

Senator Todd Weiler proposes the following substitute bill:

INDIGENT DEFENSE ACT AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Michael K. McKell

LONG TITLE

General Description:

This bill modifies provisions relating to indigent defense services.

Highlighted Provisions:

This bill:

▶ recodifies the Indigent Defense Act, including:

- defining terms;
- addressing right to counsel;
- determining indigency;
- ordering indigent defense services;
- establishing standards for indigent defense systems;
- addressing compensation and reimbursement for indigent defense services;
- addressing the Utah Indigent Defense Commission;
- addressing the Indigent Defense Funds Board and duties of the board;
- providing for defense of indigent inmates, including providing for the Indigent

Inmate Trust Fund;

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

- 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- 26 • repealing language outdated because of changes made in the bill; and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- 38 repealed and reenacted by Laws of Utah 2018, Chapter 469
- 39 **63J-1-602.2**, as repealed and reenacted by Laws of Utah 2018, Chapter 469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- 47 **78A-7-103**, as repealed and reenacted by Laws of Utah 2012, Chapter 205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 with qualified ~~[parental defense attorneys]~~
167 indigent defense services as defined in Section 78B-22-102 to provide services for an indigent
168 parent or parents who are the subject of a petition alleging abuse, neglect, or dependency~~[, and~~
169 ~~will require a parental defense attorney under Section 78A-6-1111].~~

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

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

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

176 **63J-1-602.1. List of nonlapsing appropriations from accounts and funds.**

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

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

180 (2) The Native American Repatriation Restricted Account created in Section 9-9-407.

- 181 (3) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in
182 Section 9-18-102.
- 183 (4) The National Professional Men's Soccer Team Support of Building Communities
184 Restricted Account created in Section 9-19-102.
- 185 (5) Funds collected for directing and administering the C-PACE district created in
186 Section 11-42a-302.
- 187 (6) Award money under the State Asset Forfeiture Grant Program, as provided under
188 Section 24-4-117.
- 189 (7) Funds collected from the program fund for local health department expenses
190 incurred in responding to a local health emergency under Section 26-1-38.
- 191 (8) Funds collected from the emergency medical services grant program, as provided in
192 Section 26-8a-207.
- 193 (9) The Prostate Cancer Support Restricted Account created in Section 26-21a-303.
- 194 (10) The Children with Cancer Support Restricted Account created in Section
195 26-21a-304.
- 196 (11) State funds for matching federal funds in the Children's Health Insurance Program
197 as provided in Section 26-40-108.
- 198 (12) The Children with Heart Disease Support Restricted Account created in Section
199 26-58-102.
- 200 (13) The Nurse Home Visiting Restricted Account created in Section 26-62-601.
- 201 (14) The Technology Development Restricted Account created in Section 31A-3-104.
- 202 (15) The Criminal Background Check Restricted Account created in Section
203 31A-3-105.
- 204 (16) The Captive Insurance Restricted Account created in Section 31A-3-304, except
205 to the extent that Section 31A-3-304 makes the money received under that section free revenue.
- 206 (17) The Title Licensee Enforcement Restricted Account created in Section
207 31A-23a-415.
- 208 (18) The Health Insurance Actuarial Review Restricted Account created in Section
209 31A-30-115.
- 210 (19) The Insurance Fraud Investigation Restricted Account created in Section
211 31A-31-108.

- 212 (20) The Underage Drinking Prevention Media and Education Campaign Restricted
213 Account created in Section [32B-2-306](#).
- 214 (21) The School Readiness Restricted Account created in Section [35A-3-210](#).
- 215 (22) The Youth Development Organization Restricted Account created in Section
216 [35A-8-1903](#).
- 217 (23) The Youth Character Organization Restricted Account created in Section
218 [35A-8-2003](#).
- 219 (24) Money received by the Utah State Office of Rehabilitation for the sale of certain
220 products or services, as provided in Section [35A-13-202](#).
- 221 (25) The Oil and Gas Conservation Account created in Section [40-6-14.5](#).
- 222 (26) The Electronic Payment Fee Restricted Account created by Section [41-1a-121](#) to
223 the Motor Vehicle Division.
- 224 (27) The Motor Vehicle Enforcement Division Temporary Permit Restricted Account
225 created by Section [41-3-110](#) to the State Tax Commission.
- 226 (28) The Utah Law Enforcement Memorial Support Restricted Account created in
227 Section [53-1-120](#).
- 228 (29) The State Disaster Recovery Restricted Account to the Division of Emergency
229 Management, as provided in Section [53-2a-603](#).
- 230 (30) The Department of Public Safety Restricted Account to the Department of Public
231 Safety, as provided in Section [53-3-106](#).
- 232 (31) The Utah Highway Patrol Aero Bureau Restricted Account created in Section
233 [53-8-303](#).
- 234 (32) The DNA Specimen Restricted Account created in Section [53-10-407](#).
- 235 (33) The Canine Body Armor Restricted Account created in Section [53-16-201](#).
- 236 (34) A certain portion of money collected for administrative costs under the School
237 Institutional Trust Lands Management Act, as provided under Section [53C-3-202](#).
- 238 (35) The Public Utility Regulatory Restricted Account created in Section [54-5-1.5](#),
239 subject to Subsection [54-5-1.5\(4\)\(d\)](#).
- 240 (36) Certain fines collected by the Division of Occupational and Professional Licensing
241 for violation of unlawful or unprofessional conduct that are used for education and enforcement
242 purposes, as provided in Section [58-17b-505](#).

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

246 (38) The Relative Value Study Restricted Account created in Section [59-9-105](#).

247 (39) The Cigarette Tax Restricted Account created in Section [59-14-204](#).

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

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

253 (42) Certain funds donated to the Department of Human Services, as provided in
254 Section [62A-1-111](#).

255 (43) The National Professional Men's Basketball Team Support of Women and
256 Children Issues Restricted Account created in Section [62A-1-202](#).

257 (44) Certain funds donated to the Division of Child and Family Services, as provided
258 in Section [62A-4a-110](#).

259 (45) The Choose Life Adoption Support Restricted Account created in Section
260 [62A-4a-608](#).

261 (46) Funds collected by the Office of Administrative Rules for publishing, as provided
262 in Section [63G-3-402](#).

263 (47) The Immigration Act Restricted Account created in Section [63G-12-103](#).

264 (48) Money received by the military installation development authority, as provided in
265 Section [63H-1-504](#).

266 (49) The Computer Aided Dispatch Restricted Account created in Section [63H-7a-303](#).

267 (50) The Unified Statewide 911 Emergency Service Account created in Section
268 [63H-7a-304](#).

269 (51) The Utah Statewide Radio System Restricted Account created in Section
270 [63H-7a-403](#).

271 (52) The Employability to Careers Program Restricted Account created in Section
272 [63J-4-703](#).

273 (53) The Motion Picture Incentive Account created in Section [63N-8-103](#).

274 (54) Certain money payable for expenses of the Pete Suazo Utah Athletic Commission,
275 as provided under Section 63N-10-301.

276 (55) Funds collected by the housing of state probationary inmates or state parole
277 inmates, as provided in Subsection 64-13e-104(2).

278 (56) Certain forestry and fire control funds utilized by the Division of Forestry, Fire,
279 and State Lands, as provided in Section 65A-8-103.

280 (57) Certain funds received by the Office of the State Engineer for well drilling fines or
281 bonds, as provided in Section 73-3-25.

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

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

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

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

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

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

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

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

297 **63J-1-602.2. List of nonlapsing appropriations to programs.**

298 Appropriations made to the following programs are nonlapsing:

299 (1) The Legislature and its committees.

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

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

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

- 305 (5) The Division of Wildlife Resources for the appraisal and purchase of lands under
306 the Pelican Management Act, as provided in Section 23-21a-6.
- 307 (6) The primary care grant program created in Section 26-10b-102.
- 308 (7) Sanctions collected as dedicated credits from Medicaid provider under Subsection
309 26-18-3(7).
- 310 (8) The Utah Health Care Workforce Financial Assistance Program created in Section
311 26-46-102.
- 312 (9) The Rural Physician Loan Repayment Program created in Section 26-46a-103.
- 313 (10) The Opiate Overdose Outreach Pilot Program created in Section 26-55-107.
- 314 (11) Funds that the Department of Alcoholic Beverage Control retains in accordance
315 with Subsection 32B-2-301(7)(a)(ii) or (b).
- 316 (12) The General Assistance program administered by the Department of Workforce
317 Services, as provided in Section 35A-3-401.
- 318 (13) A new program or agency that is designated as nonlapsing under Section
319 36-24-101.
- 320 (14) The Utah National Guard, created in Title 39, Militia and Armories.
- 321 (15) The State Tax Commission under Section 41-1a-1201 for the:
- 322 (a) purchase and distribution of license plates and decals; and
- 323 (b) administration and enforcement of motor vehicle registration requirements.
- 324 (16) The Search and Rescue Financial Assistance Program, as provided in Section
325 53-2a-1102.
- 326 (17) The Motorcycle Rider Education Program, as provided in Section 53-3-905.
- 327 (18) The State Board of Regents for teacher preparation programs, as provided in
328 Section 53B-6-104.
- 329 (19) The Medical Education Program administered by the Medical Education Council,
330 as provided in Section 53B-24-202.
- 331 (20) The State Board of Education, as provided in Section 53F-2-205.
- 332 (21) The Division of Services for People with Disabilities, as provided in Section
333 62A-5-102.
- 334 (22) The Division of Fleet Operations for the purpose of upgrading underground
335 storage tanks under Section 63A-9-401.

- 336 (23) The Utah Seismic Safety Commission, as provided in Section [63C-6-104](#).
- 337 (24) Appropriations to the Department of Technology Services for technology
338 innovation as provided under Section [63F-4-202](#).
- 339 (25) The Office of Administrative Rules for publishing, as provided in Section
340 [63G-3-402](#).
- 341 (26) The Utah Science Technology and Research Initiative created in Section
342 [63M-2-301](#).
- 343 (27) The Governor's Office of Economic Development to fund the Enterprise Zone
344 Act, as provided in Title 63N, Chapter 2, Part 2, Enterprise Zone Act.
- 345 (28) Appropriations to fund the Governor's Office of Economic Development's Rural
346 Employment Expansion Program, as described in Title 63N, Chapter 4, Part 4, Rural
347 Employment Expansion Program.
- 348 (29) The Department of Human Resource Management user training program, as
349 provided in Section [67-19-6](#).
- 350 (30) The University of Utah Poison Control Center program, as provided in Section
351 [69-2-5.5](#).
- 352 (31) A public safety answering point's emergency telecommunications service fund, as
353 provided in Section [69-2-301](#).
- 354 (32) The Traffic Noise Abatement Program created in Section [72-6-112](#).
- 355 (33) The Judicial Council for compensation for special prosecutors, as provided in
356 Section [77-10a-19](#).
- 357 (34) A state rehabilitative employment program, as provided in Section [78A-6-210](#).
- 358 (35) The Utah Geological Survey, as provided in Section [79-3-401](#).
- 359 (36) The Bonneville Shoreline Trail Program created under Section [79-5-503](#).
- 360 (37) Adoption document access as provided in Sections [78B-6-141](#), [78B-6-144](#), and
361 [78B-6-144.5](#).
- 362 (38) Indigent defense as provided in Title [~~77, Chapter 32, Part 8~~] 78B, Chapter 22,
363 Part 4, Utah Indigent Defense Commission.
- 364 Section 6. Section **78A-2-408** is amended to read:
- 365 **78A-2-408. Transcripts and copies -- Fees.**
- 366 (1) The Judicial Council shall by rule provide for a standard page format for transcripts

367 of court hearings.

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

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

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

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

388 **78A-2-703. Appointment of attorney guardian ad litem in district court matters.**

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

391 (a) protective order proceedings; and

392 (b) district court actions when:

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

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

397 (iii) the court makes a finding that the adult parties to the case are indigent individuals,

398 as defined in Section [~~77-32-202~~] 78B-22-102; and

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

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

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

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

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

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

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

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

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

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

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

420 (c) except as provided in Subsection (5), within one year after the day on which the
421 attorney guardian ad litem is appointed in the case, issue a final order:

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

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

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

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

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

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

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

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

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

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

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

447 **78A-2-705. Private attorney guardian ad litem -- Appointment -- Costs and fees --**
448 **Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum**
449 **qualifications.**

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

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

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

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

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

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

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

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

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

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

475 (4) The court shall:

476 (a) specify in the order appointing a private attorney guardian ad litem the specific
477 issues in the proceeding that the private attorney guardian ad litem shall be involved in
478 resolving, which may include issues relating to the custody of the child and a parent-time
479 schedule;

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

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

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

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

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

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

491 litem; or

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

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

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

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

504 (b) (i) If, after the initial assignment of a private attorney guardian ad litem, either party
505 objects to the assigned private attorney guardian ad litem, that party may file an objection with
506 the court within seven days after the day on which the party received notice of the assigned
507 private attorney guardian ad litem.

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

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

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

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

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

522 to be just; and

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

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

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

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

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

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

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

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

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

539 (11) The private attorney guardian ad litem:

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

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

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

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

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

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

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

- 553 (A) the minor is outside of the state; or
- 554 (B) meeting with the minor would be detrimental to the minor;
- 555 (ii) personally interview the minor, unless:
- 556 (A) the minor is not old enough to communicate;
- 557 (B) the minor lacks the capacity to participate in a meaningful interview; or
- 558 (C) the interview would be detrimental to the minor;
- 559 (iii) to the extent possible, determine the minor's goals and concerns regarding custody
- 560 or visitation; and
- 561 (iv) to the extent possible, and unless it would be detrimental to the minor, keep the
- 562 minor advised of:
- 563 (A) the status of the minor's case;
- 564 (B) all court and administrative proceedings;
- 565 (C) discussions with, and proposals made by, other parties;
- 566 (D) court action; and
- 567 (E) the psychiatric, medical, or other treatment or diagnostic services that are to be
- 568 provided to the minor;
- 569 (e) unless excused by the court, prepare for and attend all mediation hearings and all
- 570 court conferences and hearings, and present witnesses and exhibits as necessary to protect the
- 571 best interests of the minor;
- 572 (f) identify community resources to protect the best interests of the minor and advocate
- 573 for those resources; and
- 574 (g) participate in all appeals unless excused by the court.
- 575 (13) (a) The private attorney guardian ad litem shall represent the best interests of a
- 576 minor.
- 577 (b) If the minor's intent and desires differ from the private attorney guardian ad litem's
- 578 determination of the minor's best interests, the private attorney guardian ad litem shall
- 579 communicate to the court the minor's intent and desires and the private attorney guardian ad
- 580 litem's determination of the minor's best interests.
- 581 (c) A difference between the minor's intent and desires and the private attorney
- 582 guardian ad litem's determination of best interests is not sufficient to create a conflict of
- 583 interest.

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

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

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

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

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

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

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

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

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

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

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

606 (d) a system to:

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

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

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

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

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

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

618 **78A-6-306. Shelter hearing.**

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

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

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

623 (c) emergency placement under Subsection [62A-4a-202.1\(4\)](#);

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

626 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under
627 Subsection [78A-6-106\(4\)](#).

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

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

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

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

633 (d) a concise statement regarding:

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

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

636 (e) a statement that the parent or guardian to whom notice is given, and the child, are
637 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
638 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
639 provided in accordance with [~~the provisions of Section [78A-6-1111](#)~~] Title 78B, Chapter 22,
640 Indigent Defense Act; and

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

645 (3) The notice described in Subsection (2) shall be personally served as soon as

646 possible, but no later than one business day after removal of the child from the child's home, or
647 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection
648 78A-6-106(4), on:

649 (a) the appropriate guardian ad litem; and

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

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

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

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

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

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

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

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

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

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

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

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

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

665 (b) The court:

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

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

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

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

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

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

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

678 (d) the available services that could facilitate the return of the child to the custody of
679 the child's parent or guardian; and

680 (e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the
681 child or friends of the child's parents may be able and willing to accept temporary placement of
682 the child.

683 (7) The court shall consider all relevant evidence provided by persons or entities
684 authorized to present relevant evidence pursuant to this section.

685 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good
686 cause shown, the court may grant no more than one continuance, not to exceed five judicial
687 days.

688 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for
689 a continuance under Subsection (8)(a).

690 (c) Notwithstanding Subsection (8)(a), if the division fails to provide the notice
691 described in Subsection (2) within the time described in Subsection (3), the court may grant the
692 request of a parent or guardian for a continuance, not to exceed five judicial days.

693 (9) (a) If the child is in the protective custody of the division, the court shall order that
694 the child be returned to the custody of the parent or guardian unless it finds, by a
695 preponderance of the evidence, consistent with the protections and requirements provided in
696 Subsection 62A-4a-201(1), that any one of the following exists:

697 (i) subject to Subsection (9)(b)(i), there is a serious danger to the physical health or
698 safety of the child and the child's physical health or safety may not be protected without
699 removing the child from the custody of the child's parent;

700 (ii) (A) the child is suffering emotional damage that results in a serious impairment in
701 the child's growth, development, behavior, or psychological functioning;

702 (B) the parent or guardian is unwilling or unable to make reasonable changes that
703 would sufficiently prevent future damage; and

704 (C) there are no reasonable means available by which the child's emotional health may
705 be protected without removing the child from the custody of the child's parent or guardian;

706 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is
707 not removed from the custody of the child's parent or guardian;

- 708 (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same
709 household has been, or is considered to be at substantial risk of being, physically abused,
710 sexually abused, or sexually exploited by a:
- 711 (A) parent or guardian;
 - 712 (B) member of the parent's household or the guardian's household; or
 - 713 (C) person known to the parent or guardian;
- 714 (v) the parent or guardian is unwilling to have physical custody of the child;
- 715 (vi) the child is without any provision for the child's support;
- 716 (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe
717 and appropriate care for the child;
- 718 (viii) (A) a relative or other adult custodian with whom the child is left by the parent or
719 guardian is unwilling or unable to provide care or support for the child;
- 720 (B) the whereabouts of the parent or guardian are unknown; and
 - 721 (C) reasonable efforts to locate the parent or guardian are unsuccessful;
- 722 (ix) subject to Subsections 78A-6-105(35)(c)(i) through (iii) and 78A-6-117(2) and
723 Section 78A-6-301.5, the child is in immediate need of medical care;
- 724 (x) (A) the physical environment or the fact that the child is left unattended beyond a
725 reasonable period of time poses a threat to the child's health or safety; and
- 726 (B) the parent or guardian is unwilling or unable to make reasonable changes that
727 would remove the threat;
- 728 (xi) (A) the child or a minor residing in the same household has been neglected; and
- 729 (B) the parent or guardian is unwilling or unable to make reasonable changes that
730 would prevent the neglect;
- 731 (xii) the parent, guardian, or an adult residing in the same household as the parent or
732 guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act,
733 and any clandestine laboratory operation was located in the residence or on the property where
734 the child resided;
- 735 (xiii) (A) the child's welfare is substantially endangered; and
 - 736 (B) the parent or guardian is unwilling or unable to make reasonable changes that
737 would remove the danger; or
- 738 (xiv) the child's natural parent:

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

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

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

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

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

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

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

755 (10) (a) (i) The court shall also make a determination on the record as to whether
756 reasonable efforts were made to prevent or eliminate the need for removal of the child from the
757 child's home and whether there are available services that would prevent the need for continued
758 removal.

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

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

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

768 (12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe
769 abuse, or severe neglect are involved, neither the division nor the court has any duty to make

770 "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home,
771 return a child to the child's home, provide reunification services, or attempt to rehabilitate the
772 offending parent or parents.

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

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

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

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

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

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

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

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

788 **78A-6-317. All proceedings -- Persons entitled to be present.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

832 perpetrator in the report; or

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

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

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

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

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

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

844 **78A-6-703. Certification hearings -- Juvenile court to hold preliminary hearing --**
845 **Factors considered by juvenile court for waiver of jurisdiction to district court.**

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

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

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

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

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

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

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

- 863 (i) in concert with two or more persons;
- 864 (ii) for the benefit of, at the direction of, or in association with any criminal street gang
865 as defined in Section 76-9-802; or
- 866 (iii) to gain recognition, acceptance, membership, or increased status with a criminal
867 street gang as defined in Section 76-9-802;
- 868 (c) whether the alleged offense was committed in an aggressive, violent, premeditated,
869 or willful manner;
- 870 (d) whether the alleged offense was against persons or property, greater weight being
871 given to offenses against persons, except as provided in Section 76-8-418;
- 872 (e) the maturity of the minor as determined by considerations of the minor's home,
873 environment, emotional attitude, and pattern of living;
- 874 (f) the record and previous history of the minor;
- 875 (g) the likelihood of rehabilitation of the minor by use of facilities available to the
876 juvenile court;
- 877 (h) the desirability of trial and disposition of the entire offense in one court when the
878 minor's associates in the alleged offense are adults who will be charged with a crime in the
879 district court;
- 880 (i) whether the minor used a firearm in the commission of an offense; and
- 881 (j) whether the minor possessed a dangerous weapon on or about school premises as
882 provided in Section 76-10-505.5.
- 883 (4) The amount of weight to be given to each of the factors listed in Subsection (3) is
884 discretionary with the court.
- 885 (5) (a) Written reports and other materials relating to the minor's mental, physical,
886 educational, and social history may be considered by the court.
- 887 (b) If requested by the minor, the minor's parent, guardian, or other interested party, the
888 court shall require the person or agency preparing the report and other material to appear and
889 be subject to both direct and cross-examination.
- 890 (6) At the conclusion of the state's case, the minor may testify under oath, call
891 witnesses, cross-examine adverse witnesses, and present evidence on the factors required by
892 Subsection (3).
- 893 (7) At the time the minor is bound over to the district court, the juvenile court shall

894 make the initial determination on where the minor shall be held.

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

897 (a) the age of the minor;

898 (b) the nature, seriousness, and circumstances of the alleged offense;

899 (c) the minor's history of prior criminal acts;

900 (d) whether detention in a juvenile detention facility will adequately serve the need for
901 community protection pending the outcome of any criminal proceedings;

902 (e) whether the minor's placement in a juvenile detention facility will negatively impact
903 the functioning of the facility by compromising the goals of the facility to maintain a safe,
904 positive, and secure environment for all minors within the facility;

905 (f) the relative ability of the facility to meet the needs of the minor and protect the
906 public;

907 (g) whether the minor presents an imminent risk of harm to the minor or others within
908 the facility;

909 (h) the physical maturity of the minor;

910 (i) the current mental state of the minor as evidenced by relevant mental health or
911 psychological assessments or screenings that are made available to the court; and

912 (j) any other factors the court considers relevant.

913 (9) If a minor is ordered to a juvenile detention facility under Subsection (8), the minor
914 shall remain in the facility until released by a district court judge, or if convicted, until
915 sentencing.

916 (10) A minor held in a juvenile detention facility under this section shall have the same
917 right to bail as any other criminal defendant.

918 (11) If the minor ordered to a juvenile detention facility under Subsection (8) attains
919 the age of 18 years, the minor shall be transferred within 30 days to an adult jail until released
920 by the district court judge, or if convicted, until sentencing.

921 (12) A minor 16 years of age or older whose conduct or condition endangers the safety
922 or welfare of others in the juvenile detention facility may, by court order that specifies the
923 reasons, be detained in another place of confinement considered appropriate by the court,
924 including jail or other place of confinement for adults.

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

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

929 (a) certifying that finding; and

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

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

935 (16) [~~The provisions of~~] Title 78B, Chapter 22, Indigent Defense Act, Section
936 78A-6-115, [~~Section 78A-6-1111;~~] and other provisions relating to proceedings in juvenile
937 cases are applicable to the hearing held under this section to the extent they are pertinent.

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

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

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

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

952 (21) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice
953 Services regain jurisdiction and any authority previously exercised over the minor when there
954 is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

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

956 **78A-6-1111. Order for indigent defense service or guardian ad litem.**

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

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

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

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

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

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

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

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

979 ~~[(d)]~~ (2) ~~In any action [initiated by the state, a political subdivision of the state, or a~~
980 ~~private party] under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5,~~
981 ~~Termination of Parental Rights Act, [of this chapter,] the child shall be represented by a~~
982 ~~guardian ad litem in accordance with Sections [78A-6-317](#) and [78A-6-902](#). The child shall also~~
983 ~~be represented by an attorney guardian ad litem in other actions initiated under this chapter~~
984 ~~when appointed by the court under Section [78A-6-902](#) or as otherwise provided by law.~~

985 ~~[(e) In any action initiated by the state or a political subdivision of the state under Part~~
986 ~~6, Delinquency and Criminal Actions, or Part 7, Transfer of Jurisdiction, of this chapter, or~~

987 against a minor under Section ~~78A-6-1101~~, the parents or legal guardian and the minor shall be
988 informed that the minor has the right to be represented by counsel at every stage of the
989 proceedings.]

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

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

1000 ~~[(iii) If the minor is found to be indigent, counsel shall be appointed by the court to~~
1001 ~~represent the minor in all proceedings directly related to the petition or motion filed by the state~~
1002 ~~or a political subdivision of the state, subject to the provisions of this section.]~~

1003 ~~[(f) Indigency of a parent, legal guardian, or minor shall be determined in accordance~~
1004 ~~with the process and procedure defined in Section ~~77-32-202~~. The court shall take into account~~
1005 ~~the income and financial ability of the parent or legal guardian to retain counsel in determining~~
1006 ~~the indigency of the minor.]~~

1007 ~~[(g) The cost of appointed counsel for a party found to be indigent, including the cost~~
1008 ~~of counsel and expense of the first appeal, shall be paid by the county in which the trial court~~
1009 ~~proceedings are held. Counties may levy and collect taxes for these purposes or may apply for~~
1010 ~~a grant for reimbursement, as provided in Subsection (6).]~~

1011 ~~[(2) Counsel appointed by the court may not provide representation as court-appointed~~
1012 ~~counsel for a parent or legal guardian in any action initiated by, or in any proceeding to modify~~
1013 ~~court orders in a proceeding initiated by, a private party, except as provided under Subsection~~
1014 ~~(1)(b).]~~

1015 ~~[(3) If the county responsible to provide legal counsel for an indigent under Subsection~~
1016 ~~(1)(g) has arranged by contract to provide services, the court shall appoint the contracting~~
1017 ~~attorney as legal counsel to represent that indigent.]~~

1018 ~~[(4) The court may order a parent or legal guardian for whom counsel is appointed, and~~
1019 ~~the parents or legal guardian of any minor for whom counsel is appointed, to reimburse the~~
1020 ~~county for the cost of appointed counsel.]~~

1021 ~~[(5) The state, or an agency of the state, may not be ordered to reimburse the county for~~
1022 ~~expenses incurred under Subsection (1)(g).]~~

1023 ~~[(6) If a county incurs expenses in providing defense services to indigent individuals~~
1024 ~~facing any action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination of~~
1025 ~~Parental Rights Act or termination of parental rights under Section ~~78B-6-112~~, the county may~~
1026 ~~apply for a grant for reimbursement from the Utah Indigent Defense Commission under~~
1027 ~~Section ~~77-32-806~~.]~~

1028 Section 13. Section **78A-7-103** is amended to read:

1029 **78A-7-103. Minimum standards of justice courts -- Authority of Judicial Council**
1030 **over justice courts.**

1031 The Judicial Council shall ensure that:

1032 (1) procedures include requirements that every municipality or county that establishes
1033 or maintains a justice court provide for the following minimum operating standards:

1034 (a) a system to ensure the justice court records all proceedings with a digital audio
1035 recording device and maintains the audio recordings for a minimum of one year;

1036 (b) sufficient prosecutors to perform the prosecutorial duties before the justice court;

1037 (c) adequate funding to ~~[defend all persons charged with a public offense who are~~
1038 ~~determined by the justice court to be indigent]~~ provide indigent defense services for indigent
1039 individuals under Title ~~[77, Chapter 32]~~ 78B, Chapter 22, Indigent Defense Act;

1040 (d) sufficient local peace officers to provide security for the justice court and to attend
1041 to the justice court when required;

1042 (e) sufficient clerical personnel to serve the needs of the justice court;

1043 (f) sufficient funds to cover the cost of travel and training expenses of clerical
1044 personnel and judges at training sessions mandated by the Judicial Council;

1045 (g) adequate courtroom and auxiliary space for the justice court, which need not be
1046 specifically constructed for or allocated solely for the justice court when existing facilities
1047 adequately serve the purposes of the justice court; and

1048 (h) for each judge of its justice court, a current copy of the Utah Code, the Utah Court

1049 Rules Annotated, the justice court manual published by the state court administrator, the
1050 county, city, or town ordinances as appropriate, and other legal reference materials as
1051 determined to be necessary by the judge; and

1052 (2) the Judicial Council's rules and procedures shall:

1053 (a) presume that existing justice courts will be recertified at the end of each four-year
1054 term if the court continues to meet the minimum requirements for the establishment of a new
1055 justice court; or

1056 (b) authorize the Judicial Council, upon request of a municipality or county or upon its
1057 own review, when a justice court does not meet the minimum requirements, to:

1058 (i) decline recertification of a justice court;

1059 (ii) revoke the certification of a justice court;

1060 (iii) extend the time for a justice court to comply with the minimum requirements; or

1061 (iv) suspend rules of the Judicial Council governing justice courts, if the council
1062 believes suspending those rules is the appropriate administrative remedy for the justice courts
1063 of this state.

1064 Section 14. Section **78B-6-112** is amended to read:

1065 **78B-6-112. District court jurisdiction over termination of parental rights**
1066 **proceedings.**

1067 (1) A district court has jurisdiction to terminate parental rights in a child if the party
1068 who filed the petition is seeking to terminate parental rights in the child for the purpose of
1069 facilitating the adoption of the child.

1070 (2) A petition to terminate parental rights under this section may be:

1071 (a) joined with a proceeding on an adoption petition; or

1072 (b) filed as a separate proceeding before or after a petition to adopt the child is filed.

1073 (3) A court may enter a final order terminating parental rights before a final decree of
1074 adoption is entered.

1075 (4) (a) Nothing in this section limits the jurisdiction of a juvenile court relating to
1076 proceedings to terminate parental rights as described in Section [78A-6-103](#).

1077 (b) This section does not grant jurisdiction to a district court to terminate parental
1078 rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse,
1079 neglect, dependency, or termination of parental rights proceeding.

1080 (5) The district court may terminate an individual's parental rights in a child if:
1081 (a) the individual executes a voluntary consent to adoption, or relinquishment for
1082 adoption, of the child, in accordance with:
1083 (i) the requirements of this chapter; or
1084 (ii) the laws of another state or country, if the consent is valid and irrevocable;
1085 (b) the individual is an unmarried biological father who is not entitled to consent to
1086 adoption, or relinquishment for adoption, under Section [78B-6-120](#) or [78B-6-121](#);
1087 (c) the individual:
1088 (i) received notice of the adoption proceeding relating to the child under Section
1089 [78B-6-110](#); and
1090 (ii) failed to file a motion for relief, under Subsection [78B-6-110\(6\)](#), within 30 days
1091 after the day on which the individual was served with notice of the adoption proceeding;
1092 (d) the court finds, under Section [78B-15-607](#), that the individual is not a parent of the
1093 child; or
1094 (e) the individual's parental rights are terminated on grounds described in Title 78A,
1095 Chapter 6, Part 5, Termination of Parental Rights Act, if terminating the person's parental
1096 rights is in the best interests of the child.
1097 (6) The court shall appoint [~~counsel designated by the county where the petition is~~
1098 ~~filed~~] an indigent defense service provider, under Title 78B, Chapter 22, Indigent Defense Act,
1099 to represent a party who faces any action initiated by a private party under Title 78A, Chapter
1100 6, Part 5, Termination of Parental Rights Act or whose parental rights are subject to
1101 termination under this section[~~, if~~].
1102 [~~(a) the court determines that the party is indigent under Section [77-32-202](#); and~~
1103 ~~(b) the party does not, after being fully advised of the right to counsel, knowingly,~~
1104 ~~intelligently and voluntarily waive the right to counsel.~~]
1105 (7) If a county incurs expenses in providing indigent defense services to an indigent
1106 [~~individuals~~] individual facing any action initiated by a private party under Title 78A, Chapter
1107 6, Part 5, Termination of Parental Rights Act or termination of parental rights under this
1108 section, the county may apply for [~~a grant for~~] reimbursement from the Utah Indigent Defense
1109 Commission under Section [~~77-32-806~~] [78B-22-406](#).
1110 Section 15. Section **78B-22-101**, which is renumbered from Section 77-32-101 is

1111 renumbered and amended to read:

1112 **CHAPTER 22. INDIGENT DEFENSE ACT**

1113 **Part 1. General Provisions**

1114 ~~[77-32-101].~~ 78B-22-101. Title.

1115 This chapter is known as the "Indigent Defense Act."

1116 Section 16. Section **78B-22-102** is enacted to read:

1117 **78B-22-102. Definitions.**

1118 As used in this chapter:

1119 (1) "Account" means the Indigent Defense Resources Restricted Account created in
1120 Section [78B-22-405](#).

1121 (2) "Board" means the Indigent Defense Funds Board created in Section [78B-22-501](#).

1122 (3) "Commission" means the Utah Indigent Defense Commission created in Section
1123 [78B-22-401](#).

1124 (4) (a) "Indigent defense resources" means the resources necessary to provide an
1125 effective defense for an indigent individual, including the costs for a competent investigator,
1126 expert witness, scientific or medical testing, transcripts, and printing briefs.

1127 (b) "Indigent defense resources" does not include an indigent defense service provider.

1128 (5) "Indigent defense service provider" means an attorney or entity appointed to
1129 represent an indigent individual pursuant to:

1130 (a) a contract with an indigent defense system; or

1131 (b) an order issued by the court under Subsection [78B-22-203\(2\)\(b\)](#).

1132 (6) "Indigent defense services" means:

1133 (a) the representation of an indigent individual by an indigent defense service provider;
1134 and

1135 (b) the provision of indigent defense resources for an indigent individual.

1136 (7) "Indigent defense system" means:

1137 (a) a city or town that is responsible for providing indigent defense services in the city's
1138 or town's justice court;

1139 (b) a county that is responsible for providing indigent defense services in the district
1140 court, juvenile court, or the county's justice courts; or

1141 (c) an interlocal entity, created pursuant to Title 11, Chapter 13, Interlocal Cooperation

1142 Act, that is responsible for providing indigent defense services according to the terms of an
1143 agreement between a county, city, or town.

1144 (8) "Indigent individual" means:

1145 (a) a minor who is:

1146 (i) arrested and admitted into detention for an offense under Section [78A-6-103](#);

1147 (ii) charged by petition or information in the juvenile or district court; or

1148 (iii) described in this Subsection (8)(a), who is appealing a first appeal from an
1149 adjudication or other final court action; and

1150 (b) an individual listed in Subsection [78B-22-201\(1\)](#) who is found indigent pursuant to
1151 Section [78B-22-202](#).

1152 (9) "Minor" means the same as that term is defined in Section [78A-6-105](#).

1153 (10) "Participating county" means a county that complies with this chapter for
1154 participation in the Indigent Aggravated Murder Defense Trust Fund as provided in Sections
1155 [78B-22-702](#) and [78B-22-703](#).

1156 Section 17. Section **78B-22-201** is enacted to read:

1157 **Part 2. Appointment of Counsel**

1158 **78B-22-201. Right to counsel.**

1159 (1) A court shall advise the following of the individual's right to counsel when the
1160 individual first appears before the court:

1161 (a) an adult charged with a criminal offense the penalty for which includes the
1162 possibility of incarceration regardless of whether actually imposed;

1163 (b) a parent or legal guardian facing any action under:

1164 (i) Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;

1165 (ii) Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act;

1166 (iii) Title 78A, Chapter 6, Part 10, Adult Offenses; or

1167 (iv) Section [78B-6-112](#); or

1168 (c) an individual described in this Subsection (1), who is appealing a first appeal from
1169 a conviction or other final court action.

1170 (2) If an individual described in Subsection (1) does not knowingly and voluntarily
1171 waive the right to counsel, the court shall determine whether the individual is indigent under
1172 Section [78B-22-202](#).

1173 Section 18. Section **78B-22-202** is enacted to read:

1174 **78B-22-202. Determining indigency.**

1175 (1) A court shall find an individual indigent if the individual:

1176 (a) has an income level at or below 150% of the United States poverty level as defined

1177 by the most recent poverty income guidelines published by the United States Department of

1178 Health and Human Services; or

1179 (b) has insufficient income or other means to pay for legal counsel and the necessary

1180 expenses of representation without depriving the individual or the individual's family of food,

1181 shelter, clothing, or other necessities, considering:

1182 (i) the individual's ownership of, or any interest in, personal or real property;

1183 (ii) the amount of debt owed by the individual or that might reasonably be incurred by

1184 the individual because of illness or other needs within the individual's family;

1185 (iii) the number, ages, and relationships of any dependents;

1186 (iv) the probable expense and burden of defending the case;

1187 (v) the reasonableness of fees and expenses charged by an attorney and the scope of

1188 representation undertaken when represented by privately retained defense counsel; and

1189 (vi) any other factor the court considers relevant.

1190 (2) Notwithstanding Subsection (1), a court may not find an individual indigent if the

1191 individual transferred or otherwise disposed of assets since the commission of the offense with

1192 the intent of becoming eligible to receive indigent defense services.

1193 (3) The court may make a finding of indigency at any time.

1194 Section 19. Section **78B-22-203** is enacted to read:

1195 **78B-22-203. Order for indigent defense services.**

1196 (1) (a) If the court finds an individual is an indigent individual under Section

1197 [78B-22-202](#), the court shall order indigent defense services for the indigent individual if the

1198 indigent individual has not retained private counsel.

1199 (b) Notwithstanding Subsection (1)(a), the court may order indigent defense services

1200 for an individual who has retained private counsel only if the court finds:

1201 (i) the individual is an indigent individual under Section [78B-22-202](#);

1202 (ii) the individual would be prejudiced by the substitution of a contracted indigent

1203 defense provider and the prejudice cannot be remedied;

1204 (iii) at the time that private counsel was retained, the individual had the ability to pay
1205 for indigent defense resources; and

1206 (iv) there has been an unforeseen change in circumstances that requires indigent
1207 defense resources beyond the individual's ability to pay.

1208 (2) (a) An indigent defense service provider who has a contract with an indigent
1209 defense system shall provide indigent defense services ordered by the court.

1210 (b) Notwithstanding Subsection (2)(a), a court may order indigent defense services to
1211 be provided by an indigent defense service provider who does not have a contract with an
1212 indigent defense system only if all of the contracted indigent defense service providers:

1213 (i) have a conflict of interest; or

1214 (ii) do not have sufficient expertise to provide indigent defense services for the
1215 indigent individual.

1216 (3) (a) A court may not order indigent defense services under Subsection (1)(b) or
1217 (2)(b) until the court conducts a hearing with proper notice to the indigent defense system by
1218 sending notice of the hearing to the county clerk or municipal recorder.

1219 (b) At the hearing, the court shall conduct an in camera review of:

1220 (i) the private counsel contract;

1221 (ii) the costs or anticipated costs of the indigent defense services; and

1222 (iii) other relevant records.

1223 (4) An indigent defense service provider appointed by the court shall represent the
1224 indigent individual in all court proceedings related to the matter for which the indigent defense
1225 service provider is appointed.

1226 (5) Except as provided in this part, a court may not order indigent defense services.

1227 Section 20. Section **78B-22-204** is enacted to read:

1228 **78B-22-204. Waiver by a minor.**

1229 A minor may not waive the right to counsel before:

1230 (1) the minor has consulted with counsel; and

1231 (2) the court is satisfied that in light of the minor's unique circumstances and attributes:

1232 (a) the minor's waiver is knowing and voluntary; and

1233 (b) the minor understands the consequences of the waiver.

1234 Section 21. Section **78B-22-301** is enacted to read:

1235 **Part 3. Indigent Defense Systems and Services**

1236 **78B-22-301. Standards for indigent defense systems.**

1237 An indigent defense system shall provide indigent defense services for an indigent
1238 individual in accordance with the minimum guidelines adopted by the commission under
1239 Section [78B-22-404](#).

1240 Section 22. Section **78B-22-302** is enacted to read:

1241 **78B-22-302. Compensation for indigent defense services.**

1242 An indigent defense system shall fund indigent defense services ordered by a court in
1243 accordance with [78B-22-203](#).

1244 Section 23. Section **78B-22-303** is enacted to read:

1245 **78B-22-303. Pro bono provision of indigent defense services -- Liability limits.**

1246 A defense attorney is immune from suit if the defense attorney provides indigent
1247 defense services to an indigent individual:

- 1248 (1) at no cost; and
- 1249 (2) without gross negligence or willful misconduct.

1250 Section 24. Section **78B-22-304** is enacted to read:

1251 **78B-22-304. Reimbursement for indigent defense services.**

1252 A court may order a parent or legal guardian of a minor who is appointed indigent
1253 defense services under this chapter to reimburse the cost of the minor's indigent defense
1254 services unless the court finds the parent or legal guardian indigent under Section [78B-22-202](#).

1255 Section 25. Section **78B-22-401**, which is renumbered from Section 77-32-801 is
1256 renumbered and amended to read:

1257 **Part 4. Utah Indigent Defense Commission**

1258 ~~[77-32-801]~~. **78B-22-401. Utah Indigent Defense Commission -- Creation**
1259 **-- Purpose.**

1260 (1) There is created within the State Commission on Criminal and Juvenile Justice the
1261 "Utah Indigent Defense Commission."

1262 (2) The purpose of the commission is to assist the state in meeting the state's
1263 obligations for the provision of indigent defense services, consistent with the United States
1264 Constitution, the Utah Constitution, and the Utah Code.

1265 Section 26. Section **78B-22-402**, which is renumbered from Section 77-32-802 is

1266 renumbered and amended to read:

1267 ~~[77-32-802]~~. 78B-22-402. Commission members -- Member qualifications

1268 -- **Terms -- Vacancy.**

1269 (1) The commission is composed of 14 voting members and one ex officio, nonvoting
1270 member.

1271 (a) The governor, with the consent of the Senate, shall appoint the following 12 voting
1272 members:

1273 (i) two practicing criminal defense attorneys recommended by the Utah Association of
1274 Criminal Defense Lawyers;

1275 (ii) one attorney practicing in juvenile delinquency defense recommended by the Utah
1276 Association of Criminal Defense Lawyers;

1277 (iii) an attorney representing minority interests recommended by the Utah Minority Bar
1278 Association;

1279 (iv) one member recommended by the Utah Association of Counties from a county of
1280 the first or second class;

1281 (v) one member recommended by the Utah Association of Counties from a county of
1282 the third through sixth class;

1283 (vi) a director of a county public defender organization recommended by the Utah
1284 Association of Criminal Defense Lawyers;

1285 (vii) two members recommended by the Utah League of Cities and Towns from its
1286 membership;

1287 (viii) a retired judge recommended by the Judicial Council;

1288 (ix) one member of the Utah Legislature selected jointly by the Speaker of the House
1289 and President of the Senate; and

1290 (x) one attorney practicing in the area of parental defense, recommended by an entity
1291 funded under Title 63A, Chapter 11, Child Welfare Parental Defense Program.

1292 (b) The Judicial Council shall appoint a voting member from the Administrative Office
1293 of the Courts.

1294 (c) The executive director of the State Commission on Criminal and Juvenile Justice or
1295 the executive director's designee is a voting member of the commission.

1296 (d) The director of the commission, appointed under Section ~~[77-32-803]~~ 78B-22-403,

1297 is an ex officio, nonvoting member of the commission.

1298 (2) A member appointed by the governor shall serve a four-year term, except as
1299 provided in Subsection (3).

1300 (3) The governor shall stagger the initial terms of appointees so that approximately half
1301 of the members appointed by the governor are appointed every two years.

1302 (4) A member appointed to the commission shall have significant experience in
1303 indigent criminal defense, parental defense, or juvenile defense in delinquency proceedings or
1304 have otherwise demonstrated a strong commitment to providing effective representation in
1305 indigent defense services.

1306 (5) A person who is currently employed solely as a criminal prosecuting attorney may
1307 not serve as a member of the commission.

1308 (6) A commission member shall hold office until the member's successor is appointed.

1309 (7) The commission may remove a member for incompetence, dereliction of duty,
1310 malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.

1311 (8) If a vacancy occurs in the membership for any reason, a replacement shall be
1312 appointed for the remaining unexpired term in the same manner as the original appointment.

1313 (9) The commission shall annually elect a chair from the commission's membership to
1314 serve a one-year term. A commission member may not serve as chair of the commission for
1315 more than three consecutive terms.

1316 (10) A member may not receive compensation or benefits for the member's service, but
1317 may receive per diem and travel expenses in accordance with:

1318 (a) Section [63A-3-106](#);

1319 (b) Section [63A-3-107](#); and

1320 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
1321 [63A-3-107](#).

1322 (11) (a) A majority of the members of the commission constitutes a quorum.

1323 (b) If a quorum is present, the action of a majority of the voting members present
1324 constitutes the action of the commission.

1325 Section 27. Section **78B-22-403**, which is renumbered from Section 77-32-803 is
1326 renumbered and amended to read:

1327 ~~[77-32-803]~~. **78B-22-403. Director -- Qualifications -- Staff.**

- 1328 (1) The commission shall appoint a director to carry out the following duties:
- 1329 (a) establish an annual budget;
- 1330 (b) assist the commission in performing the commission's statutory duties;
- 1331 (c) assist the commission in developing and regularly reviewing advisory caseload
- 1332 guidelines and procedures; and
- 1333 (d) perform all other duties as assigned.
- 1334 (2) The director shall be an active member of the Utah State Bar with an appropriate
- 1335 background and experience to serve as the full-time director.
- 1336 (3) The director shall hire staff as necessary to carry out the duties of the commission,
- 1337 including:
- 1338 (a) one individual who is an active member of the Utah State Bar to serve as a full-time
- 1339 assistant director; and
- 1340 (b) one individual with data collection and analysis skills to carry out duties as outlined
- 1341 in Subsection ~~[77-32-804]~~ 78B-22-404(1)(c).
- 1342 (4) The commission in appointing the director, and the director in hiring the assistant
- 1343 director, shall give a preference to individuals with experience in adult criminal defense, child
- 1344 welfare parental defense, or juvenile delinquency defense.

1345 Section 28. Section **78B-22-404**, which is renumbered from Section 77-32-804 is

1346 renumbered and amended to read:

1347 ~~[77-32-804].~~ **78B-22-404. Powers and duties of the commission.**

- 1348 (1) The commission shall:
- 1349 (a) adopt minimum guidelines for an indigent defense system to ensure the effective
- 1350 representation of indigent individuals consistent with the requirements of the United States
- 1351 Constitution, the Utah Constitution, and the Utah Code, which guidelines at a minimum shall
- 1352 address the following:
- 1353 (i) an indigent defense system shall ensure that in providing indigent defense services:
- 1354 (A) an indigent individual receives conflict-free indigent defense services; and
- 1355 (B) there is a separate contract for each type of indigent defense service ~~[and conflict~~
- 1356 cases]; and
- 1357 (ii) an indigent defense system shall ensure an indigent defense service provider has:
- 1358 (A) the ability to exercise independent judgment without fear of retaliation and is free

1359 to represent an indigent individual based on the indigent defense service provider's own
1360 independent judgment;

1361 (B) adequate access to indigent defense resources;

1362 (C) the ability to provide representation to accused [~~persons~~] individuals in criminal
1363 cases at [~~all~~] the critical stages, and at [~~all~~] the stages to indigent [~~parties~~] individuals in
1364 juvenile delinquency and child welfare proceedings;

1365 (D) a workload that allows for sufficient time to meet with clients, investigate cases,
1366 file appropriate documents with the courts, and otherwise provide effective assistance of
1367 counsel to each client;

1368 (E) adequate compensation without financial disincentives;

1369 (F) appropriate experience or training in the area for which the indigent defense service
1370 provider is representing indigent individuals;

1371 (G) compensation for legal training and education in the areas of the law relevant to the
1372 types of cases for which the indigent defense service provider is representing indigent
1373 individuals; and

1374 (H) the ability to meet the obligations of the Utah Rules of Professional Conduct,
1375 including expectations on client communications and managing conflicts of interest;

1376 (b) encourage and aid indigent defense systems in the state in the regionalization of
1377 indigent defense services to provide for effective and efficient representation to [~~all~~] the
1378 indigent individuals;

1379 (c) identify and collect data from any source, which is necessary for the commission to:

1380 (i) aid, oversee, and review compliance by indigent defense systems with the
1381 commission's minimum guidelines for the effective representation of indigent individuals; and

1382 (ii) provide reports regarding the operation of the commission and the provision of
1383 indigent defense services by indigent defense systems in the state;

1384 (d) assist indigent defense systems by reviewing contracts and other agreements, to
1385 ensure compliance with the commission's minimum guidelines for effective representation of
1386 indigent individuals;

1387 (e) investigate, audit, and review the provision of indigent defense services to ensure
1388 compliance with the commission's minimum guidelines for the effective representation of
1389 indigent individuals;

1390 (f) establish procedures for the receipt and acceptance of complaints regarding the
1391 provision of indigent defense services in the state;

1392 (g) establish procedures to award grants to indigent defense systems under Section
1393 ~~[77-32-806]~~ 78B-22-406 consistent with the commission's minimum guidelines for the
1394 effective representation of indigent individuals and appropriations by the state;

1395 (h) emphasize the importance of ensuring constitutionally effective indigent defense
1396 services;

1397 (i) encourage members of the judiciary to provide input regarding the delivery of
1398 indigent defense services;

1399 (j) oversee individuals and entities involved in providing indigent defense services;

1400 (k) annually report to the governor, Legislature, Judiciary Interim Committee, and
1401 Judicial Council, regarding:

1402 (i) the operations of the commission;

1403 (ii) the operations of the indigent defense systems in the state; and

1404 (iii) compliance with the commission's minimum guidelines by indigent defense
1405 systems receiving grants from the commission;

1406 (l) submit recommendations for improving indigent defense services in the state, to
1407 legislative, executive, and judicial leadership; and

1408 (m) publish an annual report on the commission's website.

1409 ~~[(2) An indigent defense system within the state shall meet the minimum guidelines
1410 adopted by the commission under Subsection (1)(a).]~~

1411 ~~[(3)]~~ (2) The commission may make rules in accordance with Title 63G, Chapter 3,
1412 Utah Administrative Rulemaking Act, to carry out the commission's duties under this part.

1413 Section 29. Section **78B-22-405**, which is renumbered from Section 77-32-805 is
1414 renumbered and amended to read:

1415 ~~[77-32-805].~~ **78B-22-405. Indigent Defense Resources Restricted Account**
1416 **-- Administration.**

1417 (1) (a) There is created within the General Fund a restricted account known as the
1418 "Indigent Defense Resources Restricted Account."

1419 (b) Appropriations from the account are nonlapsing.

1420 (2) The account consists of:

1421 (a) money appropriated by the Legislature based upon recommendations from the
1422 commission consistent with principles of shared state and local funding;

1423 (b) any other money received by the commission from any source to carry out the
1424 purposes of this part; and

1425 (c) any interest and earnings from the investment of account money.

1426 (3) The commission shall administer the account and, subject to appropriation,
1427 disburse money from the account for the following purposes:

1428 (a) to establish and maintain a statewide indigent defense data collection system;

1429 (b) to establish and administer a grant program to provide grants of state money to
1430 indigent defense systems as set forth in Section [~~77-32-806~~] [78B-22-406](#);

1431 (c) to provide training and continuing legal education for indigent defense service
1432 providers; and

1433 (d) for administrative costs.

1434 Section 30. Section **78B-22-406**, which is renumbered from Section 77-32-806 is
1435 renumbered and amended to read:

1436 [~~77-32-806~~]. **78B-22-406. Indigent defense services grant program.**

1437 (1) The commission may award grants to supplement local spending by [~~a county or~~
1438 ~~municipality~~] an indigent defense system for indigent defense [~~services and defense resources~~].

1439 (2) Commission grant money may be used for the following expenses:

1440 (a) to assist [~~a county or municipality~~] an indigent defense system to provide indigent
1441 defense services that meet the commission's minimum guidelines for the effective
1442 representation of indigent individuals;

1443 (b) the establishment and maintenance of local indigent defense data collection
1444 systems;

1445 (c) indigent defense services in addition to those currently being provided by [~~a county~~
1446 ~~or municipality~~] an indigent defense system; and

1447 (d) to provide training and continuing legal education for indigent defense service
1448 providers.

1449 (3) To receive a grant from the commission, [~~a county or municipality~~] an indigent
1450 defense system shall demonstrate to the commission's satisfaction that:

1451 (a) the [~~county or municipality~~] indigent defense system has incurred or reasonably

1452 anticipates incurring expenses for indigent defense services that are in addition to the [county's
1453 or municipality's] indigent defense system's average annual spending on indigent defense
1454 services in the three fiscal years immediately preceding the grant application; and

1455 (b) a grant from the commission is necessary for the [county or municipality] indigent
1456 defense system to meet the commission's minimum guidelines for the effective representation
1457 of indigent individuals.

1458 (4) The commission may revoke a grant if an indigent defense system fails to meet
1459 requirements of the grant or any of the commission's minimum guidelines for the effective
1460 representation of indigent individuals.

1461 Section 31. Section ~~77-32-807~~, which is renumbered from Section 77-32-807 is
1462 renumbered and amended to read:

1463 ~~[77-32-807].~~ 78B-22-407. Cooperation and participation with the
1464 commission.

1465 Indigent defense systems and [~~entities or individuals engaged in providing~~] indigent
1466 defense [~~services in the state~~] service providers shall cooperate and participate with the
1467 commission in the collection of data, investigation, audit, and review of [all] indigent defense
1468 services.

1469 Section 32. Section ~~77-32-401~~, which is renumbered from Section 77-32-401 is
1470 renumbered and amended to read:

1471 **Part 5. Indigent Defense Funds Board**

1472 ~~[77-32-401].~~ 78B-22-501. Indigent Defense Funds Board -- Members --
1473 Administrative support.

1474 (1) There is created within the Division of Finance the Indigent Defense Funds Board
1475 composed of the following nine members:

1476 (a) two members who are current commissioners or county executives of participating
1477 counties appointed by the board of directors of the Utah Association of Counties;

1478 (b) one member at large appointed by the board of directors of the Utah Association of
1479 Counties;

1480 (c) two members who are current county attorneys of participating counties appointed
1481 by the Utah Prosecution Council;

1482 (d) the director of the Division of Finance or [his] the director's designee;

1483 (e) one member appointed by the Administrative Office of the Courts; and
1484 (f) two members who are private attorneys engaged in or familiar with the criminal
1485 defense practice appointed by the members of the board listed in Subsections (1)(a) through
1486 (e).

1487 (2) Members appointed under Subsection (1)(a), (b), (c), or (f) shall serve four-year
1488 terms. [~~One of the county commissioners and one of the county attorneys appointed to the~~
1489 ~~initial board shall serve two-year terms, and the remaining other members of the initial board~~
1490 ~~shall be appointed for four-year terms. After the initial two-year terms of the county~~
1491 ~~commissioner and county attorney, those board positions shall have four-year terms.]~~

1492 (3) A vacancy is created if a member appointed under:

1493 (a) Subsection (1)(a) no longer serves as a county commissioner or county executive;
1494 or

1495 (b) Subsection (1)(c) no longer serves as a county attorney.

1496 (4) [~~When~~] If a vacancy occurs in the membership for any reason, a replacement shall
1497 be appointed for the remaining unexpired term in the same manner as the original appointment.

1498 (5) The Division of Finance may provide administrative support and may seek payment
1499 for the costs or the board may contract for administrative support [for up to \$15,000 annually]
1500 to be paid [proportionally from each fund] from the funds described in Subsection
1501 78B-22-502(1)(a).

1502 (6) A member may not receive compensation or benefits for the member's service, but
1503 may receive per diem and travel expenses in accordance with:

1504 (a) Section [63A-3-106](#);

1505 (b) Section [63A-3-107](#); and

1506 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
1507 [63A-3-107](#).

1508 (7) Per diem and expenses for board members shall be paid [~~proportionally from each~~
1509 ~~fund]~~ from the funds described in Subsection [78B-22-502\(1\)\(a\)](#).

1510 (8) Five members shall constitute a quorum and, if a quorum is present, the action of a
1511 majority of the members present shall constitute the action of the board.

1512 Section 33. Section **78B-22-502**, which is renumbered from Section 77-32-402 is
1513 renumbered and amended to read:

1514 ~~[77-32-402].~~ 78B-22-502. Duties of board.

1515 (1) The board shall:

1516 (a) establish rules and procedures for the application by ~~[counties]~~ a county for

1517 disbursements, and the screening and approval of the applications for money from the:

1518 (i) Indigent Inmate Trust Fund established in Part [5] 6, Indigent Inmates; and

1519 (ii) ~~[Indigent Capital Defense Trust Fund]~~ Indigent Aggravated Murder Defense Trust

1520 Fund, established in Part ~~[6, Indigent Capital Defense Trust Fund]~~ 7, Indigent Aggravated

1521 Murder Defense Trust Fund;

1522 (b) receive, screen, and approve, or disapprove the application of ~~[counties]~~ a county

1523 for disbursements from ~~[each]~~ a fund described in Subsection (1)(a);

1524 (c) calculate the amount of the annual contribution to be made to the ~~[funds]~~ fund

1525 described in Subsection (1)(a)(ii) by each participating county;

1526 (d) prescribe forms for the application for money from ~~[each]~~ a fund described in

1527 Subsection (1)(a);

1528 (e) oversee and approve the disbursement of money from ~~[each]~~ a fund described in

1529 Subsection (1)(a) as provided in Sections ~~[77-32-502 and 77-32-601]~~ 78B-22-602 and

1530 78B-22-701;

1531 (f) establish ~~[its]~~ the board's own rules of procedure, elect ~~[its]~~ the board's own officers,

1532 and appoint committees of ~~[its]~~ the board's members and other people as may be reasonable

1533 and necessary; and

1534 (g) negotiate, enter into, and administer contracts with legal counsel, qualified under

1535 and meeting the standards consistent with this chapter, to provide indigent defense ~~[counsel]~~

1536 services to:

1537 (i) ~~[indigents]~~ an indigent individual prosecuted in a participating ~~[counties for serious~~

1538 ~~offenses in violation of state law]~~ county for an offense involving aggravated murder; and

1539 (ii) an indigent inmate who is incarcerated in ~~[certain counties]~~ a county described in

1540 Section 78B-22-601.

1541 (2) The board may provide to the court a list of attorneys qualified under Utah Rules of

1542 Criminal Procedure, Rule 8, with which the board has a preliminary contract to ~~[defend~~

1543 ~~indigent cases]~~ provide indigent defense services for an assigned rate.

1544 Section 34. Section **78B-22-601**, which is renumbered from Section 77-32-501 is

1545 renumbered and amended to read:

1546 **Part 6. Indigent Inmates.**

1547 ~~[77-32-501].~~ **78B-22-601. Defense of indigent inmates.**

1548 (1) The board shall enter into contracts ~~[with qualified legal defense counsel]~~ to
1549 provide indigent defense ~~[counsel]~~ services for an indigent inmate who:

1550 (a) is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth
1551 class as defined in Section 17-50-501~~;~~;

1552 (b) is charged with having committed a crime within that ~~[facility,]~~ state prison; and

1553 (c) will require defense counsel.

1554 (2) Payment for ~~[the representation, costs, and expenses of legal defense counsel]~~
1555 indigent defense services shall be made from the Indigent Inmate Trust Fund as provided in
1556 Section ~~[77-32-502]~~ 78B-22-602.

1557 (3) ~~[The]~~ A contract under this part shall ensure that indigent defense ~~[counsel shall~~
1558 maintain] services are provided in a manner consistent with the minimum ~~[qualifications as~~
1559 provided in Section ~~77-32-301]~~ guidelines described in Section 78B-22-301.

1560 (4) The county attorney or district attorney of a county of the third, fourth, fifth, or
1561 sixth class shall function as the prosecuting entity.

1562 (5) (a) ~~[The]~~ A county of the third, fourth, fifth, or sixth class where a state prison is
1563 located may impose an additional tax levy by ordinance at .0001 per dollar of taxable value in
1564 the county.

1565 (b) If the county governing body imposes the additional tax levy by ordinance, the
1566 money shall be deposited ~~[in]~~ into the Indigent Inmate Trust Fund as provided in Section
1567 ~~[77-32-502]~~ 78B-22-602 to fund the purposes of this ~~[section]~~ part.

1568 (c) Upon notification that the fund has reached the amount specified in Subsection
1569 ~~[77-32-502(6), the]~~ 78B-22-602(6), a county shall deposit money derived from the levy into a
1570 county account used exclusively to provide ~~[defense counsel and defense]~~ indigent defense
1571 ~~[related]~~ services ~~[for indigent defendants]~~.

1572 (d) A county that chooses not to impose the additional levy by ordinance may not
1573 receive any benefit from the Indigent Inmate Trust ~~[fund]~~ Fund.

1574 Section 35. Section **78B-22-602**, which is renumbered from Section 77-32-502 is
1575 renumbered and amended to read:

1576 ~~[77-32-502]~~. 78B-22-602. Indigent Inmate Trust Fund.

1577 (1) There is created a private-purpose trust fund known as the "Indigent Inmate Trust
1578 Fund" to be disbursed by the Division of Finance at the direction of the board and in
1579 accordance with contracts made under Section ~~[77-32-402]~~ 78B-22-502.

1580 (2) Money deposited ~~[in]~~ into this trust fund shall only ~~[shall]~~ be used:

1581 (a) to pay ~~[for the representation, costs, and expenses of legal defense counsel]~~ indigent
1582 defense services for an indigent inmate in a state prison located in a county of the third, fourth,
1583 fifth, or sixth class as defined in Section 17-50-501 who is charged with having committed a
1584 crime within the ~~[facility]~~ state prison, and who will require indigent defense ~~[counsel]~~
1585 services; and

1586 (b) for administrative costs pursuant to Section ~~[77-32-401]~~ 78B-22-501.

1587 (3) The trust fund consists of:

1588 (a) proceeds received from counties that impose the additional tax levy by ordinance
1589 under Subsection ~~[77-32-501(5)]~~ 78B-22-601(5), which shall be the total county obligation for
1590 payment of costs listed in Subsection (2) for defense ~~[of]~~ services for indigent inmates;

1591 (b) appropriations made to the fund by the Legislature; and

1592 (c) interest and earnings from the investment of fund money.

1593 (4) Fund money shall be invested by the state treasurer with the earnings and interest
1594 accruing to the fund.

1595 (5) In any calendar year in which the fund runs a deficit, or is projected to run a deficit,
1596 the board shall request a supplemental appropriation from the Legislature in the following
1597 general session to pay for the deficit. The state shall pay any or all of the reasonable and
1598 necessary money for the deficit into the Indigent Inmate Trust Fund.

1599 (6) The fund ~~[shall be]~~ is capped at \$1,000,000.

1600 (7) The Division of Finance shall notify ~~[at]~~ the contributing counties when the fund
1601 approaches \$1,000,000 and provide each county with the amount of the balance in the fund.

1602 (8) Upon notification by the Division of Finance that the fund is near the limit imposed
1603 in Subsection (6), the counties may contribute enough money to enable the fund to reach
1604 \$1,000,000 and discontinue contributions until notified by the Division of Finance that the
1605 balance has fallen below \$1,000,000, at which time counties that meet the requirements of
1606 Section ~~[77-32-501]~~ 78B-22-601 shall resume contributions.

1607 Section 36. Section **78B-22-701**, which is renumbered from Section 77-32-601 is
 1608 renumbered and amended to read:

1609 **Part 7. Indigent Aggravated Murder Defense Trust Fund.**

1610 ~~[77-32-601].~~ **78B-22-701. Establishment of Indigent Aggravated Murder**
 1611 **Defense Trust Fund -- Use of fund -- Compensation for indigent legal defense from fund.**

1612 (1) For purposes of this part, "fund" means the Indigent Aggravated Murder Defense
 1613 Trust Fund.

1614 (2) (a) There is established a private-purpose trust fund known as the "Indigent
 1615 Aggravated Murder Defense Trust Fund."

1616 (b) The ~~[fund shall be disbursed by the]~~ Division of Finance shall disburse money from
 1617 the fund at the direction of the board and subject to this chapter.

1618 (3) The fund consists of:

1619 (a) money received from participating counties as provided in Sections ~~[77-32-602 and~~
 1620 ~~77-32-603]~~ 78B-22-702 and 78B-22-703;

1621 (b) appropriations made to the fund by the Legislature as provided in Section
 1622 ~~[77-32-603]~~ 78B-22-703; and

1623 (c) interest and earnings from the investment of fund money.

1624 (4) ~~[Fund]~~ The state treasurer shall invest fund money ~~[shall be invested by the state~~
 1625 ~~treasurer]~~ with the earnings and interest accruing to the fund.

1626 (5) The fund shall be used to assist participating counties with financial resources, as
 1627 provided in Subsection (6), to fulfill their constitutional and statutory mandates for the
 1628 provision of an adequate defense for ~~[indigents]~~ indigent individuals prosecuted for the
 1629 violation of state laws in cases involving aggravated murder.

1630 (6) Money allocated to or deposited in this fund shall be used only:

1631 (a) to reimburse participating counties for expenditures made for an attorney appointed
 1632 to represent an indigent individual, other than a state inmate in a state prison, prosecuted for
 1633 aggravated murder in a participating county; and

1634 (b) for administrative costs pursuant to Section ~~[77-32-401]~~ 78B-22-501.

1635 Section 37. Section **78B-22-702**, which is renumbered from Section 77-32-602 is
 1636 renumbered and amended to read:

1637 ~~[77-32-602].~~ **78B-22-702. County participation.**

1638 (1) (a) [~~Any~~] A county may participate in the fund subject to the provisions of this
1639 chapter. [~~Any~~] A county that [~~chooses~~] does not [~~to~~] participate, or is not current in [~~its~~
1640 ~~contributions~~] the county's assessments, is ineligible to receive money from the fund.

1641 (b) The board may revoke a county's participation in the fund if the county fails to pay
1642 [~~its~~] the county's assessments when due.

1643 (2) To participate in the fund, the legislative body of a county shall:

1644 (a) adopt a resolution approving participation in the fund and committing that county to
1645 fulfill the assessment requirements as set forth in Subsection (3) and Section [~~77-32-603~~]
1646 78B-22-703; and

1647 (b) submit a certified copy of that resolution together with an application to the board.

1648 (3) By January 15 of each year, a participating county shall contribute to the fund an
1649 amount computed in accordance with Section [~~77-32-603~~] 78B-22-703.

1650 (4) [~~Any~~] A participating county may withdraw from participation in the fund upon:

1651 (a) adoption by [~~its~~] the county's legislative body of a resolution to withdraw; and

1652 (b) notice to the board by January 1 of the year [~~prior to~~] before withdrawal.

1653 (5) A county withdrawing from participation in the fund, or whose participation in the
1654 fund has been revoked for failure to pay [~~its~~] the county's assessments when due, shall forfeit
1655 the right to:

1656 (a) any previously paid assessment;

1657 (b) relief from [~~its~~] the county's obligation to pay its assessment during the period of its
1658 participation in the fund; and

1659 (c) any benefit from the fund, including reimbursement of costs [~~which~~] that accrued
1660 after the last day of the period for which the county has paid its assessment.

1661 Section 38. Section **78B-22-703**, which is renumbered from Section 77-32-603 is
1662 renumbered and amended to read:

1663 [~~77-32-603~~]. **78B-22-703. County and state obligations.**

1664 (1) (a) Except as provided in Subsection (1)(b), [~~each~~] a participating county shall pay
1665 into the fund annually an amount calculated by multiplying the average of the percent of its
1666 population to the total population of all participating counties and of the percent its taxable
1667 value of the locally and centrally assessed property located within that county to the total
1668 taxable value of the locally and centrally assessed property to all participating counties by the

1669 total fund assessment for that year to be paid by all participating counties as is determined by
1670 the board to be sufficient such that it is unlikely that a deficit will occur in the fund in any
1671 calendar year.

1672 (b) The fund minimum shall be equal to or greater than 50 cents per person of all
1673 counties participating.

1674 (c) The amount paid by ~~the~~ a participating county pursuant to this Subsection (1)
1675 shall be the total county obligation for payment of costs pursuant to Section ~~[77-32-604]~~
1676 78B-22-701.

1677 (2) (a) ~~[After the first year of operation of the fund, any]~~ A county that elects to initiate
1678 participation in the fund, or reestablish participation in the fund after participation was
1679 terminated, ~~[shall be]~~ is required to make an equity payment in addition to the assessment
1680 ~~[provided in]~~ required by Subsection (1).

1681 (b) The equity payment shall be determined by the board and represent what the
1682 county's equity in the fund would be if the county had made assessments into the fund for each
1683 of the previous two years.

1684 (3) If the fund balance after contribution by the state and participating counties is
1685 insufficient to replenish the fund annually to at least \$250,000, the board by a majority vote
1686 may terminate the fund.

1687 (4) If the fund is terminated, ~~[all]~~ the remaining ~~[funds]~~ money shall continue to be
1688 administered and disbursed in accordance with the provision of this chapter until exhausted, at
1689 which time the fund shall cease to exist.

1690 (5) (a) If the fund runs a deficit during any calendar year, the state is responsible for the
1691 deficit.

1692 (b) In the calendar year following a deficit year, the board shall increase the assessment
1693 required by Subsection (1) by an amount at least equal to the deficit of the previous year, which
1694 combined amount becomes the base assessment until another deficit year occurs.

1695 (6) In ~~[any]~~ a calendar year in which the fund runs a deficit, or is projected to run a
1696 deficit, the board shall request a supplemental appropriation to pay for the deficit from the
1697 Legislature in the following general session. The state shall pay any or all of the reasonable
1698 and necessary money for the deficit into the ~~[Indigent Capital Defense Trust Fund]~~ fund.

1699 Section 39. Section **78B-22-704**, which is renumbered from Section 77-32-604 is

1700 renumbered and amended to read:

1701 ~~[77-32-604].~~ **78B-22-704. Application and qualification for fund money.**

1702 (1) ~~[Any]~~ A participating county may apply to the board for benefits from the fund if
1703 that county has incurred, or reasonably anticipates incurring, expenses in the defense of an
1704 indigent individual for ~~[capital felonies in violation of state law arising out of a single criminal~~
1705 ~~episode]~~ an offense involving aggravated murder.

1706 (2) ~~[No]~~ An application ~~[shall]~~ may not be made nor benefits provided from the fund
1707 for ~~[cases]~~ a case filed before September 1, 1998.

1708 (3) If the application of a participating county is approved by the board, the board shall
1709 negotiate, enter into, and administer a contract with counsel for the indigent individual and
1710 costs incurred for the defense of that indigent individual, including fees for counsel and
1711 reimbursement for indigent defense ~~[costs]~~ services incurred by ~~[defense counsel]~~ an indigent
1712 defense service provider.

1713 (4) ~~[Nonparticipating counties are]~~ A nonparticipating county is responsible for paying
1714 for indigent ~~[costs in their]~~ defense services in the nonparticipating county and ~~[shall not be]~~ is
1715 not eligible for any legislative relief. ~~[However, a nonparticipating counties may provide for~~
1716 ~~payment of indigent costs through an increase in the county tax levy as provided in Section~~
1717 ~~77-32-307.]~~

1718 ~~[(5) This part may not become effective unless the board has received resolutions~~
1719 ~~before August 1, 1998, from at least 15 counties adopted as described in Subsection~~
1720 ~~77-32-602(2).]~~

1721 **Section 40. Repealer.**

1722 This bill repeals:

1723 Section **77-32-201, Definitions.**

1724 Section **77-32-202, Procedure for determination of indigency -- Standards.**

1725 Section **77-32-301, Minimum standards for defense of an indigent.**

1726 Section **77-32-302, Assignment of counsel on request of indigent or order of court.**

1727 Section **77-32-303, Standard for court to appoint noncontracting attorney or order**
1728 **the provision of defense resources -- Hearing.**

1729 Section **77-32-304, Duties of assigned counsel -- Compensation.**

1730 Section **77-32-304.5, Reasonable compensation for defense counsel for indigents.**

- 1731 Section [77-32-305](#), Expenses of printing briefs, depositions, and transcripts.
- 1732 Section [77-32-305.5](#), Reimbursement of extraordinary expense.
- 1733 Section [77-32-306](#), County or municipal legislative body to provide legal defense.
- 1734 Section [77-32-307](#), Expenditures of county or municipal funds declared proper --
- 1735 **Tax levy authorized.**
- 1736 Section [77-32-308](#), Pro bono criminal representation -- Liability limits.
- 1737 Section [77-32-401.5](#), Interim board -- Members -- Administrative support --
- 1738 **Duties.**
- 1739 Section [77-32-801.5](#), Definitions.