

1 **CHILD WELFARE COURT REPORTS**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Mike Thompson**

5

LONG TITLE

6 **General Description:**

7 This bill amends the Judicial Code to create a disclosure requirement for child welfare
8 reports made in juvenile court.

9 **Highlighted Provisions:**

10 This bill:

- 11
- 12 ▶ requires a party to a child welfare hearing to share its report with the parent of the
 - 13 child at least five days prior to the proceeding; and
 - 14 ▶ creates an exception for certain drug court hearings.

15 **Monies Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **78-3a-116**, as last amended by Chapter 332, Laws of Utah 2003

22

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

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

24 **78-3a-116. Hearings -- Record -- County attorney or district attorney**
25 **responsibilities -- Attorney general responsibilities -- Disclosure of reports --**
26 **Admissibility of evidence.**
27



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, each party to the proceeding,
87 other than a parent, shall report to each parent or each parent's counsel at least five days prior to
88 the proceeding, 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) Subsection (5)(a) does not apply to the frequent, periodic review hearings held in a
93 dependency drug court case to assess and promote the parent's progress in substance abuse
94 treatment.

95 [~~5~~] (6) For the purpose of establishing the fact of abuse, neglect, or dependency, the
96 court may, in its discretion, consider evidence of statements made by a minor under eight years
97 of age to a person in a trust relationship.

Legislative Review Note
as of 11-25-03 3:12 PM

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

Office of Legislative Research and General Counsel

State Impact

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

Individual and Business Impact

No significant fiscal impact.

Office of the Legislative Fiscal Analyst