

SB0155S05 compared with SB0155S04

~~deleted text~~ shows text that was in SB0155S04 but was deleted in SB0155S05.

inserted text shows text that was not in SB0155S04 but was inserted into SB0155S05.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Daniel McCay proposes the following substitute bill:

INDIGENT DEFENSE

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Daniel McCay

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

SB0155S05 compared with SB0155S04

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 and providing recommendations for contract design;
- ▶ establishes a restricted account to provide financial assistance to indigent criminal defense systems;
- ▶ conditions grants received from the account on indigent criminal defense systems maintaining current funding levels for indigent criminal defense services;
- ▶ allows juvenile courts to appoint counsel for an indigent private party in parental termination cases; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

This bill appropriates ~~{ for the fiscal year beginning July 1, 2015, and ending June 30, 2016}~~:

- ▶ to the Commission on Criminal and Juvenile Justice -- Utah Indigent Defense Commission ~~{,}~~ as a one-time appropriation ~~{,}~~
 - from the General Fund, \$1,500,000; and
- ▶ to the Commission on Criminal and Juvenile Justice -- Utah Indigent Defense Commission
 - from the General Fund, ~~{ \$3,000 }~~ \$500,000.

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63J-1-602.5, as last amended by Laws of Utah 2015, Chapter 137

77-32-201, as last amended by Laws of Utah 2012, Chapter 180

77-32-301, as last amended by Laws of Utah 2015, Chapter 258

77-32-302, as last amended by Laws of Utah 2012, Chapter 180

SB0155S05 compared with SB0155S04

77-32-306, as last amended by Laws of Utah 2012, Chapter 180

78A-6-1111, as last amended by Laws of Utah 2015, Chapter 338

ENACTS:

77-32-801, Utah Code Annotated 1953

77-32-802, Utah Code Annotated 1953

77-32-803, Utah Code Annotated 1953

77-32-804, Utah Code Annotated 1953

77-32-805, Utah Code Annotated 1953

77-32-806, Utah Code Annotated 1953

77-32-807, Utah Code Annotated 1953

77-32-808, Utah Code Annotated 1953

77-32-809, Utah Code Annotated 1953

77-32-810, Utah Code Annotated 1953

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

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

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

- (1) Funds collected by the housing of state probationary inmates or state parole inmates, as provided in Subsection 64-13e-104(2).
- (2) Certain forestry and fire control funds utilized by the Division of Forestry, Fire, and State Lands, as provided in Section 65A-8-103.
- (3) The Department of Human Resource Management user training program, as provided in Section 67-19-6.
- (4) Funds for the University of Utah Poison Control Center program, as provided in Section 69-2-5.5.
- (5) The Traffic Noise Abatement Program created in Section 72-6-112.
- (6) Certain funds received by the Office of the State Engineer for well drilling fines or bonds, as provided in Section 73-3-25.
- (7) Certain money appropriated from the Water Resources Conservation and Development Fund, as provided in Section 73-23-2.
- (8) Certain funds appropriated for compensation for special prosecutors, as provided in

SB0155S05 compared with SB0155S04

Section 77-10a-19.

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

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

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

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

(13) Revenue for golf user fees at the Wasatch Mountain State Park, Palisades State Park, Jordan River State Park, and Green River State Park, as provided under Section 79-4-403.

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

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

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

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

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

77-32-201. Definitions.

For the purposes of this chapter:

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

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

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

(a) a conflict of interest;

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

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

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

SB0155S05 compared with SB0155S04

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

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

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

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

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

(b) determined to be indigent under Section 77-32-202.

(9) "Indigent criminal defense system" means:

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

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

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

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

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

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

(b) afford timely representation by defense counsel;

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

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

SB0155S05 compared with SB0155S04

(e) provide a first appeal of right; and

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

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

~~[(9)]~~ (14) "Participating county" means a county ~~[which]~~ that has complied with the provisions of this chapter for participation in the Indigent ~~[Capital]~~ Aggravated Murder Defense Trust Fund as provided in Sections 77-32-602 and 77-32-603 or the Indigent Felony Defense Trust Fund as provided in Sections 77-32-702 and 77-32-703.

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

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

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

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

(b) defense resources; and

(c) critical need defense services providers.

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

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

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

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

SB0155S05 compared with SB0155S04

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

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

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

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

(c) If a county or municipality contracts to provide all legal defense elements as a single package, a defendant may not receive funding for defense resources unless represented by publicly funded counsel or as provided in Subsection 77-32-303(2).

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

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

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

(a) the indigent requests legal defense; or

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

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

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

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

SB0155S05 compared with SB0155S04

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

- (i) set the matter for a hearing;
- (ii) give proper notice of the hearing to the attorney of the responsible county or municipality and county clerk or municipal recorder; and
- (iii) make findings that there is a compelling reason to appoint a noncontracting attorney.

(e) The indigent's preference for other counsel or defense resources may not be considered a compelling reason justifying the appointment of a noncontracting defense services provider.

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

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

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

- (1) The county or municipal legislative body shall either:
 - (a) contract with a defense services provider; or
 - (b) authorize the court to provide the services prescribed by this chapter by assigning a qualified attorney in each case.
- (2) A county may create a county legal defender's office to provide for the legal defense as prescribed by this chapter.
- (3) A county legal defender's office may, through the county legislative body, contract with other counties and municipalities [~~within a judicial district~~] to provide the legal services as prescribed.
- (4) Counties and municipalities are encouraged to enter into interlocal cooperation agreements pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, for the provision of legal defense, including multiple counties and municipalities contracting with either a private defense services provider or with a legal defender's office. An interlocal agreement may provide for:
 - (a) the creation of or contract with a private defense services provider, as defined in Subsection 77-32-201[~~(4)~~](5);
 - (b) multiple counties or municipalities to contract with a county legal defender's office,

SB0155S05 compared with SB0155S04

as defined in Subsection 77-32-201[(7)](11); or

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

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

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

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

Part 8. Utah Indigent Defense Commission

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

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

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

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

77-32-802. Commission members -- Membership qualifications -- Terms --

Vacancy -- Administrative support.

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

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

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

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

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

SB0155S05 compared with SB0155S04

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

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

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

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

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

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

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

(i) the director of the Utah Indigent Defense Commission appointed in Section 77-32-803; and

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

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

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

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

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

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

(7) 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.

(8) The governor shall appoint one of the initial commission members to serve as chair of the commission for a term of one year. At the expiration of that year, or upon the vacancy in the membership of the appointed chair, the commission shall annually elect a chair from the

SB0155S05 compared with SB0155S04

commission's membership to serve a one-year term. A commission member may not serve as chair of the commission for more than three consecutive terms.

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

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

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

(10) Six members constitute a quorum, however, the affirmative vote of at least six members of the commission is required for official action of the commission.

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

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

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

(a) establish an annual budget;

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

(c) perform all other duties as assigned.

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

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

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

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

(1) The commission shall:

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

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

SB0155S05 compared with SB0155S04

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

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

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

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

(A) ~~adequate~~ access to defense resources ~~{ without judicial or state interference }~~; and

(B) workloads that allow for time to meet with clients, investigate cases, and file appropriate motions.

(vi) Service providers shall be fairly compensated and incentivized to represent clients fully through:

(A) compensation, that shall be independent from prosecutors' compensation;

(B) incentives that are structured to represent criminal defendants well; and

(C) separate contracts that are offered to the ensure right to appeal.

(vii) The ~~{state}~~commission may maintain oversight to collect data, audit attorney performance, establish standards, and enforce the principles listed above;

(b) identify and collect data necessary for the commission to:

(i) review compliance by criminal defense systems of minimum principles for effective representation;

(ii) establish procedures for the collection and analysis of the data; and

(iii) provide reports regarding the operation of the commission and the provision of indigent criminal defense services by each indigent criminal defense system;

(c) develop and oversee the establishment of advisory caseload principles and guidelines to aid indigent criminal defense systems in delivering effective representation in the state consistent with the safeguards of the United States Constitution, the Utah Constitution, and this chapter;

(d) review all contracts and interlocal agreements in the state for the provision of indigent criminal defense services and provide assistance and recommendations regarding

SB0155S05 compared with SB0155S04

compliance with minimum principles for effective representation;

(e) investigate, audit, and review the provision of indigent criminal defense services for compliance with minimum principles;

(f) establish procedures for the receipt, acceptance, and resolution of complaints regarding the provision of indigent criminal defense services;

(g) establish procedures that enable indigent criminal defense systems to apply for state funding as provided under Section 77-32-805;

(h) establish procedures for annually reporting to the governor, Legislature, judicial council, and indigent criminal defense systems throughout the state that include reporting the following:

(i) the operations of the commission;

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

(iii) each indigent criminal defense system's compliance with minimum standards for the provision of indigent criminal defense services for effective representation;

(i) award grants to indigent criminal defense systems consistent with metrics established by the commission under this part and appropriations by the state;

(j) encourage and aid in the regionalization of indigent criminal defense services within the state for effective representation and for efficiency and cost savings to local systems;

(k) submit to legislative, executive, and judicial leadership, from time to time, proposed recommendations for improvement in the provision of indigent criminal defense services to ensure effective representation in the state, consistent with the safeguards of the United States Constitution and the Utah Constitution; and

(l) identify and encourage best practices for effective representation to indigent defendants charged with crimes.

(2) The commission shall emphasize the importance of indigent criminal defense services provided to defendants, whether charged with a misdemeanor or felony.

(3) The commission shall establish procedures for the conduct of the commission's affairs and internal policies necessary to carry out the commission's duties and responsibilities under this part.

(4) Commission policies shall be placed in an appropriate manual, made publicly available on a website, and made available to all attorneys and professionals providing indigent

SB0155S05 compared with SB0155S04

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

(5) The delivery of indigent criminal defense services shall be independent of the judiciary, but the commission shall ensure that judges are permitted and encouraged to contribute information and advice concerning the delivery of indigent criminal defense services.

(6) An indigent criminal defense system that is in compliance with minimum principles and procedures may not be required to provide indigent criminal defense services in excess of those principles and procedures.

(7) The commission shall submit a report annually to the Judiciary Interim Committee on the commission's efforts to improve the provision of indigent criminal defense services statewide.

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

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

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

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

(b) Funds in the account shall be nonlapsing.

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

(3) The account consists of:

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

(b) other moneys received by the commission pursuant to Subsection 77-32-809(3);
and

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

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

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

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

SB0155S05 compared with SB0155S04

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

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

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

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

(b) for administrative costs.

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

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

(1) To qualify for grant funds described in Subsection 77-32-805(5), the legislative body responsible for an indigent criminal defense system shall:

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

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

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

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

77-32-807. Application for grant funds.

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

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

(b) defense resources;

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

(d) critical need grants for defense services providers.

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

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

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

SB0155S05 compared with SB0155S04

and

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

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

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

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

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

(b) the funding for the expenses described in Subsection (3)(a) is necessary for the indigent criminal defense system to meet minimum standards for effective representation; and

(c) increasing the system's local share for indigent criminal defense providers would constitute an undue burden on the indigent criminal defense system.

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

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

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

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

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

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

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

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

SB0155S05 compared with SB0155S04

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) (a) In any action in juvenile court initiated by the state, a political subdivision of the state, or a private party, the parents, legal guardian, and the minor, where applicable, shall be

SB0155S05 compared with SB0155S04

informed that they may be represented by counsel at every stage of the proceedings.

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

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

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

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

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

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

SB0155S05 compared with SB0155S04

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

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

(g) The cost of appointed counsel for a party found to be indigent, including the cost of counsel and expense of the first appeal, shall be paid by the county in which the trial court proceedings are held. Counties may levy and collect taxes for these purposes.

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

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

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

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

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

Section 17. **Appropriation.**

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

SB0155S05 compared with SB0155S04

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

To Fund and Account Transfers - General Fund Restricted -

Indigent Defense Resources Account

From General Fund, One-time ~~+\$3,000~~ ~~\$1,000~~ \$500,000

Schedule of Programs:

General Fund Restricted - Indigent Defense

Resources Account ~~+\$3,000~~ ~~\$1,000~~ \$500,000

(b) Under the terms and conditions of Utah Code Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use and support of the government of the State of Utah.

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

Utah Indigent Defense Commission

From General Fund Restricted - Indigent Defense

Resources Account ~~+\$3,000~~ ~~\$1,000~~ \$500,000

Schedule of Programs:

Administration ~~+\$3,000~~ ~~\$1,000~~ \$500,000

(2) Under the terms and conditions of Utah Code Title 63J, Chapter 1, Budgetary Procedures Act, the following sums of money are appropriated for the fiscal year beginning July 1, 2016 and ending June 30, 2017.

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

To Fund and Account Transfers - General Fund Restricted - Indigent

Defense Resources Account

From General Fund ~~+\$3,000~~ \$500,000

Schedule of Programs:

General Fund Restricted - Indigent Defense

Resources Account ~~+\$3,000~~ \$500,000

SB0155S05 compared with SB0155S04

(b) Under the terms and conditions of Utah Code Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use and support of the government of the State of Utah.

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

Utah Indigent Defense Commission

From General Fund Restricted - Indigent Defense

Resources Account

~~(\$3,000)~~ \$500,000

Schedule of Programs:

Administration

~~(\$3,000)~~ \$500,000