

**PARENTAL DEFENSE OFFICE AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill changes the administration of the Child Welfare Parental Defense Program from the Department of Administrative Services to the Commission on Criminal and Juvenile Justice.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ changes the administration of the Child Welfare Parental Defense Program from the Department of Administrative Services to the Commission on Criminal and Juvenile Justice;
- ▶ modifies provisions relating to the duties and functions of the Child Welfare Parental Defense Program; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63M-7-204**, as last amended by Laws of Utah 2018, Chapters 54 and 126



28 ENACTS:

29 [63M-7-211](#), Utah Code Annotated 1953

30 [63M-7-211.1](#), Utah Code Annotated 1953

31 [63M-7-211.2](#), Utah Code Annotated 1953

32 REPEALS:

33 [63A-11-101](#), as last amended by Laws of Utah 2011, Chapter 265

34 [63A-11-102](#), as last amended by Laws of Utah 2011, Chapter 265

35 [63A-11-103](#), as last amended by Laws of Utah 2011, Chapter 265

36 [63A-11-104](#), as last amended by Laws of Utah 2011, Chapter 265

37 [63A-11-105](#), as last amended by Laws of Utah 2011, Chapter 265

38 [63A-11-106](#), as last amended by Laws of Utah 2011, Chapter 265

39 [63A-11-107](#), as last amended by Laws of Utah 2008, Chapter 382

40 [63A-11-201](#), as last amended by Laws of Utah 2011, Chapter 265

41 [63A-11-202](#), as last amended by Laws of Utah 2011, Chapter 265

42 [63A-11-203](#), as last amended by Laws of Utah 2013, Chapter 400

43 [63A-11-204](#), as last amended by Laws of Utah 2011, Chapter 265



44  
45 *Be it enacted by the Legislature of the state of Utah:*

46 Section 1. Section **63M-7-204** is amended to read:

47 **63M-7-204. Duties of commission.**

48 (1) The State Commission on Criminal and Juvenile Justice administration shall:

49 (a) promote the commission's purposes as enumerated in Section [63M-7-201](#);

50 (b) promote the communication and coordination of all criminal and juvenile justice

51 agencies;

52 (c) study, evaluate, and report on the status of crime in the state and on the  
53 effectiveness of criminal justice policies, procedures, and programs that are directed toward the  
54 reduction of crime in the state;

55 (d) study, evaluate, and report on programs initiated by state and local agencies to  
56 address reducing recidivism, including changes in penalties and sentencing guidelines intended  
57 to reduce recidivism, costs savings associated with the reduction in the number of inmates, and  
58 evaluation of expenses and resources needed to meet goals regarding the use of treatment as an

59 alternative to incarceration, as resources allow;

60 (e) study, evaluate, and report on policies, procedures, and programs of other  
61 jurisdictions which have effectively reduced crime;

62 (f) identify and promote the implementation of specific policies and programs the  
63 commission determines will significantly reduce crime in Utah;

64 (g) provide analysis and recommendations on all criminal and juvenile justice  
65 legislation, state budget, and facility requests, including program and fiscal impact on all  
66 components of the criminal and juvenile justice system;

67 (h) provide analysis, accountability, recommendations, and supervision for state and  
68 federal criminal justice grant money;

69 (i) provide public information on the criminal and juvenile justice system and give  
70 technical assistance to agencies or local units of government on methods to promote public  
71 awareness;

72 (j) promote research and program evaluation as an integral part of the criminal and  
73 juvenile justice system;

74 (k) provide a comprehensive criminal justice plan annually;

75 (l) review agency forecasts regarding future demands on the criminal and juvenile  
76 justice systems, including specific projections for secure bed space;

77 (m) promote the development of criminal and juvenile justice information systems that  
78 are consistent with common standards for data storage and are capable of appropriately sharing  
79 information with other criminal justice information systems by:

80 (i) developing and maintaining common data standards for use by all state criminal  
81 justice agencies;

82 (ii) annually performing audits of criminal history record information maintained by  
83 state criminal justice agencies to assess their accuracy, completeness, and adherence to  
84 standards;

85 (iii) defining and developing state and local programs and projects associated with the  
86 improvement of information management for law enforcement and the administration of  
87 justice; and

88 (iv) establishing general policies concerning criminal and juvenile justice information  
89 systems and making rules as necessary to carry out the duties under Subsection (1)(k) and this

90 Subsection (1)(m);

91 (n) allocate and administer grants, from money made available, for approved education  
92 programs to help prevent the sexual exploitation of children;

93 (o) allocate and administer grants funded from money from the Law Enforcement  
94 Operations Account created in Section 51-9-411 for law enforcement operations and programs  
95 related to reducing illegal drug activity and related criminal activity;

96 (p) request, receive, and evaluate data and recommendations collected and reported by  
97 agencies and contractors related to policies recommended by the commission regarding  
98 recidivism reduction;

99 (q) establish and administer a performance incentive grant program that allocates funds  
100 appropriated by the Legislature to programs and practices implemented by counties that reduce  
101 recidivism and reduce the number of offenders per capita who are incarcerated;

102 (r) oversee or designate an entity to oversee the implementation of juvenile justice  
103 reforms;

104 (s) make rules and administer the juvenile holding room standards and juvenile jail  
105 standards to align with the Juvenile Justice and Delinquency Prevention Act requirements  
106 pursuant to 42 U.S.C. Sec. 5633;

107 (t) allocate and administer grants, from money made available, for pilot qualifying  
108 education programs; ~~and~~

109 (u) oversee the trauma-informed justice program described in Section 63M-7-209[:];  
110 and

111 (v) administer the Child Welfare Parental Defense Program in accordance with  
112 Sections 63M-7-211, 63M-7-211.1, and 63M-7-211.2.

113 (2) If the commission designates an entity under Subsection (1)(r), the commission  
114 shall ensure that the membership of the entity includes representation from the three branches  
115 of government and, as determined by the commission, representation from relevant stakeholder  
116 groups across all parts of the juvenile justice system, including county representation.

117 Section 2. Section 63M-7-211 is enacted to read:

118 **63M-7-211. Child welfare parental defense program -- Creation -- Duties --**  
119 **Contracting -- Annual report -- Budget -- Records access.**

120 (1) As used in this section and Sections 63M-7-211.1 and 63M-7-211.2:

121 (a) "Child welfare case" means a proceeding under Title 78A, Chapter 6, Part 3, Abuse,  
122 Neglect, and Dependency Proceedings, or Part 5, Termination of Parental Rights Act.

123 (b) "Commission" means the Commission on Criminal and Juvenile Justice created in  
124 Section [63M-7-201](#).

125 (c) "Contracted parental defense attorney" means a parental defense attorney who is  
126 under contract with the commission to provide parental defense in a child welfare case.

127 (d) "Executive director" means the executive director of the commission appointed  
128 under Section [63M-7-203](#).

129 (e) "Fund" means the Child Welfare Parental Defense Fund established in Section  
130 [63M-7-211.2](#).

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

132 (i) are authorized to practice law in the state; and

133 (ii) provide legal representation under contract with the commission, or a county in the  
134 state, to a parent who is a party in a child welfare case.

135 (g) "Program" means the Child Welfare Parental Defense Program created in this  
136 section.

137 (2) There is created within the commission the Child Welfare Parental Defense  
138 Program.

139 (3) The commission shall:

140 (a) administer and enforce this section;

141 (b) manage the operation and budget of the program;

142 (c) provide assistance and advice to parental defense attorneys;

143 (d) develop and provide educational and training programs for parental defense  
144 attorneys; and

145 (e) provide information and advice to assist a parental defense attorney to comply with  
146 the attorney's professional, contractual, and ethical duties.

147 (4) The commission may contract with:

148 (a) a person who is qualified to perform the program duties under this section; and

149 (b) an attorney authorized to practice law in the state, as an independent contractor, to  
150 serve as a parental defense attorney under this section.

151 (5) (a) On or before October 1 of each year, the executive director shall report to the

152 governor and the Child Welfare Legislative Oversight Panel regarding the preceding fiscal year  
153 on the operations, activities, and goals of the program.

154 (b) The executive director shall prepare a budget of:

155 (i) the administrative expenses for the program; and

156 (ii) the amount estimated to fund needed contracts and other costs.

157 (c) The professional legislative staff may include summary data and nonidentifying  
158 information in the staff's audits and reports to the Legislature.

159 (6) (a) (i) Notwithstanding Title 63G, Chapter 2, Government Records Access and  
160 Management Act, and except as provided in Subsection (6)(b), a record of a contracted parental  
161 defense attorney is protected and may not be released or made public upon subpoena, search  
162 warrant, discovery proceedings, or otherwise.

163 (ii) A record of a contracted parental defense attorney is subject to legislative  
164 subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers.

165 (b) The Legislature shall maintain a record released in accordance with Subsection  
166 (6)(a)(ii) as confidential.

167 Section 3. Section **63M-7-211.1** is enacted to read:

168 **63M-7-211.1. Child welfare parental defense contracts.**

169 (1) (a) The commission may enter into a contract with a parental defense attorney to  
170 provide services for an indigent parent who is the subject of a petition alleging abuse, neglect,  
171 or dependency, and requires a parental defense attorney under Section [78A-6-1111](#).

172 (b) Payment for the representation, costs, and expenses of a contracted parental defense  
173 attorney shall be made from the Child Welfare Parental Defense Fund in accordance with  
174 Section [63M-7-211.2](#).

175 (c) The parental defense attorney shall maintain the minimum qualifications as  
176 provided by this section.

177 (2) For child welfare cases, a contracted parental defense attorney shall:

178 (a) adequately prepare for and attend all court hearings, including initial and continued  
179 shelter hearings and mediations;

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

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

184 (d) where attendance is reasonably necessary, attend meetings regarding the client's  
185 case with representatives of one or more of the Division of Child and Family Services, the  
186 Office of the Attorney General, or the Office of Guardian Ad Litem;

187 (e) represent the interest of the client at all stages of the proceedings before the trial  
188 court; and

189 (f) participate in the training courses and otherwise maintain the standards described in  
190 Subsection (4).

191 (3) If the commission enters into a contract with a firm to provide parental defense  
192 attorney services under this section, the contract shall require that each attorney in the firm who  
193 will provide representation of a parent in a child welfare case under the contract perform the  
194 duties described in Subsection (2).

195 (4) (a) Except as otherwise provided in Subsection (4)(b), a contracted parental defense  
196 attorney shall:

197 (i) complete a basic training course provided by the program;

198 (ii) have experience in child welfare cases; and

199 (iii) participate each calendar year in continuing legal education courses providing no  
200 fewer than eight hours of instruction in child welfare law.

201 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
202 commission may, by rule, exempt from the requirements of Subsection (4)(a) an attorney who  
203 has equivalent training or adequate experience.

204 Section 4. Section **63M-7-211.2** is enacted to read:

205 **63M-7-211.2. Child Welfare Parental Defense Fund -- Agreements for coverage**  
206 **by the Child Welfare Parental Defense Fund.**

207 (1) There is created an expendable special revenue fund known as the "Child Welfare  
208 Parental Defense Fund."

209 (2) Subject to legislative appropriations, the commission may make distributions from  
210 the fund as required in this part for the following purposes:

211 (a) to pay for the representation, costs, expert witness fees, and expenses of parental  
212 defense attorneys who are under contract with the commission to provide parental defense in  
213 child welfare cases for an indigent parent that is the subject of a petition alleging abuse,

214 neglect, or dependency;

215 (b) for administrative costs under this part; and

216 (c) for reasonable expenses directly related to the functioning of the program, including  
217 training and travel expenses.

218 (3) The fund consists of:

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

220 (b) interest and earnings from the investment of fund money;

221 (c) proceeds deposited by participating counties under this section; and

222 (d) private contributions to the fund.

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

225 (5) (a) If the commission anticipates a deficit in the fund during a fiscal year:

226 (i) the commission shall request an appropriation from the Legislature; and

227 (ii) the Legislature may fund the anticipated deficit through appropriation.

228 (b) If the anticipated deficit is not funded by the Legislature, the commission may  
229 request an interim assessment to participating counties as described in Subsection (6) to fund  
230 the anticipated deficit.

231 (6) (a) A county legislative body and the commission may annually enter into a written  
232 agreement for the commission to provide parental defense attorney services in the county out of  
233 the fund.

234 (b) The agreement described under Subsection (6)(a) shall:

235 (i) require the county to pay into the fund an amount defined by a formula established  
236 by the commission by rule under Title 63G, Chapter 3, Utah Administrative Rulemaking Act;  
237 and

238 (ii) provide for revocation of the agreement for failure to pay an assessment on the due  
239 date established by the commission by rule under Title 63G, Chapter 3, Utah Administrative  
240 Rulemaking Act.

241 (7) (a) After the first year of operation of the fund, any county that elects to initiate  
242 participation in the fund, or reestablish participation in the fund after participation was  
243 terminated, shall be required to make an equity payment, in addition to the assessment  
244 provided in Subsection (5).



245           (b) The commission shall determine the amount of the equity payment described in  
246 Subsection (7)(a) by rule established by the commission under Title 63G, Chapter 3, Utah  
247 Administrative Rulemaking Act.

248           (8) A county that elects to withdraw from participation in the fund, or whose  
249 participation in the fund is revoked due to failure to pay the county's assessment, as described  
250 in Subsection (6), when due, shall forfeit any right to any previously paid assessment by the  
251 county or coverage from the fund.

252           Section 5. **Repealer.**

253           This bill repeals:

254           Section **63A-11-101**, **Title.**

255           Section **63A-11-102**, **Definitions.**

256           Section **63A-11-103**, **Creation of program.**

257           Section **63A-11-104**, **Program -- Duties -- Contracting.**

258           Section **63A-11-105**, **Program -- Duties, functions, and responsibilities.**

259           Section **63A-11-106**, **Annual report -- Budget.**

260           Section **63A-11-107**, **Records access.**

261           Section **63A-11-201**, **Child welfare parental defense contracts -- Qualifications.**

262           Section **63A-11-202**, **Contracted parental defense attorney.**

263           Section **63A-11-203**, **Child Welfare Parental Defense Fund -- Creation.**

264           Section **63A-11-204**, **Agreements for coverage by the Child Welfare Parental**  
265 **Defense Fund -- Eligibility -- County and state obligations -- Termination -- Revocation.**