

**CHILD WELFARE PARENTAL DEFENSE ACT**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Matt Throckmorton**

**This act creates the Office of Child Welfare Parental Defense within the Department of Administrative Services. The act creates the Parental Defense Board to advise and assist the office. The act sets forth the manner of appointment and the authority, duties, and responsibilities of the office and its director. The act sets forth the composition of the board, the manner of appointment, qualifications, and terms of board members, and the duties of the board. The act sets forth minimum standards required of parental defense attorneys. The act provides for court-appointed counsel in child welfare actions initiated by the state and in all termination of parental rights cases. The act protects the records of a contracted parental defense attorney from all but a legislative subpoena. The act makes technical changes. The act provides an effective date. The act provides a transition clause.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**78-3a-913**, as last amended by Chapter 256, Laws of Utah 1999

ENACTS:

**63A-11-101**, Utah Code Annotated 1953

**63A-11-102**, Utah Code Annotated 1953

**63A-11-103**, Utah Code Annotated 1953

**63A-11-104**, Utah Code Annotated 1953

**63A-11-105**, Utah Code Annotated 1953

**63A-11-106**, Utah Code Annotated 1953

**63A-11-107**, Utah Code Annotated 1953

**63A-11-108**, Utah Code Annotated 1953

**63A-11-109**, Utah Code Annotated 1953



63A-11-110, Utah Code Annotated 1953

63A-11-111, Utah Code Annotated 1953

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

Section 1. Section 63A-11-101 is enacted to read:

# CHAPTER 11. CHILD WELFARE PARENTAL DEFENSE ACT

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

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

Section 2. Section 63A-11-102 is enacted to read:

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

For purposes of this chapter:

(1) "Board" means the Parental Defense Board created in Section 63A-11-108.

(2) "Child welfare case" means a proceeding under Title 78, Chapter 3a, Juvenile Courts, Part 3 or 4.

(3) "Contracted parental defense attorney" means an attorney authorized to practice law in Utah who is under contract with the office to provide parental defense in child welfare cases.

(4) "Department" means the Department of Administrative Services.

(5) "Director" means the director of the office.

(6) "Executive director" means the executive director of the department.

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

Section 3. Section 63A-11-103 is enacted to read:

## **63A-11-103. Creation of office.**

There is created within the Department of Administrative Services, the Office of Child Welfare Parental Defense. The director of the office shall administer and enforce the laws of this chapter.

Section 4. Section 63A-11-104 is enacted to read:

## **63A-11-104. Director of office -- Appointment -- Duties.**

(1) The office shall be under the supervision, direction, and control of a director. The director shall be:

(a) appointed by the board; and

(b) an attorney licensed to practice law in the state with experience representing parents

59 in child welfare cases.

60 (2) The director shall perform all duties, functions, and responsibilities assigned to the  
61 office by law or rule and, where provided, with the collaboration, approval, or assistance of the  
62 board.

63 Section 5. Section **63A-11-105** is enacted to read:

64 **63A-11-105. Employment of staff.**

65 The director, with the approval of the board, may employ, as staff, one assistant.

66 Section 6. Section **63A-11-106** is enacted to read:

67 **63A-11-106. Office -- Duties, functions, and responsibilities.**

68 The duties, functions, and responsibilities of the office include the following:

69 (1) to develop policies and procedures, in collaboration with the board, for the transfer and  
70 management of existing contracts with parental defense attorneys from the counties to the state;

71 (2) to develop and enter into contracts with attorneys authorized to practice law in the  
72 state, as independent contractors, to serve as parental defense counsel;

73 (3) to assist the board in developing a formula under Subsection 63A-11-108(1)(c);

74 (4) to gather from the counties data and information needed or appropriate to develop the  
75 formula described in Subsection (3);

76 (5) to provide assistance and advice to contracted parental defense attorneys;

77 (6) to collaborate with the board to develop and provide educational and training programs  
78 and a library of materials for contracted parental defense attorneys;

79 (7) to provide information and advice to assist contracted parental defense attorneys to  
80 comply with their professional, contractual, and ethical duties;

81 (8) to give public notice of board meetings;

82 (9) to keep records of board meetings, proceedings, and actions and make those records  
83 available for public inspection upon request; and

84 (10) to maintain lists of parental defense attorneys who represent that they have experience  
85 in child welfare cases and make the lists available to the public at cost upon request.

86 Section 7. Section **63A-11-107** is enacted to read:

87 **63A-11-107. Annual report -- Budget.**

88 (1) On or before the 1st day of October each year, the director shall report to the governor  
89 and the Child Welfare Legislative Oversight Panel of the Legislature for the preceding fiscal year

on the operations, activities, and goals of the office.

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

(a) the administrative expenses for the office; and

(b) a budget to fund contracts with parental defense attorneys.

Section 8. Section **63A-11-108** is enacted to read:

**63A-11-108. Parental Defense Board created -- Functions -- Appointment -- Qualification and terms of members -- Expenses -- Meetings.**

(1) There is created within the office the Parental Defense Board. The board shall:

(a) establish the policy of the office in accordance with this chapter;

(b) with the concurrence of the director, adopt reasonable rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to administer and enforce this chapter, which are not inconsistent with this chapter;

(c) determine by rule a formula, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, pursuant to which the counties will contribute funds to the General Fund to cover the portion of the office's budget that will fund contracts with contracted parental defense attorneys statewide;

(d) advise the director on the administration and enforcement of any matters affecting the office;

(e) advise the director on matters affecting the office budget;

(f) advise and assist the director in developing and conducting legal education courses and training; and

(g) perform other duties as provided in this chapter.

(2) (a) The board shall be comprised of five members as follows:

(i) two attorneys licensed to practice law in the state with experience representing parents in child welfare cases, to be appointed by the governor;

(ii) a juvenile court judge, to be appointed by the Board of Juvenile Court Judges; and

(iii) two designees appointed by the Utah Association of Counties.

(b) No more than two board members may be appointed under Subsections (2)(a)(i) and (ii) from any given county in the state.

(3) (a) Except as required by Subsection (3)(b), each member of the board shall be appointed to a term of four years.

(b) Notwithstanding the requirements of Subsection (3)(a), the initial terms of the juvenile court judge, one of the Utah Association of Counties' designees, and one of the attorneys to be appointed by the governor shall be only two years, to ensure that the terms of board members are staggered.

(c) A board member may not serve more than two consecutive terms.

(4) The board shall annually elect one of its members as chair, for a term of one year.

(5) When a vacancy occurs in the membership for any reason, the appointing authority shall select a replacement for the unexpired term.

(6) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members may decline to receive per diem and expenses for their service.

(7) The board shall meet at least quarterly. The director may call additional meetings at the director's discretion, upon the request of the chair, or upon the written request of two or more board members.

(8) Three members constitute a quorum for the transaction of business. If a quorum is present when a vote is taken, the affirmative vote of board members present is the action of the board.

(9) (a) A board member may not participate in a vote:

(i) on a matter involving the member's business or employer; or

(ii) when the member, the member's business or family, or the member's employer has a pecuniary interest in the outcome or has some other conflict of interests concerning the matters being voted upon.

(b) If a board member is disqualified under Subsection (9)(a), the director may appoint a temporary, alternate board member to act on the issue before the board.

Section 9. Section **63A-11-109** is enacted to read:

**63A-11-109. Parental defense attorney.**

(1) With respect to child welfare cases, a contracted parental defense attorney shall:

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

(b) fully advise the client of the nature of the proceedings and of the client's rights,

152 communicate to the client any offers of settlement or compromise, and advise the client regarding  
153 the reasonably foreseeable consequences of any course of action in the proceedings;

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

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

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

160 (f) pursue and perfect appeals from final orders of the trial court, when the client requests  
161 an appeal and an appeal would not be frivolous; and

162 (g) participate in the training courses and otherwise maintain the standards described in  
163 Subsection (3).

164 (2) If the office enters into a contract with a law firm under Section 63A-11-106, the  
165 contract shall require that each attorney in the firm who will provide representation of parents in  
166 child welfare cases under the contract perform the duties described in Subsection (1).

167 (3) (a) Except as otherwise provided in Subsection (3)(b), a contracted parental defense  
168 attorney shall meet the following standards as a condition to being allowed to provide  
169 representation under a contract:

170 (i) the attorney shall have completed a basic training course provided by the office;

171 (ii) the attorney shall have experience in child welfare cases; and

172 (iii) the attorney shall participate each calendar year in continuing legal education courses  
173 providing no fewer than eight hours of instruction in child welfare law.

174 (b) The board may, by rule, exempt from the requirement of Subsection (3)(a)(i) an  
175 attorney who has equivalent training or adequate experience.

176 Section 10. Section **63A-11-110** is enacted to read:

177 **63A-11-110. Qualified experts -- Funding.**

178 (1) The office shall, in collaboration with the board, develop a list of qualified experts to  
179 serve as a defense resource to contracted parental defense attorneys. The office shall negotiate  
180 with an expert to be included on the list for fees in child welfare cases to be handled by contracted  
181 parental defense attorneys which fees are discounted from the current market billing rates of the  
182 expert.

(2) When a contracted parental defense attorney requires an expert witness in a child welfare case, the persons named in the list described in Subsection (1) are the exclusive source from which expert witness defense resources may be provided, unless the court finds a compelling reason for an expert witness not on the list to be used, in which case the court shall state the compelling reason on the record.

(3) The office has discretion to include or exclude in a contract awarded to a parental defense attorney the funding to cover expert witness fees and other costs.

(4) The office shall:

(a) establish, with the approval of the board, a reserve fund from funds appropriated by the Legislature, for the purpose of assisting a contracted parental defense attorney with expert witness fees and costs not covered under the attorney's contract; and

(b) determine reimbursements and payments to be made from the fund described in Subsection (4)(a).

Section 11. Section **63A-11-111** is enacted to read:

**63A-11-111. Records access.**

(1) (a) 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. This Subsection (1)(a) supersedes any inconsistent provision in Title 63, Chapter 2, Government Records Access and Management Act.

(b) All records of a contracted parental defense attorney are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers, and shall be released to the Legislature.

(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.

Section 12. Section **78-3a-913** is amended to read:

**78-3a-913. 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] In any action initiated by the state under this chapter and in any action initiated by any person for termination of parental rights, 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 as provided in Subsection (3). 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]~~ In any action initiated by the state under this chapter and in any action initiated by any person for termination of parental rights, 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 ~~[hearing is]~~ 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 minor in determining the indigency of the minor.

(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 under Section 63A-11-110, 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) ~~[The]~~ 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 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 ~~[or county attorney of the responsible county of the hearing]~~ and the office; 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 shall 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 minor for whom counsel is appointed to reimburse the county for the cost of appointed counsel.

(7) If the minor and other parties were not represented by counsel, the court shall inform them at the conclusion of the proceedings that they have the right to appeal.

**Section 13. Effective date.**

This act takes effect on July 1, 2002, except that Sections 63A-11-106, 63A-11-109, 63A-11-110, and the amendments to Section 78-3a-913 take effect on July 1, 2003.

**Section 14. Transition clause.**

(1) Beginning July 1, 2002, and ending June 30, 2003, the duties, functions, and responsibilities of the Office of Child Welfare Parental Defense include the following:

(a) to gather from the counties data and information needed or appropriate to develop the formula described in Subsection 63A-11-106(3);

(b) to give public notice of board meetings; and

(c) to keep records of board meetings, proceedings, and actions and make those records available for public inspection upon request.

(2) Beginning July 1, 2002, and ending June 30, 2003:

(a) In any action initiated by the state under Title 78, Chapter 3a, Juvenile Court Act of 1996, and in any action initiated by any person for termination of parental rights, 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 as provided in Subsection 78-3a-913(3). 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) In any action initiated by the state under this chapter and in any action initiated by any person for termination of parental rights, the cost of appointed counsel for the 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.

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

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**Legislative Review Note**  
**as of 2-22-02 2:49 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**