

1 **INDIGENT DEFENDANT LEGAL SERVICES**

2 2001 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: David L. Gladwell**

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

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

12 AMENDS:

13 **77-32-201**, as enacted by Chapter 354, Laws of Utah 1997

14 **77-32-302**, as renumbered and amended by Chapter 354, Laws of Utah 1997

15 **77-32-303**, as renumbered and amended by Chapter 354, Laws of Utah 1997

16 **77-32-306**, as last amended by Chapter 307 and renumbered and amended by Chapter 354,
17 Laws of Utah 1997

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

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

20 **77-32-201. Definitions.**

21 For the purposes of this chapter:

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

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

24 (a) a conflict of interest;

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

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

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

31 ~~[(2)]~~ (4) "Indigent" means a person qualifying as an indigent under indigency standards
32 established in Part 3, Counsel for Indigents.

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

35 ~~[(3)]~~ (6) "Participating county" means a county which has complied with the provisions
36 of this chapter for participation in the Indigent Capital Defense Trust Fund as provided in Sections
37 77-32-602 and 77-32-603 or the Indigent Felony Defense Trust Fund as provided in Sections
38 77-32-702 and 77-32-703.

39 ~~[(4)]~~ (7) "Serious offense" means a felony or capital offense.

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

41 **77-32-302. Assignment of counsel on request of indigent or order of court.**

42 (1) ~~[(Counsel)]~~ Legal counsel shall be assigned to represent each indigent ~~[who]~~ and the
43 indigent shall also be provided access to defense resources necessary for an effective defense, if
44 the indigent is under arrest for or charged with a crime in which there is a substantial probability
45 that the penalty to be imposed is confinement in either jail or prison if:

46 (a) the indigent requests ~~[it]~~ counsel or defense resources, or both; or

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

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

55 (b) If the county or municipality responsible for providing indigent legal defense, including
56 counsel and defense resources, has contracted to provide those services through individual
57 attorneys, individual defense resources, or associations providing defense resources, and the court
58 has received notice or a copy of the contracts, the court shall assign a contracting attorney as the

59 legal counsel to represent an indigent and a contracted defense resource to provide defense-related
60 services.

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

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

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

64 ~~[(c)]~~ (d) If the court considers the assignment of a noncontracting attorney or defense
65 resource to provide legal services to an indigent defendant despite the existence of an indigent

66 legal services contract and the court has a copy or notice of the contract, before the court may make
67 the assignment, it shall:

68 (i) set the matter for a hearing;

69 (ii) give proper notice of the hearing to the attorney of the responsible county or
70 municipality; and

71 (iii) make findings that there is a compelling reason to appoint a noncontracting attorney
72 or defense resource.

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

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

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

78 **77-32-303. Standard for court to appoint noncontracting attorney or defense**
79 **resource -- Hearing.**

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

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

86 ~~[(a)]~~ (1) conducts a hearing with proper notice to the responsible entity to consider the
87 authorization or designation of a noncontract attorney or resource; and

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

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

91 **77-32-306. County or municipal legislative body to appoint counsel or defense**
92 **resources, or provide through legal aid associations.**

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

94 [~~1~~] (a) contract to provide the [~~services~~] legal defense, including counsel, defense
95 resources, or both, as prescribed by this chapter, and as available, through [~~nonprofit~~]:

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

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

98 [~~2~~] (b) authorize the court to provide the services prescribed by this chapter by assigning
99 a qualified attorney in each case.

100 (2) When a county or municipality has contracted under Subsection (1)(a) to provide the
101 legal counsel and defense resources required by this chapter, the contracted legal aid association
102 or attorneys and contracted defense resources are the exclusive source from which the legal
103 defense may be provided, unless the court finds a compelling reason for the appointment of
104 noncontracting attorneys and defense resources, in which case the judge shall state the compelling
105 reason on the record.

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

Office of Legislative Research and General Counsel