

Chapter 11 Child Welfare Parental Defense Program

Part 1 General Provisions

63A-11-101 Title.

This chapter is known as the "Child Welfare Parental Defense Program."

Amended by Chapter 265, 2011 General Session

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 department to provide parental defense in child welfare cases.
- (3) "Fund" means the Child Welfare Parental Defense Fund established in Section 63A-11-203.
- (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 department, or a county in the state, to a parent who is a party in a child welfare case.
- (5) "Program" means the Child Welfare Parental Defense Program created in Section 63A-11-103.

Amended by Chapter 265, 2011 General Session

63A-11-103 Creation of program.

There is created within the department, the Child Welfare Parental Defense Program.

Amended by Chapter 265, 2011 General Session

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

- (1) The department shall:
 - (a) except as provided under Subsection (2), administer and enforce this chapter;
 - (b) manage the operation and budget of the program; and
 - (c) if the department operates the 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.
- (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-11-201.

Amended by Chapter 265, 2011 General Session

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

The department shall:

- (1) provide assistance and advice to parental defense attorneys;
- (2) develop and provide educational and training programs for parental defense attorneys; and
- (3) provide information and advice to assist parental defense attorneys to comply with their professional, contractual, and ethical duties.

Amended by Chapter 265, 2011 General Session

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 program.
- (2) The executive director shall prepare a budget of:
 - (a) the administrative expenses for the program; and
 - (b) the amount estimated to fund needed contracts and other costs.

Amended by Chapter 265, 2011 General Session

63A-11-107 Records access.

- (1)
 - (a) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, and except as provided in Subsection (1)(b), all records of a contracted parental defense attorney are protected and may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise.
 - (b) All records of a contracted parental defense attorney are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers.
- (2) Records released in accordance with Subsection (1)(b) shall be maintained as confidential by the Legislature. The professional legislative staff may, however, include summary data and nonidentifying information in its audits and reports to the Legislature.

Amended by Chapter 382, 2008 General Session

Part 2

Child Welfare Parental Defense Contracts

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

- (1) The department may enter into contracts with qualified parental defense 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 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.

Amended by Chapter 265, 2011 General Session

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 department enters into a contract with an attorney under Section 63A-11-201, 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 attorney shall meet the standards developed by the department, which may include:
 - (i) completion of a basic training course provided by the 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 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.

Amended by Chapter 265, 2011 General Session

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

- (1) There is created an expendable special revenue fund known as the "Child Welfare Parental Defense Fund."
- (2) Subject to availability, the 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 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 under this chapter; and
 - (c) for reasonable expenses directly related to the functioning of the 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 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 and requirements of Title 51, Chapter 7, State Money Management Act.
- (5)
- (a) If the department anticipates a deficit in the fund during any fiscal year:
 - (i) the 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 department may request an interim assessment to participating counties to fund the anticipated deficit.

Amended by Chapter 400, 2013 General Session

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 department may annually enter into a written agreement for the 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 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 department under rules established by the 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.

Amended by Chapter 265, 2011 General Session