

**Representative Mike Thompson** proposes the following substitute bill:

**CHILD WELFARE COURT REPORTS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Mike Thompson**

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**LONG TITLE**

**General Description:**

This bill amends the Judicial Code to create a disclosure requirement for information used in child welfare proceedings.

**Highlighted Provisions:**

This bill:

- ▶ requires a party to a child welfare proceeding to share information with other parties within specified time frames; and
- ▶ creates an exception for pretrial and certain drug court hearings.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78-3a-116**, as last amended by Chapter 332, Laws of Utah 2003

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

Section 1. Section **78-3a-116** is amended to read:

**78-3a-116. Hearings -- Record -- County attorney or district attorney**



26 **responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of**  
27 **evidence.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

60 (ii) petitions for termination of parental rights.

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

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

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

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

85 (5) (a) In an abuse, neglect, or dependency proceeding occurring after the  
86 commencement of a shelter hearing under Section 78-3a-306 or the filing of a petition under  
87 Section 78-3a-305, each party to the proceeding shall provide in writing to the other parties or

88 their counsel any information which the party:

89 (i) plans to report to the court at the proceeding; or

90 (ii) could reasonably expect would be requested of the party by the court at the  
91 proceeding.

92 (b) The disclosure required under Subsection (5)(a) shall be made:

93 (i) for dispositional hearings under Sections 78-3a-310 and 78-3a-311 ~~Ĥ [and proceedings~~  
94 ~~under Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act] ĥ~~ , no less than five days  
95 before the proceeding;

95a Ĥ (ii) FOR PROCEEDINGS UNDER TITLE 78, CHAPTER 3a, PART 4,  
95b TERMINATION OF PARENTAL RIGHTS ACT, IN ACCORDANCE WITH UTAH RULES OF CIVIL  
95c PROCEDURE, ĥ and

96 Ĥ ~~(ii)~~ (iii) ĥ for all other proceedings, no less than ~~§ [three] FIVE §~~ days before the  
96a proceeding.

97 (c) If a party to a proceeding obtains information after the deadline in Subsection  
98 (5)(b), the information is exempt from the disclosure required under Subsection (5)(a) if the  
99 party certifies to the court that the information was obtained after the deadline.

100 (d) Subsection (5)(a) does not apply to:

101 (i) pretrial hearings; and

102 (ii) the frequent, periodic review hearings held in a dependency drug court case to  
103 assess and promote the parent's progress in substance abuse treatment.

104 ~~(5)~~ (6) For the purpose of establishing the fact of abuse, neglect, or dependency, the  
105 court may, in its discretion, consider evidence of statements made by a minor under eight years  
106 of age to a person in a trust relationship.

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**Fiscal Note**

Child Welfare Court Reports

02-Feb-04

**Bill Number HB0198S02**11:18 AM

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**State Impact**

It is estimated that provisions of this bill can be implemented with existing resources.

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**Individual and Business Impact**

No significant fiscal impact.

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**Office of the Legislative Fiscal Analyst**