

1 **INDIGENT DEFENSE AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: Joel Ferry

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to indigent defense.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ creates and modifies definitions;
- 13 ▶ amends the right to counsel for parties in certain actions;
- 14 ▶ amends the powers, duties, and membership of the Utah Indigent Defense
15 Commission;
- 16 ▶ creates the Office of Indigent Defense Services;
- 17 ▶ creates the powers and duties of the Office of Indigent Defense Services;
- 18 ▶ amends provisions related to indigent defense funds;
- 19 ▶ creates a reporting requirement for indigent defense systems;
- 20 ▶ protects certain records related to the Office of Indigent Defense Services; and
- 21 ▶ makes technical and conforming changes.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 This bill provides a coordination clause.

26 **Utah Code Sections Affected:**

27 AMENDS:

28 **78A-6-1111**, as last amended by Laws of Utah 2019, Chapter 326

29 **78B-6-112**, as last amended by Laws of Utah 2019, Chapters 136, 326, and 491

- 30 **78B-22-102**, as enacted by Laws of Utah 2019, Chapter 326
- 31 **78B-22-201**, as enacted by Laws of Utah 2019, Chapter 326
- 32 **78B-22-301**, as enacted by Laws of Utah 2019, Chapter 326
- 33 **78B-22-401**, as renumbered and amended by Laws of Utah 2019, Chapter 326
- 34 **78B-22-402**, as last amended by Laws of Utah 2019, Chapter 435 and renumbered and
- 35 amended by Laws of Utah 2019, Chapter 326
- 36 **78B-22-404**, as renumbered and amended by Laws of Utah 2019, Chapter 326
- 37 **78B-22-405**, as renumbered and amended by Laws of Utah 2019, Chapter 326
- 38 **78B-22-406**, as renumbered and amended by Laws of Utah 2019, Chapter 326
- 39 **78B-22-501**, as renumbered and amended by Laws of Utah 2019, Chapter 326
- 40 **78B-22-502**, as renumbered and amended by Laws of Utah 2019, Chapter 326

41 ENACTS:

- 42 **78B-22-451**, Utah Code Annotated 1953
- 43 **78B-22-452**, Utah Code Annotated 1953

44 RENUMBERS AND AMENDS:

- 45 **78B-22-453**, (Renumbered from 78B-22-403, as renumbered and amended by Laws of
- 46 Utah 2019, Chapter 326)
- 47 **78B-22-454**, (Renumbered from 78B-22-601, as renumbered and amended by Laws of
- 48 Utah 2019, Chapter 326)
- 49 **78B-22-455**, (Renumbered from 78B-22-602, as renumbered and amended by Laws of
- 50 Utah 2019, Chapter 326)

51 **Utah Code Sections Affected by Coordination Clause:**

- 52 **78B-22-451**, Utah Code Annotated 1953
- 53 **78B-22-452**, Utah Code Annotated 1953
- 54 **78B-22-453**, Renumbered from 78B-22-403, as renumbered and amended by Laws of
- 55 Utah 2019, Chapter 326



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

58 Section 1. Section **78A-6-1111** is amended to read:

59 **78A-6-1111. Order for indigent defense service or guardian ad litem.**

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

62 (1) A court shall order indigent defense services in accordance with Title 78B, Chapter
63 22, Indigent Defense Act, for a minor, parent, or legal guardian facing an action filed by a
64 private party or the state under this title.

65 (2) In any action under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5,
66 Termination of Parental Rights Act, the child shall be represented by a guardian ad litem in
67 accordance with Sections **78A-6-317** and **78A-6-902**. The child shall also be represented by an
68 attorney guardian ad litem in other actions initiated under this chapter when appointed by the
69 court under Section **78A-6-902** or as otherwise provided by law.

70 Section 2. Section **78B-6-112** is amended to read:

71 **78B-6-112. District court jurisdiction over termination of parental rights**
72 **proceedings.**

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

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

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

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

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

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

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

86 (5) The district court may terminate an individual's parental rights in a child if:
87 (a) the individual executes a voluntary consent to adoption, or relinquishment for
88 adoption, of the child, in accordance with:
89 (i) the requirements of this chapter; or
90 (ii) the laws of another state or country, if the consent is valid and irrevocable;
91 (b) the individual is an unmarried biological father who is not entitled to consent to
92 adoption, or relinquishment for adoption, under Section 78B-6-120 or 78B-6-121;
93 (c) the individual:
94 (i) received notice of the adoption proceeding relating to the child under Section
95 78B-6-110; and
96 (ii) failed to file a motion for relief, under Subsection 78B-6-110(6), within 30 days
97 after the day on which the individual was served with notice of the adoption proceeding;
98 (d) the court finds, under Section 78B-15-607, that the individual is not a parent of the
99 child; or
100 (e) the individual's parental rights are terminated on grounds described in Title 78A,
101 Chapter 6, Part 5, Termination of Parental Rights Act, [~~if terminating the individual's parental~~
102 ~~rights is~~] and termination is in the best interests of the child.
103 (6) The court shall appoint an indigent defense service provider~~[, under]~~ in accordance
104 with Title 78B, Chapter 22, Indigent Defense Act, to represent [~~a party~~] an individual who
105 faces any action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination of
106 Parental Rights Act or whose parental rights are subject to termination under this section.
107 (7) If a county incurs expenses in providing indigent defense services to an indigent
108 individual facing any action initiated by a private party under Title 78A, Chapter 6, Part 5,
109 Termination of Parental Rights Act or termination of parental rights under this section, the
110 county may apply for reimbursement from the Utah Indigent Defense Commission under
111 Section 78B-22-406.
112 (8) A petition filed under this section is subject to the procedural requirements of this
113 chapter.

114 Section 3. Section **78B-22-102** is amended to read:

115 **78B-22-102. Definitions.**

116 As used in this chapter:

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

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

120 (3) "Commission" means the Utah Indigent Defense Commission created in Section
121 [78B-22-401](#).

122 (4) "Director" means the director of the Office of Indigent Defense Services, created in
123 Section [78B-22-451](#), who is appointed in accordance with Section [78B-22-453](#).

124 [~~(4)~~] (5) (a) "Indigent defense resources" means the resources necessary to provide an
125 effective defense for an indigent individual, including the costs for a competent investigator,
126 expert witness, scientific or medical testing, transcripts, and printing briefs.

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

128 [~~(5)~~] (6) "Indigent defense service provider" means an attorney or entity appointed to
129 represent an indigent individual pursuant to:

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

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

132 [~~(6)~~] (7) "Indigent defense services" means:

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

134 and

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

136 [~~(7)~~] (8) "Indigent defense system" means:

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

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

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

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

144 ~~[(8)]~~ (9) "Indigent individual" means:

145 (a) a minor who is:

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

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

148 (iii) described in this Subsection ~~[(8)]~~ (9)(a), who is appealing ~~[a first appeal from]~~ an
149 adjudication or other final court action; and

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

152 ~~[(9)]~~ (10) "Minor" means the same as that term is defined in Section 78A-6-105.

153 (11) "Office" means the Office of Indigent Defense Services created in Section
154 78B-22-451.

155 ~~[(10)]~~ (12) "Participating county" means a county that complies with this chapter for
156 participation in the Indigent Aggravated Murder Defense Trust Fund as provided in Sections
157 78B-22-702 and 78B-22-703.

158 Section 4. Section 78B-22-201 is amended to read:

159 **78B-22-201. Right to counsel.**

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

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

164 (b) a parent or legal guardian facing ~~[any]~~ an action initiated by the state under:

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

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

167 (iii) Title 78A, Chapter 6, Part 10, Adult Offenses; ~~[or]~~

168 ~~[(iv) Section 78B-6-112; or]~~

169 (c) a parent or legal guardian facing an action initiated by any party under:

170 (i) Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act; or
 171 (ii) Section 78B-6-112; or
 172 ~~[(c)]~~ (d) an individual described in this Subsection (1), who is appealing ~~[a first appeal~~
 173 ~~from]~~ a conviction or other final court action.

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

177 Section 5. Section **78B-22-301** is amended to read:

178 **78B-22-301. Standards for indigent defense systems -- Written report.**

179 (1) An indigent defense system shall provide indigent defense services for an indigent
 180 individual in accordance with the ~~[minimum guidelines]~~ core principles adopted by the
 181 commission under Section 78B-22-404.

182 (2) (a) On or before March 30 of each year, all indigent defense systems shall submit a
 183 written report to the commission that describes each indigent defense system's compliance with
 184 the commission's core principles.

185 (b) If an indigent defense system fails to submit a timely report under Subsection
 186 (2)(a), the indigent defense system is disqualified from receiving a grant from the commission
 187 for the following calendar year.

188 Section 6. Section **78B-22-401** is amended to read:

189 **78B-22-401. Utah Indigent Defense Commission -- Creation -- Purpose.**

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

192 (2) The purpose of the commission is to assist:

193 (a) the state in meeting the state's obligations for the provision of indigent defense
 194 services, consistent with the United States Constitution, the Utah Constitution, and the Utah
 195 Code[-]; and

196 (b) the Office of Indigent Defense Services, created in Section 78A-22-451, with
 197 carrying out the statutory duties assigned to the commission and the Office of Indigent Defense

198 Services.

199 Section 7. Section **78B-22-402** is amended to read:

200 **78B-22-402. Commission members -- Member qualifications -- Terms -- Vacancy.**

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

203 (a) The governor, with the consent of the Senate, shall appoint the following [~~13~~
204 ~~voting~~] 11 members:

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

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

209 (iii) one attorney practicing in the area of parental defense, recommended by an entity
210 funded under the Child Welfare Parental Defense Program created in Section [63M-7-211](#);

211 [~~(iii)~~] (iv) [~~an~~] one attorney representing minority interests recommended by the Utah
212 Minority Bar Association;

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

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

217 [~~(vi)~~] (vii) a director of a county public defender organization recommended by the
218 Utah Association of Criminal Defense Lawyers;

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

221 [~~(viii)~~] (ix) [~~a~~] one retired judge recommended by the Judicial Council[;].

222 [~~(ix)~~] ~~one attorney practicing in the area of parental defense, recommended by an entity~~
223 ~~funded under the Child Welfare Parental Defense Program created in Section [63M-7-211](#); and]~~

224 [~~(x)~~] (b) The speaker of the House of Representatives and the president of the Senate
225 shall appoint two members of the Utah Legislature, one from the House of Representatives and

226 one from the Senate~~[-selected jointly by the Speaker of the House and President of the Senate].~~

227 ~~[(b)]~~ (c) The Judicial Council shall appoint a ~~[voting]~~ member from the Administrative
228 Office of the Courts.

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

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

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

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

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

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

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

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

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

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

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

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

254 (b) Section 63A-3-107; and
255 (c) rules made by the Division of Finance [~~pursuant to~~] in accordance with Sections
256 63A-3-106 and 63A-3-107.

257 (11) (a) A majority of the members of the commission constitutes a quorum.
258 (b) If a quorum is present, the action of a majority of the voting members present
259 constitutes the action of the commission.

260 Section 8. Section 78B-22-404 is amended to read:

261 **78B-22-404. Powers and duties of the commission.**

262 (1) The commission shall:

263 (a) adopt [~~minimum guidelines~~] core principles for an indigent defense system to
264 ensure the effective representation of indigent individuals consistent with the requirements of
265 the United States Constitution, the Utah Constitution, and the Utah Code, which [~~guidelines~~]
266 principles at a minimum shall address the following:

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

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

269 (B) there is a separate contract for each type of indigent defense service; and

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

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

274 (B) adequate access to indigent defense resources;

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

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

281 (E) adequate compensation without financial disincentives;

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

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

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

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

292 ~~[(c) identify and collect data from any source, which is necessary for the commission
293 to:]~~

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

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

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

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

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

306 ~~[(g) establish procedures to award grants to indigent defense systems under Section
307 78B-22-406 consistent with the commission's minimum guidelines for the effective
308 representation of indigent individuals and appropriations by the state;]~~

309 ~~[(h)]~~ (c) emphasize the importance of ensuring constitutionally effective indigent

310 defense services;

311 ~~[(f)]~~ (d) encourage members of the judiciary to provide input regarding the delivery of
312 indigent defense services; and

313 ~~[(g)]~~ (e) oversee individuals and entities involved in providing indigent defense
314 services~~[:]~~.

315 ~~[(k) annually report to the governor, Legislature, Judiciary Interim Committee, and
316 Judicial Council, regarding:]~~

317 ~~[(i) the operations of the commission;]~~

318 ~~[(ii) the operations of the indigent defense systems in the state; and]~~

319 ~~[(iii) compliance with the commission's minimum guidelines by indigent defense
320 systems receiving grants from the commission;]~~

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

323 ~~[(m) publish an annual report on the commission's website.]~~

324 (2) The commission may:

325 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
326 Rulemaking Act, to carry out the commission's duties under this part~~[:]~~;

327 (b) assign duties related to indigent defense services to the office to assist the
328 commission with the commission's statutory duties; and

329 (c) request supplemental appropriations from the Legislature to address a deficit in the
330 Indigent Inmate Trust Fund created in Section [78B-22-455](#).

331 Section 9. Section **78B-22-405** is amended to read:

332 **78B-22-405. Indigent Defense Resources Restricted Account -- Administration.**

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

335 (b) Appropriations from the account are nonlapsing.

336 (2) The account consists of:

337 (a) money appropriated by the Legislature based upon recommendations from the

338 commission consistent with principles of shared state and local funding;

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

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

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

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

345 (b) to establish and administer a grant program to provide grants of state money and
346 other money to indigent defense systems as set forth in Section [78B-22-406](#);

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

349 (d) for administrative costs.

350 Section 10. Section **78B-22-406** is amended to read:

351 **78B-22-406. Indigent defense services grant program.**

352 (1) The commission may award grants to supplement local spending by an indigent
353 defense system for indigent defense~~[-]~~ services.

354 [~~2) Commission grant money may be used for the following expenses:~~]

355 (2) The commission may use grant money:

356 (a) to assist an indigent defense system to provide indigent defense services that meet
357 the commission's [~~minimum guidelines~~] core principles for the effective representation of
358 indigent individuals;

359 (b) [~~the establishment and maintenance of~~] to establish and maintain local indigent
360 defense data collection systems;

361 (c) to provide indigent defense services in addition to [~~those~~] indigent defense services
362 that are currently being provided by an indigent defense system; [~~and~~]

363 (d) to provide training and continuing legal education for indigent defense service
364 providers~~[-]~~; and

365 (e) to reimburse an indigent defense system for the cost of providing indigent defense

366 services in an action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination
367 of Parental Rights, if the indigent defense system has complied with the commission's policies
368 and procedures for reimbursement.

369 (3) To receive a grant from the commission, an indigent defense system shall
370 demonstrate to the commission's satisfaction that:

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

375 (b) a grant from the commission is necessary for the indigent defense system to meet
376 the commission's [~~minimum guidelines~~] core principles for the effective representation of
377 indigent individuals.

378 (4) The commission may revoke a grant if an indigent defense system fails to meet
379 requirements of the grant or any of the commission's [~~minimum guidelines~~] core principles for
380 the effective representation of indigent individuals.

381 Section 11. Section **78B-22-451** is enacted to read:

382 **Part 4a. Office of Indigent Defense Services**

383 **78B-22-451. Office of Indigent Defense Services -- Creation.**

384 There is created the Office of Indigent Defense Services within the State Commission
385 of Criminal and Juvenile Justice.

386 Section 12. Section **78B-22-452** is enacted to read:

387 **78B-22-452. Duties of the office.**

388 (1) The office shall:

389 (a) establish an annual budget for the Indigent Defense Resources Restricted
390 Account created in Section [78B-22-405](#);

391 (b) assist the commission in performing the commission's statutory duties described in
392 this chapter;

393 (c) identify and collect data that is necessary for the commission to:

- 394 (i) aid, oversee, and review compliance by indigent defense systems with the
395 commission's core principles for the effective representation of indigent individuals; and
- 396 (ii) provide reports regarding the operation of the commission and the provision of
397 indigent defense services by indigent defense systems in the state;
- 398 (d) assist indigent defense systems by reviewing contracts, and other agreements, to
399 ensure compliance with the commission's core principles for the effective representation of
400 indigent individuals;
- 401 (e) establish procedures for the receipt and acceptance of complaints regarding the
402 provision of indigent defense services in the state;
- 403 (f) establish procedures to award grants to indigent defense systems under Section
404 78B-22-406 that are consistent with the commission's core principles;
- 405 (g) create and enter into contracts consistent with Section 78B-22-454 to provide
406 indigent defense services for an indigent inmate who:
 - 407 (i) is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth
408 class as defined in Section 17-50-501;
 - 409 (ii) is charged with having committed a crime within that state prison; and
 - 410 (iii) has been appointed counsel in accordance with Section 78B-22-203;
- 411 (h) assist the commission in developing and reviewing advisory caseload guidelines
412 and procedures;
- 413 (i) annually report to the governor, Legislature, Judiciary Interim Committee, and
414 Judicial Council, regarding:
 - 415 (A) the operations of the commission;
 - 416 (B) the operations of the indigent defense systems in the state; and
 - 417 (C) compliance with the commission's core principles by indigent defense systems
418 receiving grants from the commission;
- 419 (j) submit recommendations to the commission for improving indigent defense services
420 in the state;
- 421 (k) publish an annual report on the commission's website; and

422 (1) perform all other duties assigned by the commission related to indigent defense
423 services.

424 (2) The office may enter into contracts and accept, allocate, and administer funds and
425 grants from any public or private person to accomplish the duties of the office.

426 (3) Any contract entered into under this part shall require that indigent defense services
427 are provided in a manner consistent with the commission's core principles implemented under
428 Section [78B-22-404](#).

429 Section 13. Section **78B-22-453**, which is renumbered from Section 78B-22-403 is
430 renumbered and amended to read:

431 ~~[78B-22-403].~~ **78B-22-453. Director -- Qualifications -- Staff.**

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

433 ~~[(a) establish an annual budget;]~~

434 ~~[(b) assist the commission in performing the commission's statutory duties;]~~

435 ~~[(c) assist the commission in developing and regularly reviewing advisory caseload~~
436 ~~guidelines and procedures; and]~~

437 ~~[(d) perform all other duties as assigned.]~~

438 (1) The executive director of the State Commission on Criminal and Juvenile Justice
439 shall appoint a director to carry out the duties of the office described in Section [78B-22-452](#).

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

442 (3) The director shall hire staff as necessary to carry out the duties of the [commission]
443 office described in Section [78B-22-452](#), including:

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

446 (b) one individual with data collection and analysis skills [to carry out duties as
447 outlined in Subsection [78B-22-404\(1\)\(c\)](#)].

448 (4) When appointing the director of the office under Subsection (1), the executive
449 director of the State Commission on Criminal and Juvenile Justice shall give preference to an

450 individual with experience in adult criminal defense, child welfare parental defense, or juvenile
451 delinquency defense.

452 ~~[(4) The commission in appointing the director, and the director in hiring the assistant~~
453 ~~director, shall give a preference to individuals]~~

454 (5) When hiring the assistant director, the director shall give preference to an
455 individual with experience in adult criminal defense, child welfare parental defense, or juvenile
456 delinquency defense.

457 Section 14. Section **78B-22-454**, which is renumbered from Section 78B-22-601 is
458 renumbered and amended to read:

459 ~~[78B-22-601].~~ **78B-22-454. Defense of indigent inmates.**

460 ~~[(1) The board shall enter into contracts to provide indigent defense services for an~~
461 ~~indigent inmate who:]~~

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

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

465 ~~[(c) will require defense counsel.]~~

466 ~~[(2) Payment for indigent defense services shall be made from the Indigent Inmate~~
467 ~~Trust Fund as provided in Section 78B-22-602.]~~

468 (1) The office shall pay for indigent defense services for indigent inmates from the
469 Indigent Inmate Trust Fund created in Section 78B-22-455.

470 ~~[(3)]~~ (2) A contract under this part shall ensure that indigent defense services are
471 provided in a manner consistent with ~~[the minimum guidelines]~~ the core principles described in
472 Section ~~[78B-22-301]~~ 78B-22-404.

473 ~~[(4)]~~ (3) The county attorney or district attorney of a county of the third, fourth, fifth, or
474 sixth class shall function as the prosecuting entity.

475 ~~[(5)]~~ (4) (a) A county of the third, fourth, fifth, or sixth class where a state prison is
476 located may impose an additional property tax levy by ordinance at .0001 per dollar of taxable
477 value in the county.

478 (b) If the county governing body imposes the additional property tax levy by ordinance,
 479 the ~~[money]~~ revenue shall be deposited into the Indigent Inmate Trust Fund as provided in
 480 Section ~~[78B-22-602]~~ 78B-22-455 to fund the purposes of this part.

481 (c) Upon notification that the fund has reached the amount specified in Subsection
 482 ~~[78B-22-602]~~ 78B-22-455(6), a county shall deposit ~~[money]~~ revenue derived from the
 483 property tax levy after the county receives the notice into a county account used exclusively to
 484 provide indigent defense services.

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

487 Section 15. Section **78B-22-455**, which is renumbered from Section 78B-22-602 is
 488 renumbered and amended to read:

489 ~~[78B-22-602].~~ **78B-22-455. Indigent Inmate Trust Fund.**

490 (1) There is created a private-purpose trust fund known as the "Indigent Inmate Trust
 491 Fund" to be disbursed by the ~~[Division of Finance at the direction of the board and in~~
 492 ~~accordance with contracts made under Section 78B-22-502]~~ office in accordance with contracts
 493 entered into under Subsection 78B-22-452(1)(g).

494 (2) Money deposited into this trust fund shall only be used:

495 (a) to pay indigent defense services for an indigent inmate who:

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

498 (ii) is charged with having committed a crime within [the] that state prison~~[-and who~~
 499 ~~will require indigent defense services]; and~~

500 (iii) has been appointed counsel in accordance with Section 78B-22-203; and

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

502 (b) to cover costs of administering the Indigent Inmate Trust Fund.

503 (3) The trust fund consists of:

504 (a) proceeds received from counties that impose the additional tax levy by ordinance
 505 under Subsection ~~[78B-22-601]~~ 78B-22-454(5), which shall be the total county obligation for

506 payment of costs listed in Subsection (2) for defense services for indigent inmates;

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

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

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

511 (5) (a) In any calendar year in which the fund [~~runs a deficit~~] has insufficient funding,
512 or is projected to [~~run a deficit, the board~~] have insufficient funding, the commission shall
513 request a supplemental appropriation from the Legislature in the following general session to
514 [~~pay for the deficit~~] provide sufficient funding.

515 (b) The state shall pay any or all of the reasonable and necessary money [~~for the deficit~~]
516 to provide sufficient funding into the Indigent Inmate Trust Fund.

517 (6) The fund is capped at \$1,000,000.

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

521 (8) Upon notification by the [~~Division of Finance~~] office that the fund is near the limit
522 imposed in Subsection (6), the counties may contribute enough money to enable the fund to
523 reach \$1,000,000 and discontinue contributions until notified by the [~~Division of Finance~~]
524 office that the balance has fallen below \$1,000,000, at which time counties that meet the
525 requirements of Section [~~78B-22-601~~] 78B-22-454 shall resume contributions.

526 Section 16. Section **78B-22-501** is amended to read:

527 **78B-22-501. Indigent Defense Funds Board -- Members -- Administrative**
528 **support.**

529 (1) As used in this part, "fund" means the Indigent Aggravated Murder Defense Trust
530 Fund created in Section 78B-22-701.

531 ~~[(+)]~~ (2) There is created the Indigent Defense Funds Board within the Division of
532 Finance [~~the Indigent Defense Funds Board~~].

533 (3) The board is composed of the following nine members:

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

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

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

540 (d) the director of the Division of Finance or the director's designee;

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

542 (f) two members who are private attorneys engaged in or familiar with the criminal
543 defense practice appointed by the members of the board listed in Subsections ~~[(1)]~~ (3)(a)
544 through (e).

545 ~~[(2)]~~ (4) Members appointed under Subsection ~~[(1)]~~ (3)(a), (b), (c), or (f) shall serve
546 four-year terms.

547 ~~[(3)]~~ (5) A vacancy is created if a member appointed under:

548 (a) Subsection ~~[(1)]~~ (3)(a) no longer serves as a county commissioner or county
549 executive; or

550 (b) Subsection ~~[(1)]~~ (3)(c) no longer serves as a county attorney.

551 ~~[(4)]~~ (6) If a vacancy occurs in the membership for any reason, a replacement shall be
552 appointed for the remaining unexpired term in the same manner as the original appointment.

553 ~~[(5)]~~ (7) The Division of Finance may provide administrative support and may seek
554 payment for the costs or the board may contract for administrative support to be paid from the
555 ~~[funds described in Subsection 78B-22-502(1)(a)]~~ fund.

556 ~~[(6)]~~ (8) A member may not receive compensation or benefits for the member's service,
557 but may receive per diem and travel expenses in accordance with:

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

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

560 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
561 63A-3-107.

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

564 (9) The fund shall pay per diem and expenses for board members.

565 ~~[(8)]~~ (10) Five members shall constitute a quorum and, if a quorum is present, the
566 action of a majority of the members present shall constitute the action of the board.

567 Section 17. Section **78B-22-502** is amended to read:

568 **78B-22-502. Duties of board.**

569 (1) The board shall:

570 (a) establish rules and procedures for the application by a county for disbursements,
571 and the screening and approval of the applications for money from the~~[-]~~ fund;

572 ~~[(i) Indigent Inmate Trust Fund established in Part 6, Indigent Inmates, and]~~

573 ~~[(ii) Indigent Aggravated Murder Defense Trust Fund, established in Part 7, Indigent~~
574 ~~Aggravated Murder Defense Trust Fund;]~~

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

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

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

581 (e) oversee and approve the disbursement of money from ~~[a fund described in~~
582 ~~Subsection (1)(a) as provided in Sections 78B-22-602 and 78B-22-701]~~ the fund as described
583 in Section 78B-22-701;

584 (f) establish the board's own rules of procedure, elect the board's own officers, and
585 appoint committees of the board's members and other people as may be reasonable and
586 necessary; and

587 (g) negotiate, enter into, and administer contracts with legal counsel, qualified under
588 and meeting the standards consistent with this chapter, to provide indigent defense services to~~[-]~~
589 ~~(i)]~~ an indigent individual prosecuted in a participating county for an offense involving

590 aggravated murder[; and].

591 ~~[(ii) an indigent inmate who is incarcerated in a county described in Section~~
592 ~~78B-22-601.]~~

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

596 Section 18. **Coordinating S.B. 170 with S.B. 139 -- Substantive and technical**
597 **amendments.**

598 If this S.B. 170 and S.B. 139, Amendments to Indigent Defense, both pass and become
599 law, it is the intent of the Legislature that the Office of Legislative Research and General
600 Counsel shall prepare the Utah Code database for publication as follows:

601 (1) the amendments to Section 78B-22-451 in this bill supersede the amendments to
602 Section 78B-22-451 in S.B. 139;

603 (2) the amendments to Section 78B-22-452 in this bill supersede the amendments to
604 Section 78B-22-452 in S.B. 139; and

605 (3) the amendments to Section 78B-22-403, renumbered and amended by this bill to
606 Section 78B-22-453, supersede the amendments to Section 78B-22-403, renumbered and
607 amended by S.B. 139.