

**INDIGENT DEFENDANT LEGAL SERVICES**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: David L. Gladwell**

**This act amends the Indigent Defense Act in the Code of Criminal Procedure, regarding providing defense for indigent persons. The act requires that if a county or municipality has contracted for legal defense or defense resources, indigent representation shall be assigned to those contracted, unless there is a compelling reason to assign representation to a noncontracting party. The act also provides definitions of compelling reason and defense resources.**

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

AMENDS:

**77-32-201**, as enacted by Chapter 354, Laws of Utah 1997

**77-32-302**, as renumbered and amended by Chapter 354, Laws of Utah 1997

**77-32-303**, as renumbered and amended by Chapter 354, Laws of Utah 1997

**77-32-306**, as last amended by Chapter 307 and renumbered and amended by Chapter 354, Laws of Utah 1997

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

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

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

For the purposes of this chapter:

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

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

(a) a conflict of interest;

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

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

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

counsel.

~~[(2)]~~ (4) "Indigent" means a person qualifying as an indigent under indigency standards established in Part 3, Counsel for Indigents.

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

~~[(3)]~~ (6) "Participating county" means a county which has complied with the provisions of this chapter for participation in the Indigent Capital Defense Trust Fund as provided in Sections 77-32-602 and 77-32-603 or the Indigent Felony Defense Trust Fund as provided in Sections 77-32-702 and 77-32-703.

~~[(4)]~~ (7) "Serious offense" means a felony or capital offense.

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

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

(1) ~~[Counsel]~~ Legal counsel shall be assigned to represent each indigent ~~[who]~~ and the indigent shall also be provided access to defense resources necessary for an effective defense, 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 ~~[it]~~ counsel or defense resources, or both; or

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

(2) (a) If the county or municipality responsible to provide for the legal defense of an indigent, including defense resources and counsel, has arranged by contract to provide those services through a legal aid association, and the court has received notice or a copy of ~~[such]~~ the contract, the court shall assign the ~~[contracting attorney as legal counsel to represent that indigent]~~ legal aid association named in the contract to defend the indigent and provide defense resources.

(b) If the county or municipality responsible for providing indigent legal defense, including counsel and defense resources, has contracted to provide those services through individual attorneys, individual defense resources, or associations providing defense resources, and the court has received

notice or a copy of the contracts, the court shall assign a contracting attorney as the legal counsel to represent an indigent and a contracted defense resource to provide defense-related services.

~~[(b)]~~ (c) The court shall select and assign an attorney or defense resource if:

- (i) the contract for indigent legal services is with multiple attorneys or resources; or
- (ii) the contract is with another attorney in the event of a conflict of interest.

~~[(c)]~~ (d) If the court considers the assignment of a noncontracting attorney or defense resource to provide legal services to an indigent defendant despite the existence of an indigent legal services 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
- (iii) make findings that there is a compelling reason to appoint a noncontracting attorney or defense resource.

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

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

Section 3. Section **77-32-303** is amended to read:

**77-32-303. Standard for court to appoint noncontracting attorney or defense resource -- Hearing.**

~~[(1) For purposes of this section, "resources" means a competent investigator or other appropriate means necessary for a complete defense of an indigent.]~~

~~[(2)]~~ If a county or municipality has contracted for, or otherwise made arrangements for, the legal defense of indigents, including a competent attorney and defense resources, the court may not appoint a noncontracting attorney or ~~[other]~~ resource either under this part, Section 21-5-14.5, or Rule 15, Utah Rules of Criminal Procedure, unless the court:

~~[(a)]~~ (1) conducts a hearing with proper notice to the responsible entity to consider the

authorization or designation of a noncontract attorney or resource; and

~~[(b)]~~ (2) makes a finding that there is a compelling reason to authorize or designate a noncontracting attorney or resources for the indigent defendant.

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

**77-32-306. County or municipal legislative body to appoint counsel or defense resources or provide these services through legal aid associations.**

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

~~[(1)]~~ (a) contract to provide the [services] legal defense, including counsel, defense resources, or both, as prescribed by this chapter, and as available, through [nonprofit]:

(i) a legal aid[~~, other associations,~~] association; or

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

~~[(2)]~~ (b) authorize the court to provide the services prescribed by this chapter by assigning a qualified attorney in each case.

(2) When a county or municipality has contracted under Subsection (1)(a) to provide the legal counsel and defense resources required by this chapter, the contracted legal aid association or attorneys and contracted defense resources are 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, in which case the judge shall state the compelling reason on the record.