

CHILD WELFARE COURT REPORTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Mike Thompson

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

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 responsibilities -- Attorney general responsibilities -- Disclosure -- 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) (a) In an abuse, neglect, or dependency proceeding occurring after the commencement

of a shelter hearing under Section 78-3a-306 or the filing of a petition under Section 78-3a-305, each party to the proceeding shall provide in writing to the other parties or their counsel any information which the party:

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

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

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

(i) for dispositional hearings under Sections 78-3a-310 and 78-3a-311, no less than five days before the proceeding;

(ii) for proceedings under Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act, in accordance with Utah Rules of Civil Procedure; and

(iii) for all other proceedings, no less than five days before the proceeding.

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

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

(i) pretrial hearings; and

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

~~[(5)]~~ (6) 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.