

Effective 7/1/2026

78B-22-203 Order for indigent defense services.

- (1)
 - (a) Except as provided in Subsection (6), a court shall appoint an indigent defense service provider who is employed by an indigent defense system or who has a contract with an indigent defense system to provide indigent defense services for an individual over whom the court has jurisdiction if:
 - (i) the individual is an indigent individual; and
 - (ii) the individual does not have private counsel.
 - (b) An indigent defense service provider appointed by the court under Subsection (1)(a) shall provide indigent defense services for the indigent individual in all court proceedings in the matter for which the indigent defense service provider is appointed.
- (2)
 - (a) Notwithstanding Subsection (1), the court may order that indigent defense services be provided by an indigent defense service provider who does not have a contract with an indigent defense system if the court finds by clear and convincing evidence that:
 - (i) all the contracted indigent defense service providers:
 - (A) have a conflict of interest; or
 - (B) do not have sufficient expertise to provide indigent defense services for the indigent individual; or
 - (ii) the indigent defense system does not have a contract with an indigent defense service provider for indigent defense services.
 - (b) A court may not order indigent defense services under Subsection (2)(a) unless the court conducts a hearing with proper notice to the indigent defense system by sending notice of the hearing to the county clerk or municipal recorder.
- (3)
 - (a) A court may order reasonable indigent defense resources for an individual who has retained private counsel only if the court finds by clear and convincing evidence that:
 - (i) the individual is an indigent individual;
 - (ii) the individual would be prejudiced by the substitution of a contracted indigent defense service provider and the prejudice cannot be remedied;
 - (iii) at the time that private counsel was retained, the individual:
 - (A) entered into a written contract with private counsel; and
 - (B) had the ability to pay for indigent defense resources, but no longer has the ability to pay for the indigent defense resources in addition to the cost of private counsel;
 - (iv) there has been an unforeseen change in circumstances that requires indigent defense resources beyond the individual's ability to pay; and
 - (v) any representation under this Subsection (3)(a) is made in good faith and is not calculated to allow the individual or retained private counsel to avoid the requirements of this section.
 - (b) A court may not order indigent defense resources under Subsection (3)(a) until the court conducts a hearing with proper notice to the indigent defense system by sending notice of the hearing to the county clerk or municipal recorder.
 - (c) At the hearing, the court shall conduct an in camera review of:
 - (i) the private counsel contract;
 - (ii) the costs or anticipated costs of the indigent defense resources; and
 - (iii) other relevant records.
- (4) A court may only order the representation of an indigent individual by an indigent defense service provider in accordance with this section.

- (5) A court may not order indigent defense resources be provided to an indigent individual, except as provided in Subsection (3).
- (6)
 - (a) For an individual prosecuted for aggravated murder and found indigent, a court from a county participating in the Indigent Aggravated Murder Defense Fund created in Section 75E-10-402 shall notify the Office of Indigent Defense Services of the finding of indigency.
 - (b) The office shall assign an indigent defense service provider qualified under Utah Rules of Criminal Procedure, Rule 8, with whom the office has a preliminary contract to provide indigent defense services for an assigned rate.

Amended by Chapter 291, 2026 General Session