

## HB0208S01 compared with HB0208

~~{deleted text}~~ shows text that was in HB0208 but was deleted in HB0208S01.

inserted text shows text that was not in HB0208 but was inserted into HB0208S01.

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Senator Karen Mayne proposes the following substitute bill:

### ADMINISTRATIVE SERVICES AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

Senate Sponsor: ~~{\_\_\_\_\_}~~ Karen Mayne

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#### LONG TITLE

##### General Description:

This bill ~~{creates}~~ modifies the Utah Administrative Services Code by amending Child Welfare Defense Program provisions and creating a restricted special revenue fund ~~{to allow state archives to use donations for state archive purposes}~~.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ changes the Office of Child Welfare Parental Defense in the Department of Administrative Services to a program administered by the department;
- ▶ allows the Department of Administrative Services to contract all or part of the program to a qualified contractor;
- ▶ creates the State Archives Fund, as a restricted special revenue fund;

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- ▶ specifies what is deposited into the fund and uses of the fund;
- ▶ provides that the fund shall earn interest; and
- ▶ provides that state archives shall report on the use of the fund as part of the annual budget process.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

- 63A-1-109, as last amended by Laws of Utah 2006, Chapter 139
- 63A-11-101, as enacted by Laws of Utah 2004, Chapter 356
- 63A-11-102, as last amended by Laws of Utah 2008, Chapter 3
- 63A-11-103, as enacted by Laws of Utah 2004, Chapter 356
- 63A-11-104, as last amended by Laws of Utah 2010, Chapter 341
- 63A-11-105, as last amended by Laws of Utah 2006, Chapter 76
- 63A-11-106, as enacted by Laws of Utah 2004, Chapter 356
- 63A-11-201, as last amended by Laws of Utah 2008, Chapter 3
- 63A-11-202, as last amended by Laws of Utah 2009, Chapter 32
- 63A-11-203, as last amended by Laws of Utah 2006, Chapter 76
- 63A-11-204, as last amended by Laws of Utah 2008, Chapter 382
- 63A-12-100.5, as enacted by Laws of Utah 2010, Chapter 258
- 78A-6-1111, as last amended by Laws of Utah 2010, Chapter 368

ENACTS:

63A-12-109, Utah Code Annotated 1953

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

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

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

- (1) The department shall be composed of the following divisions:
  - (a) administrative rules;

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- (b) archives and records;
- (c) facilities construction and management;
- (d) finance;
- (e) fleet operations;
- (f) office of state debt collection;
- (g) state purchasing and general services; and
- (h) risk management ~~[, and]~~.
- ~~[(i) office of child welfare parental defense.]~~

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

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

### CHAPTER 11. CHILD WELFARE PARENTAL DEFENSE PROGRAM

#### Part 1. General Provisions

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

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

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

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

For purposes of this chapter:

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

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

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

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

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

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

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

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

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

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

**63A-11-103. Creation of ~~{office}~~program.**

There is created within the ~~[Department of Administrative Services]~~department, the ~~[Office of]~~ Child Welfare Parental Defense Program.

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

**63A-11-104. ~~{Office director -- Appointment}~~Program -- Duties -- ~~{Staff}~~Contracting.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(4) The director may employ staff. {~~

~~}~~

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(2) The department may contract with:

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

(b) an attorney authorized to practice law in the state, as an independent contractor, to serve as a parental defense attorney as provided under Section 63A-11-105.

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

**63A-11-105. ~~{Office}~~Program -- Duties, functions, and responsibilities.**

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

The department shall:

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

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

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

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

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

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

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

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

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

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

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

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

### Part 2. Child Welfare Parental Defense Contracts

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

(1) The ~~[office]~~ department may enter into contracts with qualified parental defense

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attorneys to provide services for an indigent parent or parents who are the subject of a petition alleging abuse, neglect, or dependency, and will require a parental defense attorney ~~]~~pursuant to] under Section 78A-6-1111.

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

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

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

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

(1) ~~]~~For child welfare cases, a contracted parental defense attorney shall:

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

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

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

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

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

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

(2) If the ~~]~~office] department enters into a contract with an attorney under Section 63A-11-105, the contract shall require that each attorney in the firm who will provide representation of parents in child welfare cases under the contract perform the duties described in Subsection (1).

(3) (a) Except as otherwise provided in Subsection (3)(b), a contracted parental defense

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attorney shall meet the standards developed by the [director] department which may include:

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

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

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

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

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

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

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

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

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

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

(3) The fund consists of:

(a) appropriations made to the fund by the Legislature; ~~{ }~~

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

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

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

(4) The state treasurer shall invest the money in the fund by following the procedures

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and requirements of Title 51, Chapter 7, State Money Management Act.

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

(i) the [director] department shall request an appropriation from the Legislature; and  
(ii) the Legislature may fund the anticipated deficit through appropriation but is not required to fund the deficit.

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

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

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

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

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

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

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

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

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

Section ~~11~~12. Section **63A-12-100.5** is amended to read:

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

[The] (1) Except as provided under Subsection (2), the definitions in Section

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63G-2-103 apply to this chapter.

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

Section ~~2~~13. Section **63A-12-109** is enacted to read:

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

### **Reporting.**

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

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

(a) a donation;

(b) a deposit;

(c) a contribution;

(d) a gift;

(e) an endowment;

(f) a devise; and

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

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

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

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

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

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

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

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### Legislative Review Note

~~as of 1-5-11 5:31 PM~~

~~Office of Legislative Research and General Counsel~~; Section 14. Section 78A-6-1111 is amended to read:

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

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

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

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

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

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

(a) the contract for indigent legal services is with multiple attorneys; or

(b) the contract is with an additional attorney or attorneys in the event of a conflict of interest.

(4) If the court considers the appointment of a noncontracting attorney to provide legal services to an indigent despite the existence of an indigent legal services contract and the court

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has a copy or notice of such contract, before the court may make the appointment, it shall:

(a) set the matter for a hearing;

(b) give proper notice to the attorney general and the [Office of] Child Welfare Parental Defense Program created in Section 63A-11-103; and

(c) make findings that there is a compelling reason to appoint a noncontracting attorney before it may make such appointment.

(5) The indigent's mere preference for other counsel may not be considered a compelling reason justifying the appointment of a noncontracting attorney.

(6) The court may order a minor, parent, guardian, or custodian for whom counsel is appointed and the parents or guardian of any child for whom counsel is appointed to reimburse the county for some or all of the cost of appointed counsel.

(7) (a) Except as provided in Subsections (7)(b) and (c), the court shall order a minor, parent, guardian, or custodian for whom counsel is appointed and the parents or guardian of any child for whom counsel is appointed to reimburse the county for the cost of appointed counsel arising from any work of counsel that is not primarily directed at the state or the guardian ad litem.

(b) The court may not order reimbursement of the county pursuant to Subsection (7)(a) for the cost of appointed counsel arising from any work of counsel:

(i) that is specifically undertaken to defend against the filing of a petition to terminate parental rights, regardless of who filed the petition; and

(ii) that is undertaken after the petition to terminate parental rights has been filed.

(c) The state, or an agency of the state, may not be ordered to reimburse the county pursuant to Subsection (7)(a).