

1 **ADMINISTRATIVE SERVICES AMENDMENTS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne A. Harper**

5 Senate Sponsor: Karen Mayne

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Utah Administrative Services Code by amending Child Welfare
10 Defense Program provisions and creating a restricted special revenue fund.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ changes the Office of Child Welfare Parental Defense in the Department of
15 Administrative Services to a program administered by the department;
- 16 ▶ allows the Department of Administrative Services to contract all or part of the
17 program to a qualified contractor;
- 18 ▶ creates the State Archives Fund, as a restricted special revenue fund;
- 19 ▶ specifies what is deposited into the fund and uses of the fund;
- 20 ▶ provides that the fund shall earn interest; and
- 21 ▶ provides that state archives shall report on the use of the fund as part of the annual

22 budget process.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **63A-1-109**, as last amended by Laws of Utah 2006, Chapter 139

- 30 **63A-11-101**, as enacted by Laws of Utah 2004, Chapter 356
- 31 **63A-11-102**, as last amended by Laws of Utah 2008, Chapter 3
- 32 **63A-11-103**, as enacted by Laws of Utah 2004, Chapter 356
- 33 **63A-11-104**, as last amended by Laws of Utah 2010, Chapter 341
- 34 **63A-11-105**, as last amended by Laws of Utah 2006, Chapter 76
- 35 **63A-11-106**, as enacted by Laws of Utah 2004, Chapter 356
- 36 **63A-11-201**, as last amended by Laws of Utah 2008, Chapter 3
- 37 **63A-11-202**, as last amended by Laws of Utah 2009, Chapter 32
- 38 **63A-11-203**, as last amended by Laws of Utah 2006, Chapter 76
- 39 **63A-11-204**, as last amended by Laws of Utah 2008, Chapter 382
- 40 **63A-12-100.5**, as enacted by Laws of Utah 2010, Chapter 258
- 41 **78A-6-1111**, as last amended by Laws of Utah 2010, Chapter 368

42 ENACTS:

43 **63A-12-109**, Utah Code Annotated 1953



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

46 Section 1. Section **63A-1-109** is amended to read:

47 **63A-1-109. Divisions of department -- Administration.**

48 (1) The department shall be composed of the following divisions:

- 49 (a) administrative rules;
- 50 (b) archives and records;
- 51 (c) facilities construction and management;
- 52 (d) finance;
- 53 (e) fleet operations;
- 54 (f) office of state debt collection;
- 55 (g) state purchasing and general services; and
- 56 (h) risk management[; ~~and~~].
- 57 [~~(i) office of child welfare parental defense.~~]

58 (2) Each division shall be administered and managed by a division director.

59 Section 2. Section **63A-11-101** is amended to read:

60 **CHAPTER 11. CHILD WELFARE PARENTAL DEFENSE PROGRAM**

61 **Part 1. General Provisions**

62 **63A-11-101. Title.**

63 This chapter is known as the [~~Office of~~] "Child Welfare Parental Defense Program."

64 Section 3. Section **63A-11-102** is amended to read:

65 **63A-11-102. Definitions.**

66 For purposes of this chapter:

67 (1) "Child welfare case" means a proceeding under Title 78A, Chapter 6, Part 3,
68 Abuse, Neglect, and Dependency Proceedings or Part 5, Termination of Parental Rights Act.

69 (2) "Contracted parental defense attorney" means a parental defense attorney who is
70 under contract with the [~~office~~] department to provide parental defense in child welfare cases.

71 [~~(3) "Director" means the director of the office.~~]

72 [~~(4)~~] (3) "Fund" means the Child Welfare Parental Defense Fund established in Section
73 63A-11-203.

74 [~~(5) "Office" means the Office of Child Welfare Parental Defense created in Section~~
75 ~~63A-11-103.~~]

76 [~~(6)~~] (4) "Parental defense attorney" means an attorney, law firm, or group of attorneys
77 who:

78 (a) are authorized to practice law in Utah; and

79 (b) provide legal representation under contract with the [~~office~~] department, or a county
80 in the state, to a parent who is a party in a child welfare case.

81 (5) "Program" means the Child Welfare Parental Defense Program created in Section
82 63A-11-103.

83 Section 4. Section **63A-11-103** is amended to read:

84 **63A-11-103. Creation of program.**

85 There is created within the [~~Department of Administrative Services~~] department, the

86 [~~Office of~~] Child Welfare Parental Defense Program.

87 Section 5. Section **63A-11-104** is amended to read:

88 **63A-11-104. Program -- Duties -- Contracting.**

89 [~~(1) Except as provided in Subsection (2):~~]

90 [~~(a) The executive director of the department shall appoint the director of the office~~
91 ~~with the approval of the governor.~~]

92 [~~(b) The director shall be an attorney licensed to practice law in the state.~~]

93 [~~(2) Notwithstanding Subsection (1), if the executive director does not appoint a~~
94 ~~director of the office, the executive director:~~]

95 [~~(a) shall be the director of the office;~~]

96 [~~(b) is not required to be an attorney;~~]

97 [~~(c) may not engage in the practice of law, unless the executive director is an attorney~~
98 ~~licensed to practice law in the state; and]~~

99 [~~(d) may not receive a salary from the state in excess of the salary established for the~~
100 ~~executive director by the governor under Section 67-22-2.~~]

101 [~~(3)~~] (1) The [~~director~~] department shall:

102 (a) except as provided under Subsection (2), administer and enforce this chapter;

103 (b) manage the operation and budget of the [~~office~~] program; and

104 (c) if the department operates the [~~office~~] program as an internal service fund agency in
105 accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section
106 63A-1-114:

107 (i) the proposed rate and fee schedule as required by Section 63A-1-114; and

108 (ii) other information or analysis requested by the Rate Committee.

109 [~~(4) The director may employ staff.~~]

110 (2) The department may contract with:

111 (a) a qualified person to perform the program duties assigned by this chapter; and

112 (b) an attorney authorized to practice law in the state, as an independent contractor, to
113 serve as a parental defense attorney as provided under Section 63A-11-201.

114 Section 6. Section **63A-11-105** is amended to read:

115 **63A-11-105. Program -- Duties, functions, and responsibilities.**

116 [~~(1) The duties, functions, and responsibilities of the office include the following:~~]

117 The department shall:

118 [~~(a) to~~] (1) provide assistance and advice to parental defense attorneys;

119 [~~(b) to~~] (2) develop and provide educational and training programs for parental
120 defense attorneys; and

121 [~~(c) to~~] (3) provide information and advice to assist parental defense attorneys to
122 comply with their professional, contractual, and ethical duties.

123 [~~(2) The director may contract with a qualified person to fulfill the requirements of~~
124 ~~Subsection (1):~~]

125 [~~(3) The office may develop and enter into contracts with attorneys authorized to~~
126 ~~practice law in the state, as independent contractors, to serve as parental defense attorneys.~~]

127 Section 7. Section **63A-11-106** is amended to read:

128 **63A-11-106. Annual report -- Budget.**

129 (1) On or before the 1st day of October each year, the executive director shall report to
130 the governor and the Child Welfare Legislative Oversight Panel of the Legislature regarding
131 the preceding fiscal year on the operations, activities, and goals of the [~~office~~] program.

132 (2) The executive director shall prepare [~~and submit to the executive director~~] a budget
133 of:

134 (a) the administrative expenses for the [~~office~~] program; and

135 (b) the amount estimated to fund needed [~~contracted parental defense attorneys~~]
136 contracts and other costs.

137 Section 8. Section **63A-11-201** is amended to read:

138 **Part 2. Child Welfare Parental Defense Contracts**

139 **63A-11-201. Child welfare parental defense contracts -- Qualifications.**

140 (1) The [~~office~~] department may enter into contracts with qualified parental defense
141 attorneys to provide services for an indigent parent or parents who are the subject of a petition

142 alleging abuse, neglect, or dependency, and will require a parental defense attorney [~~pursuant~~
143 ~~to~~] under Section 78A-6-1111.

144 (2) Payment for the representation, costs, and expenses of a contracted parental defense
145 attorney shall be made from the Child Welfare Parental Defense Fund as provided in Section
146 63A-11-203.

147 (3) The parental defense attorney shall maintain the minimum qualifications as
148 provided by this chapter.

149 Section 9. Section **63A-11-202** is amended to read:

150 **63A-11-202. Contracted parental defense attorney.**

151 (1) [~~With respect to~~] For child welfare cases, a contracted parental defense attorney
152 shall:

153 (a) adequately prepare for and attend all court hearings, including initial and continued
154 shelter hearings and mediations;

155 (b) fully advise the client of the nature of the proceedings and of the client's rights,
156 communicate to the client any offers of settlement or compromise, and advise the client
157 regarding the reasonably foreseeable consequences of any course of action in the proceedings;

158 (c) be reasonably available to consult with the client outside of court proceedings;

159 (d) where attendance of a parental defense attorney is reasonably needed, attend
160 meetings regarding the client's case with representatives of one or more of the Division of
161 Child and Family Services, the Office of the Attorney General, and the Office of Guardian Ad
162 Litem;

163 (e) represent the interest of the client at all stages of the proceedings before the trial
164 court; and

165 (f) participate in the training courses and otherwise maintain the standards described in
166 Subsection (3).

167 (2) If the [~~office~~] department enters into a contract with an attorney under Section
168 [~~63A-11-105~~] 63A-11-201, the contract shall require that each attorney in the firm who will
169 provide representation of parents in child welfare cases under the contract perform the duties

170 described in Subsection (1).

171 (3) (a) Except as otherwise provided in Subsection (3)(b), a contracted parental defense
172 attorney shall meet the standards developed by the [director] department, which may include:

- 173 (i) completion of a basic training course provided by the [office] program;
- 174 (ii) experience in child welfare cases; and
- 175 (iii) participation each calendar year in continuing legal education courses providing no
176 fewer than eight hours of instruction in child welfare law.

177 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
178 [director] department may, by rule, exempt from the requirements of Subsection (3)(a) an
179 attorney who has equivalent training or adequate experience.

180 (4) Payment for the representation, costs, and expenses of the contracted parental
181 defense attorney shall be made from the Child Welfare Parental Defense Fund as provided in
182 Section 63A-11-203.

183 Section 10. Section **63A-11-203** is amended to read:

184 **63A-11-203. Child Welfare Parental Defense Fund -- Creation.**

185 (1) There is created a nonlapsing, restricted special revenue fund known as the "Child
186 Welfare Parental Defense Fund."

187 (2) Subject to availability, the [director] department may make distributions from the
188 fund as required in this chapter for the following purposes:

189 (a) to pay for the representation, costs, expert witness fees, and expenses of contracted
190 parental defense attorneys who are under contract with the [office] department to provide
191 parental defense in child welfare cases for the indigent parent or parents that are the subject of
192 a petition alleging abuse, neglect, or dependency;

193 (b) for administrative costs [~~pursuant to~~] under this chapter; and

194 (c) for reasonable expenses directly related to the functioning of the [office] program,
195 including training and travel expenses.

196 (3) The fund consists of:

197 (a) appropriations made to the fund by the Legislature;

198 (b) interest and earnings from the investment of fund money;

199 (c) proceeds deposited by participating counties [~~pursuant to~~] under Section
200 63A-11-204; and

201 (d) private contributions to the Child Welfare Parental Defense Fund.

202 (4) The state treasurer shall invest the money in the fund by following the procedures
203 and requirements of Title 51, Chapter 7, State Money Management Act.

204 (5) (a) If the [~~director~~] department anticipates a deficit in the fund during any fiscal
205 year:

206 (i) the [~~director~~] department shall request an appropriation from the Legislature; and

207 (ii) the Legislature may fund the anticipated deficit through appropriation but is not
208 required to fund the deficit.

209 (b) If the anticipated deficit is not funded by the Legislature, the [~~director~~] department
210 may request an interim assessment to participating counties to fund the anticipated deficit.

211 Section 11. Section **63A-11-204** is amended to read:

212 **63A-11-204. Agreements for coverage by the Child Welfare Parental Defense**
213 **Fund -- Eligibility -- County and state obligations -- Termination -- Revocation.**

214 (1) A county legislative body and the [~~office~~] department may annually enter into a
215 written agreement for the [~~office~~] department to provide parental defense attorney services in
216 the county out of the Child Welfare Parental Defense Fund.

217 (2) An agreement described in Subsection (1) shall provide that the county shall pay
218 into the fund an amount defined by a formula established in rule by the [~~office~~] department.

219 (3) (a) After the first year of operation of the fund, any county that elects to initiate
220 participation in the fund, or reestablish participation in the fund after participation was
221 terminated, shall be required to make an equity payment, in addition to the assessment
222 provided in Subsection (2).

223 (b) The amount of the equity payment described in Subsection (3)(a) shall be
224 determined by the [~~office pursuant to~~] department under rules established by the [~~office~~]
225 department under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

226 (4) The agreement shall provide for revocation of the agreement for failure to pay
227 assessments on the due date established by rule.

228 (5) Any county that elects to withdraw from participation in the fund, or whose
229 participation in the fund is revoked due to failure to pay its assessments when due, shall forfeit
230 any right to any previously paid assessments by the county or coverage from the fund.

231 Section 12. Section **63A-12-100.5** is amended to read:

232 **63A-12-100.5. Definitions.**

233 [~~The~~] (1) Except as provided under Subsection (2), the definitions in Section
234 63G-2-103 apply to this chapter.

235 (2) As used in this chapter, "division" or "state archives" means the Division of
236 Archives and Records Service.

237 Section 13. Section **63A-12-109** is enacted to read:

238 **63A-12-109. State Archives Fund created -- Donations -- Use of money --**
239 **Reporting.**

240 (1) There is created a restricted special revenue fund known as the "State Archives
241 Fund."

242 (2) The fund consists of money or other assets deposited in the fund from:

243 (a) a donation;

244 (b) a deposit;

245 (c) a contribution;

246 (d) a gift;

247 (e) an endowment;

248 (f) a devise; and

249 (g) a bequest of real property, personal property, or service.

250 (3) The division shall use the fund money for:

251 (a) the purpose specified by the grantor, if any; or

252 (b) if no purpose is specified by the grantor, the preservation of and access to the
253 archival records and exhibits.

254 (4) (a) The fund shall earn interest.

255 (b) The state treasurer shall deposit all interest earned on money in the fund into the
256 fund.

257 (5) The division shall annually report on the use of the fund to an appropriation
258 subcommittee designated by the Executive Appropriations Committee as part of the
259 appropriation subcommittee's budgetary process under Title 63J, Chapter 1, Budgetary
260 Procedures Act.

261 Section 14. Section **78A-6-1111** is amended to read:

262 **78A-6-1111. Right to counsel -- Appointment of counsel for indigent -- Cost --**
263 **Court hearing to determine compelling reason to appoint a noncontracting attorney.**

264 (1) (a) The parents, guardian, custodian, and the minor, if competent, shall be informed
265 that they have the right to be represented by counsel at every stage of the proceedings. They
266 have the right to employ counsel of their own choice and if any of them requests an attorney
267 and is found by the court to be indigent, counsel shall be appointed by the court, subject to the
268 provisions of this section. The court may appoint counsel without a request if it considers
269 representation by counsel necessary to protect the interest of the minor or of other parties.

270 (b) The cost of appointed counsel for an indigent minor or other indigent party,
271 including the cost of counsel and expense of appeal, shall be paid by the county in which the
272 trial court proceedings are held. Counties may levy and collect taxes for these purposes.

273 (c) The court shall take into account the income and financial ability to retain counsel
274 of the parents or guardian of a child in determining the indigency of the child.

275 (2) If the state or county responsible to provide legal counsel for an indigent under
276 Subsection (1)(b) has arranged by contract to provide services, the court if it has received
277 notice or a copy of such contract shall appoint the contracting attorney as legal counsel to
278 represent that indigent.

279 (3) In the absence of contrary contractual provisions regarding the selection and
280 appointment of parental defense counsel, the court shall select and appoint the attorney or
281 attorneys if:

- 282 (a) the contract for indigent legal services is with multiple attorneys; or
283 (b) the contract is with an additional attorney or attorneys in the event of a conflict of
284 interest.
- 285 (4) If the court considers the appointment of a noncontracting attorney to provide legal
286 services to an indigent despite the existence of an indigent legal services contract and the court
287 has a copy or notice of such contract, before the court may make the appointment, it shall:
- 288 (a) set the matter for a hearing;
289 (b) give proper notice to the attorney general and the [~~Office of~~] Child Welfare
290 Parental Defense Program created in Section 63A-11-103; and
- 291 (c) make findings that there is a compelling reason to appoint a noncontracting attorney
292 before it may make such appointment.
- 293 (5) The indigent's mere preference for other counsel may not be considered a
294 compelling reason justifying the appointment of a noncontracting attorney.
- 295 (6) The court may order a minor, parent, guardian, or custodian for whom counsel is
296 appointed and the parents or guardian of any child for whom counsel is appointed to reimburse
297 the county for some or all of the cost of appointed counsel.
- 298 (7) (a) Except as provided in Subsections (7)(b) and (c), the court shall order a minor,
299 parent, guardian, or custodian for whom counsel is appointed and the parents or guardian of
300 any child for whom counsel is appointed to reimburse the county for the cost of appointed
301 counsel arising from any work of counsel that is not primarily directed at the state or the
302 guardian ad litem.
- 303 (b) The court may not order reimbursement of the county pursuant to Subsection (7)(a)
304 for the cost of appointed counsel arising from any work of counsel:
- 305 (i) that is specifically undertaken to defend against the filing of a petition to terminate
306 parental rights, regardless of who filed the petition; and
307 (ii) that is undertaken after the petition to terminate parental rights has been filed.
- 308 (c) The state, or an agency of the state, may not be ordered to reimburse the county
309 pursuant to Subsection (7)(a).

