

1 **REPEAL OF UNFUNDED CONSUMER HEARING**

2 **PANEL**

3 2002 FIFTH SPECIAL SESSION

4 STATE OF UTAH

5 **Sponsor: Matt Throckmorton**

6 **This act amends the Human Services Code. The act repeals the Child Welfare Consumer**
7 **Hearing Panel which did not get funded for fiscal year 2002-03. This act has an immediate**
8 **effective date.**

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 **62A-4a-102**, as last amended by Chapters 176 and 281, Laws of Utah 2002

12 **62A-4a-207**, as last amended by Chapters 32 and 153, Laws of Utah 2001

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

14 Section 1. Section **62A-4a-102** is amended to read:

15 **62A-4a-102. Board of Child and Family Services.**

16 (1) (a) The Board of Child and Family Services, created in accordance with this section
17 and with Sections 62A-1-105 and 62A-1-107, is responsible for establishing by rule, pursuant to
18 Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the policy of the division in
19 accordance with the requirements of this chapter and Title 78, Chapter 3a, Juvenile Court Act of
20 1996, regarding abuse, neglect, and dependency proceedings, and domestic violence services. The
21 board is responsible to see that the legislative purposes for the division are carried out.

22 (b) (i) The governor shall appoint, with the consent of the Senate, 11 members to the Board
23 of Child and Family Services.

24 (ii) Except as required by Subsection (1)(b)(iii), as terms of current board members expire,
25 the governor shall appoint each new member or reappointed member to a four-year term.

26 (iii) Notwithstanding the requirements of Subsection (1)(b)(ii), the governor shall, at the
27 time of appointment or reappointment, adjust the length of terms to ensure that the terms of board



28 members are staggered so that approximately half of the board is appointed every two years.

29 (c) Two members of the board shall be persons who are or have been consumers, two
30 members of the board shall be persons who are actively involved in children's issues specifically
31 related to abuse and neglect, one member shall be a licensed foster parent, one member shall be
32 a recognized expert in the social, developmental, and mental health needs of children, one member
33 shall be a physician licensed to practice medicine in this state who is also a board certified
34 pediatrician and who is an expert in child abuse and neglect, and one member shall be an adult
35 relative of a child who is or has been in the foster care system.

36 (d) Six members of the board are necessary to constitute a quorum at any meeting.

37 (e) When a vacancy occurs in the membership for any reason, the replacement shall be
38 appointed for the unexpired term.

39 (2) (a) Members shall receive no compensation or benefits for their services, but may
40 receive per diem and expenses incurred in the performance of the member's official duties at the
41 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

42 (b) Members may decline to receive per diem and expenses for their service.

43 (3) The board shall:

44 (a) approve fee schedules for programs within the division;

45 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
46 establish, by rule, policies to ensure that private citizens, consumers, foster parents, private
47 contract providers, allied state and local agencies, and others are provided with an opportunity to
48 comment and provide input regarding any new policy or proposed revision of an existing policy;
49 and

50 (c) provide a mechanism for systematic and regular review of existing policy and for
51 consideration of policy changes proposed by the persons and agencies described in Subsection
52 (3)(b).

53 ~~[(4) (a) The board shall establish a three-member Consumer Hearing Panel to act~~
54 ~~independently of the board and the division, and to be the sole and final decision-making body to~~
55 ~~hear, resolve, and make recommendations regarding consumer complaints relating to the division.~~
56 ~~The board may appoint two alternates to serve on the Consumer Hearing Panel in the event that~~
57 ~~one or more of the members is unable to serve at any given time. This section does not restrict or~~
58 ~~limit access to the courts for any person, or override Title 62A, Chapter 2, Licensure of Programs~~

59 and Facilities, or Title 67, Chapter 19, Utah State Personnel Management Act.]

60 [~~(b) The Consumer Hearing Panel may not include any employees of the division.~~]

61 [~~(c) Prior to July 1, 2000, the Consumer Hearing Panel shall establish procedures that:~~]

62 [~~(i) provide for reasonable notice of panel hearings to the appropriate consumers;~~]

63 [~~(ii) require both the division and the consumer to present their respective information,~~
64 ~~testimony, or evidence at the same hearing unless, after reasonable notice, the consumer fails or~~
65 ~~refuses to appear at the scheduled panel hearing; and]~~

66 [~~(iii) affirm the right of affected consumers to be provided with pertinent information~~
67 ~~regarding the substance of the division's position, testimony, or evidence either prior to or at the~~
68 ~~scheduled panel hearing.]~~

69 [~~(d) The Consumer Hearing Panel shall report its recommendations to the board, the~~
70 ~~division, and the Legislative Oversight Panel described in Section 62A-4a-207. The division shall~~
71 ~~comply with the recommendations of the Consumer Hearing Panel.]~~

72 [~~(e) The department shall provide staff to the Consumer Hearing Panel.]~~

73 [~~(f) (i) Members of the panel shall receive a per diem allowance for each day or portion~~
74 ~~of a day spent in performing the duties of the panel, and shall be reimbursed for all necessary travel~~
75 ~~expenses.]~~

76 [~~(ii) The per diem reimbursement described in Subsection (4)(f)(i) may not exceed 75 days~~
77 ~~for any one individual panel member in any fiscal year.]~~

78 [~~(5)~~ (4) The board may create state advisory committees to advise it concerning programs
79 offered by the Division of Child and Family Services. The board shall provide each committee
80 with a specific charge in writing.

81 [~~(6)~~ (5) The board shall establish policies for the determination of eligibility for services
82 offered by the division in accordance with this chapter. The division may, by rule, establish
83 eligibility standards for consumers.

84 [~~(7)~~ (6) The board shall adopt and maintain rules and policies regarding placement for
85 adoption or foster care that are consistent with, and no more restrictive than, applicable statutory
86 provisions.

87 Section 2. Section **62A-4a-207** is amended to read:

88 **62A-4a-207. Legislative Oversight Panel -- Responsibilities.**

89 (1) (a) There is created the Child Welfare Legislative Oversight Panel composed of the

90 following members:

91 (i) two members of the Senate, one from the majority party and one from the minority
92 party, appointed by the president of the Senate; and

93 (ii) three members of the House of Representatives, two from the majority party and one
94 from the minority party, appointed by the speaker of the House of Representatives.

95 (b) Members of the panel shall serve for two-year terms, or until their successors are
96 appointed.

97 (c) A vacancy exists whenever a member ceases to be a member of the Legislature, or
98 when a member resigns from the panel. Vacancies shall be filled by the appointing authority, and
99 the replacement shall fill the unexpired term.

100 (2) The president of the Senate shall designate one of the senators appointed to the panel
101 under Subsection (1) as the Senate chair of the panel. The speaker of the House of Representatives
102 shall designate one of the representatives appointed to the panel under Subsection (1) as the House
103 chair of the panel.

104 (3) The panel shall follow the interim committee rules established by the Legislature.

105 (4) The panel shall:

106 (a) examine and observe the process and execution of laws governing the child welfare
107 system by the executive branch and the judicial branch;

108 (b) upon request, receive testimony from the public, the juvenile court, and from all state
109 agencies involved with the child welfare system including, but not limited to, the division, other
110 offices and agencies within the department, the attorney general's office, the Office of the Guardian
111 Ad Litem Director, and school districts;

112 [~~(c) receive reports from the Consumer Hearing Panel, described in Subsection~~
113 ~~62A-4a-102(3), and consider and review the actions, reports, and recommendations of that panel,]~~

114 [~~(c)~~] (c) before October 1, 2002, and before October 1 of each year thereafter receive
115 reports from the division, the attorney general, and the judicial branch identifying the cases not in
116 compliance with the time limits established in Section 78-3a-308, regarding pretrial and
117 adjudication hearings, Section 78-3a-311, regarding dispositional hearings and reunification
118 services, and Section 78-3a-312, regarding permanency hearings and petitions for termination, and
119 the reasons for the noncompliance;

120 [~~(e)~~] (d) receive recommendations from, and make recommendations to the governor, the

121 Legislature, the attorney general, the division, the Office of the Guardian Ad Litem Director, the
122 juvenile court, and the public;

123 ~~[(f)]~~ (e) (i) receive reports from the executive branch and the judicial branch on budgetary
124 issues impacting the child welfare system; and

125 (ii) recommend, as it considers advisable, budgetary proposals to the Health and Human
126 Services Joint Appropriations Subcommittee, the Executive Offices and Criminal Justice
127 Appropriations Subcommittee, and the Executive Appropriations Committee, which
128 recommendation should be made before December 1 of each year;

129 ~~[(g)]~~ (f) study and recommend proposed changes to laws governing the child welfare
130 system;

131 ~~[(h)]~~ (g) study actions the state can take to preserve, unify, and strengthen the child's
132 family ties whenever possible in the child's best interest, including recognizing the constitutional
133 rights and claims of parents whenever those family ties are severed or infringed;

134 ~~[(i)]~~ (h) study and determine what measures may be appropriate in addressing the
135 immunity or liability of government employees involved in child protective service investigations
136 and removals, and report its findings to the Human Services Interim Committee on or before
137 November 1, 2001;

138 ~~[(j)]~~ (i) perform such other duties related to the oversight of the child welfare system as
139 the panel considers appropriate; and

140 ~~[(k)]~~ (j) annually report its findings and recommendations to the president of the Senate,
141 the speaker of the House of Representatives, the Health and Human Services Interim Committee,
142 and the Judiciary Interim Committee.

143 (5) The panel has authority to review and discuss individual cases. When an individual
144 case is discussed, the panel's meeting may be held in private.

145 (6) (a) The panel has authority to make recommendations to the Legislature, the governor,
146 the Board of Juvenile Court Judges, the division, and any other statutorily created entity related
147 to the policies and procedures of the child welfare system. The panel does not have authority to
148 make recommendations to the court, the division, or any other public or private entity regarding
149 the disposition of any individual case.

150 (b) The panel may hold public hearings, as it considers advisable, in various locations
151 within the state in order to afford all interested persons an opportunity to appear and present their

152 views regarding the child welfare system in this state.

153 (7) (a) All records of the panel regarding individual cases shall be classified private, and
154 may be disclosed only in accordance with federal law and the provisions of Title 63, Chapter 2,
155 Government Records Access and Management Act.

156 (b) The panel shall have access to all of the division's records, including those regarding
157 individual cases. In accordance with Title 63, Chapter 2, Government Records Access
158 Management Act, all documents and information received by the panel shall maintain the same
159 classification that was designated by the division.

160 (8) In order to accomplish its oversight functions, the panel has:

161 (a) all powers granted to legislative interim committees in Section 36-12-11; and

162 (b) legislative subpoena powers under Title 36, Chapter 14, Legislative Subpoena Powers.

163 (9) Members of the panel shall receive salary and expenses in accordance with Section
164 36-2-2.

165 (10) (a) The Office of Legislative Research and General Counsel shall provide staff
166 support to the panel.

167 (b) The panel is authorized to employ additional professional assistance and other staff
168 members as it considers necessary and appropriate.

169 **Section 3. Effective date.**

170 If approved by two-thirds of all the members elected to each house, this act takes effect
171 upon approval by the governor, or the day following the constitutional time limit of Utah
172 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the
173 date of veto override.

Legislative Review Note
as of 6-26-02 4:40 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel