

**INDIGENT DEFENSE ACT AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kay L. McIff**

Senate Sponsor: Lyle W. Hillyard

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**LONG TITLE**

**General Description:**

This bill requires the court, when making a determination of indigency for a defendant, to consider the reasonableness of the fees and expenses charge by privately retained defense counsel.

**Highlighted Provisions:**

This bill:

- ▶ amends the definition of compelling reason; and
- ▶ requires the court, when making a determination of indigency, to consider the reasonableness of fees and expenses charged by privately retained defense counsel.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-32-201**, as last amended by Laws of Utah 2006, Chapter 49

**77-32-202**, as last amended by Laws of Utah 2002, Chapter 263

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

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



28 **77-32-201. Definitions.**

29 For the purposes of this chapter:

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

31 (2) "Compelling reason" ~~may~~ shall include one or more of the following

32 circumstances relating to the contracting attorney:

33 (a) a conflict of interest;

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

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

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

40 (4) "Indigent" means a person qualifying as an indigent under indigency standards  
41 established in Part 3, Counsel for Indigents.

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

44 (6) "Legal defender's office" means a department of county government created and  
45 authorized by the county legislative body to provide legal representation in criminal matters to  
46 indigent defendants.

47 (7) "Legal defense" means legal counsel, defense resources, or both.

48 (8) "Participating county" means a county which has complied with the provisions of  
49 this chapter for participation in the Indigent Capital Defense Trust Fund as provided in  
50 Sections 77-32-602 and 77-32-603 or the Indigent Felony Defense Trust Fund as provided in  
51 Sections 77-32-702 and 77-32-703.

52 (9) "Serious offense" means a felony or capital felony.

53 Section 2. Section **77-32-202** is amended to read:

54 **77-32-202. Procedure for determination of indigency -- Standards.**

55 (1) A determination of indigency or continuing indigency of any defendant may be  
56 made by the court at any stage of the proceedings.

57 (2) (a) Any defendant claiming indigency who is charged with a crime the penalty of  
58 which is a class A misdemeanor or felony shall file with the court a fully complete affidavit

59 verified by a notary or other person authorized by law to administer an oath and file a copy of  
60 that affidavit with the prosecuting entity. The affidavit shall contain the factual information  
61 required in this section and by the court.

62 (b) A defendant claiming indigency who is charged with a crime the penalty of which  
63 is less than a class A misdemeanor is not required to comply with the requirements of  
64 Subsection (2)(a) and Subsection (4).

65 (3) (a) "Indigency" means that a person:

66 (i) does not have sufficient income, assets, credit, or other means to provide for the  
67 payment of legal counsel and all other necessary expenses of representation without depriving  
68 that person or the family of that person of food, shelter, clothing, and other necessities; or

69 (ii) has an income level at or below 150% of the United States poverty level as defined  
70 by the most recently revised poverty income guidelines published by the United States  
71 Department of Health and Human Services; and

72 (iii) has not transferred or otherwise disposed of any assets since the commission of the  
73 offense with the intent of establishing eligibility for the appointment of counsel under this  
74 chapter.

75 (b) In making a determination of indigency, the court shall consider:

76 (i) the probable expense and burden of defending the case;

77 (ii) the ownership of, or any interest in, any tangible or intangible personal property or  
78 real property, or reasonable expectancy of any such interest;

79 (iii) the amounts of debts owned by the defendant or that might reasonably be incurred  
80 by the defendant because of illness or other needs within the defendant's family;

81 (iv) number, ages, and relationships of any dependents; ~~and~~

82 ~~[(v) other relevant factors:]~~

83 (v) the reasonableness of fees and expenses charged to the defendant by the defendant's  
84 attorney where the defendant is represented by privately retained defense counsel; and

85 (vi) other factors considered relevant by the court.

86 (c) In determining the reasonableness of the fees and expenses charged by privately  
87 retained defense counsel, the court shall consider the provisions of Section 77-32-304.5.

88 (4) Upon making a finding of indigence, the court shall enter the findings on the record  
89 and enter an order assigning defense counsel to represent the defendant in the case. The clerk

90 of the court shall send a copy of the affidavit and order to the prosecutor.

91 (5) If the county or municipality providing the defense counsel has any objections to or  
92 concerns with the finding of indigency and assignment of defense counsel or the continuing of  
93 indigency status and assignment of a public defender, it shall file notice with the court and a  
94 hearing shall be scheduled to review the findings and give the county or municipality the  
95 opportunity to present evidence and arguments as to the reasons the finding of indigency  
96 should be reversed.

97 (6) (a) If the trial court finds within one year after the determination of indigency that  
98 any defendant was erroneously or improperly determined to be indigent, the county or  
99 municipality may proceed against that defendant for the reasonable value of the services  
100 rendered to the defendant, including all costs paid by the county or municipality in providing  
101 the defense counsel.

102 (b) Subsection (6)(a) does not affect any restitution required of the defendant by the  
103 court pursuant to Title 77, Chapter 32a, Defense Costs.

104 (c) A defendant claiming indigency has a continuing duty to inform the court of any  
105 material changes or change in circumstances that may affect the determination of his eligibility  
106 for indigency.

107 (d) Any person who intentionally or knowingly makes a material false statement or  
108 omits a material fact in an affidavit for indigency is guilty of a class B misdemeanor.

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**Legislative Review Note**  
**as of 1-28-11 11:04 AM**

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 272

SHORT TITLE: **Indigent Defense Act Amendments**

SPONSOR: **McCliff, K.**

2011 GENERAL SESSION, STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.