

SB0186S01 compared with SB0186

~~text~~ shows text that was in SB0186 but was deleted in SB0186S01.

Inserted text shows text that was not in SB0186 but was inserted into SB0186S01.

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Senator Todd Weiler proposes the following substitute bill:

INDIGENT DEFENSE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

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;

SB0186S01 compared with SB0186

- ▶ 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:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

ENACTS:

77-32-801.5, Utah Code Annotated 1953

REPEALS AND REENACTS:

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

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

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

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

REPEALS:

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

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

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

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

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

Part 8. Utah Indigent Defense Commission

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

(1) There is created within the State Commission on Criminal and Juvenile Justice the

SB0186S01 compared with SB0186

"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 defense services, consistent with the United States Constitution, the Utah Constitution, and the Utah Code.

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

~~[(a) "Indigent defense services" means the representation of indigent persons in criminal, juvenile delinquency, and child welfare cases:]~~

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

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

~~[(ii) a regional legal defense organization:]~~

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

77-32-801.5. Definitions.

Notwithstanding Section 77-32-201, as used in this part:

(1) "Account" means the Indigent Defense Resources Account, created in Section 77-32-805.

(2) "Indigent defense service provider" means an individual or an entity providing indigent defense services for:

(a) a county;

(b) a municipality; or

(c) any combination of counties or municipalities, or both, through an interlocal agreement or other agreement under Section 77-32-306 to provide regional indigent defense services.

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

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

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

(b) a regional legal defense organization.

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

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

(b) does not, after being fully advised of the right to counsel, knowingly, intelligently, and voluntarily waive the right to counsel; and

(c) is:

SB0186S01 compared with SB0186

- (i) accused of a criminal offense the penalty for which includes any possibility of incarceration, confinement, or detention regardless of whether actually imposed;
- (ii) a minor arrested or charged with any offense under Title 78A, Chapter 6, Part 6, Delinquency and Criminal Actions, or Title 78A, Chapter 6, Part 7, Transfer of Jurisdiction;
- (iii) a parent or legal guardian facing any action initiated by the state or political subdivision of the state under Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, or Title 78A, Chapter 6, Part 10, Adult Offenses;
- (iv) a parent or legal guardian facing any action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act; or
- (v) any one of the parties in the proceedings listed in this Subsection (5)(c), who is appealing a first appeal from a conviction or other final court action in one of those proceedings.

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

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

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

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

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

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

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

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

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

[~~(v)~~] (vi) a director of a county public defender organization recommended by the Utah

SB0186S01 compared with SB0186

Association of Criminal Defense Lawyers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) The commission may remove a member for incompetence, dereliction of duty,

SB0186S01 compared with SB0186

malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.

(8) ~~[When]~~ If 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.

(9) 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 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.

(10) 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.

~~[(11) 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.]~~

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

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

Section 4. Section **77-32-803** is amended 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 ~~[the performance of]~~ performing the commission's statutory duties;

(c) 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 person's eligibility to receive defense services under this chapter];~~ and

(d) perform all other duties as assigned.

(2) The director shall be an active member of the Utah State Bar with an appropriate

SB0186S01 compared with SB0186

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:

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

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

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

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

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

(1) The commission shall:

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

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

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

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

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

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

(B) adequate access to defense resources;

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

~~(C)~~(D) a workload that allows for sufficient time to meet with clients, investigate

SB0186S01 compared with SB0186

cases, file appropriate documents with the courts, and otherwise provide effective assistance of counsel to each client;

(~~F~~~~D~~~~E~~) adequate compensation without financial disincentives;

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

(~~F~~~~G~~) compensation for legal training and education in the areas of the law relevant to the types of cases for which the indigent defense service provider is representing indigent individuals; and

(~~G~~~~H~~) the ability to meet the obligations of the Utah Rules of Professional Conduct, including expectations on client communications and managing conflicts of interest;

(b) encourage and aid indigent defense systems in the state in the regionalization of indigent defense services to provide for effective and efficient representation to all indigent individuals;

(c) identify and collect data from any source, which is necessary for the commission to:

(i) aid, oversee, and review compliance by indigent defense systems with the commission's minimum guidelines for the effective representation of indigent individuals; and

(ii) provide reports regarding the operation of the commission and the provision of indigent defense services by indigent defense systems in the state;

(d) assist indigent defense systems by reviewing contracts and other agreements, to ensure compliance with the commission's minimum guidelines for effective representation of indigent individuals;

(e) investigate, audit, and review the provision of indigent defense services to ensure compliance with the commission's minimum guidelines for the effective representation of indigent individuals;

(f) establish procedures for the receipt and acceptance of complaints regarding the provision of indigent defense services in the state;

(g) establish procedures to award grants to indigent defense systems under Section 77-32-806 consistent with the commission's minimum guidelines for the effective representation of indigent individuals and appropriations by the state;

(h) emphasize the importance of ensuring constitutionally effective indigent defense services;

SB0186S01 compared with SB0186

(i) encourage members of the judiciary to provide input regarding the delivery of indigent defense services;

(j) oversee individuals and entities involved in providing indigent defense services;

~~{ (k) use money in the account to provide training and continuing legal education for indigent defense service providers throughout the state;~~

~~{ (k)}~~ (k) annually report to the governor, Legislature, Judiciary Interim Committee, and Judicial Council, regarding:

(i) the operations of the commission;

(ii) the operations of the indigent defense systems in the state; and

(iii) compliance with the commission's minimum guidelines by indigent defense systems receiving grants from the commission;

~~{m}~~ (l) submit recommendations for improving indigent defense services in the state, to legislative, executive, and judicial leadership; and

~~{n}~~ (m) publish an annual report on the commission's website.

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

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

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

~~77-32-805. { Indigent}~~ **Indigent Defense Resources Restricted Account --**

Administration.

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

(b) ~~{Money in}~~ **Appropriations from** the account ~~{is}~~ **are** nonlapsing.

(2) The account consists of:

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

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

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

(3) The commission shall administer the account and, subject to appropriation,

SB0186S01 compared with SB0186

disburse money from the account for the following purposes:

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

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

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

(d) for administrative costs.

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

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

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

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

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

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

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

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

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

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

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

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

SB0186S01 compared with SB0186

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

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

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

Section 9. **Repealer.**

This bill repeals:

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

Availability on website.

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

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

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Legislative Review Note

Office of Legislative Research and General Counsel†