

SB0251S01 compared with SB0251

~~{deleted text}~~ shows text that was in SB0251 but was deleted in SB0251S01.

Inserted text shows text that was not in SB0251 but was inserted into SB0251S01.

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Senator Wayne A. Harper proposes the following substitute bill:

PARENTAL DEFENSE OFFICE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: _____

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

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- ▶ makes technical changes.

Money Appropriated in this Bill:

~~{None}~~ This bill appropriates in fiscal year 2020:

- ▶ to Commission on Criminal and Juvenile Justice -- Child Welfare Parental Defense Fund, as an ongoing appropriation:
 - from General Fund, \$6,500.

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63M-7-204, as last amended by Laws of Utah 2018, Chapters 54 and 126
77-32-802, as last amended by Laws of Utah 2018, Chapter 296

ENACTS:

63M-7-211, Utah Code Annotated 1953
63M-7-211.1, Utah Code Annotated 1953
63M-7-211.2, Utah Code Annotated 1953

REPEALS:

63A-11-101, as last amended by Laws of Utah 2011, Chapter 265
63A-11-102, as last amended by Laws of Utah 2011, Chapter 265
63A-11-103, as last amended by Laws of Utah 2011, Chapter 265
63A-11-104, as last amended by Laws of Utah 2011, Chapter 265
63A-11-105, as last amended by Laws of Utah 2011, Chapter 265
63A-11-106, as last amended by Laws of Utah 2011, Chapter 265
63A-11-107, as last amended by Laws of Utah 2008, Chapter 382
63A-11-201, as last amended by Laws of Utah 2011, Chapter 265
63A-11-202, as last amended by Laws of Utah 2011, Chapter 265
63A-11-203, as last amended by Laws of Utah 2013, Chapter 400
63A-11-204, as last amended by Laws of Utah 2011, Chapter 265

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

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

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63M-7-204. Duties of commission.

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

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

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

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

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

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

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

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

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

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

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

(k) provide a comprehensive criminal justice plan annually;

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

(m) promote the development of criminal and juvenile justice information systems that

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are consistent with common standards for data storage and are capable of appropriately sharing information with other criminal justice information systems by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The commission shall:

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(a) administer and enforce this section;

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

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

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

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

(4) The commission may contract with:

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

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

(5) (a) On or before October 1 of each year, the executive director shall report to the governor and the Child Welfare Legislative Oversight Panel regarding the preceding fiscal year on the operations, activities, and goals of the program.

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

(i) the administrative expenses for the program; and

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

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

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

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

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

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

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

(1) (a) The commission may enter into a contract with a parental defense attorney to provide services for an indigent parent who is the subject of a petition alleging abuse, neglect,

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or dependency, and requires a parental defense attorney under Section 78A-6-1111.

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

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

(2) ~~{For child welfare cases, a}~~A contracted parental defense attorney shall:

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

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

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

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

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

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

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

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

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

(ii) have experience in child welfare cases; and

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

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

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commission may, by rule, exempt from the requirements of Subsection (4)(a) an attorney who has equivalent training or adequate experience.

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

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

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

(2) Subject to ~~legislative appropriations~~ availability, the commission may make distributions from the fund as required in this ~~{part}~~ section or Section 63M-7-211 or 63M-7-211.1 for the following purposes:

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

(b) for administrative costs under this ~~{part}~~ section or Section 63M-7-211 or 63M-7-211.1; and

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

(3) The fund consists of:

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

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

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

(d) private contributions to the fund.

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

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

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

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

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

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

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

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

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

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

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

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

Section 5. Section 77-32-802 is amended to read:

77-32-802. Commission members -- Member qualifications -- Terms -- Vacancy.

(1) The commission is composed of 14 voting members and one ex officio, nonvoting member.

(a) The governor, with the consent of the Senate, shall appoint the following 12 voting members:

(i) two practicing criminal defense attorneys recommended by the Utah Association of Criminal Defense Lawyers;

(ii) one attorney practicing in juvenile delinquency defense recommended by the Utah Association of Criminal Defense Lawyers;

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(iii) an attorney representing minority interests recommended by the Utah Minority Bar Association;

(iv) one member recommended by the Utah Association of Counties from a county of the first or second class;

(v) one member recommended by the Utah Association of Counties from a county of the third through sixth class;

(vi) a director of a county public defender organization recommended by the Utah Association of Criminal Defense Lawyers;

(vii) two members recommended by the Utah League of Cities and Towns from its membership;

(viii) a retired judge recommended by the Judicial Council;

(ix) one member of the Utah Legislature selected jointly by the Speaker of the House and President of the Senate; and

(x) one attorney practicing in the area of parental defense, recommended by an entity funded under [Title 63A, Chapter 11,] the Child Welfare Parental Defense Program created in Section 63M-7-211.

(b) The Judicial Council shall appoint a voting member from the Administrative Office of the Courts.

(c) The executive director of the State Commission on Criminal and Juvenile Justice or the executive director's designee is a voting member of the commission.

(d) The director of the commission, appointed under Section 77-32-803, is an ex officio, nonvoting member of the commission.

(2) A member appointed by the governor shall serve a four-year term, except as provided in Subsection (3).

(3) The governor shall stagger the initial terms of appointees so that approximately half of the members appointed by the governor are appointed every two years.

(4) A member appointed to the commission shall have significant experience in indigent criminal defense, parental defense, or juvenile defense in delinquency proceedings or have otherwise demonstrated a strong commitment to providing effective representation in indigent defense services.

(5) A person who is currently employed solely as a criminal prosecuting attorney may

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not serve as a member of the commission.

(6) A commission member shall hold office until the member's successor is appointed.

(7) The commission may remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.

(8) If a vacancy occurs in the membership for any reason, a replacement shall be appointed for the remaining unexpired term in the same manner as the original appointment.

(9) The commission shall annually elect a chair from the commission's membership to serve a one-year term. A commission member may not serve as chair of the commission for more than three consecutive terms.

(10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(11) (a) A majority of the members of the commission constitutes a quorum.

(b) If a quorum is present, the action of a majority of the voting members present constitutes the action of the commission.

Section ~~5~~6. **Repealer.**

This bill repeals:

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

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

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

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

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

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

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

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

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

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

Section 63A-11-204, **Agreements for coverage by the Child Welfare Parental**

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Defense Fund -- Eligibility -- County and state obligations -- Termination -- Revocation.

Section 7. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2019, and ending June 30, 2020. These are additions to amounts previously appropriated for fiscal year 2020. The Legislature has reviewed the following expendable funds. The Legislature authorizes the State Division of Finance to transfer amounts between funds and accounts as indicated. Outlays and expenditures from the funds or accounts to which the money is transferred may be made without further legislative action, in accordance with statutory provisions relating to the funds or accounts.

ITEM 1

To Commission on Criminal and Juvenile Justice -- Child Welfare Parental

Defense Fund

From General Fund

\$6,500

Schedule of Programs:

Child Welfare Parental Defense Fund

\$6,500