

1                                   **EXPEDITED APPEALS IN CHILD WELFARE**

2   **CASES**

3   2004 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Lyle W. Hillyard**

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7   **LONG TITLE**

8   **General Description:**

9                   This bill amends provisions relating to appeals from juvenile court cases.

10 **Highlighted Provisions:**

11                   This bill:

- 12                   ▶ creates an expedited process for appeals from juvenile court orders;
- 13                   ▶ requires the notice of appeal to be signed by appellant’s counsel and appellant,  
14 unless the appellant is a minor child or the state;
- 15                   ▶ provides that failure to timely sign a notice of appeal results in the dismissal of the  
16 appeal;
- 17                   ▶ requires the attorney general to represent the state in all appeals under this chapter;
- 18                   ▶ requires the court to notify the parties in open court of the requirements regarding  
19 filing an appeal;
- 20                   ▶ requires parties to an appeal to maintain regular contact with their counsel and keep  
21 all other parties and the appellate court informed of their whereabouts;
- 22                   ▶ requires the court to inform the parties’ counsel of their obligation to represent their  
23 clients throughout the appellate process unless relieved of that obligation;
- 24                   ▶ repeals the minor and other parties' right to appeal if they were not represented by  
25 counsel; and
- 26                   ▶ makes technical changes.

27 **Monies Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **78-3a-909**, as enacted by Chapter 1, Laws of Utah 1996

34 **78-3a-913**, as last amended by Chapter 256, Laws of Utah 1999

35 **78-45c-314**, as enacted by Chapter 247, Laws of Utah 2000



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

38 Section 1. Section **78-3a-909** is amended to read:

39 **78-3a-909. Appeals.**

40 (1) An appeal to the Court of Appeals may be taken from any order, decree, or  
41 judgment of the juvenile court. [~~The appeal shall be taken within 30 days from the entry of the~~  
42 ~~order, decree, or judgment appealed from. The attorney general shall represent the state in all~~  
43 ~~appeals under this chapter.~~]

44 (2) Appeals of right from juvenile court orders related to abuse, neglect, dependency,  
45 termination, and adoption proceedings, shall be taken within 15 days from entry of the order,  
46 decree, or judgment appealed from. In addition, the notice of appeal must be signed by  
47 appellant's counsel, if any, and by appellant, unless the appellant is a minor child or state  
48 agency. If an appellant fails to timely sign a notice of appeal, the appeal shall be dismissed.

49 ~~§ [(3) In all other appeals of right, the appeal shall be taken within 30 days from the entry~~  
50 ~~of the order, decree, or judgment appealed from and the notice of appeal must be signed by~~  
51 ~~appellant's counsel, if any, or by appellant. The attorney general shall represent the state in all~~  
52 ~~appeals under this chapter.~~

53 ~~—— (4) The] (3) IF THE PARTIES ARE PRESENT IN THE COURTROOM, THE § court shall inform~~

53a ~~§ [the parties in open court at the conclusion of the proceedings~~

54 ~~of the requirements of this section, including] THEM OF § :~~

55 (a) their right to appeal within the specified time limits;

56 (b) the need for their signature on a notice of appeal in appeals from juvenile court  
57 orders related to abuse, neglect, dependency, termination, and adoption proceedings; and

58 (c) the need for parties to maintain regular contact with their counsel and to keep all

59 other parties and the appellate court informed of their whereabouts.

59a **§ (4) IF THE PARTIES ARE NOT PRESENT IN THE COURTROOM, THE COURT SHALL MAIL A**  
 59b **WRITTEN STATEMENT CONTAINING THE INFORMATION PROVIDED IN SUBSECTION (4) TO THE**  
 59c **PARTIES AT THEIR LAST KNOWN ADDRESS. §**

60 (5) (a) The court shall inform the parties' counsel at the conclusion of the proceedings  
 61 that, if an appeal is filed, they must represent their clients throughout the appellate process  
 62 unless relieved of that obligation by the juvenile court upon a showing of extraordinary  
 63 circumstances.

64 (b) § ~~[Claims]~~ UNTIL THE PETITION ON APPEAL IS FILED, CLAIMS § of ineffective  
 64a assistance of counsel do not constitute extraordinary  
 65 circumstances. If a claim is raised by trial counsel § OR A PARTY § , it must be included in the  
 65a petition on  
 66 appeal.

67 (6) During the pendency of an appeal from juvenile court orders related to abuse,  
 68 neglect, dependency, termination, and adoption proceedings, parties shall maintain regular  
 69 contact with their counsel, if any, and keep all other parties and the appellate court informed of  
 70 their whereabouts.

70a **§ (7) IN ALL OTHER APPEALS OF RIGHT, THE APPEAL SHALL BE TAKEN WITHIN 30 DAYS FROM**  
 70b **THE ENTRY OF THE ORDER, DECREE, OR JUDGMENT APPEALED FROM AND THE NOTICE OF**  
 70c **APPEAL MUST BE SIGNED BY APPELLANT'S COUNSEL, IF ANY, OR BY APPELLANT. THE**  
 70d **ATTORNEY GENERAL SHALL REPRESENT THE STATE IN ALL APPEALS UNDER THIS CHAPTER. §**

71 ~~[(2)]~~ **§ ~~(7)~~ (8) §** Unless the juvenile court stays its order, the pendency of an appeal does not  
 72 stay the order or decree appealed from in a minor's case, unless otherwise ordered by the Court  
 73 of Appeals, if suitable provision for the care and custody of the minor involved is made  
 74 pending the appeal.

75 ~~[(3)]~~ **§ ~~(8)~~ (9) §** The name of the minor may not appear on the record on appeal.

76 Section 2. Section **78-3a-913** is amended to read:

77 **78-3a-913. Right to counsel -- Appointment of counsel for indigent -- Cost --**  
 78 **Court hearing to determine compelling reason to appoint a noncontracting attorney --**  
 79 **Rate of pay.**

80 (1) (a) The parents, guardian, custodian, and the minor, if competent, shall be informed  
 81 that they have the right to be represented by counsel at every stage of the proceedings. They  
 82 have the right to employ counsel of their own choice and if any of them requests an attorney  
 83 and is found by the court to be indigent, counsel shall be appointed by the court as provided in  
 84 Subsection (3). The court may appoint counsel without a request if it considers representation

85 by counsel necessary to protect the interest of the minor or of other parties.

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

89 (c) The court shall take into account the income and financial ability to retain counsel

90 of the parents or guardian of a minor in determining the indigency of the minor.

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

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

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

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

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

102 (a) set the matter for a hearing;

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

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

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

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

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

114 Section 3. Section **78-45c-314** is amended to read:

115 **78-45c-314. Appeals.**

116 An appeal may be taken from [~~a final~~] an order in a proceeding under this chapter in  
117 accordance with expedited appellate procedures in other civil cases. Unless the court enters a  
118 temporary emergency order under Section 78-45c-204, the enforcing court may not stay an  
119 order enforcing a child custody determination pending appeal.

**Legislative Review Note**  
as of 2-3-04 3:19 PM

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

**Office of Legislative Research and General Counsel**

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**Fiscal Note****Expedited Appeals in Child Welfare Cases***11-Feb-04***Bill Number SB0179***10:02 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**No fiscal impact.

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**Office of the Legislative Fiscal Analyst**