

1   **JUVENILE COURT ACT AMENDMENTS**

2   1999 GENERAL SESSION

3   STATE OF UTAH

4   **Sponsor: Thomas V. Hatch**

5 AN ACT RELATING TO THE JUDICIAL CODE; PROVIDING FOR COSTS OF APPOINTED  
6 COUNSEL FOR INDIGENTS TO BE PAID BY THE STATE IN CASES INITIATED BY THE  
7 ATTORNEY GENERAL; EXEMPTING THE STATE AND COUNTIES FROM INDIGENT  
8 COUNSEL COSTS IN PRIVATE ACTIONS; AND REQUIRING COURTS TO TAKE INTO  
9 ACCOUNT THE INCOME AND FINANCIAL ABILITY OF THE PARENTS OF MINORS IN  
10 DETERMINING IF A MINOR IS INDIGENT.

11 This act affects sections of Utah Code Annotated 1953 as follows:

12 AMENDS:

13               **78-3a-913**, as last amended by Chapter 6 and renumbered and amended by Chapter 365,  
14 Laws of Utah 1997

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

16               Section 1. Section **78-3a-913** is amended to read:

17               **78-3a-913. Right to counsel -- Appointment of counsel for indigent -- Cost -- Court**  
18 **hearing to determine compelling reason to appoint a noncontracting attorney -- Rate of pay.**

19               (1) (a) The parents, guardian, custodian, and the minor, if competent, shall be informed  
20 that they have the right to be represented by counsel at every stage of the proceedings. They have  
21 the right to employ counsel of their own choice and if any of them requests an attorney and is  
22 found by the court to be indigent, counsel shall be appointed by the court as provided in Subsection  
23 (3). The court may appoint counsel without a request if it considers representation by counsel  
24 necessary to protect the interest of the minor or of other parties.

25               (b) The cost of appointed counsel for an indigent minor [~~or other indigent party~~], including  
26 the cost of counsel and expense of appeal, shall be paid by the county in which the hearing is held.  
27 Counties may levy and collect taxes for these purposes.

28           (c) The cost of appointed counsel for an indigent party to proceedings initiated and  
29 prosecuted by the attorney general pursuant to Section 62A-4a-113 shall be paid by the state.

30           (d) Neither the county nor the state shall have any responsibility to pay costs of counsel  
31 or expenses of appeal for petitions filed pursuant to this chapter by private parties.

32           (e) The court shall take into account the income and financial ability to retain counsel of  
33 the parents or guardian of a minor in determining the indigency of the minor.

34           (2) If the state or county responsible to provide legal counsel for an indigent under  
35 Subsection (1)(b) or (c) has arranged by contract to provide services, the court if it has received  
36 notice or a copy of such contract shall appoint the contracting attorney as legal counsel to represent  
37 that indigent.

38           (3) The court shall select and appoint the attorney or attorneys if:

39           (a) the contract for indigent legal services is with multiple attorneys; or

40           (b) the contract is with an additional attorney or attorneys in the event of a conflict of  
41 interest.

42           (4) If the court considers the appointment of a noncontracting attorney to provide legal  
43 services to an indigent despite the existence of an indigent legal services contract and the court has  
44 a copy or notice of such contract, before the court may make the appointment, it shall:

45           (a) set the matter for a hearing;

46           (b) give proper notice to the attorney general or county attorney of the responsible county  
47 of the hearing; and

48           (c) make findings that there is a compelling reason to appoint a noncontracting attorney  
49 before it may make such appointment.

50           (5) The indigent's mere preference for other counsel shall not be considered a compelling  
51 reason justifying the appointment of a noncontracting attorney.

52           (6) The court may order a minor, parent, guardian, or custodian for whom counsel is  
53 appointed and the parents or guardian of any minor for whom counsel is appointed to reimburse  
54 the county for the cost of appointed counsel.

55           (7) If the minor and other parties were not represented by counsel, the court shall inform  
56 them at the conclusion of the proceedings that they have the right to appeal.

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**Legislative Review Note**

**as of 2-1-99 1:53 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**