to, shelter hearings, dispositional hearings,
 55 dispositional review hearings, periodic review hearings, and petitions for termination of
 56 parental rights; and
- 57 (iii) be available to and advise caseworkers on an ongoing basis.

58 (c) The attorney general shall designate no less than 16 full-time attorneys to advise
59 and represent the division in abuse, neglect, and dependency proceedings, including petitions
60 for termination of parental rights. Those attorneys shall devote their full time and attention to
61 that representation and, insofar as it is practicable, shall be housed in or near various offices of
62 the division statewide.

63 (3) As of July 1, 1998, the attorney general's office shall represent the division with
64 regard to actions involving minors who have not been adjudicated as abused or neglected, but
65 who are otherwise committed to the custody of the division by the juvenile court, and who are
66 classified in the division's management information system as having been placed in custody
67 primarily on the basis of delinquent behavior or a status offense. Nothing in this section may
68 be construed to affect the responsibility of the county attorney or district attorney to represent
69 the state in those matters, in accordance with Section 78A-6-115.

70 Section 2. Section 78A-6-115 is amended to read:

71 **78A-6-115. Hearings -- Record -- County attorney or district attorney**
72 **responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of**
73 **evidence.**

74 (1) (a) A verbatim record of the proceedings shall be taken in all cases that might result
75 in deprivation of custody as defined in this chapter. In all other cases a verbatim record shall
76 also be made unless dispensed with by the court.

77 (b) (i) Notwithstanding any other provision, including Title 63G, Chapter 2,
78 Government Records Access and Management Act, a record of a proceeding made under
79 Subsection (1)(a) shall be released by the court to any person upon a finding on the record for
80 good cause.

81 (ii) Following a petition for a record of a proceeding made under Subsection (1)(a), the
82 court shall:

83 (A) provide notice to all subjects of the record that a request for release of the record
84 has been made; and

85 (B) allow sufficient time for the subjects of the record to respond before making a

86 finding on the petition.

87 (iii) A record of a proceeding may not be released under this Subsection (1)(b) if the
88 court's jurisdiction over the subjects of the proceeding ended more than 12 months before the
89 request.

90 (iv) For purposes of this Subsection (1)(b):

91 (A) "record of a proceeding" does not include documentary materials of any type
92 submitted to the court as part of the proceeding, including items submitted under Subsection
93 (4)(a); and

94 (B) "subjects of the record" includes the child's guardian ad litem, the child's legal
95 guardian, the Division of Child and Family Services, and any other party to the proceeding.

96 (2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a
97 prosecution district, the district attorney shall represent the state in any proceeding in a minor's
98 case.

99 (b) [The] Subject to the attorney general's prosecutorial discretion in civil enforcement
100 actions, the attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child and
101 Family Services, and this chapter, relating to:

102 (i) protection or custody of an abused, neglected, or dependent child; and

103 (ii) petitions for termination of parental rights.

104 (c) The attorney general shall represent the Division of Child and Family Services in
105 actions involving a minor who is not adjudicated as abused or neglected, but who is receiving
106 in-home family services under Section 78A-6-117.5. Nothing in this Subsection (2)(c) may be
107 construed to affect the responsibility of the county attorney or district attorney to represent the
108 state in those matters, in accordance with Subsection (2)(a).

109 (3) The board may adopt special rules of procedure to govern proceedings involving
110 violations of traffic laws or ordinances, wildlife laws, and boating laws. However, proceedings
111 involving offenses under Section 78A-6-606 are governed by that section regarding suspension
112 of driving privileges.

113 (4) (a) For the purposes of determining proper disposition of the minor in dispositional

114 hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and
115 in hearings upon petitions for termination of parental rights, written reports and other material
116 relating to the minor's mental, physical, and social history and condition may be received in
117 evidence and may be considered by the court along with other evidence. The court may require
118 that the person who wrote the report or prepared the material appear as a witness if the person
119 is reasonably available.

120 (b) For the purpose of determining proper disposition of a minor alleged to be or
121 adjudicated as abused, neglected, or dependent, dispositional reports prepared by the division
122 under Section 78A-6-315 may be received in evidence and may be considered by the court
123 along with other evidence. The court may require any person who participated in preparing the
124 dispositional report to appear as a witness, if the person is reasonably available.

125 (5) (a) In an abuse, neglect, or dependency proceeding occurring after the
126 commencement of a shelter hearing under Section 78A-6-306 or the filing of a petition under
127 Section 78A-6-304, each party to the proceeding shall provide in writing to the other parties or
128 their counsel any information which the party:

129 (i) plans to report to the court at the proceeding; or

130 (ii) could reasonably expect would be requested of the party by the court at the
131 proceeding.

132 (b) The disclosure required under Subsection (5)(a) shall be made:

133 (i) for dispositional hearings under Sections 78A-6-311 and 78A-6-312, no less than
134 five days before the proceeding;

135 (ii) for proceedings under Chapter 6, Part 5, Termination of Parental Rights Act, in
136 accordance with Utah Rules of Civil Procedure; and

137 (iii) for all other proceedings, no less than five days before the proceeding.

138 (c) If a party to a proceeding obtains information after the deadline in Subsection
139 (5)(b), the information is exempt from the disclosure required under Subsection (5)(a) if the
140 party certifies to the court that the information was obtained after the deadline.

141 (d) Subsection (5)(a) does not apply to:

142 (i) pretrial hearings; and
143 (ii) the frequent, periodic review hearings held in a dependency drug court case to
144 assess and promote the parent's progress in substance use disorder treatment.

145 (6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court
146 may, in its discretion, consider evidence of statements made by a child under eight years of age
147 to a person in a trust relationship.

148 Section 3. Section **78A-6-314** is amended to read:

149 **78A-6-314. Permanency hearing -- Final plan -- Petition for termination of**
150 **parental rights filed -- Hearing on termination of parental rights.**

151 (1) (a) When reunification services have been ordered in accordance with Section
152 [78A-6-312](#), with regard to a minor who is in the custody of the Division of Child and Family
153 Services, a permanency hearing shall be held by the court no later than 12 months after the day
154 on which the minor was initially removed from the minor's home.

155 (b) If reunification services were not ordered at the dispositional hearing, a permanency
156 hearing shall be held within 30 days after the day on which the dispositional hearing ends.

157 (2) (a) If reunification services were ordered by the court in accordance with Section
158 [78A-6-312](#), the court shall, at the permanency hearing, determine, consistent with Subsection
159 (3), whether the minor may safely be returned to the custody of the minor's parent.

160 (b) If the court finds, by a preponderance of the evidence, that return of the minor to
161 the minor's parent would create a substantial risk of detriment to the minor's physical or
162 emotional well-being, the minor may not be returned to the custody of the minor's parent.

163 (c) Prima facie evidence that return of the minor to a parent or guardian would create a
164 substantial risk of detriment to the minor is established if:

165 (i) the parent or guardian fails to:

166 (A) participate in a court approved child and family plan;

167 (B) comply with a court approved child and family plan in whole or in part; or

168 (C) meet the goals of a court approved child and family plan; or

169 (ii) the child's natural parent:

170 (A) intentionally, knowingly, or recklessly causes the death of another parent of the
171 child;

172 (B) is identified by a law enforcement agency as the primary suspect in an investigation
173 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

174 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
175 recklessly causing the death of another parent of the child.

176 (3) In making a determination under Subsection (2)(a), the court shall review and
177 consider:

178 (a) the report prepared by the Division of Child and Family Services;

179 (b) any admissible evidence offered by the minor's guardian ad litem;

180 (c) any report submitted by the division under Subsection 78A-6-315(3)(a)(i);

181 (d) any evidence regarding the efforts or progress demonstrated by the parent; and

182 (e) the extent to which the parent cooperated and utilized the services provided.

183 (4) With regard to a case where reunification services were ordered by the court, if a
184 minor is not returned to the minor's parent or guardian at the permanency hearing, the court
185 shall, unless the time for the provision of reunification services is extended under Subsection
186 (8):

187 (a) order termination of reunification services to the parent;

188 (b) make a final determination regarding whether termination of parental rights,
189 adoption, or permanent custody and guardianship is the most appropriate final plan for the
190 minor, taking into account the minor's primary permanency plan established by the court
191 pursuant to Section 78A-6-312; and

192 (c) establish a concurrent permanency plan that identifies the second most appropriate
193 final plan for the minor, if appropriate.

194 (5) The court may order another planned permanent living arrangement for a minor 16
195 years old or older upon entering the following findings:

196 (a) the Division of Child and Family Services has documented intensive, ongoing, and
197 unsuccessful efforts to reunify the minor with the minor's parent or parents, or to secure a

198 placement for the minor with a guardian, an adoptive parent, or an individual described in
199 Subsection 78A-6-306(6)(e);

200 (b) the Division of Child and Family Services has demonstrated that the division has
201 made efforts to normalize the life of the minor while in the division's custody, in accordance
202 with Sections 62A-4a-210 through 62A-4a-212;

203 (c) the minor prefers another planned permanent living arrangement; and

204 (d) there is a compelling reason why reunification or a placement described in
205 Subsection (5)(a) is not in the minor's best interest.

206 (6) Except as provided in Subsection (7), the court may not extend reunification
207 services beyond 12 months after the day on which the minor was initially removed from the
208 minor's home, in accordance with the provisions of Section 78A-6-312.

209 (7) (a) Subject to Subsection (7)(b), the court may extend reunification services for no
210 more than 90 days if the court finds, beyond a preponderance of the evidence, that:

211 (i) there has been substantial compliance with the child and family plan;

212 (ii) reunification is probable within that 90-day period; and

213 (iii) the extension is in the best interest of the minor.

214 (b) (i) Except as provided in Subsection (7)(c), the court may not extend any
215 reunification services beyond 15 months after the day on which the minor was initially
216 removed from the minor's home.

217 (ii) Delay or failure of a parent to establish paternity or seek custody does not provide a
218 basis for the court to extend services for that parent beyond the 12-month period described in
219 Subsection (6).

220 (c) In accordance with Subsection (7)(d), the court may extend reunification services
221 for one additional 90-day period, beyond the 90-day period described in Subsection (7)(a), if:

222 (i) the court finds, by clear and convincing evidence, that:

223 (A) the parent has substantially complied with the child and family plan;

224 (B) it is likely that reunification will occur within the additional 90-day period; and

225 (C) the extension is in the best interest of the child;

226 (ii) the court specifies the facts upon which the findings described in Subsection
227 (7)(c)(i) are based; and

228 (iii) the court specifies the time period in which it is likely that reunification will occur.

229 (d) A court may not extend the time period for reunification services without
230 complying with the requirements of this Subsection (7) before the extension.

231 (e) In determining whether to extend reunification services for a minor, a court shall
232 take into consideration the status of the minor siblings of the minor.

233 (8) The court may, in its discretion:

234 (a) enter any additional order that it determines to be in the best interest of the minor,
235 so long as that order does not conflict with the requirements and provisions of Subsections (4)
236 through (7); or

237 (b) order the division to provide protective supervision or other services to a minor and
238 the minor's family after the division's custody of a minor has been terminated.

239 (9) (a) If the final plan for the minor is to proceed toward termination of parental
240 rights, the petition for termination of parental rights shall be filed, and a pretrial held, within 45
241 calendar days after the permanency hearing.

242 (b) If the division opposes the plan to terminate parental rights, the court may not
243 require the division to file a petition for the termination of parental rights, except as required
244 under Subsection [78A-6-316\(2\)](#).

245 (10) (a) Any party to an action may, at any time, petition the court for an expedited
246 permanency hearing on the basis that continuation of reunification efforts are inconsistent with
247 the permanency needs of the minor.

248 (b) If the court so determines, it shall order, in accordance with federal law, that:

249 (i) the minor be placed in accordance with the permanency plan; and

250 (ii) whatever steps are necessary to finalize the permanent placement of the minor be
251 completed as quickly as possible.

252 (11) Nothing in this section may be construed to:

253 (a) entitle any parent to reunification services for any specified period of time;

254 (b) limit a court's ability to terminate reunification services at any time prior to a
255 permanency hearing; or

256 (c) limit or prohibit the filing of a petition for termination of parental rights by any
257 party, or a hearing on termination of parental rights, at any time prior to a permanency hearing.

258 (12) (a) Subject to Subsection (12)(b), if a petition for termination of parental rights is
259 filed prior to the date scheduled for a permanency hearing, the court may consolidate the
260 hearing on termination of parental rights with the permanency hearing.

261 (b) For purposes of Subsection (12)(a), if the court consolidates the hearing on
262 termination of parental rights with the permanency hearing:

263 (i) the court shall first make a finding regarding whether reasonable efforts have been
264 made by the Division of Child and Family Services to finalize the permanency plan for the
265 minor; and

266 (ii) any reunification services shall be terminated in accordance with the time lines
267 described in Section 78A-6-312.

268 (c) A decision on a petition for termination of parental rights shall be made within 18
269 months from the day on which the minor is removed from the minor's home.

270 (13) If a court determines that a child will not be returned to a parent of the child, the
271 court shall consider appropriate placement options inside and outside of the state.

272 Section 4. Section 78A-6-506 is amended to read:

273 **78A-6-506. Notice -- Nature of proceedings.**

274 (1) After a petition for termination of parental rights has been filed, notice [~~of that fact~~
275 ~~and of the time and place of the hearing shall be provided, in accordance with the Utah Rules~~
276 ~~of Civil Procedure,]~~ shall:

277 (a) be provided to the parents, the guardian, the person or agency having legal custody
278 of the child, and [~~to~~] any person acting in loco parentis to the child[~~;~~]; and

279 (b) indicate the:

280 (i) nature of the petition;

281 (ii) time and place of the hearing;

282 (iii) right to counsel; and
283 (iv) right to the appointment of counsel for a party whom the court determines is
284 indigent and at risk of losing the party's parental rights.

285 (2) A hearing shall be held specifically on the question of termination of parental rights
286 no sooner than 10 days after service of summons is complete. A verbatim record of the
287 proceedings shall be taken and the parties shall be advised of their right to counsel, including
288 the appointment of counsel for an indigent parent or legal guardian facing any action initiated
289 by a private party under this part or termination of parental rights under Section [78B-6-112](#).

290 The summons shall contain a statement to the effect that the rights of the parent or parents are
291 proposed to be permanently terminated in the proceedings. That statement may be contained in
292 the summons originally issued in the proceeding or in a separate summons subsequently issued.

293 (3) The proceedings are civil in nature and are governed by the Utah Rules of Civil
294 Procedure. The court shall in all cases require the petitioner to establish the facts by clear and
295 convincing evidence, and shall give full and careful consideration to all of the evidence
296 presented with regard to the constitutional rights and claims of the parent and, if a parent is
297 found, by reason of [his] the parent's conduct or condition, to be unfit or incompetent based
298 upon any of the grounds for termination described in this part, the court shall then consider the
299 welfare and best interest of the child of paramount importance in determining whether
300 termination of parental rights shall be ordered.

301 Section 5. Section **78A-6-902** is amended to read:

302 **78A-6-902. Appointment of attorney guardian ad litem -- Duties and**
303 **responsibilities -- Training -- Trained staff and court-appointed special advocate**
304 **volunteers -- Costs -- Immunity -- Annual report.**

305 (1) (a) The court:

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

308 (ii) shall consider the best interest of a minor, consistent with the provisions of Section
309 [62A-4a-201](#), in determining whether to appoint a guardian ad litem.

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

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

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

316 (b) the petition is filed.

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

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

320 (i) court proceedings; and

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

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

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

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

326 (c) conducts or supervises an ongoing, independent investigation in order to obtain,
327 first-hand, a clear understanding of the situation and needs of the minor;

328 (d) (i) personally meets with the minor, unless:

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

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

331 (ii) personally interviews the minor, unless:

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

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

334 (C) the interview would be detrimental to the minor; and

335 (iii) if the minor is placed in an out-of-home placement, or is being considered for
336 placement in an out-of-home placement, unless it would be detrimental to the minor:

337 (A) to the extent possible, determines the minor's goals and concerns regarding

338 placement; and

339 (B) personally assesses or supervises an assessment of the appropriateness and safety

340 of the minor's environment in each placement;

341 (e) personally attends all review hearings pertaining to the minor's case;

342 (f) participates in all appeals, unless excused by order of the court;

343 (g) is familiar with local experts who can provide consultation and testimony regarding

344 the reasonableness and appropriateness of efforts made by the Division of Child and Family

345 Services to:

346 (i) maintain a minor in the minor's home; or

347 (ii) reunify a child with the child's parent;

348 (h) to the extent possible, and unless it would be detrimental to the minor, personally

349 or through a trained volunteer, paralegal, or other trained staff, keeps the minor advised of:

350 (i) the status of the minor's case;

351 (ii) all court and administrative proceedings;

352 (iii) discussions with, and proposals made by, other parties;

353 (iv) court action; and

354 (v) the psychiatric, medical, or other treatment or diagnostic services that are to be

355 provided to the minor; ~~and~~

356 (i) in cases where a child and family plan is required, personally or through a trained

357 volunteer, paralegal, or other trained staff, monitors implementation of a minor's child and

358 family plan and any dispositional orders to:

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

360 (A) are actually provided; and

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

362 (ii) attempt to assess whether services ordered by the court are accomplishing the

363 intended goal of the services[-]; and

364 (j) makes all necessary court filings to advance the guardian ad litem's position

365 regarding the best interest of the child.

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

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

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

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

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

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

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

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

385 (A) private attorney fees;

386 (B) counseling for the child;

387 (C) counseling for the parent, if mandated by the court or recommended by the
388 Division of Child and Family Services; and

389 (D) any other cost the court determines to be relevant.

390 (ii) The court may not assess those fees or costs against:

391 (A) a legal guardian, when that guardian is the state; or

392 (B) consistent with Subsection (6)(d), a parent who is found to be impecunious.

393 (d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the

394 court shall:

395 (i) require that person to submit an affidavit of impecuniosity as provided in Section
396 78A-2-302; and

397 (ii) follow the procedures and make the determinations as provided in Section
398 78A-2-304.

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

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

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

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

409 (c) A difference between the minor's wishes and the attorney's determination of best
410 interest may not be considered a conflict of interest for the attorney.

411 (d) The guardian ad litem shall disclose the wishes of the child unless the child:

412 (i) instructs the guardian ad litem to not disclose the child's wishes; or

413 (ii) has not expressed any wishes.

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

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

418 (10) (a) An attorney guardian ad litem shall conduct an independent investigation
419 regarding the minor at issue, the minor's family, and what constitutes the best interest of the
420 minor.

421 (b) An attorney guardian ad litem may interview the minor's Division of Child and

422 Family Services caseworker, but may not:

423 (i) rely exclusively on the conclusions and findings of the Division of Child and Family
424 Services; or

425 (ii) except as provided in Subsection (10)(c), conduct a visit with the client in
426 conjunction with the visit of a Division of Child and Family Services caseworker.

427 (c) A guardian ad litem may meet with a client during a team meeting, court hearing, or
428 similar venue when a Division of Child and Family Services caseworker is present for a
429 purpose other than the guardian ad litem's visit with the client.

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

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

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

434 (b) In every hearing where the guardian ad litem makes a recommendation regarding
435 the best interest of the child, the court shall require the guardian ad litem to disclose the factors
436 that form the basis of the recommendation.

437 (12) (a) Except as provided in Subsection (12)(b), all records of an attorney guardian
438 ad litem are confidential and may not be released or made public upon subpoena, search
439 warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63G, Chapter
440 2, Government Records Access and Management Act.

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

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

444 (ii) shall be released to the Legislature.

445 (c) (i) Except as provided in Subsection (12)(c)(ii), records released in accordance with
446 Subsection (12)(b) shall be maintained as confidential by the Legislature.

447 (ii) Notwithstanding Subsection (12)(c)(i), the Office of the Legislative Auditor
448 General may include summary data and nonidentifying information in its audits and reports to
449 the Legislature.

450 (d) (i) Subsection (12)(b) constitutes an exception to Rules of Professional Conduct,
451 Rule 1.6, as provided by Rule 1.6(b)(4), because of:

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

453 (B) the state's role and responsibility:

454 (I) to provide a guardian ad litem program; and

455 (II) as *parens patriae*, to protect minors.

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

458 Section 6. Section **78A-6-1111** is amended to read:

459 **78A-6-1111. Right to counsel -- Appointment of counsel for indigent -- Costs.**

460 (1) (a) In any action in juvenile court initiated by the state, a political subdivision of the
461 state, or a private party, the parents, legal guardian, and the minor, where applicable, shall be
462 informed that they may be represented by counsel at every stage of the proceedings.

463 (b) In any action initiated by a private party^[;]:

464 (i) the parents or legal guardian shall have the right to employ counsel of their own
465 choice at their own expense^{[-];} and

466 (ii) the court shall appoint counsel designated by the county where the petition is filed
467 to represent a parent or legal guardian facing any action initiated by a private party under Title
468 78A, Chapter 6, Part 5, Termination of Parental Rights Act or termination of parental rights
469 under Section 78B-6-112, if the parent or legal guardian:

470 (A) qualifies as indigent under Section 77-32-202; and

471 (B) does not, after being fully advised of the right to counsel, knowingly, intelligently,
472 and voluntarily waive the right to counsel.

473 (c) If, in any action initiated by the state or a political subdivision of the state under
474 Part 3, Abuse, Neglect, and Dependency Proceedings; Part 5, Termination of Parental Rights
475 Act; or Part 10, Adult Offenses, of this chapter or under Section 78A-6-1101, a parent or legal
476 guardian requests an attorney and is found by the court to be indigent, counsel shall be
477 appointed by the court to represent the parent or legal guardian in all proceedings directly

478 related to the petition or motion filed by the state, or a political subdivision of the state, subject
479 to the provisions of this section.

480 (d) In any action initiated by the state, a political subdivision of the state, or a private
481 party under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of
482 Parental Rights Act, of this chapter, the child shall be represented by a guardian ad litem in
483 accordance with Sections 78A-6-317 and 78A-6-902. The child shall also be represented by an
484 attorney guardian ad litem in other actions initiated under this chapter when appointed by the
485 court under Section 78A-6-902 or as otherwise provided by law.

486 (e) In any action initiated by the state or a political subdivision of the state under Part
487 6, Delinquency and Criminal Actions, or Part 7, Transfer of Jurisdiction, of this chapter, or
488 against a minor under Section 78A-6-1101, the parents or legal guardian and the minor shall be
489 informed that the minor has the right to be represented by counsel at every stage of the
490 proceedings.

491 (i) In cases where a petition or information alleging a felony-level offense is filed, the
492 court shall appoint counsel, who shall appear until counsel is retained on the minor's behalf.
493 The minor may not waive counsel unless the minor has had a meaningful opportunity to
494 consult with a defense attorney. The court shall make findings on the record, taking into
495 consideration the minor's unique circumstances and attributes, that the waiver is knowing and
496 voluntary and the minor understands the consequences of waiving the right to counsel.

497 (ii) In all other cases in which a petition is filed the right to counsel may not be waived
498 by a minor unless there has been a finding on the record, taking into consideration the minor's
499 unique circumstances and attributes, that the waiver is knowing and voluntary, and the minor
500 understands the consequences of waiving the right to counsel.

501 (iii) If the minor is found to be indigent, counsel shall be appointed by the court to
502 represent the minor in all proceedings directly related to the petition or motion filed by the state
503 or a political subdivision of the state, subject to the provisions of this section.

504 (f) Indigency of a parent, legal guardian, or minor shall be determined in accordance
505 with the process and procedure defined in Section 77-32-202. The court shall take into account

506 the income and financial ability of the parent or legal guardian to retain counsel in determining
507 the indigency of the minor.

508 (g) The cost of appointed counsel for a party found to be indigent, including the cost of
509 counsel and expense of the first appeal, shall be paid by the county in which the trial court
510 proceedings are held. Counties may levy and collect taxes for these purposes or may apply for
511 a grant for reimbursement, as provided in Subsection (6).

512 (2) Counsel appointed by the court may not provide representation as court-appointed
513 counsel for a parent or legal guardian in any action initiated by, or in any proceeding to modify
514 court orders in a proceeding initiated by, a private party, except [~~that in a private action to~~
515 ~~terminate parental rights the court may appoint counsel to represent an indigent parent if it~~
516 ~~finds that the failure to appoint counsel will result in a deprivation of due process]~~ as provided
517 under Subsection (1)(b).

518 (3) If the county responsible to provide legal counsel for an indigent under Subsection
519 (1)(g) has arranged by contract to provide services, the court shall appoint the contracting
520 attorney as legal counsel to represent that indigent.

521 (4) The court may order a parent or legal guardian for whom counsel is appointed, and
522 the parents or legal guardian of any minor for whom counsel is appointed, to reimburse the
523 county for the cost of appointed counsel.

524 (5) The state, or an agency of the state, may not be ordered to reimburse the county for
525 expenses incurred under Subsection (1)(g).

526 (6) If a county incurs expenses in providing defense services to indigent individuals
527 facing any action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination of
528 Parental Rights Act or termination of parental rights under Section [78B-6-112](#), the county may
529 apply for a grant for reimbursement from the Utah Indigent Defense Commission under
530 Section [77-32-806](#).

531 Section 7. Section **78B-6-110** is amended to read:

532 **78B-6-110. Notice of adoption proceedings.**

533 (1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a

534 sexual relationship with a woman:

535 (i) is considered to be on notice that a pregnancy and an adoption proceeding regarding
536 the child may occur; and

537 (ii) has a duty to protect his own rights and interests.

538 (b) An unmarried biological father is entitled to actual notice of a birth or an adoption
539 proceeding with regard to his child only as provided in this section or Section [78B-6-110.5](#).

540 (2) Notice of an adoption proceeding shall be served on each of the following persons:

541 (a) any person or agency whose consent or relinquishment is required under Section
542 [78B-6-120](#) or [78B-6-121](#), unless that right has been terminated by:

543 (i) waiver;

544 (ii) relinquishment;

545 (iii) actual consent, as described in Subsection (12); or

546 (iv) judicial action;

547 (b) any person who has initiated a paternity proceeding and filed notice of that action
548 with the state registrar of vital statistics within the Department of Health, in accordance with
549 Subsection (3);

550 (c) any legally appointed custodian or guardian of the adoptee;

551 (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the
552 petition;

553 (e) the adoptee's spouse, if any;

554 (f) any person who, prior to the time the mother executes her consent for adoption or
555 relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with
556 the knowledge and consent of the mother;

557 (g) a person who is:

558 (i) openly living in the same household with the child at the time the consent is
559 executed or relinquishment made; and

560 (ii) holding himself out to be the child's father; and

561 (h) any person who is married to the child's mother at the time she executes her consent

562 to the adoption or relinquishes the child for adoption, unless the court finds that the mother's
563 spouse is not the child's father under Section 78B-15-607.

564 (3) (a) In order to preserve any right to notice, an unmarried biological father shall,
565 consistent with Subsection (3)(d):

566 (i) initiate proceedings in a district court of Utah to establish paternity under Title 78B,
567 Chapter 15, Utah Uniform Parentage Act; and

568 (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i)
569 with the office of vital statistics within the Department of Health.

570 (b) If the unmarried, biological father does not know the county in which the birth
571 mother resides, he may initiate his action in any county, subject to a change in trial pursuant to
572 Section 78B-3-307.

573 (c) The Department of Health shall provide forms for the purpose of filing the notice
574 described in Subsection (3)(a)(ii), and make those forms available in the office of the county
575 health department in each county.

576 (d) When the state registrar of vital statistics receives a completed form, the registrar
577 shall:

578 (i) record the date and time the form was received; and

579 (ii) immediately enter the information provided by the unmarried biological father in
580 the confidential registry established by Subsection 78B-6-121(3)(c).

581 (e) The action and notice described in Subsection (3)(a):

582 (i) may be filed before or after the child's birth; and

583 (ii) shall be filed prior to the mother's:

584 (A) execution of consent to adoption of the child; or

585 (B) relinquishment of the child for adoption.

586 (4) Notice provided in accordance with this section need not disclose the name of the
587 mother of the child who is the subject of an adoption proceeding.

588 (5) The notice required by this section:

589 (a) may be served at any time after the petition for adoption is filed, but may not be

590 served on a birth mother before she has given birth to the child who is the subject of the
591 petition for adoption;

592 (b) shall be served at least 30 days prior to the final dispositional hearing;

593 (c) shall specifically state that the person served shall fulfill the requirements of
594 Subsection (6)(a), within 30 days after the day on which the person receives service if the
595 person intends to intervene in or contest the adoption;

596 (d) shall state the consequences, described in Subsection (6)(b), for failure of a person
597 to file a motion for relief within 30 days after the day on which the person is served with notice
598 of an adoption proceeding;

599 (e) is not required to include, nor be accompanied by, a summons or a copy of the
600 petition for adoption; [~~and~~]

601 (f) shall state where the person may obtain a copy of the petition for adoption[-]; and

602 (g) shall indicate the right to the appointment of counsel for a party whom the court
603 determines is indigent and at risk of losing the party's parental rights.

604 (6) (a) A person who has been served with notice of an adoption proceeding and who
605 wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:

606 (i) within 30 days after the day on which the person was served with notice of the
607 adoption proceeding;

608 (ii) setting forth specific relief sought; and

609 (iii) accompanied by a memorandum specifying the factual and legal grounds upon
610 which the motion is based.

611 (b) A person who fails to fully and strictly comply with all of the requirements
612 described in Subsection (6)(a) within 30 days after the day on which the person was served
613 with notice of the adoption proceeding:

614 (i) waives any right to further notice in connection with the adoption;

615 (ii) forfeits all rights in relation to the adoptee; and

616 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in
617 the adoptee.

618 (7) Service of notice under this section shall be made as follows:

619 (a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary
620 under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah
621 Rules of Civil Procedure.

622 (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court
623 shall designate the content of the notice regarding the identity of the parties.

624 (iii) The notice described in this Subsection (7)(a) may not include the name of a
625 person seeking to adopt the adoptee.

626 (b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice
627 is required under this section, service by certified mail, return receipt requested, is sufficient.

628 (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two
629 attempts, the court may issue an order providing for service by publication, posting, or by any
630 other manner of service.

631 (c) Notice to a person who has initiated a paternity proceeding and filed notice of that
632 action with the state registrar of vital statistics in the Department of Health in accordance with
633 the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at
634 the last address filed with the registrar.

635 (8) The notice required by this section may be waived in writing by the person entitled
636 to receive notice.

637 (9) Proof of service of notice on all persons for whom notice is required by this section
638 shall be filed with the court before the final dispositional hearing on the adoption.

639 (10) Notwithstanding any other provision of law, neither the notice of an adoption
640 proceeding nor any process in that proceeding is required to contain the name of the person or
641 persons seeking to adopt the adoptee.

642 (11) Except as to those persons whose consent to an adoption is required under Section
643 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person
644 served to:

645 (a) intervene in the adoption; and

646 (b) present evidence to the court relevant to the best interest of the child.

647 (12) In order to be excused from the requirement to provide notice as described in
648 Subsection (2)(a) on the grounds that the person has provided consent to the adoption
649 proceeding under Subsection (2)(a)(iii), the consent may not be implied consent, as described
650 in Section [78B-6-120.1](#).

651 Section 8. Section **78B-6-112** is amended to read:

652 **78B-6-112. District court jurisdiction over termination of parental rights**
653 **proceedings.**

654 (1) A district court has jurisdiction [~~to hear and decide a petition~~] to terminate parental
655 rights in a child if the party who filed the petition is seeking to terminate parental rights in the
656 child for the purpose of facilitating the adoption of the child.

657 (2) A petition to terminate parental rights under this section may be:

658 (a) joined with a proceeding on an adoption petition; or

659 (b) filed as a separate proceeding before or after a petition to adopt the child is filed.

660 (3) A court may enter a final order terminating parental rights before a final decree of
661 adoption is entered.

662 (4) (a) Nothing in this section limits the jurisdiction of a juvenile court relating to
663 proceedings to terminate parental rights as described in Section [78A-6-103](#).

664 (b) This section does not grant jurisdiction to a district court to terminate parental
665 rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse,
666 neglect, dependency, or termination of parental rights proceeding.

667 (5) The district court may terminate [~~a person's~~] an individual's parental rights in a
668 child if:

669 (a) the [~~person~~] individual executes a voluntary consent to adoption, or relinquishment
670 for adoption, of the child, in accordance with:

671 (i) the requirements of this chapter; or

672 (ii) the laws of another state or country, if the consent is valid and irrevocable;

673 (b) the [~~person~~] individual is an unmarried biological father who is not entitled to

674 consent to adoption, or relinquishment for adoption, under Section [78B-6-120](#) or [78B-6-121](#);

675 (c) the [person] individual:

676 (i) received notice of the adoption proceeding relating to the child under Section
677 [78B-6-110](#); and

678 (ii) failed to file a motion for relief, under Subsection [78B-6-110\(6\)](#), within 30 days
679 after the day on which the [person] individual was served with notice of the adoption
680 proceeding;

681 (d) the court finds, under Section [78B-15-607](#), that the [person] individual is not a
682 parent of the child; or

683 (e) the [person's] individual's parental rights are terminated on grounds described in
684 Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, if terminating the person's
685 parental rights is in the best interests of the child.

686 (6) The court shall appoint counsel designated by the county where the petition is filed
687 to represent a party who faces any action initiated by a private party under Title 78A, Chapter
688 6, Part 5, Termination of Parental Rights Act or whose parental rights are subject to
689 termination under this section, if:

690 (a) the court determines that the party is indigent under Section [77-32-202](#); and

691 (b) the party does not, after being fully advised of the right to counsel, knowingly,
692 intelligently and voluntarily waive the right to counsel.

693 (7) If a county incurs expenses in providing defense services to indigent individuals
694 facing any action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination of
695 Parental Rights Act or termination of parental rights under this section, the county may apply
696 for a grant for reimbursement from the Utah Indigent Defense Commission under Section
697 [77-32-806](#).