

From: Mary Noonan
To: Alicia Davis
Date: 1/30/03 11:24AM
Subject: Fwd: Re: HB 222

Yes, we discussed effective date for pilot - 11/1/03

Report to Oversight prior to Leg Session, 1/05. So, likely that report would be in Autumn 04.

Statewide effective date, absent a change based on feedback from study, etc., 7/1/05.

MTN

>>> Alicia Davis 01/27/03 05:10PM >>>
Mary and Kristin -

I thought the rules went into effect on 11/2003, but the actual enactment didn't occur until the following July 2004... Rick tells me I got that wrong, but did I? Did we voice agreement to go from a May 2003 implementation, to a November 2003 implementation?



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H.B. 222

1

CHILD WELFARE PROCEEDINGS

2

AMENDMENTS

3

2003 GENERAL SESSION

4

STATE OF UTAH

5

Sponsor: Greg J. Curtis

6
neglect,
7
Court
8
Judicial

6 **This act modifies the Judicial Code. This act phases in expanded access to abuse,**
 7 **and dependency hearings and records of those hearings, beginning with Juvenile**
 8 **districts identified by the Judicial Council as pilot districts. This act requires the**
 9 **Council to report to the Legislature on the effects of this act. This act includes revisors**
 10 **instructions.**

11 This act affects sections of Utah Code Annotated 1953 as follows:

12 **AMENDS:**

13 **78-3-21**, as last amended by Chapter 221, Laws of Utah 2000

14 **78-3a-115**, as last amended by Chapters 171 and 237, Laws of Utah 1998

15 **78-3a-116**, as last amended by Chapter 274, Laws of Utah 1998

16 **78-3a-406**, as renumbered and amended by Chapter 260, Laws of Utah 1994

17 **ENACTS:**

18 **78-3a-115.1**, Utah Code Annotated 1953

19 This act enacts uncodified material.

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

21 Section 1. Section **78-3-21** is amended to read:

22 **78-3-21. Judicial Council -- Creation -- Members -- Terms and election --**
 23 **Responsibilities -- Reports.**

24 (1) The Judicial Council, established by Article VIII, Section 12, Utah Constitution,
 25 shall be composed of:

26 (a) the chief justice of the Supreme Court;

27 (b) one member elected by the justices of the Supreme Court;

28

(c) one member elected by the judges of the Court of Appeals;

29 (d) five members elected by the judges of the district courts;

30 (e) two members elected by the judges of the juvenile courts;

31 (f) three members elected by the justice court judges; and

32 (g) a member or ex officio member of the Board of Commissioners of the Utah State

33 Bar who is an active member of the Bar in good standing elected by the Board of

34 Commissioners.

35 (2) (a) The chief justice of the Supreme Court shall act as presiding officer of the

36 council and chief administrative officer for the courts. The chief justice shall vote only in

the

37 case of a tie.

38 (b) All members of the council shall serve for three-year terms. If a council member

39 should die, resign, retire, or otherwise fail to complete a term of office, the appropriate

40 constituent group shall elect a member to complete the term of office. In courts having

more

41 than one member, the members shall be elected to staggered terms. The person elected to

the

42 Judicial Council by the Board of Commissioners shall be a member or ex officio member

of

43 the Board of Commissioners and an active member of the Bar in good standing at the time

the

44 person is elected. The person may complete a three-year term of office on the Judicial

Council

45 even though the person ceases to be a member or ex officio member of the Board of

46 Commissioners. The person shall be an active member of the Bar in good standing for the

47 entire term of the Judicial Council.

48 (c) Elections shall be held under rules made by the Judicial Council.

49 (3) The council is responsible for the development of uniform administrative policy for

50 the courts throughout the state. The presiding officer of the Judicial Council is responsible

for

51 the implementation of the policies developed by the council and for the general

management of

52 the courts, with the aid of the administrator. The council has authority and responsibility

to:

53 (a) establish and assure compliance with policies for the operation of the courts,

54 including uniform rules and forms; and

55 (b) publish and submit to the governor, the chief justice of the Supreme Court, and the

56 Legislature an annual report of the operations of the courts, which shall include financial

and

57 statistical data and may include suggestions and recommendations for legislation.

58 (4) (a) The Judicial Council shall make rules establishing:

59

(i) standards for judicial competence; and

60 (ii) a formal program for the evaluation of judicial performance containing the

61 elements of and meeting the requirements of this Subsection (4).

62 (b) The Judicial Council shall ensure that the formal judicial performance evaluation
 63 program has improvement in the performance of individual judges, court commissioners,
 and
 64 the judiciary as its goal.
 65 (c) The Judicial Council shall ensure that the formal judicial performance evaluation
 66 program includes at least all of the following elements:
 67 (i) a requirement that judges complete a certain number of hours of approved judicial
 68 education each year;
 69 (ii) a requirement that each judge certify that he is:
 70 (A) physically and mentally competent to serve; and
 71 (B) in compliance with the Codes of Judicial Conduct and Judicial Administration; and
 72 (iii) a requirement that the judge receive a satisfactory score on questions identified by
 73 the Judicial Council as relating to judicial certification on a survey of members of the Bar
 74 developed by the Judicial Council in conjunction with the American Bar Association.
 75 (d) The Judicial Council shall ensure that the formal judicial performance evaluation
 76 program considers at least the following criteria:
 77 (i) integrity;
 78 (ii) knowledge;
 79 (iii) understanding of the law;
 80 (iv) ability to communicate;
 81 (v) punctuality;
 82 (vi) preparation;
 83 (vii) attentiveness;
 84 (viii) dignity;
 85 (ix) control over proceedings; and
 86 (x) skills as a manager.
 87 (e) (i) The Judicial Council shall provide the judicial performance evaluation
 88 information and the disciplinary data required by Subsection 20A-7-702 (2) to the
 Lieutenant
 89 Governor for publication in the voter information pamphlet.

90
 (ii) Not later than August 1 of the year before the expiration of the term of office of a
 91 municipal court judge, the Judicial Council shall provide the judicial performance
 evaluation
 92 information required by Subsection 20A-7-702 (2) to the appointing authority of a
 municipal
 93 justice court judge.
 94 (5) The council shall establish standards for the operation of the courts of the state
 95 including, but not limited to, facilities, court security, support services, and staff levels for
 96 judicial and support personnel.
 97 (6) The council shall by rule establish the time and manner for destroying court
 98 records, including computer records, and shall establish retention periods for these
 records.
 99 (7) (a) Consistent with the requirements of judicial office and security policies, the
 100 council shall establish procedures to govern the assignment of state vehicles to public
 officers
 101 of the judicial branch.
 102 (b) The vehicles shall be marked in a manner consistent with Section 41-1a-407 and
 103 may be assigned for unlimited use, within the state only.

104 (8) (a) The council shall advise judicial officers and employees concerning ethical
 105 issues and shall establish procedures for issuing informal and formal advisory opinions
 on
 106 these issues.
 107 (b) Compliance with an informal opinion is evidence of good faith compliance with
 the
 108 Code of Judicial Conduct.
 109 (c) A formal opinion constitutes a binding interpretation of the Code of Judicial
 110 Conduct.
 111 (9) (a) The council shall establish written procedures authorizing the presiding officer
 112 of the council to appoint judges of courts of record by special or general assignment to
 serve
 113 temporarily in another level of court in a specific court or generally within that level.
 The
 114 appointment shall be for a specific period and shall be reported to the council.
 115 (b) These procedures shall be developed in accordance with Subsection 78-3-24 (10)
 116 regarding temporary appointment of judges.
 117 (10) The Judicial Council may by rule designate municipalities in addition to those
 118 designated by statute as a location of a trial court of record. There shall be at least one
 court
 119 clerk's office open during regular court hours in each county. Any trial court of record
 may
 120 hold court in any municipality designated as a location of a court of record. Designations
 by
 121
 the Judicial Council may not be made between July 1, 1997, and July 1, 1998.
 122 (11) The Judicial Council shall by rule determine whether the administration of a
 court
 123 shall be the obligation of the administrative office of the courts or whether the
 administrative
 124 office of the courts should contract with local government for court support services.
 125 (12) The Judicial Council may by rule direct that a district court location be
 126 administered from another court location within the county.
 127 (13) The Judicial Council shall establish and supervise the Office of Guardian Ad
 128 Litem Director, in accordance with the provisions of Sections 78-3a-911 and 78-3a-912 ,
 and
 129 assure compliance of the guardian ad litem program with state and federal law,
 regulation, and
 130 policy, and court rules.
 131 (14) The Judicial Council shall establish and maintain, in cooperation with the Office
 of
 132 Recovery Services within the Department of Human Services, the part of the state case
 registry
 133 that contains records of each support order established or modified in the state on or after
 134 October 1, 1998, as is necessary to comply with the Social Security Act, 42 U.S.C. Sec.
 654a.

135 (15) (a) On or before November 1, 2003, the Judicial Council, by rule, shall select one
 136 or more districts as pilot districts for purposes of Sections 78-3a-115 , 78-3a-115.1 , and
 137 78-3a-116 .

138 *(b) Prior to the 2005 Annual General Session, the Judicial Council shall report to the*
 139 *Child Welfare Legislative Oversight Panel and the Judiciary Interim Committee on the*
effects
 140 *of this act and recommend whether the provisions of this act should be continued,*
modified, or
 141 *repealed.*
 142 Section 2. Section 78-3a-115 is amended to read:
 143 **78-3a-115. Hearings -- Public excluded, exceptions -- Victims admitted --**
Minor's
 144 **cases heard separately from adult cases -- Minor or parents or custodian heard**
 145 **separately -- Continuance of hearing -- Consolidation of proceedings involving**
more than
 146 **one minor.**
 147 (1) Hearings in minor's cases shall be held before the court without a jury and may be
 148 conducted in an informal manner.
 149 (a) In abuse, neglect, and dependency cases *in all districts other than pilot districts*
 150 *selected by the Judicial Council under Subsection 78-3-21 (15)(a),* the court shall
 exclude all
 151 persons *from hearings held prior to July 1, 2005* who do not have a direct interest in the

 152
 proceedings.
 153 (b) In delinquency cases the court shall admit all persons who have a direct interest in
 154 the case and may admit persons requested by the parent or legal guardian to be present.
 The
 155 court shall exclude all other persons except as provided in Subsection (1)(c).
 156 (c) In delinquency cases in which the minor charged is 14 years of age or older, the
 157 court shall admit any person unless the hearing is closed by the court upon findings on
 the
 158 record for good cause if:
 159 (i) the minor has been charged with an offense which would be a felony if committed
 160 by an adult; or
 161 (ii) the minor is charged with an offense that would be a class A or B misdemeanor if
 162 committed by an adult, and the minor has been previously charged with an offense
 which
 163 would be a misdemeanor or felony if committed by an adult.
 164 (d) The victim of any act charged in a petition or information involving an offense
 165 committed by a minor which if committed by an adult would be a felony or a class A or
 class B
 166 misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77,
 Chapter
 167 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title
 77,
 168 Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do
 not
 169 apply to important juvenile justice hearings as defined in Section 77-38-2 .
 170 (e) A victim, upon request to appropriate juvenile court personnel, shall have the right
 171 to inspect and duplicate juvenile court legal records that have not been expunged
 concerning:
 172 (i) the scheduling of any court hearings on the petition;

173 (ii) any findings made by the court; and
 174 (iii) any sentence or decree imposed by the court.
 175 (2) Minor's cases shall be heard separately from adult cases. The minor or his parents
 176 or custodian may be heard separately when considered necessary by the court. The
 hearing
 177 may be continued from time to time to a date specified by court order.
 178 (3) When more than one minor is involved in a home situation which may be found to
 179 constitute neglect or dependency, or when more than one minor is alleged to be involved
 in the
 180 same law violation, the proceedings may be consolidated, except that separate hearings
 may be
 181 held with respect to disposition.
 182 Section 3. Section **78-3a-115.1** is enacted to read:

183
78-3a-115.1. Access to abuse, neglect, and dependency hearings.

184 (1) This section applies:
 185 (a) beginning November 1, 2003, to districts selected by the Judicial Council as pilot
 186 districts under Subsection 78-3-21 (15)(a); and
 187 (b) beginning July 1, 2005, to all other districts.
 188 (2) (a) In abuse, neglect, and dependency cases the court shall admit any person to a
 189 hearing, including a hearing under Subsection 78-3a-320 (3), unless the court makes a
 finding
 190 upon the record that the person's presence at the hearing would:
 191 (i) be detrimental to the best interest of a child who is a party to the proceeding;
 192 (ii) impair the fact-finding process; or
 193 (iii) be otherwise contrary to the interests of justice.
 194 (b) The court may exclude a person from a hearing under Subsection (2)(a) on its own
 195 motion or by motion of a party to the proceeding.

196 Section 4. Section **78-3a-116** is amended to read:
 197 **78-3a-116. Hearings -- Record -- County attorney or district attorney**
 198 **responsibilities -- Attorney general responsibilities -- Admissibility of evidence.**

199 (1) (a) A verbatim record of the proceedings shall be taken by an official court
 reporter
 200 or by means of a mechanical recording device in all cases that might result in deprivation
 of
 201 custody as defined in this chapter. In all other cases a verbatim record shall also be made
 202 unless dispensed with by the court.
 203 (b) (i) Notwithstanding any other provision, including Title 63, Chapter 2,

Government
 204 Records Access and Management Act, a record of a proceeding made under Subsection
 (1)(a)
 205 shall be released by the court to any person upon a finding on the record for good cause.
 206 (ii) Following a petition for a record of a proceeding made under Subsection (1)(a),
 the
 207 court shall:
 208 (A) provide notice to all subjects of the record that a request for release of the record
 209 has been made; and
 210 (B) allow sufficient time for the subjects of the record to respond before making a
 211 finding on the petition.

212 (iii) A record of a proceeding may not be released under this Subsection (1)(b) if the
 213 court's jurisdiction over the subjects of the proceeding ended more than 12 months prior
 to the

214
 request.

215 (iv) For purposes of this Subsection (1)(b):
 216 (A) "record of a proceeding" does not include documentary materials of any type
 217 submitted to the court as part of the proceeding, including items submitted under
 Subsection

218 (4)(a); and
 219 (B) "subjects of the record" includes the child's guardian ad litem, the child's legal
 220 guardian, the Division of Child and Family Services, and any other party to the
 proceeding.

221 (v) This Subsection (1)(b) applies:
 222 (A) to records of proceedings made on or after November 1, 2003 in districts selected
 223 by the Judicial Council as pilot districts under Subsection 78-3-21 (15)(a); and
 224 (B) to records of proceedings made on or after July 1, 2005 in all other districts.
 225 (2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a
 226 prosecution district, the district attorney shall represent the state in any proceeding in a
 minor's

227 case.
 228 (b) The attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child
 229 and Family Services, and Title 78, Chapter 3a, Juvenile Courts, relating to:
 230 (i) protection or custody of an abused, neglected, or dependent child; and
 231 (ii) petitions for termination of parental rights.
 232 (c) The attorney general shall represent the Division of Child and Family Services in
 233 actions involving minors who have not been adjudicated as abused or neglected, but who
 are

234 otherwise committed to the custody of that division by the juvenile court, and who are
 235 classified in the division's management information system as having been placed in
 custody

236 primarily on the basis of delinquent behavior or a status offense. Nothing in this
 Subsection

237 (2)(c) may be construed to affect the responsibility of the county attorney or district
 attorney to

238 represent the state in those matters, in accordance with the provisions of Subsection (2)
 (a).

239 (3) The board may adopt special rules of procedure to govern proceedings involving
 240 violations of traffic laws or ordinances, fish and game laws, and boating laws. However,
 241 proceedings involving offenses under Section 78-3a-506 are governed by that section
 regarding

242 suspension of driving privileges.
 243 (4) (a) For the purposes of determining proper disposition of the minor in dispositional
 244 hearings and establishing the fact of abuse, neglect, or dependency in adjudication
 hearings and

245
 in hearings upon petitions for termination of parental rights, written reports and other material

246 relating to the minor's mental, physical, and social history and condition may be received
 in
 247 evidence and may be considered by the court along with other evidence. The court may
 require
 248 that the person who wrote the report or prepared the material appear as a witness if the
 person
 249 is reasonably available.
 250 (b) For the purpose of determining proper disposition of a minor alleged to be or
 251 adjudicated as abused, neglected, or dependent, dispositional reports prepared by Foster
 Care
 252 Citizen Review Boards pursuant to Section 78-3g-103 may be received in evidence and
 may be
 253 considered by the court along with other evidence. The court may require any person
 who
 254 participated in preparing the dispositional report to appear as a witness, if the person is
 255 reasonably available.
 256 (5) For the purpose of establishing the fact of abuse, neglect, or dependency, the court
 257 may, in its discretion, consider evidence of statements made by a minor under eight
 years of
 258 age to a person in a trust relationship.
 259 Section 5. Section **78-3a-406** is amended to read:
 260 **78-3a-406. Notice -- Nature of proceedings.**
 261 (1) After a petition for termination of parental rights has been filed, notice of that fact
 262 and of the time and place of the hearing shall be provided, in accordance with the Utah
 Rules
 263 of Civil Procedure, to the parents, the guardian, the person or agency having legal
 custody of
 264 the child, and to any person acting in loco parentis to the child.
 265 (2) A hearing shall be held specifically on the question of termination of parental
 rights
 266 no sooner than ten days after service of summons is complete. A verbatim record of the
 267 proceedings shall be taken and the parties shall be advised of their right to counsel. The
 268 summons shall contain a statement to the effect that the rights of the parent or parents are
 269 proposed to be permanently terminated in the proceedings. That statement may be
 contained in
 270 the summons originally issued in the proceeding or in a separate summons subsequently
 issued.
 271 (3) The proceedings are civil in nature and are governed by the Utah Rules of Civil
 272 Procedure. The court shall in all cases require the petitioner to establish the facts by clear
 and
 273 convincing evidence, and shall give full and careful consideration to all of the evidence
 274 presented with regard to the constitutional rights and claims of the parent and, if a parent
 is
 275 found, by reason of his conduct or condition, to be unfit or incompetent based upon any
 of the

276
 grounds for termination described in this part, the court shall then consider the welfare and best
 277 interest of the child of paramount importance in determining whether termination of
 parental

278 rights shall be ordered.
 279 ~~[(4) Any hearing held pursuant to this part shall be held in closed court without~~
 280 ~~admittance of any person who is not necessary to the action or proceeding, unless the~~
 court
 281 ~~determines that holding the hearing in open court will not be detrimental to the child.]~~
 282 **Section 6. Revisors instructions.**
 283 *It is the intent of the Legislature that, in preparing the Utah Code database for*
 284 *publication, the Office of Legislative Research and General Counsel shall change the*
 reference
 285 *in Subsection 78-3-21 (15)(b) from "this act" to the act's designated chapter number in*
 Laws of
 286 *Utah, 2003.*

Legislative Review Note
 as of 1-24-03 11:39 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

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Fiscal Note

HB0222 - Child Welfare Proceedings Amendments

State Impact:

This bill establishes a pilot program and requires an ongoing General Fund appropriation of \$8,000 to the Courts to implement the program in the pilot districts. There may be additional expenses for evaluation of the pilot and to report the results. Other funding sources are anticipated to handle the evaluation.

Funding Source	FY 04 Approp.	FY 05 Approp.	FY 04 Revenue	FY 05 Revenue
General Fund	\$8,000	\$8,000	\$0	\$0
TOTAL	\$8,000	\$8,000	\$0	\$0

Individual and Business Impact:

There may be some increased litigation costs.

Office of the Legislative Fiscal Analyst
2/5/2003 11:08:59 AM

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Last Revised: 30 August, 2000