

**MINUTES OF THE  
CHILD WELFARE LEGISLATIVE OVERSIGHT PANEL**  
Thursday, September 13, 2001 – 1:00 p.m. – Room 416 State Capitol

**Members Present:**

Rep. Matt Throckmorton, House Chair  
Sen. Dan R. Eastman, Senate Chair  
Rep. Trisha Beck  
Rep. Jack Seitz

**Members Absent:**

Sen. Gene Davis

**Staff Present:**

Mr. Paul W. Hess, Associate General Counsel  
Ms. Cassandra Bauman, Legislative Secretary

**Note:** A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us.imaging/history.asp> or contact the Office of Legislative Research and General Counsel.

**1. Call to Order and Approval of Minutes**

Chair Eastman called the meeting to order at 1:11 p.m.

**MOTION:** Rep. Seitz moved to approve the minutes of August 21, 2001. The motion passed unanimously with Rep. Beck absent for the vote.

**2. Proposed Legislation: Amendments to Guardian ad Litem Statutes**

Chair Eastman explained that Rep. Throckmorton has requested legislation to eliminate the role of the Guardian ad Litem in juvenile delinquency and custody cases, unless the case involves an allegation of abuse, neglect, or dependency.

Mr. Paul W. Hess, Associate General Counsel, Office of Legislative Research and General Counsel, distributed "Amendments to Guardian ad Litem Statutes, 2002 General Session" and UCA §30-3-11.2. Appointment of counsel for child. He explained the amendments in draft legislation.

Ms. Kristin Brewer, Director, Office of the Guardian ad Litem, spoke in opposition of the proposed legislation. She recommended that reference to UCA §78-7-9 (not §78-3a-911 or 912) should be made in §78-7-45(1)(c)(ii). She explained that judges have discretion in cases of delinquents whom appear before the court to appoint a Guardian ad Litem. She stated that this legislation would deny that discretion to the court judges unless there was a petition containing an allegation of abuse or neglect.

Rep. Throckmorton stated that the caseloads of guardian ad litem workers are overwhelming. He indicated that the intent of the legislation is to narrow the focus of the Office of the Guardian ad Litem, to reduce caseloads and improve representation of children in child welfare cases.

Mr. Adam Trupp, Assistant Juvenile Court Administrator, speaking in behalf of the Board of Juvenile Court Judges, testified in opposition of the proposed legislation. He explained that many cases where juvenile delinquents are involved, attorneys are needed to speak in the children's best interest. He indicated that court judges are concerned that children will not be represented. He related several instances to the panel of cases where a Guardian ad Litem is appointed that would not be allowed under the proposed legislation.

Rep. Throckmorton further explained the intentions behind the proposed legislation. He indicated that some amendments may be needed to clarify the legislation. He stated that a guardian ad litem outside the Office of the Guardian ad Litem could still be appointed to represent children in cases where abuse, neglect, or dependency are not involved. He expressed great concern for large caseloads of guardians ad litem.

Sen. Eastman requested that persons present review options for narrowing the Office of Guardian ad Litem's caseloads without necessarily having to proceed statutorily. He inquired whether the situation could be resolved by resolution, rule, or a request from the Office of the Guardian ad Litem to the Courts.

Ms. Patricia Worthington, Director, Foster Care Citizens Review Board, spoke in opposition of the proposed legislation. She indicated that the discretion for the court judges to appoint a guardian ad litem in all cases for children to have adequate representation is extremely important.

### **3. Immunity of Government Employees Involved in Child Protective Services Investigations and Removals -- UCA §62A-4a-207(4)(i)**

Mr. Hess distributed "Child Welfare Worker Immunity Issues," including "Excerpts from Other Relevant State Laws" and "Immunity from Liability in Child Welfare Investigations, 2002 General Session." He reviewed the Panel's responsibility to review the immunity issue under UCA §62A-4a-207(4)(i) and to make a report to the Health and Human Services Interim Committee. He explained the handouts provided. He stated that child welfare workers have a difficult task to make sure that children are not inappropriately removed from a home and that children do not remain in the home when removal is necessary. He briefly explained the State immunity statutes why cases against child welfare workers are often filed in federal court, where the State immunity statutes would not apply and where plaintiffs can recover attorneys fees. He indicated that Rep. Throckmorton directed staff to draft legislation to exclude child welfare workers from State immunity where a worker has committed fraud, malice, or perjury.

Mr. Richard Anderson, Director, Division of Child and Family Services, stated that this propose legislation appears to address a problem which does not really exist. He expressed his concern that legislation such as this may further discourage persons from seeking or maintaining employment as child welfare workers. He asked for more time to study this draft bill.

Mr. David Carlson, Attorney General's Office, stated that the panel should consider testimony from the Division of Risk Management and the fiscal impact of the legislation. He also asked for time to study this draft bill.

Ms. Brewer recommended the panel allow further time for agencies to review the legislation and bring testimony back to the panel at a future meeting.

Chair Eastman stated that the handouts describing the law of immunity for child welfare workers could probably serve as the Panel's report to the Health and Human Services Interim Committee.

### **4. Proposed Legislation: Taking Minor into Protective Custody Without Warrant**

Mr. Hess distributed "Taking Minor into Protective Custody without Warrant, 2002 General Session." He requested that comments, after today's discussion, on this and other draft legislation presented today be submitted in writing to him or to the chairs. He stated that this bill draft is a "work in progress" and that the practice of taking minors into custody is an important issue that requires much consideration. He then went through the draft bill, explaining various provisions to the Panel.

Mr. Hess explained that this draft legislation merges UCA §78-3a-301 into §62A-4a-202.1 and that he views the current structure of one statute referencing the other as cumbersome. He stated that DCFS has already suggested that some a list of removal reasons should also appear in Title 78, to cover situations where children are removed pursuant to petitions being filed. Mr. Hess asked persons present to provide comments on this point.

Mr. Hess indicated that there is no statutory definition of "child" and that "minor" was substituted for clarification. He explained that the panel unanimously voted, at the August meeting, to direct staff to draft legislation to insert the requirement of imminent or exigent circumstances into the statute. He stated that inconsistent evidentiary standards are contained in the existing statutes, i.e., "reasonable cause" and "substantial cause". His suggestion is that "probable cause" be used. He also explained that the concept of "parental consent" to a removal has been added in this draft legislation.

Mr. Hess reminded the Panel that at the August meeting, one person testified that poverty, in and of itself, should not be grounds to remove a child. This concept has been inserted into the draft bill.

Rep. Throckmorton stated that the intent of the legislation is to push for more in-home services for struggling parents. He indicated that removal of children from their homes is a last resort. He explained that if circumstances are beyond control with in-home services, the option for child removal would be available.

Mr. Hess stated that UCA §78-3a-106 explains how a child can be removed pursuant to a warrant. He read the statute to the panel and explained that the list of reasons which can be used by a judge is shorter than the list of reasons for emergency removal without a warrant. He indicated that the proposed legislation focuses on circumstances where the worker or peace officer reasonably believes that he or she does not have time to obtain a warrant before the harm occurs.

Mr. Steve Russell, attorney, identified three circumstances where removal of a child without a warrant is granted: (1) in a case of emergency, (2) a temporary restraining order (TRO) is approved, (3) when parents are served a petition and assigned a hearing. He stated that police officers are able to distinguish an exigent circumstance for removal and that child welfare workers should be trained to do the same. He recommended that "exigent circumstances" alone should be the requirement for warrantless removal of children from the home.

Mr. Trupp stated that the juvenile courts will need more hearing time if warrants are being pushed before a child can be removed from the home. He explained that proven allegations are needed to obtain a warrant and that more court time will be needed to allow review of reasons to issue the warrants. He indicated that the costs for courts will be increased. He also indicated that increased administrative burden and cost would

be created. Rarely now do peace officers obtain warrants for removal of children. Mr. Trupp stated that his preliminary impression is that this legislation would require a warrant in most cases.

Ms. Gayle Ruzicka, Utah Eagle Forum, explained that the fiscal impact of this type of legislation was studied last session. She indicated that this legislation may actually save the State money because fewer children will be removed.

Rep. Throckmorton requested that Mr. Trupp research approximately how many cases filed involve true emergencies where no warrant would be required, as well as approximate court time and costs to implement the warrant requirement of this legislation. Mr. Trupp will report this information to the Panel at the September meeting.

Mr. Carlson stated that the Attorney General's Office has not studied the draft legislation as of yet and that the office would like the chance to study the issue. He said that while his office agrees that State statutes should comply with the Constitution, the case law in this Fourth Amendment area is not clear.

Mr. Hess stated that he agrees with Mr. Carlson on this point and reminded the Panel that the case law is unclear, particularly in the Tenth Circuit Court of Appeals. Also, the U.S. Supreme Court has not made a definitive ruling regarding Fourth Amendment requirements as applied to child removal. He said he had hoped this lack of clarity in the law was evident in his presentation to the Panel at the August meeting. Mr. Hess said that it may be some years before we have clarification from either the U.S. Supreme Court or the Tenth Circuit. However, Mr. Hess explained that several other federal circuits have held in cases that the Fourth Amendment does apply to the warrantless home entry and strip search of children by child welfare workers and peace officers, without distinguishing between the two types of state actors. Mr. Hess stated that the requirement of true imminent, exigent circumstances and probable cause in connection with the warrantless removal of a child from his or her home is where he believes "the dust will settle" (i.e., where the case law will end up in the Tenth Circuit), as a logical extension of current case law.

Mr. Anderson indicated that the definition of a "substantial, imminent risk" will have to be studied carefully. He stated that the decision to remove a child from the home is made with great consideration. He said that inappropriately removing a child from the home is the worst action that the division can make and is avoided if at all possible. He indicated that Utah has one of the lowest removal rates in the nation. He stated that a child is the most vulnerable victim and assistance is absolutely necessary when the child states that they are scared to go home. He clarified that removal of a child from the home is last resort, especially in a loving family.

Ms. Brewer suggested that the panel read the Office of the Child Ombudsman reports and the Child Fatality Review reports. She stated that policy is not "when in doubt, move them out." She recommended a thorough review of definition of "imminent". She said that child welfare workers have no liability if the child is left in the home, but if the child is removed from the home, the child welfare worker is liable. She stated that the legal issues for the child welfare workers are less if the child is left in the home, but the safety issues for the child may be greater if the child is left in the home. She expressed concern that adoption of this legislation may endanger children.

Chair Eastman reminded persons present to submit written comments to Paul Hess on all of the bills presented today.

**5. Report on Meeting of Working Group regarding Defense Counsel for Indigent Parents**

Mr. Hess explained that the working group met to discuss the various child welfare issues and members were assigned to research specific issues. He stated that the working group will meet again this month to share the results of research and investigation on this issue.

**6. Other Business**

The next meeting of the Child Welfare Legislative Oversight Panel is Thursday, October 25, 2001 at 1:00 p.m. in room 414/416.

**7. Adjourn**

**MOTION:** Rep. Seitz moved to adjourn the meeting. The motion passed unanimously. Chair Eastman adjourned the meeting at 3:06 p.m.

