

INDIGENT COUNSEL IN JUVENILE COURT

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the appointment of counsel for indigents in juvenile court proceedings.

Highlighted Provisions:

This bill:

- ▶ provides for a parent, legal guardian, or child who is found to be indigent, the option of legal counsel appointed by the court under certain circumstances;
- ▶ defines when, and under what circumstances, court appointed legal counsel can be used for indigent representation;
- ▶ describes when a child can be represented by an attorney guardian ad litem in cases requiring counsel for indigents;
- ▶ describes payment and reimbursement practices when legal counsel is appointed by the court for indigent representation; and
- ▶ make technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 78A-6-317, as last amended by Laws of Utah 2010, Chapter 247

29 REPEALS AND REENACTS:

30 78A-6-1111, as last amended by Laws of Utah 2011, Chapter 265



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

33 Section 1. Section 78A-6-317 is amended to read:

34 **78A-6-317. All proceedings -- Persons entitled to be present.**

35 (1) A child who is the subject of a juvenile court hearing, any person entitled to notice
36 pursuant to Section 78A-6-306 or 78A-6-310, preadoptive parents, foster parents, and any
37 relative providing care for the child, are:

38 (a) entitled to notice of, and to be present at, each hearing and proceeding held under
39 this part, including administrative reviews; and

40 (b) have a right to be heard at each hearing and proceeding described in Subsection
41 (1)(a).

42 (2) A child shall be represented at each hearing by the guardian ad litem appointed to
43 the child's case by the court. The child has a right to be present at each hearing, subject to the
44 discretion of the guardian ad litem or the court regarding any possible detriment to the child.

45 (3) (a) The parent or guardian of a child who is the subject of a petition under this part
46 has the right to be represented by counsel, and to present evidence, at each hearing.

47 (b) When it appears to the court that a parent or guardian of the child desires counsel
48 but is financially unable to afford and cannot for that reason employ counsel, [~~and the child has~~
49 ~~been placed in out-of-home care, or the petitioner is recommending that the child be placed in~~
50 ~~out-of-home care;~~] the court shall appoint counsel as provided in Section 78A-6-1111.

51 [~~(4) In every abuse, neglect, or dependency proceeding under this chapter, the court~~
52 ~~shall order that the child be represented by a guardian ad litem, in accordance with Section~~
53 ~~78A-6-902. The guardian ad litem shall represent the best interest of the child, in accordance~~
54 ~~with the requirements of that section, at the shelter hearing and at all subsequent court and~~
55 ~~administrative proceedings, including any proceeding for termination of parental rights in~~
56 ~~accordance with Part 5, Termination of Parental Rights Act.]~~

57 [(5) (a) Except as provided in Subsection (5)(b), and notwithstanding any other
58 provision of law:]

59 ~~[(i) counsel for all parties to the action shall be given access to all records, maintained~~
60 ~~by the division or any other state or local public agency, that are relevant to the abuse, neglect,~~
61 ~~or dependency proceeding under this chapter; and]~~

62 ~~[(ii) if the natural parent of a child is not represented by counsel, the natural parent~~
63 ~~shall have access to the records described in Subsection (5)(a)(i).]~~

64 ~~[(b) The disclosures described in Subsection (5)(a) are not required in the following~~
65 ~~circumstances:]~~

66 ~~[(i) subject to Subsection (5)(c), the division or other state or local public agency did~~
67 ~~not originally create the record being requested;]~~

68 ~~[(ii) disclosure of the record would jeopardize the life or physical safety of a child who~~
69 ~~has been a victim of abuse or neglect, or any person who provided substitute care for the child;]~~

70 ~~[(iii) disclosure of the record would jeopardize the anonymity of the person or persons~~
71 ~~making the initial report of abuse or neglect or any others involved in the subsequent~~
72 ~~investigation;]~~

73 ~~[(iv) disclosure of the record would jeopardize the life or physical safety of a person~~
74 ~~who has been a victim of domestic violence;]~~

75 ~~[(v) the record is a report maintained in the Management Information System, for~~
76 ~~which a finding of unsubstantiated, unsupported, or without merit has been made, unless the~~
77 ~~person requesting the information is the alleged perpetrator in the report or counsel for the~~
78 ~~alleged perpetrator in the report; or]~~

79 ~~[(vi) the record is a Children's Justice Center investigative interview, video or audio,~~
80 ~~the release of which is governed by Section 77-37-4.]~~

81 ~~[(c) If a disclosure is denied under Subsection (5)(b)(i), the division shall inform the~~
82 ~~person making the request of the following:]~~

83 ~~[(i) the existence of all records in the possession of the division or any other state or~~
84 ~~local public agency;]~~

85 ~~[(ii) the name and address of the person or agency that originally created the record;~~
86 ~~and]~~

87 ~~[(iii) that the person must seek access to the record from the person or agency that~~
88 ~~originally created the record.]~~

89 Section 2. Section 78A-6-1111 is repealed and reenacted to read:

90 **78A-6-1111. Right to counsel -- Appointment of counsel for indigent -- Costs.**

91 (1) (a) In any action in juvenile court initiated by the state, a political subdivision of the
92 state, or a private party, the parents, legal guardian, and the minor, where applicable, shall be
93 informed that they may be represented by counsel at every stage of the proceedings.

94 (b) In any action initiated by a private party, the parents or legal guardian shall have the
95 right to employ counsel of their own choice at their own expense.

96 (c) If, in any action initiated by the state or a political subdivision of the state under
97 Part 3, Abuse, Neglect, and Dependency Proceedings; Part 5, Termination of Parental Rights
98 Act; or Part 10, Adult Offenses, of this chapter or under Section [78A-6-1101](#), a parent or legal
99 guardian requests an attorney and is found by the court to be indigent, counsel shall be
100 appointed by the court to represent the parent or legal guardian in all proceedings directly
101 related to the petition or motion filed by the state, or a political subdivision of the state, subject
102 to the provisions of this section.

103 (d) In any action initiated by the state, a political subdivision of the state, or a private
104 party under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of
105 Parental Rights Act, of this chapter, the child shall be represented by a guardian ad litem in
106 accordance with Sections [78A-6-317](#) and [78A-6-902](#). The child shall also be represented by an
107 attorney guardian ad litem in other actions initiated under this chapter when appointed by the
108 court under Section [78A-6-902](#) or as otherwise provided by law.

109 (e) In any action initiated by the state or a political subdivision of the state under Part
110 6, Delinquency and Criminal Actions, or Part 7, Transfer of Jurisdiction, of this chapter, or
111 against a minor under Section [78A-6-1101](#), the parents or legal guardian and the minor shall be
112 informed that the minor may be represented by counsel at every stage of the proceedings and
113 that if the minor is found to be indigent, counsel shall be appointed by the court to represent the
114 minor in all proceedings directly related to the petition or motion filed by the state or a political
115 subdivision of the state, subject to the provisions of this section.

116 (f) Indigency of a parent, legal guardian, or minor shall be determined in accordance
117 with the process and procedure defined in Section [77-32-202](#). The court shall take into account
118 the income and financial ability of the parent or legal guardian to retain counsel in determining
119 the indigency of the minor.

120 (g) The cost of appointed counsel for a party found to be indigent, including the cost of

121 counsel and expense of the first appeal, shall be paid by the county in which the trial court
122 proceedings are held. Counties may levy and collect taxes for these purposes.

123 (2) Counsel appointed by the court may not provide representation as court-appointed
124 counsel for a parent or legal guardian in any action initiated by, or in any proceeding to modify
125 court orders in a proceeding initiated by, a private party.

126 (3) If the county responsible to provide legal counsel for an indigent under Subsection
127 (1)(g) has arranged by contract to provide services, the court shall appoint the contracting
128 attorney as legal counsel to represent that indigent.

129 (4) The court may order a parent or legal guardian for whom counsel is appointed, and
130 the parents or legal guardian of any minor for whom counsel is appointed, to reimburse the
131 county for the cost of appointed counsel.

132 (5) The state, or an agency of the state, may not be ordered to reimburse the county for
133 expenses incurred under Subsection (1)(g).

Legislative Review Note
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Office of Legislative Research and General Counsel