

**MINUTES OF THE  
CHILD WELFARE LEGISLATIVE OVERSIGHT PANEL**  
Thursday, October 25, 2001 – 1:00 p.m. – Room 414/416 State Capitol

**Members Present:**

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

**Members Absent:**

Sen. Gene Davis

**Staff Present:**

Mr. Paul W. Hess, Associate General Counsel  
Mr. Mark D. Andrews, Research Analyst  
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 Matt Throckmorton called the meeting to order at 1:06 p.m.

**MOTION:** Rep. Jack Seitz moved to approve the minutes of September 13, 2001. The motion passed unanimously with Rep. Beck absent for the vote.

**2. Annual Report by the Auditor General**

Mr. Wayne L. Welsh, Legislative Auditor General, OLAG (Office of the Legislative Auditor General), introduced the auditors involved in the annual report to the Panel, which was distributed to Panel members prior to the meeting.

Mr. Wayne Kidd, auditor, OLAG, explained the audit performed on child welfare referrals to and cases handled by the DCFS (Division of Child and Family Services) in 2001, stating that the audit reviewed a sample of foster care cases from the case process review, removal statistics and procedures, caseworker training, and the qualitative case review process. He stated that results from the audit showed the case process review could benefit from caseworker involvement. He stated that some of the removal statistics cause concern, but that overall the removal process is reasonable. He indicated that DCFS training needs improvement and that the qualitative review tool looks promising.

Mr. Kidd explained that foster care cases were reviewed because the 2000 case process review did not show improvement, but rather, a decrease in performance. He indicated that each case was reviewed with the caseworker responsible for the case. He indicated that results of a survey to those case workers indicated that 39 percent of the cases were not completed, 31 percent were completed but not documented, and 30 percent were thought by the caseworker to have met the requirements for completion. He explained the reasons given for cases not being completed, which include: (1) individual caseloads are too high and the monthly visiting policy is too inflexible, (2) responsibilities for cases are unclear, (3) the OSR (Office of Services Review) scoring is not reasonable, and (4) some questions are scored incorrectly. He explained that OSR and the Office of the Child Protection Ombudsman monitor reviews of child removal cases.

Mr. Kidd referred to Utah Code Annotated Section 62A-4a-107 which sets forth training requirements for DCFS caseworkers involved in removals of children and indicated that further training is required for caseworkers within DCFS.

Mr. Rick Coleman, auditor, OLAG, stated that his office conducted a limited review of removals based on a sample of cases and indicated that OLAG would accept specific requests that the Panel might have regarding removal issues to look into in next year's audit.

Ms. Linda Wininger, DCFS, indicated that problems addressed by the audit are being reviewed and will continue to be reviewed and corrected. She expressed satisfaction with OLAG's recommendations and indicated that DCFS will be implementing many of them.

**MOTION:** Sen. Dan Eastman moved to direct staff to draft a letter to OLAG requesting inclusion of a worker caseload study in the 2002 audit. The motion passed unanimously with Rep. Beck absent for the vote.

### **3. Annual Report by the Office of Services Review**

Mr. Craig Monson, Director, OSR, explained that OSR reviews the child welfare system as a whole. He indicated that the reviews are systematic, not anecdotal. He explained that the purpose of reviews is not to satisfy statute, but to foster improvement in the system. He stated that the OSR annual report is based on a qualitative case review as well as a case process review. He explained that a qualitative case review assesses outcomes and practice, while a case process review assesses compliance with statute and policy.

Mr. Monson explained that the qualitative case review is conducted by assessing the status of the child and the family after a caseworker's involvement. He stated that the process of reviewing child welfare cases is very intense. He indicated that scoring effectiveness of child welfare caseworkers is based on safety and permanence for each child. He explained that DCFS is scored on the effectiveness of service team coordination and the use of formal and informal supports provided in each case. He stated that the scores have gone down for a variety of reasons and efforts are being made to reverse the trend.

Mr. Wayne Searle, attorney, asked about CPS (Child Protective Services) workers who do not follow guidelines to take appropriate actions in child welfare cases. Mr. Monson explained that performance appraisals are conducted to assess appropriate consequences. He indicated that many times further training is required and that sometimes additional administrative consequences may be necessary.

Ms. Wininger explained that during the time the reviews of DCFS were conducted the number of caseworkers was decreasing and caseloads were increasing. She stated that the number of caseworkers is now increasing, caseloads are decreasing, and conditions will improve within the system. She also indicated that DCFS employees recently received training on areas scored low in the review. She expects significant improvement in the next review.

#### **4. Report by Juvenile Court on Information Requested by the Panel**

Mr. Adam Trupp, Assistant Juvenile Court Administrator, AOC (Administrative Office of the Courts), explained that recording and tracking data on juvenile delinquency cases is a less difficult task than recording and tracking data on child welfare cases in juvenile court.

Mr. Trupp explained the report required by statute and due to the Panel by October 2002 which would require information from the juvenile court computer system. He stated that the data from the system is not reliable at this point. He indicated that a general sense about child welfare cases may be obtained using the system. He explained steps that are to be taken over the next several months to assist in identifying problems with the system—sharing problems with the local court authorities, and receiving support, direction, and guidance from other agencies to evaluate the system. He indicated that the system is based on action codes and that most of the codes do not work well for child welfare cases. Trying to obtain information from the system for child welfare cases is not logical. Further, the new system being created will not be ready for the preparation of the 2002 report.

Mr. Trupp stated that an all-day workshop will be held in November. He indicated that this workshop is being provided by the courts and the court improvement committee in hopes that outside organizations or individuals may be of assistance in updating the courts' computer system to provide more accurate information and allow for more thorough reviews. He explained that various information within the system will be pulled and compared to hard file information for evaluation.

#### **5. Draft Legislation "Taking Minor into Protective Custody Without Warrant"**

Mr. Paul W. Hess, Associate General Counsel, Office of Legislative Research and General Counsel, explained three instances when a child may be removed from a home: (1) by warrant, (2) by peace officer/caseworker, and (3) after filing of a petition (a judge could order removal of a child after a hearing is held). He explained that draft legislation, "Taking Minor into Protective Custody Without Warrant," would require a warrant to remove a minor from a home except under exigent circumstances, as defined in the draft. He pointed out modifications made to the draft bill presented at the September meeting.

Chair Throckmorton explained that defining "exigent circumstances" has been discussed in great detail and that the decision to define "exigent circumstances" in the bill intended to clarify that removal would require an emergency situation, unless a warrant is issued. He indicated that DCFS and the Attorney General's Office are opposed to the legislation.

Mr. Searle spoke in favor of the bill. He explained that guidelines for removing a child are imperative for the well-being of the family. He stated that overloaded caseworkers do not have the time to follow through in the process of obtaining a warrant and that unscrupulous instances may exist when children are removed from the home when the appropriate steps have not been taken. He explained that the issue of poverty is overlooked for neglect when cases are rushed through the system. He summarized that a warrant requirement is the appropriate way to protect the constitutional rights of the family.

Ms. Anne Sherry, child welfare activist, JEDI (Justice, Economic Dignity & Independence) for Women, expressed appreciation for the clarification that poverty is not a circumstance for removal and should not be cause for removal of a child, but that assistance may be necessary for the family to provide for the child, in the proposed legislation. She stated that exigent circumstances should be defined as emergency circumstances where waiting to remove the child would put that child in imminent danger and should not be put off. She indicated that this legislation would prevent many problems that are currently taking place in child welfare cases.

Ms. Gayle Ruzicka, Eagle Forum of Utah, stated that many issues addressed in the legislation are positive, but that she also has concerns about the bill. She indicated that further time to review the legislation would be required and expressed her desire for the Panel to postpone taking action on the legislation.

Ms. Carol Verdoia, attorney, Office of the Attorney General, stated that the draft legislation will not provide additional protection for children. She indicated that the removal process currently followed by DCFS has been discussed and reviewed several times by several groups and has been generally supported. She stated that statistics would not show that this legislation would provide further protection for the family. She indicated that less than one percent of children are returned home after a judge reviews the removal at the shelter hearing.

Ms. Wininger requested that the Panel further study removals of children from the home before the legislation is moved forward. She indicated that if the proposed legislation is enacted, it is possible that children's safety could be compromised.

**MOTION:** Rep. Seitz moved that the Panel recommend the draft legislation to the Health and Human Services Interim Committee for review.

**SUBSTITUTE MOTION:** Rep. Trisha Beck moved to proceed to the next item on the agenda and postpone action on this legislation until the next meeting. The motion failed with Rep. Beck voting in favor.

The original motion passed with Rep. Beck voting in opposition.

## **6. Draft Legislation "Responsibility of Attorney General to Represent Division of Child and Family Services"**

Chair Throckmorton provided background on the proposed legislation. He explained that most of the time the Attorney General's Office and DCFS work well together, but that when they disagree, "Responsibility of Attorney General to Represent Division of Child and Family Services" would provide that the final decision would be up to DCFS. He stated that the collaborative effort between the Attorney General's Office and DCFS would be encouraged and not changed in any way, but that DCFS would behave the final say in the decision-making process.

Ms. Lisa Byerly explained the circumstances behind the removal of her two children. She indicated that she had no services from a CPS worker prior to the removal of one of her children from her home. She

stated that she was not allowed to speak at the shelter hearing. She explained that the Attorney General's Office has been prosecuting the case with an assistant attorney general whom DCFS has repeatedly asked to have removed from the case. She reviewed problems caused by the assistant attorney general. She stated that the best interest of the child is what should be considered and that DCFS has children in its best interest. She spoke in favor of the legislation.

Ms. Bonnie Macri, Executive Director, JEDI for Women, expressed concern about the current practice for deciding removal of a child.

Ms. Verdoia explained that DCFS currently contacts the Attorney General's Office to work in a collaborative effort in deciding whether or not to remove a child from a home. She stated that the case mentioned by Ms. Byerly cannot be responded to in public, but that the Panel has statutory authority to review the case files if the information is necessary or desired for decisions regarding what action may be taken.

Ms. Wininger stated that DCFS and the Attorney General's Office have a good working relationship and that problems can be worked out without the need for legislation.

Ms. Sherry indicated that there have been instances where DCFS' decision to meet with a parent and work toward reunification has taken a dramatic turn after speaking with the Attorney General's Office.

Ms. Elizabeth Atkinson-Bird explained the circumstances of her children in state custody. She stated that her children have been physically harmed while in state custody and indicated that she does not have the power to remove her children from this neglectful circumstance. She expressed concern about the Attorney General's Office influencing the decisions of DCFS. She spoke in favor of the legislation, stating that DCFS needs to keep control of the situation.

## **7. Report on Parental Defense Oversight Project**

Mr. Hess indicated that the parental defense oversight work group recommends that the State create a small office with minimal staff to oversee and assist parental defense attorneys throughout the State. Attached to these minutes are copies of an October 18, 2001 letter from the Office of Legislative Research and General Counsel to Chair Throckmorton, outlining the two principal proposals being considered, plus an October 17, 2001 memo from Melvin C. Wilson, Chair, Law Enforcement Steering Committee of the Utah Association of Counties, and Davis County Attorney.

Mr. Wilson explained that before the Child Welfare Reform Act of 1994, county attorneys had the responsibility to prosecute child welfare cases as well as provide counsel to indigent parents in those proceedings. After the Child Welfare Reform Act, the State took prosecution and also the representation of children. He expressed concern about the inconsistent quality of defense counsel across the state and indicated that work group's recommendation would help eliminate that inconsistency.

## **8. Draft Legislation "Immunity from Liability in Child Welfare Investigations"**

Mr. Hess told the Panel that the general immunity statute protecting governmental employees from liability contains an exception for fraud or malice because the child welfare immunity statute does not contain this exception, it is unclear whether the fraud or malice exception applies to DCFS employees. "Immunity from Liability in Child Welfare Investigations" conforms the child welfare immunity statute to the general governmental immunity statute, but also provides that immunity does not extend to an employee in the case of perjury.

Sen. Eastman stated that the legislation is a clarification that CPS workers are liable if they break the law, but they are immune from liability if they act in good faith and nevertheless make a wrong decision.

**MOTION:** Rep. Seitz moved that the Panel recommend the draft legislation to the Health and Human Services Interim Committee. The motion passed unanimously with Rep. Throckmorton absent for the vote.

## **9. Other Business**

Rep. Seitz inquired whether the Panel should investigate concerns of parents who have testified before the Panel regarding DCFS, the Attorney General's Office, and guardians ad litem. Chair Throckmorton requested that staff review the process for reviewing the details of specific cases in a private setting.

The next meeting of the Child Welfare Legislative Oversight Panel is tentatively scheduled for Tuesday, November 27, 2001.

## **10. Adjourn**

**MOTION:** Rep. Seitz moved to adjourn the meeting. The motion passed unanimously. Chair Throckmorton adjourned the meeting at 4:10 p.m.