

**OFFICE OF CHILD WELFARE PARENTAL
DEFENSE AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Thomas V. Hatch

LONG TITLE

General Description:

This bill amends the chapter relating to the Office of Child Welfare Parental Defense in the Utah Administrative Services Code.

Highlighted Provisions:

This bill:

▸ defines terms;

▸ provides that the executive director of the Department of Administrative Services serves as the director of the Office of Child Welfare Parental Defense if the executive director does not appoint a director;

▸ describes the duties of the director of the Office of Child Welfare Parental Defense;

▸ provides that the Office of Child Welfare Parental Defense may enter into a contract for the provision of assistance, advice, and training to parental defense attorneys;

H→ ▸ provides that the Office of Child Welfare Parental Defense may enter into contracts with parental defense attorneys to provide services to indigent parents who are the subject of a petition alleging abuse, neglect, or dependency;

▸ provides that payment for an attorney described in the preceding paragraph shall be made from the Child Welfare Parental Defense Fund; ←H

▸ provides that the Office of Child Welfare Parental Defense and a county may, in their discretion, enter into a contract for the office to provide parental defense attorney services directly to the county;

▸ provides that the Child Welfare Parental Defense Fund is a nonlapsing, restricted special revenue fund;

▸ provides that the Child Welfare Parental Defense Fund may be used for reasonable training and travel expenses directly related to the functioning of the Office of Child



28 Welfare Parental Defense; and
29 ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **63A-11-102**, as enacted by Chapter 356, Laws of Utah 2004

37 **63A-11-104**, as enacted by Chapter 356, Laws of Utah 2004

38 **63A-11-105**, as enacted by Chapter 356, Laws of Utah 2004

38a ~~H~~→ **63A-11-201, as enacted by Chapter 356, Laws of Utah 2004** ←~~H~~

39 **63A-11-203**, as enacted by Chapter 356, Laws of Utah 2004

40 **63A-11-204**, as enacted by Chapter 356, Laws of Utah 2004



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

43 Section 1. Section **63A-11-102** is amended to read:

44 **63A-11-102. Definitions.**

45 For purposes of this chapter:

46 (1) "Child welfare case" means a proceeding under Title 78, Chapter 3a, [~~Juvenile~~
47 ~~Courts,~~] Part 3, Abuse, Neglect, and Dependency Proceedings or 4, Termination of Parental
48 Rights Act.

49 (2) "Contracted parental defense attorney" means [~~an attorney or law firm authorized to~~
50 ~~practice law in Utah~~] a parental defense attorney who is under contract with the office to
51 provide parental defense in child welfare cases.

52 (3) "Director" means the director of the office.

53 (4) "Fund" means the Child Welfare Parental Defense Fund established in Section
54 63A-11-203.

55 (5) "Office" means the Office of Child Welfare Parental Defense created in Section
56 63A-11-103.

57 (6) "Parental defense attorney" means an attorney, law firm, or group of attorneys who:

58 (a) are authorized to practice law in Utah; and

59 (b) provide legal representation under contract with the office, or a county in the state,
60 to a parent who is a party in a child welfare case.

61 Section 2. Section **63A-11-104** is amended to read:

62 **63A-11-104. Office director -- Appointment -- Duties -- Staff.**

63 (1) Except as provided in Subsection (2):

64 (a) The executive director of the department shall appoint the director of the office
65 with the approval of the governor.

66 (b) The director shall be an attorney licensed to practice law in the state.

67 (2) Notwithstanding Subsection (1), if the executive director does not appoint a
68 director of the office, the executive director:

69 (a) shall be the director of the office;

70 (b) is not required to be an attorney;

71 (c) may not engage in the practice of law, unless the executive director is an attorney
72 licensed to practice law in the state; and

73 (d) may not receive a salary from the state in excess of the salary established for the
74 executive director by the governor under Section 67-22-2.

75 ~~[(2)]~~ (3) The director shall:

76 (a) administer and enforce this chapter[-]; and

77 (b) manage the operation and budget of the office.

78 ~~[(3)]~~ (4) The director may employ staff.

79 Section 3. Section **63A-11-105** is amended to read:

80 **63A-11-105. Office -- Duties, functions, and responsibilities.**

81 (1) The duties, functions, and responsibilities of the office include the following:

82 ~~[(1) to develop and enter into contracts with attorneys authorized to practice law in the~~
83 ~~state, as independent contractors, to serve as parental defense attorneys;]~~

84 ~~[(2)]~~ (a) to provide assistance and advice to ~~[contracted]~~ parental defense attorneys;

85 ~~[(3)]~~ (b) to develop and provide educational and training programs for ~~[contracted]~~
86 parental defense attorneys; and

87 ~~[(4)]~~ (c) to provide information and advice to assist ~~[contracted]~~ parental defense
88 attorneys to comply with their professional, contractual, and ethical duties.

89 (2) The director may contract with a qualified person to fulfill the requirements of

90 Subsection (1).

91 (3) The office may develop and enter into contracts with attorneys authorized to
 92 practice law in the state, as independent contractors, to serve as parental defense attorneys.

92a **Ĥ→ Section 4. Section 63A-11-201 is amended to read:**

92b **63A-11-201. Child welfare parental defense contracts -- Qualifications.**

92c (1) The office ~~[shall]~~ may enter into contracts with qualified parental defense attorneys to
 92d provide services for an indigent parent or parents who are the subject of a petition alleging abuse,
 92e neglect, or dependency, and will require a parental defense attorney pursuant to Section 78-3a-913.

92f (2) Payment for the representation, costs, and expenses of ~~[legal defense counsel]~~ a contracted
 92g parental defense attorney shall be made from the Child Welfare Parental Defense Fund as provided in
 92h Section 63A-11-203.

92i (3) The parental defense attorney shall maintain the minimum qualifications as provided by
 92j this chapter. ←Ĥ

93 Section ~~Ĥ→~~ [4] 5 ←Ĥ . Section 63A-11-203 is amended to read:

94 **63A-11-203. Child Welfare Parental Defense Fund -- Creation.**

95 (1) There is created a nonlapsing, restricted special revenue fund known as the "Child
 96 Welfare Parental Defense Fund."

97 (2) Subject to availability, the director may make distributions from the fund as
 98 required in this chapter for the following purposes:

99 (a) to pay for the representation, costs, expert witness fees, and expenses of contracted
 100 parental defense attorneys who are under contract with the office to provide parental defense in
 101 child welfare cases for the indigent parent or parents that are the subject of a petition alleging
 102 abuse, neglect, or dependency; ~~[and]~~

103 (b) for administrative costs pursuant to this chapter~~[-];~~ and

104 (c) for reasonable expenses directly related to the functioning of the office, including
 105 training and travel expenses.

106 (3) The fund consists of:

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

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

109 (c) proceeds deposited by participating counties pursuant to Section 63A-11-204; and

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

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

113 (5) (a) If the director anticipates a deficit in the fund during any fiscal year:

114 (i) the director shall request an appropriation from the Legislature; and

115 (ii) the Legislature may fund the anticipated deficit through appropriation but is not
 116 required to fund the deficit.

117 (b) If the anticipated deficit is not funded by the Legislature, the director may request
118 an interim assessment to participating counties to fund the anticipated deficit.

119 Section ~~H~~→ [5] 6 ←~~H~~ . Section **63A-11-204** is amended to read:

120 **63A-11-204. Agreements for coverage by the Child Welfare Parental Defense**

121 **Fund -- Eligibility -- County and state obligations -- Termination -- Revocation.**

122 (1) A county legislative body and the office may annually enter into a written
123 agreement [~~with the office~~] for the office to provide [~~for payment of~~] parental defense attorney
124 [~~costs~~] services in the county out of the Child Welfare Parental Defense Fund.

125 (2) An agreement [~~for payment of parental defense costs from the fund~~] described in
126 Subsection (1) shall provide that the county shall pay into the fund an amount defined by a
127 formula established in rule by the office.

128 (3) (a) [~~Except as provided in Subsection (3)(b), after~~] After the first year of operation
129 of the fund, any county that elects to initiate participation in the fund, or reestablish
130 participation in the fund after participation was terminated, shall be required to make an equity
131 payment, in addition to the assessment provided in Subsection (2).

132 (b) The amount of the equity payment described in Subsection (3)(a) shall be
133 determined by the office [in accordance with office rules] pursuant to rules established by the
134 office under Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

135 (4) The agreement shall provide for revocation of the agreement for failure to pay
136 assessments on the due date established by rule.

137 (5) Any county that elects to withdraw from participation in the fund, or whose
138 participation in the fund is revoked due to failure to pay its assessments when due, shall forfeit
139 any right to any previously paid assessments by the county or coverage from the fund.

Legislative Review Note
as of 9-2-05 8:47 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-16-05 8:12 AM

The Health and Human Services Interim Committee recommended this bill.

Legislative Committee Note
as of 12-16-05 8:12 AM

12-16-05 10:29 AM

H.B. 23

The Child Welfare Legislative Oversight Panel recommended this bill.

Fiscal Note
Bill Number HB0023

Office of Child Welfare Parental Defense Amendments

12-Jan-06

10:55 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst