

**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 for the fiscal year beginning July 1, 2015, and ending June 30,

36 2016:

- 37       ▶ to the Commission on Criminal and Juvenile Justice -- Utah Indigent Defense
- 38 Commission, as a one-time appropriation:
- 39           • from the General Fund, \$3,000,000.

40 **Other Special Clauses:**

41       None

42 **Utah Code Sections Affected:**

43 AMENDS:

- 44       **63J-1-602.5**, as last amended by Laws of Utah 2015, Chapter 137
- 45       **77-32-201**, as last amended by Laws of Utah 2012, Chapter 180
- 46       **77-32-301**, as last amended by Laws of Utah 2015, Chapter 258
- 47       **77-32-302**, as last amended by Laws of Utah 2012, Chapter 180
- 48       **77-32-306**, as last amended by Laws of Utah 2012, Chapter 180
- 49       **78A-6-1111**, as last amended by Laws of Utah 2015, Chapter 338

50 ENACTS:

- 51       **77-32-801**, Utah Code Annotated 1953
- 52       **77-32-802**, Utah Code Annotated 1953
- 53       **77-32-803**, Utah Code Annotated 1953
- 54       **77-32-804**, Utah Code Annotated 1953
- 55       **77-32-805**, Utah Code Annotated 1953
- 56       **77-32-806**, Utah Code Annotated 1953

- 57 [77-32-807](#), Utah Code Annotated 1953
  - 58 [77-32-808](#), Utah Code Annotated 1953
  - 59 [77-32-809](#), Utah Code Annotated 1953
  - 60 [77-32-810](#), Utah Code Annotated 1953
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62 *Be it enacted by the Legislature of the state of Utah:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

85 (13) Revenue for golf user fees at the Wasatch Mountain State Park, Palisades State  
86 Park, Jordan River State Park, and Green River State Park, as provided under Section

87 [79-4-403](#).

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

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

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

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

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

96 **77-32-201. Definitions.**

97 For the purposes of this chapter:

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

99 (2) "Commission" means the Utah Indigent Defense Commission created in Section  
100 77-32-801.

101 ~~[(2)]~~ (3) "Compelling reason" shall include one or more of the following circumstances  
102 relating to the contracting attorney:

103 (a) a conflict of interest;

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

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

107 ~~[(3)]~~ (4) "Defense resources" means a competent investigator, expert witness, scientific  
108 or medical testing, or other appropriate means necessary, for an effective defense of an  
109 indigent, but does not include legal counsel.

110 ~~[(4)]~~ (5) "Defense services provider" means a legal aid association, legal defender's  
111 office, regional legal defense association, law firm, attorney, or attorneys contracting with a  
112 county or municipality to provide legal defense and includes any combination of counties or  
113 municipalities to provide regional ~~[legal defense]~~ indigent criminal defense services.

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

117 ~~[(5)]~~ (7) "Indigent" means a person qualifying as an indigent under indigency standards  
118 established in Part 3, Counsel for Indigents.

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

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

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

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

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

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

130           ~~[(6)]~~ (10) "Legal aid association" means a nonprofit defense association or society that  
131 provides legal defense for indigent defendants.

132           ~~[(7)]~~ (11) "Legal defender's office" means a division of county government created and  
133 authorized by the county legislative body to provide legal representation in criminal matters to  
134 indigent defendants.

135           ~~[(8)]~~ (12) "Legal defense" means to:

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

138           (b) afford timely representation by defense counsel;

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

140           (d) assure undivided loyalty of defense counsel to the client;

141           (e) provide a first appeal of right; and

142           (f) prosecute other remedies before or after a conviction, considered by defense counsel  
143 to be in the interest of justice except for other and subsequent discretionary appeals or  
144 discretionary writ proceedings.

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

149           ~~[(9)]~~ (14) "Participating county" means a county ~~[which]~~ that has complied with the

150 provisions of this chapter for participation in the Indigent [~~Capital~~] Aggravated Murder  
151 Defense Trust Fund as provided in Sections 77-32-602 and 77-32-603 or the Indigent Felony  
152 Defense Trust Fund as provided in Sections 77-32-702 and 77-32-703.

153 [~~(10)~~] (15) "Regional legal defense" means a defense services provider which provides  
154 legal defense to any combination of counties or municipalities through an interlocal  
155 cooperation agreement pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, and  
156 Subsection 77-32-306(3).

157 [~~(11)~~] (16) "Serious offense" means a felony or capital felony.

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

159 (a) the establishment of a statewide indigent criminal defense data collection system;

160 (b) defense resources; and

161 (c) critical need defense services providers.

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

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

168 **77-32-301. Minimum standards for defense of an indigent.**

169 (1) Each county, city, and town shall provide for the legal defense of an indigent in  
170 criminal cases in the courts and various administrative bodies of the state in accordance with  
171 legal defense standards as defined in Subsection 77-32-201[~~(8)~~](12).

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

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

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

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

180 (c) If a county or municipality contracts to provide all legal defense elements as a

181 single package, a defendant may not receive funding for defense resources unless represented  
182 by publicly funded counsel or as provided in Subsection 77-32-303(2).

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

184 **77-32-302. Assignment of counsel on request of indigent or order of court.**

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

189 (a) the indigent requests legal defense; or

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

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

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

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

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

206 (i) set the matter for a hearing;

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

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

211 (e) The indigent's preference for other counsel or defense resources may not be

212 considered a compelling reason justifying the appointment of a noncontracting defense services  
213 provider.

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

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

216 **77-32-306. County or municipal legislative body to provide legal defense.**

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

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

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

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

223 (3) A county legal defender's office may, through the county legislative body, contract  
224 with other counties and municipalities [~~within a judicial district~~] to provide the legal services  
225 as prescribed.

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

231 (a) the creation of or contract with a private defense services provider, as defined in  
232 Subsection [77-32-201](#)~~(4)~~[\(5\)](#);

233 (b) multiple counties or municipalities to contract with a county legal defender's office,  
234 as defined in Subsection [77-32-201](#)~~(7)~~[\(11\)](#); or

235 (c) the creation of an interlocal entity under the provisions of Section [11-13-203](#).

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



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

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

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

247 **77-32-801. Indigent Defense Commission creation -- Purpose.**

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

250 (2) The purpose of the commission is to assist the state in meeting the state's  
251 obligations for the provision of indigent criminal defense services, consistent with the United  
252 States Constitution, the Utah Constitution, and this chapter.

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

254 **77-32-802. Commission members -- Membership qualifications -- Terms --**  
255 **Vacancy -- Administrative support.**

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

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

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

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

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

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

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

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

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

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

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

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

277 (i) the director of the Utah Indigent Defense Commission appointed in Section

278 [77-32-803](#); and

279 (ii) a representative from the Administrative Office of the Courts appointed by the  
280 Judicial Council.

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

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

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

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

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

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

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

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

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

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

302 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and  
303 [63A-3-107](#).

304 (10) Six members constitute a quorum, however, the affirmative vote of at least six

305 members of the commission is required for official action of the commission.

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

307 **77-32-803. Director -- Qualifications -- Staff.**

308 (1) The commission shall appoint a director to carry out the following duties:

309 (a) establish an annual budget;

310 (b) assist the commission in developing and regularly reviewing advisory caseload  
311 guidelines and procedures, including recommending to the commission suggested changes to  
312 the criteria for an indigent defendant's eligibility to receive criminal defense services under this  
313 chapter; and

314 (c) perform all other duties as assigned.

315 (2) The director shall be a full-time licensed attorney with appropriate background and  
316 experience to serve as the full-time director.

317 (3) The director shall hire staff as necessary to carry out the duties of the commission,  
318 including at least one individual with data collection and analysis skills to carry out duties as  
319 outlined in Subsection [77-32-804\(1\)\(a\)](#).

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

321 **77-32-804. Duties of the commission -- Annual report.**

322 (1) The commission shall:

323 (a) develop and adopt guiding principles for the assessment and oversight of criminal  
324 defense systems with the state that, at a minimum, address the following:

325 (i) Indigent defense service providers shall have independent judgment without fear of  
326 retaliation.

327 (ii) Service providers shall provide conflict-free representation, including the need for a  
328 separate contract for conflict counsel.

329 (iii) The state may not interfere with the service provider's access to clients and the  
330 service provider is free to defend the client based on the service provider's own independent  
331 judgment.

332 (iv) Accused persons shall be provided counsel at all critical stages of the criminal  
333 process.

334 (v) Counsel shall be free to provide meaningful, adversarial testing of the evidence,  
335 including:

- 336 (A) access to defense resources without judicial or state interference; and  
337 (B) workloads that allow for time to meet with clients, investigate cases, and file  
338 appropriate motions.
- 339 (vi) Service providers shall be fairly compensated and incentivized to represent clients  
340 fully through:
- 341 (A) compensation, that shall be independent from prosecutors' compensation;  
342 (B) incentives that are structured to represent criminal defendants well; and  
343 (C) separate contracts that are offered to the ensure right to appeal.
- 344 (vii) The state may maintain oversight to collect data, audit attorney performance,  
345 establish standards, and enforce the principles listed above;
- 346 (b) identify and collect data necessary for the commission to:
- 347 (i) review compliance by criminal defense systems of minimum principles for effective  
348 representation;
- 349 (ii) establish procedures for the collection and analysis of the data; and  
350 (iii) provide reports regarding the operation of the commission and the provision of  
351 indigent criminal defense services by each indigent criminal defense system;
- 352 (c) develop and oversee the establishment of advisory caseload principles and  
353 guidelines to aid indigent criminal defense systems in delivering effective representation in the  
354 state consistent with the safeguards of the United States Constitution, the Utah Constitution,  
355 and this chapter;
- 356 (d) review all contracts and interlocal agreements in the state for the provision of  
357 indigent criminal defense services and provide assistance and recommendations regarding  
358 compliance with minimum principles for effective representation;
- 359 (e) investigate, audit, and review the provision of indigent criminal defense services for  
360 compliance with minimum principles;
- 361 (f) establish procedures for the receipt, acceptance, and resolution of complaints  
362 regarding the provision of indigent criminal defense services;
- 363 (g) establish procedures that enable indigent criminal defense systems to apply for state  
364 funding as provided under Section [77-32-805](#);
- 365 (h) establish procedures for annually reporting to the governor, Legislature, judicial  
366 council, and indigent criminal defense systems throughout the state that include reporting the

367 following:

368 (i) the operations of the commission;

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

370 (iii) each indigent criminal defense system's compliance with minimum standards for

371 the provision of indigent criminal defense services for effective representation;

372 (i) award grants to indigent criminal defense systems consistent with metrics

373 established by the commission under this part and appropriations by the state;

374 (j) encourage and aid in the regionalization of indigent criminal defense services within

375 the state for effective representation and for efficiency and cost savings to local systems;

376 (k) submit to legislative, executive, and judicial leadership, from time to time,

377 proposed recommendations for improvement in the provision of indigent criminal defense

378 services to ensure effective representation in the state, consistent with the safeguards of the

379 United States Constitution and the Utah Constitution; and

380 (l) identify and encourage best practices for effective representation to indigent

381 defendants charged with crimes.

382 (2) The commission shall emphasize the importance of indigent criminal defense

383 services provided to defendants, whether charged with a misdemeanor or felony.

384 (3) The commission shall establish procedures for the conduct of the commission's

385 affairs and internal policies necessary to carry out the commission's duties and responsibilities

386 under this part.

387 (4) Commission policies shall be placed in an appropriate manual, made publicly

388 available on a website, and made available to all attorneys and professionals providing indigent

389 criminal defense services, the judicial council, the governor, and the Legislature.

390 (5) The delivery of indigent criminal defense services shall be independent of the

391 judiciary, but the commission shall ensure that judges are permitted and encouraged to

392 contribute information and advice concerning the delivery of indigent criminal defense

393 services.

394 (6) An indigent criminal defense system that is in compliance with minimum principles

395 and procedures may not be required to provide indigent criminal defense services in excess of

396 those principles and procedures.

397 (7) The commission shall submit a report annually to the Judiciary Interim Committee

398 on the commission's efforts to improve the provision of indigent criminal defense services  
399 statewide.

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

401 **77-32-805. Indigent Defense Resources Account -- Administration.**

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

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

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

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

409 (3) The account consists of:

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

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

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

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

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

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

420 (b) grants to indigent criminal defense systems for defense resources; and

421 (c) grants to indigent criminal defense systems for defense services providers.

422 (6) Money allocated to or deposited into the account shall be used:

423 (a) to reimburse participating systems for commission-approved expenditures for the  
424 purposes listed in Subsection (5); and

425 (b) for administrative costs.

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

427 **77-32-806. Indigent criminal defense system participation.**

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

429 body responsible for an indigent criminal defense system shall:

430 (a) adopt a resolution stating the intent to apply for grant funds from the account and  
431 committing that the indigent criminal defense system shall meet minimum principles for  
432 effective representation; and

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

435 (2) The commission may revoke an indigent criminal defense system's grant award if  
436 the system fails to meet minimum principles for effective representation.

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

438 **77-32-807. Application for grant funds.**

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

440 (a) establishment and maintenance of an indigent criminal defense data collection  
441 system;

442 (b) defense resources;

443 (c) matching fund grants for defense services providers; and

444 (d) critical need grants for defense services providers.

445 (2) (a) Matching fund grants, as described in Subsection (1)(c), may be awarded if the  
446 indigent criminal defense system spends an amount greater than the system's baseline budget,  
447 as described in Subsection [77-32-809\(2\)\(a\)](#), for defense services providers.

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

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

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

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

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

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

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

459 (b) the funding for the expenses described in Subsection (3)(a) is necessary for the

460 indigent criminal defense system to meet minimum standards for effective representation; and  
461 (c) increasing the system's local share for indigent criminal defense providers would  
462 constitute an undue burden on the indigent criminal defense system.

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

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

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

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

472 **77-32-808. Annual report, budget, and listing of expenditures -- Availability on**  
473 **website.**

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

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

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

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

483 **77-32-809. Investigation, audit, and review of indigent criminal defense services -**  
484 **Cooperation and participation with commission -- Maintenance of local share -- Necessity**  
485 **for excess funding -- Funds received by commission as state funds.**

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

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



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

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

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

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

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

504 **77-32-810. Applicability of GRAMA and Open and Public Meetings Act.**

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

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

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

510 **78A-6-1111. Right to counsel -- Appointment of counsel for indigent -- Costs.**

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

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

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

522 to the provisions of this section.

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

529 (e) In any action initiated by the state or a political subdivision of the state under Part  
530 6, Delinquency and Criminal Actions, or Part 7, Transfer of Jurisdiction, of this chapter, or  
531 against a minor under Section 78A-6-1101, the parents or legal guardian and the minor shall be  
532 informed that the minor has the right to be represented by counsel at every stage of the  
533 proceedings.

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

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

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

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

551 (g) The cost of appointed counsel for a party found to be indigent, including the cost of  
552 counsel and expense of the first appeal, shall be paid by the county in which the trial court

553 proceedings are held. Counties may levy and collect taxes for these purposes.

554 (2) [~~Counsel~~] Except as provided in Subsection (3), counsel appointed by the court  
555 may not provide representation as court-appointed counsel for a parent or legal guardian in any  
556 action initiated by, or in any proceeding to modify court orders in a proceeding initiated by, a  
557 private party.

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

562 [~~3~~] (4) If the county responsible to provide legal counsel for an indigent under  
563 Subsection (1)(g) has arranged by contract to provide services, the court shall appoint the  
564 contracting attorney as legal counsel to represent that indigent.

565 [~~4~~] (5) The court may order a parent or legal guardian for whom counsel is appointed,  
566 and the parents or legal guardian of any minor for whom counsel is appointed, to reimburse the  
567 county for the cost of appointed counsel.

568 [~~5~~] (6) The state, or an agency of the state, may not be ordered to reimburse the  
569 county for expenses incurred under Subsection (1)(g).

570 Section 17. **Appropriation.**

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

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

578 To Fund and Account Transfers - General Fund Restricted -

579 Indigent Defense Resources Account

580 From General Fund, One-time \$3,000,000

581 Schedule of Programs:

582 General Fund Restricted - Indigent Defense

583 Resources Account \$3,000,000



