



**Parental Defense
ALLIANCE OF UTAH**

Newsletter

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Thinking Outside Of The Box

By Mike Thompson

Editor's Note: The following is an actual account of creative efforts by all parties to assist one Utah family, and demonstrates how family advocates are helpful in child welfare proceedings. Future issues will provide additional information about the family advocate.

Most of us would never think that such a thing as a Plea in Abeyance in a Child Welfare case was possible. Well, they can be, when the parties put their minds together to devise a creative plan to assist families. In one particular case, the parents never had to enter a plea to the Division's petition. How can this be?

Twelve years of DCFS involvement—dirty house charge after dirty house charge—with one family, in

two states was about all this family could take. The Doe Family (obviously, not their real name) consists of four children, ages 5 to 15, who had problems in school, a father on disability, and a mother with persistent health problems. Their case finally closed in March 2005 and they were through with DCFS—or so they thought.

In June 2005, a DCFS investigator appeared on the Doe's doorstep investigating yet another complaint of a dirty house. They took pictures. Another complaint was filed and in July 2005 the Doe's found themselves—once again—back in juvenile court. This time, however, DCFS



sought removal of the Doe children. Trial on the Division's petition would be necessary.

While awaiting the trial date, I went to the family home and gave the parents instructions on cleaning the home. I also enlisted the assistance of a family advocate who went through each room of the home with the family and gave them very explicit instructions on what needed to be done in every room.

Continued...

2006 Child Welfare Legislative Preview

By John Norman

The 2006 Legislative Session will begin January 16, 2006. This year, like past years, there will be many bills proposed that effect the lives of parents and children, and those who work to protect their rights.

The most interesting of the bills that is currently available to read is HB 21, "Child Welfare Revisions", by Rep. Wayne Harper. This bill, if passed, will make several changes to the Division of Child and Family Services

code (62A-4a).

First, this bill defines, certain conduct that is not "abuse".

"(b) "Abuse" does not include: (i) reasonable discipline or management of a child, including withholding privi-

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Special points of interest:

- Proposed legislation will clarify what conduct constitutes "abuse"
- Proposed bills will effect lives of Utah families
- Thinking outside the box to assist families takes community support
- Environmental summit results in articulable assessment criteria

2006 Child Welfare Legislative Preview, continued...



leges;
 (ii) conduct described in Section 76-2-401; or
 (iii) the use of reasonable and necessary physical restraint or force on a child;
 (A) in self-defense;
 (B) in defense of others;
 (C) to protect the child; or
 (D) to remove a weapon in the possession of a child for any of the reasons described in Subsections (1)(b)(iii)(A) through (C).”

Second, this bill changes some of the education requirements for caseworkers. The changes include the additional study of the 14th and 4th Amendments of the Constitution and their effect on the legal framework in which they operate.

Thirdly, the bill adds to the rights of parents already enumerated that, “The state recognizes that: (i) a parent has the right, obligation, responsibility, and authority to raise, manage, train, educate, provide for, and reasonably discipline the parent's children; and (ii) the state's role is

secondary and supportive to the primary role of a parent.”

Fourth, the person who takes a child into custody, has an affirmative duty to “locate and inform” the parents that, “(v) that the child and the child's parent or guardian are entitled to have an attorney present at the shelter hearing; (vi) that if the child's parent or guardian is impecunious and desires to have an attorney, one will be provided; and (vii) that resources are available to assist the child's parent or guardian, including: (A) a parent advocate; (B) a qualified attorney; or (C) potential expert witnesses to testify on behalf of the:

- (I) child;
- (II) child's parent;
- (III) child's guardian; or
- (IV) child's family.”

Fifth, the bill requires that the family plan be one to which the parents agree.

“(c) (i) The division shall make a substantial effort to develop a child and family plan with which the child's

parents agree.

(ii) If a parent does not agree with a child and family plan: (A) the division shall strive to resolve the disagreement between the division and The parent; and (B) if the disagreement is not resolved, the division shall inform the court of the disagreement.”

Sixth, the person taking a child into custody shall document, “(a) the grounds upon which the child was taken into, or retained in, protective custody; and (b) the nature of, and necessity for, any medical care or treatment provided to the child.”

Those interested in reading the bill and learning of its other changes, in addition to those enumerated herein, may go to, <http://www.le.state.ut.us/~2006/bills/hbillint/hb0021.htm>, to read the text of the bill.

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Link	Short Title	Sponsor	Attorney
HB0021	Child Welfare Revisions	Harper, W.	TRV
HB0022	Utah Child Abuse Prevention Board	Ray, P.	TRV
HB0023	Office of Child Welfare Parental Defense Amendments	Harper, W.	TRV
HB0025	Child Welfare - Licensing and Management Information Systems	Harper, W.	TRV
SB0007	Child Protection Amendments	Bell, G.	TRV
HB0030	Emancipation of a Minor	McGee, R.	ECM

2006 Bill Requests

Short Title	Sponsor	Attorney	Status
Changes to Definitions of a Child and a Minor	Harper, W.	TRV	In Process
Changes to Guardian Ad Litem	Eastman, D.	ECM	In Process
Child Custody Determinations	Fowlke, L.	ECM	In Process
Child Protection - Clandestine Laboratory Operation	Hutchings, E.	TRV	In Process
Child Protection - Gang Association	Hutchings, E.	TRV	In Process
Child Protection and Parental Rights Amendments	Harper, W.	TRV	In Process
Child Welfare - Evidentiary Standards and Burdens of Proof	Harper, W.	TRV	Abandoned
Child Welfare Amendments	Harper, W.	TRV	In Process
Childrens Justice Center	Buttars, D. C.	ECM	In Process
Custody Evaluations	Fowlke, L.	ECM	Abandoned
Death Penalty for Sexual Child Abuse	Ure, D.	SCA	In Process
Foster Care Citizen Review Board Amendments	Harper, W.	TRV	In Process
Foster Care Citizen Review Board Amendments	Harper, W.	TRV	In Process
Health Care Amendments for Foster Children	Hogue, D.	CJD	In Process
Medical Recommendations for Children	Morley, M.	DSL	In Process
Out of State Parent-Time Amendments	Fowlke, L.	ECM	In Process

Thinking Outside Of The Box, continued

The following day, when the family advocate returned to the home, the family members had completed every task given them. They did all the work. We took pictures .

Before trial, the DCFS worker, the GAL, and I were called into the Judge's chambers where we came to an agreement on an alterna-

tive course of action for this family. What was the agreement?

No DCFS Service Plan. No DCFS involvement in the case. No GAL involvement in this case. The judge would give us the opportunity to use the family advocates to assist this family instead of state

contracted service providers.

A family advocate agreed to go to the home once a week and give ideas to the family to help them learn to work together to provide the upkeep on their home the state insisted they were unable to do.

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Thinking Outside Of The Box., continued...

And, this was not just women going into the home. The family advocates were a husband and wife. The court required that the family participate in family therapy. The major issue we had was in finding a therapist who would accept Medicaid to would work with this family. Initially, we could find no one willing to do so. Finally, the day before the three month review in this matter, we found a therapist who agreed to provide therapy and accept the family's Medicaid insurance.

We went to court for the review, December 15, 2005. The family advocate who had set up the private in-home services explained the plan and the family's progress to the judge. The GAL checked over the school work completed by the children (who were home schooled). The case will be reviewed again in three months, but can be closed earlier if the therapist submits his reports in January.

Private citizens—family advocates—are out there, willing to be involved with, and willing to help, their neighbors. This does take some additional work on the part of the attorney in the case. I have been in frequent contact with the family advocates to keep myself informed about the family's progress, and the private advocates call me to see what they should do next and for ideas to improve the situation. Thinking outside of the box helped keep this family together.



We're On The Web!
www.parentaldefense.utah.gov

Final Word on the Environmental Summit (unless something interesting comes up)

DCFS continues to work to establish criteria to clarify when its agents will become involved in dirty house situations. Most agree that a dirty house is rarely the sole reason for a removal, however, it can happen when the health and safety of a child in a dirty home is alleged. There is controversy whether DCFS should be involved at all when the sole complaint is one for a dirty home.

Representatives from DCFS, the Health Department, Building & Safety Department, the Eagle Forum, Guardian ad Litem, Attorney General, and Parental Defense Alliance met again this month to continue discussions on this emotionally charged topic.

By the afternoon's end, there was a consensus that assessments would entail evaluation of the "unremediated" potential safety threats considering the ages

and circumstances of children involved. For example, the unremediated risk of no electricity could constitute a safety threat to a child in need of electrically-powered medical equipment while the lack of electricity may not necessarily be a safety threat to an otherwise healthy child. Rotten and spoiling food accessible to children would raise different safety concerns in a household with toddlers versus older children.

In assessing the safety threat, the group agreed that the CPS investigator should consider the age of the children involved, the development of the children, the medical condition of the children, the duration or length of time the situation was present, the volume or quantity of the hazard, the severity of the threat, the child's access, and, the level of parental involvement. Finally, local resources should be utilized in an effort

to seek out expert advice, such as contact with a pharmacist to determine whether medications alleged to be accessible to children constitute a threat to the child's safety, or a call to the health department to determine whether the presence of a particular situation renders a home "uninhabitable" or a threat to health and safety.

DCFS has some internal processes to go through before implementing the recommendations adopted at the Summit. For parents in child welfare proceedings, adoption of the criteria will mean that when the Division does get involved with a family based upon allegations of environmental neglect, the investigator will have articulable criteria related to the particular children in the home. Defense counsel will be able to inquire into the efforts taken by investigator to assess the home against articulable assessment criteria.