

Effective 5/14/2019

Chapter 22 Indigent Defense Act

Part 1 General Provisions

78B-22-101 Title.

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

Renumbered and Amended by Chapter 326, 2019 General Session

78B-22-102 Definitions.

As used in this chapter:

- (1) "Account" means the Indigent Defense Resources Restricted Account created in Section 78B-22-405.
- (2) "Commission" means the Utah Indigent Defense Commission created in Section 78B-22-401.
- (3) "Child welfare case" means a proceeding under Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, or Title 80, Chapter 4, Termination and Restoration of Parental Rights.
- (4) "Executive Director" means the executive director of the Office of Indigent Defense Services, created in Section 78B-22-451, who is appointed in accordance with Section 78B-22-453.
- (5) "Indigent defense resources" means the resources necessary to provide an effective defense for an indigent individual.
- (6) "Indigent defense service provider" means an attorney or entity appointed to represent an indigent individual through:
 - (a) a contract with an indigent defense system to provide indigent defense services;
 - (b) an order issued by the court under Subsection 78B-22-203(2)(a); or
 - (c) direct employment with an indigent defense system.
- (7) "Indigent defense services" means:
 - (a) the representation of an indigent individual by an indigent defense service provider; and
 - (b) the provision of indigent defense resources for an indigent individual.
- (8) "Indigent defense system" means:
 - (a) a city or town that is responsible for providing indigent defense services;
 - (b) a county that is responsible for providing indigent defense services in the district court, juvenile court, and the county's justice courts; or
 - (c) an interlocal entity, created pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, that is responsible for providing indigent defense services according to the terms of an agreement between a county, city, or town.
- (9) "Indigent individual" means:
 - (a) a minor who is:
 - (i) arrested and admitted into detention for an offense under Section 78A-6-103;
 - (ii) charged by petition or information in the juvenile or district court; or
 - (iii) described in this Subsection (9)(a), who is appealing an adjudication or other final court action; and
 - (b) an individual listed in Subsection 78B-22-201(1) who is found indigent pursuant to Section 78B-22-202.

(10) "Minor" means the same as that term is defined in Section 80-1-102.

(11) "Office" means the Office of Indigent Defense Services created in Section 78B-22-451.

(12) "Participating county" means a county that complies with this chapter for participation in the Indigent Aggravated Murder Defense Fund as provided in Sections 78B-22-702 and 78B-22-703.

Amended by Chapter 193, 2024 General Session

Part 2 Appointment of Counsel

78B-22-201 Right to counsel.

- (1) A court shall advise the following of the individual's right to counsel no later than the individual's first court appearance:
- (a) an adult charged with a criminal offense the penalty for which includes the possibility of incarceration regardless of whether actually imposed;
 - (b) a parent or legal guardian facing an action initiated by the state under:
 - (i) Title 78A, Chapter 6, Part 4a, Adult Criminal Proceedings;
 - (ii) Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings; or
 - (iii) Title 80, Chapter 4, Termination and Restoration of Parental Rights;
 - (c) a parent or legal guardian facing an action initiated by any party under:
 - (i) Section 78B-6-112; or
 - (ii) Title 80, Chapter 4, Termination and Restoration of Parental Rights; or
 - (d) an individual described in this Subsection (1), who is appealing a conviction or other final court action.
- (2) If an individual described in Subsection (1) does not knowingly and voluntarily waive the right to counsel, the court shall determine whether the individual is indigent under Section 78B-22-202.

Amended by Chapter 281, 2022 General Session

78B-22-201.5 Affidavit of indigency.

- (1) Except as provided in Subsection (5), on or after January 1, 2022, an individual, who is seeking appointment of an indigent defense service provider, shall submit an affidavit of indigency described in Subsection (2) to the court.
- (2) An affidavit of indigency shall include the following information:
- (a) the individual's identifying information, including:
 - (i) the individual's legal name and any known aliases;
 - (ii) the individual's mobile or residential phone number;
 - (iii) the individual's residential address; and
 - (iv) the individual's date of birth; and
 - (b) the individual's financial information, including:
 - (i) any financial support or benefit that the individual receives from a state or federal government;
 - (ii) the individual's monthly income, including any alimony or child support that contributes to the individual's monthly income;

- (iii) the individual's monthly expenses, including any alimony or child support obligation that the individual is responsible for paying;
 - (iv) the individual's ownership of, or any interest in, personal or real property, including any savings or checking accounts or cash;
 - (v) the number, ages, and relationships of any dependents; and
 - (vi) any extraordinary financial conditions that would prevent the individual from retaining private counsel.
- (3) The affidavit of indigency shall:
- (a) require the signature of the individual; and
 - (b) include a statement that:
 - (i) by signing the affidavit the individual confirms that, to the best of the individual's knowledge, the information in the affidavit is true;
 - (ii) the individual may be subject to a criminal penalty for a written false statement under Section 76-8-504;
 - (iii) the individual authorizes an indigent defense system to contact or request information from the individual or a third party to verify whether an individual is indigent; and
 - (iv) the individual may be ordered to pay the cost of the individual's indigent defense services if a court determines that the individual is not indigent.
- (4) The Judicial Council or Supreme Court shall adopt an affidavit of indigency form described in Subsection (2) to be distributed to an individual seeking the appointment of an indigent defense service provider.
- (5) This section does not apply to a minor, who is appointed an indigent defense service provider, or the minor's parent or legal guardian.

Enacted by Chapter 4, 2021 Special Session 2

78B-22-202 Determining indigency.

- (1) A court shall find an individual indigent if the individual:
- (a) has an income level at or below 150% of the United States poverty level as defined by the most recent poverty income guidelines published by the United States Department of Health and Human Services; or
 - (b) has insufficient income or other means to pay for legal counsel and the necessary expenses of representation without depriving the individual or the individual's family of food, shelter, clothing, or other necessities, considering:
 - (i) the individual's ownership of, or any interest in, personal or real property;
 - (ii) the amount of debt owed by the individual or that might reasonably be incurred by the individual because of illness or other needs within the individual's family;
 - (iii) the number, ages, and relationships of any dependents;
 - (iv) the probable expense and burden of defending the case;
 - (v) the reasonableness of fees and expenses charged by an attorney and the scope of representation undertaken when represented by privately retained defense counsel; and
 - (vi) any other factor the court considers relevant.
- (2) Notwithstanding Subsection (1), a court may not find an individual indigent if the individual transferred or otherwise disposed of assets since the commission of the offense with the intent of becoming eligible to receive indigent defense services.
- (3)
- (a) The court may:
 - (i) make a finding of indigency at any time; and

- (ii) rely on information contained in an affidavit of indigency described in Section 78B-22-201.5 in making a finding about whether an individual is an indigent individual.
- (b) An individual's inability to submit, or to provide the information required in, an affidavit of indigency under Section 78B-22-201.5 does not preclude a court from:
 - (i) making a finding about whether an individual is an indigent individual under this section; or
 - (ii) appointing an indigent defense service provider under Section 78B-22-203.

Amended by Chapter 4, 2021 Special Session 2

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 78B-22-701 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 193, 2024 General Session

78B-22-204 Waiver by a minor.

A minor may not waive the right to be represented by counsel at all stages of court proceedings unless:

- (1) the minor has consulted with counsel; and
- (2) the court is satisfied that in light of the minor's unique circumstances and attributes:
 - (a) the minor's waiver is knowing and voluntary; and
 - (b) the minor understands the consequences of the waiver.

Amended by Chapter 124, 2021 General Session

Part 3
Indigent Defense Systems and Services

78B-22-301 Standards for indigent defense systems -- Written report.

- (1) An indigent defense system shall provide indigent defense services for an indigent individual in accordance with the core principles adopted by the commission under Section 78B-22-404.
- (2)
 - (a) On or before March 30 of each year, all indigent defense systems shall submit a written report to the commission that describes each indigent defense system's compliance with the commission's core principles.
 - (b) If an indigent defense system fails to submit a timely report under Subsection (2)(a), the indigent defense system is disqualified from receiving a grant from the commission for the following calendar year.

Amended by Chapter 371, 2020 General Session

Amended by Chapter 392, 2020 General Session

78B-22-302 Compensation for indigent defense services.

- (1) An indigent defense system shall fund indigent defense services ordered by a court under Section 78B-22-203.
- (2) An indigent defense system shall ensure that there are adequate funds for indigent defense resources when a court orders indigent defense services under Section 78B-22-203.

Amended by Chapter 182, 2023 General Session

78B-22-303 Pro bono provision of indigent defense services -- Liability limits.

A defense attorney is immune from suit if the defense attorney provides indigent defense services to an indigent individual:

- (1) at no cost; and
- (2) without gross negligence or willful misconduct.

Enacted by Chapter 326, 2019 General Session

78B-22-304 Reimbursement for indigent defense services.

A court may order a parent or legal guardian of a minor who is appointed indigent defense services under this chapter to reimburse the cost of the minor's indigent defense services, as determined by the court, unless the court finds the parent or legal guardian indigent under Section 78B-22-202.

Enacted by Chapter 326, 2019 General Session

Part 4
Utah Indigent Defense Commission

78B-22-401 Utah Indigent Defense Commission -- Creation -- Purpose.

- (1) There is created the Utah Indigent Defense Commission within the State Commission on Criminal and Juvenile Justice.
- (2) The purpose of the commission is to assist:
 - (a) the state in meeting the state's obligations for the provision of indigent defense services, consistent with the United States Constitution, the Utah Constitution, and the Utah Code; and
 - (b) the Office of Indigent Defense Services, created in Section 78B-22-451, with carrying out the statutory duties assigned to the commission and the Office of Indigent Defense Services.

Amended by Chapter 371, 2020 General Session

Amended by Chapter 392, 2020 General Session

Amended by Chapter 395, 2020 General Session

78B-22-402 Commission members -- Member qualifications -- Terms -- Vacancy.

- (1)
 - (a) The commission is composed of 15 members.

- (b) The governor, with the advice and consent of the Senate, and in accordance with Title 63G, Chapter 24, Part 2, Vacancies, shall appoint the following 11 members:
 - (i) two practicing criminal defense attorneys recommended by the Utah Association of Criminal Defense Lawyers;
 - (ii) one attorney practicing in juvenile delinquency defense recommended by the Utah Association of Criminal Defense Lawyers;
 - (iii) one attorney who represents parents in child welfare cases, recommended by an entity funded under the Child Welfare Parental Representation Program created in Section 78B-22-802;
 - (iv) one attorney representing minority interests recommended by the Utah Minority Bar Association;
 - (v) one member recommended by the Utah Association of Counties from a county of the first or second class;
 - (vi) one member recommended by the Utah Association of Counties from a county of the third through sixth class;
 - (vii) a director of a county public defender organization recommended by the Utah Association of Criminal Defense Lawyers;
 - (viii) two members recommended by the Utah League of Cities and Towns from its membership; and
 - (ix) one retired judge recommended by the Judicial Council.
- (c) The speaker of the House of Representatives and the president of the Senate shall appoint two members of the Utah Legislature, one from the House of Representatives and one from the Senate.
- (d) The Judicial Council shall appoint a member from the Administrative Office of the Courts.
- (e) The executive director of the State Commission on Criminal and Juvenile Justice or the executive director's designee is a member of the commission.
- (2) A member appointed by the governor shall serve a four-year term, except as provided in Subsection (3).
- (3) The governor shall stagger the initial terms of appointees so that approximately half of the members appointed by the governor are appointed every two years.
- (4) A member appointed to the commission shall have significant experience in indigent criminal defense , representing parents in child welfare cases, or in juvenile defense in delinquency proceedings or have otherwise demonstrated a strong commitment to providing effective representation in indigent defense services.
- (5) An individual who is currently employed solely as a criminal prosecuting attorney may not serve as a member of the commission .
- (6) A commission member shall hold office until the member's successor is appointed.
- (7) The commission may remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.
- (8) If a vacancy occurs in the membership for any reason, a replacement shall be appointed for the remaining unexpired term in the same manner, and in accordance with the same procedure, as the original appointment.
- (9)
 - (a) The commission shall elect annually a chair from the commission's membership to serve a one-year term.
 - (b) A commission member may not serve as chair of the commission for more than three consecutive terms.

- (10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance in accordance with Sections 63A-3-106 and 63A-3-107.
- (11)
- (a) A majority of the members of the commission constitutes a quorum.
 - (b) If a quorum is present, the action of a majority of the voting members present constitutes the action of the commission.
 - (c) A member shall comply with the conflict of interest provisions described in Title 63G, Chapter 24, Part 3, Conflicts of Interest.

Amended by Chapter 529, 2024 General Session

78B-22-404 Powers and duties of the commission.

- (1) The commission shall:
- (a) adopt core principles for an indigent defense system to ensure the effective representation of indigent individuals consistent with the requirements of the United States Constitution, the Utah Constitution, and the Utah Code, which principles at a minimum shall address the following:
 - (i) an indigent defense system shall ensure that in providing indigent defense services:
 - (A) an indigent individual receives conflict-free indigent defense services; and
 - (B) there is a separate contract for each type of indigent defense service; and
 - (ii) an indigent defense system shall ensure an indigent defense service provider has:
 - (A) the ability to exercise independent judgment without fear of retaliation and is free to represent an indigent individual based on the indigent defense service provider's own independent judgment;
 - (B) adequate access to indigent defense resources;
 - (C) the ability to provide representation to accused individuals in criminal cases at the critical stages of proceedings, and at all stages to indigent individuals in juvenile delinquency and child welfare proceedings;
 - (D) a workload that allows for sufficient time to meet with clients, investigate cases, file appropriate documents with the courts, and otherwise provide effective assistance of counsel to each client;
 - (E) adequate compensation without financial disincentives;
 - (F) appropriate experience or training in the area for which the indigent defense service provider is representing indigent individuals;
 - (G) compensation for legal training and education in the areas of the law relevant to the types of cases for which the indigent defense service provider is representing indigent individuals; and
 - (H) the ability to meet the obligations of the Utah Rules of Professional Conduct, including expectations on client communications and managing conflicts of interest;
 - (b) encourage and aid indigent defense systems in the state in the regionalization of indigent defense services to provide for effective and efficient representation to the indigent individuals;
 - (c) emphasize the importance of ensuring constitutionally effective indigent defense services;
 - (d) encourage members of the judiciary to provide input regarding the delivery of indigent defense services;

- (e) oversee individuals and entities involved in providing indigent defense services; and
 - (f) manage county participation in the Indigent Aggravated Murder Defense Fund created in Section 78B-22-701.
- (2) The commission may:
- (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the commission's duties under this part;
 - (b) assign duties related to indigent defense services to the office to assist the commission with the commission's statutory duties;
 - (c) request supplemental appropriations from the Legislature to address a deficit in the Indigent Inmate Fund created in Section 78B-22-455; and
 - (d) request supplemental appropriations from the Legislature to address a deficit in the Child Welfare Parental Representation Fund created in Section 78B-22-804.

Amended by Chapter 193, 2024 General Session

78B-22-405 Indigent Defense Resources Restricted Account -- Administration.

- (1)
- (a) There is created within the General Fund a restricted account known as the "Indigent Defense Resources Restricted Account."
 - (b) Appropriations from the account are nonlapsing.
- (2) The account consists of:
- (a) money appropriated by the Legislature based upon recommendations from the commission consistent with principles of shared state and local funding;
 - (b) any other money received by the commission from any source to carry out the purposes of this part; and
 - (c) any interest and earnings from the investment of account money.
- (3) The commission shall administer the account and, subject to appropriation, disburse money from the account for the following purposes:
- (a) to establish and maintain a statewide indigent defense data collection system;
 - (b) to establish and administer a grant program to provide grants of state money and other money to indigent defense systems as set forth in Section 78B-22-406;
 - (c) to provide training and continuing legal education for indigent defense service providers; and
 - (d) for administrative costs.

Amended by Chapter 392, 2020 General Session

78B-22-406 Indigent defense services grant program.

- (1) The commission may award grants:
- (a) to supplement local spending by an indigent defense system for indigent defense services; and
 - (b) for contracts to provide indigent defense services for appeals from juvenile court proceedings in a county of the third, fourth, fifth, or sixth class.
- (2) The commission may use grant money:
- (a) to assist an indigent defense system to provide indigent defense services that meet the commission's core principles for the effective representation of indigent individuals;
 - (b) to establish and maintain local indigent defense data collection systems;
 - (c) to provide indigent defense services in addition to indigent defense services that are currently being provided by an indigent defense system;

- (d) to provide training and continuing legal education for indigent defense service providers;
 - (e) to assist indigent defense systems with appeals from juvenile court proceedings;
 - (f) to pay for indigent defense resources and costs and expenses for parental representation attorneys as described in Subsection 78B-22-804(2); and
 - (g) to reimburse an indigent defense system for the cost of providing indigent defense services in an action initiated by a private party under Title 80, Chapter 4, Termination and Restoration of Parental Rights, if the indigent defense system has complied with the commission's policies and procedures for reimbursement.
- (3) To receive a grant from the commission, an indigent defense system shall demonstrate to the commission's satisfaction that:
- (a) the indigent defense system has incurred or reasonably anticipates incurring expenses for indigent defense services that are in addition to the indigent defense system's average annual spending on indigent defense services in the three fiscal years immediately preceding the grant application; and
 - (b)
 - (i) a grant from the commission is necessary for the indigent defense system to meet the commission's core principles for the effective representation of indigent individuals; or
 - (ii) the indigent defense system shall use the grant in an innovative manner that meets the commission's core principles for the effective representation of indigent individuals.
- (4) The commission may revoke a grant if an indigent defense system fails to meet requirements of the grant or any of the commission's core principles for the effective representation of indigent individuals.

Amended by Chapter 281, 2022 General Session

78B-22-407 Cooperation and participation with the commission.

Indigent defense systems and indigent defense service providers shall cooperate and participate with the commission in the collection of data, investigation, audit, and review of indigent defense services.

Renumbered and Amended by Chapter 326, 2019 General Session

78B-22-452 Duties of the office.

- (1) The office shall:
- (a) establish an annual budget for the office for the Indigent Defense Resources Restricted Account created in Section 78B-22-405;
 - (b) assist the commission in performing the commission's statutory duties described in this chapter;
 - (c) identify and collect data that is necessary for the commission to:
 - (i) aid, oversee, and review compliance by indigent defense systems with the commission's core principles for the effective representation of indigent individuals; and
 - (ii) provide reports regarding the operation of the commission and the provision of indigent defense services by indigent defense systems in the state;
 - (d) assist indigent defense systems by reviewing contracts and other agreements, to ensure compliance with the commission's core principles for effective representation of indigent individuals;
 - (e) establish procedures for the receipt and acceptance of complaints regarding the provision of indigent defense services in the state;

- (f) establish procedures to award grants to indigent defense systems under Section 78B-22-406 that are consistent with the commission's core principles;
 - (g) create and enter into contracts consistent with Section 78B-22-454 to provide indigent defense services for an indigent defense inmate who:
 - (i) is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth class as classified in Section 17-50-501;
 - (ii) is charged with having committed a crime within that state prison; and
 - (iii) has been appointed counsel in accordance with Section 78B-22-203;
 - (h) assist the commission in developing and reviewing advisory caseload guidelines and procedures;
 - (i) investigate, audit, and review the provision of indigent defense services to ensure compliance with the commission's core principles for the effective representation of indigent individuals;
 - (j) administer the Child Welfare Parental Representation Program in accordance with Part 8, Child Welfare Parental Representation Program;
 - (k) administer the Indigent Aggravated Murder Defense Fund in accordance with Part 7, Indigent Aggravated Murder Defense Fund;
 - (l) assign an indigent defense service provider to represent an individual prosecuted for aggravated murder in accordance with Part 7, Indigent Aggravated Murder Defense Fund;
 - (m) annually report to the governor, Legislature, Judiciary Interim Committee, and Judicial Council, regarding:
 - (i) the operations of the commission;
 - (ii) the operations of the indigent defense systems in the state; and
 - (iii) compliance with the commission's core principles by indigent defense systems receiving grants from the commission;
 - (n) submit recommendations to the commission for improving indigent defense services in the state;
 - (o) publish an annual report on the commission's website; and
 - (p) perform all other duties assigned by the commission related to indigent defense services.
- (2) The office may enter into contracts and accept, allocate, and administer funds and grants from any public or private person to accomplish the duties of the office.
- (3) Any contract entered into under this part shall require that indigent defense services are provided in a manner consistent with the commission's core principles implemented under Section 78B-22-404.

Amended by Chapter 193, 2024 General Session

Part 4a

Office of Indigent Defense Services

78B-22-451 Office of Indigent Defense Services -- Creation.

There is created under the commission the Office of Indigent Defense Services.

Amended by Chapter 235, 2021 General Session

78B-22-453 Executive director -- Qualifications -- Staff.

(1) The commission:

- (a) shall appoint the executive director, by a majority vote of the commission, to carry out the duties of the office described in Section 78B-22-452; and
- (b) may remove the executive director by majority vote of the commission.
- (2) The executive director shall be an active member of the Utah State Bar with an appropriate background and experience to serve as the full-time executive director.
- (3) The executive director shall hire staff as necessary to carry out the duties of the office as described in Section 78B-22-452, including:
 - (a) one individual who is an active member of the Utah State Bar to serve as a full-time assistant director; and
 - (b) one individual with data collection and analysis skills.
- (4) When appointing the executive director of the office under Subsection (1), the commission shall give preference to an individual with experience in adult criminal defense, representing parents in child welfare cases, or in juvenile delinquency defense.
- (5) When hiring the assistant director, the executive director shall give preference to an individual with experience in adult criminal defense, representing parents in child welfare cases, or in juvenile delinquency defense.

Amended by Chapter 228, 2021 General Session

Amended by Chapter 235, 2021 General Session

78B-22-454 Defense of indigent inmates.

- (1) The office shall pay for indigent defense services for indigent inmates from the Indigent Inmate Fund created in Section 78B-22-455.
- (2) A contract under this part shall ensure that indigent defense services are provided in a manner consistent with the core principles described in Section 78B-22-404.
- (3) The county attorney or district attorney of a county of the third, fourth, fifth, or sixth class shall function as the prosecuting entity.
- (4)
 - (a) A county of the third, fourth, fifth, or sixth class where a state prison is located may impose an additional property tax levy by ordinance at .0001 per dollar of taxable value in the county.
 - (b) If the county governing body imposes the additional property tax levy by ordinance, the revenue shall be deposited into the Indigent Inmate Fund as provided in Section 78B-22-455 to fund the purposes of this part.
 - (c) Upon notification that the fund has reached the amount specified in Subsection 78B-22-455(6), a county shall deposit revenue derived from the property tax levy after the county receives the notice into a county account used exclusively to provide indigent defense services.
 - (d) A county that chooses not to impose the additional levy by ordinance may not receive any benefit from the Indigent Inmate Fund.

Amended by Chapter 451, 2022 General Session

78B-22-455 Indigent Inmate Fund.

- (1) There is created a custodial fund known as the "Indigent Inmate Fund" to be disbursed by the office in accordance with contracts entered into under Subsection 78B-22-452(1)(g).
- (2) Money deposited into this fund shall only be used:
 - (a) to pay indigent defense services for an indigent inmate who:

- (i) is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth class as defined in Section 17-50-501;
 - (ii) is charged with having committed a crime within that state prison; and
 - (iii) has been appointed counsel in accordance with Section 78B-22-203; and
- (b) to cover costs of administering the Indigent Inmate Fund.
- (3) The fund consists of:
- (a) proceeds received from counties that impose the additional tax levy by ordinance under Subsection 78B-22-454(4), which shall be the total county obligation for payment of costs listed in Subsection (2) for defense services for indigent inmates;
 - (b) appropriations made to the fund by the Legislature; and
 - (c) interest and earnings from the investment of fund money.
- (4) Fund money shall be invested by the state treasurer with the earnings and interest accruing to the fund.
- (5)
- (a) In any calendar year in which the fund has insufficient funding, or is projected to have insufficient funding, the commission shall request a supplemental appropriation from the Legislature in the following general session to provide sufficient funding.
 - (b) The state shall pay any or all of the reasonable and necessary money to provide sufficient funding into the Indigent Inmate Fund.
- (6) The fund is capped at \$1,000,000.
- (7) The office shall notify the contributing counties when the fund approaches \$1,000,000 and provide each county with the amount of the balance in the fund.
- (8) Upon notification by the office that the fund is near the limit imposed in Subsection (6), the counties may contribute enough money to enable the fund to reach \$1,000,000 and discontinue contributions until notified by the office that the balance has fallen below \$1,000,000, at which time counties that meet the requirements of Section 78B-22-454 shall resume contributions.

Amended by Chapter 451, 2022 General Session

Part 7

Indigent Aggravated Murder Defense Fund

78B-22-701 Establishment of Indigent Aggravated Murder Defense Fund -- Use of fund -- Compensation for indigent legal defense from fund.

- (1) As used in this part, "fund" means the Indigent Aggravated Murder Defense Fund.
- (2)
- (a) There is established a custodial fund known as the "Indigent Aggravated Murder Defense Fund."
 - (b) The office shall disburse money from the fund at the direction of the commission and subject to this chapter.
- (3) The fund consists of:
- (a) money received from participating counties as provided in Sections 78B-22-702 and 78B-22-703;
 - (b) appropriations made to the fund by the Legislature as provided in Section 78B-22-703; and
 - (c) interest and earnings from the investment of fund money.
- (4) The state treasurer shall invest fund money with the earnings and interest accruing to the fund.

- (5) The fund shall be used to fulfill the constitutional and statutory mandates for the provision of constitutionally effective defense for indigent individuals prosecuted for the violation of state laws in cases involving aggravated murder.
- (6) Money allocated to or deposited into the fund is used only:
 - (a) to pay an indigent defense service provider appointed to represent an individual prosecuted for aggravated murder;
 - (b) for defense resources necessary to effectively represent the individual; and
 - (c) for costs associated with the management of the fund and defense service providers.

Amended by Chapter 193, 2024 General Session

78B-22-701.5 Administration of Indigent Aggravated Murder Defense Fund.

- (1) The commission shall establish rules and procedures for the application by a county for disbursements, and the screening and approval of the applications for the money from the fund.
- (2) The office shall:
 - (a) receive, screen, and approve, or disapprove the application of a county for disbursements from the fund;
 - (b) calculate the amount of the annual contribution to be made to the fund by each participating county;
 - (c) prescribe forms for the application for money from the fund;
 - (d) oversee and approve the disbursement of money from the fund as described in Section 78B-22-701; and
 - (e) negotiate, enter into, and administer contracts with legal counsel, qualified under and meeting the standards consistent with this chapter, to provide indigent defense services to an indigent individual prosecuted in a participating county for an offense involving aggravated murder.

Renumbered and Amended by Chapter 193, 2024 General Session

78B-22-702 County participation.

- (1)
 - (a) A county may participate in the fund subject to the provisions of this chapter.
 - (b) A county that does not participate in the fund, or is not current in the county's assessments for the fund, is ineligible to receive money from the fund.
 - (c) The commission may revoke a county's participation in the fund if the county fails to pay the county's assessments when due.
- (2) To participate in the fund, the legislative body of a county shall:
 - (a) adopt a resolution approving participation in the fund and committing that county to fulfill the assessment requirements as set forth in Subsection (3) and Section 78B-22-703; and
 - (b) submit a certified copy of that resolution together with an application to the commission.
- (3) By January 15 of each year, a participating county shall contribute to the fund an amount computed in accordance with Section 78B-22-703.
- (4) A participating county may withdraw from participation in the fund upon:
 - (a) adoption by the county's legislative body of a resolution to withdraw; and
 - (b) notice to the commission by January 1 of the year before withdrawal.
- (5) A county withdrawing from participation in the fund, or whose participation in the fund has been revoked for failure to pay the county's assessments when due, shall forfeit the right to:
 - (a) any previously paid assessment;

- (b) relief from the county's obligation to pay the county's assessment during the period of the county's participation in the fund; and
- (c) any benefit from the fund, including reimbursement of costs that accrued after the last day of the period for which the county has paid the county's assessment.

Amended by Chapter 193, 2024 General Session

78B-22-703 County and state obligations.

- (1)
 - (a) Except as provided in Subsection (1)(b), a participating county shall pay into the fund annually an amount calculated by multiplying the average of the percent of the county's population to the total population of all participating counties and of the percent of the county's taxable value of the locally and centrally assessed property located within that county to the total taxable value of the locally and centrally assessed property to all participating counties by the total fund assessment for that year to be paid by all participating counties as is determined by the commission to be sufficient such that it is unlikely that a deficit will occur in the fund in any calendar year.
 - (b) The fund minimum is equal to or greater than 50 cents per person of all counties participating.
 - (c) The amount paid by a participating county under this Subsection (1) is the total county obligation for payment of costs in accordance with Section 78B-22-701.
- (2)
 - (a) A county that elects to initiate participation in the fund, or reestablish participation in the fund after participation was terminated, is required to make an equity payment in addition to the assessment required by Subsection (1).
 - (b) The equity payment is determined by the commission and represent what the county's equity in the fund would be if the county had made assessments into the fund for each of the previous two years.
- (3) If the fund balance after contribution by the state and participating counties is insufficient to replenish the fund annually to at least \$250,000, the commission by a majority vote may terminate the fund.
- (4) If the fund is terminated, the remaining money shall continue to be administered and disbursed in accordance with the provision of this chapter until exhausted, at which time the fund shall cease to exist.
- (5)
 - (a) If the fund runs a deficit during any calendar year, the state is responsible for the deficit.
 - (b) In the calendar year following a deficit year, the commission shall increase the assessment required by Subsection (1) by an amount at least equal to the deficit of the previous year, which combined amount becomes the base assessment until another deficit year occurs.
- (6) In a calendar year in which the fund runs a deficit, or is projected to run a deficit, the commission shall request a supplemental appropriation to pay for the deficit from the Legislature in the following general session.
- (7) The state shall pay any or all of the reasonable and necessary money for the deficit into the fund.

Amended by Chapter 193, 2024 General Session

78B-22-704 Application and qualification for fund money.

- (1) A participating county may apply to the office for benefits from the fund if that county has incurred, or reasonably anticipates incurring, expenses for indigent defense services provided to an indigent individual for an offense involving aggravated murder.
- (2) An application may not be made nor benefits provided from the fund for a case filed before September 1, 1998.
- (3) If the application of a participating county is approved by the office, the office shall negotiate, enter into, and administer a contract for the cost of indigent defense services with an attorney or entity appointed to represent the indigent individual.
- (4) A nonparticipating county is responsible for paying for indigent defense services in the nonparticipating county and is not eligible for any legislative relief.

Amended by Chapter 193, 2024 General Session

Part 8

Child Welfare Parental Representation Program

78B-22-801 Definitions.

As used in this part:

- (1) "Contracted parental representation attorney" means an attorney who represents an indigent individual who is a parent in a child welfare case under a contract with the office or a contributing county.
- (2) "Contributing county" means a county that complies with this part for participation in the fund described in Section 78B-22-804.
- (3) "Fund" means the Child Welfare Parental Representation Fund created in Section 78B-22-804.
- (4) "Program" means the Child Welfare Parental Representation Program created in Section 78B-22-802.

Amended by Chapter 228, 2021 General Session

Amended by Chapter 262, 2021 General Session

Amended by Chapter 262, 2021 General Session, (Coordination Clause)

78B-22-802 Child Welfare Parental Representation Program -- Creation -- Duties -- Annual report -- Budget.

- (1) There is created within the office the Child Welfare Parental Representation Program.
- (2)
 - (a) The office shall:
 - (i) administer and enforce the program in accordance with this part;
 - (ii) manage the operation and budget of the program;
 - (iii) develop and provide educational and training programs for contracted parental representation attorneys; and
 - (iv) provide information and advice to assist a contracted parental representation attorney to comply with the attorney's professional, contractual, and ethical duties.
 - (b) In administering the program, the office shall contract with:
 - (i) a person who is qualified to perform the program duties under this section; and
 - (ii) an attorney, as an independent contractor, in accordance with Section 78B-22-803.
- (3)

- (a) The executive director shall prepare a budget of:
 - (i) the administrative expenses for the program; and
 - (ii) the amount estimated to fund needed contracts and other costs.
- (b) On or before October 1 of each year, the executive director shall report to the governor and the Child Welfare Legislative Oversight Panel regarding the preceding fiscal year on the operations, activities, and goals of the program.

Amended by Chapter 228, 2021 General Session

Amended by Chapter 235, 2021 General Session

78B-22-803 Child welfare parental defense contracts.

- (1)
 - (a) The office may enter into a contract with an attorney to provide indigent defense services for a parent who is the subject of a petition alleging abuse, neglect, or dependency, and requires indigent defense services under Section 80-3-104.
 - (b) The office shall make payment for the representation, costs, and expenses of a contracted parental representation attorney from the fund in accordance with Section 78B-22-804.
- (2)
 - (a) Except as provided in Subsection (2)(b), a contracted parental representation attorney shall:
 - (i) complete a basic training course provided by the office;
 - (ii) provide parental representation services consistent with the commission's core principles described in Section 78B-22-404;
 - (iii) have experience in child welfare cases; and
 - (iv) participate each calendar year in continuing legal education courses providing no fewer than eight hours of instruction in child welfare law.
 - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may, by rule, exempt from the requirements of Subsection (2)(a) an attorney who has equivalent training or adequate experience.

Amended by Chapter 228, 2021 General Session

Amended by Chapter 262, 2021 General Session

78B-22-804 Child Welfare Parental Representation Fund -- Contracts for coverage by the fund.

- (1) There is created an expendable special revenue fund known as the "Child Welfare Parental Representation Fund."
- (2) Subject to availability, the office may make distributions from the fund for the following purposes:
 - (a) to pay for indigent defense resources for contracted parental representation attorneys;
 - (b) for administrative costs of the program; and
 - (c) for reasonable expenses directly related to the functioning of the program, including training and travel expenses.
- (3) The fund consists of:
 - (a) federal funds received by the state as partial reimbursement for amounts expended by the Utah Indigent Defense Commission to pay for parental representation;
 - (b) appropriations made to the fund by the Legislature;
 - (c) interest and earnings from the investment of fund money;
 - (d) proceeds deposited by contributing counties under this section; and

- (e) private contributions to the fund.
- (4) The state treasurer shall invest the money in the fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act.
- (5)
 - (a) If the office anticipates a deficit in the fund during a fiscal year:
 - (i) the commission may request an appropriation from the Legislature; and
 - (ii) the Legislature may fund the anticipated deficit through appropriation.
 - (b) If the anticipated deficit is not funded by the Legislature under Subsection (5)(a), the office may request an interim assessment from contributing counties as described in Subsection (6) to fund the anticipated deficit.
- (6)
 - (a) A county legislative body and the office may annually enter into a contract for the office to provide indigent defense services for a parent in a child welfare case in the county out of the fund.
 - (b) A contract described in Subsection (6)(a) shall:
 - (i) require the contributing county described in Subsection (6)(a) to pay into the fund an amount defined by a formula established by the commission; and
 - (ii) provide for revocation of the contract for the contributing county's failure to pay the assessment described in Subsection (5) on the due date established by the commission.
- (7) After the first year of operation of the fund, a contributing county that enters into a contract under Subsection (6) to initiate or reestablish participation in the fund is required to make an equity payment in the amount determined by the commission, in addition to the assessment described in Subsection (5).
- (8) A contributing county that withdraws from participation in the fund, or whose participation in the fund is revoked as described in Subsection (6) for failure to pay the contributing county's assessment when due, shall forfeit any right to any previously paid assessment by the contributing county or coverage from the fund.

Amended by Chapter 438, 2023 General Session

78B-22-805 Interdisciplinary Parental Representation Pilot Program.

- (1) As used in this section:
 - (a) "Parental representation liaison" means an individual who has a bachelor's or graduate degree in social work, sociology, psychology, human services, or a closely related field.
 - (b) "Program" means the Interdisciplinary Parental Representation Pilot Program created in this section.
- (2)
 - (a) There is created within the commission the Interdisciplinary Parental Representation Pilot Program.
 - (b) The purpose of the program is to enhance the legal representation of a parent in a child welfare case by including a parental representation liaison as a member of the parent's interdisciplinary legal team.
- (3)
 - (a) A county may submit a proposal to the commission for a grant to develop a parental representation liaison position to provide services to parents involved in a child welfare case in the county.
 - (b) A proposal described in Subsection (3)(a) shall include details regarding:

- (i) how the county plans to use the grant award to fulfill the purpose described in Subsection (2);
 - (ii) any plan to use funding sources in addition to a grant awarded under this section for the proposal; and
 - (iii) other information the commission determines necessary to evaluate the proposal for a grant award under this section.
- (c) In evaluating a proposal for a grant award under this section, the commission shall consider:
- (i) the extent to which the proposal will fulfill the purpose described in Subsection (2);
 - (ii) the cost of the proposal;
 - (iii) the extent to which other funding sources identified in the proposal are likely to benefit the proposal;
 - (iv) the sustainability of the proposal;
 - (v) the need for parental representation liaison engagement in child welfare cases in the county that submitted the proposal; and
 - (vi) whether the proposal will support improvements in indigent defense services in accordance with the commission core principles described in Section 78B-22-404.
- (4) Before October 1, 2023, the commission shall provide a written report to the Health and Human Services Interim Committee regarding the program that includes information on:
- (a) the number of grants awarded under the program; and
 - (b) whether the program had any impact on child welfare case outcomes.

Amended by Chapter 438, 2023 General Session

Part 9

Indigent Appellate Defense Division

78B-22-901 Definitions.

As used in this part:

- (1)
- (a) "Appellate defense services" means the representation of an indigent individual:
 - (i) described in Subsection 78B-22-201(1)(d) or who is party to an appeal under Section 77-18a-1;
 - (ii) in an action or on appeal for postconviction relief under Chapter 9, Postconviction Remedies Act; or
 - (iii) in an appeal of right from an action for the termination or restoration of parental rights under Chapter 6, Part 1, Utah Adoption Act, Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, or Title 80, Chapter 4, Termination and Restoration of Parental Rights.
 - (b) "Appellate defense services" does not include the representation of an indigent individual:
 - (i) facing an appeal in a case where the indigent individual was prosecuted for aggravated murder; or
 - (ii) in an action or appeal for postconviction relief under Chapter 9, Postconviction Remedies Act, if the indigent individual has been sentenced to death.
- (2) "Division" means the Indigent Appellate Defense Division created in Section 78B-22-902.

Amended by Chapter 229, 2023 General Session

78B-22-902 Indigent Appellate Defense Division.

There is created the Indigent Appellate Defense Division within the Office of Indigent Defense Services.

Enacted by Chapter 371, 2020 General Session

78B-22-903 Powers and duties of the division.

- (1) The division shall:
 - (a) provide appellate defense services:
 - (i) for an appeal under Section 77-18a-1, in counties of the third, fourth, fifth, and sixth class;
 - (ii) for an action or an appeal for postconviction relief under Chapter 9, Postconviction Remedies Act, if the court appoints the division to represent the indigent individual; and
 - (iii) for an appeal of right from an action for the termination or restoration of parental rights under Chapter 6, Part 1, Utah Adoption Act, Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, or Title 80, Chapter 4, Termination and Restoration of Parental Rights; and
 - (b) provide appellate defense services in accordance with the core principles adopted by the commission under Section 78B-22-404 and any other state and federal standards for appellate defense services.
- (2) Upon consultation with the executive director and the commission, the division shall:
 - (a) adopt a budget for the division;
 - (b) adopt and publish on the commission's website:
 - (i) appellate performance standards;
 - (ii) case weighting standards; and
 - (iii) any other relevant measures or information to assist with appellate defense services; and
 - (c) if requested by the commission, provide a report to the commission on:
 - (i) the provision of appellate defense services by the division;
 - (ii) the caseloads of appellate attorneys; and
 - (iii) any other information relevant to appellate defense services in the state.
- (3) If the division provides appellate defense services to an indigent individual in an indigent defense system, the division shall provide notice to the district court and the indigent defense system that the division intends to be appointed as counsel for the indigent individual.
- (4) The office shall assist with providing training and continual legal education on appellate defense to indigent defense service providers in counties of the third, fourth, fifth, and sixth class.

Amended by Chapter 229, 2023 General Session

78B-22-904 Chief appellate officer -- Qualifications -- Staff -- Duties.

- (1)
 - (a) After consulting with the commission, the executive director shall appoint a chief appellate officer.
 - (b) When appointing the chief appellate officer, the executive director shall give preference to an individual with experience in adult criminal appellate defense representation.
- (2) The chief appellate officer shall be an active member of the Utah State Bar with an appropriate background and experience to serve as the chief appellate officer.
- (3) The chief appellate officer shall carry out the duties of the division described in Section 78B-22-903.
- (4) The chief appellate officer shall:

- (a) provide appellate defense services in a county of the third, fourth, fifth, or sixth class;
 - (b) hire staff as necessary to carry out the duties of the division described in Section 78B-22-903; and
 - (c) perform all other duties that are necessary for the division to carry out the division's statutory duties.
- (5) The chief appellate officer may provide appellate defense services in an action or an appeal for postconviction relief under Title 78B, Chapter 9, Postconviction Remedies Act, if the court appoints the division to represent the indigent individual.

Amended by Chapter 295, 2022 General Session

Part 10 Indigency Verification

78B-22-1001 Verification of indigency -- Pilot program.

- (1) Beginning on July 1, 2022, and ending on June 30, 2025, an indigent defense system in Cache County, Davis County, Duchesne County, and San Juan County shall conduct a pilot program to verify the indigency of individuals who were provided indigent defense services by the indigent defense system, except as provided in Subsection (5).
- (2) Under the pilot program described in Subsection (1), the indigent defense system shall review and verify financial information in a statistically significant sample of cases for each calendar year where, except as provided in Subsection (5):
 - (a) an individual was found to be indigent by a court; and
 - (b) the indigent defense system provided indigent defense services to the individual.
- (3) To verify financial information under Subsection (2), the indigent defense system may require an individual to provide financial documentation or proof demonstrating that the individual qualifies as indigent under Section 78B-22-202.
- (4) An indigent defense system described in Subsection (1) shall report to the Judiciary Interim Committee and the Law Enforcement and Criminal Justice Interim Committee, concerning the results of the pilot program described in this section, on or before November 1 of each year of the three-year pilot program.
- (5) This section does not apply to a minor, who is appointed an indigent defense service provider, or the minor's parent or legal guardian.

Enacted by Chapter 4, 2021 Special Session 2

78B-22-1002 Recovery of costs for indigent defense services.

- (1) Except as provided in Subsection (2), a court shall order an individual to pay the indigent defense system for the cost of indigent defense services in accordance with Subsection 76-3-201(4)(d) and Section 77-32b-104 if:
 - (a) the individual was provided indigent defense services by the indigent defense system; and
 - (b) the indigent defense system provides financial documentation or proof to the court that demonstrates that the individual is not indigent under Section 78B-22-202.
- (2) This section does not apply to a minor, who is appointed an indigent defense service provider, or the minor's parent or legal guardian.

Amended by Chapter 497, 2023 General Session