

INDIGENT DEFENSE IN JUSTICE COURTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian M. Greene

Senate Sponsor: _____

LONG TITLE

General Description:

This bill requires the appointment of counsel for indigents if the offense the person is charged with includes the possibility of incarceration.

Highlighted Provisions:

This bill:

► requires the appointment of counsel for indigents if the person is charged with an offense, the punishment for which includes incarceration.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-32-202, as last amended by Laws of Utah 2012, Chapter 180

~~⚡→ [77-32-302, as last amended by Laws of Utah 2012, Chapter 180] ←⚡~~

78A-7-103, as repealed and reenacted by Laws of Utah 2012, Chapter 205

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

Section 1. Section **77-32-202** is amended to read:

77-32-202. Procedure for determination of indigency -- Standards.

H.B. 339



28 (1) A determination of indigency or continuing indigency of any defendant may be
29 made by the court at any stage of the proceedings.

30 (2) (a) Any defendant claiming indigency who is charged with a crime the penalty of
31 which is a class A misdemeanor or serious offense shall file with the court a fully complete
32 affidavit verified by a notary or other person authorized by law to administer an oath and file a
33 copy of that affidavit with the prosecuting entity. The affidavit shall contain the factual
34 information required in this section and by the court.

35 (b) A defendant claiming indigency who is charged with a crime the penalty of which
36 is less than a class A misdemeanor is not required to comply with the requirements of
37 Subsection (2)(a) [~~and Subsection (4)~~].

38 (3) (a) "Indigency" means that a person:

39 (i) does not have sufficient income, assets, credit, or other means to provide for the
40 payment of legal counsel and all other necessary expenses of representation without depriving
41 that person or the family of that person of food, shelter, clothing, and other necessities; or

42 (ii) has an income level at or below 150% of the United States poverty level as defined
43 by the most recently revised poverty income guidelines published by the United States
44 Department of Health and Human Services; and

45 (iii) has not transferred or otherwise disposed of any assets since the commission of the
46 offense with the intent of establishing eligibility for the appointment of counsel under this
47 chapter.

48 (b) In making a determination of indigency under Subsection (3)(a)(i), the court shall
49 consider:

50 (i) the probable expense and burden of defending the case;

51 (ii) the ownership of, or any interest in, any tangible or intangible personal property or
52 real property, or reasonable expectancy of any such interest;

53 (iii) the amounts of debts [~~owned~~] owed by the defendant or that might reasonably be
54 incurred by the defendant because of illness or other needs within the defendant's family;

55 (iv) number, ages, and relationships of any dependents;

56 (v) the reasonableness of fees and expenses charged to the defendant by the defendant's
57 attorney and the scope of representation undertaken where the defendant is represented by
58 privately retained defense counsel; and

59 (vi) other factors considered relevant by the court.

60 (4) (a) Upon making a finding of indigence, the court shall enter the findings on the
61 record and enter an order assigning a defense services provider to represent the defendant in the
62 case.

63 (b) Upon finding indigence when the defendant has privately retained counsel, the
64 court, subject to Section 77-32-303, shall enter the findings into the record and issue an order
65 directing the county or municipality to coordinate the providing of defense resources as
66 appropriate.

67 (c) The clerk of the court shall send a copy of the affidavit and order to the prosecutor
68 and to the county clerk or municipal recorder.

69 (5) If the county or municipality providing the defense services provider has any
70 objections to or concerns with the finding of indigency and assignment of a defense services
71 provider or the continuing of indigency status and assignment of a defense services provider, it
72 shall file notice with the court and a hearing shall be scheduled to review the findings and give
73 the county or municipality the opportunity to present evidence and arguments as to the reasons
74 the finding of indigency should be reversed and the court shall proceed as provided in
75 Subsection 77-32-302(4).

76 (6) (a) If the trial court finds within one year after the determination of indigency that
77 any defendant was erroneously or improperly determined to be indigent, the county or
78 municipality may proceed against that defendant for the reasonable value of the services
79 rendered to the defendant, including all costs paid by the county or municipality in providing
80 the legal defense.

81 (b) Subsection (6)(a) does not affect any restitution required of the defendant by the
82 court pursuant to Chapter 32a, Defense Costs.

83 (c) A defendant claiming indigency has a continuing duty to inform the court of any
84 material changes or change in circumstances that may affect the determination of his eligibility
85 for indigency.

86 (d) Any person who intentionally or knowingly makes a material false statement or
87 omits a material fact in an affidavit for indigency is guilty of a class B misdemeanor.

88 **¶→ [Section 2. Section 77-32-302 is amended to read:**

89 ~~77-32-302. Assignment of counsel on request of indigent or order of court. ←¶~~

90 ~~¶~~ → ~~————(1) The defense services provider shall be assigned to represent each indigent and shall~~
 91 ~~provide the legal defense services necessary for an effective defense, if the indigent is under~~
 92 ~~arrest for or charged with a crime [in] for which [there is a substantial probability that the]~~
 93 ~~incarceration is a permissible penalty [to be imposed is confinement in either jail or prison]~~
 94 ~~upon conviction, if:~~
 95 ~~————(a) the indigent requests legal defense; or~~
 96 ~~————(b) the court on its own motion or otherwise orders legal defense services and the~~
 97 ~~defendant does not affirmatively waive or reject on the record the opportunity to be provided~~
 98 ~~legal defense.~~
 99 ~~————(2) (a) If a county responsible for providing indigent legal defense has established a~~
 100 ~~county legal defender's office and the court has received notice of the establishment of the~~
 101 ~~office, the court shall assign to the county legal defender's office the responsibility to defend~~
 102 ~~indigent defendants within the county and provide defense resources.~~
 103 ~~————(b) If the county or municipality responsible to provide for the legal defense of an~~
 104 ~~indigent has arranged by contract to provide those services through a defense services provider,~~
 105 ~~and the court has received notice or a copy of the contract, the court shall assign the defense~~
 106 ~~services provider named in the contract to provide legal defense.~~
 107 ~~————(c) If no county or municipal defense services provider contract exists, the court shall~~
 108 ~~select and assign a legal defense provider.~~
 109 ~~————(d) If the court considers the assignment of a noncontracting legal defense provider to~~
 110 ~~an indigent defendant despite the existence of a defense services provider contract and the~~
 111 ~~court has a copy or notice of the contract, before the court may make the assignment, it shall:~~
 112 ~~————(i) set the matter for a hearing;~~
 113 ~~————(ii) give proper notice of the hearing to the attorney of the responsible county or~~
 114 ~~municipality and county clerk or municipal recorder; and~~
 115 ~~————(iii) make findings that there is a compelling reason to appoint a noncontracting~~
 116 ~~attorney.~~
 117 ~~————(e) The indigent's preference for other counsel or defense resources may not be~~
 118 ~~considered a compelling reason justifying the appointment of a noncontracting defense services~~
 119 ~~provider.~~
 120 ~~————(3) The court may make a determination of indigency at any time.] ←¶~~

121 Section 3. Section 78A-7-103 is amended to read:

122 **78A-7-103. Minimum standards of justice courts -- Authority of Judicial Council**
 123 **over justice courts.**

124 (1) The Judicial Council shall ensure that:

125 (a) procedures include requirements that every municipality or county that establishes
 126 or maintains a justice court provide for the following minimum operating standards:

127 (i) a system to ensure the justice court records all proceedings with a digital audio
 128 recording device and maintains the audio recordings for a minimum of one year;

129 (ii) sufficient prosecutors to perform the prosecutorial duties before the justice court;

130 (iii) adequate funding ~~to~~ **[to defend] and procedures to provide for the defense of** ~~the~~
 130a all persons charged with ~~a~~ **[a** ~~public offense]~~ **[crime for**
 131 **which incarceration is a permissible penalty upon conviction, and] an offense for which there is a**
 131a **substantial probability that the penalty to be imposed is confinement in either jail or prison**
 131b **upon conviction, and** ~~the~~ who are determined by the

132 justice court to be indigent under Title 77, Chapter 32, Indigent Defense Act;

133 (iv) sufficient local peace officers to provide security for the justice court and to attend
 134 to the justice court when required;

135 (v) sufficient clerical personnel to serve the needs of the justice court;

136 (vi) sufficient funds to cover the cost of travel and training expenses of clerical
 137 personnel and judges at training sessions mandated by the Judicial Council;

138 (vii) adequate courtroom and auxiliary space for the justice court, which need not be
 139 specifically constructed for or allocated solely for the justice court when existing facilities
 140 adequately serve the purposes of the justice court; and

141 (viii) for each judge of its justice court, a current copy of the Utah Code, the Utah
 142 Court Rules Annotated, the justice court manual published by the state court administrator, the
 143 county, city, or town ordinances as appropriate, and other legal reference materials as
 144 determined to be necessary by the judge; and

145 (b) the Judicial Council's rules and procedures shall:

146 (i) presume that existing justice courts will be recertified at the end of each four-year
 147 term if the court continues to meet the minimum requirements for the establishment of a new
 148 justice court; or

149 (ii) authorize the Judicial Council, upon request of a municipality or county or upon its
 150 own review, when a justice court does not meet the minimum requirements, to:

151 (A) decline recertification of a justice court;

152 (B) revoke the certification of a justice court;
153 (C) extend the time for a justice court to comply with the minimum requirements; or
154 (D) suspend rules of the Judicial Council governing justice courts, if the council
155 believes suspending those rules is the appropriate administrative remedy for the justice courts
156 of this state.

Legislative Review Note
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Office of Legislative Research and General Counsel