

SB0139S01 compared with SB0139

~~text~~ shows text that was in SB0139 but was deleted in SB0139S01.

text shows text that was not in SB0139 but was inserted into SB0139S01.

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Senator Ralph Okerlund proposes the following substitute bill:

AMENDMENTS TO INDIGENT DEFENSE

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses indigent defense services.

Highlighted Provisions:

This bill:

- ▶ creates and modifies definitions;
- ▶ amends the right to counsel for certain parties;
- ▶ amends the powers, duties, and membership of the Utah Indigent Defense Commission;
- ▶ creates the Office of Indigent Defense Services;
- ▶ creates the powers and duties of the Office of Indigent Defense Services;
- ▶ amends provisions related to indigent defense grants;
- ▶ creates the Indigent Appellate Defense Division to serve rural counties;

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- ▶ provides the powers and duties of the Indigent Appellate Defense Division;
- ▶ creates the position of chief appellate officer within the Indigent Appellate Defense Division; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

78B-22-102, as enacted by Laws of Utah 2019, Chapter 326

78B-22-201, as enacted by Laws of Utah 2019, Chapter 326

78B-22-301, as enacted by Laws of Utah 2019, Chapter 326

78B-22-401, as renumbered and amended by Laws of Utah 2019, Chapter 326

78B-22-402, as last amended by Laws of Utah 2019, Chapter 435 and renumbered and amended by Laws of Utah 2019, Chapter 326

78B-22-404, as renumbered and amended by Laws of Utah 2019, Chapter 326

78B-22-406, as renumbered and amended by Laws of Utah 2019, Chapter 326

78B-22-601, as renumbered and amended by Laws of Utah 2019, Chapter 326

ENACTS:

78B-22-451, Utah Code Annotated 1953

78B-22-452, Utah Code Annotated 1953

78B-22-801, Utah Code Annotated 1953

78B-22-802, Utah Code Annotated 1953

78B-22-803, Utah Code Annotated 1953

78B-22-804, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

78B-22-453, (Renumbered from 78B-22-403, as renumbered and amended by Laws of Utah 2019, Chapter 326)

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

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

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

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

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

(2) (a) In any action under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of Parental Rights Act, the child shall be represented by a guardian ad litem in accordance with Sections 78A-6-317 and 78A-6-902.

(b) 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.

Section 2. 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] that 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.

(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,

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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 individual's parental rights is~~] and termination is in the best interests of the child.

(6) The court shall appoint an indigent defense service provider[~~, under~~] in accordance with Title 78B, Chapter 22, Indigent Defense Act, to represent [~~a party~~] an individual 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.

(7) If a county incurs expenses in providing indigent defense services to an indigent 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 reimbursement from the Utah Indigent Defense Commission [~~under~~] in accordance with Section 78B-22-406.

(8) A petition filed under this section is subject to the procedural requirements of this chapter.

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

78B-22-102. Definitions.

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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) "Director" means the director of the Office of Indigent Defense Services, created in Section 78B-22-451, who is appointed in accordance with Section 78B-22-453.

~~[(4)]~~ (5) (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)]~~ (6) "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 to provide indigent defense services; or

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

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

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

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

~~[(7)]~~ (8) "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~~] and 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)]~~ (9) "Indigent individual" means:

(a) a minor who is:

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

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

(iii) described in this Subsection [~~(8)~~] (9)(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)]~~ (10) "Minor" means the same as that term is defined in Section 78A-6-105.

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

~~[(10)]~~ (12) "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 4. Section **78B-22-201** is amended to read:

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~~] an action initiated by the state 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; or

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

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

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

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

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

~~[(c)]~~ (d) 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 5. Section **78B-22-301** is amended to read:

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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~~] core principles adopted by the commission under Section 78B-22-404.

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

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

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

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

(a) 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; and

(b) the office with carrying out the statutory duties assigned to the commission and office.

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

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

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

(a) The governor, with the consent of the Senate, shall appoint the following [~~13 voting~~] 11 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) one attorney practicing in the area of parental defense, recommended by an entity funded under the Child Welfare Parental Defense Program created in Section 63M-7-211;

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

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

~~(v)~~ (vi) one member recommended by the Utah Association of Counties from a

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county of the third through sixth class;

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

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

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

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

~~[(x)]~~ ~~(b)~~ The speaker of the House of Representatives and the president of the Senate shall appoint two members of the Utah Legislature, one from the House of Representatives and one from the Senate~~[-selected jointly by the Speaker of the House and President of the Senate].~~

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

~~[(c)]~~ ~~(d)~~ 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 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]~~ An individual 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) (a) The commission shall [~~annually elect~~] elect annually a chair from the commission's membership to serve a one-year term.

(b) 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~~] in accordance with 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 8. Section **78B-22-404** is amended to read:

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

(1) The commission shall:

(a) adopt [~~minimum guidelines~~] core principles 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~~] core principles 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

(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 individuals in criminal cases at the critical stages of proceedings, and at [~~the~~] all stages to indigent individuals in juvenile

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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

(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 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 78B-22-406 consistent with the commission's minimum guidelines for the effective~~

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~~representation of indigent individuals and appropriations by the state;]~~

~~[(h)]~~ (c) emphasize the importance of ensuring constitutionally effective indigent defense services;

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

~~[(j)]~~ (e) 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 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) The commission may:

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

(b) assign duties related to indigent defense services to the office to assist the commission with the commission's statutory duties.

Section 9. Section **78B-22-406** is amended to read:

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

(1) The commission may award grants [to]:

(a) to ~~for~~ supplement local spending by an indigent defense system for indigent defense[.] services; and

(b) ~~enter into~~ for contracts ~~for~~ to provide indigent defense services for ~~an appeal~~ appeals from ~~a~~ at juvenile court ~~proceeding~~ proceedings in a county of the third, fourth, fifth, or sixth class.

(2) ~~[Commission grant money may be used for the following expenses:]~~ The commission may use grant money:

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

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

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

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

(e) to assist indigent defense systems with appeals from juvenile court proceedings.

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

(a) the indigent defense system has incurred or reasonably anticipates incurring expenses for indigent defense services that are in addition to the 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 indigent defense system to meet the commission's ~~[minimum guidelines]~~ core principles 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]~~ core principles for the effective representation of indigent individuals.

Section 10. Section **78B-22-451** is enacted to read:

Part 4a. Office of Indigent Defense Services

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

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

Section 11. Section **78B-22-452** is enacted to read:

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

(1) The office shall:

(a) establish an annual budget for the Indigent Defense Resources Restricted Account

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created in Section 78B-22-405;

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

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

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

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

(f) establish procedures to award grants to indigent defense systems under Section 78B-22-406 that are consistent with the commission's core principles;

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

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

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

(~~fi~~A) the operations of the commission;

(~~fi~~B) the operations of the indigent defense systems in the state; and

(~~fi~~C) compliance with the commission's core principles by indigent defense systems receiving grants from the commission;

(j) submit recommendations to the commission for improving indigent defense services in the state;

(k) publish an annual report on the commission's website; and

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

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

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

Section 12. Section **78B-22-453**, which is renumbered from Section 78B-22-403 is renumbered and amended to read:

~~[78B-22-403].~~ **78B-22-453. 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.]~~

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

(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]~~ office described in Section 78B-22-452, 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 78B-22-404(1)(c)].~~

(4) When appointing the director of the office under Subsection (1), the executive director of the State Commission on Criminal and Juvenile Justice shall give preference to an individual with experience in adult criminal defense, child welfare parental defense, or juvenile delinquency defense.

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

(5) When hiring the assistant director, the director shall give preference to an

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

Section 13. Section **78B-22-601** is amended to read:

78B-22-601. Defense of indigent inmates.

(1) The board shall enter into contracts to provide indigent defense 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;

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

(c) will require defense counsel.

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

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

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

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

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

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

Section 14. Section **78B-22-801** is enacted to read:

Part 8. Indigent Appellate Defense Division

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78B-22-801. Definitions.

(1) "Appellate defense services" means the representation of an indigent individual facing an appeal under Section 77-18a-1.

(2) "Division" means the Indigent Appellate Defense Division created in Section 78B-22-802.

Section 15. Section **78B-22-802** is enacted to read:

78B-22-802. Indigent Appellate Defense Division.

There is created the Indigent Appellate Defense Division within the Office of Indigent Defense Services.

Section 16. Section **78B-22-803** is enacted to read:

78B-22-803. Powers and duties of the division.

(1) The division shall:

(a) provide appellate defense services in counties of the third, fourth, fifth, and sixth class; and

(b) provide appellate defense services in accordance with the core principles adopted by the commission under Section 78A-22-404 and any other state and federal standards for appellate defense services.

(2) Upon consultation with the director and the commission, the division shall:

(a) adopt a budget for the division;

(b) adopt and publish on the commission's website:

(i) appellate performance standards;

(ii) case weighting standards; and

(iii) any other relevant measures or information to assist with appellate defense services; and

(c) if requested by the commission, provide a report to the commission on:

(i) the provision of appellate defense services by the division;

(ii) the caseloads of appellate attorneys; and

(iii) any other information relevant to appellate defense services in the state.

(3) If the division provides appellate defense services to an indigent individual in an indigent defense system, the division shall provide notice to the district court and the indigent defense system that the division intends to be appointed as counsel for the indigent individual.

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(4) The office shall assist with providing training and continual legal education on appellate defense to indigent defense service providers in counties of the third, fourth, fifth, and sixth class.

Section 17. Section **78B-22-804** is enacted to read:

78B-22-804. Chief appellate officer -- Qualifications -- Staff.

(1) (a) After consulting with the commission, the director shall appoint a chief appellate officer.

(b) When appointing the chief appellate officer, the director shall give preference to an individual with experience in adult criminal appellate defense representation.

(2) The chief appellate officer shall be an active member of the Utah State Bar with an appropriate background and experience to serve as the chief appellate officer.

(3) The chief appellate officer shall carry out the duties of the division described in Section ~~{78B-22-802}~~78B-22-803.

(4) The chief appellate officer shall:

(a) provide appellate defense services in a county of the third, fourth, fifth, or sixth class;

(b) hire staff as necessary to carry out the duties of the division described in Section ~~{78A-22-802}~~78A-22-803; and

(c) perform all other duties that are necessary for the division to carry out the division's statutory duties.