

Senator Bill Wright proposes the following substitute bill:

REVISIONS TO CHILD WELFARE

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill creates the Division of Child Welfare Parental Defense.

Highlighted Provisions:

This bill:

- ▶ sets forth definitions;
- ▶ creates within the Department of Administrative Services the Division of Child Welfare Parental Defense;
- ▶ appoints a director to have supervision, direction, and control over the division;
- ▶ sets forth the duties, functions, and responsibilities of the division;
- ▶ outlines the qualifications, responsibilities, and standards for a parental defense attorney;
- ▶ requires the division to develop a list of qualified experts and to set aside funds for the fees associated with the use of experts;
- ▶ classifies records of a contracted parental defense attorney as protected and indicates that the records may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise;
- ▶ requires the county in which the trial court proceedings are held to cover the costs associated with the appointment of counsel; and
- ▶ creates the Child Welfare Parental Defense Trust Fund.



26 **Monies Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **63A-1-109**, as last amended by Chapter 5, Laws of Utah 2003

33 **78-3a-913**, as last amended by Chapter 256, Laws of Utah 1999

34 ENACTS:

35 **63A-11-101**, Utah Code Annotated 1953

36 **63A-11-102**, Utah Code Annotated 1953

37 **63A-11-103**, Utah Code Annotated 1953

38 **63A-11-104**, Utah Code Annotated 1953

39 **63A-11-105**, Utah Code Annotated 1953

40 **63A-11-106**, Utah Code Annotated 1953

41 **63A-11-107**, Utah Code Annotated 1953

42 **63A-11-108**, Utah Code Annotated 1953

43 **63A-11-109**, Utah Code Annotated 1953

44 **63A-11-110**, Utah Code Annotated 1953

45 **63A-11-201**, Utah Code Annotated 1953

46 **63A-11-202**, Utah Code Annotated 1953

47 **63A-11-203**, Utah Code Annotated 1953



48
49 *Be it enacted by the Legislature of the state of Utah:*

50 Section 1. Section **63A-1-109** is amended to read:

51 **63A-1-109. Divisions of department -- Administration.**

52 (1) The department shall be composed of the following divisions:

53 (a) administrative rules;

54 (b) archives and records;

55 (c) facilities construction and management;

56 (d) finance;

- 57 (e) fleet operations;
- 58 (f) information technology services;
- 59 (g) office of state debt collection;
- 60 (h) state purchasing and general services; ~~and~~
- 61 (i) risk management[-]; and
- 62 (j) child welfare parental defense.

63 (2) Each division shall be administered and managed by a division director.

64 Section 2. Section **63A-11-101** is enacted to read:

65 **CHAPTER 11. DIVISION OF CHILD WELFARE PARENTAL DEFENSE**

66 **63A-11-101. Title.**

67 This chapter is known as the "Division of Child Welfare Parental Defense."

68 Section 3. Section **63A-11-102** is enacted to read:

69 **63A-11-102. Definitions.**

70 For purposes of this chapter:

71 (1) "Child welfare case" means a proceeding under Title 78, Chapter 3a, Juvenile
72 Courts, Part 3 or 4.

73 (2) "Contracted parental defense attorney" means an attorney authorized to practice law
74 in Utah who is under contract with the division to provide parental defense in child welfare
75 cases.

76 (3) "Director" means the director of the division.

77 (4) "Division" means the Division of Child Welfare Parental Defense created in
78 Section 63A-11-103.

79 (5) "Fund" means the Child Welfare Parental Defense Trust Fund established in
80 Section 63A-11-202.

81 Section 4. Section **63A-11-103** is enacted to read:

82 **63A-11-103. Creation of division.**

83 There is created within the Department of Administrative Services, the Division of
84 Child Welfare Parental Defense.

85 Section 5. Section **63A-11-104** is enacted to read:

86 **63A-11-104. Division director -- Appointment -- Duties.**

87 (1) (a) The executive director of the department shall appoint the director of the

88 division with the approval of the governor.

89 (b) The director shall be an attorney licensed to practice law in the state with
90 experience representing parents in child welfare cases.

91 (2) The director shall administer and enforce this chapter.

92 Section 6. Section **63A-11-105** is enacted to read:

93 **63A-11-105. Employment of staff.**

94 The director may employ, as staff, one assistant.

95 Section 7. Section **63A-11-106** is enacted to read:

96 **63A-11-106. Division -- Duties, functions, and responsibilities.**

97 The duties, functions, and responsibilities of the division include the following:

98 (1) to develop policies and procedures for the transfer and management of existing
99 contracts with parental defense attorneys from the counties to the state;

100 (2) to develop and enter into contracts with attorneys authorized to practice law in the
101 state, as independent contractors, to serve as parental defense attorneys;

102 (3) to provide assistance and advice to contracted parental defense attorneys;

103 (4) to develop and provide educational and training programs and a library of materials
104 for contracted parental defense attorneys;

105 (5) to provide information and advice to assist contracted parental defense attorneys to
106 comply with their professional, contractual, and ethical duties; and

107 (6) to maintain lists of parental defense attorneys who represent that they have
108 experience in child welfare cases and make the lists available to the public at cost upon request.

109 Section 8. Section **63A-11-107** is enacted to read:

110 **63A-11-107. Annual report -- Budget.**

111 (1) On or before the 1st day of October each year, the director shall report to the
112 governor and the Child Welfare Legislative Oversight Panel of the Legislature regarding the
113 preceding fiscal year on the operations, activities, and goals of the division.

114 (2) The director shall prepare and submit to the executive director a budget of:

115 (a) the administrative expenses for the division; and

116 (b) the amount to fund needed contracted parental defense attorneys.

117 Section 9. Section **63A-11-108** is enacted to read:

118 **63A-11-108. Parental defense attorney.**

119 (1) With respect to child welfare cases, a contracted parental defense attorney shall:
120 (a) adequately prepare for and attend all court hearings, including initial and continued
121 shelter hearings;

122 (b) fully advise the client of the nature of the proceedings and of the client's rights,
123 communicate to the client any offers of settlement or compromise, and advise the client
124 regarding the reasonably foreseeable consequences of any course of action in the proceedings;

125 (c) be reasonably available to consult with the client outside of court proceedings;

126 (d) where attendance of a parental defense attorney is reasonably needed, attend
127 meetings regarding the client's case with representatives of one or more of the Division of
128 Child and Family Services, the Office of the Attorney General, and the Office of the Guardian
129 Ad Litem Director;

130 (e) zealously represent the interest of the client at all stages of the proceedings before
131 the trial court;

132 (f) pursue and perfect appeals from final orders of the trial court, when the client
133 requests an appeal and an appeal would not be frivolous; and

134 (g) participate in the training courses and otherwise maintain the standards described in
135 Subsection (3).

136 (2) If the division enters into a contract with a law firm under Section 63A-11-106, the
137 contract shall require that each attorney in the firm who will provide representation of parents
138 in child welfare cases under the contract perform the duties described in Subsection (1).

139 (3) (a) Except as otherwise provided in Subsection (3)(b), a contracted parental defense
140 attorney shall meet the following standards as a condition to being allowed to provide
141 representation under a contract:

142 (i) the attorney shall have completed a basic training course provided by the division;

143 (ii) the attorney shall have experience in child welfare cases; and

144 (iii) the attorney shall participate each calendar year in continuing legal education
145 courses providing no fewer than eight hours of instruction in child welfare law.

146 (b) In accordance with Title 62, Chapter 46a, Utah Administrative Rulemaking Act, the
147 director may, by rule, exempt from the requirement of Subsection (3)(a)(i) an attorney who has
148 equivalent training or adequate experience.

149 (4) Payment for the representation, costs, and expenses of the contracted parental

150 defense attorney shall be made from the Child Welfare Parental Defense Fund as provided in
151 Section 63A-11-202.

152 Section 10. Section **63A-11-109** is enacted to read:

153 **63A-11-109. Qualified experts -- Funding.**

154 (1) The division shall develop a list of qualified experts to serve as a defense resource
155 to contracted parental defense attorneys. The division shall negotiate with one or more experts
156 to be included on the list in child welfare cases to be handled by contracted parental defense
157 attorneys, whose fees are discounted from the current market billing rates of the expert.

158 (2) When a contracted parental defense attorney requires an expert witness in a child
159 welfare case, the persons named in the list described in Subsection (1) are the exclusive source
160 from which expert witness defense resources may be provided, unless the court finds a
161 compelling reason for an expert witness not on the list to be used, in which case the court shall
162 state the compelling reason on the record.

163 (3) The division has discretion to include or exclude in a contract awarded to a
164 contracted parental defense attorney the funding to cover expert witness fees and other costs.

165 (4) The division shall:

166 (a) establish a reserve fund from funds appropriated by the Legislature, for the purpose
167 of assisting a contracted parental defense attorney with expert witness fees and costs not
168 covered under the attorney's contract;

169 (b) determine reimbursements and payments to be made from the fund described in
170 Subsection (4)(a); and

171 (c) establish a child welfare parental defense trust fund to encourage participation by
172 counties throughout the state.

173 Section 11. Section **63A-11-110** is enacted to read:

174 **63A-11-110. Records access.**

175 (1) (a) Notwithstanding Title 63, Chapter 2, Government Records Access and
176 Management Act, and except as provided in Subsection (1)(b), all records of a contracted
177 parental defense attorney are protected and may not be released or made public upon subpoena,
178 search warrant, discovery proceedings, or otherwise.

179 (b) All records of a contracted parental defense attorney are subject to legislative
180 subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers.

181 (2) Records released in accordance with Subsection (1)(b) shall be maintained as
182 confidential by the Legislature. The professional legislative staff may, however, include
183 summary data and nonidentifying information in its audits and reports to the Legislature.

184 Section 12. Section **63A-11-201** is enacted to read:

185 **63A-11-201. Child welfare parental defense contracts -- Qualifications -- Duties.**

186 (1) The division shall enter into contracts with qualified parental defense attorneys
187 counsel to provide services for a parent or parents who are the subject of a petition alleging
188 abuse, neglect, or dependency, and will require parental defense attorney.

189 (2) Payment for the representation, costs, and expenses of legal defense counsel shall
190 be made from the Child Welfare Parental Defense Trust Fund as provided in Section
191 63a-11-202.

192 (3) The parental defense attorney shall maintain the minimum qualifications as
193 provided in Section 63A-11-106.

194 Section 13. Section **63A-11-202** is enacted to read:

195 **63A-11-202. Child Welfare Parental Defense Trust Fund -- Creation.**

196 (1) There is created a trust fund known as the "Child Welfare Parental Defense Trust
197 Fund" to be disbursed by the Division of Finance at the direction of the director and in
198 accordance with contracts made under Section 63A-11-106.

199 (2) Monies deposited in this fund shall be used:

200 (a) to pay for the representation, costs, and expenses of contracted parental defense
201 attorneys who are under contract with the division to provide parental defense in child welfare
202 cases for the parent or parents that are the subject of a petition alleging abuse, neglect, or
203 dependency; and

204 (b) for administrative costs pursuant to Section 63A-11-104.

205 (3) The fund consists of:

206 (a) appropriations made to the fund by the Legislature;

207 (b) interest and earnings from the investment of fund monies;

208 (c) proceeds deposited by participating counties pursuant to Section 63A-11-203; and

209 (d) private contributions to the Child Welfare Parental Defense Trust Fund.

210 (4) The state treasurer shall invest the money in the fund by following the procedures
211 and requirements of Title 51, Chapter 7, State Money Management Act.

212 (5) In any calendar year in which the fund runs a deficit, or is projected to run a deficit,
213 the division shall request a supplemental appropriation from the Legislature in the following
214 general session to pay for the deficit. The legislature may appropriate subject to future budget
215 constraints, any or all of the reasonable and necessary monies for the deficit into the Child
216 Welfare Parental Defense Trust Fund.

217 Section 14. Section **63A-11-203** is enacted to read:

218 **63A-11-203. Agreements for coverage by the Child Welfare Parental Defense**
219 **Fund -- Eligibility -- County and state obligations -- Termination -- Revocation.**

220 (1) (a) A county legislative body may annually enter into a written agreement to
221 provide for payment of parental defense attorney costs in excess of the county's parental
222 defense budget out of the Child Welfare Parental Defense Fund.

223 (b) The services of contracted parental defense attorneys who are under contract with
224 the Division of Administrative Services to provide parental defense in child welfare cases for
225 parents that are the subject of a petition alleging abuse, neglect, or dependency are eligible for
226 coverage by the Child Welfare Parental Defense Fund.

227 (2) An agreement for payment of parental defense costs from the Child Welfare
228 Parental Defense Fund shall provide that the county shall pay into the fund an amount equal to
229 the parental defense costs determined to be normal by the division in accordance with the
230 formula specified by rule.

231 (3) (a) Except as provided in Subsection (3)(d), after the first year of operation of the
232 fund, any county that elects to initiate participation in the fund, or reestablish participation in
233 the fund after participation was terminated, shall be required to make an equity payment, in
234 addition to the assessment provided in Subsection (2)(a).

235 (b) The equity payment shall represent what the county's equity in the fund would be if
236 the county had made assessments into the fund for each of the previous three years.

237 (c) The equity payment shall be determined by the division in accordance with division
238 rules.

239 (d) The equity payment requirement is waived for any county that initiates participation
240 in the fund, or reestablishes participation in the fund, during the period beginning on April 1,
241 2005 and ending on May 31, 2005.

242 (4) The agreement shall provide that:

243 (a) the state shall pay into the fund an amount equal to the county's payment, including
 244 any equity payment required under Subsection (3); and

245 (b) if monies in the fund are insufficient to pay for all eligible parental defense costs,
 246 the state shall pay for 1/2 of the county's remaining costs.

247 (5) The agreement shall provide for revocation of the agreement for failure to pay
 248 assessments when due.

249 (6) Any county that elects to withdraw from participation in the fund, or whose
 250 participation in the fund is revoked due to failure to pay its assessments when due, shall forfeit
 251 any right to any previously paid assessments by the county.

252 Section 15. Section **78-3a-913** is amended to read:

253 **78-3a-913. Right to counsel -- Appointment of counsel for indigent -- Cost --**
 254 **Court hearing to determine compelling reason to appoint a noncontracting attorney --**
 255 **Rate of pay.**

256 (1) (a) [The] In any action initiated by the state under this chapter and in any action
 257 initiated by any person for termination of parental rights, the parents, guardian, custodian, and
 258 the minor, if competent, shall be informed that they have the right to be represented by counsel
 259 at every stage of the proceedings. They have the right to employ counsel of their own choice
 260 and if any of them requests an attorney and is found by the court to be indigent, counsel shall
 261 be appointed by the court as provided in Subsection (3). The court may appoint counsel
 262 without a request if it considers representation by counsel necessary to protect the interest of
 263 the minor or of other parties.

264 (b) [The] In any action initiated by the state under this chapter and in any action
 265 initiated by any person for termination of parental rights, the cost of appointed counsel for an
 266 indigent minor or other indigent party, including the cost of counsel and expense of appeal,
 267 shall be paid by the county in which the ~~[hearing is]~~ trial court proceedings are held. Counties
 268 may levy and collect taxes for these purposes.

269 (c) The court shall take into account the income and financial ability to retain counsel
 270 of the parents or guardian of a minor in determining the indigency of the minor.

271 (2) If the state or county responsible to provide legal counsel for an indigent under
 272 Subsection (1)(b) has arranged by contract to provide services under Section 63A-11-109, the
 273 court if it has received notice or a copy of such contract shall appoint the contracting attorney

274 as legal counsel to represent that indigent.

275 (3) ~~[The]~~ In the absence of contrary contractual provisions regarding the selection and
276 appointment of parental defense counsel, the court shall select and appoint the attorney or
277 attorneys if:

278 (a) the contract for indigent legal services is with multiple attorneys; or

279 (b) the contract is with an additional attorney or attorneys in the event of a conflict of
280 interest.

281 (4) If the court considers the appointment of a noncontracting attorney to provide legal
282 services to an indigent despite the existence of an indigent legal services contract and the court
283 has a copy or notice of such contract, before the court may make the appointment, it shall:

284 (a) set the matter for a hearing;

285 (b) give proper notice to the attorney general ~~[or county attorney of the responsible~~
286 ~~county of the hearing]~~ and the Division of Child Welfare Parental Defense created in Section
287 62A-11-103; and

288 (c) make findings that there is a compelling reason to appoint a noncontracting attorney
289 before it may make such appointment.

290 (5) The indigent's mere preference for other counsel shall not be considered a
291 compelling reason justifying the appointment of a noncontracting attorney.

292 (6) The court may order a minor, parent, guardian, or custodian for whom counsel is
293 appointed and the parents or guardian of any minor for whom counsel is appointed to
294 reimburse the county for the cost of appointed counsel.

295 (7) If the minor and other parties were not represented by counsel, the court shall
296 inform them at the conclusion of the proceedings that they have the right to appeal.