

## **SELECT SECTIONS OF THE UTAH CODE PERTAINING TO INDIGENT DEFENSE**

### **77-32-101. Indigent Defense Act.**

This chapter is known as the "Indigent Defense Act."

Enacted by Chapter 354, 1997 General Session

### **77-32-201. Definitions.**

For the purposes of this chapter:

- (1) "Board" means the Indigent Defense Funds Board created in Section 77-32-401.
- (2) "Compelling reason" may include the following circumstances:
  - (a) a conflict of interest;
  - (b) the contracting attorney does not have sufficient expertise to provide an effective defense of the indigent; or
  - (c) the defense resource is insufficient or lacks expertise to provide a complete defense.
- (3) "Defense resources" means a competent investigator, expert witness, or other appropriate means necessary, for an effective defense of an indigent, but does not include legal counsel.
- (4) "Indigent" means a person qualifying as an indigent under indigency standards established in Part 3, Counsel for Indigents.
- (5) "Legal aid association" means a nonprofit defense association that provides counsel and defense resources for indigent defendants.
- (6) "Legal defender's office" means a department of county government created and authorized by the county legislative body to provide legal representation in criminal matters to indigent defendants.
- (7) "Legal defense" means legal counsel, defense resources, or both.
- (8) "Participating county" means a county which has complied with the provisions of this chapter for participation in the Indigent Capital Defense Trust Fund as provided in Sections 77-32-602 and 77-32-603 or the Indigent Felony Defense Trust Fund as provided in Sections 77-32-702 and 77-32-703.
- (9) "Serious offense" means a felony or capital felony.

Amended by Chapter 49, 2006 General Session

### **77-32-301. Minimum standards for defense of an indigent.**

Each county, city, and town shall provide for the defense of an indigent in criminal cases in the courts and various administrative bodies of the state in accordance with the following minimum standards:

- (1) provide counsel for each indigent who faces the substantial probability of the deprivation of the indigent's liberty;
- (2) afford timely representation by competent legal counsel;
- (3) provide the investigatory resources necessary for a complete defense;
- (4) assure undivided loyalty of defense counsel to the client;
- (5) proceed with a first appeal of right; and

(6) prosecute other remedies before or after a conviction, considered by defense counsel to be in the interest of justice except for other and subsequent discretionary appeals or discretionary writ proceedings.

Renumbered and Amended by Chapter 354, 1997 General Session

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

(1) Legal counsel shall be assigned to represent each indigent and the indigent shall also be provided access to defense resources necessary for an effective defense, if the indigent is under arrest for or charged with a crime in which there is a substantial probability that the penalty to be imposed is confinement in either jail or prison if:

(a) the indigent requests counsel or defense resources, or both; or

(b) the court on its own motion or otherwise orders counsel, defense resources, or both and the defendant does not affirmatively waive or reject on the record the opportunity to be represented and provided defense resources.

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

(b) If the county or municipality responsible to provide for the legal defense of an indigent, including defense resources and counsel, has arranged by contract to provide those services through a legal aid association, and the court has received notice or a copy of the contract, the court shall assign the legal aid association named in the contract to defend the indigent and provide defense resources.

(c) If the county or municipality responsible for providing indigent legal defense, including counsel and defense resources, has contracted to provide those services through individual attorneys, individual defense resources, or associations providing defense resources, and the court has received notice or a copy of the contracts, the court shall assign a contracting attorney as the legal counsel to represent an indigent and a contracted defense resource to provide defense-related services.

(d) If no county legal defender's office exists, the court shall select and assign an attorney or defense resource if:

(i) the contract for indigent legal services is with multiple attorneys or resources; or

(ii) the contract is with another attorney in the event of a conflict of interest.

(e) If the court considers the assignment of a noncontracting attorney or defense resource to provide legal services to an indigent defendant despite the existence of an indigent legal services contract and the court has a copy or notice of the contract, before the court may make the assignment, it shall:

(i) set the matter for a hearing;

(ii) give proper notice of the hearing to the attorney of the responsible county or municipality; and

(iii) make findings that there is a compelling reason to appoint a noncontracting attorney or defense resource.

(f) The indigent's preference for other counsel or defense resources may not be considered a compelling reason justifying the appointment of a noncontracting attorney or defense resource.

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

Amended by Chapter 49, 2006 General Session

**77-32-304. Duties of assigned counsel -- Compensation.**

(1) When representing an indigent, the assigned counsel shall:

(a) counsel and defend the indigent at every stage of the proceeding following assignment; and

(b) file any first appeal of right or other remedy before or after conviction that the assigned counsel considers to be in the interest of justice, except for other and subsequent discretionary appeals or discretionary writ proceedings.

(2) An assigned counsel may not have the duty or power under this section to represent an indigent in any discretionary appeal or action for a discretionary writ, other than in a meaningful first appeal of right to assure the indigent an adequate opportunity to present the indigent's claims fairly in the context of the appellate process of this state.

(3) An assigned counsel for an indigent shall be entitled to compensation upon:

(a) approval of the district court where the original trial was held;

(b) a showing that:

(i) the indigent has been denied a constitutional right; or

(ii) there was newly discovered evidence that would show the indigent's innocence; and

(c) that the legal services rendered by counsel were:

(i) other than that required under this chapter or under a separate fee arrangement; and

(ii) necessary for the indigent and not for the purpose of delaying the judgment of the original trier of fact.

Renumbered and Amended by Chapter 354, 1997 General Session

**77-32-304.5. Reasonable compensation for defense counsel for indigents.**

(1) This section does not apply to any attorney:

(a) under contract with the county or municipality for defense of an indigent person;

(b) in the legal defender organization, legal aid agency, law firm, or public defender association with which that attorney is professionally associated; or

(c) who is an employee of a county legal defender's office.

(2) (a) The county or municipality shall pay reasonable compensation to any attorney assigned by the court under Subsection 77-32-306 at the conclusion of the representation or any segment of the representation, as provided in Subsections (2)(b), (c), (d), and (e):

- (i) before the district or justice courts, including interlocutory appeals; and
- (ii) before the appellate court on a first appeal of right.
- (b) The legislative body of each county and municipality shall establish and annually review guidelines for the rate of compensation, taking into account:
  - (i) the nature and complexity of the case;
  - (ii) the competency and years of experience in criminal defense of the assigned attorney;
  - (iii) the adjusted net hourly rate incurred by the county or municipality for a prosecutor or public defender of equivalent experience and competency; and
  - (iv) the prevailing rates within the judicial district for comparable services.
- (c) If the legislative body of a county or municipality does not establish the rate guidelines, the rate of compensation shall be determined by the trial judge or a judge other than the trial judge if requested by:
  - (i) the assigned attorney; or
  - (ii) the county or municipality.
- (d) If the assigned attorney disagrees with the amount of compensation paid or contemplated for payment by the county or municipality, the assigned attorney shall nonetheless continue to represent the indigent defendant and may file a claim against:
  - (i) the county pursuant to Section 17-50-401, in which event the period for a denial by the county shall be 20 days; or
  - (ii) the municipality pursuant to Title 10, Chapter 6, Uniform Fiscal Procedures Act for Utah Cities.
- (e) In determining the reasonable compensation to be paid to defense counsel under Subsections (2)(c) and (d), the court shall consider the factors contained in Subsections (2)(b)(i) through (iv).
- (f) The total compensation in a noncapital case may not, without prior court approval following a hearing, exceed:
  - (i) \$3,500 for each assigned attorney in a case in which one or more felonies is charged;
  - (ii) \$1,000 for each assigned attorney in a case in which only misdemeanors or lesser offenses are charged; or
  - (iii) \$2,500 for each assigned attorney in the representation of an indigent in an appellate court on a first appeal of right.

Amended by Chapter 49, 2006 General Session

**77-32-305.5. Reimbursement of extraordinary expense.**

- (1) For the purposes of this section, an "extraordinary expense" means the collective expense which exceeds \$500 for any particular service or item such as experts, investigators, surveys, or demonstrative evidence.
- (2) The county or municipality shall reimburse expenses, exclusive of overhead and extraordinary expense not approved by the court in accordance with this chapter, reasonably incurred by assigned attorneys for indigent defendants.
- (3) The assigned attorney shall file a motion with the court for approval of the proposed expenditure for any extraordinary expense before the expense is incurred.

The motion shall be heard and ruled upon by a judge other than the trial judge if so requested by either party or upon the motion of the trial judge.

Enacted by Chapter 307, 1997 General Session

**77-32-306. County or municipal legislative body to provide legal defense.**

(1) The county or municipal legislative body shall either:

(a) contract to provide the legal defense, including counsel, defense resources, or both, as prescribed by this chapter, and as available, through:

(i) a legal aid association; or

(ii) one or more defense associations or attorneys and qualified defense resources; or

(b) authorize the court to provide the services prescribed by this chapter by assigning a qualified attorney in each case.

(2) A county may create a county legal defender's office to provide for the legal defense, including counsel and defense resources or both, as prescribed by this chapter.

(3) A county legal defender's office may, through the county legislative body contract with other counties and municipalities within a judicial district to provide the legal services as prescribed.

(4) When a county or municipality has contracted under Subsection (1)(a) or a county has created a legal defender's office as provided under Subsection (2) to provide the legal counsel and defense resources required by this chapter, the contracted legal aid association or attorneys, contracted defense resources, and the county legal defender's office are the exclusive source from which the legal defense may be provided, unless the court finds a compelling reason for the appointment of noncontracting attorneys and defense resources, in which case the judge shall state the compelling reason on the record.

Amended by Chapter 49, 2006 General Session