

**Representative Michael T. Morley** proposes the following substitute bill:

**ACCESS TO CHILD WELFARE HEARINGS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Michael T. Morley**

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**LONG TITLE**

**General Description:**

This bill amends the Judicial Code.

**Highlighted Provisions:**

This bill:

► changes the date on which any person may be admitted to a child abuse, neglect, or dependency hearing in juvenile court from July 1, 2005 to July 1, 2004.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78-3a-115**, as last amended by Chapter 332, Laws of Utah 2003

**78-3a-115.1**, as enacted by Chapter 332, Laws of Utah 2003

**78-3a-116**, as last amended by Chapter 332, Laws of Utah 2003

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

Section 1. Section **78-3a-115** is amended to read:

**78-3a-115. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's**



26 **cases heard separately from adult cases -- Minor or parents or custodian heard**  
27 **separately -- Continuance of hearing -- Consolidation of proceedings involving more than**  
28 **one minor.**

29 (1) Hearings in minor's cases shall be held before the court without a jury and may be  
30 conducted in an informal manner.

31 (a) In abuse, neglect, and dependency cases in all districts other than pilot districts  
32 selected by the Judicial Council under Subsection 78-3-21(15)(a), the court shall exclude all  
33 persons from hearings held prior to July 1, [~~2005~~] 2004 who do not have a direct interest in the  
34 proceedings.

35 (b) In delinquency cases the court shall admit all persons who have a direct interest in  
36 the case and may admit persons requested by the parent or legal guardian to be present. The  
37 court shall exclude all other persons except as provided in Subsection (1)(c).

38 (c) In delinquency cases in which the minor charged is 14 years of age or older, the  
39 court shall admit any person unless the hearing is closed by the court upon findings on the  
40 record for good cause if:

41 (i) the minor has been charged with an offense which would be a felony if committed  
42 by an adult; or

43 (ii) the minor is charged with an offense that would be a class A or B misdemeanor if  
44 committed by an adult, and the minor has been previously charged with an offense which  
45 would be a misdemeanor or felony if committed by an adult.

46 (d) The victim of any act charged in a petition or information involving an offense  
47 committed by a minor which if committed by an adult would be a felony or a class A or class B  
48 misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter  
49 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77,  
50 Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not  
51 apply to important juvenile justice hearings as defined in Section 77-38-2.

52 (e) A victim, upon request to appropriate juvenile court personnel, shall have the right  
53 to inspect and duplicate juvenile court legal records that have not been expunged concerning:

54 (i) the scheduling of any court hearings on the petition;

55 (ii) any findings made by the court; and

56 (iii) any sentence or decree imposed by the court.

57 (2) Minor's cases shall be heard separately from adult cases. The minor or his parents  
58 or custodian may be heard separately when considered necessary by the court. The hearing  
59 may be continued from time to time to a date specified by court order.

60 (3) When more than one minor is involved in a home situation which may be found to  
61 constitute neglect or dependency, or when more than one minor is alleged to be involved in the  
62 same law violation, the proceedings may be consolidated, except that separate hearings may be  
63 held with respect to disposition.

64 Section 2. Section **78-3a-115.1** is amended to read:

65 **78-3a-115.1. Access to abuse, neglect, and dependency hearings.**

66 (1) This section applies:

67 (a) beginning November 1, 2003, to districts selected by the Judicial Council as pilot  
68 districts under Subsection 78-3-21(15)(a); and

69 (b) beginning July 1, [~~2005~~] 2004, to all other districts.

70 (2) (a) In abuse, neglect, and dependency cases the court shall admit any person to a  
71 hearing, including a hearing under Subsection 78-3a-320(3), unless the court makes a finding  
72 upon the record that the person's presence at the hearing would:

73 (i) be detrimental to the best interest of a child who is a party to the proceeding;

74 (ii) impair the fact-finding process; or

75 (iii) be otherwise contrary to the interests of justice.

76 (b) The court may exclude a person from a hearing under Subsection (2)(a) on its own  
77 motion or by motion of a party to the proceeding.

78 Section 3. Section **78-3a-116** is amended to read:

79 **78-3a-116. Hearings -- Record -- County attorney or district attorney**  
80 **responsibilities -- Attorney general responsibilities -- Admissibility of evidence.**

81 (1) (a) A verbatim record of the proceedings shall be taken by an official court reporter  
82 or by means of a mechanical recording device in all cases that might result in deprivation of  
83 custody as defined in this chapter. In all other cases a verbatim record shall also be made  
84 unless dispensed with by the court.

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

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

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

92 (B) allow sufficient time for the subjects of the record to respond before making a  
93 finding on the petition.

94 (iii) A record of a proceeding may not be released under this Subsection (1)(b) if the  
95 court's jurisdiction over the subjects of the proceeding ended more than 12 months prior to the  
96 request.

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

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

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

103 (v) This Subsection (1)(b) applies:

104 (A) to records of proceedings made on or after November 1, 2003 in districts selected  
105 by the Judicial Council as pilot districts under Subsection 78-3-21(15)(a); and

106 (B) to records of proceedings made on or after July 1, [~~2005~~] 2004 in all other districts.

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

110 (b) The attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child  
111 and Family Services, and Title 78, Chapter 3a, Juvenile Courts, relating to:

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

113 (ii) petitions for termination of parental rights.

114 (c) The attorney general shall represent the Division of Child and Family Services in  
115 actions involving minors who have not been adjudicated as abused or neglected, but who are  
116 otherwise committed to the custody of that division by the juvenile court, and who are  
117 classified in the division's management information system as having been placed in custody  
118 primarily on the basis of delinquent behavior or a status offense. Nothing in this Subsection

119 (2)(c) may be construed to affect the responsibility of the county attorney or district attorney to  
120 represent the state in those matters, in accordance with the provisions of Subsection (2)(a).

121 (3) The board may adopt special rules of procedure to govern proceedings involving  
122 violations of traffic laws or ordinances, fish and game laws, and boating laws. However,  
123 proceedings involving offenses under Section 78-3a-506 are governed by that section regarding  
124 suspension of driving privileges.

125 (4) (a) For the purposes of determining proper disposition of the minor in dispositional  
126 hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and  
127 in hearings upon petitions for termination of parental rights, written reports and other material  
128 relating to the minor's mental, physical, and social history and condition may be received in  
129 evidence and may be considered by the court along with other evidence. The court may require  
130 that the person who wrote the report or prepared the material appear as a witness if the person  
131 is reasonably available.

132 (b) For the purpose of determining proper disposition of a minor alleged to be or  
133 adjudicated as abused, neglected, or dependent, dispositional reports prepared by Foster Care  
134 Citizen Review Boards pursuant to Section 78-3g-103 may be received in evidence and may be  
135 considered by the court along with other evidence. The court may require any person who  
136 participated in preparing the dispositional report to appear as a witness, if the person is  
137 reasonably available.

138 (5) For the purpose of establishing the fact of abuse, neglect, or dependency, the court  
139 may, in its discretion, consider evidence of statements made by a minor under eight years of  
140 age to a person in a trust relationship.