

**CHILD WELFARE PROCEEDINGS**

**AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Greg J. Curtis**

**This act modifies the Judicial Code. This act phases in expanded access to abuse, neglect, and dependency hearings and records of those hearings, beginning with Juvenile Court districts identified by the Judicial Council as pilot districts. This act requires the Judicial Council to report to the Legislature on the effects of this act. This act includes revisors instructions.**

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

AMENDS:

**78-3-21**, as last amended by Chapter 221, Laws of Utah 2000

**78-3a-115**, as last amended by Chapters 171 and 237, Laws of Utah 1998

**78-3a-116**, as last amended by Chapter 274, Laws of Utah 1998

**78-3a-406**, as renumbered and amended by Chapter 260, Laws of Utah 1994

ENACTS:

**78-3a-115.1**, Utah Code Annotated 1953

This act enacts uncodified material.

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

Section 1. Section **78-3-21** is amended to read:

**78-3-21. Judicial Council -- Creation -- Members -- Terms and election -- Responsibilities -- Reports.**

(1) The Judicial Council, established by Article VIII, Section 12, Utah Constitution, shall be composed of:

- (a) the chief justice of the Supreme Court;
- (b) one member elected by the justices of the Supreme Court;
- (c) one member elected by the judges of the Court of Appeals;
- (d) five members elected by the judges of the district courts;

(e) two members elected by the judges of the juvenile courts;

(f) three members elected by the justice court judges; and

(g) a member or ex officio member of the Board of Commissioners of the Utah State Bar who is an active member of the Bar in good standing elected by the Board of Commissioners.

(2) (a) The chief justice of the Supreme Court shall act as presiding officer of the council and chief administrative officer for the courts. The chief justice shall vote only in the case of a tie.

(b) All members of the council shall serve for three-year terms. If a council member should die, resign, retire, or otherwise fail to complete a term of office, the appropriate constituent group shall elect a member to complete the term of office. In courts having more than one member, the members shall be elected to staggered terms. The person elected to the Judicial Council by the Board of Commissioners shall be a member or ex officio member of the Board of Commissioners and an active member of the Bar in good standing at the time the person is elected. The person may complete a three-year term of office on the Judicial Council even though the person ceases to be a member or ex officio member of the Board of Commissioners. The person shall be an active member of the Bar in good standing for the entire term of the Judicial Council.

(c) Elections shall be held under rules made by the Judicial Council.

(3) The council is responsible for the development of uniform administrative policy for the courts throughout the state. The presiding officer of the Judicial Council is responsible for the implementation of the policies developed by the council and for the general management of the courts, with the aid of the administrator. The council has authority and responsibility to:

(a) establish and assure compliance with policies for the operation of the courts, including uniform rules and forms; and

(b) publish and submit to the governor, the chief justice of the Supreme Court, and the Legislature an annual report of the operations of the courts, which shall include financial and statistical data and may include suggestions and recommendations for legislation.

(4) (a) The Judicial Council shall make rules establishing:

(i) standards for judicial competence; and  
(ii) a formal program for the evaluation of judicial performance containing the elements of and meeting the requirements of this Subsection (4).

(b) The Judicial Council shall ensure that the formal judicial performance evaluation program has improvement in the performance of individual judges, court commissioners, and the judiciary as its goal.

(c) The Judicial Council shall ensure that the formal judicial performance evaluation program includes at least all of the following elements:

- (i) a requirement that judges complete a certain number of hours of approved judicial education each year;
- (ii) a requirement that each judge certify that he is:
  - (A) physically and mentally competent to serve; and
  - (B) in compliance with the Codes of Judicial Conduct and Judicial Administration; and
- (iii) a requirement that the judge receive a satisfactory score on questions identified by the Judicial Council as relating to judicial certification on a survey of members of the Bar developed by the Judicial Council in conjunction with the American Bar Association.

(d) The Judicial Council shall ensure that the formal judicial performance evaluation program considers at least the following criteria:

- (i) integrity;
- (ii) knowledge;
- (iii) understanding of the law;
- (iv) ability to communicate;
- (v) punctuality;
- (vi) preparation;
- (vii) attentiveness;
- (viii) dignity;
- (ix) control over proceedings; and
- (x) skills as a manager.

(e) (i) The Judicial Council shall provide the judicial performance evaluation information and the disciplinary data required by Subsection 20A-7-702(2) to the Lieutenant Governor for publication in the voter information pamphlet.

(ii) Not later than August 1 of the year before the expiration of the term of office of a municipal court judge, the Judicial Council shall provide the judicial performance evaluation information required by Subsection 20A-7-702(2) to the appointing authority of a municipal justice court judge.

(5) The council shall establish standards for the operation of the courts of the state including, but not limited to, facilities, court security, support services, and staff levels for judicial and support personnel.

(6) The council shall by rule establish the time and manner for destroying court records, including computer records, and shall establish retention periods for these records.

(7) (a) Consistent with the requirements of judicial office and security policies, the council shall establish procedures to govern the assignment of state vehicles to public officers of the judicial branch.

(b) The vehicles shall be marked in a manner consistent with Section 41-1a-407 and may be assigned for unlimited use, within the state only.

(8) (a) The council shall advise judicial officers and employees concerning ethical issues and shall establish procedures for issuing informal and formal advisory opinions on these issues.

(b) Compliance with an informal opinion is evidence of good faith compliance with the Code of Judicial Conduct.

(c) A formal opinion constitutes a binding interpretation of the Code of Judicial Conduct.

(9) (a) The council shall establish written procedures authorizing the presiding officer of the council to appoint judges of courts of record by special or general assignment to serve temporarily in another level of court in a specific court or generally within that level. The appointment shall be for a specific period and shall be reported to the council.

(b) These procedures shall be developed in accordance with Subsection 78-3-24(10) regarding temporary appointment of judges.

(10) The Judicial Council may by rule designate municipalities in addition to those designated by statute as a location of a trial court of record. There shall be at least one court clerk's office open during regular court hours in each county. Any trial court of record may hold court in any municipality designated as a location of a court of record. Designations by the Judicial Council may not be made between July 1, 1997, and July 1, 1998.

(11) The Judicial Council shall by rule determine whether the administration of a court shall be the obligation of the administrative office of the courts or whether the administrative office of the courts should contract with local government for court support services.

(12) The Judicial Council may by rule direct that a district court location be administered from another court location within the county.

(13) The Judicial Council shall establish and supervise the Office of Guardian Ad Litem Director, in accordance with the provisions of Sections 78-3a-911 and 78-3a-912, and assure compliance of the guardian ad litem program with state and federal law, regulation, and policy, and court rules.

(14) The Judicial Council shall establish and maintain, in cooperation with the Office of Recovery Services within the Department of Human Services, the part of the state case registry that contains records of each support order established or modified in the state on or after October 1, 1998, as is necessary to comply with the Social Security Act, 42 U.S.C. Sec. 654a.

(15) (a) On or before November 1, 2003, the Judicial Council, by rule, shall select one or more districts as pilot districts for purposes of Sections 78-3a-115, 78-3a-115.1, and 78-3a-116.

(b) Prior to the 2005 Annual General Session, the Judicial Council shall report to the Child Welfare Legislative Oversight Panel and the Judiciary Interim Committee on the effects of this act and recommend whether the provisions of this act should be continued, modified, or repealed.

Section 2. Section **78-3a-115** is amended to read:

**78-3a-115. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's cases heard separately from adult cases -- Minor or parents or custodian heard separately -- Continuance of hearing -- Consolidation of proceedings involving more than one minor.**

(1) Hearings in minor's cases shall be held before the court without a jury and may be conducted in an informal manner.

(a) In abuse, neglect, and dependency cases in all districts other than pilot districts selected by the Judicial Council under Subsection 78-3-21(15)(a), the court shall exclude all persons from hearings held prior to July 1, 2005 who do not have a direct interest in the proceedings.

(b) In delinquency cases the court shall admit all persons who have a direct interest in the case and may admit persons requested by the parent or legal guardian to be present. The court shall exclude all other persons except as provided in Subsection (1)(c).

(c) In delinquency cases in which the minor charged is 14 years of age or older, the court shall admit any person unless the hearing is closed by the court upon findings on the record for good cause if:

(i) the minor has been charged with an offense which would be a felony if committed by an adult; or

(ii) the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult, and the minor has been previously charged with an offense which would be a misdemeanor or felony if committed by an adult.

(d) The victim of any act charged in a petition or information involving an offense committed by a minor which if committed by an adult would be a felony or a class A or class B misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77, Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not apply to important juvenile justice hearings as defined in Section 77-38-2.

(e) A victim, upon request to appropriate juvenile court personnel, shall have the right to inspect and duplicate juvenile court legal records that have not been expunged concerning:

(i) the scheduling of any court hearings on the petition;

(ii) any findings made by the court; and

(iii) any sentence or decree imposed by the court.

(2) Minor's cases shall be heard separately from adult cases. The minor or his parents or custodian may be heard separately when considered necessary by the court. The hearing may be continued from time to time to a date specified by court order.

(3) When more than one minor is involved in a home situation which may be found to constitute neglect or dependency, or when more than one minor is alleged to be involved in the same law violation, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

Section 3. Section **78-3a-115.1** is enacted to read:

**78-3a-115.1. Access to abuse, neglect, and dependency hearings.**

(1) This section applies:

(a) beginning November 1, 2003, to districts selected by the Judicial Council as pilot districts under Subsection 78-3-21(15)(a); and

(b) beginning July 1, 2005, to all other districts.

(2) (a) In abuse, neglect, and dependency cases the court shall admit any person to a hearing, including a hearing under Subsection 78-3a-320(3), unless the court makes a finding upon the record that the person's presence at the hearing would:

(i) be detrimental to the best interest of a child who is a party to the proceeding;

(ii) impair the fact-finding process; or

(iii) be otherwise contrary to the interests of justice.

(b) The court may exclude a person from a hearing under Subsection (2)(a) on its own motion or by motion of a party to the proceeding.

Section 4. Section **78-3a-116** is amended to read:

**78-3a-116. Hearings -- Record -- County attorney or district attorney responsibilities -- Attorney general responsibilities -- Admissibility of evidence.**

(1) (a) A verbatim record of the proceedings shall be taken by an official court reporter or by means of a mechanical recording device in all cases that might result in deprivation of custody as defined in this chapter. In all other cases a verbatim record shall also be made unless dispensed with by the court.

(b) (i) Notwithstanding any other provision, including Title 63, Chapter 2, Government Records Access and Management Act, a record of a proceeding made under Subsection(1)(a) shall be released by the court to any person upon a finding on the record for good cause.

(ii) Following a petition for a record of a proceeding made under Subsection (1)(a), the court shall:

(A) provide notice to all subjects of the record that a request for release of the record has been made; and

(B) allow sufficient time for the subjects of the record to respond before making a finding on the petition.

(iii) A record of a proceeding may not be released under this Subsection (1)(b) if the court's jurisdiction over the subjects of the proceeding ended more than 12 months prior to the request.

(iv) For purposes of this Subsection (1)(b):

(A) "record of a proceeding" does not include documentary materials of any type submitted to the court as part of the proceeding, including items submitted under Subsection (4)(a); and

(B) "subjects of the record" includes the child's guardian ad litem, the child's legal guardian, the Division of Child and Family Services, and any other party to the proceeding.

(v) This Subsection (1)(b) applies:

(A) to records of proceedings made on or after November 1, 2003 in districts selected by the Judicial Council as pilot districts under Subsection 78-3-21(15)(a); and

(B) to records of proceedings made on or after July 1, 2005 in all other districts.

(2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a prosecution district, the district attorney shall represent the state in any proceeding in a minor's case.

(b) The attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child and Family Services, and Title 78, Chapter 3a, Juvenile Courts, relating to:

(i) protection or custody of an abused, neglected, or dependent child; and



(ii) petitions for termination of parental rights.

(c) The attorney general shall represent the Division of Child and Family Services in actions involving minors who have not been adjudicated as abused or neglected, but who are otherwise committed to the custody of that division by the juvenile court, and who are classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense. Nothing in this Subsection (2)(c) may be construed to affect the responsibility of the county attorney or district attorney to represent the state in those matters, in accordance with the provisions of Subsection (2)(a).

(3) The board may adopt special rules of procedure to govern proceedings involving violations of traffic laws or ordinances, fish and game laws, and boating laws. However, proceedings involving offenses under Section 78-3a-506 are governed by that section regarding suspension of driving privileges.

(4) (a) For the purposes of determining proper disposition of the minor in dispositional hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and in hearings upon petitions for termination of parental rights, written reports and other material relating to the minor's mental, physical, and social history and condition may be received in evidence and may be considered by the court along with other evidence. The court may require that the person who wrote the report or prepared the material appear as a witness if the person is reasonably available.

(b) For the purpose of determining proper disposition of a minor alleged to be or adjudicated as abused, neglected, or dependent, dispositional reports prepared by Foster Care Citizen Review Boards pursuant to Section 78-3g-103 may be received in evidence and may be considered by the court along with other evidence. The court may require any person who participated in preparing the dispositional report to appear as a witness, if the person is reasonably available.

(5) For the purpose of establishing the fact of abuse, neglect, or dependency, the court may, in its discretion, consider evidence of statements made by a minor under eight years of age to a person in a trust relationship.

Section 5. Section **78-3a-406** is amended to read:

**78-3a-406. Notice -- Nature of proceedings.**

(1) After a petition for termination of parental rights has been filed, notice of that fact and of the time and place of the hearing shall be provided, in accordance with the Utah Rules of Civil Procedure, to the parents, the guardian, the person or agency having legal custody of the child, and to any person acting in loco parentis to the child.

(2) A hearing shall be held specifically on the question of termination of parental rights no sooner than ten days after service of summons is complete. A verbatim record of the proceedings shall be taken and the parties shall be advised of their right to counsel. The summons shall contain a statement to the effect that the rights of the parent or parents are proposed to be permanently terminated in the proceedings. That statement may be contained in the summons originally issued in the proceeding or in a separate summons subsequently issued.

(3) The proceedings are civil in nature and are governed by the Utah Rules of Civil Procedure. The court shall in all cases require the petitioner to establish the facts by clear and convincing evidence, and shall give full and careful consideration to all of the evidence presented with regard to the constitutional rights and claims of the parent and, if a parent is found, by reason of his conduct or condition, to be unfit or incompetent based upon any of the grounds for termination described in this part, the court shall then consider the welfare and best interest of the child of paramount importance in determining whether termination of parental rights shall be ordered.

~~[(4) Any hearing held pursuant to this part shall be held in closed court without admittance of any person who is not necessary to the action or proceeding, unless the court determines that holding the hearing in open court will not be detrimental to the child.]~~

Section 6. **Revisors instructions.**

It is the intent of the Legislature that, in preparing the Utah Code database for publication, the Office of Legislative Research and General Counsel shall change the reference in Subsection 78-3-21(15)(b) from "this act" to the act's designated chapter number in Laws of Utah, 2003.