

SB0221S01 compared with SB0221

~~deleted text~~ shows text that was in SB0221 but was deleted in SB0221S01.

inserted text shows text that was not in SB0221 but was inserted into SB0221S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Todd Weiler proposes the following substitute bill:

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

SB0221S01 compared with SB0221

the court for indigent representation; and

- ▶ make technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

REPEALS AND REENACTS:

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

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

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

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

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

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

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

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

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

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

SB0221S01 compared with SB0221

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

~~§§~~(5) (a) Except as provided in Subsection (5)(b), and notwithstanding any other provision of law:~~§§~~

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

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

~~§§~~(b) The disclosures described in Subsection (5)(a) are not required in the following circumstances:~~§§~~

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

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

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

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

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

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

SB0221S01 compared with SB0221

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

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

~~§§~~(ii) the name and address of the person or agency that originally created the record; and~~§§~~

~~§§~~(iii) that the person must seek access to the record from the person or agency that originally created the record.~~§§~~

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

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

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

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

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

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

(e) In any action initiated by the state or a political subdivision of the state under Part 6, Delinquency and Criminal Actions, or Part 7, Transfer of Jurisdiction, of this chapter, or against a minor under Section 78A-6-1101, the parents or legal guardian and the minor shall be

SB0221S01 compared with SB0221

informed that the minor may be represented by counsel at every stage of the proceedings and that if the minor is found to be indigent, counsel shall be appointed by the court to represent the minor in all proceedings directly related to the petition or motion filed by the state or a political subdivision of the state, subject to the provisions of this section.

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

(g) The cost of appointed counsel for a party found to be indigent, including the cost of counsel and expense of the first appeal, shall be paid by the county in which the trial court proceedings are held. Counties may levy and collect taxes for these purposes.

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

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

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

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

†

Legislative Review Note

~~as of 2-19-14 6:05 AM~~

~~Office of Legislative Research and General Counsel~~