

Senator Wayne A. Harper proposes the following substitute bill:

PARENTAL DEFENSE OFFICE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill changes the administration of the Child Welfare Parental Defense Program from the Department of Administrative Services to the Commission on Criminal and Juvenile Justice.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ changes the administration of the Child Welfare Parental Defense Program from the Department of Administrative Services to the Commission on Criminal and Juvenile Justice;
- ▶ modifies provisions relating to the duties and functions of the Child Welfare Parental Defense Program; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2020:

- ▶ to Commission on Criminal and Juvenile Justice -- Child Welfare Parental Defense Fund, as an ongoing appropriation:
 - from General Fund, \$6,500.



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **63M-7-204**, as last amended by Laws of Utah 2018, Chapters 54 and 126

31 **77-32-802**, as last amended by Laws of Utah 2018, Chapter 296

32 ENACTS:

33 **63M-7-211**, Utah Code Annotated 1953

34 **63M-7-211.1**, Utah Code Annotated 1953

35 **63M-7-211.2**, Utah Code Annotated 1953

36 REPEALS:

37 **63A-11-101**, as last amended by Laws of Utah 2011, Chapter 265

38 **63A-11-102**, as last amended by Laws of Utah 2011, Chapter 265

39 **63A-11-103**, as last amended by Laws of Utah 2011, Chapter 265

40 **63A-11-104**, as last amended by Laws of Utah 2011, Chapter 265

41 **63A-11-105**, as last amended by Laws of Utah 2011, Chapter 265

42 **63A-11-106**, as last amended by Laws of Utah 2011, Chapter 265

43 **63A-11-107**, as last amended by Laws of Utah 2008, Chapter 382

44 **63A-11-201**, as last amended by Laws of Utah 2011, Chapter 265

45 **63A-11-202**, as last amended by Laws of Utah 2011, Chapter 265

46 **63A-11-203**, as last amended by Laws of Utah 2013, Chapter 400

47 **63A-11-204**, as last amended by Laws of Utah 2011, Chapter 265



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

50 Section 1. Section **63M-7-204** is amended to read:

51 **63M-7-204. Duties of commission.**

52 (1) The State Commission on Criminal and Juvenile Justice administration shall:

53 (a) promote the commission's purposes as enumerated in Section **63M-7-201**;

54 (b) promote the communication and coordination of all criminal and juvenile justice
55 agencies;

56 (c) study, evaluate, and report on the status of crime in the state and on the

57 effectiveness of criminal justice policies, procedures, and programs that are directed toward the
58 reduction of crime in the state;

59 (d) study, evaluate, and report on programs initiated by state and local agencies to
60 address reducing recidivism, including changes in penalties and sentencing guidelines intended
61 to reduce recidivism, costs savings associated with the reduction in the number of inmates, and
62 evaluation of expenses and resources needed to meet goals regarding the use of treatment as an
63 alternative to incarceration, as resources allow;

64 (e) study, evaluate, and report on policies, procedures, and programs of other
65 jurisdictions which have effectively reduced crime;

66 (f) identify and promote the implementation of specific policies and programs the
67 commission determines will significantly reduce crime in Utah;

68 (g) provide analysis and recommendations on all criminal and juvenile justice
69 legislation, state budget, and facility requests, including program and fiscal impact on all
70 components of the criminal and juvenile justice system;

71 (h) provide analysis, accountability, recommendations, and supervision for state and
72 federal criminal justice grant money;

73 (i) provide public information on the criminal and juvenile justice system and give
74 technical assistance to agencies or local units of government on methods to promote public
75 awareness;

76 (j) promote research and program evaluation as an integral part of the criminal and
77 juvenile justice system;

78 (k) provide a comprehensive criminal justice plan annually;

79 (l) review agency forecasts regarding future demands on the criminal and juvenile
80 justice systems, including specific projections for secure bed space;

81 (m) promote the development of criminal and juvenile justice information systems that
82 are consistent with common standards for data storage and are capable of appropriately sharing
83 information with other criminal justice information systems by:

84 (i) developing and maintaining common data standards for use by all state criminal
85 justice agencies;

86 (ii) annually performing audits of criminal history record information maintained by
87 state criminal justice agencies to assess their accuracy, completeness, and adherence to

88 standards;

89 (iii) defining and developing state and local programs and projects associated with the
90 improvement of information management for law enforcement and the administration of
91 justice; and

92 (iv) establishing general policies concerning criminal and juvenile justice information
93 systems and making rules as necessary to carry out the duties under Subsection (1)(k) and this
94 Subsection (1)(m);

95 (n) allocate and administer grants, from money made available, for approved education
96 programs to help prevent the sexual exploitation of children;

97 (o) allocate and administer grants funded from money from the Law Enforcement
98 Operations Account created in Section 51-9-411 for law enforcement operations and programs
99 related to reducing illegal drug activity and related criminal activity;

100 (p) request, receive, and evaluate data and recommendations collected and reported by
101 agencies and contractors related to policies recommended by the commission regarding
102 recidivism reduction;

103 (q) establish and administer a performance incentive grant program that allocates funds
104 appropriated by the Legislature to programs and practices implemented by counties that reduce
105 recidivism and reduce the number of offenders per capita who are incarcerated;

106 (r) oversee or designate an entity to oversee the implementation of juvenile justice
107 reforms;

108 (s) make rules and administer the juvenile holding room standards and juvenile jail
109 standards to align with the Juvenile Justice and Delinquency Prevention Act requirements
110 pursuant to 42 U.S.C. Sec. 5633;

111 (t) allocate and administer grants, from money made available, for pilot qualifying
112 education programs; ~~and~~

113 (u) oversee the trauma-informed justice program described in Section 63M-7-209[-];
114 and

115 (v) administer the Child Welfare Parental Defense Program in accordance with
116 Sections 63M-7-211, 63M-7-211.1, and 63M-7-211.2.

117 (2) If the commission designates an entity under Subsection (1)(r), the commission
118 shall ensure that the membership of the entity includes representation from the three branches

119 of government and, as determined by the commission, representation from relevant stakeholder
120 groups across all parts of the juvenile justice system, including county representation.

121 Section 2. Section **63M-7-211** is enacted to read:

122 **63M-7-211. Child welfare parental defense program -- Creation -- Duties --**
123 **Contracting -- Annual report -- Budget -- Records access.**

124 (1) As used in this section and Sections [63M-7-211.1](#) and [63M-7-211.2](#):

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

127 (b) "Commission" means the Commission on Criminal and Juvenile Justice created in
128 Section [63M-7-201](#).

129 (c) "Contracted parental defense attorney" means a parental defense attorney who is
130 under contract with the commission to provide parental defense in a child welfare case.

131 (d) "Executive director" means the executive director of the commission appointed
132 under Section [63M-7-203](#).

133 (e) "Fund" means the Child Welfare Parental Defense Fund established in Section
134 [63M-7-211.2](#).

135 (f) "Parental defense attorney" means an attorney, law firm, or group of attorneys who:

136 (i) are authorized to practice law in the state; and

137 (ii) provide legal representation under contract with the commission, or a county in the
138 state, to a parent who is a party in a child welfare case.

139 (g) "Program" means the Child Welfare Parental Defense Program created in this
140 section.

141 (2) There is created within the commission the Child Welfare Parental Defense
142 Program.

143 (3) The commission shall:

144 (a) administer and enforce this section;

145 (b) manage the operation and budget of the program;

146 (c) provide assistance and advice to parental defense attorneys;

147 (d) develop and provide educational and training programs for parental defense
148 attorneys; and

149 (e) provide information and advice to assist a parental defense attorney to comply with

150 the attorney's professional, contractual, and ethical duties.

151 (4) The commission may contract with:

152 (a) a person who is qualified to perform the program duties under this section; and

153 (b) an attorney authorized to practice law in the state, as an independent contractor, to
154 serve as a parental defense attorney under this section.

155 (5) (a) On or before October 1 of each year, the executive director shall report to the
156 governor and the Child Welfare Legislative Oversight Panel regarding the preceding fiscal year
157 on the operations, activities, and goals of the program.

158 (b) The executive director shall prepare a budget of:

159 (i) the administrative expenses for the program; and

160 (ii) the amount estimated to fund needed contracts and other costs.

161 (c) The professional legislative staff may include summary data and nonidentifying
162 information in the staff's audits and reports to the Legislature.

163 (6) (a) (i) Notwithstanding Title 63G, Chapter 2, Government Records Access and
164 Management Act, and except as provided in Subsection (6)(b), a record of a contracted parental
165 defense attorney is protected and may not be released or made public upon subpoena, search
166 warrant, discovery proceedings, or otherwise.

167 (ii) A record of a contracted parental defense attorney is subject to legislative
168 subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers.

169 (b) The Legislature shall maintain a record released in accordance with Subsection
170 (6)(a)(ii) as confidential.

171 Section 3. Section **63M-7-211.1** is enacted to read:

172 **63M-7-211.1. Child welfare parental defense contracts.**

173 (1) (a) The commission may enter into a contract with a parental defense attorney to
174 provide services for an indigent parent who is the subject of a petition alleging abuse, neglect,
175 or dependency, and requires a parental defense attorney under Section [78A-6-1111](#).

176 (b) Payment for the representation, costs, and expenses of a contracted parental defense
177 attorney shall be made from the Child Welfare Parental Defense Fund in accordance with
178 Section [63M-7-211.2](#).

179 (c) The parental defense attorney shall maintain the minimum qualifications as
180 provided by this section.

- 181 (2) A contracted parental defense attorney shall:
 182 (a) adequately prepare for and attend all court hearings, including initial and continued
 183 shelter hearings and mediations;
 184 (b) fully advise the client of the nature of the proceedings and of the client's rights,
 185 communicate to the client any offers of settlement or compromise, and advise the client
 186 regarding the reasonably foreseeable consequences of any course of action in the proceedings;
 187 (c) be reasonably available to consult with the client outside of court proceedings;
 188 (d) where attendance is reasonably necessary, attend meetings regarding the client's
 189 case with representatives of one or more of the Division of Child and Family Services, the
 190 Office of the Attorney General, or the Office of Guardian Ad Litem;
 191 (e) represent the interest of the client at all stages of the proceedings before the trial
 192 court $\hat{S} \rightarrow$, and on appeal as required by law $\leftarrow \hat{S}$; and
 193 (f) participate in the training courses and otherwise maintain the standards described in
 194 Subsection (4).
 195 (3) If the commission enters into a contract with a firm to provide parental defense
 196 attorney services under this section, the contract shall require that each attorney in the firm who
 197 will provide representation of a parent in a child welfare case under the contract perform the
 198 duties described in Subsection (2).
 199 (4) (a) Except as otherwise provided in Subsection (4)(b), a contracted parental defense
 200 attorney shall:
 201 (i) complete a basic training course provided by the program;
 202 (ii) have experience in child welfare cases; and
 203 (iii) participate each calendar year in continuing legal education courses providing no
 204 fewer than eight hours of instruction in child welfare law.
 205 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 206 commission may, by rule, exempt from the requirements of Subsection (4)(a) an attorney who
 207 has equivalent training or adequate experience.
 208 Section 4. Section **63M-7-211.2** is enacted to read:
 209 **63M-7-211.2. Child Welfare Parental Defense Fund -- Agreements for coverage**
 210 **by the Child Welfare Parental Defense Fund.**
 211 (1) There is created an expendable special revenue fund known as the "Child Welfare

212 Parental Defense Fund."

213 (2) Subject to availability, the commission may make distributions from the fund as
214 required in this section or Section [63M-7-211](#) or [63M-7-211.1](#) for the following purposes:

215 (a) to pay for the representation, costs, expert witness fees, and expenses of parental
216 defense attorneys who are under contract with the commission to provide parental defense in
217 child welfare cases for an indigent parent that is the subject of a petition alleging abuse,
218 neglect, or dependency;

219 (b) for administrative costs under this section or Section [63M-7-211](#) or [63M-7-211.1](#);

220 and

221 (c) for reasonable expenses directly related to the functioning of the program, including
222 training and travel expenses.

223 (3) The fund consists of:

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

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

226 (c) proceeds deposited by participating counties under this section; and

227 (d) private contributions to the fund.

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

230 (5) (a) If the commission anticipates a deficit in the fund during a fiscal year:

231 (i) the commission shall request an appropriation from the Legislature; and

232 (ii) the Legislature may fund the anticipated deficit through appropriation.

233 (b) If the anticipated deficit is not funded by the Legislature, the commission may
234 request an interim assessment to participating counties as described in Subsection (6) to fund
235 the anticipated deficit.

236 (6) (a) A county legislative body and the commission may annually enter into a written
237 agreement for the commission to provide parental defense attorney services in the county out of
238 the fund.

239 (b) The agreement described under Subsection (6)(a) shall:

240 (i) require the county to pay into the fund an amount defined by a formula established
241 by the commission by rule under Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

242 and

243 (ii) provide for revocation of the agreement for failure to pay an assessment on the due
244 date established by the commission by rule under Title 63G, Chapter 3, Utah Administrative
245 Rulemaking Act.

246 (7) (a) After the first year of operation of the fund, any county that elects to initiate
247 participation in the fund, or reestablish participation in the fund after participation was
248 terminated, shall be required to make an equity payment, in addition to the assessment
249 provided in Subsection (5).

250 (b) The commission shall determine the amount of the equity payment described in
251 Subsection (7)(a) by rule established by the commission under Title 63G, Chapter 3, Utah
252 Administrative Rulemaking Act.

253 (8) A county that elects to withdraw from participation in the fund, or whose
254 participation in the fund is revoked due to failure to pay the county's assessment, as described
255 in Subsection (6), when due, shall forfeit any right to any previously paid assessment by the
256 county or coverage from the fund.

257 Section 5. Section **77-32-802** is amended to read:

258 **77-32-802. Commission members -- Member qualifications -- Terms -- Vacancy.**

259 (1) The commission is composed of 14 voting members and one ex officio, nonvoting
260 member.

261 (a) The governor, with the consent of the Senate, shall appoint the following 12 voting
262 members:

263 (i) two practicing criminal defense attorneys recommended by the Utah Association of
264 Criminal Defense Lawyers;

265 (ii) one attorney practicing in juvenile delinquency defense recommended by the Utah
266 Association of Criminal Defense Lawyers;

267 (iii) an attorney representing minority interests recommended by the Utah Minority Bar
268 Association;

269 (iv) one member recommended by the Utah Association of Counties from a county of
270 the first or second class;

271 (v) one member recommended by the Utah Association of Counties from a county of
272 the third through sixth class;

273 (vi) a director of a county public defender organization recommended by the Utah

274 Association of Criminal Defense Lawyers;

275 (vii) two members recommended by the Utah League of Cities and Towns from its
276 membership;

277 (viii) a retired judge recommended by the Judicial Council;

278 (ix) one member of the Utah Legislature selected jointly by the Speaker of the House
279 and President of the Senate; and

280 (x) one attorney practicing in the area of parental defense, recommended by an entity
281 funded under [~~Title 63A, Chapter 11,~~] the Child Welfare Parental Defense Program created in
282 Section 63M-7-211.

283 (b) The Judicial Council shall appoint a voting member from the Administrative Office
284 of the Courts.

285 (c) The executive director of the State Commission on Criminal and Juvenile Justice or
286 the executive director's designee is a voting member of the commission.

287 (d) The director of the commission, appointed under Section [77-32-803](#), is an ex
288 officio, nonvoting member of the commission.

289 (2) A member appointed by the governor shall serve a four-year term, except as
290 provided in Subsection (3).

291 (3) The governor shall stagger the initial terms of appointees so that approximately half
292 of the members appointed by the governor are appointed every two years.

293 (4) A member appointed to the commission shall have significant experience in
294 indigent criminal defense, parental defense, or juvenile defense in delinquency proceedings or
295 have otherwise demonstrated a strong commitment to providing effective representation in
296 indigent defense services.

297 (5) A person who is currently employed solely as a criminal prosecuting attorney may
298 not serve as a member of the commission.

299 (6) A commission member shall hold office until the member's successor is appointed.

300 (7) The commission may remove a member for incompetence, dereliction of duty,
301 malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.

302 (8) If a vacancy occurs in the membership for any reason, a replacement shall be
303 appointed for the remaining unexpired term in the same manner as the original appointment.

304 (9) The commission shall annually elect a chair from the commission's membership to

305 serve a one-year term. A commission member may not serve as chair of the commission for
306 more than three consecutive terms.

307 (10) A member may not receive compensation or benefits for the member's service, but
308 may receive per diem and travel expenses in accordance with:

309 (a) Section 63A-3-106;

310 (b) Section 63A-3-107; and

311 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
312 63A-3-107.

313 (11) (a) A majority of the members of the commission constitutes a quorum.

314 (b) If a quorum is present, the action of a majority of the voting members present
315 constitutes the action of the commission.

316 Section 6. **Repealer.**

317 This bill repeals:

318 Section 63A-11-101, **Title.**

319 Section 63A-11-102, **Definitions.**

320 Section 63A-11-103, **Creation of program.**

321 Section 63A-11-104, **Program -- Duties -- Contracting.**

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

323 Section 63A-11-106, **Annual report -- Budget.**

324 Section 63A-11-107, **Records access.**

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

326 Section 63A-11-202, **Contracted parental defense attorney.**

327 Section 63A-11-203, **Child Welfare Parental Defense Fund -- Creation.**

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

330 Section 7. **Appropriation.**

331 The following sums of money are appropriated for the fiscal year beginning July 1,
332 2019, and ending June 30, 2020. These are additions to amounts previously appropriated for
333 fiscal year 2020. The Legislature has reviewed the following expendable funds. The Legislature
334 authorizes the State Division of Finance to transfer amounts between funds and accounts as
335 indicated. Outlays and expenditures from the funds or accounts to which the money is

336 transferred may be made without further legislative action, in accordance with statutory
337 provisions relating to the funds or accounts.

338 ITEM 1

339 To Commission on Criminal and Juvenile Justice -- Child Welfare Parental

340 Defense Fund

341 From General Fund \$6,500

342 Schedule of Programs:

343 Child Welfare Parental Defense Fund \$6,500