

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

8 **LONG TITLE**

9 **General Description:**

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

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

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

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
49 be 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
51 in the protective custody, temporary custody, and custody of the division, and the cost for
52 legal counsel appointed for the parent or guardian under Subsection (2)(e), according to the
53 financial 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,
56 or 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
91 of 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
- 135 dependency involving the parent; and
- 136 (B) a subsequent incident of abuse, neglect, or dependency involving the parent
- 137 occurs.
- 138 (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly
- 139 allowed the child to be in the physical care of a person after the parent received actual notice
- 140 that the person physically abused, sexually abused, or sexually exploited the child, that fact
- 141 constitutes prima facie evidence that there is a substantial risk that the child will be physically

142 abused, sexually abused, or sexually exploited.

143 (10) (a) (i) The court shall also make a determination on the record as to whether
144 reasonable efforts were made to prevent or eliminate the need for removal of the child from the
145 child's home and whether there are available services that would prevent the need for
146 continued removal.

147 (ii) If the court finds that the child can be safely returned to the custody of the child's
148 parent or guardian through the provision of those services, the court shall place the child with
149 the child's parent or guardian and order that those services be provided by the division.

150 (b) In making the determination described in Subsection (10)(a), and in ordering and
151 providing services, the child's health, safety, and welfare shall be the paramount concern, in
152 accordance with federal law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

203 (a) set the matter for a hearing;

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

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

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

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

213 (7) (a) Except as provided in Subsections (7)(b) and (c), the court shall order a minor,
214 parent, guardian, or custodian for whom counsel is appointed and the parents or guardian of
215 any child for whom counsel is appointed to reimburse the county for the cost of appointed
216 counsel arising from any work of counsel that is not primarily directed at the state or the
217 guardian ad litem.

218 (b) The court may not order reimbursement of the county pursuant to Subsection
219 (7)(a) for the cost of appointed counsel arising from any work of counsel:

220 (i) that is specifically undertaken to defend against the filing of a petition to terminate
221 parental rights, regardless of who filed the petition; and

222 (ii) that is undertaken after the petition to terminate parental rights has been filed.

223 (c) The state, or an agency of the state, may not be ordered to reimburse the county
224 pursuant to Subsection (7)(a).