

**Senator Todd Weiler** proposes the following substitute bill:

**INDIGENT DEFENSE AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: Craig Hall

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**LONG TITLE**

**General Description:**

This bill addresses provisions relating to indigent defense.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ rewrites portions of Title 77, Chapter 32, Part 8, Utah Indigent Defense Commission;
- ▶ addresses membership, membership qualifications, terms, and quorum requirements of the commission;
- ▶ addresses duties of the director of the commission;
- ▶ addresses powers and duties of the commission;
- ▶ addresses minimum guidelines;
- ▶ addresses provisions regarding the Indigent Defense Resources Restricted Account;
- ▶ addresses provisions of an indigent defense services grant program;
- ▶ modifies provisions requiring cooperation and participation with commission;
- ▶ repeals sections of the code relating to the commission; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 77-32-801, as last amended by Laws of Utah 2017, Chapter 111

32 77-32-802, as last amended by Laws of Utah 2017, Chapter 111

33 77-32-803, as last amended by Laws of Utah 2017, Chapter 111

34 ENACTS:

35 77-32-801.5, Utah Code Annotated 1953

36 REPEALS AND REENACTS:

37 77-32-804, as last amended by Laws of Utah 2017, Chapter 111

38 77-32-805, as last amended by Laws of Utah 2017, Chapter 111

39 77-32-806, as last amended by Laws of Utah 2017, Chapter 111

40 77-32-807, as last amended by Laws of Utah 2017, Chapter 111

41 REPEALS:

42 77-32-808, as last amended by Laws of Utah 2017, Chapter 111

43 77-32-809, as last amended by Laws of Utah 2017, Chapter 111

44 77-32-810, as enacted by Laws of Utah 2016, Chapter 177



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

47 Section 1. Section 77-32-801 is amended to read:

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

49 **77-32-801. Utah Indigent Defense Commission -- Creation -- Purpose.**

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

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

55 [~~(3) Notwithstanding Section 77-32-201, for purposes of this part.]~~

56 [~~(a) "Indigent defense services" means the representation of indigent persons in~~

57 ~~criminal, juvenile delinquency, and child welfare cases.]~~

58 ~~[(b) "Indigent defense system" means indigent defense services provided by:]~~

59 ~~[(i) local units of government, including a county, city, or town; or]~~

60 ~~[(ii) a regional legal defense organization.]~~

61 Section 2. Section **77-32-801.5** is enacted to read:

62 **77-32-801.5. Definitions.**

63 Notwithstanding Section [77-32-201](#), as used in this part:

64 (1) "Account" means the Indigent Defense Resources Account, created in Section

65 [77-32-805](#).

66 (2) "Indigent defense service provider" means an individual or an entity providing

67 indigent defense services for:

68 (a) a county;

69 (b) a municipality; or

70 (c) any combination of counties or municipalities, or both, through an interlocal

71 agreement or other agreement under Section [77-32-306](#) to provide regional indigent defense

72 services.

73 (3) "Indigent defense services" means the representation of an indigent individual.

74 (4) "Indigent defense system" means indigent defense services provided by:

75 (a) local units of government, including a county or municipality; or

76 (b) a regional legal defense organization.

77 (5) "Indigent individual" means an individual who:

78 (a) qualifies as indigent under indigency standards established in Section [77-32-202](#);

79 (b) does not, after being fully advised of the right to counsel, knowingly, intelligently,

80 and voluntarily waive the right to counsel; and

81 (c) is:

82 (i) accused of a criminal offense the penalty for which includes any possibility of

83 incarceration, confinement, or detention regardless of whether actually imposed;

84 (ii) a minor arrested or charged with any offense under Title 78A, Chapter 6, Part 6,

85 Delinquency and Criminal Actions, or Title 78A, Chapter 6, Part 7, Transfer of Jurisdiction;

86 (iii) a parent or legal guardian facing any action initiated by the state or political

87 subdivision of the state under Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency

88 Proceedings, Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, or Title 78A,  
89 Chapter 6, Part 10, Adult Offenses;

90 (iv) a parent or legal guardian facing any action initiated by a private party under Title  
91 78A, Chapter 6, Part 5, Termination of Parental Rights Act ~~H~~→ , or under Section 78B-6-112 ←~~H~~

91a ; or

92 (v) any one of the parties in the proceedings listed in this Subsection (5)(c), who is  
93 appealing a first appeal from a conviction or other final court action in one of those  
94 proceedings.

95 Section 3. Section **77-32-802** is amended to read:

96 **77-32-802. Commission members -- Member qualifications -- Terms -- Vacancy.**

97 (1) The commission is composed of [~~13~~] 14 voting members and [~~two~~] one ex officio,  
98 nonvoting [~~members~~] member.

99 (a) The governor, with the consent of the Senate, shall appoint the following 12 voting  
100 members:

101 (i) two practicing criminal defense attorneys [~~and one attorney practicing in the area of~~  
102 ~~juvenile delinquency defense~~] recommended by the Utah Association of Criminal Defense  
103 Lawyers;

104 (ii) one attorney practicing in juvenile delinquency defense recommended by the Utah  
105 Association of Criminal Defense Lawyers;

106 [~~(ii)~~] (iii) an attorney representing minority interests recommended by the Utah  
107 Minority Bar Association;

108 [~~(iii)~~] (iv) one member recommended by the Utah Association of Counties from a  
109 county of the first or second class;

110 [~~(iv)~~] (v) one member recommended by the Utah Association of Counties from a  
111 county of the third through sixth class;

112 [~~(v)~~] (vi) a director of a county public defender organization recommended by the Utah  
113 Association of Criminal Defense Lawyers;

114 [~~(vi)~~] (vii) two members recommended by the Utah League of Cities and Towns from  
115 its membership;

116 [~~(vii)~~] (viii) a retired judge recommended by the Judicial Council;

117 [~~(viii)~~] (ix) one member of the Utah Legislature selected jointly by the Speaker of the  
118 House and President of the Senate; and

119           ~~[(ix)]~~ (x) one attorney practicing in the area of parental defense, recommended by an  
120 entity funded under Title 63A, Chapter 11, Child Welfare Parental Defense Program.

121           (b) The Judicial Council shall appoint a voting member from the Administrative Office  
122 of the Courts.

123           ~~[(b)]~~ (c) The executive director of the State Commission on Criminal and Juvenile  
124 Justice or the executive director's designee ~~[shall be]~~ is a voting member of the commission.

125           ~~[(c) The ex officio, nonvoting members of the commission are:]~~

126           ~~[(i) the director of the commission appointed in Section 77-32-803; and]~~

127           ~~[(ii) a representative from the Administrative Office of the Courts appointed by the~~  
128 ~~Judicial Council.]~~

129           (d) The director of the commission, appointed under Section 77-32-803, is an ex  
130 officio, nonvoting member of the commission.

131           ~~(2) [Members]~~ A member appointed by the governor shall serve a four-year ~~[terms]~~  
132 term, except as provided in Subsection (3).

133           (3) The governor shall stagger the initial terms of appointees so that approximately half  
134 of the ~~[commission is]~~ members appointed by the governor are appointed every two years.

135           ~~(4) [Members]~~ A member appointed to the commission shall have significant  
136 experience in indigent criminal defense, ~~[child welfare]~~ parental defense, or juvenile defense in  
137 delinquency proceedings or have otherwise demonstrated a strong commitment to providing  
138 effective representation in indigent defense services.

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

141           ~~(6) [Commission members]~~ A commission member shall hold office until ~~[their~~  
142 ~~successors are]~~ the member's successor is appointed.

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

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

147           ~~(9) The [governor shall appoint one of the initial commission members to serve as~~  
148 ~~chair of the commission for a term of one year. At the expiration of that year, or upon the~~  
149 ~~vacancy in the membership of the appointed chair, the]~~ commission shall annually elect a chair

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

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

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

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

156 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
157 63A-3-107.

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

160 (11) (a) A majority of the members of the commission constitutes a quorum.

161 (b) If a quorum is present, the action of a majority of the voting members present  
162 constitutes the action of the commission.

163 Section 4. Section 77-32-803 is amended to read:

164 **77-32-803. Director -- Qualifications -- Staff.**

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

166 (a) establish an annual budget;

167 (b) assist the commission in ~~[the performance of]~~ performing the commission's  
168 statutory duties;

169 (c) assist the commission in developing and regularly reviewing advisory caseload  
170 guidelines and procedures~~[-, including recommending to the commission suggested changes to~~  
171 ~~the criteria for an indigent person's eligibility to receive defense services under this chapter];~~  
172 and

173 (d) perform all other duties as assigned.

174 (2) The director shall be an active member of the Utah State Bar with an appropriate  
175 background and experience to serve as the full-time director.

176 (3) The director shall hire staff as necessary to carry out the duties of the commission,  
177 including:

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

180 (b) one individual with data collection and analysis skills to carry out duties as outlined

181 in Subsection 77-32-804(1)(a)(c).

182 (4) The commission in appointing the director, and the director in hiring the assistant  
183 director, shall give a preference to individuals with experience in adult criminal defense, child  
184 welfare parental defense, or juvenile delinquency defense.

185 Section 5. Section 77-32-804 is repealed and reenacted to read:

186 **77-32-804. Powers and duties of the commission -- Minimum guidelines -- Annual**  
187 **report.**

188 (1) The commission shall:

189 (a) adopt minimum guidelines for an indigent defense system to ensure the effective  
190 representation of indigent individuals consistent with the requirements of the United States  
191 Constitution, the Utah Constitution, and the Utah Code, which guidelines at a minimum shall  
192 address the following:

193 (i) an indigent defense system shall ensure that in providing indigent defense services:

194 (A) an indigent individual receives conflict-free indigent defense services; and

195 (B) there is a separate contract for each type of indigent defense service and conflict  
196 cases; and

197 (ii) an indigent defense system shall ensure an indigent defense service provider has:

198 (A) the ability to exercise independent judgment without fear of retaliation and is free  
199 to represent an indigent individual based on the indigent defense service provider's own  
200 independent judgment;

201 (B) adequate access to defense resources;

202 (C) the ability to provide representation to accused persons in criminal cases at all  
203 critical stages, and at all stages to indigent parties in juvenile delinquency and child welfare  
204 proceedings;

205 (D) a workload that allows for sufficient time to meet with clients, investigate cases,  
206 file appropriate documents with the courts, and otherwise provide effective assistance of  
207 counsel to each client;

208 (E) adequate compensation without financial disincentives;

209 (F) appropriate experience or training in the area for which the indigent defense service  
210 provider is representing indigent individuals;

211 (G) compensation for legal training and education in the areas of the law relevant to the

212 types of cases for which the indigent defense service provider is representing indigent  
213 individuals; and  
214 (H) the ability to meet the obligations of the Utah Rules of Professional Conduct,  
215 including expectations on client communications and managing conflicts of interest;  
216 (b) encourage and aid indigent defense systems in the state in the regionalization of  
217 indigent defense services to provide for effective and efficient representation to all indigent  
218 individuals;  
219 (c) identify and collect data from any source, which is necessary for the commission to:  
220 (i) aid, oversee, and review compliance by indigent defense systems with the  
221 commission's minimum guidelines for the effective representation of indigent individuals; and  
222 (ii) provide reports regarding the operation of the commission and the provision of  
223 indigent defense services by indigent defense systems in the state;  
224 (d) assist indigent defense systems by reviewing contracts and other agreements, to  
225 ensure compliance with the commission's minimum guidelines for effective representation of  
226 indigent individuals;  
227 (e) investigate, audit, and review the provision of indigent defense services to ensure  
228 compliance with the commission's minimum guidelines for the effective representation of  
229 indigent individuals;  
230 (f) establish procedures for the receipt and acceptance of complaints regarding the  
231 provision of indigent defense services in the state;  
232 (g) establish procedures to award grants to indigent defense systems under Section  
233 77-32-806 consistent with the commission's minimum guidelines for the effective  
234 representation of indigent individuals and appropriations by the state;  
235 (h) emphasize the importance of ensuring constitutionally effective indigent defense  
236 services;  
237 (i) encourage members of the judiciary to provide input regarding the delivery of  
238 indigent defense services;  
239 (j) oversee individuals and entities involved in providing indigent defense services;  
240 (k) annually report to the governor, Legislature, Judiciary Interim Committee, and  
241 Judicial Council, regarding:  
242 (i) the operations of the commission;



- 243 (ii) the operations of the indigent defense systems in the state; and
- 244 (iii) compliance with the commission's minimum guidelines by indigent defense
- 245 systems receiving grants from the commission;
- 246 (l) submit recommendations for improving indigent defense services in the state, to
- 247 legislative, executive, and judicial leadership; and
- 248 (m) publish an annual report on the commission's website.

249 (2) An indigent defense system within the state shall meet the minimum guidelines  
 250 adopted by the commission under Subsection (1)(a).

251 (3) The commission may make rules in accordance with Title 63G, Chapter 3, Utah  
 252 Administrative Rulemaking Act, to carry out the commission's duties under this part.

253 Section 6. Section **77-32-805** is repealed and reenacted to read:

254 **77-32-805. Indigent Defense Resources Restricted Account -- Administration.**

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

257 (b) Appropriations from the account are nonlapsing.

258 (2) The account consists of:

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

261 (b) any other money received by the commission from any source to carry out the  
 262 purposes of this part; and

263 (c) any interest and earnings from the investment of account money.

264 (3) The commission shall administer the account and, subject to appropriation,  
 265 disburse money from the account for the following purposes:

266 (a) to establish and maintain a statewide indigent defense data collection system;

267 (b) to establish and administer a grant program to provide grants of state money to  
 268 indigent defense systems as set forth in Section **77-32-806**;

269 (c) to provide training and continuing legal education for indigent defense service  
 270 providers; and

271 (d) for administrative costs.

272 Section 7. Section **77-32-806** is repealed and reenacted to read:

273 **77-32-806. Indigent defense services grant program.**

274 (1) The commission may award grants to supplement local spending by a county or  
275 municipality for indigent defense services and defense resources.

276 (2) Commission grant money may be used for the following expenses:

277 (a) to assist a county or municipality to provide indigent defense services that meet the  
278 commission's minimum guidelines for the effective representation of indigent individuals;

279 (b) the establishment and maintenance of local indigent defense data collection  
280 systems;

281 (c) indigent defense services in addition to those currently being provided by a county  
282 or municipality; and

283 (d) to provide training and continuing legal education for indigent defense service  
284 providers.

285 (3) To receive a grant from the commission, a county or municipality shall demonstrate  
286 to the commission's satisfaction that:

287 (a) the county or municipality has incurred or reasonably anticipates incurring expenses  
288 for indigent defense services that are in addition to the county's or municipality's average  
289 annual spending on indigent defense services in the three fiscal years immediately preceding  
290 the grant application; and

291 (b) a grant from the commission is necessary for the county or municipality to meet the  
292 commission's minimum guidelines for the effective representation of indigent individuals.

293 (4) The commission may revoke a grant if an indigent defense system fails to meet  
294 requirements of the grant or any of the commission's minimum guidelines for the effective  
295 representation of indigent individuals.

296 Section 8. Section **77-32-807** is repealed and reenacted to read:

297 **77-32-807. Cooperation and participation with the commission.**

298 Indigent defense systems and entities or individuals engaged in providing indigent  
299 defense services in the state shall cooperate and participate with the commission in the  
300 collection of data, investigation, audit, and review of all indigent defense services.

301 Section 9. **Repealer.**

302 This bill repeals:

303 Section **77-32-808, Annual report, budget, and listing of expenditures --**

304 **Availability on website.**

305           Section **77-32-809**, Investigation, audit, and review of indigent and juvenile defense  
306 services -- Cooperation and participation with commission -- Maintenance of local share  
307 -- Necessity for excess funding.

308           Section **77-32-810**, Applicability of GRAMA and Open and Public Meetings Act.