

## SB0032S03 compared with SB0032S02

~~{deleted text}~~ shows text that was in SB0032S02 but was deleted in SB0032S03.

Inserted text shows text that was not in SB0032S02 but was inserted into SB0032S03.

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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

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#### 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;

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- 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
  - repealing language outdated because of changes made in the bill; and
- ▶ makes technical changes.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

None

### **Utah Code Sections Affected:**

#### **AMENDS:**

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

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

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

**63J-1-602.1**, as last amended by Laws of Utah 2018, Chapters 114, 347, 430 and repealed and reenacted by Laws of Utah 2018, Chapter 469

**63J-1-602.2**, as repealed and reenacted by Laws of Utah 2018, Chapter 469

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

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

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

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

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

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

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

**78A-7-103**, as repealed and reenacted by Laws of Utah 2012, Chapter 205

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

#### **ENACTS:**

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

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

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

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

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

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

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

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

**78B-22-304**, Utah Code Annotated 1953

### RENUMBERS AND AMENDS:

**78B-22-101**, (Renumbered from 77-32-101, as enacted by Laws of Utah 1997, Chapter 354)

**78B-22-401**, (Renumbered from 77-32-801, as last amended by Laws of Utah 2018, Chapter 296)

**78B-22-402**, (Renumbered from 77-32-802, as last amended by Laws of Utah 2018, Chapter 296)

**78B-22-403**, (Renumbered from 77-32-803, as last amended by Laws of Utah 2018, Chapter 296)

**78B-22-404**, (Renumbered from 77-32-804, as repealed and reenacted by Laws of Utah 2018, Chapter 296)

**78B-22-405**, (Renumbered from 77-32-805, as repealed and reenacted by Laws of Utah 2018, Chapter 296)

**78B-22-406**, (Renumbered from 77-32-806, as repealed and reenacted by Laws of Utah 2018, Chapter 296)

**78B-22-407**, (Renumbered from 77-32-807, as repealed and reenacted by Laws of Utah 2018, Chapter 296)

**78B-22-501**, (Renumbered from 77-32-401, as last amended by Laws of Utah 2012, Chapter 180)

**78B-22-502**, (Renumbered from 77-32-402, as last amended by Laws of Utah 2017, Chapter 56)

**78B-22-601**, (Renumbered from 77-32-501, as last amended by Laws of Utah 2009, Chapter 80)

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**78B-22-602**, (Renumbered from 77-32-502, as last amended by Laws of Utah 2009, Chapter 80)

**78B-22-701**, (Renumbered from 77-32-601, as last amended by Laws of Utah 2011, Chapter 303)

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

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

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

### REPEALS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- (1) a number;
- (2) a title which indicates the nature of the subject matter of the ordinance;
- (3) a preamble which states the need or reason for the ordinance;
- (4) an ordaining clause which states "Be it ordained by the \_\_\_\_ (name of the governing body and municipality):";
- (5) the body or subject of the ordinance;
- (6) when applicable, a statement indicating the penalty for violation of the ordinance or a reference that the punishment is covered by an ordinance which prescribes the fines and terms of imprisonment for the violation of a municipal ordinance; or, the penalty may establish a classification of penalties and refer to such ordinance in which the penalty for such violation is established;
- (7) when a penalty for a violation of the ordinance includes any possibility of imprisonment, a statement that the municipality is required, under Section [~~77-32-301~~] 78B-22-301, to provide for indigent [~~legal~~] defense[~~, as those terms are~~] services, as that term is defined in Section [~~77-32-201~~] 78B-22-102;
- (8) a statement indicating the effective date of the ordinance or the date when the ordinance shall become effective after publication or posting as required by this chapter;
- (9) a line for the signature of the mayor or acting mayor to sign the ordinance;
- (10) a place for the municipal recorder to attest the ordinance and fix the seal of the municipality; and
- (11) in municipalities where the mayor may disapprove an ordinance passed by the legislative body, a statement showing:
  - (a) if the mayor approves the ordinance, that the governing body passes the ordinance with the mayor's approval;
  - (b) if the mayor disapproves the ordinance, that the governing body passes the ordinance over the mayor's disapproval; or
  - (c) if the mayor neither approves or disapproves the ordinance, that the ordinance became effective without the approval or disapproval of the mayor.

Section 2. Section **17-53-223** is amended to read:

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

- (1) A county legislative body may:

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

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

(c) pass ordinances to control air pollution.

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

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

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

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

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

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

(1) The department may enter into ~~[contracts]~~ a contract with a qualified ~~[parental defense attorneys]~~ indigent defense ~~{services}~~ service provider as defined in Section 78B-22-102 to provide indigent defense services for an indigent ~~[parent or parents]~~ individual who ~~[are]~~ is the subject of a petition alleging abuse, neglect, or dependency~~[, and will require a parental defense attorney under Section 78A-6-1111].~~

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

(3) The parental defense attorney shall maintain the minimum qualifications as

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provided by this chapter.

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

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

Appropriations made from the following accounts or funds are nonlapsing:

- (1) The Utah Intracurricular Student Organization Support for Agricultural Education and Leadership Restricted Account created in Section 4-42-102.
- (2) The Native American Repatriation Restricted Account created in Section 9-9-407.
- (3) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in Section 9-18-102.
- (4) The National Professional Men's Soccer Team Support of Building Communities Restricted Account created in Section 9-19-102.
- (5) Funds collected for directing and administering the C-PACE district created in Section 11-42a-302.
- (6) Award money under the State Asset Forfeiture Grant Program, as provided under Section 24-4-117.
- (7) Funds collected from the program fund for local health department expenses incurred in responding to a local health emergency under Section 26-1-38.
- (8) Funds collected from the emergency medical services grant program, as provided in Section 26-8a-207.
- (9) The Prostate Cancer Support Restricted Account created in Section 26-21a-303.
- (10) The Children with Cancer Support Restricted Account created in Section 26-21a-304.
- (11) State funds for matching federal funds in the Children's Health Insurance Program as provided in Section 26-40-108.
- (12) The Children with Heart Disease Support Restricted Account created in Section 26-58-102.
- (13) The Nurse Home Visiting Restricted Account created in Section 26-62-601.
- (14) The Technology Development Restricted Account created in Section 31A-3-104.
- (15) The Criminal Background Check Restricted Account created in Section 31A-3-105.
- (16) The Captive Insurance Restricted Account created in Section 31A-3-304, except

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to the extent that Section 31A-3-304 makes the money received under that section free revenue.

(17) The Title Licensee Enforcement Restricted Account created in Section 31A-23a-415.

(18) The Health Insurance Actuarial Review Restricted Account created in Section 31A-30-115.

(19) The Insurance Fraud Investigation Restricted Account created in Section 31A-31-108.

(20) The Underage Drinking Prevention Media and Education Campaign Restricted Account created in Section 32B-2-306.

(21) The School Readiness Restricted Account created in Section 35A-3-210.

(22) The Youth Development Organization Restricted Account created in Section 35A-8-1903.

(23) The Youth Character Organization Restricted Account created in Section 35A-8-2003.

(24) Money received by the Utah State Office of Rehabilitation for the sale of certain products or services, as provided in Section 35A-13-202.

(25) The Oil and Gas Conservation Account created in Section 40-6-14.5.

(26) The Electronic Payment Fee Restricted Account created by Section 41-1a-121 to the Motor Vehicle Division.

(27) The Motor Vehicle Enforcement Division Temporary Permit Restricted Account created by Section 41-3-110 to the State Tax Commission.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(52) The Employability to Careers Program Restricted Account created in Section 63J-4-703.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Appropriations made to the following programs are nonlapsing:

- (1) The Legislature and its committees.
- (2) The Percent-for-Art Program created in Section 9-6-404.
- (3) The LeRay McAllister Critical Land Conservation Program created in Section 11-38-301.
- (4) Dedicated credits accrued to the Utah Marriage Commission as provided under Subsection 17-16-21(2)(d)(ii).
- (5) The Division of Wildlife Resources for the appraisal and purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6.
- (6) The primary care grant program created in Section 26-10b-102.
- (7) Sanctions collected as dedicated credits from Medicaid provider under Subsection 26-18-3(7).
- (8) The Utah Health Care Workforce Financial Assistance Program created in Section 26-46-102.
- (9) The Rural Physician Loan Repayment Program created in Section 26-46a-103.
- (10) The Opiate Overdose Outreach Pilot Program created in Section 26-55-107.
- (11) Funds that the Department of Alcoholic Beverage Control retains in accordance with Subsection 32B-2-301(7)(a)(ii) or (b).
- (12) The General Assistance program administered by the Department of Workforce Services, as provided in Section 35A-3-401.
- (13) A new program or agency that is designated as nonlapsing under Section 36-24-101.
- (14) The Utah National Guard, created in Title 39, Militia and Armories.
- (15) The State Tax Commission under Section 41-1a-1201 for the:
  - (a) purchase and distribution of license plates and decals; and
  - (b) administration and enforcement of motor vehicle registration requirements.
- (16) The Search and Rescue Financial Assistance Program, as provided in Section 53-2a-1102.
- (17) The Motorcycle Rider Education Program, as provided in Section 53-3-905.
- (18) The State Board of Regents for teacher preparation programs, as provided in Section 53B-6-104.

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(19) The Medical Education Program administered by the Medical Education Council, as provided in Section 53B-24-202.

(20) The State Board of Education, as provided in Section 53F-2-205.

(21) The Division of Services for People with Disabilities, as provided in Section 62A-5-102.

(22) The Division of Fleet Operations for the purpose of upgrading underground storage tanks under Section 63A-9-401.

(23) The Utah Seismic Safety Commission, as provided in Section 63C-6-104.

(24) Appropriations to the Department of Technology Services for technology innovation as provided under Section 63F-4-202.

(25) The Office of Administrative Rules for publishing, as provided in Section 63G-3-402.

(26) The Utah Science Technology and Research Initiative created in Section 63M-2-301.

(27) The Governor's Office of Economic Development to fund the Enterprise Zone Act, as provided in Title 63N, Chapter 2, Part 2, Enterprise Zone Act.

(28) Appropriations to fund the Governor's Office of Economic Development's Rural Employment Expansion Program, as described in Title 63N, Chapter 4, Part 4, Rural Employment Expansion Program.

(29) The Department of Human Resource Management user training program, as provided in Section 67-19-6.

(30) The University of Utah Poison Control Center program, as provided in Section 69-2-5.5.

(31) A public safety answering point's emergency telecommunications service fund, as provided in Section 69-2-301.

(32) The Traffic Noise Abatement Program created in Section 72-6-112.

(33) The Judicial Council for compensation for special prosecutors, as provided in Section 77-10a-19.

(34) A state rehabilitative employment program, as provided in Section 78A-6-210.

(35) The Utah Geological Survey, as provided in Section 79-3-401.

(36) The Bonneville Shoreline Trail Program created under Section 79-5-503.

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(37) Adoption document access as provided in Sections 78B-6-141, 78B-6-144, and 78B-6-144.5.

(38) Indigent defense as provided in Title [~~77, Chapter 32, Part 8~~] 78B, Chapter 22, Part 4, Utah Indigent Defense Commission.

Section 6. Section **78A-2-408** is amended to read:

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

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

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

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

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

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

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

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

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(a) protective order proceedings; and

(b) district court actions when:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- (i) resolving the issues in the order described in Subsection (3)(a); and
- (ii) terminating the appointment of the attorney guardian ad litem in the case.

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

- (a) the court determines that the allegations of abuse or neglect are unfounded;
- (b) after receiving input from the attorney guardian ad litem, the court determines that the children are no longer at risk of abuse or neglect; or
- (c) there has been no activity in the case for which the attorney guardian ad litem is appointed for a period of six consecutive months.

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

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

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

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

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

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

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

- (a) child abuse, child sexual abuse, or neglect is alleged in any proceeding, and the

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court has made a finding that an adult party is not indigent[, as defined by Section 77-32-202] as determined under Section 78B-22-202; or

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

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

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

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

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

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

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

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

(4) The court shall:

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

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

(c) except as provided in Subsection (6), issue a final order within one year after the



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day on which the private attorney guardian ad litem is appointed in the case:

- (i) resolving the issues described in Subsection (4)(a); and
- (ii) terminating the private attorney guardian ad litem from the appointment to the case.

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

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

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

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

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

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

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

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

(iii) Upon receipt of an objection, the court shall determine whether grounds exist for the objection, and if grounds exist, the court shall order, without a hearing, the office to assign

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a new private attorney guardian ad litem, in consultation with the parties and in accordance with this section.

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

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

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

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

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

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

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

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

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

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

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

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

(11) The private attorney guardian ad litem:

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

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

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

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- (a) represent the best interests of the minor from the date of the appointment until released by the court;
  - (b) conduct or supervise an ongoing, independent investigation in order to obtain, first-hand, a clear understanding of the situation and needs of the minor;
  - (c) interview witnesses and review relevant records pertaining to the minor and the minor's family, including medical, psychological, and school records;
  - (d) (i) personally meet with the minor, unless:
    - (A) the minor is outside of the state; or
    - (B) meeting with the minor would be detrimental to the minor;
  - (ii) personally interview the minor, unless:
    - (A) the minor is not old enough to communicate;
    - (B) the minor lacks the capacity to participate in a meaningful interview; or
    - (C) the interview would be detrimental to the minor;
  - (iii) to the extent possible, determine the minor's goals and concerns regarding custody or visitation; and
  - (iv) to the extent possible, and unless it would be detrimental to the minor, keep the minor advised of:
    - (A) the status of the minor's case;
    - (B) all court and administrative proceedings;
    - (C) discussions with, and proposals made by, other parties;
    - (D) court action; and
    - (E) the psychiatric, medical, or other treatment or diagnostic services that are to be provided to the minor;
  - (e) unless excused by the court, prepare for and attend all mediation hearings and all court conferences and hearings, and present witnesses and exhibits as necessary to protect the best interests of the minor;
  - (f) identify community resources to protect the best interests of the minor and advocate for those resources; and
  - (g) participate in all appeals unless excused by the court.
- (13) (a) The private attorney guardian ad litem shall represent the best interests of a minor.

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

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

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

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

(ii) has not expressed an intent and desire.

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

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

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

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

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

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

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

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

(d) a system to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) a concise statement regarding:

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

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

(e) a statement that the parent or guardian to whom notice is given, and the child, are entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be

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provided in accordance with [~~the provisions of Section 78A-6-1111~~] Title 78B, Chapter 22, Indigent Defense Act; and

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

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

(a) the appropriate guardian ad litem; and

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

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

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

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

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

(d) the child's guardian ad litem;

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

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

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

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

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

(B) any other person having relevant knowledge; and

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

(b) The court:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited by a:

(A) parent or guardian;

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

(C) person known to the parent or guardian;

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

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

(vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the child;

(viii) (A) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;

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

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

(ix) subject to Subsections 78A-6-105(35)(c)(i) through (iii) and 78A-6-117(2) and Section 78A-6-301.5, the child is in immediate need of medical care;

(x) (A) the physical environment or the fact that the child is left unattended beyond a reasonable period of time poses a threat to the child's health or safety; and

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

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

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

(xii) the parent, guardian, or an adult residing in the same household as the parent or



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guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation was located in the residence or on the property where the child resided;

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

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

(xiv) the child's natural parent:

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

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

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

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

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

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

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

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

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

(b) In making the determination described in Subsection (10)(a), and in ordering and

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providing services, the child's health, safety, and welfare shall be the paramount concern, in accordance with federal law.

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

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

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

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

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

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

- (a) any error in the initial removal of the child;
- (b) the failure of a party to comply with notice provisions; or
- (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) disclosure of the record would jeopardize the anonymity of the person or persons

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making the initial report of abuse or neglect or any others involved in the subsequent investigation;

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) In considering whether or not it would be contrary to the best interests of the minor

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or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may base its decision on, the finding of one or more of the following factors:

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

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

(i) in concert with two or more persons;

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

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

(c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the age of the minor;

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

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

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

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

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

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

(h) the physical maturity of the minor;

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

(j) any other factors the court considers relevant.

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

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

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

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

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

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

- (a) certifying that finding; and
- (b) directing that the minor be held for criminal proceedings in the district court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(d)] (2) In any action [initiated by the state, a political subdivision of the state, or a~~



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~~private party]~~ under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of Parental Rights Act, ~~[of this chapter,]~~ the child shall be represented by a guardian ad litem in accordance with Sections 78A-6-317 and 78A-6-902. The child shall also be represented by an attorney guardian ad litem in other actions initiated under this chapter when appointed by the court under Section 78A-6-902 or as otherwise provided by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

The Judicial Council shall ensure that:

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

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

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

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

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

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

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

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

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

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

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

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

(i) decline recertification of a justice court;

(ii) revoke the certification of a justice court;

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the requirements of this chapter; or

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

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

(c) the individual:

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

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

(d) the court finds, under Section 78B-15-607, that the individual is not a parent of the child; or

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

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

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

~~[(b) the party does not, after being fully advised of the right to counsel, knowingly,~~

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intelligently and voluntarily waive the right to counsel.]

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

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

### CHAPTER 22. INDIGENT DEFENSE ACT

#### Part 1. General Provisions

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

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

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

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

As used in this chapter:

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

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

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

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

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

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

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

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

(6) "Indigent defense services" means:

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

and

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

(7) "Indigent defense system" means:

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

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

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

(8) "Indigent individual" means:

(a) a minor who is:

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

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

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

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

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

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

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

### **Part 2. Appointment of Counsel**

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) has an income level at or below 150% of the United States poverty level as defined by the most recent poverty income guidelines published by the United States Department of Health and Human Services; or

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

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

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

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

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

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

(vi) any other factor the court considers relevant.

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

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

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

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

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

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78B-22-202, the court shall order indigent defense services ~~{ for the indigent individual if the indigent individual has not retained private counsel}~~.

(b) Notwithstanding Subsection (1)(a), the court may order indigent defense services for an individual who has retained private counsel only if the court finds:

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

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

(iii) at the time that private counsel was retained ~~{,};~~:

(A) the individual and private counsel entered into a written contract providing that the individual agreed to pay for private counsel; and

(B) the individual had the ability to pay for ~~{indigent defense resources; and}~~ resources necessary to provide an effective defense, including the costs for a competent investigator, expert witness, scientific or medical testing, transcripts, and printing briefs;

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

(v) any representation under this Subsection (1)(b) is made in good faith by the individual and is not calculated to allow the individual or retained private counsel to avoid the requirements of this section.

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

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

(i) have a conflict of interest; or

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

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

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



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- (i) the private counsel contract;
- (ii) the costs or anticipated costs of the indigent defense services; and
- (iii) other relevant records.

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

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

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

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

A minor may not waive the right to counsel before:

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

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

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

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

An indigent defense system shall provide indigent defense services for an indigent individual in accordance with the minimum guidelines adopted by the commission under Section 78B-22-404.

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

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

An indigent defense system shall fund indigent defense services ordered by a court in accordance with 78B-22-203.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) If a vacancy occurs in the membership for any reason, a replacement shall be

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appointed for the remaining unexpired term in the same manner as the original appointment.

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

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

(a) Section 63A-3-106;

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

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

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

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

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

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

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

(a) establish an annual budget;

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

(c) assist the commission in developing and regularly reviewing advisory caseload guidelines and procedures; and

(d) perform all other duties as assigned.

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

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

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

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

(4) The commission in appointing the director, and the director in hiring the assistant

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director, shall give a preference to individuals with experience in adult criminal defense, child welfare parental defense, or juvenile delinquency defense.

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

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

(1) The commission shall:

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

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

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

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

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

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

(B) adequate access to indigent defense resources;

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

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

(E) adequate compensation without financial disincentives;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the operations of the commission;

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

(iii) compliance with the commission's minimum guidelines by indigent defense

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systems receiving grants from the commission;

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

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

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

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

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

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

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

(b) Appropriations from the account are nonlapsing.

(2) The account consists of:

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

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

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

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

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

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

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

(d) for administrative costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Indigent defense systems and ~~[entities or individuals engaged in providing]~~ indigent defense ~~[services in the state]~~ service providers shall cooperate and participate with the



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commission in the collection of data, investigation, audit, and review of [aH] indigent defense services.

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

### Part 5. Indigent Defense Funds Board

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

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

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

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

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

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

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

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

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

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

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

or

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

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

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

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

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

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

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

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

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

- (1) The board shall:
  - (a) establish rules and procedures for the application by [~~counties~~] a county for disbursements, and the screening and approval of the applications for money from the:
    - (i) Indigent Inmate Trust Fund established in Part [~~5~~] 6, Indigent Inmates; and
    - (ii) [~~Indigent Capital Defense Trust Fund~~] Indigent Aggravated Murder Defense Trust Fund, established in Part [~~6, Indigent Capital Defense Trust Fund~~] 7, Indigent Aggravated Murder Defense Trust Fund;
  - (b) receive, screen, and approve, or disapprove the application of [~~counties~~] a county for disbursements from [~~each~~] a fund described in Subsection (1)(a);
  - (c) calculate the amount of the annual contribution to be made to the [~~funds~~] fund described in Subsection (1)(a)(ii) by each participating county;
  - (d) prescribe forms for the application for money from [~~each~~] a fund described in Subsection (1)(a);
  - (e) oversee and approve the disbursement of money from [~~each~~] a fund described in

## SB0032S03 compared with SB0032S02

Subsection (1)(a) as provided in Sections [~~77-32-502 and 77-32-601~~] 78B-22-602 and 78B-22-701;

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

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

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

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

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

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

### **Part 6. Indigent Inmates.**

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

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

(a) is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth class as defined in Section 17-50-501<sup>[5]</sup>;

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

(c) will require defense counsel.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The trust fund consists of:

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

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- (b) appropriations made to the fund by the Legislature; and
- (c) interest and earnings from the investment of fund money.

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

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

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

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

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

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

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

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

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

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

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

(3) The fund consists of:

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

(b) appropriations made to the fund by the Legislature as provided in Section

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~~[77-32-603]~~ 78B-22-703; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) any previously payed assessment;

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

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

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

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

(1) (a) Except as provided in Subsection (1)(b), ~~[each]~~ a participating county shall pay into the fund annually an amount calculated by multiplying the average of the percent of its population to the total population of all participating counties and of the percent its taxable value of the locally and centrally assessed property located within that county to the total taxable value of the locally and centrally assessed property to all participating counties by the total fund assessment for that year to be paid by all participating counties as is determined by the board to be sufficient such that it is unlikely that a deficit will occur in the fund in any calendar year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) ~~[Nonparticipating counties are]~~ A nonparticipating county is responsible for paying for indigent ~~[costs in their]~~ defense services in the nonparticipating county and ~~[shall not be]~~ is



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not eligible for any legislative relief. [~~However, a nonparticipating counties may provide for payment of indigent costs through an increase in the county tax levy as provided in Section 77-32-307.~~]

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

### **Section 40. Repealer.**

This bill repeals:

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

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

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

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

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

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

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

**Section 77-32-305, Expenses of printing briefs, depositions, and transcripts.**

**Section 77-32-305.5, Reimbursement of extraordinary expense.**

**Section 77-32-306, County or municipal legislative body to provide legal defense.**

**Section 77-32-307, Expenditures of county or municipal funds declared proper --**

**Tax levy authorized.**

**Section 77-32-308, Pro bono criminal representation -- Liability limits.**

**Section 77-32-401.5, Interim board -- Members -- Administrative support --**

**Duties.**

**Section 77-32-801.5, Definitions.**