

**MINUTES OF THE  
CHILD WELFARE LEGISLATIVE OVERSIGHT PANEL**  
Thursday, July 19, 2001 -- 1:00 p.m. -- Room 416 State Capitol

**Members Present:**

Rep. Matt Throckmorton,  
House Chair  
Sen. Dan R. Eastman,  
Senate Chair  
Sen. Gene Davis  
Rep. Trisha Beck  
Rep. Jack Seitz

**Staff Present:**

Mr. Mark D. Andrews,  
Research Analyst  
Mr. Paul W. Hess,  
Associate General Counsel  
Ms. Cassandra Bauman,  
Legislative Secretary

**Note:** A list of others present and a copy of materials distributed in the meeting are on file in the Office of Legislative Research and General Counsel.

**1. Call to Order and Approval of Minutes**

Chair Eastman called the meeting to order at 1:11 p.m.

**MOTION:** Rep. Throckmorton moved to approve the minutes of June 22, 2001. The motion passed unanimously with Sen. Davis and Rep. Seitz absent for the vote.

**2. Constitutional Rights and Claims of Parents**

Mr. Paul Hess, Associate General Counsel, Office of Legislative Research and General Counsel, explained that, in the 2001 General Session, legislation passed, in which, the Child Welfare Legislative Oversight Panel would "study actions that the state can take to preserve, unify, and strengthen the child's family ties whenever possible in the child's best interest, including recognizing the constitutional rights and claims of parents whenever those family ties are severed or infringed." He referred extensively to the constitutional paper prepared by the office, "Balancing the Rights and Interests of Parents, Children, and that State in Child Welfare Proceedings (July 2001)." He stated that most lawsuits regarding parental constitutional rights are taken to federal court, where state immunity statutes would not protect against federal claims that may be filed.

Mr. Hess explained that Utah is part of the Tenth Circuit Court in the United States, and that, in being such, Utah must pay particular attention to Tenth Circuit Court decisions.

He stated that, in a civil proceeding, a parent does not have a Utah constitutional right to, nor is there anything presently in statute for, a jury trial.

Sen. Davis inquired whether the state's removal policy set forth in statute has been challenged in court. Mr. David Carlson, Attorney General's Office, stated that he is not aware of any appellate court ruling stating it is unconstitutional, but he stated that the statute has been challenged.

Mr. Hess distributed UCA §§ 62A-4a-202.1. Taking a child into protective custody -- Peace Officer -- Division of Child and Family Services caseworker and 78-3a-301. (Subsection (1)(m) is repealed 07/01/02). Removing a child from his home -- Grounds for removal -- Exigent circumstances.

Sen. Davis asked about the number of times and to what extent the law has been altered since the David C. lawsuit. Ms. Janetha Hancock, Director of Legal Compliance, Department of Human Services, explained that the statute mentioned was passed before that lawsuit was filed. She stated that the settlement agreement mostly relied on what was already in statute.

Mr. Hess discussed briefly the burden of proof in child welfare proceedings. He also referred to the supplement to the constitutional paper distributed to the panel members prior to the meeting. He explained that the database for child maltreatment reports has recently been studied by the Law Enforcement and Criminal Justice Interim Committee.

Rep. Throckmorton clarified that H.B. 83, 2001 General Session, stated that unsubstantiated reports are listed on the database for five years and reports without merit for one year. He stated that the database is not public information.

Mr. Richard Anderson, Director, Division of Child and Family Services, explained that there are certain levels of access throughout the state departments. He stated that only a certain number of individuals have access to that database and explained that licensing professionals in the state can call those individuals with access and inquire if someone is on the database. He emphasized that only names of substantiated cases can be given out.

Mr. Abel Ortiz, Projects Coordinator, Division of Child and Family Services, explained that only an employer has the right to call for information on the database. He stated that an employee cannot have access for the employer.

Ms. Patricia Worthington, Director, Foster Care Citizens Review Board, provided for the panel an instance when the Girl Scouts of America were screening volunteers, and since they did not have the right to access the database, the organization had to pay a \$15 fee to run a BCI search. She commented that this type of screening could be very costly, considering the number of volunteers in such an organization.

### **3. Defense Counsel and Advocate for Parents in Child Welfare Proceedings**

Judge Pamela Greenwood, Chair, Utah Court Improvement Project, distributed handouts "The Utah Court Improvement Project" and "Memorandum Re: Legal Counsel for Parents in Child Welfare Court Proceedings." She stated that the court improvement project is a federally funded project that is meant to improve the system as it affects child welfare cases and to ensure that children are placed in safe, permanent homes as quickly as possible. She explained that the process for appointment of parent defense counsel in county courts is determined by bid; resulting in a quality issue. She stated that there is a great need for competent legal counsel for parents in child welfare proceedings.

Judge Greenwood made several suggestions for the panel to consider, all taking into account the concepts of funding, training, and competence: (1) create a statewide funding match for counties; (2) set universal standards for caseloads, require a full range of legal services from a shelter hearing up to appeals, and have competency measures including cancellation of contracts; (3) create an incentive and mechanism for smaller counties to pool their resources and share a contract for legal services; (4) create a Defense Counselor General office to provide training assistance to attorneys throughout the state as well as a voice for defense counsel at statewide meetings; or (5) create a statewide Office of Parent Defense Counsel, similar to the Guardian ad Litem Office.

Ms. Kristin Brewer, Director, Guardian ad Litem Office, gave brief information about the office's budget, in order to give the panel an idea of cost for these programs.

Ms. Bonnie Macri, Executive Director, JEDI for Women, stated that JEDI has been monitoring this issue for a while and that most of the families are not aware of the legal process. She explained that parents are, many times, left in the dark about their rights.

#### **4. Mental Health Services**

Ms. Robin Arnold-Williams, Director, Department of Human Services, explained that Utah's Medicaid system has chosen to operate within a managed care approach with respect to mental health services. She stated that the public mental health system is the designated managed care provider for mental health services. She stated that foster children were removed from the requirement to go through the pre-paid medicaid system, but they still use the medicaid card. She stated that adoptive children were added to the system. She explained that adoptive children are required to use the local mental health system (Valley Mental Health, Wasatch Mental Health, Bear River Mental Health, etc.) while foster children are now allowed to use any qualified Medicaid provider, as long as they are under contract with the Department of Child and Family Services.

Ms. Karen Ford, Medicaid, stated that Primary Children's Hospital is a provider for residential care, but she does not believe that it is not under Medicaid enhancement program. She stated that four counties are not yet included under the Medicaid system: San Juan, Daggett, Duchesne, and Uintah counties.

Rep Throckmorton inquired whether the multi-track pilot program was ready to implement in the two regions which recently applied to participate in the program. Ms. Arnold-Williams indicated she thought the Department would grant approval as soon as the regions are ready.

**MOTION:** Rep. Throckmorton moved that staff send a letter to the House Speaker, Senate President, and Governor's Office highlighting the need for action to be taken to improve the quality of defense counsel for indigent parents in child welfare proceedings. The motion passed unanimously.

**5. Other Business**

Future meetings are scheduled for August 21, 2001 and September 13, 2001 at 1:00 p.m. in room 416.

**6. Adjourn**

**MOTION:** Sen. Davis moved to adjourn the meeting at 3:34 p.m. The motion passed unanimously.