

**MINUTES OF THE  
CHILD WELFARE LEGISLATIVE OVERSIGHT PANEL**  
Tuesday, August 21, 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. Paul W. Hess,  
Associate General Counsel  
Ms. Cassandra Bauman,  
Legislative Secretary

**Note:** A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or contact the Office of Legislative Research and General Counsel.

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

Chair Throckmorton called the meeting to order at 1:11 p.m. Various panel members shared sentiments about the belated Senator Peter Suazo and expressed their deepest sympathies for this loss.

**MOTION:** Rep. Seitz moved to approve the minutes of July 19, 2001. The motion passed unanimously with Sen. Davis absent for the vote.

**2. Child Welfare Defense Counsel for Indigent Parents**

Mr. David Carlson, chief of the Child Protection Division of the Office of the Attorney General (AG), stated that the AG's Office supports the effort to improve the quality of representation for indigent parents in child welfare proceedings. He stated concerns about placing a statewide defender for parents in the AG's Office: (1) the potential conflict of interests in having the same office represent both DCFS and parents, and (2) the lack of funding available within the office.

Mr. Adam Trupp, Administrative Office of the Court, stated that a statewide defense counsel for parents could possibly be placed within the courts. He explained the structure of the Guardian ad Litem Office and how a State Defender General's Office might be considered. He said that the Court Improvement Committee is appointing a subcommittee to look at how a State Defender General's Office can be established and administered.

Mr. John E. Laherty, attorney with Laherty and Associates, questioned the ability of a defender's office placed with the courts to function autonomously. He recommended that the Panel consider, instead, the creation of an office that would set standards for attorneys who are contracted to provide services to indigent parents in child welfare proceedings. He also suggested that the standards could be written in statute similar to those established for the Guardian ad Litem's Office in UCA §78-3a-912.

Ms. Kristin Brewer, director of the Guardian ad Litem Office, stated her view that the biggest issue is that adequate funds are not available for public defense contracts for parents' defense counsel. These contracts would need to be more attractive to lawyers. She stated that the person who monitors compliance with the standards to be established should be a lawyer.

Mr. Richard Anderson, director of DCFS (Division of Child and Family Services), explained that social workers are often asked legal questions. He explained that availability of legal counsel for legal advice to parents is greatly needed.

Chair Throckmorton reported that he has discussed this issue with Legislative Management and they told him that if a good plan is developed and if the fiscal impact is less than one million dollars, management would help to fund it. He said that the Panel will be creating a working group on the issue of an office for statewide parent counsel and invited anyone who wants to participate to contact panel staff. He stated that the following individuals would need to participate: David Carlson, Kristin Brewer, Adam Trupp, a representative of DCFS, and staff from the Office of Legislative Research and General Counsel.

### **3. Basis for Termination of Parental Rights**

Mr. Laherty explained that the statute regarding termination of parental rights is not adequate. He stated that the State should follow through in all cases in order to ensure that parental rights are not terminated wrongfully; he stated that wrongful termination because failure of DCFS to provide reunification services occurs frequently. He said that in most cases, the state does not have to prove that ordered services were provided before the judge terminates parental rights. Mr. Laherty pointed out that the Adoption and Safe Families Act is not consistent with state law and that this could cause the State to lose some funding.

Mr. Anderson explained that concerns are being heard and addressed by DCFS. He said that service planning within DCFS is increasing the efforts of social workers in child welfare cases and that every effort is being made to improve those services provided to parents. He answered questions from the Panel and stated that reasonable efforts will be made in every case to assist parents. Mr. Anderson said that, on average, a child is out of the home 18 months before the parental status termination hearing. He further stated that service plans should be adjusted from time to time to meet parents' needs.

Mr. Carlson concurred with many of Mr. Anderson's comments. He stated that the State needs to focus on parent responsibility as well as parental rights. Parents who have been adjudicated unfit have a responsibility to become fit. A key reason for child welfare reform in 1994 was that children were being kept too long in foster care. The current timetables were established to help children achieve permanency and to move them out of foster care. Utah has done well at this, he said.

Ms. Gayle Ruzicka, Utah Eagle Forum, requested that the Panel review making necessary changes to reunification funding. She stated that adoptions have greater funding than reunification services. Mr. Anderson explained that federal incentives are given to encourage moving adoptive children through the system. He explained that a need for balance to keep families together and adoption services has been considered for years.

Rep. Beck requested that, when considering funding for reunification, the funding for checking up on the reunified families be considered as well, in order to ensure the family will continue to do well.

Ms. Ruzicka explained that inconsistency in termination of parents rights occur. She stated that parents with the same problems, such as a dirty house or mental illnesses, can be viewed differently by different case workers. She stated that a 'good parent' is not defined in statute and that it needs to be clarified. She expressed concerns for termination of parents rights because of a parent's mental illness. She stated that poverty should not be an issue when considering removal of children from the home or termination of parental statuts.

Ms. Brewer explained that rights are not terminated for mental illnesses alone. She stated that a link to poor parenting is needed. She also discussed briefly the Federal Child Welfare Act of 1980. The Act requires that reasonable efforts first be made to keep the child at home and later be made to return the child home.

#### **4. Basis for Removal or Search of a Child**

Mr. Paul W. Hess, Associate General Counsel, Office of Legislative Research and General Counsel, distributed "Child Removal or Inspection Under the Fourth Amendments," UCA §§ 62A-4a-202.1 and 78-3a-301, and "Warrantless Child Removal Standards." He explained the justifications for warrantless searches and seizures under case law. He stated that the exceptions for warrants are: consent, administrative searches, and emergencies. He presented possible legislative options to the Panel: (1) maintain the status quo, (2) amend 78-3a-301 to require emergency or imminency, (3) eliminate list of reasons for removal in 78-3a-301 and solely include 'exigent circumstances' as the reason for warrantless removal, or (4) amend 78-3a-301 to include 'exigent circumstances' and briefly define those circumstances. Mr. Hess explained the differences among reasonable suspicion, probable cause, and substantial cause for investigations and removal in child welfare cases.

Mr. Anderson stated that DCFS is struggling with lack of evidence to prove substantial cause referred to in § 78-3a-301. He stated that it is difficult for social workers to take on a case where abuse is suspected and not being able to remove the child from the situation without evidence. He explained the abuse often recurs before any action can be taken to protect the child.

Mr. Abel Ortiz, director of Child Welfare Programs in the State Office Building, explained that articulation from children is difficult when dealing with immediacy. He related instances when children have fears of going home from school, yet cannot explain.

Ms. Carol Verdoia, attorney for Child Protection Services within DCFS, explained the difficulties with unclear case law in Federal Court regarding the relationship of the Fourth Amendment to children. She stated her view that 'exigent circumstances' are also only related to criminal case law. She said that legislation at this point would be premature since Federal case law (particularly in the 10<sup>th</sup> Circuit) is so unclear. She indicated that further research might be needed before legislative action is taken. She also expressed concern for social workers decisions exposing them to potential lawsuits.

Chair Throckmorton expressed concern that the Legislature cannot wait for further judicial decisions before proceeding on such an important issue. As a matter of policy, he would like to move forward.

**MOTION:** Rep. Seitz moved to direct staff to draft a bill with language regarding 'exigent circumstances' for warrantless removal of children. The motion passed unanimously with Sen. Davis absent for the vote.

Ms. Anne Sherry, JEDI for Women, said that removal of a child from the home is a last resort. She stated that "substantial cause" should remain the standard when considering removal. She expressed that social workers have been found personally and civilly liable for decisions they make regarding child removal. She expressed concern for poverty as a reason for removal of a child from the home.

Ms. Ruzicka clarified comments regarding Constitutional rights concerning property.

Mr. Laherty commented that in-home services are 75 percent federally funded. He stated that this causes dilemma for social workers when services to monitor the family should be provided and funds are not available. Mr. Ortiz stated that there is a need for in-home services.

## **5. Amendments to Guardian ad Litem Statutes**

This item will be discussed at a future meeting.

## **6. Report by DCFS on Family Assessment Tool**

Mr. Anderson introduced the issue, referring to UCA § 62A-4a-202.7. Ms. Mariam Richards, DCFS-Intake, explained fundamental assessment cases and child protective cases.

Ms. Eden Krehbiel, DCFS-Provo School District, related a CFA (fundamental assessment) case that had a positive outcome. She explained the resources she used in order to assist the family.

Ms. Judy Slayton, DCFS-Alpine School District, also related a CFA case with a positive outcome and the resources that were used.

Ms. Bethany Mott, DCFS-CPS, related two CFA cases where the families did not receive the assistance they needed. She stated that some families do not want help and others are not allowed ample time to receive the help they need, referring to the 30-day time frame set forth in statute.

Ms. Richards relayed both negative and positive effects of these cases. She suggested that the Panel look into extending the 3-day time frame for visiting the family and the 30-day time frame for assistance to the family. She responded to questions from the Panel.

Ms. Midge Delavan, the child welfare training coordinator for DCFS, distributed and explained "Functional Assessment in Child Welfare" and "Functional Assessment Guide Documentation Headings."

Mr. Anderson explained need for immediacy when responding to reports and the importance of responding to most crucial cases first. He stated that extension of the 3-day time frame for meeting with the family to 5 days would be sufficient.

Mr. Ortiz explained the 30-day time frame for completion of the family assessment and the policy that allows it to be extended to 60 days. He stated that the statute limitation for 30 days allows insufficient time for collecting evidence or delivering of services.

Ms. Kristin Brewer expressed concern for extending the 3-day time frame. She stated that extension of the 30-day time frame, however, did not cause concern.

## **7. Other Business**

The next meeting is scheduled for Thursday, September 13, 2001 at 1:00 p.m.

Chair Throckmorton announced that the candlelight vigil for Senator Suazo had been rescheduled due to the weather.

## **8. Adjourn**

**MOTION:** Rep. Seitz moved to adjourn the meeting. The motion passed unanimously with Sen. Davis absent for the vote. Chair Throckmorton adjourned the meeting at 4:08 p.m.

