

1 **INDIGENT DEFENSE ACT AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: Michael K. McKell

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to indigent defense services.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ recodifies the Indigent Defense Act, including:

- 13 • defining terms;
- 14 • addressing right to counsel;
- 15 • determining indigency;
- 16 • ordering indigent defense services;
- 17 • establishing standards for indigent defense systems;
- 18 • addressing compensation and reimbursement for indigent defense services;
- 19 • addressing the Utah Indigent Defense Commission;
- 20 • addressing the Indigent Defense Funds Board and duties of the board;
- 21 • providing for defense of indigent inmates, including providing for the Indigent

22 Inmate Trust Fund;

23 • addressing the Indigent Aggravated Murder Defense Trust Fund and the roles of
24 counties and the state;

25 • updating cross references; and

26 • repealing language outdated because of changes made in the bill; and

27 ▶ makes technical changes.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **10-3-704**, as last amended by Laws of Utah 2018, Chapter 82

35 **17-53-223**, as last amended by Laws of Utah 2018, Chapter 82

36 **63A-11-201**, as last amended by Laws of Utah 2011, Chapter 265

37 **63J-1-602.1**, as last amended by Laws of Utah 2018, Chapters 114, 347, 430 and
38 repealed and reenacted by Laws of Utah 2018, Chapter 469

39 **63J-1-602.2**, as repealed and reenacted by Laws of Utah 2018, Chapter 469

40 **78A-2-408**, as last amended by Laws of Utah 2014, Chapter 48

41 **78A-2-703**, as renumbered and amended by Laws of Utah 2014, Chapter 267

42 **78A-2-705**, as renumbered and amended by Laws of Utah 2014, Chapter 267

43 **78A-6-306**, as last amended by Laws of Utah 2018, Chapter 91

44 **78A-6-317**, as last amended by Laws of Utah 2014, Chapters 90 and 275

45 **78A-6-703**, as last amended by Laws of Utah 2015, Chapter 338

46 **78A-6-1111**, as last amended by Laws of Utah 2018, Chapter 359

47 **78A-7-103**, as repealed and reenacted by Laws of Utah 2012, Chapter 205

48 **78B-6-112**, as last amended by Laws of Utah 2018, Chapter 359

49 ENACTS:

50 **78B-22-102**, Utah Code Annotated 1953

51 **78B-22-201**, Utah Code Annotated 1953

52 **78B-22-202**, Utah Code Annotated 1953

53 **78B-22-203**, Utah Code Annotated 1953

54 **78B-22-204**, Utah Code Annotated 1953

55 **78B-22-301**, Utah Code Annotated 1953

56 **78B-22-302**, Utah Code Annotated 1953

57 **78B-22-303**, Utah Code Annotated 1953

58 **78B-22-304**, Utah Code Annotated 1953
59 RENUMBERS AND AMENDS:
60 **78B-22-101**, (Renumbered from 77-32-101, as enacted by Laws of Utah 1997, Chapter
61 354)
62 **78B-22-401**, (Renumbered from 77-32-801, as last amended by Laws of Utah 2018,
63 Chapter 296)
64 **78B-22-402**, (Renumbered from 77-32-802, as last amended by Laws of Utah 2018,
65 Chapter 296)
66 **78B-22-403**, (Renumbered from 77-32-803, as last amended by Laws of Utah 2018,
67 Chapter 296)
68 **78B-22-404**, (Renumbered from 77-32-804, as repealed and reenacted by Laws of Utah
69 2018, Chapter 296)
70 **78B-22-405**, (Renumbered from 77-32-805, as repealed and reenacted by Laws of Utah
71 2018, Chapter 296)
72 **78B-22-406**, (Renumbered from 77-32-806, as repealed and reenacted by Laws of Utah
73 2018, Chapter 296)
74 **78B-22-407**, (Renumbered from 77-32-807, as repealed and reenacted by Laws of Utah
75 2018, Chapter 296)
76 **78B-22-501**, (Renumbered from 77-32-401, as last amended by Laws of Utah 2012,
77 Chapter 180)
78 **78B-22-502**, (Renumbered from 77-32-402, as last amended by Laws of Utah 2017,
79 Chapter 56)
80 **78B-22-601**, (Renumbered from 77-32-501, as last amended by Laws of Utah 2009,
81 Chapter 80)
82 **78B-22-602**, (Renumbered from 77-32-502, as last amended by Laws of Utah 2009,
83 Chapter 80)
84 **78B-22-701**, (Renumbered from 77-32-601, as last amended by Laws of Utah 2011,
85 Chapter 303)

86 78B-22-702, (Renumbered from 77-32-602, as last amended by Laws of Utah 1998,
87 Chapter 333)

88 78B-22-703, (Renumbered from 77-32-603, as last amended by Laws of Utah 2018,
89 Chapter 281)

90 78B-22-704, (Renumbered from 77-32-604, as last amended by Laws of Utah 2001,
91 Chapter 209)

92 REPEALS:

93 77-32-201, as last amended by Laws of Utah 2017, Chapter 56

94 77-32-202, as last amended by Laws of Utah 2013, Chapter 245

95 77-32-301, as last amended by Laws of Utah 2016, Chapter 177

96 77-32-302, as last amended by Laws of Utah 2016, Chapter 177

97 77-32-303, as last amended by Laws of Utah 2012, Chapter 180

98 77-32-304, as last amended by Laws of Utah 2012, Chapter 180

99 77-32-304.5, as last amended by Laws of Utah 2012, Chapters 17 and 180

100 77-32-305, as renumbered and amended by Laws of Utah 1997, Chapter 354

101 77-32-305.5, as last amended by Laws of Utah 2012, Chapter 180

102 77-32-306, as last amended by Laws of Utah 2016, Chapter 177

103 77-32-307, as last amended by Laws of Utah 2012, Chapter 180

104 77-32-308, as renumbered and amended by Laws of Utah 1997, Chapter 354

105 77-32-401.5, as last amended by Laws of Utah 2017, Chapter 56

106 77-32-801.5, as enacted by Laws of Utah 2018, Chapter 296

107

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

109 Section 1. Section 10-3-704 is amended to read:

110 **10-3-704. Form of ordinance.**

111 The governing body shall ensure that any ordinance that the governing body passes
112 contains the following, in substantially the following order and form:

113 (1) a number;

- 114 (2) a title which indicates the nature of the subject matter of the ordinance;
- 115 (3) a preamble which states the need or reason for the ordinance;
- 116 (4) an ordaining clause which states "Be it ordained by the ____ (name of the
117 governing body and municipality):";
- 118 (5) the body or subject of the ordinance;
- 119 (6) when applicable, a statement indicating the penalty for violation of the ordinance or
120 a reference that the punishment is covered by an ordinance which prescribes the fines and
121 terms of imprisonment for the violation of a municipal ordinance; or, the penalty may establish
122 a classification of penalties and refer to such ordinance in which the penalty for such violation
123 is established;
- 124 (7) when a penalty for a violation of the ordinance includes any possibility of
125 imprisonment, a statement that the municipality is required, under Section [~~77-32-301~~]
126 [78B-22-301](#), to provide for indigent [~~legal~~] defense[~~, as those terms are~~] services, as that term
127 is defined in Section [~~77-32-201~~] [78B-22-102](#);
- 128 (8) a statement indicating the effective date of the ordinance or the date when the
129 ordinance shall become effective after publication or posting as required by this chapter;
- 130 (9) a line for the signature of the mayor or acting mayor to sign the ordinance;
- 131 (10) a place for the municipal recorder to attest the ordinance and fix the seal of the
132 municipality; and
- 133 (11) in municipalities where the mayor may disapprove an ordinance passed by the
134 legislative body, a statement showing:
 - 135 (a) if the mayor approves the ordinance, that the governing body passes the ordinance
136 with the mayor's approval;
 - 137 (b) if the mayor disapproves the ordinance, that the governing body passes the
138 ordinance over the mayor's disapproval; or
 - 139 (c) if the mayor neither approves or disapproves the ordinance, that the ordinance
140 became effective without the approval or disapproval of the mayor.
- 141 Section 2. Section **17-53-223** is amended to read:

142 **17-53-223. Ordinances -- Power to enact -- Penalty for violation.**

143 (1) A county legislative body may:

144 (a) pass all ordinances and rules and make all regulations, not repugnant to law,
145 necessary for carrying into effect or discharging the powers and duties conferred by this title,
146 and as are necessary and proper to provide for the safety, and preserve the health, promote the
147 prosperity, improve the morals, peace, and good order, comfort, and convenience of the county
148 and its inhabitants, and for the protection of property in the county;

149 (b) enforce obedience to ordinances with fines or penalties as the county legislative
150 body considers proper; and

151 (c) pass ordinances to control air pollution.

152 (2) (a) Punishment imposed under Subsection (1)(b) shall be by fine, not to exceed the
153 maximum fine for a class B misdemeanor under Section 76-3-301, imprisonment, or both fine
154 and imprisonment.

155 (b) When a penalty for a violation of an ordinance includes any possibility of
156 imprisonment, the county legislative body shall include in the ordinance a statement that the
157 county is required, under Section ~~[77-32-301]~~ 78B-22-301, to provide for indigent ~~[legal]~~
158 ~~defense[, as those terms are]~~ services, as that term is defined in Section [77-32-201]
159 78B-22-102.

160 (3) (a) Except as specifically authorized by statute, the county legislative body may not
161 impose a civil penalty for the violation of a county traffic ordinance.

162 (b) Subsection (3)(a) does not apply to an ordinance regulating the parking of vehicles
163 on a highway.

164 Section 3. Section **63A-11-201** is amended to read:

165 **63A-11-201. Child welfare indigent defense services contracts -- Qualifications.**

166 (1) The department may enter into ~~[contracts]~~ a contract with a qualified ~~[parental~~
167 ~~defense attorneys]~~ indigent defense service provider as defined in Section 78B-22-102 to
168 provide indigent defense services for an indigent ~~[parent or parents]~~ individual who ~~[are]~~ is the
169 subject of a petition alleging abuse, neglect, or dependency~~[, and will require a parental defense~~

170 attorney under Section [78A-6-1111](#)].

171 (2) Payment for the representation, costs, and expenses of a contracted parental defense
172 attorney shall be made from the Child Welfare Parental Defense Fund as provided in Section
173 [63A-11-203](#).

174 (3) The parental defense attorney shall maintain the minimum qualifications as
175 provided by this chapter.

176 Section 4. Section **63J-1-602.1** is amended to read:

177 **63J-1-602.1. List of nonlapsing appropriations from accounts and funds.**

178 Appropriations made from the following accounts or funds are nonlapsing:

179 (1) The Utah Intracurricular Student Organization Support for Agricultural Education
180 and Leadership Restricted Account created in Section [4-42-102](#).

181 (2) The Native American Repatriation Restricted Account created in Section [9-9-407](#).

182 (3) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in
183 Section [9-18-102](#).

184 (4) The National Professional Men's Soccer Team Support of Building Communities
185 Restricted Account created in Section [9-19-102](#).

186 (5) Funds collected for directing and administering the C-PACE district created in
187 Section [11-42a-302](#).

188 (6) Award money under the State Asset Forfeiture Grant Program, as provided under
189 Section [24-4-117](#).

190 (7) Funds collected from the program fund for local health department expenses
191 incurred in responding to a local health emergency under Section [26-1-38](#).

192 (8) Funds collected from the emergency medical services grant program, as provided in
193 Section [26-8a-207](#).

194 (9) The Prostate Cancer Support Restricted Account created in Section [26-21a-303](#).

195 (10) The Children with Cancer Support Restricted Account created in Section
196 [26-21a-304](#).

197 (11) State funds for matching federal funds in the Children's Health Insurance Program

- 198 as provided in Section [26-40-108](#).
- 199 (12) The Children with Heart Disease Support Restricted Account created in Section
200 [26-58-102](#).
- 201 (13) The Nurse Home Visiting Restricted Account created in Section [26-62-601](#).
- 202 (14) The Technology Development Restricted Account created in Section [31A-3-104](#).
- 203 (15) The Criminal Background Check Restricted Account created in Section
204 [31A-3-105](#).
- 205 (16) The Captive Insurance Restricted Account created in Section [31A-3-304](#), except
206 to the extent that Section [31A-3-304](#) makes the money received under that section free revenue.
- 207 (17) The Title Licensee Enforcement Restricted Account created in Section
208 [31A-23a-415](#).
- 209 (18) The Health Insurance Actuarial Review Restricted Account created in Section
210 [31A-30-115](#).
- 211 (19) The Insurance Fraud Investigation Restricted Account created in Section
212 [31A-31-108](#).
- 213 (20) The Underage Drinking Prevention Media and Education Campaign Restricted
214 Account created in Section [32B-2-306](#).
- 215 (21) The School Readiness Restricted Account created in Section [35A-3-210](#).
- 216 (22) The Youth Development Organization Restricted Account created in Section
217 [35A-8-1903](#).
- 218 (23) The Youth Character Organization Restricted Account created in Section
219 [35A-8-2003](#).
- 220 (24) Money received by the Utah State Office of Rehabilitation for the sale of certain
221 products or services, as provided in Section [35A-13-202](#).
- 222 (25) The Oil and Gas Conservation Account created in Section [40-6-14.5](#).
- 223 (26) The Electronic Payment Fee Restricted Account created by Section [41-1a-121](#) to
224 the Motor Vehicle Division.
- 225 (27) The Motor Vehicle Enforcement Division Temporary Permit Restricted Account

226 created by Section 41-3-110 to the State Tax Commission.

227 (28) The Utah Law Enforcement Memorial Support Restricted Account created in
228 Section 53-1-120.

229 (29) The State Disaster Recovery Restricted Account to the Division of Emergency
230 Management, as provided in Section 53-2a-603.

231 (30) The Department of Public Safety Restricted Account to the Department of Public
232 Safety, as provided in Section 53-3-106.

233 (31) The Utah Highway Patrol Aero Bureau Restricted Account created in Section
234 53-8-303.

235 (32) The DNA Specimen Restricted Account created in Section 53-10-407.

236 (33) The Canine Body Armor Restricted Account created in Section 53-16-201.

237 (34) A certain portion of money collected for administrative costs under the School
238 Institutional Trust Lands Management Act, as provided under Section 53C-3-202.

239 (35) The Public Utility Regulatory Restricted Account created in Section 54-5-1.5,
240 subject to Subsection 54-5-1.5(4)(d).

241 (36) Certain fines collected by the Division of Occupational and Professional Licensing
242 for violation of unlawful or unprofessional conduct that are used for education and enforcement
243 purposes, as provided in Section 58-17b-505.

244 (37) Certain fines collected by the Division of Occupational and Professional Licensing
245 for use in education and enforcement of the Security Personnel Licensing Act, as provided in
246 Section 58-63-103.

247 (38) The Relative Value Study Restricted Account created in Section 59-9-105.

248 (39) The Cigarette Tax Restricted Account created in Section 59-14-204.

249 (40) Funds paid to the Division of Real Estate for the cost of a criminal background
250 check for a mortgage loan license, as provided in Section 61-2c-202.

251 (41) Funds paid to the Division of Real Estate for the cost of a criminal background
252 check for principal broker, associate broker, and sales agent licenses, as provided in Section
253 61-2f-204.

- 254 (42) Certain funds donated to the Department of Human Services, as provided in
255 Section [62A-1-111](#).
- 256 (43) The National Professional Men's Basketball Team Support of Women and
257 Children Issues Restricted Account created in Section [62A-1-202](#).
- 258 (44) Certain funds donated to the Division of Child and Family Services, as provided
259 in Section [62A-4a-110](#).
- 260 (45) The Choose Life Adoption Support Restricted Account created in Section
261 [62A-4a-608](#).
- 262 (46) Funds collected by the Office of Administrative Rules for publishing, as provided
263 in Section [63G-3-402](#).
- 264 (47) The Immigration Act Restricted Account created in Section [63G-12-103](#).
- 265 (48) Money received by the military installation development authority, as provided in
266 Section [63H-1-504](#).
- 267 (49) The Computer Aided Dispatch Restricted Account created in Section [63H-7a-303](#).
- 268 (50) The Unified Statewide 911 Emergency Service Account created in Section
269 [63H-7a-304](#).
- 270 (51) The Utah Statewide Radio System Restricted Account created in Section
271 [63H-7a-403](#).
- 272 (52) The Employability to Careers Program Restricted Account created in Section
273 [63J-4-703](#).
- 274 (53) The Motion Picture Incentive Account created in Section [63N-8-103](#).
- 275 (54) Certain money payable for expenses of the Pete Suazo Utah Athletic Commission,
276 as provided under Section [63N-10-301](#).
- 277 (55) Funds collected by the housing of state probationary inmates or state parole
278 inmates, as provided in Subsection [64-13e-104\(2\)](#).
- 279 (56) Certain forestry and fire control funds utilized by the Division of Forestry, Fire,
280 and State Lands, as provided in Section [65A-8-103](#).
- 281 (57) Certain funds received by the Office of the State Engineer for well drilling fines or

282 bonds, as provided in Section 73-3-25.

283 (58) The Water Resources Conservation and Development Fund, as provided in
284 Section 73-23-2.

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

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

288 (61) Funds collected for adoption document access as provided in Sections 78B-6-141,
289 78B-6-144, and 78B-6-144.5.

290 (62) Revenue for golf user fees at the Wasatch Mountain State Park, Palisades State
291 Park, Jordan River State Park, and Green River State Park, as provided under Section
292 79-4-403.

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

295 (64) Funds collected for indigent defense as provided in Title [~~77, Chapter 32, Part 8~~]
296 78B, Chapter 22, Part 4, Utah Indigent Defense Commission.

297 Section 5. Section 63J-1-602.2 is amended to read:

298 **63J-1-602.2. List of nonlapsing appropriations to programs.**

299 Appropriations made to the following programs are nonlapsing:

300 (1) The Legislature and its committees.

301 (2) The Percent-for-Art Program created in Section 9-6-404.

302 (3) The LeRay McAllister Critical Land Conservation Program created in Section
303 11-38-301.

304 (4) Dedicated credits accrued to the Utah Marriage Commission as provided under
305 Subsection 17-16-21(2)(d)(ii).

306 (5) The Division of Wildlife Resources for the appraisal and purchase of lands under
307 the Pelican Management Act, as provided in Section 23-21a-6.

308 (6) The primary care grant program created in Section 26-10b-102.

309 (7) Sanctions collected as dedicated credits from Medicaid provider under Subsection

- 310 26-18-3(7).
- 311 (8) The Utah Health Care Workforce Financial Assistance Program created in Section
- 312 26-46-102.
- 313 (9) The Rural Physician Loan Repayment Program created in Section 26-46a-103.
- 314 (10) The Opiate Overdose Outreach Pilot Program created in Section 26-55-107.
- 315 (11) Funds that the Department of Alcoholic Beverage Control retains in accordance
- 316 with Subsection 32B-2-301(7)(a)(ii) or (b).
- 317 (12) The General Assistance program administered by the Department of Workforce
- 318 Services, as provided in Section 35A-3-401.
- 319 (13) A new program or agency that is designated as nonlapsing under Section
- 320 36-24-101.
- 321 (14) The Utah National Guard, created in Title 39, Militia and Armories.
- 322 (15) The State Tax Commission under Section 41-1a-1201 for the:
- 323 (a) purchase and distribution of license plates and decals; and
- 324 (b) administration and enforcement of motor vehicle registration requirements.
- 325 (16) The Search and Rescue Financial Assistance Program, as provided in Section
- 326 53-2a-1102.
- 327 (17) The Motorcycle Rider Education Program, as provided in Section 53-3-905.
- 328 (18) The State Board of Regents for teacher preparation programs, as provided in
- 329 Section 53B-6-104.
- 330 (19) The Medical Education Program administered by the Medical Education Council,
- 331 as provided in Section 53B-24-202.
- 332 (20) The State Board of Education, as provided in Section 53F-2-205.
- 333 (21) The Division of Services for People with Disabilities, as provided in Section
- 334 62A-5-102.
- 335 (22) The Division of Fleet Operations for the purpose of upgrading underground
- 336 storage tanks under Section 63A-9-401.
- 337 (23) The Utah Seismic Safety Commission, as provided in Section 63C-6-104.

- 338 (24) Appropriations to the Department of Technology Services for technology
339 innovation as provided under Section [63F-4-202](#).
- 340 (25) The Office of Administrative Rules for publishing, as provided in Section
341 [63G-3-402](#).
- 342 (26) The Utah Science Technology and Research Initiative created in Section
343 [63M-2-301](#).
- 344 (27) The Governor's Office of Economic Development to fund the Enterprise Zone
345 Act, as provided in Title 63N, Chapter 2, Part 2, Enterprise Zone Act.
- 346 (28) Appropriations to fund the Governor's Office of Economic Development's Rural
347 Employment Expansion Program, as described in Title 63N, Chapter 4, Part 4, Rural
348 Employment Expansion Program.
- 349 (29) The Department of Human Resource Management user training program, as
350 provided in Section [67-19-6](#).
- 351 (30) The University of Utah Poison Control Center program, as provided in Section
352 [69-2-5.5](#).
- 353 (31) A public safety answering point's emergency telecommunications service fund, as
354 provided in Section [69-2-301](#).
- 355 (32) The Traffic Noise Abatement Program created in Section [72-6-112](#).
- 356 (33) The Judicial Council for compensation for special prosecutors, as provided in
357 Section [77-10a-19](#).
- 358 (34) A state rehabilitative employment program, as provided in Section [78A-6-210](#).
- 359 (35) The Utah Geological Survey, as provided in Section [79-3-401](#).
- 360 (36) The Bonneville Shoreline Trail Program created under Section [79-5-503](#).
- 361 (37) Adoption document access as provided in Sections [78B-6-141](#), [78B-6-144](#), and
362 [78B-6-144.5](#).
- 363 (38) Indigent defense as provided in Title [~~77, Chapter 32, Part 8~~] 78B, Chapter 22,
364 Part 4, Utah Indigent Defense Commission.
- 365 Section 6. Section **78A-2-408** is amended to read:

366 **78A-2-408. Transcripts and copies -- Fees.**

367 (1) The Judicial Council shall by rule provide for a standard page format for transcripts
368 of court hearings.

369 (2) (a) The fee for a transcript of a court session, or any part of a court session, shall be
370 \$4.50 per page, which includes the initial preparation of the transcript and one certified copy.
371 The preparer shall deposit the original text file and printed transcript with the clerk of the court
372 and provide the person requesting the transcript with the certified copy. The cost of additional
373 copies shall be as provided in Subsection [78A-2-301\(1\)](#). The transcript for an appeal shall be
374 prepared within the time period permitted by the rules of Appellate Procedure. The fee for a
375 transcript prepared within three business days of the request shall be 1-1/2 times the base rate.
376 The fee for a transcript prepared within one business day of the request shall be double the base
377 rate.

378 (b) When a transcript is ordered by the court, the fees shall be paid by the parties to the
379 action in equal proportion or as ordered by the court. The fee for a transcript in a criminal case
380 in which the defendant is found to be [~~impecunious~~] indigent shall be paid pursuant to Section
381 [~~77-32-305~~] [78B-22-302](#).

382 (3) The fee for the preparation of a transcript of a court hearing by an official court
383 transcriber and the fee for the preparation of the transcript by a certified court reporter of a
384 hearing before any court, referee, master, board, or commission of this state shall be as
385 provided in Subsection (2)(a), and shall be payable to the person preparing the transcript.
386 Payment for a transcript under this section is the responsibility of the party requesting the
387 transcript.

388 Section 7. Section **78A-2-703** is amended to read:

389 **78A-2-703. Appointment of attorney guardian ad litem in district court matters.**

390 (1) A district court may appoint an attorney guardian ad litem to represent the best
391 interests of a minor in the following district court matters:

392 (a) protective order proceedings; and

393 (b) district court actions when:

394 (i) child abuse, child sexual abuse, or neglect is alleged in a formal complaint, petition,
395 or counterclaim;

396 (ii) the child abuse, child sexual abuse, or neglect described in Subsection (1)(b)(i) has
397 been reported to Child Protective Services;

398 (iii) the court makes a finding that the adult parties to the case are indigent individuals,
399 as defined in Section [~~77-32-202~~] 78B-22-102; and

400 (iv) the district court determines that there are no private attorney guardians ad litem
401 who are reasonably available to be appointed in the district court action.

402 (2) (a) A court may not appoint an attorney guardian ad litem in a criminal case.

403 (b) Subsection (2)(a) does not prohibit the appointment of an attorney guardian ad
404 litem in a case where a court is determining whether to adjudicate a minor for committing an
405 act that would be a crime if committed by an adult.

406 (c) Subsection (2)(a) does not prohibit an attorney guardian ad litem from entering an
407 appearance, filing motions, or taking other action in a criminal case on behalf of a minor, if:

408 (i) the attorney guardian ad litem is appointed to represent the minor in a case that is
409 not a criminal case; and

410 (ii) the interests of the minor may be impacted by:

411 (A) an order that has been, or may be, issued in the criminal case; or

412 (B) other proceedings that have occurred, or may occur, in the criminal case.

413 (3) If a court appoints an attorney guardian ad litem in a divorce or child custody case,
414 the court shall:

415 (a) specify in the order appointing the attorney guardian ad litem the specific issues in
416 the proceeding that the attorney guardian ad litem is required to be involved in resolving, which
417 may include issues relating to the custody of children and parent-time schedules;

418 (b) to the extent possible, bifurcate the issues specified in the order described in
419 Subsection (3)(a) from the other issues in the case, in order to minimize the time constraints
420 placed upon the attorney guardian ad litem in the case; and

421 (c) except as provided in Subsection (5), within one year after the day on which the

422 attorney guardian ad litem is appointed in the case, issue a final order:

423 (i) resolving the issues in the order described in Subsection (3)(a); and

424 (ii) terminating the appointment of the attorney guardian ad litem in the case.

425 (4) A court shall issue an order terminating the appointment of an attorney guardian ad
426 litem made under this section, if:

427 (a) the court determines that the allegations of abuse or neglect are unfounded;

428 (b) after receiving input from the attorney guardian ad litem, the court determines that
429 the children are no longer at risk of abuse or neglect; or

430 (c) there has been no activity in the case for which the attorney guardian ad litem is
431 appointed for a period of six consecutive months.

432 (5) A court may issue a written order extending the one-year period described in
433 Subsection (3)(c) for a time certain, if the court makes a written finding that there is a
434 compelling reason that the court cannot comply with the requirements described in Subsection
435 (3)(c) within the one-year period.

436 (6) When appointing an attorney guardian ad litem for a minor under this section, a
437 court may appoint the same attorney guardian ad litem who represents the minor in another
438 proceeding, or who has represented the minor in a previous proceeding, if that attorney
439 guardian ad litem is available.

440 (7) The court is responsible for all costs resulting from the appointment of an attorney
441 guardian ad litem and shall use funds appropriated by the Legislature for the guardian ad litem
442 program to cover those costs.

443 (8) An attorney guardian ad litem appointed in accordance with the requirements of
444 this section and Chapter 6, Part 9, Guardian Ad Litem, is, when serving in the scope of duties
445 of an attorney guardian ad litem, considered an employee of this state for purposes of
446 indemnification under the Governmental Immunity Act.

447 Section 8. Section **78A-2-705** is amended to read:

448 **78A-2-705. Private attorney guardian ad litem -- Appointment -- Costs and fees --**
449 **Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum**

450 **qualifications.**

451 (1) The court may appoint an attorney as a private attorney guardian ad litem to
452 represent the best interests of the minor in any district court action when:

453 (a) child abuse, child sexual abuse, or neglect is alleged in any proceeding, and the
454 court has made a finding that an adult party is not indigent~~[, as defined by Section 77-32-202]~~
455 as determined under Section 78B-22-202; or

456 (b) the custody of, or parent-time with, a child is at issue.

457 (2) (a) The court shall consider the limited number of eligible private attorneys
458 guardian ad litem, as well as the limited time and resources available to a private attorney
459 guardian ad litem, when making an appointment under Subsection (1) and prioritize case
460 assignments accordingly.

461 (b) The court shall make findings regarding the need and basis for the appointment of a
462 private attorney guardian ad litem.

463 (c) A court may not appoint a private attorney guardian ad litem in a criminal case.

464 (3) (a) If the parties stipulate to a private attorney guardian ad litem, the office shall
465 assign the stipulated private attorney guardian ad litem to the case in accordance with this
466 section.

467 (b) If, under Subsection (3)(a), the parties have not stipulated to a private attorney
468 guardian ad litem, or if the stipulated private attorney guardian ad litem is unable to take the
469 case, the court shall appoint a private attorney guardian ad litem in accordance with Subsection
470 (3)(c).

471 (c) The court shall state in an order that the court is appointing a private attorney
472 guardian ad litem, to be assigned by the office, to represent the best interests of the child in the
473 matter.

474 (d) The court shall send the order described in Subsection (3)(c) to the office, in care of
475 the Private Attorney Guardian ad Litem program.

476 (4) The court shall:

477 (a) specify in the order appointing a private attorney guardian ad litem the specific

478 issues in the proceeding that the private attorney guardian ad litem shall be involved in
479 resolving, which may include issues relating to the custody of the child and a parent-time
480 schedule;

481 (b) to the extent possible, bifurcate the issues described in Subsection (4)(a) from the
482 other issues in the case in order to minimize the time constraints placed upon the private
483 attorney guardian ad litem; and

484 (c) except as provided in Subsection (6), issue a final order within one year after the
485 day on which the private attorney guardian ad litem is appointed in the case:

486 (i) resolving the issues described in Subsection (4)(a); and

487 (ii) terminating the private attorney guardian ad litem from the appointment to the case.

488 (5) The court shall issue an order terminating the appointment of a private attorney
489 guardian ad litem made under this section if:

490 (a) after receiving input from the private attorney guardian ad litem, the court
491 determines that the minor no longer requires the services of the private attorney guardian ad
492 litem; or

493 (b) there has been no activity in the case for a period of six consecutive months.

494 (6) A court may issue an order extending the one-year period described in Subsection
495 (4)(c) for a specified amount of time if the court makes a written finding that there is a
496 compelling reason that the court cannot comply with the requirements described in Subsection
497 (4)(c) within the one-year period.

498 (7) When appointing a private attorney guardian ad litem under this section, a court
499 may appoint the same private attorney guardian ad litem who represents the minor in another
500 proceeding, or who has represented the minor in a previous proceeding, if that private attorney
501 guardian ad litem is available.

502 (8) (a) Upon receipt of the court's order, described in Subsections (3)(c) and (d), the
503 office shall assign the case to a private attorney guardian ad litem, if available, in accordance
504 with this section.

505 (b) (i) If, after the initial assignment of a private attorney guardian ad litem, either party

506 objects to the assigned private attorney guardian ad litem, that party may file an objection with
507 the court within seven days after the day on which the party received notice of the assigned
508 private attorney guardian ad litem.

509 (ii) If, after the initial assignment of a private attorney guardian ad litem, either
510 attorney for a party discovers that the private attorney guardian ad litem represents an adverse
511 party in a separate matter, that attorney may file an objection with the court within seven days
512 after the day on which the attorney received notice of the private attorney guardian ad litem's
513 representation of an adverse party in a separate matter.

514 (iii) Upon receipt of an objection, the court shall determine whether grounds exist for
515 the objection, and if grounds exist, the court shall order, without a hearing, the office to assign
516 a new private attorney guardian ad litem, in consultation with the parties and in accordance
517 with this section.

518 (iv) If no alternative private attorney guardian ad litem is available, the office shall
519 notify the court.

520 (9) (a) When appointing a private attorney guardian ad litem, the court shall:

521 (i) assess all or part of the private attorney guardian ad litem fees, court costs, and
522 paralegal, staff, and volunteer expenses against the parties in a proportion the court determines
523 to be just; and

524 (ii) designate in the order whether the private attorney guardian ad litem shall, as
525 established by rule under Subsection (17):

526 (A) be paid a set fee and initial retainer;

527 (B) not be paid and serve pro bono; or

528 (C) be paid at a rate less than the set fee established by court rule.

529 (b) If a party claims to be impecunious, the court shall follow the procedure and make a
530 determination, described in Section [78A-2-302](#), to set the amount that the party is required to
531 pay, if any, toward the private attorney guardian ad litem's fees and expenses.

532 (c) The private attorney guardian ad litem may adjust the court-ordered fees or retainer
533 to an amount less than what was ordered by the court at any time before being released from

534 representation by the court.

535 (10) Upon accepting the court's appointment, the assigned private attorney guardian ad
536 litem shall:

537 (a) file a notice of appearance with the court within five business days of the day on
538 which the attorney was assigned; and

539 (b) represent the best interests of the minor until released by the court.

540 (11) The private attorney guardian ad litem:

541 (a) shall be certified by the director of the office as meeting the minimum
542 qualifications for appointment; and

543 (b) may not be employed by, or under contract with, the office unless under contract as
544 a conflict private attorney guardian ad litem in an unrelated case.

545 (12) The private attorney guardian ad litem appointed under the provisions of this
546 section shall:

547 (a) represent the best interests of the minor from the date of the appointment until
548 released by the court;

549 (b) conduct or supervise an ongoing, independent investigation in order to obtain,
550 first-hand, a clear understanding of the situation and needs of the minor;

551 (c) interview witnesses and review relevant records pertaining to the minor and the
552 minor's family, including medical, psychological, and school records;

553 (d) (i) personally meet with the minor, unless:

554 (A) the minor is outside of the state; or

555 (B) meeting with the minor would be detrimental to the minor;

556 (ii) personally interview the minor, unless:

557 (A) the minor is not old enough to communicate;

558 (B) the minor lacks the capacity to participate in a meaningful interview; or

559 (C) the interview would be detrimental to the minor;

560 (iii) to the extent possible, determine the minor's goals and concerns regarding custody
561 or visitation; and

562 (iv) to the extent possible, and unless it would be detrimental to the minor, keep the
563 minor advised of:

564 (A) the status of the minor's case;

565 (B) all court and administrative proceedings;

566 (C) discussions with, and proposals made by, other parties;

567 (D) court action; and

568 (E) the psychiatric, medical, or other treatment or diagnostic services that are to be
569 provided to the minor;

570 (e) unless excused by the court, prepare for and attend all mediation hearings and all
571 court conferences and hearings, and present witnesses and exhibits as necessary to protect the
572 best interests of the minor;

573 (f) identify community resources to protect the best interests of the minor and advocate
574 for those resources; and

575 (g) participate in all appeals unless excused by the court.

576 (13) (a) The private attorney guardian ad litem shall represent the best interests of a
577 minor.

578 (b) If the minor's intent and desires differ from the private attorney guardian ad litem's
579 determination of the minor's best interests, the private attorney guardian ad litem shall
580 communicate to the court the minor's intent and desires and the private attorney guardian ad
581 litem's determination of the minor's best interests.

582 (c) A difference between the minor's intent and desires and the private attorney
583 guardian ad litem's determination of best interests is not sufficient to create a conflict of
584 interest.

585 (d) The private attorney guardian ad litem shall disclose the intent and desires of the
586 minor unless the minor:

587 (i) instructs the private attorney guardian ad litem to not disclose the minor's intent and
588 desires; or

589 (ii) has not expressed an intent and desire.

590 (e) The court may appoint one private attorney guardian ad litem to represent the best
591 interests of more than one child of a marriage.

592 (14) In every court hearing where the private attorney guardian ad litem makes a
593 recommendation regarding the best interest of the minor, the court shall require the private
594 attorney guardian ad litem to disclose the factors that form the basis of the recommendation.

595 (15) A private attorney guardian ad litem appointed under this section is immune from
596 any civil liability that might result by reason of acts performed within the scope of duties of the
597 private attorney guardian ad litem.

598 (16) The office and the Guardian ad Litem Oversight Committee shall compile a list of
599 attorneys willing to accept an appointment as a private attorney guardian ad litem.

600 (17) Upon the advice of the director and the Guardian ad Litem Oversight Committee,
601 the Judicial Council shall establish by rule:

602 (a) the minimum qualifications and requirements for appointment by the court as a
603 private attorney guardian ad litem;

604 (b) the standard fee rate and retainer amount for a private attorney guardian ad litem;

605 (c) the percentage of cases a private attorney guardian ad litem may be expected to take
606 on pro bono;

607 (d) a system to:

608 (i) select a private attorney guardian ad litem for a given appointment; and

609 (ii) determine when a private attorney guardian ad litem shall be expected to accept an
610 appointment pro bono; and

611 (e) the process for handling a complaint relating to the eligibility status of a private
612 attorney guardian ad litem.

613 (18) (a) Any savings that result from assigning a private attorney guardian ad litem in a
614 district court case, instead of an office guardian ad litem, shall be applied to the office to recruit
615 and train attorneys for the private attorney guardian ad litem program.

616 (b) After complying with Subsection (18)(a), the office shall use any additional savings
617 to reduce caseloads and improve current practices in juvenile court.

618 Section 9. Section **78A-6-306** is amended to read:

619 **78A-6-306. Shelter hearing.**

620 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays
621 after any one or all of the following occur:

622 (a) removal of the child from the child's home by the division;

623 (b) placement of the child in the protective custody of the division;

624 (c) emergency placement under Subsection **62A-4a-202.1(4)**;

625 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter
626 at the request of the division; or

627 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under
628 Subsection **78A-6-106(4)**.

629 (2) If one of the circumstances described in Subsections (1)(a) through (e) occurs, the
630 division shall issue a notice that contains all of the following:

631 (a) the name and address of the person to whom the notice is directed;

632 (b) the date, time, and place of the shelter hearing;

633 (c) the name of the child on whose behalf a petition is being brought;

634 (d) a concise statement regarding:

635 (i) the reasons for removal or other action of the division under Subsection (1); and

636 (ii) the allegations and code sections under which the proceeding has been instituted;

637 (e) a statement that the parent or guardian to whom notice is given, and the child, are
638 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is

639 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
640 provided in accordance with [~~the provisions of Section **78A-6-1111**~~] Title 78B, Chapter 22,

641 Indigent Defense Act; and

642 (f) a statement that the parent or guardian is liable for the cost of support of the child in
643 the protective custody, temporary custody, and custody of the division, and the cost for legal
644 counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial
645 ability of the parent or guardian.

646 (3) The notice described in Subsection (2) shall be personally served as soon as
647 possible, but no later than one business day after removal of the child from the child's home, or
648 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection
649 78A-6-106(4), on:

650 (a) the appropriate guardian ad litem; and

651 (b) both parents and any guardian of the child, unless the parents or guardians cannot
652 be located.

653 (4) The following persons shall be present at the shelter hearing:

654 (a) the child, unless it would be detrimental for the child;

655 (b) the child's parents or guardian, unless the parents or guardian cannot be located, or
656 fail to appear in response to the notice;

657 (c) counsel for the parents, if one is requested;

658 (d) the child's guardian ad litem;

659 (e) the caseworker from the division who is assigned to the case; and

660 (f) the attorney from the attorney general's office who is representing the division.

661 (5) (a) At the shelter hearing, the court shall:

662 (i) provide an opportunity to provide relevant testimony to:

663 (A) the child's parent or guardian, if present; and

664 (B) any other person having relevant knowledge; and

665 (ii) subject to Section 78A-6-305, provide an opportunity for the child to testify.

666 (b) The court:

667 (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile
668 Procedure;

669 (ii) shall hear relevant evidence presented by the child, the child's parent or guardian,
670 the requesting party, or their counsel; and

671 (iii) may in its discretion limit testimony and evidence to only that which goes to the
672 issues of removal and the child's need for continued protection.

673 (6) If the child is in the protective custody of the division, the division shall report to

674 the court:

675 (a) the reason why the child was removed from the parent's or guardian's custody;

676 (b) any services provided to the child and the child's family in an effort to prevent

677 removal;

678 (c) the need, if any, for continued shelter;

679 (d) the available services that could facilitate the return of the child to the custody of

680 the child's parent or guardian; and

681 (e) subject to Subsections [78A-6-307](#)(18)(c) through (e), whether any relatives of the

682 child or friends of the child's parents may be able and willing to accept temporary placement of

683 the child.

684 (7) The court shall consider all relevant evidence provided by persons or entities

685 authorized to present relevant evidence pursuant to this section.

686 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good

687 cause shown, the court may grant no more than one continuance, not to exceed five judicial

688 days.

689 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for

690 a continuance under Subsection (8)(a).

691 (c) Notwithstanding Subsection (8)(a), if the division fails to provide the notice

692 described in Subsection (2) within the time described in Subsection (3), the court may grant the

693 request of a parent or guardian for a continuance, not to exceed five judicial days.

694 (9) (a) If the child is in the protective custody of the division, the court shall order that

695 the child be returned to the custody of the parent or guardian unless it finds, by a

696 preponderance of the evidence, consistent with the protections and requirements provided in

697 Subsection [62A-4a-201](#)(1), that any one of the following exists:

698 (i) subject to Subsection (9)(b)(i), there is a serious danger to the physical health or

699 safety of the child and the child's physical health or safety may not be protected without

700 removing the child from the custody of the child's parent;

701 (ii) (A) the child is suffering emotional damage that results in a serious impairment in

702 the child's growth, development, behavior, or psychological functioning;

703 (B) the parent or guardian is unwilling or unable to make reasonable changes that

704 would sufficiently prevent future damage; and

705 (C) there are no reasonable means available by which the child's emotional health may

706 be protected without removing the child from the custody of the child's parent or guardian;

707 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is

708 not removed from the custody of the child's parent or guardian;

709 (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same

710 household has been, or is considered to be at substantial risk of being, physically abused,

711 sexually abused, or sexually exploited by a:

712 (A) parent or guardian;

713 (B) member of the parent's household or the guardian's household; or

714 (C) person known to the parent or guardian;

715 (v) the parent or guardian is unwilling to have physical custody of the child;

716 (vi) the child is without any provision for the child's support;

717 (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe

718 and appropriate care for the child;

719 (viii) (A) a relative or other adult custodian with whom the child is left by the parent or

720 guardian is unwilling or unable to provide care or support for the child;

721 (B) the whereabouts of the parent or guardian are unknown; and

722 (C) reasonable efforts to locate the parent or guardian are unsuccessful;

723 (ix) subject to Subsections [78A-6-105\(35\)\(c\)\(i\)](#) through (iii) and [78A-6-117\(2\)](#) and

724 Section [78A-6-301.5](#), the child is in immediate need of medical care;

725 (x) (A) the physical environment or the fact that the child is left unattended beyond a

726 reasonable period of time poses a threat to the child's health or safety; and

727 (B) the parent or guardian is unwilling or unable to make reasonable changes that

728 would remove the threat;

729 (xi) (A) the child or a minor residing in the same household has been neglected; and

730 (B) the parent or guardian is unwilling or unable to make reasonable changes that
731 would prevent the neglect;

732 (xii) the parent, guardian, or an adult residing in the same household as the parent or
733 guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act,
734 and any clandestine laboratory operation was located in the residence or on the property where
735 the child resided;

736 (xiii) (A) the child's welfare is substantially endangered; and

737 (B) the parent or guardian is unwilling or unable to make reasonable changes that
738 would remove the danger; or

739 (xiv) the child's natural parent:

740 (A) intentionally, knowingly, or recklessly causes the death of another parent of the
741 child;

742 (B) is identified by a law enforcement agency as the primary suspect in an investigation
743 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

744 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
745 recklessly causing the death of another parent of the child.

746 (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is
747 established if:

748 (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency
749 involving the parent; and

750 (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

751 (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly
752 allowed the child to be in the physical care of a person after the parent received actual notice
753 that the person physically abused, sexually abused, or sexually exploited the child, that fact
754 constitutes prima facie evidence that there is a substantial risk that the child will be physically
755 abused, sexually abused, or sexually exploited.

756 (10) (a) (i) The court shall also make a determination on the record as to whether
757 reasonable efforts were made to prevent or eliminate the need for removal of the child from the

758 child's home and whether there are available services that would prevent the need for continued
759 removal.

760 (ii) If the court finds that the child can be safely returned to the custody of the child's
761 parent or guardian through the provision of those services, the court shall place the child with
762 the child's parent or guardian and order that those services be provided by the division.

763 (b) In making the determination described in Subsection (10)(a), and in ordering and
764 providing services, the child's health, safety, and welfare shall be the paramount concern, in
765 accordance with federal law.

766 (11) Where the division's first contact with the family occurred during an emergency
767 situation in which the child could not safely remain at home, the court shall make a finding that
768 any lack of preplacement preventive efforts was appropriate.

769 (12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe
770 abuse, or severe neglect are involved, neither the division nor the court has any duty to make
771 "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home,
772 return a child to the child's home, provide reunification services, or attempt to rehabilitate the
773 offending parent or parents.

774 (13) The court may not order continued removal of a child solely on the basis of
775 educational neglect as described in Subsection 78A-6-105(35)(b), truancy, or failure to comply
776 with a court order to attend school.

777 (14) (a) Whenever a court orders continued removal of a child under this section, the
778 court shall state the facts on which that decision is based.

779 (b) If no continued removal is ordered and the child is returned home, the court shall
780 state the facts on which that decision is based.

781 (15) If the court finds that continued removal and temporary custody are necessary for
782 the protection of a child pursuant to Subsection (9)(a), the court shall order continued removal
783 regardless of:

784 (a) any error in the initial removal of the child;

785 (b) the failure of a party to comply with notice provisions; or

786 (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child
787 and Family Services.

788 Section 10. Section 78A-6-317 is amended to read:

789 **78A-6-317. All proceedings -- Persons entitled to be present.**

790 (1) A child who is the subject of a juvenile court hearing, any person entitled to notice
791 pursuant to Section 78A-6-306 or 78A-6-310, preadoptive parents, foster parents, and any
792 relative providing care for the child, are:

793 (a) entitled to notice of, and to be present at, each hearing and proceeding held under
794 this part, including administrative reviews; and

795 (b) have a right to be heard at each hearing and proceeding described in Subsection
796 (1)(a).

797 (2) A child shall be represented at each hearing by the guardian ad litem appointed to
798 the child's case by the court. The child has a right to be present at each hearing, subject to the
799 discretion of the guardian ad litem or the court regarding any possible detriment to the child.

800 (3) (a) The parent or guardian of a child who is the subject of a petition under this part
801 has the right to be represented by counsel, and to present evidence, at each hearing.

802 (b) ~~[When it appears to the court that a parent or guardian of the child desires counsel~~
803 ~~but is financially unable to afford and cannot for that reason employ counsel, the] A court~~
804 ~~[shall] may appoint [counsel] an indigent defense service provider as provided in [Section~~
805 ~~78A-6-1111] Title 78B, Chapter 22, Indigent Defense Act.~~

806 (4) In every abuse, neglect, or dependency proceeding under this chapter, the court
807 shall order that the child be represented by a guardian ad litem, in accordance with Section
808 78A-6-902. The guardian ad litem shall represent the best interest of the child, in accordance
809 with the requirements of that section, at the shelter hearing and at all subsequent court and
810 administrative proceedings, including any proceeding for termination of parental rights in
811 accordance with Part 5, Termination of Parental Rights Act.

812 (5) (a) Except as provided in Subsection (5)(b), and notwithstanding any other
813 provision of law:

814 (i) counsel for all parties to the action shall be given access to all records, maintained
815 by the division or any other state or local public agency, that are relevant to the abuse, neglect,
816 or dependency proceeding under this chapter; and

817 (ii) if the natural parent of a child is not represented by counsel, the natural parent shall
818 have access to the records described in Subsection (5)(a)(i).

819 (b) The disclosures described in Subsection (5)(a) are not required in the following
820 circumstances:

821 (i) subject to Subsection (5)(c), the division or other state or local public agency did not
822 originally create the record being requested;

823 (ii) disclosure of the record would jeopardize the life or physical safety of a child who
824 has been a victim of abuse or neglect, or any person who provided substitute care for the child;

825 (iii) disclosure of the record would jeopardize the anonymity of the person or persons
826 making the initial report of abuse or neglect or any others involved in the subsequent
827 investigation;

828 (iv) disclosure of the record would jeopardize the life or physical safety of a person
829 who has been a victim of domestic violence;

830 (v) the record is a report maintained in the Management Information System, for which
831 a finding of unsubstantiated, unsupported, or without merit has been made, unless the person
832 requesting the information is the alleged perpetrator in the report or counsel for the alleged
833 perpetrator in the report; or

834 (vi) the record is a Children's Justice Center interview, including a video or audio
835 recording, and a transcript of the recording, the release of which is governed by Section
836 [77-37-4](#).

837 (c) If a disclosure is denied under Subsection (5)(b)(i), the division shall inform the
838 person making the request of the following:

839 (i) the existence of all records in the possession of the division or any other state or
840 local public agency;

841 (ii) the name and address of the person or agency that originally created the record; and

842 (iii) that the person must seek access to the record from the person or agency that
843 originally created the record.

844 Section 11. Section 78A-6-703 is amended to read:

845 **78A-6-703. Certification hearings -- Juvenile court to hold preliminary hearing --**
846 **Factors considered by juvenile court for waiver of jurisdiction to district court.**

847 (1) If a criminal information filed in accordance with Subsection 78A-6-602(3) alleges
848 the commission of an act which would constitute a felony if committed by an adult, the
849 juvenile court shall conduct a preliminary hearing.

850 (2) At the preliminary hearing the state shall have the burden of going forward with its
851 case and the burden of establishing:

852 (a) probable cause to believe that a crime was committed and that the defendant
853 committed it; and

854 (b) by a preponderance of the evidence, that it would be contrary to the best interests of
855 the minor or of the public for the juvenile court to retain jurisdiction.

856 (3) In considering whether or not it would be contrary to the best interests of the minor
857 or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider,
858 and may base its decision on, the finding of one or more of the following factors:

859 (a) the seriousness of the offense and whether the protection of the community requires
860 isolation of the minor beyond that afforded by juvenile facilities;

861 (b) whether the alleged offense was committed by the minor under circumstances
862 which would subject the minor to enhanced penalties under Section 76-3-203.1 if the minor
863 were adult and the offense was committed:

864 (i) in concert with two or more persons;

865 (ii) for the benefit of, at the direction of, or in association with any criminal street gang
866 as defined in Section 76-9-802; or

867 (iii) to gain recognition, acceptance, membership, or increased status with a criminal
868 street gang as defined in Section 76-9-802;

869 (c) whether the alleged offense was committed in an aggressive, violent, premeditated,

870 or willful manner;

871 (d) whether the alleged offense was against persons or property, greater weight being
872 given to offenses against persons, except as provided in Section 76-8-418;

873 (e) the maturity of the minor as determined by considerations of the minor's home,
874 environment, emotional attitude, and pattern of living;

875 (f) the record and previous history of the minor;

876 (g) the likelihood of rehabilitation of the minor by use of facilities available to the
877 juvenile court;

878 (h) the desirability of trial and disposition of the entire offense in one court when the
879 minor's associates in the alleged offense are adults who will be charged with a crime in the
880 district court;

881 (i) whether the minor used a firearm in the commission of an offense; and

882 (j) whether the minor possessed a dangerous weapon on or about school premises as
883 provided in Section 76-10-505.5.

884 (4) The amount of weight to be given to each of the factors listed in Subsection (3) is
885 discretionary with the court.

886 (5) (a) Written reports and other materials relating to the minor's mental, physical,
887 educational, and social history may be considered by the court.

888 (b) If requested by the minor, the minor's parent, guardian, or other interested party, the
889 court shall require the person or agency preparing the report and other material to appear and
890 be subject to both direct and cross-examination.

891 (6) At the conclusion of the state's case, the minor may testify under oath, call
892 witnesses, cross-examine adverse witnesses, and present evidence on the factors required by
893 Subsection (3).

894 (7) At the time the minor is bound over to the district court, the juvenile court shall
895 make the initial determination on where the minor shall be held.

896 (8) The juvenile court shall consider the following when determining where the minor
897 will be held until the time of trial:

- 898 (a) the age of the minor;
- 899 (b) the nature, seriousness, and circumstances of the alleged offense;
- 900 (c) the minor's history of prior criminal acts;
- 901 (d) whether detention in a juvenile detention facility will adequately serve the need for
902 community protection pending the outcome of any criminal proceedings;
- 903 (e) whether the minor's placement in a juvenile detention facility will negatively impact
904 the functioning of the facility by compromising the goals of the facility to maintain a safe,
905 positive, and secure environment for all minors within the facility;
- 906 (f) the relative ability of the facility to meet the needs of the minor and protect the
907 public;
- 908 (g) whether the minor presents an imminent risk of harm to the minor or others within
909 the facility;
- 910 (h) the physical maturity of the minor;
- 911 (i) the current mental state of the minor as evidenced by relevant mental health or
912 psychological assessments or screenings that are made available to the court; and
- 913 (j) any other factors the court considers relevant.
- 914 (9) If a minor is ordered to a juvenile detention facility under Subsection (8), the minor
915 shall remain in the facility until released by a district court judge, or if convicted, until
916 sentencing.
- 917 (10) A minor held in a juvenile detention facility under this section shall have the same
918 right to bail as any other criminal defendant.
- 919 (11) If the minor ordered to a juvenile detention facility under Subsection (8) attains
920 the age of 18 years, the minor shall be transferred within 30 days to an adult jail until released
921 by the district court judge, or if convicted, until sentencing.
- 922 (12) A minor 16 years of age or older whose conduct or condition endangers the safety
923 or welfare of others in the juvenile detention facility may, by court order that specifies the
924 reasons, be detained in another place of confinement considered appropriate by the court,
925 including jail or other place of confinement for adults.

926 (13) The district court may reconsider the decision on where the minor shall be held
927 pursuant to Subsection (7).

928 (14) If the court finds the state has met its burden under Subsection (2), the court may
929 enter an order:

930 (a) certifying that finding; and

931 (b) directing that the minor be held for criminal proceedings in the district court.

932 (15) If an indictment is returned by a grand jury, the preliminary examination held by
933 the juvenile court need not include a finding of probable cause, but the juvenile court shall
934 proceed in accordance with this section regarding the additional consideration referred to in
935 Subsection (2)(b).

936 (16) [~~The provisions of~~] Title 78B, Chapter 22, Indigent Defense Act, Section
937 [78A-6-115](#), [~~Section 78A-6-111~~];] and other provisions relating to proceedings in juvenile
938 cases are applicable to the hearing held under this section to the extent they are pertinent.

939 (17) A minor who has been directed to be held for criminal proceedings in the district
940 court is not entitled to a preliminary examination in the district court.

941 (18) A minor who has been certified for trial in the district court shall have the same
942 right to bail as any other criminal defendant and shall be advised of that right by the juvenile
943 court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20,
944 Bail.

945 (19) When a minor has been certified to the district court under this section, the
946 jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile
947 court over the minor is terminated regarding that offense, any other offenses arising from the
948 same criminal episode, and any subsequent misdemeanors or felonies charged against the
949 minor, except as provided in Subsection (21) or Section [78A-6-705](#).

950 (20) If a minor enters a plea to, or is found guilty of any of the charges filed or on any
951 other offense arising out of the same criminal episode, the district court retains jurisdiction
952 over the minor for all purposes, including sentencing.

953 (21) The juvenile court under Section [78A-6-103](#) and the Division of Juvenile Justice

954 Services regain jurisdiction and any authority previously exercised over the minor when there
955 is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

956 Section 12. Section ~~78A-6-1111~~ is amended to read:

957 **78A-6-1111. Order for indigent defense service or guardian ad litem.**

958 [~~(1) (a) In any action in juvenile court initiated by the state, a political subdivision of
959 the state, or a private party, the parents, legal guardian, and the minor, where applicable, shall
960 be informed that they may be represented by counsel at every stage of the proceedings.]~~

961 [~~(b) In any action initiated by a private party:]~~

962 [~~(i) the parents or legal guardian shall have the right to employ counsel of their own
963 choice at their own expense; and]~~

964 [~~(ii) the court shall appoint counsel designated by the county where the petition is filed
965 to represent a parent or legal guardian facing any action initiated by a private party under Title
966 78A, Chapter 6, Part 5, Termination of Parental Rights Act or termination of parental rights
967 under Section ~~78B-6-112~~, if the parent or legal guardian:]~~

968 [~~(A) qualifies as indigent under Section ~~77-32-202~~; and]~~

969 [~~(B) does not, after being fully advised of the right to counsel, knowingly, intelligently,
970 and voluntarily waive the right to counsel.]~~

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

978 (1) A court shall order indigent defense services for a minor, parent, or legal guardian
979 as provided by Title 78B, Chapter 22, Indigent Defense Act.

980 [~~(d)~~] (2) In any action [~~initiated by the state, a political subdivision of the state, or a~~
981 ~~private party]~~ under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5,

982 Termination of Parental Rights Act, [of this chapter,] the child shall be represented by a
983 guardian ad litem in accordance with Sections 78A-6-317 and 78A-6-902. The child shall also
984 be represented by an attorney guardian ad litem in other actions initiated under this chapter
985 when appointed by the court under Section 78A-6-902 or as otherwise provided by law.

986 ~~[(e) In any action initiated by the state or a political subdivision of the state under Part~~
987 ~~6, Delinquency and Criminal Actions, or Part 7, Transfer of Jurisdiction, of this chapter, or~~
988 ~~against a minor under Section 78A-6-1101, the parents or legal guardian and the minor shall be~~
989 ~~informed that the minor has the right to be represented by counsel at every stage of the~~
990 ~~proceedings.]~~

991 ~~[(i) In cases where a petition or information alleging a felony-level offense is filed, the~~
992 ~~court shall appoint counsel, who shall appear until counsel is retained on the minor's behalf.~~
993 ~~The minor may not waive counsel unless the minor has had a meaningful opportunity to~~
994 ~~consult with a defense attorney. The court shall make findings on the record, taking into~~
995 ~~consideration the minor's unique circumstances and attributes, that the waiver is knowing and~~
996 ~~voluntary and the minor understands the consequences of waiving the right to counsel.]~~

997 ~~[(ii) In all other cases in which a petition is filed the right to counsel may not be waived~~
998 ~~by a minor unless there has been a finding on the record, taking into consideration the minor's~~
999 ~~unique circumstances and attributes, that the waiver is knowing and voluntary, and the minor~~
1000 ~~understands the consequences of waiving the right to counsel.]~~

1001 ~~[(iii) If the minor is found to be indigent, counsel shall be appointed by the court to~~
1002 ~~represent the minor in all proceedings directly related to the petition or motion filed by the state~~
1003 ~~or a political subdivision of the state, subject to the provisions of this section.]~~

1004 ~~[(f) Indigency of a parent, legal guardian, or minor shall be determined in accordance~~
1005 ~~with the process and procedure defined in Section 77-32-202. The court shall take into account~~
1006 ~~the income and financial ability of the parent or legal guardian to retain counsel in determining~~
1007 ~~the indigency of the minor.]~~

1008 ~~[(g) The cost of appointed counsel for a party found to be indigent, including the cost~~
1009 ~~of counsel and expense of the first appeal, shall be paid by the county in which the trial court~~

1010 ~~proceedings are held. Counties may levy and collect taxes for these purposes or may apply for~~
1011 ~~a grant for reimbursement, as provided in Subsection (6).]~~

1012 ~~[(2) Counsel appointed by the court may not provide representation as court-appointed~~
1013 ~~counsel for a parent or legal guardian in any action initiated by, or in any proceeding to modify~~
1014 ~~court orders in a proceeding initiated by, a private party, except as provided under Subsection~~
1015 ~~(1)(b).]~~

1016 ~~[(3) If the county responsible to provide legal counsel for an indigent under Subsection~~
1017 ~~(1)(g) has arranged by contract to provide services, the court shall appoint the contracting~~
1018 ~~attorney as legal counsel to represent that indigent.]~~

1019 ~~[(4) The court may order a parent or legal guardian for whom counsel is appointed, and~~
1020 ~~the parents or legal guardian of any minor for whom counsel is appointed, to reimburse the~~
1021 ~~county for the cost of appointed counsel.]~~

1022 ~~[(5) The state, or an agency of the state, may not be ordered to reimburse the county for~~
1023 ~~expenses incurred under Subsection (1)(g).]~~

1024 ~~[(6) If a county incurs expenses in providing defense services to indigent individuals~~
1025 ~~facing any action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination of~~
1026 ~~Parental Rights Act or termination of parental rights under Section ~~78B-6-112~~, the county may~~
1027 ~~apply for a grant for reimbursement from the Utah Indigent Defense Commission under~~
1028 ~~Section ~~77-32-806~~.]~~

1029 Section 13. Section **78A-7-103** is amended to read:

1030 **78A-7-103. Minimum standards of justice courts -- Authority of Judicial Council**
1031 **over justice courts.**

1032 The Judicial Council shall ensure that:

1033 (1) procedures include requirements that every municipality or county that establishes
1034 or maintains a justice court provide for the following minimum operating standards:

1035 (a) a system to ensure the justice court records all proceedings with a digital audio
1036 recording device and maintains the audio recordings for a minimum of one year;

1037 (b) sufficient prosecutors to perform the prosecutorial duties before the justice court;

1038 (c) adequate funding to [~~defend all persons charged with a public offense who are~~
1039 ~~determined by the justice court to be indigent~~] provide indigent defense services for indigent
1040 individuals under Title [~~77, Chapter 32~~] 78B, Chapter 22, Indigent Defense Act;

1041 (d) sufficient local peace officers to provide security for the justice court and to attend
1042 to the justice court when required;

1043 (e) sufficient clerical personnel to serve the needs of the justice court;

1044 (f) sufficient funds to cover the cost of travel and training expenses of clerical
1045 personnel and judges at training sessions mandated by the Judicial Council;

1046 (g) adequate courtroom and auxiliary space for the justice court, which need not be
1047 specifically constructed for or allocated solely for the justice court when existing facilities
1048 adequately serve the purposes of the justice court; and

1049 (h) for each judge of its justice court, a current copy of the Utah Code, the Utah Court
1050 Rules Annotated, the justice court manual published by the state court administrator, the
1051 county, city, or town ordinances as appropriate, and other legal reference materials as
1052 determined to be necessary by the judge; and

1053 (2) the Judicial Council's rules and procedures shall:

1054 (a) presume that existing justice courts will be recertified at the end of each four-year
1055 term if the court continues to meet the minimum requirements for the establishment of a new
1056 justice court; or

1057 (b) authorize the Judicial Council, upon request of a municipality or county or upon its
1058 own review, when a justice court does not meet the minimum requirements, to:

1059 (i) decline recertification of a justice court;

1060 (ii) revoke the certification of a justice court;

1061 (iii) extend the time for a justice court to comply with the minimum requirements; or

1062 (iv) suspend rules of the Judicial Council governing justice courts, if the council
1063 believes suspending those rules is the appropriate administrative remedy for the justice courts
1064 of this state.

1065 Section 14. Section **78B-6-112** is amended to read:

1066 **78B-6-112. District court jurisdiction over termination of parental rights**
1067 **proceedings.**

1068 (1) A district court has jurisdiction to terminate parental rights in a child if the party
1069 who filed the petition is seeking to terminate parental rights in the child for the purpose of
1070 facilitating the adoption of the child.

1071 (2) A petition to terminate parental rights under this section may be:

1072 (a) joined with a proceeding on an adoption petition; or

1073 (b) filed as a separate proceeding before or after a petition to adopt the child is filed.

1074 (3) A court may enter a final order terminating parental rights before a final decree of
1075 adoption is entered.

1076 (4) (a) Nothing in this section limits the jurisdiction of a juvenile court relating to
1077 proceedings to terminate parental rights as described in Section [78A-6-103](#).

1078 (b) This section does not grant jurisdiction to a district court to terminate parental
1079 rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse,
1080 neglect, dependency, or termination of parental rights proceeding.

1081 (5) The district court may terminate an individual's parental rights in a child if:

1082 (a) the individual executes a voluntary consent to adoption, or relinquishment for
1083 adoption, of the child, in accordance with:

1084 (i) the requirements of this chapter; or

1085 (ii) the laws of another state or country, if the consent is valid and irrevocable;

1086 (b) the individual is an unmarried biological father who is not entitled to consent to
1087 adoption, or relinquishment for adoption, under Section [78B-6-120](#) or [78B-6-121](#);

1088 (c) the individual:

1089 (i) received notice of the adoption proceeding relating to the child under Section
1090 [78B-6-110](#); and

1091 (ii) failed to file a motion for relief, under Subsection [78B-6-110\(6\)](#), within 30 days
1092 after the day on which the individual was served with notice of the adoption proceeding;

1093 (d) the court finds, under Section [78B-15-607](#), that the individual is not a parent of the

1094 child; or

1095 (e) the individual's parental rights are terminated on grounds described in Title 78A,
1096 Chapter 6, Part 5, Termination of Parental Rights Act, if terminating the person's parental
1097 rights is in the best interests of the child.

1098 (6) The court shall appoint [~~counsel designated by the county where the petition is~~
1099 ~~filed~~] an indigent defense service provider, under Title 78B, Chapter 22, Indigent Defense Act,
1100 to represent a party who faces any action initiated by a private party under Title 78A, Chapter
1101 6, Part 5, Termination of Parental Rights Act or whose parental rights are subject to
1102 termination under this section[~~, if:~~].

1103 [~~(a) the court determines that the party is indigent under Section 77-32-202; and]~~

1104 [~~(b) the party does not, after being fully advised of the right to counsel, knowingly,~~
1105 ~~intelligently and voluntarily waive the right to counsel.]~~

1106 (7) If a county incurs expenses in providing indigent defense services to an indigent
1107 [~~individuals~~] individual facing any action initiated by a private party under Title 78A, Chapter
1108 6, Part 5, Termination of Parental Rights Act or termination of parental rights under this
1109 section, the county may apply for [~~a grant for~~] reimbursement from the Utah Indigent Defense
1110 Commission under Section [~~77-32-806~~] 78B-22-406.

1111 Section 15. Section **78B-22-101**, which is renumbered from Section 77-32-101 is
1112 renumbered and amended to read:

1113 **CHAPTER 22. INDIGENT DEFENSE ACT**

1114 **Part 1. General Provisions**

1115 [~~77-32-101~~]. **78B-22-101. Title.**

1116 This chapter is known as the "Indigent Defense Act."

1117 Section 16. Section **78B-22-102** is enacted to read:

1118 **78B-22-102. Definitions.**

1119 As used in this chapter:

1120 (1) "Account" means the Indigent Defense Resources Restricted Account created in
1121 Section 78B-22-405.

1122 (2) "Board" means the Indigent Defense Funds Board created in Section 78B-22-501.

1123 (3) "Commission" means the Utah Indigent Defense Commission created in Section
1124 78B-22-401.

1125 (4) (a) "Indigent defense resources" means the resources necessary to provide an
1126 effective defense for an indigent individual, including the costs for a competent investigator,
1127 expert witness, scientific or medical testing, transcripts, and printing briefs.

1128 (b) "Indigent defense resources" does not include an indigent defense service provider.

1129 (5) "Indigent defense service provider" means an attorney or entity appointed to
1130 represent an indigent individual pursuant to:

1131 (a) a contract with an indigent defense system to provide indigent defense services; or

1132 (b) an order issued by the court under Subsection 78B-22-203(2)(a).

1133 (6) "Indigent defense services" means:

1134 (a) the representation of an indigent individual by an indigent defense service provider;

1135 and

1136 (b) the provision of indigent defense resources for an indigent individual.

1137 (7) "Indigent defense system" means:

1138 (a) a city or town that is responsible for providing indigent defense services in the city's
1139 or town's justice court;

1140 (b) a county that is responsible for providing indigent defense services in the district
1141 court, juvenile court, or the county's justice courts; or

1142 (c) an interlocal entity, created pursuant to Title 11, Chapter 13, Interlocal Cooperation
1143 Act, that is responsible for providing indigent defense services according to the terms of an
1144 agreement between a county, city, or town.

1145 (8) "Indigent individual" means:

1146 (a) a minor who is:

1147 (i) arrested and admitted into detention for an offense under Section 78A-6-103;

1148 (ii) charged by petition or information in the juvenile or district court; or

1149 (iii) described in this Subsection (8)(a), who is appealing a first appeal from an

1150 adjudication or other final court action; and

1151 (b) an individual listed in Subsection 78B-22-201(1) who is found indigent pursuant to
1152 Section 78B-22-202.

1153 (9) "Minor" means the same as that term is defined in Section 78A-6-105.

1154 (10) "Participating county" means a county that complies with this chapter for
1155 participation in the Indigent Aggravated Murder Defense Trust Fund as provided in Sections
1156 78B-22-702 and 78B-22-703.

1157 Section 17. Section 78B-22-201 is enacted to read:

1158 **Part 2. Appointment of Counsel**

1159 **78B-22-201. Right to counsel.**

1160 (1) A court shall advise the following of the individual's right to counsel when the
1161 individual first appears before the court:

1162 (a) an adult charged with a criminal offense the penalty for which includes the
1163 possibility of incarceration regardless of whether actually imposed;

1164 (b) a parent or legal guardian facing any action under:

1165 (i) Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;

1166 (ii) Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act;

1167 (iii) Title 78A, Chapter 6, Part 10, Adult Offenses; or

1168 (iv) Section 78B-6-112; or

1169 (c) an individual described in this Subsection (1), who is appealing a first appeal from
1170 a conviction or other final court action.

1171 (2) If an individual described in Subsection (1) does not knowingly and voluntarily
1172 waive the right to counsel, the court shall determine whether the individual is indigent under
1173 Section 78B-22-202.

1174 Section 18. Section 78B-22-202 is enacted to read:

1175 **78B-22-202. Determining indigency.**

1176 (1) A court shall find an individual indigent if the individual:

1177 (a) has an income level at or below 150% of the United States poverty level as defined

1178 by the most recent poverty income guidelines published by the United States Department of
 1179 Health and Human Services; or

1180 (b) has insufficient income or other means to pay for legal counsel and the necessary
 1181 expenses of representation without depriving the individual or the individual's family of food,
 1182 shelter, clothing, or other necessities, considering:

1183 (i) the individual's ownership of, or any interest in, personal or real property;

1184 (ii) the amount of debt owed by the individual or that might reasonably be incurred by
 1185 the individual because of illness or other needs within the individual's family;

1186 (iii) the number, ages, and relationships of any dependents;

1187 (iv) the probable expense and burden of defending the case;

1188 (v) the reasonableness of fees and expenses charged by an attorney and the scope of
 1189 representation undertaken when represented by privately retained defense counsel; and

1190 (vi) any other factor the court considers relevant.

1191 (2) Notwithstanding Subsection (1), a court may not find an individual indigent if the
 1192 individual transferred or otherwise disposed of assets since the commission of the offense with
 1193 the intent of becoming eligible to receive indigent defense services.

1194 (3) The court may make a finding of indigency at any time.

1195 Section 19. Section **78B-22-203** is enacted to read:

1196 **78B-22-203. Order for indigent defense services.**

1197 (1) (a) A court shall appoint an indigent defense service provider who has a contract
 1198 with an indigent defense system to provide indigent defense services for an individual over
 1199 whom the court has jurisdiction if:

1200 (i) the individual is an indigent individual as defined in Section [77B-22-102](#); and

1201 (ii) the individual does not have private counsel.

1202 (b) An indigent defense service provider appointed by the court under Subsection
 1203 (1)(a) shall provide indigent defense services for the indigent individual in all court
 1204 proceedings in the matter for which the indigent defense service provider is appointed.

1205 (2) (a) Notwithstanding Subsection (1), the court may order that indigent defense

1206 services be provided by an indigent defense service provider who does not have a contract with
1207 an indigent defense system only if the court finds by clear and convincing evidence that:

1208 (i) all of the contracted indigent defense service providers:

1209 (A) have a conflict of interest; or

1210 (B) do not have sufficient expertise to provide indigent defense services for the
1211 indigent individual; or

1212 (ii) the indigent defense system does not have a contract with an indigent defense
1213 service provider for indigent defense services.

1214 (b) A court may not order indigent defense services under Subsection (2)(a) unless the
1215 court conducts a hearing with proper notice to the indigent defense system by sending notice of
1216 the hearing to the county clerk or municipal recorder.

1217 (3) (a) A court may order reasonable indigent defense resources for an individual who
1218 has retained private counsel only if the court finds by clear and convincing evidence that:

1219 (i) the individual is an indigent individual;

1220 (ii) the individual would be prejudiced by the substitution of a contracted indigent
1221 defense service provider and the prejudice cannot be remedied;

1222 (iii) at the time that private counsel was retained, the individual:

1223 (A) entered into a written contract with private counsel; and

1224 (B) had the ability to pay for indigent defense resources, but no longer has the ability to
1225 pay for the indigent defense resources in addition to the cost of private counsel;

1226 (iv) there has been an unforeseen change in circumstances that requires indigent
1227 defense resources beyond the individual's ability to pay; and

1228 (v) any representation under this Subsection (3)(a) is made in good faith and is not
1229 calculated to allow the individual or retained private counsel to avoid the requirements of this
1230 section.

1231 (b) A court may not order indigent defense resources under Subsection (3)(a) until the
1232 court conducts a hearing with proper notice to the indigent defense system by sending notice of
1233 the hearing to the county clerk or municipal recorder.

- 1234 (c) At the hearing, the court shall conduct an in camera review of:
1235 (i) the private counsel contract;
1236 (ii) the costs or anticipated costs of the indigent defense resources; and
1237 (iii) other relevant records.
1238 (4) Except as provided in this section, a court may not order indigent defense services.

1239 Section 20. Section **78B-22-204** is enacted to read:

1240 **78B-22-204. Waiver by a minor.**

1241 A minor may not waive the right to counsel before:

- 1242 (1) the minor has consulted with counsel; and
1243 (2) the court is satisfied that in light of the minor's unique circumstances and attributes:
1244 (a) the minor's waiver is knowing and voluntary; and
1245 (b) the minor understands the consequences of the waiver.

1246 Section 21. Section **78B-22-301** is enacted to read:

1247 **Part 3. Indigent Defense Systems and Services**

1248 **78B-22-301. Standards for indigent defense systems.**

1249 An indigent defense system shall provide indigent defense services for an indigent
1250 individual in accordance with the minimum guidelines adopted by the commission under
1251 Section [78B-22-404](#).

1252 Section 22. Section **78B-22-302** is enacted to read:

1253 **78B-22-302. Compensation for indigent defense services.**

1254 An indigent defense system shall fund indigent defense services ordered by a court in
1255 accordance with Section [78B-22-203](#).

1256 Section 23. Section **78B-22-303** is enacted to read:

1257 **78B-22-303. Pro bono provision of indigent defense services -- Liability limits.**

1258 A defense attorney is immune from suit if the defense attorney provides indigent
1259 defense services to an indigent individual:

- 1260 (1) at no cost; and
1261 (2) without gross negligence or willful misconduct.

1262 Section 24. Section **78B-22-304** is enacted to read:

1263 **78B-22-304. Reimbursement for indigent defense services.**

1264 A court may order a parent or legal guardian of a minor who is appointed indigent
1265 defense services under this chapter to reimburse the cost of the minor's indigent defense
1266 services, as determined by the court, unless the court finds the parent or legal guardian indigent
1267 under Section [78B-22-202](#).

1268 Section 25. Section **78B-22-401**, which is renumbered from Section 77-32-801 is
1269 renumbered and amended to read:

1270 **Part 4. Utah Indigent Defense Commission**

1271 ~~[77-32-801].~~ **78B-22-401. Utah Indigent Defense Commission -- Creation**

1272 **-- Purpose.**

1273 (1) There is created within the State Commission on Criminal and Juvenile Justice the
1274 "Utah Indigent Defense Commission."

1275 (2) The purpose of the commission is to assist the state in meeting the state's
1276 obligations for the provision of indigent defense services, consistent with the United States
1277 Constitution, the Utah Constitution, and the Utah Code.

1278 Section 26. Section **78B-22-402**, which is renumbered from Section 77-32-802 is
1279 renumbered and amended to read:

1280 ~~[77-32-802].~~ **78B-22-402. Commission members -- Member qualifications**

1281 **-- Terms -- Vacancy.**

1282 (1) The commission is composed of [~~14~~] 15 voting members and one ex officio,
1283 nonvoting member.

1284 (a) The governor, with the consent of the Senate, shall appoint the following [~~12~~] 13
1285 voting members:

1286 (i) two practicing criminal defense attorneys recommended by the Utah Association of
1287 Criminal Defense Lawyers;

1288 (ii) one attorney practicing in juvenile delinquency defense recommended by the Utah
1289 Association of Criminal Defense Lawyers;

1290 (iii) an attorney representing minority interests recommended by the Utah Minority Bar
1291 Association;

1292 (iv) one member recommended by the Utah Association of Counties from a county of
1293 the first or second class;

1294 (v) one member recommended by the Utah Association of Counties from a county of
1295 the third through sixth class;

1296 (vi) a director of a county public defender organization recommended by the Utah
1297 Association of Criminal Defense Lawyers;

1298 (vii) two members recommended by the Utah League of Cities and Towns from its
1299 membership;

1300 (viii) a retired judge recommended by the Judicial Council;

1301 (ix) ~~one member~~ two members of the Utah Legislature, one from the House of
1302 Representatives and one from the Senate, selected jointly by the Speaker of the House and
1303 President of the Senate; and

1304 (x) one attorney practicing in the area of parental defense, recommended by an entity
1305 funded under Title 63A, Chapter 11, Child Welfare Parental Defense Program.

1306 (b) The Judicial Council shall appoint a voting member from the Administrative Office
1307 of the Courts.

1308 (c) The executive director of the State Commission on Criminal and Juvenile Justice or
1309 the executive director's designee is a voting member of the commission.

1310 (d) The director of the commission, appointed under Section ~~[77-32-803]~~ 78B-22-403,
1311 is an ex officio, nonvoting member of the commission.

1312 (2) A member appointed by the governor shall serve a four-year term, except as
1313 provided in Subsection (3).

1314 (3) The governor shall stagger the initial terms of appointees so that approximately half
1315 of the members appointed by the governor are appointed every two years.

1316 (4) A member appointed to the commission shall have significant experience in
1317 indigent criminal defense, parental defense, or juvenile defense in delinquency proceedings or

1318 have otherwise demonstrated a strong commitment to providing effective representation in
1319 indigent defense services.

1320 (5) A person who is currently employed solely as a criminal prosecuting attorney may
1321 not serve as a member of the commission.

1322 (6) A commission member shall hold office until the member's successor is appointed.

1323 (7) The commission may remove a member for incompetence, dereliction of duty,
1324 malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.

1325 (8) If a vacancy occurs in the membership for any reason, a replacement shall be
1326 appointed for the remaining unexpired term in the same manner as the original appointment.

1327 (9) The commission shall annually elect a chair from the commission's membership to
1328 serve a one-year term. A commission member may not serve as chair of the commission for
1329 more than three consecutive terms.

1330 (10) A member may not receive compensation or benefits for the member's service, but
1331 may receive per diem and travel expenses in accordance with:

1332 (a) Section [63A-3-106](#);

1333 (b) Section [63A-3-107](#); and

1334 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
1335 [63A-3-107](#).

1336 (11) (a) A majority of the members of the commission constitutes a quorum.

1337 (b) If a quorum is present, the action of a majority of the voting members present
1338 constitutes the action of the commission.

1339 Section 27. Section **78B-22-403**, which is renumbered from Section 77-32-803 is
1340 renumbered and amended to read:

1341 ~~[77-32-803]~~. **78B-22-403. Director -- Qualifications -- Staff.**

1342 (1) The commission shall appoint a director to carry out the following duties:

1343 (a) establish an annual budget;

1344 (b) assist the commission in performing the commission's statutory duties;

1345 (c) assist the commission in developing and regularly reviewing advisory caseload

1346 guidelines and procedures; and

1347 (d) perform all other duties as assigned.

1348 (2) The director shall be an active member of the Utah State Bar with an appropriate
1349 background and experience to serve as the full-time director.

1350 (3) The director shall hire staff as necessary to carry out the duties of the commission,
1351 including:

1352 (a) one individual who is an active member of the Utah State Bar to serve as a full-time
1353 assistant director; and

1354 (b) one individual with data collection and analysis skills to carry out duties as outlined
1355 in Subsection [~~77-32-804~~] 78B-22-404(1)(c).

1356 (4) The commission in appointing the director, and the director in hiring the assistant
1357 director, shall give a preference to individuals with experience in adult criminal defense, child
1358 welfare parental defense, or juvenile delinquency defense.

1359 Section 28. Section ~~78B-22-404~~, which is renumbered from Section 77-32-804 is
1360 renumbered and amended to read:

1361 [~~77-32-804~~]. **78B-22-404. Powers and duties of the commission.**

1362 (1) The commission shall:

1363 (a) adopt minimum guidelines for an indigent defense system to ensure the effective
1364 representation of indigent individuals consistent with the requirements of the United States
1365 Constitution, the Utah Constitution, and the Utah Code, which guidelines at a minimum shall
1366 address the following:

1367 (i) an indigent defense system shall ensure that in providing indigent defense services:

1368 (A) an indigent individual receives conflict-free indigent defense services; and

1369 (B) there is a separate contract for each type of indigent defense service [~~and conflict~~
1370 ~~cases~~]; and

1371 (ii) an indigent defense system shall ensure an indigent defense service provider has:

1372 (A) the ability to exercise independent judgment without fear of retaliation and is free
1373 to represent an indigent individual based on the indigent defense service provider's own

- 1374 independent judgment;
- 1375 (B) adequate access to indigent defense resources;
- 1376 (C) the ability to provide representation to accused [~~persons~~] individuals in criminal
1377 cases at [~~all~~] the critical stages, and at [~~all~~] the stages to indigent [~~parties~~] individuals in
1378 juvenile delinquency and child welfare proceedings;
- 1379 (D) a workload that allows for sufficient time to meet with clients, investigate cases,
1380 file appropriate documents with the courts, and otherwise provide effective assistance of
1381 counsel to each client;
- 1382 (E) adequate compensation without financial disincentives;
- 1383 (F) appropriate experience or training in the area for which the indigent defense service
1384 provider is representing indigent individuals;
- 1385 (G) compensation for legal training and education in the areas of the law relevant to the
1386 types of cases for which the indigent defense service provider is representing indigent
1387 individuals; and
- 1388 (H) the ability to meet the obligations of the Utah Rules of Professional Conduct,
1389 including expectations on client communications and managing conflicts of interest;
- 1390 (b) encourage and aid indigent defense systems in the state in the regionalization of
1391 indigent defense services to provide for effective and efficient representation to [~~all~~] the
1392 indigent individuals;
- 1393 (c) identify and collect data from any source, which is necessary for the commission to:
- 1394 (i) aid, oversee, and review compliance by indigent defense systems with the
1395 commission's minimum guidelines for the effective representation of indigent individuals; and
- 1396 (ii) provide reports regarding the operation of the commission and the provision of
1397 indigent defense services by indigent defense systems in the state;
- 1398 (d) assist indigent defense systems by reviewing contracts and other agreements, to
1399 ensure compliance with the commission's minimum guidelines for effective representation of
1400 indigent individuals;
- 1401 (e) investigate, audit, and review the provision of indigent defense services to ensure

1402 compliance with the commission's minimum guidelines for the effective representation of
1403 indigent individuals;

1404 (f) establish procedures for the receipt and acceptance of complaints regarding the
1405 provision of indigent defense services in the state;

1406 (g) establish procedures to award grants to indigent defense systems under Section
1407 ~~[77-32-806]~~ 78B-22-406 consistent with the commission's minimum guidelines for the
1408 effective representation of indigent individuals and appropriations by the state;

1409 (h) emphasize the importance of ensuring constitutionally effective indigent defense
1410 services;

1411 (i) encourage members of the judiciary to provide input regarding the delivery of
1412 indigent defense services;

1413 (j) oversee individuals and entities involved in providing indigent defense services;

1414 (k) annually report to the governor, Legislature, Judiciary Interim Committee, and
1415 Judicial Council, regarding:

1416 (i) the operations of the commission;

1417 (ii) the operations of the indigent defense systems in the state; and

1418 (iii) compliance with the commission's minimum guidelines by indigent defense
1419 systems receiving grants from the commission;

1420 (l) submit recommendations for improving indigent defense services in the state, to
1421 legislative, executive, and judicial leadership; and

1422 (m) publish an annual report on the commission's website.

1423 ~~[(2) An indigent defense system within the state shall meet the minimum guidelines~~
1424 ~~adopted by the commission under Subsection (1)(a).]~~

1425 ~~[(3)]~~ (2) The commission may make rules in accordance with Title 63G, Chapter 3,
1426 Utah Administrative Rulemaking Act, to carry out the commission's duties under this part.

1427 Section 29. Section **78B-22-405**, which is renumbered from Section 77-32-805 is
1428 renumbered and amended to read:

1429 ~~[77-32-805].~~ **78B-22-405. Indigent Defense Resources Restricted Account**

1430 -- Administration.

1431 (1) (a) There is created within the General Fund a restricted account known as the
1432 "Indigent Defense Resources Restricted Account."

1433 (b) Appropriations from the account are nonlapsing.

1434 (2) The account consists of:

1435 (a) money appropriated by the Legislature based upon recommendations from the
1436 commission consistent with principles of shared state and local funding;

1437 (b) any other money received by the commission from any source to carry out the
1438 purposes of this part; and

1439 (c) any interest and earnings from the investment of account money.

1440 (3) The commission shall administer the account and, subject to appropriation,
1441 disburse money from the account for the following purposes:

1442 (a) to establish and maintain a statewide indigent defense data collection system;

1443 (b) to establish and administer a grant program to provide grants of state money to
1444 indigent defense systems as set forth in Section [~~77-32-806~~] [78B-22-406](#);

1445 (c) to provide training and continuing legal education for indigent defense service
1446 providers; and

1447 (d) for administrative costs.

1448 Section 30. Section ~~78B-22-406~~, which is renumbered from Section 77-32-806 is
1449 renumbered and amended to read:

1450 [~~77-32-806~~]. **78B-22-406. Indigent defense services grant program.**

1451 (1) The commission may award grants to supplement local spending by [~~a county or~~
1452 ~~municipality~~] an indigent defense system for indigent defense [~~services and defense resources~~].

1453 (2) Commission grant money may be used for the following expenses:

1454 (a) to assist [~~a county or municipality~~] an indigent defense system to provide indigent
1455 defense services that meet the commission's minimum guidelines for the effective
1456 representation of indigent individuals;

1457 (b) the establishment and maintenance of local indigent defense data collection

1458 systems;

1459 (c) indigent defense services in addition to those currently being provided by [~~a county~~
1460 ~~or municipality~~] an indigent defense system; and

1461 (d) to provide training and continuing legal education for indigent defense service
1462 providers.

1463 (3) To receive a grant from the commission, [~~a county or municipality~~] an indigent
1464 defense system shall demonstrate to the commission's satisfaction that:

1465 (a) the [~~county or municipality~~] indigent defense system has incurred or reasonably
1466 anticipates incurring expenses for indigent defense services that are in addition to the [~~county's~~
1467 ~~or municipality's~~] indigent defense system's average annual spending on indigent defense
1468 services in the three fiscal years immediately preceding the grant application; and

1469 (b) a grant from the commission is necessary for the [~~county or municipality~~] indigent
1470 defense system to meet the commission's minimum guidelines for the effective representation
1471 of indigent individuals.

1472 (4) The commission may revoke a grant if an indigent defense system fails to meet
1473 requirements of the grant or any of the commission's minimum guidelines for the effective
1474 representation of indigent individuals.

1475 Section 31. Section **78B-22-407**, which is renumbered from Section 77-32-807 is
1476 renumbered and amended to read:

1477 [~~77-32-807~~]. **78B-22-407. Cooperation and participation with the**
1478 **commission.**

1479 Indigent defense systems and [~~entities or individuals engaged in providing~~] indigent
1480 defense [~~services in the state~~] service providers shall cooperate and participate with the
1481 commission in the collection of data, investigation, audit, and review of [~~all~~] indigent defense
1482 services.

1483 Section 32. Section **78B-22-501**, which is renumbered from Section 77-32-401 is
1484 renumbered and amended to read:

1485 **Part 5. Indigent Defense Funds Board**

1486 ~~[77-32-401].~~ 78B-22-501. Indigent Defense Funds Board -- Members --

1487 **Administrative support.**

1488 (1) There is created within the Division of Finance the Indigent Defense Funds Board
1489 composed of the following nine members:

1490 (a) two members who are current commissioners or county executives of participating
1491 counties appointed by the board of directors of the Utah Association of Counties;

1492 (b) one member at large appointed by the board of directors of the Utah Association of
1493 Counties;

1494 (c) two members who are current county attorneys of participating counties appointed
1495 by the Utah Prosecution Council;

1496 (d) the director of the Division of Finance or ~~[his]~~ the director's designee;

1497 (e) one member appointed by the Administrative Office of the Courts; and

1498 (f) two members who are private attorneys engaged in or familiar with the criminal
1499 defense practice appointed by the members of the board listed in Subsections (1)(a) through
1500 (e).

1501 (2) Members appointed under Subsection (1)(a), (b), (c), or (f) shall serve four-year
1502 terms. ~~[One of the county commissioners and one of the county attorneys appointed to the
1503 initial board shall serve two-year terms, and the remaining other members of the initial board
1504 shall be appointed for four-year terms. After the initial two-year terms of the county
1505 commissioner and county attorney, those board positions shall have four-year terms.]~~

1506 (3) A vacancy is created if a member appointed under:

1507 (a) Subsection (1)(a) no longer serves as a county commissioner or county executive;

1508 or

1509 (b) Subsection (1)(c) no longer serves as a county attorney.

1510 (4) ~~[When]~~ If a vacancy occurs in the membership for any reason, a replacement shall
1511 be appointed for the remaining unexpired term in the same manner as the original appointment.

1512 (5) The Division of Finance may provide administrative support and may seek payment
1513 for the costs or the board may contract for administrative support ~~[for up to \$15,000 annually]~~

1514 to be paid [~~proportionally from each fund~~] from the funds described in Subsection
1515 78B-22-502(1)(a).

1516 (6) A member may not receive compensation or benefits for the member's service, but
1517 may receive per diem and travel expenses in accordance with:

1518 (a) Section 63A-3-106;

1519 (b) Section 63A-3-107; and

1520 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
1521 63A-3-107.

1522 (7) Per diem and expenses for board members shall be paid [~~proportionally from each~~
1523 ~~fund~~] from the funds described in Subsection 78B-22-502(1)(a).

1524 (8) Five members shall constitute a quorum and, if a quorum is present, the action of a
1525 majority of the members present shall constitute the action of the board.

1526 Section 33. Section 78B-22-502, which is renumbered from Section 77-32-402 is
1527 renumbered and amended to read:

1528 [~~77-32-402~~]. **78B-22-502. Duties of board.**

1529 (1) The board shall:

1530 (a) establish rules and procedures for the application by [~~counties~~] a county for
1531 disbursements, and the screening and approval of the applications for money from the:

1532 (i) Indigent Inmate Trust Fund established in Part [5] 6, Indigent Inmates; and

1533 (ii) [~~Indigent Capital Defense Trust Fund~~] Indigent Aggravated Murder Defense Trust
1534 Fund, established in Part [6, ~~Indigent Capital Defense Trust Fund~~] 7, Indigent Aggravated
1535 Murder Defense Trust Fund;

1536 (b) receive, screen, and approve, or disapprove the application of [~~counties~~] a county
1537 for disbursements from [~~each~~] a fund described in Subsection (1)(a);

1538 (c) calculate the amount of the annual contribution to be made to the [~~funds~~] fund
1539 described in Subsection (1)(a)(ii) by each participating county;

1540 (d) prescribe forms for the application for money from [~~each~~] a fund described in
1541 Subsection (1)(a);

1542 (e) oversee and approve the disbursement of money from ~~[each]~~ a fund described in
 1543 Subsection (1)(a) as provided in Sections ~~[77-32-502 and 77-32-601]~~ 78B-22-602 and
 1544 78B-22-701;

1545 (f) establish ~~[its]~~ the board's own rules of procedure, elect ~~[its]~~ the board's own officers,
 1546 and appoint committees of ~~[its]~~ the board's members and other people as may be reasonable
 1547 and necessary; and

1548 (g) negotiate, enter into, and administer contracts with legal counsel, qualified under
 1549 and meeting the standards consistent with this chapter, to provide indigent defense ~~[counsel]~~
 1550 services to:

1551 (i) ~~[indigents]~~ an indigent individual prosecuted in a participating ~~[counties for serious~~
 1552 ~~offenses in violation of state law]~~ county for an offense involving aggravated murder; and

1553 (ii) an indigent inmate who is incarcerated in ~~[certain counties]~~ a county described in
 1554 Section 78B-22-601.

1555 (2) The board may provide to the court a list of attorneys qualified under Utah Rules of
 1556 Criminal Procedure, Rule 8, with which the board has a preliminary contract to ~~[defend~~
 1557 ~~indigent cases]~~ provide indigent defense services for an assigned rate.

1558 Section 34. Section **78B-22-601**, which is renumbered from Section 77-32-501 is
 1559 renumbered and amended to read:

1560 **Part 6. Indigent Inmates.**

1561 ~~[77-32-501].~~ **78B-22-601. Defense of indigent inmates.**

1562 (1) The board shall enter into contracts ~~[with qualified legal defense counsel]~~ to
 1563 provide indigent defense ~~[counsel]~~ services for an indigent inmate who:

1564 (a) is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth
 1565 class as defined in Section ~~17-50-501~~ [7];

1566 (b) is charged with having committed a crime within that ~~[facility,]~~ state prison; and

1567 (c) will require defense counsel.

1568 (2) Payment for ~~[the representation, costs, and expenses of legal defense counsel]~~
 1569 indigent defense services shall be made from the Indigent Inmate Trust Fund as provided in

1570 Section ~~[77-32-502]~~ 78B-22-602.

1571 (3) ~~[The]~~ A contract under this part shall ensure that indigent defense ~~[counsel shall~~
1572 ~~maintain]~~ services are provided in a manner consistent with the minimum ~~[qualifications as~~
1573 ~~provided in Section 77-32-301]~~ guidelines described in Section 78B-22-301.

1574 (4) The county attorney or district attorney of a county of the third, fourth, fifth, or
1575 sixth class shall function as the prosecuting entity.

1576 (5) (a) ~~[The]~~ A county of the third, fourth, fifth, or sixth class where a state prison is
1577 located may impose an additional tax levy by ordinance at .0001 per dollar of taxable value in
1578 the county.

1579 (b) If the county governing body imposes the additional tax levy by ordinance, the
1580 money shall be deposited ~~[in]~~ into the Indigent Inmate Trust Fund as provided in Section
1581 ~~[77-32-502]~~ 78B-22-602 to fund the purposes of this ~~[section]~~ part.

1582 (c) Upon notification that the fund has reached the amount specified in Subsection
1583 ~~[77-32-502(6), the]~~ 78B-22-602(6), a county shall deposit money derived from the levy into a
1584 county account used exclusively to provide ~~[defense counsel and defense]~~ indigent defense
1585 ~~[related]~~ services ~~[for indigent defendants].~~

1586 (d) A county that chooses not to impose the additional levy by ordinance may not
1587 receive any benefit from the Indigent Inmate Trust ~~[fund]~~ Fund.

1588 Section 35. Section **78B-22-602**, which is renumbered from Section 77-32-502 is
1589 renumbered and amended to read:

1590 ~~[77-32-502]~~. **78B-22-602. Indigent Inmate Trust Fund.**

1591 (1) There is created a private-purpose trust fund known as the "Indigent Inmate Trust
1592 Fund" to be disbursed by the Division of Finance at the direction of the board and in
1593 accordance with contracts made under Section ~~[77-32-402]~~ 78B-22-502.

1594 (2) Money deposited ~~[in]~~ into this trust fund shall only ~~[shall]~~ be used:

1595 (a) to pay ~~[for the representation, costs, and expenses of legal defense counsel]~~ indigent
1596 defense services for an indigent inmate in a state prison located in a county of the third, fourth,
1597 fifth, or sixth class as defined in Section 17-50-501 who is charged with having committed a

1598 crime within the [~~facility~~] state prison, and who will require indigent defense [~~counsel~~]
 1599 services; and

1600 (b) for administrative costs pursuant to Section [~~77-32-401~~] 78B-22-501.

1601 (3) The trust fund consists of:

1602 (a) proceeds received from counties that impose the additional tax levy by ordinance
 1603 under Subsection [~~77-32-501(5)~~] 78B-22-601(5), which shall be the total county obligation for
 1604 payment of costs listed in Subsection (2) for defense [~~of~~] services for indigent inmates;

1605 (b) appropriations made to the fund by the Legislature; and

1606 (c) interest and earnings from the investment of fund money.

1607 (4) Fund money shall be invested by the state treasurer with the earnings and interest
 1608 accruing to the fund.

1609 (5) In any calendar year in which the fund runs a deficit, or is projected to run a deficit,
 1610 the board shall request a supplemental appropriation from the Legislature in the following
 1611 general session to pay for the deficit. The state shall pay any or all of the reasonable and
 1612 necessary money for the deficit into the Indigent Inmate Trust Fund.

1613 (6) The fund [~~shall be~~] is capped at \$1,000,000.

1614 (7) The Division of Finance shall notify [~~at~~] the contributing counties when the fund
 1615 approaches \$1,000,000 and provide each county with the amount of the balance in the fund.

1616 (8) Upon notification by the Division of Finance that the fund is near the limit imposed
 1617 in Subsection (6), the counties may contribute enough money to enable the fund to reach
 1618 \$1,000,000 and discontinue contributions until notified by the Division of Finance that the
 1619 balance has fallen below \$1,000,000, at which time counties that meet the requirements of
 1620 Section [~~77-32-501~~] 78B-22-601 shall resume contributions.

1621 Section 36. Section **78B-22-701**, which is renumbered from Section 77-32-601 is
 1622 renumbered and amended to read:

1623 **Part 7. Indigent Aggravated Murder Defense Trust Fund.**

1624 [~~77-32-601~~]. **78B-22-701. Establishment of Indigent Aggravated Murder**
 1625 **Defense Trust Fund -- Use of fund -- Compensation for indigent legal defense from fund.**

1626 (1) For purposes of this part, "fund" means the Indigent Aggravated Murder Defense
 1627 Trust Fund.

1628 (2) (a) There is established a private-purpose trust fund known as the "Indigent
 1629 Aggravated Murder Defense Trust Fund."

1630 (b) The [~~fund shall be disbursed by the~~] Division of Finance shall disburse money from
 1631 the fund at the direction of the board and subject to this chapter.

1632 (3) The fund consists of:

1633 (a) money received from participating counties as provided in Sections [~~77-32-602 and~~
 1634 ~~77-32-603~~] 78B-22-702 and 78B-22-703;

1635 (b) appropriations made to the fund by the Legislature as provided in Section
 1636 [~~77-32-603~~] 78B-22-703; and

1637 (c) interest and earnings from the investment of fund money.

1638 (4) [~~Fund~~] The state treasurer shall invest fund money [~~shall be invested by the state~~
 1639 ~~treasurer~~] with the earnings and interest accruing to the fund.

1640 (5) The fund shall be used to assist participating counties with financial resources, as
 1641 provided in Subsection (6), to fulfill their constitutional and statutory mandates for the
 1642 provision of an adequate defense for [~~indigents~~] indigent individuals prosecuted for the
 1643 violation of state laws in cases involving aggravated murder.

1644 (6) Money allocated to or deposited in this fund shall be used only:

1645 (a) to reimburse participating counties for expenditures made for an attorney appointed
 1646 to represent an indigent individual, other than a state inmate in a state prison, prosecuted for
 1647 aggravated murder in a participating county; and

1648 (b) for administrative costs pursuant to Section [~~77-32-401~~] 78B-22-501.

1649 Section 37. Section **78B-22-702**, which is renumbered from Section 77-32-602 is
 1650 renumbered and amended to read:

1651 [~~77-32-602~~]. **78B-22-702. County participation.**

1652 (1) (a) [~~Any~~] A county may participate in the fund subject to the provisions of this
 1653 chapter. [~~Any~~] A county that [~~chooses~~] does not [~~to~~] participate, or is not current in [~~its~~

1654 ~~contributions]~~ the county's assessments, is ineligible to receive money from the fund.

1655 (b) The board may revoke a county's participation in the fund if the county fails to pay
1656 ~~[its]~~ the county's assessments when due.

1657 (2) To participate in the fund, the legislative body of a county shall:

1658 (a) adopt a resolution approving participation in the fund and committing that county to
1659 fulfill the assessment requirements as set forth in Subsection (3) and Section ~~[77-32-603]~~
1660 78B-22-703; and

1661 (b) submit a certified copy of that resolution together with an application to the board.

1662 (3) By January 15 of each year, a participating county shall contribute to the fund an
1663 amount computed in accordance with Section ~~[77-32-603]~~ 78B-22-703.

1664 (4) ~~[Any]~~ A participating county may withdraw from participation in the fund upon:

1665 (a) adoption by ~~[its]~~ the county's legislative body of a resolution to withdraw; and

1666 (b) notice to the board by January 1 of the year ~~[prior to]~~ before withdrawal.

1667 (5) A county withdrawing from participation in the fund, or whose participation in the
1668 fund has been revoked for failure to pay ~~[its]~~ the county's assessments when due, shall forfeit
1669 the right to:

1670 (a) any previously paid assessment;

1671 (b) relief from ~~[its]~~ the county's obligation to pay its assessment during the period of its
1672 participation in the fund; and

1673 (c) any benefit from the fund, including reimbursement of costs ~~[which]~~ that accrued
1674 after the last day of the period for which the county has paid its assessment.

1675 Section 38. Section **78B-22-703**, which is renumbered from Section 77-32-603 is
1676 renumbered and amended to read:

1677 ~~[77-32-603]~~. **78B-22-703. County and state obligations.**

1678 (1) (a) Except as provided in Subsection (1)(b), ~~[each]~~ a participating county shall pay
1679 into the fund annually an amount calculated by multiplying the average of the percent of its
1680 population to the total population of all participating counties and of the percent its taxable
1681 value of the locally and centrally assessed property located within that county to the total

1682 taxable value of the locally and centrally assessed property to all participating counties by the
1683 total fund assessment for that year to be paid by all participating counties as is determined by
1684 the board to be sufficient such that it is unlikely that a deficit will occur in the fund in any
1685 calendar year.

1686 (b) The fund minimum shall be equal to or greater than 50 cents per person of all
1687 counties participating.

1688 (c) The amount paid by ~~the~~ a participating county pursuant to this Subsection (1)
1689 shall be the total county obligation for payment of costs pursuant to Section ~~[77-32-601]~~
1690 78B-22-701.

1691 (2) (a) ~~[After the first year of operation of the fund, any]~~ A county that elects to initiate
1692 participation in the fund, or reestablish participation in the fund after participation was
1693 terminated, ~~[shall be]~~ is required to make an equity payment in addition to the assessment
1694 ~~[provided in]~~ required by Subsection (1).

1695 (b) The equity payment shall be determined by the board and represent what the
1696 county's equity in the fund would be if the county had made assessments into the fund for each
1697 of the previous two years.

1698 (3) If the fund balance after contribution by the state and participating counties is
1699 insufficient to replenish the fund annually to at least \$250,000, the board by a majority vote
1700 may terminate the fund.

1701 (4) If the fund is terminated, ~~all~~ the remaining ~~[funds]~~ money shall continue to be
1702 administered and disbursed in accordance with the provision of this chapter until exhausted, at
1703 which time the fund shall cease to exist.

1704 (5) (a) If the fund runs a deficit during any calendar year, the state is responsible for the
1705 deficit.

1706 (b) In the calendar year following a deficit year, the board shall increase the assessment
1707 required by Subsection (1) by an amount at least equal to the deficit of the previous year, which
1708 combined amount becomes the base assessment until another deficit year occurs.

1709 (6) In ~~[any]~~ a calendar year in which the fund runs a deficit, or is projected to run a

1710 deficit, the board shall request a supplemental appropriation to pay for the deficit from the
 1711 Legislature in the following general session. The state shall pay any or all of the reasonable
 1712 and necessary money for the deficit into the [~~Indigent Capital Defense Trust Fund~~] fund.

1713 Section 39. Section **78B-22-704**, which is renumbered from Section 77-32-604 is
 1714 renumbered and amended to read:

1715 ~~[77-32-604].~~ **78B-22-704. Application and qualification for fund money.**

1716 (1) ~~[Any]~~ A participating county may apply to the board for benefits from the fund if
 1717 that county has incurred, or reasonably anticipates incurring, expenses in the defense of an
 1718 indigent individual for [~~capital felonies in violation of state law arising out of a single criminal~~
 1719 ~~episode~~] an offense involving aggravated murder.

1720 (2) ~~[No]~~ An application [~~shall~~] may not be made nor benefits provided from the fund
 1721 for [~~cases~~] a case filed before September 1, 1998.

1722 (3) If the application of a participating county is approved by the board, the board shall
 1723 negotiate, enter into, and administer a contract with counsel for the indigent individual and
 1724 costs incurred for the defense of that indigent individual, including fees for counsel and
 1725 reimbursement for indigent defense [~~costs~~] services incurred by [~~defense counsel~~] an indigent
 1726 defense service provider.

1727 (4) [~~Nonparticipating counties are~~] A nonparticipating county is responsible for paying
 1728 for indigent [~~costs in their~~] defense services in the nonparticipating county and [~~shall not be~~] is
 1729 not eligible for any legislative relief. [~~However, a nonparticipating counties may provide for~~
 1730 ~~payment of indigent costs through an increase in the county tax levy as provided in Section~~
 1731 ~~77-32-307.~~]

1732 [~~(5) This part may not become effective unless the board has received resolutions~~
 1733 ~~before August 1, 1998, from at least 15 counties adopted as described in Subsection~~
 1734 ~~77-32-602(2).~~]

1735 Section 40. **Repealer.**

1736 This bill repeals:

1737 Section **77-32-201, Definitions.**

- 1738 Section **77-32-202**, Procedure for determination of indigency -- Standards.
- 1739 Section **77-32-301**, Minimum standards for defense of an indigent.
- 1740 Section **77-32-302**, Assignment of counsel on request of indigent or order of court.
- 1741 Section **77-32-303**, Standard for court to appoint noncontracting attorney or order
- 1742 **the provision of defense resources -- Hearing.**
- 1743 Section **77-32-304**, Duties of assigned counsel -- Compensation.
- 1744 Section **77-32-304.5**, Reasonable compensation for defense counsel for indigents.
- 1745 Section **77-32-305**, Expenses of printing briefs, depositions, and transcripts.
- 1746 Section **77-32-305.5**, Reimbursement of extraordinary expense.
- 1747 Section **77-32-306**, County or municipal legislative body to provide legal defense.
- 1748 Section **77-32-307**, Expenditures of county or municipal funds declared proper --
- 1749 **Tax levy authorized.**
- 1750 Section **77-32-308**, Pro bono criminal representation -- Liability limits.
- 1751 Section **77-32-401.5**, Interim board -- Members -- Administrative support --
- 1752 **Duties.**
- 1753 Section **77-32-801.5**, Definitions.