

HOUSE BILL NO. HB0017

Parent counsel and family preservation.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to children and parents; creating the
2 office of parent counsel; providing for staffing and
3 prescribing duties of the office; creating the parent
4 counsel program; requiring rulemaking; providing for agency
5 and county contributions to the program; creating the
6 family preservation advisory board; prescribing duties of
7 the board; authorizing positions; providing an
8 appropriation; and providing for an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 14-14-101 through 14-14-106 and
13 14-14-201 are created to read:

14

15

CHAPTER 14

16

FAMILY PRESERVATION

1

2

ARTICLE 1

3

OFFICE OF PARENT COUNSEL

4

5

14-14-101. Office created; definitions.

6

7 (a) The office of parent counsel is created as a
8 separate operating agency as provided in W.S. 9-2-1704(d).
9 The office shall provide court-appointed legal
10 representation to a parent in a termination of parental
11 rights action brought by the state as provided by W.S.
12 14-2-318. The office shall provide court-appointed legal
13 representation to a parent, guardian or custodian in the
14 following cases and actions:

15

16 (i) Child protection cases as provided by W.S.
17 14-3-422;

18

19 (ii) Delinquency cases as provided by W.S.
20 14-6-222;

21

22 (iii) Children in need of supervision cases as
23 provided by W.S. 14-6-422.

1

2 (b) As used in this act:

3

4 (i) "Board" means the family preservation board
5 created by W.S. 14-14-201;

6

7 (ii) "Director" means the director of the office
8 of parent counsel;

9

10 (iii) "Office" means the office of parent
11 counsel;

12

13 (iv) "Parent counsel" means an attorney employed
14 by the office to represent a parent, guardian or custodian
15 under this act, including full-time and part-time employees
16 of the office, independent contractors and volunteer
17 attorneys;

18

19 (v) "The program" means the parent counsel
20 program established under this act;

21

22 (vi) "This act" means W.S. 14-14-101 through
23 14-14-106.

1

2 **14-14-102. Appointment of director; duties;**
3 **rulemaking.**

4

5 (a) The governor, with the advice and consent of the
6 senate, shall appoint a director of the office who shall
7 serve as the administrative head of the office. Unless
8 sooner removed, the director's term of appointment expires
9 at the end of the term of office of the governor during
10 which he was appointed. The director serves at the pleasure
11 of the governor and may be removed as provided by W.S.
12 9-1-202. The director shall:

13

14 (i) Be a member in good standing of the Wyoming
15 state bar;

16

17 (ii) Have a minimum of five (5) years of
18 experience as a licensed attorney prior to appointment;

19

20 (iii) Be familiar with the representation of
21 parents in juvenile court or in termination of parental
22 rights cases;

23

1 (iv) Be compensated as determined by the human
2 resources division of the department of administration and
3 information;

4

5 (v) Devote full time to the performance of his
6 duties;

7

8 (vi) Administer the office and program as
9 provided in this act.

10

11 (b) The director shall not engage in private practice
12 except to complete business pending at the time of his
13 appointment.

14

15 (c) In consultation with the board, the director
16 shall:

17

18 (i) Establish a statewide program promoting
19 uniform and quality representation of parents in
20 proceedings affecting child welfare and family
21 preservation;

22

1 (ii) Promulgate rules for the operation of the
2 office and establishing the standards for the legal
3 representation by attorneys acting as parent counsel in
4 cases under the program;

5

6 (iii) Provide for the training of attorneys
7 acting as parent counsel.

8

9 (d) The director shall employ or contract with,
10 supervise and manage attorneys and other staff necessary to
11 perform the duties of the office, subject to legislative
12 appropriation.

13

14 **14-14-103. Attorneys and staff.**

15

16 (a) The director shall employ staff necessary to
17 perform the duties of the office, including staff
18 attorneys, contract attorneys, a fiscal manager and an
19 office manager.

20

21 (b) Attorneys employed by the office as parent
22 counsel shall:

23

1 (i) Serve at the pleasure of the director;

2

3 (ii) Be a member in good standing of the Wyoming
4 state bar;

5

6 (iii) Be compensated as determined by the human
7 resources division of the department of administration and
8 information or by the director if retained under
9 independent contract.

10

11 (c) Attorneys providing parent representation under
12 independent contract are not prohibited from representing
13 other clients or from practicing in other areas of the law.

14

15 (d) Non-attorney employees shall serve at the
16 pleasure of the director and be compensated as determined
17 by the human resources division of the department of
18 administration and information or by the director if
19 retained under independent contract.

20

21 **14-14-104. Agency and county participation;**
22 **reimbursement.**

23

1 (a) The office shall enter into agreements with each
2 county participating in the program. Agreements shall
3 require counties to comply with all program rules and
4 policies. The agreement shall establish the compensation
5 rate within the county for parent counsel appointed under
6 W.S. 14-2-318, 14-3-422, 14-6-222 or 14-6-422. A county may
7 agree with a parent counsel providing services under the
8 program to pay a rate in excess of the rate set for payment
9 by the program. If a county agrees to do so, it shall enter
10 into a separate contract with the parent counsel providing
11 services and shall be responsible and obligated to
12 reimburse the program for one hundred percent (100%) of the
13 excess amount. The county shall enter into a separate
14 agreement with the office setting out the agreement, the
15 excess rate and the responsibilities and obligations of all
16 parties.

17

18 (b) The office shall pay from the account created by
19 W.S. 14-14-105 one hundred percent (100%) of the fees for
20 the legal representation of parents under the program.
21 Participating counties shall reimburse the program an
22 amount equal to not less than twenty-five percent (25%) of
23 the agreed program fees, not less than twenty-five percent

1 (25%) of the program's administrative cost prorated by
2 program funds expended in each county and one hundred
3 percent (100%) of excess rate fees. The program shall
4 invoice the county for its proportionate share. In the
5 event a county does not make payments within ninety (90)
6 days, the state treasurer may deduct the amount from sales
7 tax revenues due to the county from the state and shall
8 credit the amount to the program account.

9

10 (c) In consultation with the director, each county in
11 which parent counsel is employed by or under contract with
12 the office shall provide adequate space and utility
13 services, other than telephone service, for the use by
14 parent counsel.

15

16 (d) The office shall enter into a memorandum of
17 understanding with the department of family services under
18 which parent counsel will be provided for cases in which
19 the department is required by law or court order to provide
20 counsel to parents. The department shall reimburse the
21 program an amount equal to not less than seventy-five
22 percent (75%) of parent counsel's fees.

23

1 **14-14-105. Account.**

2

3 There is created an office of parent counsel account. All
4 reimbursements received under the program and any
5 appropriations to the office shall be deposited to the
6 account. Funds within the account are continuously
7 appropriated to the office for expenditure for the sole
8 purpose of the program.

9

10 **14-14-106. Applicability.**

11

12 (a) This act does not apply to representation of an
13 individual:

14

15 (i) In criminal proceedings;

16

17 (ii) In federal court; or

18

19 (iii) As a plaintiff in a tort or civil rights
20 action.

21

22 (b) Notwithstanding any other provision of law to the
23 contrary, any attorney providing services for the office as

1 parent counsel shall, for matters arising out of such
2 services, be considered a state employee for purposes of
3 coverage and representation under the Wyoming Governmental
4 Claims Act, W.S. 1-39-101 through 1-39-120, and the state
5 self-insurance program, W.S. 1-41-101 through 1-41-111.

6

7

ARTICLE 2

8

FAMILY PRESERVATION BOARD

9

10 **14-14-201. Board created; members; expenses.**

11

12 (a) There is created a family preservation advisory
13 board. The board is charged with providing advice and
14 guidance to the office of parent counsel and guardian ad
15 litem program to ensure that parents and children are
16 provided quality legal representation in juvenile court and
17 termination of parental rights cases.

18

19 (b) The board shall consist of five (5) voting
20 members as follows:

21

22 (i) Two (2) practicing attorneys;

23

1 (ii) Two (2) members of the judiciary;

2

3 (iii) One (1) lay person.

4

5 (c) The governor shall appoint all voting members of
6 the board.

7

8 (d) Voting members of the board shall serve for four
9 (4) years, except that, of the members first appointed,
10 three (3) shall serve for terms of two (2) years. The
11 governor shall fill any vacancies as they occur.

12

13 (e) No member of the board shall, while serving on
14 the board, be an employee of or contractor with the office
15 of parent counsel as provided in W.S. 14-14-101 through
16 14-14-106 or be an employee of or contractor with the
17 guardian ad litem program as provided in W.S. 14-12-101
18 through 14-12-104.

19

20 (f) The board shall adopt rules for its own
21 procedures. The board shall select a chairman and a vice
22 chairman. The board shall meet as often as necessary to

1 carry out its duties, but in no instance shall it meet less
2 than semiannually.

3

4 (g) The board shall be voluntary and no state funds
5 shall be expended for salary or expenses, except members
6 whose appointment is by virtue of their state employment.

7

8 **Section** 2. W.S. 1-39-103(a)(iv)(F),
9 1-41-102(a)(v)(D), 9-2-1704(d) by creating a new paragraph
10 (xvii), 14-2-318(b)(ii), 14-3-434(b)(v), 14-6-235(b)(v) and
11 14-6-434(b)(v) are amended to read:

12

13 **1-39-103. Definitions.**

14

15 (a) As used in this act:

16

17 (iv) "Public employee":

18

19 (F) Includes contract attorneys in the
20 course of providing contract services for:

21

1 (I) The state public defenders
2 defender's office as provided in W.S. 7-6-103(k) or
3 14-12-104; and

4

5 (II) The office of parent counsel as
6 provided in W.S. 14-14-101 through 14-14-106.

7

8 **1-41-102. Definitions.**

9

10 (a) As used in this act:

11

12 (v) "Public employee" means any officer,
13 employee or servant of the state, provided the term:

14

15 (D) Includes contract attorneys in the
16 course of providing contract services for:

17

18 (I) The state public defenders
19 defender's office as provided in W.S. 7-6-103(k) or
20 14-12-104; and

21

22 (II) The office of parent counsel as
23 provided in W.S. 14-14-101 through 14-14-106.

1

2 **9-2-1704. Reorganization plan; structure; time frame.**

3

4 (d) The entities of state government specified in
5 this subsection are designated as separate operating
6 agencies, which are separate and distinct from the
7 departments and offices specified in subsection (a) of this
8 section because of their quasi-judicial responsibility or
9 because of their unique, specialized function which
10 precludes their inclusion in another department. This act
11 does not otherwise apply to separate operating agencies.
12 Separate operating agencies are as follows:

13

14 (xvii) Office of parent counsel.

15

16 **14-2-318. Costs of proceedings; appointment of**
17 **counsel.**

18

19 (b) Where petitioner is an authorized agency as
20 defined by W.S. 14-2-308(a)(ii)(B), it shall pay for the
21 costs of the action. Costs shall include:

22

1 (ii) Attorney's fee for an indigent party. If
2 the agency had entered into an agreement with the office of
3 parent counsel pursuant to W.S. 14-14-101 through 14-14-106
4 and the office was appointed to provide representation, the
5 office of parent counsel shall pay the attorney's fee in
6 accordance with that agreement;

7
8 **14-3-434. Fees, costs and expenses.**

9
10 (b) The following costs and expenses, when approved
11 and certified by the court to the county treasurer, shall
12 be a charge upon the funds of the county where the
13 proceedings are held and shall be paid by the board of
14 county commissioners of that county:

15
16 (v) Reasonable compensation for services and
17 costs of counsel appointed by the court. If the county had
18 entered into an agreement with the office of parent counsel
19 pursuant to W.S. 14-14-101 through 14-14-106 and the office
20 was appointed to provide representation, the office of
21 parent counsel shall pay the attorney's fee in accordance
22 with that agreement;

23

1 **14-6-235. Fees, costs and expenses.**

2

3 (b) The following costs and expenses, when approved
4 and certified by the court to the county treasurer, shall
5 be a charge upon the funds of the county where the
6 proceedings are held and shall be paid by the board of
7 county commissioners of that county:

8

9 (v) Reasonable compensation for services and
10 costs of counsel appointed by the court. If the county had
11 entered into an agreement with the office of parent counsel
12 pursuant to W.S. 14-14-101 through 14-14-106 and the office
13 was appointed to provide representation, the office of
14 parent counsel shall pay the attorney's fee in accordance
15 with that agreement;

16

17 **14-6-434. Fees, costs and expenses.**

18

19 (b) The following costs and expenses, when approved
20 and certified by the court to the county treasurer, shall
21 be a charge upon the funds of the county where the
22 proceedings are held and shall be paid by the board of
23 county commissioners of that county:

1

2 (v) Reasonable compensation for services and
3 costs of counsel appointed by the court. If the county had
4 entered into an agreement with the office of parent counsel
5 pursuant to W.S. 14-14-101 through 14-14-106 and the office
6 was appointed to provide representation, the office of
7 parent counsel shall pay the attorney's fee in accordance
8 with that agreement;

9

10 **Section 3.**

11

12 (a) There is appropriated four million fifty thousand
13 dollars (\$4,050,000.00) from the general fund to the office
14 of parent counsel created by section 1 of this act for the
15 purpose of providing authorized full-time positions,
16 contract attorneys, office space, furniture and supplies
17 for the office of parent counsel as provided by this act.
18 This appropriation shall be for the period beginning with
19 the effective date of this act and ending June 30, 2022.
20 This appropriation shall not be transferred or expended for
21 any other purpose and any unexpended, unobligated funds
22 remaining from this appropriation shall revert as provided
23 by law on June 30, 2022.

1

2 (b) There are authorized six (6) full-time attorney
3 positions, such contract attorney positions as necessary,
4 one (1) full-time office manager position and one (1)
5 full-time fiscal manager position to the office of parent
6 counsel to implement this act. It is the intent of the
7 legislature that to the extent necessary for the office of
8 parent counsel to maintain the same level of services, only
9 the positions and funding provided in this section be
10 included in the office of parent counsel's standard budget
11 for the immediately succeeding fiscal biennium.

12

13 **Section 4.** This act is effective July 1, 2020.

14

15

(END)