

90 [~~criminal~~] defense services.

91 (5) A person who is currently employed ~~§~~→ solely ←~~§~~ as a criminal prosecuting attorney
 91a may not
 92 serve as a member of the commission.

93 [~~(5)~~] (6) Commission members shall hold office until their successors are appointed.

94 [~~(6)~~] (7) The commission may remove a member for incompetence, dereliction of duty,
 95 malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.

96 [~~(7)~~] (8) When a vacancy occurs in the membership for any reason, a replacement shall
 97 be appointed for the remaining unexpired term in the same manner as the original appointment.

98 [~~(8)~~] (9) The governor shall appoint one of the initial commission members to serve as
 99 chair of the commission for a term of one year. At the expiration of that year, or upon the
 100 vacancy in the membership of the appointed chair, the commission shall annually elect a chair
 101 from the commission's membership to serve a one-year term. A commission member may not
 102 serve as chair of the commission for more than three consecutive terms.

103 [~~(9)~~] (10) A member may not receive compensation or benefits for the member's
 104 service, but may receive per diem and travel expenses in accordance with:

105 (a) Section 63A-3-106;

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

107 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
 108 63A-3-107.

109 [~~(10)~~] (11) Six members constitute a quorum, however, the affirmative vote of at least
 110 six members of the commission is required for official action of the commission.

111 Section 3. Section 77-32-803 is amended to read:

112 **77-32-803. Executive director -- Qualifications -- Staff.**

113 (1) The commission shall appoint [a] an executive director to carry out the following
 114 duties:

115 (a) establish an annual budget;

116 (b) assist the commission in [~~developing and regularly reviewing advisory caseload~~
 117 ~~guidelines and procedures, including recommending to the commission suggested changes to~~
 118 ~~the criteria for an indigent defendant's eligibility to receive criminal defense services under this~~
 119 ~~chapter; and] the performance of the commission's statutory duties;~~

120 (c) assist the commission in developing and regularly reviewing advisory caseload

121 guidelines and procedures, including recommending to the commission suggested changes to
 122 the criteria for an indigent person's eligibility to receive defense services under this chapter;
 123 and

124 ~~[(c)]~~ (d) perform all other duties as assigned.

125 (2) The executive director shall be ~~[a full-time licensed attorney]~~ an active member of
 126 the Utah State Bar with an appropriate background and experience to serve as the full-time
 127 executive director.

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

131 (a) one individual who is an active member of the Utah State Bar to serve as a full-time
 132 assistant director; ~~§→~~ and ~~←§~~

133 (b) one individual with data collection and analysis skills to carry out duties as outlined
 134 in Subsection 77-32-804(1)(a) ~~§→~~ ~~[; and]~~ ~~.~~ ~~←§~~

135 ~~§→ [(c) any additional professional and clerical staff necessary to enable the commission to~~
 136 ~~carry out its responsibilities.] ←§~~

137 (4) The executive director and the assistant director shall have combined experience in
 138 adult criminal defense, child welfare parental defense, and juvenile delinquency defense.

139 Section 4. Section **77-32-804** is amended to read:

140 **77-32-804. Powers and duties of the commission -- Annual report.**

141 (1) The commission shall:

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

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

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

148 (iii) Service providers shall provide contracts that separately account for indigent
 149 criminal defense, parental defense, and juvenile delinquency defense.

150 ~~[(iii)]~~ (iv) The state may not interfere with the service provider's access to clients and
 151 the service provider is free to defend the client based on the service provider's own independent

152 judgment[-]:

153 ~~[(iv)]~~ (A) Accused persons in criminal cases shall be provided counsel at all critical
154 stages ~~[of the criminal process]~~.

155 (B) Indigent persons in juvenile delinquency and child welfare proceedings shall be
156 provided counsel at all stages.

157 ~~[(v)]~~ (v) Counsel shall be free to provide meaningful ~~§→~~ ~~[-adversarial testing of the~~
158 ~~evidence] representation ←§~~ , including:

159 (A) adequate access to defense resources; and

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

162 ~~[(vi)]~~ (vi) Service providers shall be fairly compensated and incentivized to represent
163 clients fully through:

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

165 (B) incentives that are structured to effectively represent ~~[criminal defendants well;~~
166 ~~and] indigent persons;~~

167 (C) contract provisions that address legal training and education in the areas of the law
168 relevant to the types of cases the service provider is contracted to appear on;

169 ~~[(C)]~~ (D) separate contracts ~~[that are offered]~~ for appellate attorneys to ensure the right
170 to appeal[-]; and

171 (E) compensation sufficient to attract applicants qualified with adequate experience in
172 the relevant areas of the law to provide effective representation in the defense of clients.

173 (vii) Contracts that address counsel's obligation under the Utah Rules of Professional
174 Conduct, including expectations on client communications and managing conflicts of interest.

175 ~~[(vii)]~~ (viii) The commission may maintain oversight to collect data, audit attorney
176 performance, establish standards, and enforce the principles listed ~~[above]~~ in this Subsection
177 (1)(a);

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

179 (i) review compliance by ~~[criminal]~~ indigent defense systems of minimum principles
180 for effective representation;

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

182 (iii) provide reports regarding the operation of the commission and the provision of

307 constitute an undue burden on the indigent [criminal] defense system.

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

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

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

316 Section 8. Section 77-32-808 is amended to read:

317 **77-32-808. Annual report, budget, and listing of expenditures -- Availability on**
 318 **website.**

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

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

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

327 Section 9. Section 77-32-809 is amended to read:

328 **77-32-809. Investigation, audit, and review of indigent and juvenile defense**
 329 **services -- Cooperation and participation with commission -- Maintenance of local share**
 330 **-- Necessity for excess funding.**

331 (1) [~~All indigent criminal~~] Indigent defense systems and attorneys engaged in
 332 providing indigent [criminal] defense services shall cooperate and participate with the
 333 commission in the investigation, audit, and review of all indigent [criminal] defense services.

334 (2) (a) For purposes of this part, "baseline budget" means an indigent [criminal]
 335 defense system's ~~Š→ [share of local funding, adjusted annually for growth in population and~~
 336 ~~inflation.] annual expenditure for indigent defense services. The baseline budget shall be~~
 336a ~~adjusted for indigent defense case load fluctuations and inflation whenever subsequent grant~~
 336b ~~requests are submitted to the commission. ←Š~~

337 (b) An indigent [criminal] defense system shall maintain the system's baseline budget