

**INDIGENT DEFENSE FUND AMENDMENTS**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Leonard M. Blackham**

AN ACT RELATING TO UTAH CODE OF CRIMINAL PROCEDURE; CREATING AN INTERIM BOARD TO MANAGE FUND MONIES UNTIL A PERMANENT BOARD IS CONSTITUTED; AMENDING DATES FOR APPLICATIONS FOR INDIGENT FELONY AND CAPITAL FUND MONIES AND EFFECTIVE DATES; AND MODIFYING PROVISIONS RELATED TO THE FUNDING OF THE FUNDS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**77-32-602**, as enacted by Chapter 354, Laws of Utah 1997

**77-32-603**, as enacted by Chapter 354, Laws of Utah 1997

**77-32-604**, as enacted by Chapter 354, Laws of Utah 1997

**77-32-702**, as enacted by Chapter 354, Laws of Utah 1997

**77-32-703**, as enacted by Chapter 354, Laws of Utah 1997

**77-32-704**, as enacted by Chapter 354, Laws of Utah 1997

ENACTS:

**77-32-401.5**, Utah Code Annotated 1953

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

Section 1. Section **77-32-401.5** is enacted to read:

**77-32-401.5. Interim board -- Members -- Administrative support -- Duties.**

(1) Until the Indigent Defense Funds Board authorized by Section 77-32-401 is constituted after achieving the number of participating counties required by Sections 77-32-604 and 77-32-704, an interim board may be created within the Division of Finance composed of the following three members:

(a) a county commissioner from a county participating in the Indigent Inmate Trust Fund pursuant to Section 77-32-502 appointed by the Utah Association of Counties;

(b) a county attorney from a county participating in the Indigent Inmate Trust Fund

pursuant to Section 77-32-502 appointed by the Utah Association of Counties; and

(c) a representative appointed by the Administrative Office of the Courts.

(2) The Division of Finance shall provide administrative support to the interim board.

(3) (a) Members shall serve until the Indigent Defense Funds Board is constituted.

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

(4) (a) Compensation for members shall be the same as provided in Subsection 77-32-401(6).

(b) Per diem and expenses for board members shall be paid from the Indigent Inmate Trust Fund in Section 77-32-502.

(5) Until the Indigent Defense Funds Board is constituted, the interim board shall be authorized to carry out any responsibility provided to the Indigent Defense Funds Board in statute as it relates to Chapter 77, Part 5, Indigent Inmates.

(6) The action by two members present shall constitute the action of the board.

Section 2. Section **77-32-602** is amended to read:

**77-32-602. County participation.**

(1) (a) Any county may participate in the fund subject to the provisions of this chapter. Any county that chooses not to participate, or is not current in its contributions, is ineligible to receive money from the fund.

(b) The board may revoke a county's participation in the fund if the county fails to pay its 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 77-32-603; and

(b) submit a certified copy of that resolution together with an application to the board.

(3) By January [†] 15 of each year, a participating county shall contribute to the fund an amount computed in accordance with Section 77-32-603.

(4) Any participating county may withdraw from participation in the fund upon:

- (a) adoption by its legislative body of a resolution to withdraw; and
- (b) notice to the board by January 1 of the year prior to withdrawal.

(5) A county withdrawing from participation in the fund, or whose participation in the fund has been revoked for failure to pay its assessments when due, shall forfeit the right to:

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

Section 3. Section **77-32-603** is amended to read:

**77-32-603. County and state obligations.**

(1) (a) [Each] Except as provided in Subsection (1)(b), each participating county shall pay into the fund annually an amount [equal to .00005 per dollar of taxable value in its county until] calculated by multiplying the average of the percent of its population to the total population of all participating counties and of the percent its taxable value of the locally and centrally assessed property located with 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 board [determines the fund is] to be sufficient [and] such that it is unlikely that a deficit will occur in the fund in any calendar year.

(b) The fund minimum shall be equal to or greater than 50 cents per person of all counties participating.

~~[(b)]~~ (c) The amount paid by the participating county pursuant to Subsection (1)~~[(a)]~~ shall be the total county obligation for payment of costs pursuant to Section 77-32-601.

(2) (a) After the first year of operation of the fund, any county that elects to initiate participation in the fund, or reestablish participation in the fund after participation was terminated, shall be required to make an equity payment in addition to the assessment provided in Subsection (1).

(b) The equity payment shall be determined by the board 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 board by a majority vote may terminate the fund.

(4) If the fund is terminated, all remaining funds 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 board 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 any calendar year in which the fund runs a deficit, or is projected to run a deficit, the board shall request a supplemental appropriation to pay for the deficit from the Legislature in the following general session. The state shall pay any or all of the reasonable and necessary monies for the deficit into the Indigent Capital Defense Trust Fund.

Section 4. Section **77-32-604** is amended to read:

**77-32-604. Application and qualification for fund money.**

(1) Any participating county may apply to the board for benefits from the fund if that county has incurred, or reasonably anticipates incurring, expenses in the defense of an indigent for capital offenses in violation of state law arising out of a single criminal episode.

(2) No application shall be made nor benefits provided from the fund for cases filed before September 1, [~~1997~~] 1998.

(3) If the application of a participating county is approved by the board, the board shall negotiate, enter into, and administer a contract with counsel for the indigent and costs incurred for the defense of that indigent, including fees for counsel and reimbursement for defense costs incurred by defense counsel.

(4) Nonparticipating counties are responsible for paying indigent costs in their county and shall not be eligible for any legislative relief. However, nonparticipating counties may provide for payment of indigent costs through an increase in the county tax levy as provided in Section 77-32-307.

(5) This part may not become effective unless the board has received resolutions before August 1, ~~[1997]~~ 1998, from at least 15 counties adopted as described in Subsection 77-32-602(2).

Section 5. Section **77-32-702** is amended to read:

**77-32-702. County participation.**

(1) (a) Any county may participate in the fund subject to the provisions of this chapter. Any county that chooses not to participate, or is not current in its contributions, is ineligible to receive money from the fund.

(b) The board may revoke a county's participation in the fund if the county fails to pay its 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 77-32-703; and

(b) submit a certified copy of that resolution together with an application to the board.

(3) By January ~~[†]~~ 15 of each year, a participating county shall contribute to the fund an amount computed in accordance with Section 77-32-703.

(4) Any participating county may withdraw from participation in the fund upon:

(a) adoption by its legislative body of a resolution to withdraw; and

(b) notice to the board by January 1 of the year prior to withdrawal.

(5) A county withdrawing from participation in the fund, or whose participation in the fund has been revoked for failure to pay its assessments when due, shall forfeit the right to:

(a) any previously paid assessment;

(b) relief from its obligation to pay its assessment during the period of its participation in the fund; and

(c) any benefit from the fund, including reimbursement of costs which accrued after the last

day of the period for which the county has paid its assessment.

(6) This part may not become effective unless the board has received resolutions before August 1, [1997] 1998, from at least 15 counties adopted as described in Subsection (2).

Section 6. Section **77-32-703** is amended to read:

**77-32-703. Computing participating county assessments.**

(1) [~~Each participating county shall pay into the fund annually an amount equal to .000025 per dollar of taxable value in its county until the board determines the fund is sufficient and it is unlikely that a deficit will occur in the fund in any calendar year.~~] The board shall determine the amount annually each county shall pay into the fund.

(2) (a) After the first year of operation of the fund, any county that elects to initiate participation in the fund, or reestablish participation in the fund after participation was terminated, shall be required to make an equity payment, in addition to the assessment provided in Subsection (1).

(b) The equity payment shall be determined by the board 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) (a) If the fund runs a deficit during any calendar year, the participating counties shall pay an amount equal to the deficit in the fund by the end of the first quarter of the following year.

(b) In the calendar year following a deficit year, the board 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.

(4) After the initial year of the fund, if the participating counties are unable to replenish the fund annually to at least \$200,000, the board by a majority vote may terminate the fund.

(5) If the fund is terminated, all remaining funds 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.

Section 7. Section **77-32-704** is amended to read:

**77-32-704. Application and qualification for fund money.**

(1) Any participating county may apply to the board for benefits from the fund if that county has incurred, or reasonably anticipates incurring, expenses in excess of \$20,000 in the defense of an indigent for felony offenses in violation of state law arising out of a single criminal episode.

(2) No application shall be made nor benefits provided from the fund for cases filed before September 1, ~~1997~~ 1998.

(3) (a) If the application of a participating county is approved by the board, the board shall negotiate, enter into, and administer a contract with counsel for the indigent and costs incurred for the defense of that indigent, including fees for counsel and reimbursement for defense costs incurred by defense counsel.

(b) Fees for counsel and reimbursement for defense costs of an indigent are as follows:

(i) \$20,000 or more shall be paid from the fund; and

(ii) up to \$20,000 shall be paid by the participating county.

(4) Nonparticipating counties are responsible for paying indigent costs in their county and shall not be eligible for any legislative relief. However, nonparticipating counties may provide for payment of indigent costs through an increase in the county tax levy as provided in Section 77-32-307.

(5) This part may not become effective unless the board has received resolutions before August 1, ~~1997~~ 1998, from at least 15 counties adopted as described in Subsection 77-32-702(2).