

1 **COUNSEL FOR INDIGENTS IN JUVENILE**

2 **COURT PROCEEDINGS**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Kraig Powell**

6 Senate Sponsor: Kevin T. Van Tassell

7

LONG TITLE

8 **General Description:**

9
10 This bill provides limitations on the scope of services available to indigents through
11 appointed counsel in juvenile court.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ limits the scope of services the county is responsible for when counsel is appointed
15 for an indigent in juvenile court to the proceedings for which counsel is appointed.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **78A-6-306**, as last amended by Laws of Utah 2008, Chapter 17 and renumbered and
23 amended by Laws of Utah 2008, Chapter 3

24 **78A-6-1111**, as renumbered and amended by Laws of Utah 2008, Chapter 3

25

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

26 Section 1. Section **78A-6-306** is amended to read:
27



28 **78A-6-306. Shelter hearing.**

29 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays
30 after any one or all of the following occur:

- 31 (a) removal of the child from the child's home by the division;
- 32 (b) placement of the child in the protective custody of the division;
- 33 (c) emergency placement under Subsection 62A-4a-202.1(4);
- 34 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter
35 at the request of the division; or

36 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under
37 Subsection 78A-6-106(4).

38 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)
39 through (e), the division shall issue a notice that contains all of the following:

- 40 (a) the name and address of the person to whom the notice is directed;
- 41 (b) the date, time, and place of the shelter hearing;
- 42 (c) the name of the child on whose behalf a petition is being brought;
- 43 (d) a concise statement regarding:
 - 44 (i) the reasons for removal or other action of the division under Subsection (1); and
 - 45 (ii) the allegations and code sections under which the proceeding has been instituted;

46 (e) a statement that the parent or guardian to whom notice is given, and the child, are
47 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
48 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
49 provided in accordance with the provisions of Section 78A-6-1111; and

50 (f) a statement that the parent or guardian is liable for the cost of support of the child in
51 the protective custody, temporary custody, and custody of the division, and the cost for legal
52 counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial
53 ability of the parent or guardian.

54 (3) The notice described in Subsection (2) shall be personally served as soon as
55 possible, but no later than one business day after removal of the child from the child's home, or
56 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection
57 78A-6-106(4), on:

- 58 (a) the appropriate guardian ad litem; and

59 (b) both parents and any guardian of the child, unless the parents or guardians cannot
60 be located.

61 (4) The following persons shall be present at the shelter hearing:

62 (a) the child, unless it would be detrimental for the child;

63 (b) the child's parents or guardian, unless the parents or guardian cannot be located, or
64 fail to appear in response to the notice;

65 (c) counsel for the parents, if one is requested;

66 (d) the child's guardian ad litem;

67 (e) the caseworker from the division who is assigned to the case; and

68 (f) the attorney from the attorney general's office who is representing the division.

69 (5) (a) At the shelter hearing, the court shall:

70 (i) provide an opportunity to provide relevant testimony to:

71 (A) the child's parent or guardian, if present; and

72 (B) any other person having relevant knowledge; and

73 (ii) subject to Section 78A-6-305, provide an opportunity for the child to testify.

74 (b) The court:

75 (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile
76 Procedure;

77 (ii) shall hear relevant evidence presented by the child, the child's parent or guardian,
78 the requesting party, or their counsel; and

79 (iii) may in its discretion limit testimony and evidence to only that which goes to the
80 issues of removal and the child's need for continued protection.

81 (6) If the child is in the protective custody of the division, the division shall report to
82 the court:

83 (a) the reason why the child was removed from the parent's or guardian's custody;

84 (b) any services provided to the child and the child's family in an effort to prevent
85 removal;

86 (c) the need, if any, for continued shelter;

87 (d) the available services that could facilitate the return of the child to the custody of
88 the child's parent or guardian; and

89 (e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the

90 child or friends of the child's parents may be able and willing to accept temporary placement of
91 the child.

92 (7) The court shall consider all relevant evidence provided by persons or entities
93 authorized to present relevant evidence pursuant to this section.

94 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good
95 cause shown, the court may grant no more than one continuance, not to exceed five judicial
96 days.

97 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for
98 a continuance under Subsection (8)(a).

99 (9) (a) If the child is in the protective custody of the division, the court shall order that
100 the child be released from the protective custody of the division unless it finds, by a
101 preponderance of the evidence, that any one of the following exist:

102 (i) subject to Subsection (9)(b)(i), there is a substantial danger to the physical health or
103 safety of the child and the child's physical health or safety may not be protected without
104 removing the child from the custody of the child's parent;

105 (ii) (A) the child is suffering emotional damage; and

106 (B) there are no reasonable means available by which the child's emotional health may
107 be protected without removing the child from the custody of the child's parent;

108 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is
109 not removed from the custody of the child's parents;

110 (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same
111 household has been, or is considered to be at substantial risk of being, physically abused,
112 sexually abused, or sexually exploited by a:

113 (A) parent;

114 (B) member of the parent's household; or

115 (C) person known to the parent;

116 (v) the parent is unwilling to have physical custody of the child;

117 (vi) the child is without any provision for the child's support;

118 (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe
119 and appropriate care for the child;

120 (viii) (A) a relative or other adult custodian with whom the child is left by the parent is

121 unwilling or unable to provide care or support for the child;

122 (B) the whereabouts of the parent are unknown; and

123 (C) reasonable efforts to locate the parent are unsuccessful;

124 (ix) the child is in urgent need of medical care;

125 (x) the physical environment or the fact that the child is left unattended beyond a

126 reasonable period of time poses a threat to the child's health or safety;

127 (xi) the child or a minor residing in the same household has been neglected;

128 (xii) the parent, or an adult residing in the same household as the parent, is charged or

129 arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine

130 laboratory operation was located in the residence or on the property where the child resided; or

131 (xiii) the child's welfare is substantially endangered.

132 (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is

133 established if:

134 (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency

135 involving the parent; and

136 (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

137 (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly

138 allowed the child to be in the physical care of a person after the parent received actual notice

139 that the person physically abused, sexually abused, or sexually exploited the child, that fact

140 constitutes prima facie evidence that there is a substantial risk that the child will be physically

141 abused, sexually abused, or sexually exploited.

142 (10) (a) (i) The court shall also make a determination on the record as to whether

143 reasonable efforts were made to prevent or eliminate the need for removal of the child from the

144 child's home and whether there are available services that would prevent the need for continued

145 removal.

146 (ii) If the court finds that the child can be safely returned to the custody of the child's

147 parent or guardian through the provision of those services, the court shall place the child with

148 the child's parent or guardian and order that those services be provided by the division.

149 (b) In making the determination described in Subsection (10)(a), and in ordering and

150 providing services, the child's health, safety, and welfare shall be the paramount concern, in

151 accordance with federal law.

152 (11) Where the division's first contact with the family occurred during an emergency
153 situation in which the child could not safely remain at home, the court shall make a finding that
154 any lack of preplacement preventive efforts was appropriate.

155 (12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe
156 abuse, or severe neglect are involved, neither the division nor the court has any duty to make
157 "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home,
158 return a child to the child's home, provide reunification services, or attempt to rehabilitate the
159 offending parent or parents.

160 (13) The court may not order continued removal of a child solely on the basis of
161 educational neglect as described in Subsection 78A-6-105(25)(b).

162 (14) (a) Whenever a court orders continued removal of a child under this section, the
163 court shall state the facts on which that decision is based.

164 (b) If no continued removal is ordered and the child is returned home, the court shall
165 state the facts on which that decision is based.

166 (15) If the court finds that continued removal and temporary custody are necessary for
167 the protection of a child because harm may result to the child if the child were returned home,
168 the court shall order continued removal regardless of:

- 169 (a) any error in the initial removal of the child;
- 170 (b) the failure of a party to comply with notice provisions; or
- 171 (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child
172 and Family Services.

173 Section 2. Section **78A-6-1111** is amended to read:

174 **78A-6-1111. Right to counsel -- Appointment of counsel for indigent -- Cost --**
175 **Court hearing to determine compelling reason to appoint a noncontracting attorney --**
176 **Rate of pay.**

177 (1) (a) The parents, guardian, custodian, and the minor, if competent, shall be informed
178 that they have the right to be represented by counsel at every stage of the proceedings. They
179 have the right to employ counsel of their own choice and if any of them requests an attorney
180 and is found by the court to be indigent, counsel shall be appointed by the court [~~as provided in~~
181 ~~Subsection (3)], subject to the provisions of this section. The court may appoint counsel
182 without a request if it considers representation by counsel necessary to protect the interest of~~

183 the minor or of other parties.

184 (b) The cost of appointed counsel for an indigent minor or other indigent party,
185 including the cost of counsel and expense of appeal, shall be paid by the county in which the
186 trial court proceedings are held. Counties may levy and collect taxes for these purposes.

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

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

193 (3) In the absence of contrary contractual provisions regarding the selection and
194 appointment of parental defense counsel, the court shall select and appoint the attorney or
195 attorneys if:

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

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

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

202 (a) set the matter for a hearing;

203 (b) give proper notice to the attorney general and the Office of Child Welfare Parental
204 Defense created in Section 63A-11-103; and

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

207 (5) The indigent's mere preference for other counsel [~~shall~~] may not be considered a
208 compelling reason justifying the appointment of a noncontracting attorney.

209 (6) The court may order a minor, parent, guardian, or custodian for whom counsel is
210 appointed and the parents or guardian of any child for whom counsel is appointed to reimburse
211 the county for some or all of the cost of appointed counsel.

212 (7) ~~H→~~ (a) **[The] Except as provided in Subsections (b) and (c), the ←H** court shall
212a order a minor, parent, guardian, or custodian for whom counsel is
213 appointed and the parents or guardian of any child for whom counsel is appointed to reimburse

214 the county for the cost of appointed counsel arising from any ~~H→~~ [~~petition or motion~~] work of
 214a counsel that is not primarily ~~←H~~ directed at ~~H→~~ [~~any~~
 215 party other than] ~~←H~~ the state or the guardian ad litem.
 215a ~~H→~~ (b) The court may not order reimbursement of the county pursuant to Subsection (a) for
 215b the cost of appointed counsel arising from any work of counsel ~~S→~~ :
 215c (i) ~~←S~~ that is specifically undertaken
 215c to defend against the filing of a petition to terminate parental rights ~~S→~~ , regardless of who
 215d filed the petition; and
 215e (ii) that is undertaken ~~←S~~ after the petition ~~S→~~ to terminate parental rights ~~←S~~ has been
 215d filed ~~S→~~ [~~, regardless of who filed the petition~~] ~~←S~~ .
 215e (c) The state, or an agency of the state, may not be ordered to reimburse the county
 215f pursuant to Subsection (a). ~~←H~~

Legislative Review Note
 as of 1-26-10 3:32 PM

Office of Legislative Research and General Counsel

H.B. 115 - Counsel for Indigents in Juvenile Court Proceedings

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Individuals may incur costs for legal counsel. Local governments may accrue a savings and/or reimbursement for court ordered costs.
