

**Representative Daniel McCay** proposes the following substitute bill:

**INDIGENT DEFENSE**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: Daniel McCay

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**LONG TITLE**

**General Description:**

This bill creates the Utah Indigent Defense Commission.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ creates the Utah Indigent Defense Commission and describes the commission's membership;
- ▶ gives the commission authority to collect data from local indigent criminal defense authorities for the purpose of studying the provision of indigent criminal defense services statewide;
- ▶ requires the commission to study the indigent criminal defense system statewide and report to the Legislature on its findings, including recommendations to improve the system;
- ▶ authorizes the commission to assist local jurisdictions to meet minimum standards of effective representation by:
  - establishing advisory caseload principles and guidelines for defense services providers; and
  - 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[~~(8)~~](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 malfesance, 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 the ensure 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 (1) 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) ~~Ĥ→ [H] Counsel [H] [Except as provided in Subsection (3), counsel]~~ ←Ĥ appointed  
 556a by the court  
 557 may not provide representation as court-appointed counsel for a parent or legal guardian in any  
 558 action initiated by, or in any proceeding to modify court orders in a proceeding initiated by, a  
 559 private party ~~Ĥ→~~ , except that in a private action to terminate parental rights the court may  
 559a appoint counsel to represent an indigent parent if it finds that the failure to appoint counsel  
 559b will result in a deprivation of due process .

560 ~~[3) Unless the court finds there is a likelihood that the failure to appoint counsel for an~~  
 561 ~~indigent private party may result in a deprivation of due process, counsel appointed by the~~  
 562 ~~court may not provide representation as court-appointed counsel for a parent or legal guardian~~  
 563 ~~in a termination of parental rights action initiated by a private party.]~~ ←Ĥ

564 ~~Ĥ→ [H] (3) [H] [(4)]~~ ←Ĥ If the county responsible to provide legal counsel for an  
 564a indigent under  
 565 Subsection (1)(g) has arranged by contract to provide services, the court shall appoint the  
 566 contracting attorney as legal counsel to represent that indigent.

567 ~~Ĥ→ [H] (4) [H] [(5)]~~ ←Ĥ The court may order a parent or legal guardian for whom counsel  
 567a is appointed,  
 568 and the parents or legal guardian of any minor for whom counsel is appointed, to reimburse the  
 569 county for the cost of appointed counsel.

570 ~~Ĥ→ [H] (5) [H] [(6)]~~ ←Ĥ The state, or an agency of the state, may not be ordered to  
 570a reimburse the  
 571 county for expenses incurred under Subsection (1)(g).

#### 572 Section 17. **Appropriation.**

573 (1) Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act,  
 574 the following sums of money are appropriated for the fiscal year beginning July 1, 2015, and  
 575 ending June 30, 2016. These are additions to amounts previously appropriated for fiscal year  
 576 2016.

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

580 To Fund and Account Transfers - General Fund Restricted -

581	<u>Indigent Defense Resources Account</u>	
582	<u>From General Fund, One-time</u>	<u>\$1,500,000</u>
583	<u>Schedule of Programs:</u>	

584                           General Fund Restricted - Indigent Defense

585                           Resources Account                           \$1,500,000

586                   (b) Under the terms and conditions of Utah Code Title 63J, Chapter 1, Budgetary

587 Procedures Act, the Legislature appropriates the following sums of money from the funds or

588 fund accounts indicated for the use and support of the government of the State of Utah.

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

590                   Utah Indigent Defense Commission

591                   From General Fund Restricted - Indigent Defense

592                   Resources Account                           \$1,500,000

593                   Schedule of Programs:

594                           Administration                           \$1,500,000

595                   (2) Under the terms and conditions of Utah Code Title 63J, Chapter 1, Budgetary

596 Procedures Act, the following sums of money are appropriated for the fiscal year beginning

597 July 1, 2016 and ending June 30, 2017.

598                   (a) Restricted Fund and Account Transfers. The Legislature authorizes the State

599 Division of Finance to transfer the following amounts among the following funds or accounts

600 as indicated. Expenditures and outlays from the recipient funds must be authorized elsewhere

601 in an appropriations act.

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

603                   Defense Resources Account

604                   From General Fund                           \$500,000

605                   Schedule of Programs:

606                           General Fund Restricted - Indigent Defense

607                           Resources Account                           \$500,000

608                   (b) Under the terms and conditions of Utah Code Title 63J, Chapter 1, Budgetary

609 Procedures Act, the Legislature appropriates the following sums of money from the funds or

610 fund accounts indicated for the use and support of the government of the State of Utah.

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

612                   Utah Indigent Defense Commission

613                   From General Fund Restricted - Indigent Defense

614                   Resources Account                           \$500,000

615                    Schedule of Programs:

616                    Administration

\$500,000