

1 **INDIGENT DEFENSE**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: Daniel McCay

7 **LONG TITLE**

8 **General Description:**

9 This bill creates the Utah Indigent Defense Commission.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ creates the Utah Indigent Defense Commission and describes the commission's
- 14 membership;
- 15 ▶ gives the commission authority to collect data from local indigent criminal defense
- 16 authorities for the purpose of studying the provision of indigent criminal defense
- 17 services statewide;
- 18 ▶ requires the commission to study the indigent criminal defense system statewide
- 19 and report to the Legislature on its findings, including recommendations to improve
- 20 the system;
- 21 ▶ authorizes the commission to assist local jurisdictions to meet minimum standards
- 22 of effective representation by:
 - 23 • establishing advisory caseload principles and guidelines for defense services
 - 24 providers; and
 - 25 • reviewing contracts and interlocal agreements with defense services providers
 - 26 and providing recommendations for contract design;
- 27 ▶ establishes a restricted account to provide financial assistance to indigent criminal
- 28 defense systems;
- 29 ▶ conditions grants received from the account on indigent criminal defense systems

30 maintaining current funding levels for indigent criminal defense services;

31 ▶ allows juvenile courts to appoint counsel for an indigent private party in parental
32 termination cases; and

33 ▶ makes technical and conforming changes.

34 **Money Appropriated in this Bill:**

35 This bill appropriates:

36 ▶ to the Commission on Criminal and Juvenile Justice -- Utah Indigent Defense
37 Commission as a one-time appropriation

38 • from the General Fund, \$1,500,000; and

39 ▶ to the Commission on Criminal and Juvenile Justice -- Utah Indigent Defense
40 Commission

41 • from the General Fund, \$500,000.

42 **Other Special Clauses:**

43 None

44 **Utah Code Sections Affected:**

45 AMENDS:

46 **63J-1-602.5**, as last amended by Laws of Utah 2015, Chapter 137

47 **77-32-201**, as last amended by Laws of Utah 2012, Chapter 180

48 **77-32-301**, as last amended by Laws of Utah 2015, Chapter 258

49 **77-32-302**, as last amended by Laws of Utah 2012, Chapter 180

50 **77-32-306**, as last amended by Laws of Utah 2012, Chapter 180

51 **78A-6-1111**, as last amended by Laws of Utah 2015, Chapter 338

52 ENACTS:

53 **77-32-801**, Utah Code Annotated 1953

54 **77-32-802**, Utah Code Annotated 1953

55 **77-32-803**, Utah Code Annotated 1953

56 **77-32-804**, Utah Code Annotated 1953

57 **77-32-805**, Utah Code Annotated 1953

- 58 [77-32-806](#), Utah Code Annotated 1953
 - 59 [77-32-807](#), Utah Code Annotated 1953
 - 60 [77-32-808](#), Utah Code Annotated 1953
 - 61 [77-32-809](#), Utah Code Annotated 1953
 - 62 [77-32-810](#), Utah Code Annotated 1953
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64 *Be it enacted by the Legislature of the state of Utah:*

65 Section 1. Section **63J-1-602.5** is amended to read:

66 **63J-1-602.5. List of nonlapsing funds and accounts -- Title 64 and thereafter.**

67 (1) Funds collected by the housing of state probationary inmates or state parole
68 inmates, as provided in Subsection [64-13e-104](#)(2).

69 (2) Certain forestry and fire control funds utilized by the Division of Forestry, Fire, and
70 State Lands, as provided in Section [65A-8-103](#).

71 (3) The Department of Human Resource Management user training program, as
72 provided in Section [67-19-6](#).

73 (4) Funds for the University of Utah Poison Control Center program, as provided in
74 Section [69-2-5.5](#).

75 (5) The Traffic Noise Abatement Program created in Section [72-6-112](#).

76 (6) Certain funds received by the Office of the State Engineer for well drilling fines or
77 bonds, as provided in Section [73-3-25](#).

78 (7) Certain money appropriated from the Water Resources Conservation and
79 Development Fund, as provided in Section [73-23-2](#).

80 (8) Certain funds appropriated for compensation for special prosecutors, as provided in
81 Section [77-10a-19](#).

82 (9) Funds donated or paid to a juvenile court by private sources, as provided in
83 Subsection [78A-6-203](#)(1)(c).

84 (10) A state rehabilitative employment program, as provided in Section [78A-6-210](#).

85 (11) Fees for certificate of admission created under Section [78A-9-102](#).

86 (12) The money for the Utah Geological Survey, as provided in Section 79-3-401.

87 (13) Revenue for golf user fees at the Wasatch Mountain State Park, Palisades State
88 Park, Jordan River State Park, and Green River State Park, as provided under Section
89 79-4-403.

90 (14) Certain funds received by the Division of Parks and Recreation from the sale or
91 disposal of buffalo, as provided under Section 79-4-1001.

92 (15) The Bonneville Shoreline Trail Program created under Section 79-5-503.

93 (16) Funds appropriated and collected for adoption document access as provided in
94 Sections 78B-6-141, 78B-6-144, and 78B-6-144.5.

95 (17) Funds appropriated and collected for indigent defense as provided in Title 77,
96 Chapter 32, Part 8, Utah Indigent Defense Commission.

97 Section 2. Section 77-32-201 is amended to read:

98 **77-32-201. Definitions.**

99 For the purposes of this chapter:

100 (1) "Board" means the Indigent Defense Funds Board created in Section 77-32-401.

101 (2) "Commission" means the Utah Indigent Defense Commission created in Section
102 77-32-801.

103 [~~(2)~~] (3) "Compelling reason" shall include one or more of the following circumstances
104 relating to the contracting attorney:

105 (a) a conflict of interest;

106 (b) the contracting attorney does not have sufficient expertise to provide an effective
107 defense of the indigent; or

108 (c) the legal defense is insufficient or lacks expertise to provide a complete defense.

109 [~~(3)~~] (4) "Defense resources" means a competent investigator, expert witness, scientific
110 or medical testing, or other appropriate means necessary, for an effective defense of an
111 indigent, but does not include legal counsel.

112 [~~(4)~~] (5) "Defense services provider" means a legal aid association, legal defender's
113 office, regional legal defense association, law firm, attorney, or attorneys contracting with a

114 county or municipality to provide legal defense and includes any combination of counties or
115 municipalities to provide regional ~~[legal defense]~~ indigent criminal defense services.

116 (6) "Effective representation" means legal representation consistent with the Sixth
117 Amendment to the United States Constitution, and Utah Constitution, Article I, Section 12, as
118 interpreted through federal and Utah state appellate courts.

119 ~~[(5)]~~ (7) "Indigent" means a person qualifying as an indigent under indigency standards
120 established in Part 3, Counsel for Indigents.

121 (8) "Indigent criminal defense services" means the provision of a defense services
122 provider and defense resources to a defendant who is:

123 (a) being prosecuted or sentenced for a crime for which the defendant may be
124 incarcerated upon conviction, beginning with the defendant's initial appearance in court to
125 answer to the criminal charge; and

126 (b) determined to be indigent under Section [77-32-202](#).

127 (9) "Indigent criminal defense system" means:

128 (a) indigent criminal defense services provided by local units of government, including
129 counties, cities, and towns funded by state and local government; or

130 (b) indigent criminal defense services provided by regional legal defense funded by
131 state and local government.

132 ~~[(6)]~~ (10) "Legal aid association" means a nonprofit defense association or society that
133 provides legal defense for indigent defendants.

134 ~~[(7)]~~ (11) "Legal defender's office" means a division of county government created and
135 authorized by the county legislative body to provide legal representation in criminal matters to
136 indigent defendants.

137 ~~[(8)]~~ (12) "Legal defense" means to:

138 (a) provide defense counsel for each indigent who faces the potential deprivation of the
139 indigent's liberty;

140 (b) afford timely representation by defense counsel;

141 (c) provide the defense resources necessary for a complete defense;

- 142 (d) assure undivided loyalty of defense counsel to the client;
- 143 (e) provide a first appeal of right; and
- 144 (f) prosecute other remedies before or after a conviction, considered by defense counsel
- 145 to be in the interest of justice except for other and subsequent discretionary appeals or
- 146 discretionary writ proceedings.

147 (13) "Local funding" includes funding by an indigent criminal defense system for
 148 defense services. Local funding may be adjusted annually to reflect population growth and
 149 inflation for consideration of state funding for indigent criminal defense resources and critical
 150 need indigent criminal defense providers.

151 [~~9~~] (14) "Participating county" means a county [~~which~~] that has complied with the
 152 provisions of this chapter for participation in the Indigent [~~Capital~~] Aggravated Murder
 153 Defense Trust Fund as provided in Sections 77-32-602 and 77-32-603 or the Indigent Felony
 154 Defense Trust Fund as provided in Sections 77-32-702 and 77-32-703.

155 [~~10~~] (15) "Regional legal defense" means a defense services provider which provides
 156 legal defense to any combination of counties or municipalities through an interlocal
 157 cooperation agreement pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, and
 158 Subsection 77-32-306(3).

159 [~~11~~] (16) "Serious offense" means a felony or capital felony.

160 (17) "State funding" means funding by the state for:

- 161 (a) the establishment of a statewide indigent criminal defense data collection system;
- 162 (b) defense resources; and
- 163 (c) critical need defense services providers.

164 (18) "Shared state and local funding" means the recognition of the state's constitutional
 165 responsibility for the provision of indigent defense services and the collaborative assistance by
 166 indigent criminal defense systems to fairly provide effective representation in the state,
 167 consistent with the safeguards of the United States Constitution, the Utah Constitution, and this
 168 chapter.

169 Section 3. Section **77-32-301** is amended to read:

170 **77-32-301. Minimum standards for defense of an indigent.**

171 (1) Each county, city, and town shall provide for the legal defense of an indigent in
172 criminal cases in the courts and various administrative bodies of the state in accordance with
173 legal defense standards as defined in Subsection ~~77-32-201~~(12).

174 (2) (a) A county or municipality which contracts with a defense services provider shall
175 provide that all legal defense elements be included as a single package of legal defense services
176 made available to indigents, except as provided in Sections 77-32-302 and 77-32-303.

177 (b) When needed to avoid a conflict of interest between:

178 (i) trial counsel and counsel on appeal, a defense services provider contract shall also
179 provide for separate trial and appellate counsel; and

180 (ii) counsel for co-defendants, a defense services provider contract shall also provide
181 for separate trial counsel.

182 (c) If a county or municipality contracts to provide all legal defense elements as a
183 single package, a defendant may not receive funding for defense resources unless represented
184 by publicly funded counsel or as provided in Subsection 77-32-303(2).

185 Section 4. Section 77-32-302 is amended to read:

186 **77-32-302. Assignment of counsel on request of indigent or order of court.**

187 (1) ~~[The]~~ An indigent criminal defense services provider shall be assigned to represent
188 each indigent and shall provide the legal defense services necessary for ~~[an]~~ effective ~~[defense]~~
189 representation, if the indigent is under arrest for or charged with a crime in which there is a
190 substantial probability that the penalty to be imposed is confinement in either jail or prison if:

191 (a) the indigent requests legal defense; or

192 (b) the court on its own motion or otherwise orders legal defense services and the
193 defendant does not affirmatively waive or reject on the record the opportunity to be provided
194 legal defense.

195 (2) (a) If a county responsible for providing indigent legal defense has established a
196 county legal defender's office and the court has received notice of the establishment of the
197 office, the court shall assign to the county legal defender's office the responsibility to defend

198 indigent defendants within the county and provide defense resources.

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

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

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

208 (i) set the matter for a hearing;

209 (ii) give proper notice of the hearing to the attorney of the responsible county or
210 municipality and county clerk or municipal recorder; and

211 (iii) make findings that there is a compelling reason to appoint a noncontracting
212 attorney.

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

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

217 Section 5. Section **77-32-306** is amended to read:

218 **77-32-306. County or municipal legislative body to provide legal defense.**

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

220 (a) contract with a defense services provider; or

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

223 (2) A county may create a county legal defender's office to provide for the legal
224 defense as prescribed by this chapter.

225 (3) A county legal defender's office may, through the county legislative body, contract

226 with other counties and municipalities [~~within a judicial district~~] to provide the legal services
227 as prescribed.

228 (4) Counties and municipalities are encouraged to enter into interlocal cooperation
229 agreements pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, for the provision of
230 legal defense, including multiple counties and municipalities contracting with either a private
231 defense services provider or with a legal defender's office. An interlocal agreement may
232 provide for:

233 (a) the creation of or contract with a private defense services provider, as defined in
234 Subsection 77-32-201~~(4)~~(5);

235 (b) multiple counties or municipalities to contract with a county legal defender's office,
236 as defined in Subsection 77-32-201~~(7)~~(11); or

237 (c) the creation of an interlocal entity under the provisions of Section 11-13-203.

238 (5) When a county or municipality has contracted under Subsection (1)(a) or a county
239 has created a legal defender's office as provided under Subsection (2) to provide the legal
240 defense resources required by this chapter, the legal services provider is the exclusive source
241 from which the legal defense may be provided, unless the court finds a compelling reason for
242 the appointment of noncontracting attorneys and defense resources, under the provisions of
243 Section 77-32-302 or 77-32-303, in which case the judge shall state the compelling reason and
244 the findings of the hearing held under Subsections 77-32-303(2) and (3) on the record.

245 (6) A county or municipality may, by ordinance, provide for some other means which
246 are constitutionally adequate for legal defense of indigents.

247 Section 6. Section 77-32-801 is enacted to read:

248 **Part 8. Utah Indigent Defense Commission**

249 **77-32-801. Indigent Defense Commission creation -- Purpose.**

250 (1) There is created within the Commission on Criminal and Juvenile Justice the Utah
251 Indigent Defense Commission.

252 (2) The purpose of the commission is to assist the state in meeting the state's
253 obligations for the provision of indigent criminal defense services, consistent with the United

254 States Constitution, the Utah Constitution, and this chapter.

255 Section 7. Section **77-32-802** is enacted to read:

256 **77-32-802. Commission members -- Membership qualifications -- Terms --**

257 **Vacancy -- Administrative support.**

258 (1) The commission is composed of 11 voting and two ex officio, nonvoting members.

259 (a) The governor, with the consent of the Senate, shall appoint the following nine
260 members:

261 (i) two practicing criminal defense attorneys recommended by the Utah Association of
262 Criminal Defense Lawyers;

263 (ii) an attorney representing minority interests recommended by the Utah Minority Bar
264 Association;

265 (iii) one member recommended by the Utah Association of Counties from a county of
266 the first or second class;

267 (iv) one member recommended by the Utah Association of Counties from a county of
268 the third through sixth class;

269 (v) a director of a county public defender organization recommended by the Utah
270 Association of Criminal Defense Lawyers;

271 (vi) two members recommended by the Utah League of Cities and Towns from its
272 membership;

273 (vii) a retired judge recommended by the Judicial Council; and

274 (viii) one member of the Utah Legislature selected jointly by the Speaker of the House
275 and President of the Senate.

276 (b) The executive director of the Commission on Criminal and Juvenile Justice or the
277 executive director's designee shall be a voting member of the commission.

278 (c) The ex officio, nonvoting members of the commission are:

279 (i) the director of the Utah Indigent Defense Commission appointed in Section
280 77-32-803; and

281 (ii) a representative from the Administrative Office of the Courts appointed by the

282 Judicial Council.

283 (2) Members appointed by the governor shall serve four-year terms, except as provided
284 in Subsection (3).

285 (3) The governor shall stagger the initial terms of appointees so that approximately half
286 of the commission is appointed every two years.

287 (4) Members appointed to the commission shall have significant experience in criminal
288 defense proceedings or have demonstrated a strong commitment to providing effective
289 representation in indigent criminal defense services.

290 (5) Commission members shall hold office until their successors are appointed.

291 (6) The commission may remove a member for incompetence, dereliction of duty,
292 malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.

293 (7) When a vacancy occurs in the membership for any reason, a replacement shall be
294 appointed for the remaining unexpired term in the same manner as the original appointment.

295 (8) The governor shall appoint one of the initial commission members to serve as chair
296 of the commission for a term of one year. At the expiration of that year, or upon the vacancy in
297 the membership of the appointed chair, the commission shall annually elect a chair from the
298 commission's membership to serve a one-year term. A commission member may not serve as
299 chair of the commission for more than three consecutive terms.

300 (9) A member may not receive compensation or benefits for the member's service, but
301 may receive per diem and travel expenses in accordance with:

302 (a) Section [63A-3-106](#);

303 (b) Section [63A-3-107](#); and

304 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
305 [63A-3-107](#).

306 (10) Six members constitute a quorum, however, the affirmative vote of at least six
307 members of the commission is required for official action of the commission.

308 Section 8. Section **77-32-803** is enacted to read:

309 **77-32-803. Director -- Qualifications -- Staff.**

- 310 (1) The commission shall appoint a director to carry out the following duties:
311 (a) establish an annual budget;
312 (b) assist the commission in developing and regularly reviewing advisory caseload
313 guidelines and procedures, including recommending to the commission suggested changes to
314 the criteria for an indigent defendant's eligibility to receive criminal defense services under this
315 chapter; and
316 (c) perform all other duties as assigned.
317 (2) The director shall be a full-time licensed attorney with appropriate background and
318 experience to serve as the full-time director.
319 (3) The director shall hire staff as necessary to carry out the duties of the commission,
320 including at least one individual with data collection and analysis skills to carry out duties as
321 outlined in Subsection [77-32-804\(1\)\(a\)](#).

322 Section 9. Section **77-32-804** is enacted to read:

323 **77-32-804. Duties of the commission -- Annual report.**

- 324 (1) The commission shall:
325 (a) develop and adopt guiding principles for the assessment and oversight of criminal
326 defense systems with the state that, at a minimum, address the following:
327 (i) Indigent defense service providers shall have independent judgment without fear of
328 retaliation.
329 (ii) Service providers shall provide conflict-free representation, including the need for a
330 separate contract for conflict counsel.
331 (iii) The state may not interfere with the service provider's access to clients and the
332 service provider is free to defend the client based on the service provider's own independent
333 judgment.
334 (iv) Accused persons shall be provided counsel at all critical stages of the criminal
335 process.
336 (v) Counsel shall be free to provide meaningful, adversarial testing of the evidence,
337 including:

- 338 (A) adequate access to defense resources; and
- 339 (B) workloads that allow for time to meet with clients, investigate cases, and file
- 340 appropriate motions.
- 341 (vi) Service providers shall be fairly compensated and incentivized to represent clients
- 342 fully through:
- 343 (A) compensation, that shall be independent from prosecutors' compensation;
- 344 (B) incentives that are structured to represent criminal defendants well; and
- 345 (C) separate contracts that are offered to ensure the right to appeal.
- 346 (vii) The commission may maintain oversight to collect data, audit attorney
- 347 performance, establish standards, and enforce the principles listed above;
- 348 (b) identify and collect data necessary for the commission to:
- 349 (i) review compliance by criminal defense systems of minimum principles for effective
- 350 representation;
- 351 (ii) establish procedures for the collection and analysis of the data; and
- 352 (iii) provide reports regarding the operation of the commission and the provision of
- 353 indigent criminal defense services by each indigent criminal defense system;
- 354 (c) develop and oversee the establishment of advisory caseload principles and
- 355 guidelines to aid indigent criminal defense systems in delivering effective representation in the
- 356 state consistent with the safeguards of the United States Constitution, the Utah Constitution,
- 357 and this chapter;
- 358 (d) review all contracts and interlocal agreements in the state for the provision of
- 359 indigent criminal defense services and provide assistance and recommendations regarding
- 360 compliance with minimum principles for effective representation;
- 361 (e) investigate, audit, and review the provision of indigent criminal defense services for
- 362 compliance with minimum principles;
- 363 (f) establish procedures for the receipt, acceptance, and resolution of complaints
- 364 regarding the provision of indigent criminal defense services;
- 365 (g) establish procedures that enable indigent criminal defense systems to apply for state

366 funding as provided under Section [77-32-805](#);

367 (h) establish procedures for annually reporting to the governor, Legislature, Judicial
368 Council, and indigent criminal defense systems throughout the state that include reporting the
369 following:

370 (i) the operations of the commission;

371 (ii) the operations of each indigent criminal defense system; and

372 (iii) each indigent criminal defense system's compliance with minimum standards for
373 the provision of indigent criminal defense services for effective representation;

374 (i) award grants to indigent criminal defense systems consistent with metrics
375 established by the commission under this part and appropriations by the state;

376 (j) encourage and aid in the regionalization of indigent criminal defense services within
377 the state for effective representation and for efficiency and cost savings to local systems;

378 (k) submit to legislative, executive, and judicial leadership, from time to time,
379 proposed recommendations for improvement in the provision of indigent criminal defense
380 services to ensure effective representation in the state, consistent with the safeguards of the
381 United States Constitution and the Utah Constitution; and

382 (l) identify and encourage best practices for effective representation to indigent
383 defendants charged with crimes.

384 (2) The commission shall emphasize the importance of indigent criminal defense
385 services provided to defendants, whether charged with a misdemeanor or felony.

386 (3) The commission shall establish procedures for the conduct of the commission's
387 affairs and internal policies necessary to carry out the commission's duties and responsibilities
388 under this part.

389 (4) Commission policies shall be placed in an appropriate manual, made publicly
390 available on a website, and made available to all attorneys and professionals providing indigent
391 criminal defense services, the Judicial Council, the governor, and the Legislature.

392 (5) The delivery of indigent criminal defense services shall be independent of the
393 judiciary, but the commission shall ensure that judges are permitted and encouraged to

394 contribute information and advice concerning the delivery of indigent criminal defense
395 services.

396 (6) An indigent criminal defense system that is in compliance with minimum principles
397 and procedures may not be required to provide indigent criminal defense services in excess of
398 those principles and procedures.

399 (7) The commission shall submit a report annually to the Judiciary Interim Committee
400 on the commission's efforts to improve the provision of indigent criminal defense services
401 statewide.

402 Section 10. Section **77-32-805** is enacted to read:

403 **77-32-805. Indigent Defense Resources Account -- Administration.**

404 (1) For purposes of this part, "account" means the Indigent Defense Resources
405 Account.

406 (2) (a) There is created within the General Fund a restricted account known as the
407 "Indigent Defense Resources Restricted Account."

408 (b) Funds in the account shall be nonlapsing.

409 (c) Subject to appropriation, funds from the account shall be disbursed by the Utah
410 Indigent Defense Commission in accordance with the provisions of this chapter.

411 (3) The account consists of:

412 (a) funds appropriated by the Legislature based upon recommendations from the
413 commission consistent with principles of shared state and local funding;

414 (b) other moneys received by the commission pursuant to Subsection [77-32-809\(3\)](#);
415 and

416 (c) interest and earnings from the investment of account funds.

417 (4) Funds from the account shall be invested by the state treasurer with the earnings
418 and interest accruing to the account.

419 (5) The account shall be administered by the commission for:

420 (a) the establishment and maintenance of a statewide indigent criminal defense data
421 collection system;

- 422 (b) grants to indigent criminal defense systems for defense resources; and
- 423 (c) grants to indigent criminal defense systems for defense services providers.
- 424 (6) Money allocated to or deposited into the account shall be used:
- 425 (a) to reimburse participating systems for commission-approved expenditures for the
- 426 purposes listed in Subsection (5); and
- 427 (b) for administrative costs.

428 Section 11. Section **77-32-806** is enacted to read:

429 **77-32-806. Indigent criminal defense system participation.**

430 (1) To qualify for grant funds described in Subsection [77-32-805\(5\)](#), the legislative

431 body responsible for an indigent criminal defense system shall:

- 432 (a) adopt a resolution stating the intent to apply for grant funds from the account and
- 433 committing that the indigent criminal defense system shall meet minimum principles for
- 434 effective representation; and
- 435 (b) submit a certified copy of that resolution together with an application to the
- 436 commission.

437 (2) The commission may revoke an indigent criminal defense system's grant award if

438 the system fails to meet minimum principles for effective representation.

439 Section 12. Section **77-32-807** is enacted to read:

440 **77-32-807. Application for grant funds.**

441 (1) Applications for grant moneys may seek resources for the following expenses:

- 442 (a) establishment and maintenance of an indigent criminal defense data collection
- 443 system;
- 444 (b) defense resources;
- 445 (c) matching fund grants for defense services providers; and
- 446 (d) critical need grants for defense services providers.

447 (2) (a) Matching fund grants, as described in Subsection (1)(c), may be awarded if the

448 indigent criminal defense system spends an amount greater than the system's baseline budget,

449 as described in Subsection [77-32-809\(2\)\(a\)](#), for defense services providers.

450 (b) For the purposes of Subsection (2)(a), matching funds is an amount equal to the
451 product of:

452 (i) the indigent criminal defense system's spending above the system's baseline budget;
453 and

454 (ii) (A) 50% for counties of the first class;

455 (B) 100% for counties of the second or third class; or

456 (C) 200% for counties of the fourth through sixth class.

457 (3) Critical need grant moneys, as described in Subsection (1)(d), may be awarded if
458 the indigent criminal defense system can demonstrate to the commission's satisfaction that:

459 (a) the system has incurred or reasonably anticipates incurring expenses in excess of
460 the system's annual local funding, as adjusted for population growth and inflation;

461 (b) the funding for the expenses described in Subsection (3)(a) is necessary for the
462 indigent criminal defense system to meet minimum standards for effective representation; and

463 (c) increasing the system's local share for indigent criminal defense providers would
464 constitute an undue burden on the indigent criminal defense system.

465 (4) If the application of a participating indigent criminal defense system is approved by
466 the commission, the director of the commission shall negotiate, enter into, and administer a
467 contract with the participating indigent criminal defense system for the purposes listed in
468 Subsection (1).

469 (5) Nonparticipating systems remain responsible for meeting minimum principles for
470 effective representation but may not be eligible for any legislative relief.

471 (6) A county or municipality may not be required to increase the county or
472 municipality's certified tax rate pursuant to Section [59-2-924](#) to participate in the fund.

473 Section 13. Section **77-32-808** is enacted to read:

474 **77-32-808. Annual report, budget, and listing of expenditures -- Availability on**
475 **website.**

476 (1) As used in this section, "expenditures" means all payments or disbursements of
477 commission funds, received from any source, made by the commission.

478 (2) The commission shall publish and make available to the public on a website the
479 commission's annual report, budget, salary information, a listing of all expenditures, and a list
480 of all indigent criminal defense systems.

481 (3) Publication and availability of the listing of expenditures shall be on a quarterly
482 basis. The commission's budget and salary information may be published and made available
483 on an annual basis.

484 Section 14. Section **77-32-809** is enacted to read:

485 **77-32-809. Investigation, audit, and review of indigent criminal defense services --**
486 **Cooperation and participation with commission -- Maintenance of local share -- Necessity**
487 **for excess funding -- Funds received by commission as state funds.**

488 (1) All indigent criminal defense systems and attorneys engaged in providing indigent
489 criminal defense services shall cooperate and participate with the commission in the
490 investigation, audit, and review of all indigent criminal defense services.

491 (2) (a) For purposes of this part, "baseline budget" means an indigent criminal defense
492 system's share of local funding, adjusted annually for growth in population and inflation.

493 (b) An indigent criminal defense system shall maintain the system's baseline budget
494 each year.

495 (c) If the commission determines that funding in excess of the indigent criminal
496 defense system's baseline budget is necessary to achieve minimum principles for effective
497 representation, the excess funding shall be paid from state or local funding, or a combination of
498 both, as determined by the grant application process described in Section [77-32-807](#).

499 (d) An indigent criminal defense system is not required to expend all of the system's
500 local funding if minimum principles for effective representation may be met for less than local
501 funding.

502 (3) The commission may apply for and obtain state funding from any source to carry
503 out the purposes of this part. All funds received by the commission, from any source, are state
504 funds and shall be appropriated as provided by law.

505 Section 15. Section **77-32-810** is enacted to read:

506 77-32-810. Applicability of GRAMA and Open and Public Meetings Act.

507 (1) Official business conducted by the commission is subject to Title 63G, Chapter 2,
508 Government Records Access and Management Act.

509 (2) Meetings convened by the commission in the commission's official capacity are
510 subject to Title 52, Chapter 4, Open and Public Meetings Act.

511 Section 16. Section **78A-6-1111** is amended to read:

512 **78A-6-1111. Right to counsel -- Appointment of counsel for indigent -- Costs.**

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

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

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

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

531 (e) In any action initiated by the state or a political subdivision of the state under Part
532 6, Delinquency and Criminal Actions, or Part 7, Transfer of Jurisdiction, of this chapter, or
533 against a minor under Section **78A-6-1101**, the parents or legal guardian and the minor shall be

534 informed that the minor has the right to be represented by counsel at every stage of the
535 proceedings.

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

542 (ii) In all other situations the right to counsel may not be waived by a minor unless
543 there has been a finding on the record, taking into consideration the minor's unique
544 circumstances and attributes, that the waiver is knowing and voluntary, and the minor
545 understands the consequences of waiving the right to counsel.

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

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

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

556 (2) Counsel appointed by the court may not provide representation as court-appointed
557 counsel for a parent or legal guardian in any action initiated by, or in any proceeding to modify
558 court orders in a proceeding initiated by, a private party, except that in a private action to
559 terminate parental rights the court may appoint counsel to represent an indigent parent if it
560 finds that the failure to appoint counsel will result in a deprivation of due process.

561 (3) If the county responsible to provide legal counsel for an indigent under Subsection

562 (1)(g) has arranged by contract to provide services, the court shall appoint the contracting
563 attorney as legal counsel to represent that indigent.

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

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

569 Section 17. **Appropriation.**

570 (1) Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act,
571 the following sums of money are appropriated for the fiscal year beginning July 1, 2015, and
572 ending June 30, 2016. These are additions to amounts previously appropriated for fiscal year
573 2016.

574 (a) The Legislature authorizes the State Division of Finance to transfer the following
575 amounts among the following funds or accounts as indicated. Expenditures and outlays from
576 the recipient funds must be authorized elsewhere in an appropriations act.

577 To Fund and Account Transfers - General Fund Restricted -

578 Indigent Defense Resources Account

579 From General Fund, One-time \$1,500,000

580 Schedule of Programs:

581 General Fund Restricted - Indigent Defense

582 Resources Account \$1,500,000

583 (b) Under the terms and conditions of Utah Code Title 63J, Chapter 1, Budgetary
584 Procedures Act, the Legislature appropriates the following sums of money from the funds or
585 fund accounts indicated for the use and support of the government of the State of Utah.

586 To Governor's Office - Commission on Criminal and Juvenile Justice -

587 Utah Indigent Defense Commission

588 From General Fund Restricted - Indigent Defense

589 Resources Account \$1,500,000

590 Schedule of Programs:

591 Administration \$1,500,000

592 (2) Under the terms and conditions of Utah Code Title 63J, Chapter 1, Budgetary
593 Procedures Act, the following sums of money are appropriated for the fiscal year beginning
594 July 1, 2016 and ending June 30, 2017.

595 (a) Restricted Fund and Account Transfers. The Legislature authorizes the State
596 Division of Finance to transfer the following amounts among the following funds or accounts
597 as indicated. Expenditures and outlays from the recipient funds must be authorized elsewhere
598 in an appropriations act.

599 To Fund and Account Transfers - General Fund Restricted - Indigent

600 Defense Resources Account

601 From General Fund \$500,000

602 Schedule of Programs:

603 General Fund Restricted - Indigent Defense

604 Resources Account \$500,000

605 (b) Under the terms and conditions of Utah Code Title 63J, Chapter 1, Budgetary
606 Procedures Act, the Legislature appropriates the following sums of money from the funds or
607 fund accounts indicated for the use and support of the government of the State of Utah.

608 To Governor's Office - Commission on Criminal and Juvenile Justice -

609 Utah Indigent Defense Commission

610 From General Fund Restricted - Indigent Defense

611 Resources Account \$500,000

612 Schedule of Programs:

613 Administration \$500,000