

**INDIGENT COUNSEL IN PRIVATE PARENTAL
TERMINATION CASES**

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill amends provisions related to the right to counsel in private parental termination cases.

Highlighted Provisions:

This bill:

- ▶ allows juvenile courts to appoint counsel for an indigent private party in parental termination cases when failure to appoint counsel would result in a deprivation of due process; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-6-1111, as last amended by Laws of Utah 2015, Chapter 338

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

Section 1. Section **78A-6-1111** is amended to read:



28 **78A-6-1111. Right to counsel -- Appointment of counsel for indigent -- Costs.**

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

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

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

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

47 (e) In any action initiated by the state or a political subdivision of the state under Part
48 6, Delinquency and Criminal Actions, or Part 7, Transfer of Jurisdiction, of this chapter, or
49 against a minor under Section 78A-6-1101, the parents or legal guardian and the minor shall be
50 informed that the minor has the right to be represented by counsel at every stage of the
51 proceedings.

52 (i) In cases where a minor is facing a felony level offense, the court shall appoint
53 counsel, who shall appear until counsel is retained on the minor's behalf. The minor may not
54 waive counsel unless the minor has had a meaningful opportunity to consult with a defense
55 attorney. The court shall make findings on the record, taking into consideration the minor's
56 unique circumstances and attributes, that the waiver is knowing and voluntary and the minor
57 understands the consequences of waiving the right to counsel.

58 (ii) In all other situations the right to counsel may not be waived by a minor unless

59 there has been a finding on the record, taking into consideration the minor's unique
60 circumstances and attributes, that the waiver is knowing and voluntary, and the minor
61 understands the consequences of waiving the right to counsel.

62 (iii) If the minor is found to be indigent, counsel shall be appointed by the court to
63 represent the minor in all proceedings directly related to the petition or motion filed by the state
64 or a political subdivision of the state, subject to the provisions of this section.

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

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

72 (2) ~~[Counsel]~~ Except as provided in Subsection (3), counsel appointed by the court
73 may not provide representation as court-appointed counsel for a parent or legal guardian in any
74 action initiated by, or in any proceeding to modify court orders in a proceeding initiated by, a
75 private party.

76 (3) Unless the court finds there is a likelihood that the failure to appoint counsel for an
77 indigent private party may result in a deprivation of due process, counsel appointed by the
78 court may not provide representation as court-appointed counsel for a parent or legal guardian
79 in a termination of parental rights action initiated by a private party.

80 ~~[(3)]~~ (4) If the county responsible to provide legal counsel for an indigent under
81 Subsection (1)(g) has arranged by contract to provide services, the court shall appoint the
82 contracting attorney as legal counsel to represent that indigent.

83 ~~[(4)]~~ (5) The court may order a parent or legal guardian for whom counsel is appointed,
84 and the parents or legal guardian of any minor for whom counsel is appointed, to reimburse the
85 county for the cost of appointed counsel.

86 ~~[(5)]~~ (6) The state, or an agency of the state, may not be ordered to reimburse the
87 county for expenses incurred under Subsection (1)(g).

Legislative Review Note
Office of Legislative Research and General Counsel