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**PROVIDING FOR INDIGENT DEFENSE**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gregory S. Bell**

House Sponsor: Julie Fisher

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**LONG TITLE**

**General Description:**

This bill authorizes counties to create a legal defender's office as a department within county government.

**Highlighted Provisions:**

This bill:

- ▶ authorizes counties to create legal defender's offices;
- ▶ permits county legal defender's offices to contract with other counties and municipalities within the same judicial district to provide legal counsel and defense resources for indigent criminal defendants; and
- ▶ requires the court to assign criminal indigent defendants to the county legal defender's office for legal services.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

- 77-32-201**, as last amended by Chapters 209 and 251, Laws of Utah 2001
  - 77-32-302**, as last amended by Chapter 251, Laws of Utah 2001
  - 77-32-304.5**, as last amended by Chapter 133, Laws of Utah 2000
  - 77-32-306**, as last amended by Chapter 251, Laws of Utah 2001
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30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **77-32-201** is amended to read:

32 **77-32-201. Definitions.**

33 For the purposes of this chapter:

34 (1) "Board" means the Indigent Defense Funds Board created in Section 77-32-401.

35 (2) "Compelling reason" may include the following circumstances:

36 (a) a conflict of interest;

37 (b) the contracting attorney does not have sufficient expertise to provide an effective  
38 defense of the indigent; or

39 (c) the defense resource is insufficient or lacks expertise to provide a complete defense.

40 (3) "Defense resources" means a competent investigator, expert witness, or other  
41 appropriate means necessary, for an effective defense of an indigent, but does not include legal  
42 counsel.

43 (4) "Indigent" means a person qualifying as an indigent under indigency standards  
44 established in Part 3, Counsel for Indigents.

45 (5) "Legal aid association" means a nonprofit defense association that provides counsel  
46 and defense resources for indigent defendants.

47 (6) "Legal defender's office" means a department of county government created and  
48 authorized by the county legislative body to provide legal representation in criminal matters to  
49 indigent defendants.

50 (7) "Legal defense" means legal counsel, defense resources, or both.

51 [~~(6)~~] (8) "Participating county" means a county which has complied with the provisions  
52 of this chapter for participation in the Indigent Capital Defense Trust Fund as provided in  
53 Sections 77-32-602 and 77-32-603 or the Indigent Felony Defense Trust Fund as provided in  
54 Sections 77-32-702 and 77-32-703.

55 [~~(7)~~] (9) "Serious offense" means a felony or capital felony.

56 Section 2. Section **77-32-302** is amended to read:

57 **77-32-302. Assignment of counsel on request of indigent or order of court.**

58 (1) Legal counsel shall be assigned to represent each indigent and the indigent shall  
59 also be provided access to defense resources necessary for an effective defense, if the indigent  
60 is under arrest for or charged with a crime in which there is a substantial probability that the  
61 penalty to be imposed is confinement in either jail or prison if:

62 (a) the indigent requests counsel or defense resources, or both; or

63 (b) the court on its own motion or otherwise orders counsel, defense resources, or both  
64 and the defendant does not affirmatively waive or reject on the record the opportunity to be  
65 represented and provided defense resources.

66 (2) (a) If a county responsible for providing indigent legal defense, including counsel  
67 and defense resources, has established a county legal defender's office and the court has  
68 received notice of the establishment of the office, the court shall assign to the county legal  
69 defender's office the responsibility to defend indigent defendants within the county and provide  
70 defense resources.

71 [~~(2)(a)~~] (b) If the county or municipality responsible to provide for the legal defense of  
72 an indigent, including defense resources and counsel, has arranged by contract to provide those  
73 services through a legal aid association, and the court has received notice or a copy of the  
74 contract, the court shall assign the legal aid association named in the contract to defend the  
75 indigent and provide defense resources.

76 [~~(b)~~] (c) If the county or municipality responsible for providing indigent legal defense,  
77 including counsel and defense resources, has contracted to provide those services through  
78 individual attorneys, individual defense resources, or associations providing defense resources,  
79 and the court has received notice or a copy of the contracts, the court shall assign a contracting  
80 attorney as the legal counsel to represent an indigent and a contracted defense resource to  
81 provide defense-related services.

82 [~~(c)~~ The] (d) If no county legal defender's office exists, the court shall select and  
83 assign an attorney or defense resource if:

84 (i) the contract for indigent legal services is with multiple attorneys or resources; or

85 (ii) the contract is with another attorney in the event of a conflict of interest.

86           ~~[(d)]~~ (e) If the court considers the assignment of a noncontracting attorney or defense  
87 resource to provide legal services to an indigent defendant despite the existence of an indigent  
88 legal services contract and the court has a copy or notice of the contract, before the court may  
89 make the assignment, it shall:

- 90           (i) set the matter for a hearing;
- 91           (ii) give proper notice of the hearing to the attorney of the responsible county or  
92 municipality; and
- 93           (iii) make findings that there is a compelling reason to appoint a noncontracting  
94 attorney or defense resource.

95           ~~[(e)]~~ (f) The indigent's preference for other counsel or defense resources may not be  
96 considered a compelling reason justifying the appointment of a noncontracting attorney or  
97 defense resource.

98           (3) The court may make a determination of indigency at any time.

99           Section 3. Section **77-32-304.5** is amended to read:

100           **77-32-304.5. Reasonable compensation for defense counsel for indigents.**

101           (1) This section does not apply to any attorney:

102           (a) under contract with the county or municipality for defense of an indigent person;

103           ~~[or]~~

104           (b) in the legal defender organization, legal aid agency, law firm, or public defender  
105 association with which that attorney is professionally associated~~[-];~~ or

106           (c) who is an employee of a county legal defender's office.

107           (2) (a) The county or municipality shall pay reasonable compensation to any attorney  
108 assigned by the court under Subsection 77-32-306 at the conclusion of the representation or any  
109 segment of the representation, as provided in Subsections (2)(b), (c), (d), and (e):

110           (i) before the district or justice courts, including interlocutory appeals; and

111           (ii) before the appellate court on a first appeal of right.

112           (b) The legislative body of each county and municipality shall establish and annually  
113 review guidelines for the rate of compensation, taking into account:

- 114 (i) the nature and complexity of the case;
- 115 (ii) the competency and years of experience in criminal defense of the assigned  
116 attorney;
- 117 (iii) the adjusted net hourly rate incurred by the county or municipality for a prosecutor  
118 or public defender of equivalent experience and competency; and
- 119 (iv) the prevailing rates within the judicial district for comparable services.
- 120 (c) If the legislative body of a county or municipality does not establish the rate  
121 guidelines, the rate of compensation shall be determined by the trial judge or a judge other than  
122 the trial judge if requested by:
  - 123 (i) the assigned attorney; or
  - 124 (ii) the county or municipality.
- 125 (d) If the assigned attorney disagrees with the amount of compensation paid or  
126 contemplated for payment by the county or municipality, the assigned attorney shall  
127 nonetheless continue to represent the indigent defendant and may file a claim against:
  - 128 (i) the county pursuant to Section 17-50-401, in which event the period for a denial by  
129 the county shall be 20 days; or
  - 130 (ii) the municipality pursuant to Title 10, Chapter 6, Uniform Fiscal Procedures Act for  
131 Utah Cities.
- 132 (e) In determining the reasonable compensation to be paid to defense counsel under  
133 Subsections (2)(c) and (d), the court shall consider the factors contained in Subsections  
134 (2)(b)(i) through (iv).
- 135 (f) The total compensation in a noncapital case may not, without prior court approval  
136 following a hearing, exceed:
  - 137 (i) \$3,500 for each assigned attorney in a case in which one or more felonies is  
138 charged;
  - 139 (ii) \$1,000 for each assigned attorney in a case in which only misdemeanors or lesser  
140 offenses are charged; or
  - 141 (iii) \$2,500 for each assigned attorney in the representation of an indigent in an

142 appellate court on a first appeal of right.

143 Section 4. Section **77-32-306** is amended to read:

144 **77-32-306. County or municipal legislative body to provide legal defense.**

145 (1) The county or municipal legislative body shall either:

146 (a) contract to provide the legal defense, including counsel, defense resources, or both,  
147 as prescribed by this chapter, and as available, through:

148 (i) a legal aid association; or

149 (ii) one or more defense associations or attorneys and qualified defense resources; or

150 (b) authorize the court to provide the services prescribed by this chapter by assigning a  
151 qualified attorney in each case.

152 (2) A county may create a county legal defender's office to provide for the legal  
153 defense, including counsel and defense resources or both, as prescribed by this chapter.

154 (3) A county legal defender's office may, through the county legislative body contract  
155 with other counties and municipalities within a judicial district to provide the legal services as  
156 prescribed.

157 [~~2~~] (4) When a county or municipality has contracted under Subsection (1)(a) or a  
158 county has created a legal defender's office as provided under Subsection (2) to provide the  
159 legal counsel and defense resources required by this chapter, the contracted legal aid  
160 association or attorneys [~~and~~], contracted defense resources, and the county legal defender's  
161 office are the exclusive source from which the legal defense may be provided, unless the court  
162 finds a compelling reason for the appointment of noncontracting attorneys and defense  
163 resources, in which case the judge shall state the compelling reason on the record.