

### **Part 3 Counsel for Indigents**

#### **77-32-301 Minimum standards for defense of an indigent.**

- (1) Each county, city, and town shall provide for the legal defense of an indigent in criminal cases in the courts and various administrative bodies of the state in accordance with legal defense standards as defined in Subsection 77-32-201(12).
- (2)
  - (a) A county or municipality which contracts with a defense services provider shall provide that all legal defense elements be included as a single package of legal defense services made available to indigents, except as provided in Sections 77-32-302 and 77-32-303.
  - (b) When needed to avoid a conflict of interest between:
    - (i) trial counsel and counsel on appeal, a defense services provider contract shall also provide for separate trial and appellate counsel; and
    - (ii) counsel for co-defendants, a defense services provider contract shall also provide for separate trial counsel.
  - (c) If a county or municipality contracts to provide all legal defense elements as a single package, a defendant may not receive funding for defense resources unless represented by publicly funded counsel or as provided in Subsection 77-32-303(2).

Amended by Chapter 177, 2016 General Session

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

- (1) An indigent criminal defense services provider shall be assigned to represent each indigent and shall provide the legal defense services necessary for effective representation, if the indigent is under arrest for or charged with a crime in which there is a substantial probability that the penalty to be imposed is confinement in either jail or prison if:
  - (a) the indigent requests legal defense; or
  - (b) the court on its own motion or otherwise orders legal defense services and the defendant does not affirmatively waive or reject on the record the opportunity to be provided legal defense.
- (2)
  - (a) If a county responsible for providing indigent legal defense has established a county legal defender's office and the court has received notice of the establishment of the office, the court shall assign to the county legal defender's office the responsibility to defend indigent defendants within the county and provide defense resources.
  - (b) If the county or municipality responsible to provide for the legal defense of an indigent has arranged by contract to provide those services through a defense services provider, and the court has received notice or a copy of the contract, the court shall assign the defense services provider named in the contract to provide legal defense.
  - (c) If no county or municipal defense services provider contract exists, the court shall select and assign a legal defense provider.
  - (d) If the court considers the assignment of a noncontracting legal defense provider to an indigent defendant despite the existence of a defense services provider contract and the court has a copy or notice of the contract, before the court may make the assignment, it shall:
    - (i) set the matter for a hearing;

- (ii) give proper notice of the hearing to the attorney of the responsible county or municipality and county clerk or municipal recorder; and
  - (iii) make findings that there is a compelling reason to appoint a noncontracting attorney.
- (e) The indigent's preference for other counsel or defense resources may not be considered a compelling reason justifying the appointment of a noncontracting defense services provider.
- (3) The court may make a determination of indigency at any time.

Amended by Chapter 177, 2016 General Session

**77-32-303 Standard for court to appoint noncontracting attorney or order the provision of defense resources -- Hearing.**

- (1) If a county or municipality has contracted or otherwise provided for a defense services provider, the court may not appoint a noncontracting attorney under this part, Section 78B-1-151, or Rule 15, Utah Rules of Criminal Procedure, unless the court:
- (a) conducts a hearing with proper notice to the county clerk or municipal recorder, with a copy of the notice provided to the prosecutor, to consider the authorization or designation of a noncontract attorney; and
  - (b) makes a finding that there is a compelling reason to authorize or designate a noncontracting attorney for the indigent defendant.
- (2) Except as provided in Subsection (3), if a county or municipality has contracted or otherwise provided for a defense services provider, the court may not order under this part, Section 78B-1-151, or Rule 15, Utah Rules of Criminal Procedure, and the county or municipality may not provide defense resources for a defendant who has retained private counsel.
- (3) The court may order, and the county or municipality may provide, defense resources to a defendant represented by private counsel only if:
- (a) the court conducts a hearing with proper notice to the county clerk or municipal recorder, with a copy of the notice provided to the prosecutor;
  - (b) the court conducts an in camera review of the defense contract, a full accounting of the defense retainer, anticipated costs of defense resources and other relevant defense records and finds by clear and convincing evidence all of the following:
    - (i) the defendant would be prejudiced by the substitution of a contracted defense services provider and any prejudice cannot be remedied by a continuance or other alternative means;
    - (ii) at the time of retention of private counsel, the defendant and attorney entered into a written contract which provided that the defendant had the means to pay for fees and defense resources;
    - (iii) there has been an unforeseen change in circumstances which requires defense resources beyond the defendant's ability to pay; and
    - (iv) all of the above representations are made in good faith and are not calculated to allow the defendant or defense attorney to avoid the requirements of this section.
- (4) The court may not order the defense services provider to act as co-counsel with a privately retained legal counsel as a means of circumventing the requirements of this section.

Amended by Chapter 180, 2012 General Session

**77-32-304 Duties of assigned counsel -- Compensation.**

- (1) When representing an indigent, the assigned counsel shall:
- (a) counsel and defend the indigent at every stage of the proceeding following assignment; and

- (b) file any first appeal of right or other remedy before or after conviction that the assigned counsel considers to be in the interest of justice, except for other and subsequent discretionary appeals or discretionary writ proceedings.
- (2) An assigned counsel may not represent an indigent in any discretionary appeal or action for a discretionary writ, other than in a meaningful first appeal of right to assure the indigent an adequate opportunity to present the indigent's claims fairly in the context of the appellate process of this state.
- (3) An assigned counsel for an indigent shall be entitled to compensation upon:
  - (a) approval of the district court where the original trial was held;
  - (b) a showing that:
    - (i) the indigent has been denied a constitutional right; or
    - (ii) there was newly discovered evidence that would show the indigent's innocence; and
  - (c) a clear showing that the legal services rendered by counsel were:
    - (i) other than that required under this chapter or under a separate fee arrangement; and
    - (ii) necessary for the adequate defense of the indigent and not for the purpose of delaying the judgment of the original trier of fact.

Amended by Chapter 180, 2012 General Session

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

- (1) This section does not apply to any attorney acting as a defense services provider or otherwise under contract with the county or municipality for defense of an indigent person.
- (2)
  - (a) The county or municipality shall pay reasonable compensation to any attorney assigned by the court under Section 77-32-306 at the conclusion of the representation or any segment of the representation, as provided in Subsections (2)(b), (c), (d), and (e):
    - (i) before the district or justice courts, including interlocutory appeals; and
    - (ii) before the appellate court on a first appeal of right.
  - (b) The legislative body of each county and municipality shall establish and annually review guidelines for the rate of compensation, taking into account:
    - (i) the nature and complexity of the case;
    - (ii) the competency and years of experience in criminal defense of the assigned attorney;
    - (iii) the adjusted net hourly rate incurred by the county or municipality for a prosecutor or public defender of equivalent experience and competency; and
    - (iv) the prevailing rates within the judicial district for comparable services.
  - (c) If the legislative body of a county or municipality does not establish the rate guidelines, the rate of compensation shall be determined by the trial judge or a judge other than the trial judge if requested by:
    - (i) the assigned attorney; or
    - (ii) the county or municipality.
  - (d) If the assigned attorney disagrees with the amount of compensation paid or contemplated for payment by the county or municipality, the assigned attorney shall nonetheless continue to represent the indigent defendant and may file a claim against:
    - (i) the county pursuant to Section 17-50-401, in which event the period for a denial by the county shall be 20 days; or
    - (ii) the municipality pursuant to Title 10, Chapter 6, Uniform Fiscal Procedures Act for Utah Cities.

- (e) In determining the reasonable compensation to be paid to defense counsel under Subsections (2)(c) and (d), the court shall consider the factors contained in Subsections (2)(b)(i) through (iv).
- (f) The total compensation in a noncapital case may not, without prior court approval following a hearing, exceed:
  - (i) \$3,500 for each assigned attorney in a case in which one or more felonies is charged;
  - (ii) \$1,000 for each assigned attorney in a case in which only misdemeanors or lesser offenses are charged; or
  - (iii) \$2,500 for each assigned attorney in the representation of an indigent in an appellate court on a first appeal of right.

Amended by Chapter 17, 2012 General Session  
Amended by Chapter 180, 2012 General Session

**77-32-305 Expenses of printing briefs, depositions, and transcripts.**

The state, county, or municipal agency that prosecuted the indigent at trial is responsible for the expenses of printing or typewriting briefs on any first appeal of right, including expenses of depositions and other transcripts.

Renumbered and Amended by Chapter 354, 1997 General Session

**77-32-305.5 Reimbursement of extraordinary expense.**

- (1) For the purposes of this section, an "extraordinary expense" means the collective expense which exceeds \$500 for defense resources or any particular service or item such as experts, investigators, surveys, or demonstrative evidence.
- (2) The county or municipality shall reimburse expenses, exclusive of overhead and extraordinary expense not approved by the court in accordance with this chapter, reasonably incurred by assigned attorneys for indigent defendants through a contracted defense services provider or if so ordered by the court based on a hearing held in accordance with Subsections 77-32-303(2) and (3), or for an appointed counsel under Section 77-32-304.5.
- (3) The assigned attorney shall file a motion with the court for approval of the proposed expenditure for any extraordinary expense before the expense is incurred. The motion shall be heard and ruled upon by a judge other than the trial judge if so requested by either party or upon the motion of the trial judge.

Amended by Chapter 180, 2012 General Session

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

- (1) The county or municipal legislative body shall either:
  - (a) contract with a defense services provider; or
  - (b) authorize the court to provide the services prescribed by this chapter by assigning a qualified attorney in each case.
- (2) A county may create a county legal defender's office to provide for the legal defense as prescribed by this chapter.
- (3) A county legal defender's office may, through the county legislative body, contract with other counties and municipalities to provide the legal services as prescribed.
- (4) Counties and municipalities are encouraged to enter into interlocal cooperation agreements pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, for the provision of legal defense,

including multiple counties and municipalities contracting with either a private defense services provider or with a legal defender's office. An interlocal agreement may provide for:

- (a) the creation of or contract with a private defense services provider, as defined in Subsection 77-32-201(5);
  - (b) multiple counties or municipalities to contract with a county legal defender's office, as defined in Subsection 77-32-201(11); or
  - (c) the creation of an interlocal entity under the provisions of Section 11-13-203.
- (5) When a county or municipality has contracted under Subsection (1)(a) or a county has created a legal defender's office as provided under Subsection (2) to provide the legal defense resources required by this chapter, the legal services provider is the exclusive source from which the legal defense may be provided, unless the court finds a compelling reason for the appointment of noncontracting attorneys and defense resources, under the provisions of Section 77-32-302 or 77-32-303, in which case the judge shall state the compelling reason and the findings of the hearing held under Subsections 77-32-303(2) and (3) on the record.
- (6) A county or municipality may, by ordinance, provide for some other means which are constitutionally adequate for legal defense of indigents.

Amended by Chapter 177, 2016 General Session

**77-32-307 Expenditures of county or municipal funds declared proper -- Tax levy authorized.**

- (1) An expenditure by any county or municipality is considered a proper use of public funds if the expenditure is necessary to carry out the purposes defined in this chapter.
- (2) A donation to a nonprofit legal aid or other association charged with the duty to provide the services is a proper use of public funds.
- (3) Any county or municipality of the state is authorized to levy and collect taxes to meet the requirements of this chapter.

Amended by Chapter 180, 2012 General Session

**77-32-308 Pro bono criminal representation -- Liability limits.**

Counsel assigned by a court to represent an indigent in criminal, post-conviction, or habeas corpus proceedings is immune from suit if the attorney provides the legal services:

- (1) at no cost; or
- (2) for only a substantially reduced cost that is applied to, but does not cover, expenses of the service; and
- (3) without gross negligence or willful misconduct.

Renumbered and Amended by Chapter 354, 1997 General Session