

Senator Lyle W. Hillyard proposes the following substitute bill:

EXPEDITED APPEALS IN CHILD WELFARE

CASES

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ creates an expedited process for appeals from juvenile court orders;
- ▶ requires the notice of appeal to be signed by appellant's counsel and appellant, unless the appellant is a minor child or the state;
- ▶ provides that failure to timely sign a notice of appeal results in the dismissal of the appeal;
- ▶ requires the attorney general to represent the state in all appeals under this chapter;
- ▶ requires the court to notify the parties in open court of the requirements regarding filing an appeal;
- ▶ requires parties to an appeal to maintain regular contact with their counsel and keep all other parties and the appellate court informed of their whereabouts;
- ▶ requires the court to inform the parties' counsel of their obligation to represent their clients throughout the appellate process unless relieved of that obligation;
- ▶ repeals the minor and other parties' right to appeal if they were not represented by 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) If the parties are present in the courtroom, the court shall inform them of:

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

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

53 (c) the need for parties to maintain regular contact with their counsel and to keep all
54 other parties and the appellate court informed of their whereabouts.

55 (4) If the parties are not present in the courtroom, the court shall mail a written
56 statement containing the information provided in Subsection (3) to the parties at their last

57 known address.

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

62 (b) Until the petition on appeal is filed, claims of ineffective assistance of counsel do
63 not constitute extraordinary circumstances. If a claim is raised by trial counsel or a party, it
64 must be included in the petition on appeal.

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

69 (7) In all other appeals of right, the appeal shall be taken within 30 days from the entry
70 of the order, decree, or judgment appealed from and the notice of appeal must be signed by
71 appellant's counsel, if any, or by appellant. The attorney general shall represent the state in all
72 appeals under his chapter.

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

77 ~~[(3)]~~ (9) The name of the minor may not appear on the record on appeal.

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

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

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

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

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

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

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

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

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

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

104 (a) set the matter for a hearing;

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

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

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

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

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

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

117 **78-45c-314. Appeals.**

118 An appeal may be taken from [a final] an order in a proceeding under this chapter in

119 accordance with expedited appellate procedures in other civil cases. Unless the court enters a
120 temporary emergency order under Section 78-45c-204, the enforcing court may not stay an
121 order enforcing a child custody determination pending appeal.