

1                                   **CHILD WELFARE PROCEEDINGS**

2   **AMENDMENTS**

3   2003 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Greg J. Curtis**

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

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

12 AMENDS:

13           **78-3-21**, as last amended by Chapter 221, Laws of Utah 2000

14           **78-3a-115**, as last amended by Chapters 171 and 237, Laws of Utah 1998

15           **78-3a-116**, as last amended by Chapter 274, Laws of Utah 1998

16           **78-3a-406**, as renumbered and amended by Chapter 260, Laws of Utah 1994

17 ENACTS:

18           **78-3a-115.1**, Utah Code Annotated 1953

19 This act enacts uncodified material.

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

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

22           **78-3-21. Judicial Council -- Creation -- Members -- Terms and election --**  
23 **Responsibilities -- Reports.**

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

26           (a) the chief justice of the Supreme Court;

27           (b) one member elected by the justices of the Supreme Court;



- 28 (c) one member elected by the judges of the Court of Appeals;
- 29 (d) five members elected by the judges of the district courts;
- 30 (e) two members elected by the judges of the juvenile courts;
- 31 (f) three members elected by the justice court judges; and
- 32 (g) a member or ex officio member of the Board of Commissioners of the Utah State
- 33 Bar who is an active member of the Bar in good standing elected by the Board of
- 34 Commissioners.

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

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

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

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

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

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

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

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

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

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

67 (i) a requirement that judges complete a certain number of hours of approved judicial  
68 education each year;

69 (ii) a requirement that each judge certify that he is:

70 (A) physically and mentally competent to serve; and

71 (B) in compliance with the Codes of Judicial Conduct and Judicial Administration; and

72 (iii) a requirement that the judge receive a satisfactory score on questions identified by  
73 the Judicial Council as relating to judicial certification on a survey of members of the Bar  
74 developed by the Judicial Council in conjunction with the American Bar Association.

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

77 (i) integrity;

78 (ii) knowledge;

79 (iii) understanding of the law;

80 (iv) ability to communicate;

81 (v) punctuality;

82 (vi) preparation;

83 (vii) attentiveness;

84 (viii) dignity;

85 (ix) control over proceedings; and

86 (x) skills as a manager.

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

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

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

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

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

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

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

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

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

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

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

117 (10) The Judicial Council may by rule designate municipalities in addition to those  
118 designated by statute as a location of a trial court of record. There shall be at least one court  
119 clerk's office open during regular court hours in each county. Any trial court of record may  
120 hold court in any municipality designated as a location of a court of record. Designations by

121 the Judicial Council may not be made between July 1, 1997, and July 1, 1998.

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

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

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

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

135 (15) (a) On or before November 1, 2003, the Judicial Council, by rule, shall select one  
136 or more districts as pilot districts for purposes of Sections 78-3a-115, 78-3a-115.1, and  
137 78-3a-116.

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

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

143 **78-3a-115. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's**  
144 **cases heard separately from adult cases -- Minor or parents or custodian heard**  
145 **separately -- Continuance of hearing -- Consolidation of proceedings involving more than**  
146 **one minor.**

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

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

152 proceedings.

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

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

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

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

164 (d) The victim of any act charged in a petition or information involving an offense  
165 committed by a minor which if committed by an adult would be a felony or a class A or class B  
166 misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter  
167 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77,  
168 Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not  
169 apply to important juvenile justice hearings as defined in Section 77-38-2.

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

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

173 (ii) any findings made by the court; and

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

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

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

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

183 **78-3a-115.1. Access to abuse, neglect, and dependency hearings.**

184 (1) This section applies:

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

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

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

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

192 (ii) impair the fact-finding process; or

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

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

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

197 **78-3a-116. Hearings -- Record -- County attorney or district attorney**  
198 **responsibilities -- Attorney general responsibilities -- Admissibility of evidence.**

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

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

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

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

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

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

214 request.

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

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

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

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

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

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

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

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

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

231 (ii) petitions for termination of parental rights.

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

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

243 (4) (a) For the purposes of determining proper disposition of the minor in dispositional  
244 hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and



245 in hearings upon petitions for termination of parental rights, written reports and other material  
246 relating to the minor's mental, physical, and social history and condition may be received in  
247 evidence and may be considered by the court along with other evidence. The court may require  
248 that the person who wrote the report or prepared the material appear as a witness if the person  
249 is reasonably available.

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

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

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

260 **78-3a-406. Notice -- Nature of proceedings.**

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

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

271 (3) The proceedings are civil in nature and are governed by the Utah Rules of Civil  
272 Procedure. The court shall in all cases require the petitioner to establish the facts by clear and  
273 convincing evidence, and shall give full and careful consideration to all of the evidence  
274 presented with regard to the constitutional rights and claims of the parent and, if a parent is  
275 found, by reason of his conduct or condition, to be unfit or incompetent based upon any of the

276 grounds for termination described in this part, the court shall then consider the welfare and best  
277 interest of the child of paramount importance in determining whether termination of parental  
278 rights shall be ordered.

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

282 **Section 6. Revisors instructions.**

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

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**Legislative Review Note**

**as of 1-24-03 11:39 AM**

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

**Office of Legislative Research and General Counsel**

**State Impact**

This bill establishes a pilot program and requires an ongoing General Fund appropriation of \$8,000 to the Courts to implement the program in the pilot districts. There may be additional expenses for evaluation of the pilot and to report the results. Other funding sources are anticipated to handle the evaluation.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
General Fund	\$8,000	\$8,000	\$0	\$0
<b>TOTAL</b>	<b>\$8,000</b>	<b>\$8,000</b>	<b>\$0</b>	<b>\$0</b>

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**Individual and Business Impact**

There may be some increased litigation costs.

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