

Senator Todd Weiler proposes the following substitute bill:

INDIGENT DEFENSE COMMISSION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Craig Hall

LONG TITLE

General Description:

This bill modifies the Indigent Defense Act.

Highlighted Provisions:

This bill:

- ▶ expands the Utah Indigent Defense Commission to include juvenile defense;
- ▶ addresses the make up of the commission;
- ▶ ~~§~~ → [~~changes the director of the commission to executive director and~~] ← ~~§~~ addresses the
- 14a the
- 15 qualifications and duties ~~§~~ → **of the director** ← ~~§~~ , including the hiring of staff;
- 16 ▶ addresses the powers and duties of the commission;
- 17 ▶ modifies provisions related to the Indigent Defense Resources Account;
- 18 ▶ addresses indigent criminal and juvenile defense system participation;
- 19 ▶ amends provisions related to application for grant money;
- 20 ▶ addresses cooperation with the commission; and
- 21 ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



57 (a) The governor, with the consent of the Senate, shall appoint the following ~~[nine]~~ 12
58 members:

59 (i) two practicing criminal defense attorneys and one attorney practicing in the area of
60 juvenile delinquency defense recommended by the Utah Association of Criminal Defense
61 Lawyers;

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

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

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

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

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

72 (vii) a retired judge recommended by the Judicial Council; ~~[and]~~

73 (viii) one member of the Utah Legislature selected jointly by the Speaker of the House
74 and President of the Senate[-]; and

75 (ix) one attorney practicing in the area of parental defense, recommended by an entity
76 funded under Title 63A, Chapter 11, Child Welfare Parental Defense Program.

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

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

80 (i) the ~~§~~ **→** [executive] **←** ~~§~~ director of the ~~[Utah Indigent Defense Commission]~~ commission
81 appointed in Section 77-32-803; and

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

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

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

88 (4) Members appointed to the commission shall have significant experience in indigent
 89 criminal defense, child welfare parental defense, or juvenile defense in delinquency
 90 proceedings or have otherwise demonstrated a strong commitment to providing effective
 91 representation in indigent [criminal] defense services.

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

94 [(5)] (6) Commission members shall hold office until their successors are appointed.

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

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

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

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

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

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

108 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
 109 63A-3-107.

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

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

113 ~~77-32-803.~~ ~~§→~~ [Executive director] Director ~~←§~~ -- Qualifications -- Staff.

114 (1) The commission shall appoint ~~§→~~ [f] ~~←§~~ a ~~§→~~ [~~an executive~~] ~~←§~~ director to carry
 114a out the following

115 duties:

116 (a) establish an annual budget;

117 (b) assist the commission in [~~developing and regularly reviewing advisory caseload~~
 118 ~~guidelines and procedures, including recommending to the commission suggested changes to~~

119 the criteria for an indigent defendant's eligibility to receive criminal defense services under this
 120 chapter; and] the performance of the commission's statutory duties;

121 (c) assist the commission in developing and regularly reviewing advisory caseload
 122 guidelines and procedures, including recommending to the commission suggested changes to
 123 the criteria for an indigent person's eligibility to receive defense services under this chapter;
 124 and

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

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

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

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

134 (b) one individual with data collection and analysis skills to carry out duties as outlined
 135 in Subsection 77-32-804(1)(a).

136 (4) The commission in appointing the ~~§~~ → [executive] ~~←§~~ director, and the ~~§~~ → [executive]
 136a ←§ director in
 137 hiring the assistant director, shall give a preference to individuals with experience in adult
 138 criminal defense, child welfare parental defense, or 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.