

**INDIGENT DEFENSE IN JUSTICE COURTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brian M. Greene**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill requires the appointment of counsel for indigents if the offense the person is charged with includes the possibility of incarceration.

**Highlighted Provisions:**

This bill:

► requires the appointment of counsel for indigents if the person is charged with an offense, the punishment for which includes incarceration.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**77-32-202**, as last amended by Laws of Utah 2012, Chapter 180

**77-32-302**, as last amended by Laws of Utah 2012, Chapter 180

**78A-7-103**, as repealed and reenacted by Laws of Utah 2012, Chapter 205

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

Section 1. Section **77-32-202** is amended to read:

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



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

30 (2) (a) Any defendant claiming indigency who is charged with a crime the penalty of  
31 which is a class A misdemeanor or serious offense shall file with the court a fully complete  
32 affidavit verified by a notary or other person authorized by law to administer an oath and file a  
33 copy of that affidavit with the prosecuting entity. The affidavit shall contain the factual  
34 information required in this section and by the court.

35 (b) A defendant claiming indigency who is charged with a crime the penalty of which  
36 is less than a class A misdemeanor is not required to comply with the requirements of  
37 Subsection (2)(a) [~~and Subsection (4)~~].

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

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

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

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

48 (b) In making a determination of indigency under Subsection (3)(a)(i), the court shall  
49 consider:

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

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

53 (iii) the amounts of debts [~~owned~~] owed by the defendant or that might reasonably be  
54 incurred by the defendant because of illness or other needs within the defendant's family;

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

56 (v) the reasonableness of fees and expenses charged to the defendant by the defendant's  
57 attorney and the scope of representation undertaken where the defendant is represented by  
58 privately retained defense counsel; and

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

60 (4) (a) Upon making a finding of indigence, the court shall enter the findings on the  
61 record and enter an order assigning a defense services provider to represent the defendant in the  
62 case.

63 (b) Upon finding indigence when the defendant has privately retained counsel, the  
64 court, subject to Section 77-32-303, shall enter the findings into the record and issue an order  
65 directing the county or municipality to coordinate the providing of defense resources as  
66 appropriate.

67 (c) The clerk of the court shall send a copy of the affidavit and order to the prosecutor  
68 and to the county clerk or municipal recorder.

69 (5) If the county or municipality providing the defense services provider has any  
70 objections to or concerns with the finding of indigency and assignment of a defense services  
71 provider or the continuing of indigency status and assignment of a defense services provider, it  
72 shall file notice with the court and a hearing shall be scheduled to review the findings and give  
73 the county or municipality the opportunity to present evidence and arguments as to the reasons  
74 the finding of indigency should be reversed and the court shall proceed as provided in  
75 Subsection 77-32-302(4).

76 (6) (a) If the trial court finds within one year after the determination of indigency that  
77 any defendant was erroneously or improperly determined to be indigent, the county or  
78 municipality may proceed against that defendant for the reasonable value of the services  
79 rendered to the defendant, including all costs paid by the county or municipality in providing  
80 the legal defense.

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

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

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

88 Section 2. Section **77-32-302** is amended to read:

89 **77-32-302. Assignment of counsel on request of indigent or order of court.**

90 (1) The defense services provider shall be assigned to represent each indigent and shall  
91 provide the legal defense services necessary for an effective defense, if the indigent is under  
92 arrest for or charged with a crime [in] for which [~~there is a substantial probability that the~~  
93 incarceration is a permissible penalty [~~to be imposed is confinement in either jail or prison~~  
94 upon conviction, if:

- 95 (a) the indigent requests legal defense; or
- 96 (b) the court on its own motion or otherwise orders legal defense services and the  
97 defendant does not affirmatively waive or reject on the record the opportunity to be provided  
98 legal defense.

99 (2) (a) If a county responsible for providing indigent legal defense has established a  
100 county legal defender's office and the court has received notice of the establishment of the  
101 office, the court shall assign to the county legal defender's office the responsibility to defend  
102 indigent defendants within the county and provide defense resources.

103 (b) If the county or municipality responsible to provide for the legal defense of an  
104 indigent has arranged by contract to provide those services through a defense services provider,  
105 and the court has received notice or a copy of the contract, the court shall assign the defense  
106 services provider named in the contract to provide legal defense.

107 (c) If no county or municipal defense services provider contract exists, the court shall  
108 select and assign a legal defense provider.

109 (d) If the court considers the assignment of a noncontracting legal defense provider to  
110 an indigent defendant despite the existence of a defense services provider contract and the  
111 court has a copy or notice of the contract, before the court may make the assignment, it shall:

- 112 (i) set the matter for a hearing;
- 113 (ii) give proper notice of the hearing to the attorney of the responsible county or  
114 municipality and county clerk or municipal recorder; and
- 115 (iii) make findings that there is a compelling reason to appoint a noncontracting  
116 attorney.

117 (e) The indigent's preference for other counsel or defense resources may not be  
118 considered a compelling reason justifying the appointment of a noncontracting defense services  
119 provider.

120 (3) The court may make a determination of indigency at any time.

121 Section 3. Section 78A-7-103 is amended to read:

122 **78A-7-103. Minimum standards of justice courts -- Authority of Judicial Council**  
123 **over justice courts.**

124 (1) The Judicial Council shall ensure that:

125 (a) procedures include requirements that every municipality or county that establishes  
126 or maintains a justice court provide for the following minimum operating standards:

127 (i) a system to ensure the justice court records all proceedings with a digital audio  
128 recording device and maintains the audio recordings for a minimum of one year;

129 (ii) sufficient prosecutors to perform the prosecutorial duties before the justice court;

130 (iii) adequate funding to defend all persons charged with a [~~public offense~~] crime for  
131 which incarceration is a permissible penalty upon conviction, and who are determined by the  
132 justice court to be indigent under Title 77, Chapter 32, Indigent Defense Act;

133 (iv) sufficient local peace officers to provide security for the justice court and to attend  
134 to the justice court when required;

135 (v) sufficient clerical personnel to serve the needs of the justice court;

136 (vi) sufficient funds to cover the cost of travel and training expenses of clerical  
137 personnel and judges at training sessions mandated by the Judicial Council;

138 (vii) adequate courtroom and auxiliary space for the justice court, which need not be  
139 specifically constructed for or allocated solely for the justice court when existing facilities  
140 adequately serve the purposes of the justice court; and

141 (viii) for each judge of its justice court, a current copy of the Utah Code, the Utah  
142 Court Rules Annotated, the justice court manual published by the state court administrator, the  
143 county, city, or town ordinances as appropriate, and other legal reference materials as  
144 determined to be necessary by the judge; and

145 (b) the Judicial Council's rules and procedures shall:

146 (i) presume that existing justice courts will be recertified at the end of each four-year  
147 term if the court continues to meet the minimum requirements for the establishment of a new  
148 justice court; or

149 (ii) authorize the Judicial Council, upon request of a municipality or county or upon its  
150 own review, when a justice court does not meet the minimum requirements, to:

151 (A) decline recertification of a justice court;

152 (B) revoke the certification of a justice court;  
153 (C) extend the time for a justice court to comply with the minimum requirements; or  
154 (D) suspend rules of the Judicial Council governing justice courts, if the council  
155 believes suspending those rules is the appropriate administrative remedy for the justice courts  
156 of this state.

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**Legislative Review Note**  
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**Office of Legislative Research and General Counsel**