

INDIGENT DEFENSE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to indigent defense.

Highlighted Provisions:

This bill:

- ▶ creates and modifies definitions;
- ▶ amends the right to counsel for parties in certain actions;
- ▶ 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 funds;
- ▶ creates a reporting requirement for indigent defense systems;
- ▶ protects certain records related to the Office of Indigent Defense Services; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 **63G-2-305**, as last amended by Laws of Utah 2019, Chapters 128, 193, 244, and 277
- 29 **78A-6-1111**, as last amended by Laws of Utah 2019, Chapter 326
- 30 **78B-6-112**, as last amended by Laws of Utah 2019, Chapters 136, 326, and 491
- 31 **78B-22-102**, as enacted by Laws of Utah 2019, Chapter 326
- 32 **78B-22-201**, as enacted by Laws of Utah 2019, Chapter 326
- 33 **78B-22-301**, as enacted by Laws of Utah 2019, Chapter 326
- 34 **78B-22-401**, as renumbered and amended by Laws of Utah 2019, Chapter 326
- 35 **78B-22-402**, as last amended by Laws of Utah 2019, Chapter 435 and renumbered and
- 36 amended by Laws of Utah 2019, Chapter 326
- 37 **78B-22-404**, as renumbered and amended by Laws of Utah 2019, Chapter 326
- 38 **78B-22-405**, as renumbered and amended by Laws of Utah 2019, Chapter 326
- 39 **78B-22-406**, as renumbered and amended by Laws of Utah 2019, Chapter 326
- 40 **78B-22-501**, as renumbered and amended by Laws of Utah 2019, Chapter 326
- 41 **78B-22-502**, as renumbered and amended by Laws of Utah 2019, Chapter 326

42 ENACTS:

- 43 **78B-22-451**, Utah Code Annotated 1953
- 44 **78B-22-452**, Utah Code Annotated 1953

45 RENUMBERS AND AMENDS:

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



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

54 Section 1. Section **63G-2-305** is amended to read:

55 **63G-2-305. Protected records.**

56 The following records are protected if properly classified by a governmental entity:

- 57 (1) trade secrets as defined in Section **13-24-2** if the person submitting the trade secret
- 58 has provided the governmental entity with the information specified in Section **63G-2-309**;

59 (2) commercial information or nonindividual financial information obtained from a
60 person if:

61 (a) disclosure of the information could reasonably be expected to result in unfair
62 competitive injury to the person submitting the information or would impair the ability of the
63 governmental entity to obtain necessary information in the future;

64 (b) the person submitting the information has a greater interest in prohibiting access
65 than the public in obtaining access; and

66 (c) the person submitting the information has provided the governmental entity with
67 the information specified in Section [63G-2-309](#);

68 (3) commercial or financial information acquired or prepared by a governmental entity
69 to the extent that disclosure would lead to financial speculations in currencies, securities, or
70 commodities that will interfere with a planned transaction by the governmental entity or cause
71 substantial financial injury to the governmental entity or state economy;

72 (4) records, the disclosure of which could cause commercial injury to, or confer a
73 competitive advantage upon a potential or actual competitor of, a commercial project entity as
74 defined in Subsection [11-13-103\(4\)](#);

75 (5) test questions and answers to be used in future license, certification, registration,
76 employment, or academic examinations;

77 (6) records, the disclosure of which would impair governmental procurement
78 proceedings or give an unfair advantage to any person proposing to enter into a contract or
79 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
80 Subsection (6) does not restrict the right of a person to have access to, after the contract or
81 grant has been awarded and signed by all parties:

82 (a) a bid, proposal, application, or other information submitted to or by a governmental
83 entity in response to:

84 (i) an invitation for bids;

85 (ii) a request for proposals;

86 (iii) a request for quotes;

87 (iv) a grant; or

88 (v) other similar document; or

89 (b) an unsolicited proposal, as defined in Section [63G-6a-712](#);

90 (7) information submitted to or by a governmental entity in response to a request for
91 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict
92 the right of a person to have access to the information, after:

93 (a) a contract directly relating to the subject of the request for information has been
94 awarded and signed by all parties; or

95 (b) (i) a final determination is made not to enter into a contract that relates to the
96 subject of the request for information; and

97 (ii) at least two years have passed after the day on which the request for information is
98 issued;

99 (8) records that would identify real property or the appraisal or estimated value of real
100 or personal property, including intellectual property, under consideration for public acquisition
101 before any rights to the property are acquired unless:

102 (a) public interest in obtaining access to the information is greater than or equal to the
103 governmental entity's need to acquire the property on the best terms possible;

104 (b) the information has already been disclosed to persons not employed by or under a
105 duty of confidentiality to the entity;

106 (c) in the case of records that would identify property, potential sellers of the described
107 property have already learned of the governmental entity's plans to acquire the property;

108 (d) in the case of records that would identify the appraisal or estimated value of
109 property, the potential sellers have already learned of the governmental entity's estimated value
110 of the property; or

111 (e) the property under consideration for public acquisition is a single family residence
112 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
113 the property as required under Section [78B-6-505](#);

114 (9) records prepared in contemplation of sale, exchange, lease, rental, or other
115 compensated transaction of real or personal property including intellectual property, which, if
116 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
117 of the subject property, unless:

118 (a) the public interest in access is greater than or equal to the interests in restricting
119 access, including the governmental entity's interest in maximizing the financial benefit of the
120 transaction; or

121 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
122 the value of the subject property have already been disclosed to persons not employed by or
123 under a duty of confidentiality to the entity;

124 (10) records created or maintained for civil, criminal, or administrative enforcement
125 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
126 release of the records:

127 (a) reasonably could be expected to interfere with investigations undertaken for
128 enforcement, discipline, licensing, certification, or registration purposes;

129 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
130 proceedings;

131 (c) would create a danger of depriving a person of a right to a fair trial or impartial
132 hearing;

133 (d) reasonably could be expected to disclose the identity of a source who is not
134 generally known outside of government and, in the case of a record compiled in the course of
135 an investigation, disclose information furnished by a source not generally known outside of
136 government if disclosure would compromise the source; or

137 (e) reasonably could be expected to disclose investigative or audit techniques,
138 procedures, policies, or orders not generally known outside of government if disclosure would
139 interfere with enforcement or audit efforts;

140 (11) records the disclosure of which would jeopardize the life or safety of an
141 individual;

142 (12) records the disclosure of which would jeopardize the security of governmental
143 property, governmental programs, or governmental recordkeeping systems from damage, theft,
144 or other appropriation or use contrary to law or public policy;

145 (13) records that, if disclosed, would jeopardize the security or safety of a correctional
146 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
147 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

148 (14) records that, if disclosed, would reveal recommendations made to the Board of
149 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
150 Board of Pardons and Parole, or the Department of Human Services that are based on the
151 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's

152 jurisdiction;

153 (15) records and audit workpapers that identify audit, collection, and operational
154 procedures and methods used by the State Tax Commission, if disclosure would interfere with
155 audits or collections;

156 (16) records of a governmental audit agency relating to an ongoing or planned audit
157 until the final audit is released;

158 (17) records that are subject to the attorney client privilege;

159 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
160 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,
161 quasi-judicial, or administrative proceeding;

162 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
163 from a member of the Legislature; and

164 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
165 legislative action or policy may not be classified as protected under this section; and

166 (b) (i) an internal communication that is part of the deliberative process in connection
167 with the preparation of legislation between:

168 (A) members of a legislative body;

169 (B) a member of a legislative body and a member of the legislative body's staff; or

170 (C) members of a legislative body's staff; and

171 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
172 legislative action or policy may not be classified as protected under this section;

173 (20) (a) records in the custody or control of the Office of Legislative Research and
174 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
175 legislation or contemplated course of action before the legislator has elected to support the
176 legislation or course of action, or made the legislation or course of action public; and

177 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
178 Office of Legislative Research and General Counsel is a public document unless a legislator
179 asks that the records requesting the legislation be maintained as protected records until such
180 time as the legislator elects to make the legislation or course of action public;

181 (21) research requests from legislators to the Office of Legislative Research and
182 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared

183 in response to these requests;

184 (22) drafts, unless otherwise classified as public;

185 (23) records concerning a governmental entity's strategy about:

186 (a) collective bargaining; or

187 (b) imminent or pending litigation;

188 (24) records of investigations of loss occurrences and analyses of loss occurrences that
189 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
190 Uninsured Employers' Fund, or similar divisions in other governmental entities;

191 (25) records, other than personnel evaluations, that contain a personal recommendation
192 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
193 personal privacy, or disclosure is not in the public interest;

194 (26) records that reveal the location of historic, prehistoric, paleontological, or
195 biological resources that if known would jeopardize the security of those resources or of
196 valuable historic, scientific, educational, or cultural information;

197 (27) records of independent state agencies if the disclosure of the records would
198 conflict with the fiduciary obligations of the agency;

199 (28) records of an institution within the state system of higher education defined in
200 Section [53B-1-102](#) regarding tenure evaluations, appointments, applications for admissions,
201 retention decisions, and promotions, which could be properly discussed in a meeting closed in
202 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
203 the final decisions about tenure, appointments, retention, promotions, or those students
204 admitted, may not be classified as protected under this section;

205 (29) records of the governor's office, including budget recommendations, legislative
206 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
207 policies or contemplated courses of action before the governor has implemented or rejected
208 those policies or courses of action or made them public;

209 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
210 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
211 recommendations in these areas;

212 (31) records provided by the United States or by a government entity outside the state
213 that are given to the governmental entity with a requirement that they be managed as protected

214 records if the providing entity certifies that the record would not be subject to public disclosure
215 if retained by it;

216 (32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a
217 public body except as provided in Section 52-4-206;

218 (33) records that would reveal the contents of settlement negotiations but not including
219 final settlements or empirical data to the extent that they are not otherwise exempt from
220 disclosure;

221 (34) memoranda prepared by staff and used in the decision-making process by an
222 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
223 other body charged by law with performing a quasi-judicial function;

224 (35) records that would reveal negotiations regarding assistance or incentives offered
225 by or requested from a governmental entity for the purpose of encouraging a person to expand
226 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
227 person or place the governmental entity at a competitive disadvantage, but this section may not
228 be used to restrict access to a record evidencing a final contract;

229 (36) materials to which access must be limited for purposes of securing or maintaining
230 the governmental entity's proprietary protection of intellectual property rights including patents,
231 copyrights, and trade secrets;

232 (37) the name of a donor or a prospective donor to a governmental entity, including an
233 institution within the state system of higher education defined in Section 53B-1-102, and other
234 information concerning the donation that could reasonably be expected to reveal the identity of
235 the donor, provided that:

236 (a) the donor requests anonymity in writing;

237 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
238 classified protected by the governmental entity under this Subsection (37); and

239 (c) except for an institution within the state system of higher education defined in
240 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
241 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
242 over the donor, a member of the donor's immediate family, or any entity owned or controlled
243 by the donor or the donor's immediate family;

244 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and

- 245 73-18-13;
- 246 (39) a notification of workers' compensation insurance coverage described in Section
- 247 34A-2-205;
- 248 (40) (a) the following records of an institution within the state system of higher
- 249 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
- 250 or received by or on behalf of faculty, staff, employees, or students of the institution:
- 251 (i) unpublished lecture notes;
- 252 (ii) unpublished notes, data, and information:
- 253 (A) relating to research; and
- 254 (B) of:
- 255 (I) the institution within the state system of higher education defined in Section
- 256 53B-1-102; or
- 257 (II) a sponsor of sponsored research;
- 258 (iii) unpublished manuscripts;
- 259 (iv) creative works in process;
- 260 (v) scholarly correspondence; and
- 261 (vi) confidential information contained in research proposals;
- 262 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
- 263 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
- 264 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 265 (41) (a) records in the custody or control of the Office of Legislative Auditor General
- 266 that would reveal the name of a particular legislator who requests a legislative audit prior to the
- 267 date that audit is completed and made public; and
- 268 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
- 269 Office of the Legislative Auditor General is a public document unless the legislator asks that
- 270 the records in the custody or control of the Office of Legislative Auditor General that would
- 271 reveal the name of a particular legislator who requests a legislative audit be maintained as
- 272 protected records until the audit is completed and made public;
- 273 (42) records that provide detail as to the location of an explosive, including a map or
- 274 other document that indicates the location of:
- 275 (a) a production facility; or

- 276 (b) a magazine;
- 277 (43) information:
 - 278 (a) contained in the statewide database of the Division of Aging and Adult Services
 - 279 created by Section [62A-3-311.1](#); or
 - 280 (b) received or maintained in relation to the Identity Theft Reporting Information
 - 281 System (IRIS) established under Section [67-5-22](#);
 - 282 (44) information contained in the Management Information System and Licensing
 - 283 Information System described in Title 62A, Chapter 4a, Child and Family Services;
 - 284 (45) information regarding National Guard operations or activities in support of the
 - 285 National Guard's federal mission;
 - 286 (46) records provided by any pawn or secondhand business to a law enforcement
 - 287 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
 - 288 Secondhand Merchandise Transaction Information Act;
 - 289 (47) information regarding food security, risk, and vulnerability assessments performed
 - 290 by the Department of Agriculture and Food;
 - 291 (48) except to the extent that the record is exempt from this chapter pursuant to Section
 - 292 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or
 - 293 prepared or maintained by the Division of Emergency Management, and the disclosure of
 - 294 which would jeopardize:
 - 295 (a) the safety of the general public; or
 - 296 (b) the security of:
 - 297 (i) governmental property;
 - 298 (ii) governmental programs; or
 - 299 (iii) the property of a private person who provides the Division of Emergency
 - 300 Management information;
 - 301 (49) records of the Department of Agriculture and Food that provides for the
 - 302 identification, tracing, or control of livestock diseases, including any program established under
 - 303 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control
 - 304 of Animal Disease;
 - 305 (50) as provided in Section [26-39-501](#):
 - 306 (a) information or records held by the Department of Health related to a complaint

307 regarding a child care program or residential child care which the department is unable to
308 substantiate; and

309 (b) information or records related to a complaint received by the Department of Health
310 from an anonymous complainant regarding a child care program or residential child care;

311 (51) unless otherwise classified as public under Section 63G-2-301 and except as
312 provided under Section 41-1a-116, an individual's home address, home telephone number, or
313 personal mobile phone number, if:

314 (a) the individual is required to provide the information in order to comply with a law,
315 ordinance, rule, or order of a government entity; and

316 (b) the subject of the record has a reasonable expectation that this information will be
317 kept confidential due to:

318 (i) the nature of the law, ordinance, rule, or order; and

319 (ii) the individual complying with the law, ordinance, rule, or order;

320 (52) the portion of the following documents that contains a candidate's residential or
321 mailing address, if the candidate provides to the filing officer another address or phone number
322 where the candidate may be contacted:

323 (a) a declaration of candidacy, a nomination petition, or a certificate of nomination,
324 described in Section 20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408,
325 20A-9-408.5, 20A-9-502, or 20A-9-601;

326 (b) an affidavit of impecuniosity, described in Section 20A-9-201; or

327 (c) a notice of intent to gather signatures for candidacy, described in Section
328 20A-9-408;

329 (53) the name, home address, work addresses, and telephone numbers of an individual
330 that is engaged in, or that provides goods or services for, medical or scientific research that is:

331 (a) conducted within the state system of higher education, as defined in Section
332 53B-1-102; and

333 (b) conducted using animals;

334 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance
335 Evaluation Commission concerning an individual commissioner's vote on whether or not to
336 recommend that the voters retain a judge including information disclosed under Subsection
337 78A-12-203(5)(e);

338 (55) information collected and a report prepared by the Judicial Performance
339 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
340 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
341 the information or report;

342 (56) records contained in the Management Information System created in Section
343 62A-4a-1003;

344 (57) records provided or received by the Public Lands Policy Coordinating Office in
345 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

346 (58) information requested by and provided to the 911 Division under Section
347 63H-7a-302;

348 (59) in accordance with Section 73-10-33:

349 (a) a management plan for a water conveyance facility in the possession of the Division
350 of Water Resources or the Board of Water Resources; or

351 (b) an outline of an emergency response plan in possession of the state or a county or
352 municipality;

353 (60) the following records in the custody or control of the Office of Inspector General
354 of Medicaid Services, created in Section 63A-13-201:

355 (a) records that would disclose information relating to allegations of personal
356 misconduct, gross mismanagement, or illegal activity of a person if the information or
357 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
358 through other documents or evidence, and the records relating to the allegation are not relied
359 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation
360 report or final audit report;

361 (b) records and audit workpapers to the extent they would disclose the identity of a
362 person who, during the course of an investigation or audit, communicated the existence of any
363 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or
364 regulation adopted under the laws of this state, a political subdivision of the state, or any
365 recognized entity of the United States, if the information was disclosed on the condition that
366 the identity of the person be protected;

367 (c) before the time that an investigation or audit is completed and the final
368 investigation or final audit report is released, records or drafts circulated to a person who is not

369 an employee or head of a governmental entity for the person's response or information;

370 (d) records that would disclose an outline or part of any investigation, audit survey

371 plan, or audit program; or

372 (e) requests for an investigation or audit, if disclosure would risk circumvention of an

373 investigation or audit;

374 (61) records that reveal methods used by the Office of Inspector General of Medicaid

375 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or

376 abuse;

377 (62) information provided to the Department of Health or the Division of Occupational

378 and Professional Licensing under Subsection 58-68-304(3) or (4);

379 (63) a record described in Section 63G-12-210;

380 (64) captured plate data that is obtained through an automatic license plate reader

381 system used by a governmental entity as authorized in Section 41-6a-2003;

382 (65) any record in the custody of the Utah Office for Victims of Crime relating to a

383 victim, including:

384 (a) a victim's application or request for benefits;

385 (b) a victim's receipt or denial of benefits; and

386 (c) any administrative notes or records made or created for the purpose of, or used to,

387 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim

388 Reparations Fund;

389 (66) an audio or video recording created by a body-worn camera, as that term is

390 defined in Section 77-7a-103, that records sound or images inside a hospital or health care

391 facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care

392 provider, as that term is defined in Section 78B-3-403, or inside a human service program as

393 that term is defined in Section 62A-2-101, except for recordings that:

394 (a) depict the commission of an alleged crime;

395 (b) record any encounter between a law enforcement officer and a person that results in

396 death or bodily injury, or includes an instance when an officer fires a weapon;

397 (c) record any encounter that is the subject of a complaint or a legal proceeding against

398 a law enforcement officer or law enforcement agency;

399 (d) contain an officer involved critical incident as defined in Subsection

400 76-2-408(1)(d); or

401 (e) have been requested for reclassification as a public record by a subject or
402 authorized agent of a subject featured in the recording;

403 (67) a record pertaining to the search process for a president of an institution of higher
404 education described in Section 53B-2-102, except for application materials for a publicly
405 announced finalist; and

406 (68) an audio recording that is:

407 (a) produced by an audio recording device that is used in conjunction with a device or
408 piece of equipment designed or intended for resuscitating an individual or for treating an
409 individual with a life-threatening condition;

410 (b) produced during an emergency event when an individual employed to provide law
411 enforcement, fire protection, paramedic, emergency medical, or other first responder service:

412 (i) is responding to an individual needing resuscitation or with a life-threatening
413 condition; and

414 (ii) uses a device or piece of equipment designed or intended for resuscitating an
415 individual or for treating an individual with a life-threatening condition; and

416 (c) intended and used for purposes of training emergency responders how to improve
417 their response to an emergency situation;

418 (69) records submitted by or prepared in relation to an applicant seeking a
419 recommendation by the Research and General Counsel Subcommittee, the Budget
420 Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an
421 employment position with the Legislature;

422 (70) work papers as defined in Section 31A-2-204;

423 (71) a record made available to Adult Protective Services or a law enforcement agency
424 under Section 61-1-206;

425 (72) a record submitted to the Insurance Department in accordance with Section
426 31A-37-201; [~~and~~]

427 (73) a record described in Section 31A-37-503[-];

428 (74) any record created by the Division of Occupational and Professional Licensing as
429 a result of Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii); [~~and~~]

430 (75) a record described in Section 72-16-306 that relates to the reporting of an injury

431 involving an amusement ride[-]; and

432 (76) a contract, or a record prepared in relation to a contract, between the Office of
433 Indigent Defense Services and an indigent defense service provider as defined in Section
434 78B-22-102.

435 Section 2. Section **78A-6-1111** is amended to read:

436 **78A-6-1111. Order for indigent defense service or guardian ad litem.**

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

439 (1) A court shall order indigent defense services in accordance with Title 78B, Chapter
440 22, Indigent Defense Act, for a minor, parent, or legal guardian facing an action filed by a
441 private party or the state under this title.

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

447 Section 3. Section **78B-6-112** is amended to read:

448 **78B-6-112. District court jurisdiction over termination of parental rights**
449 **proceedings.**

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

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

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

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

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

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

460 (b) This section does not grant jurisdiction to a district court to terminate parental
461 rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse,

462 neglect, dependency, or termination of parental rights proceeding.

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

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

466 (i) the requirements of this chapter; or

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

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

470 (c) the individual:

471 (i) received notice of the adoption proceeding relating to the child under Section
472 78B-6-110; and

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

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

477 (e) the individual's parental rights are terminated on grounds described in Title 78A,
478 Chapter 6, Part 5, Termination of Parental Rights Act, [~~if terminating the individual's parental~~
479 ~~rights is]~~ and termination is in the best interests of the child.

480 (6) The court shall appoint an indigent defense service provider[~~, under~~] in accordance
481 with Title 78B, Chapter 22, Indigent Defense Act, to represent [~~a party~~] an individual who
482 faces any action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination of
483 Parental Rights Act or whose parental rights are subject to termination under this section.

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

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

491 Section 4. Section 78B-22-102 is amended to read:

492 **78B-22-102. Definitions.**

493 As used in this chapter:

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

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

497 (3) "Commission" means the Utah Indigent Defense Commission created in Section
498 [78B-22-401](#).

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

501 ~~[(4)]~~ (5) (a) "Indigent defense resources" means the resources necessary to provide an
502 effective defense for an indigent individual, including the costs for a competent investigator,
503 expert witness, scientific or medical testing, transcripts, and printing briefs.

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

505 ~~[(5)]~~ (6) "Indigent defense service provider" means an attorney or entity appointed to
506 represent an indigent individual pursuant to:

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

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

509 ~~[(6)]~~ (7) "Indigent defense services" means:

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

511 and

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

513 ~~[(7)]~~ (8) "Indigent defense system" means:

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

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

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

521 ~~[(8)]~~ (9) "Indigent individual" means:

522 (a) a minor who is:

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

- 524 (ii) charged by petition or information in the juvenile or district court; or
- 525 (iii) described in this Subsection ~~[(8)]~~ (9)(a), who is appealing ~~[a first appeal from]~~ an
- 526 adjudication or other final court action; and
- 527 (b) an individual listed in Subsection [78B-22-201](#)(1) who is found indigent pursuant to
- 528 Section [78B-22-202](#).
- 529 ~~[(9)]~~ (10) "Minor" means the same as that term is defined in Section [78A-6-105](#).
- 530 (11) "Office" means the Office of Indigent Defense Services created in Section
- 531 [78B-22-451](#).
- 532 ~~[(10)]~~ (12) "Participating county" means a county that complies with this chapter for
- 533 participation in the Indigent Aggravated Murder Defense Trust Fund as provided in Sections
- 534 [78B-22-702](#) and [78B-22-703](#).
- 535 Section 5. Section **78B-22-201** is amended to read:
- 536 **78B-22-201. Right to counsel.**
- 537 (1) A court shall advise the following of the individual's right to counsel when the
- 538 individual first appears before the court:
- 539 (a) an adult charged with a criminal offense the penalty for which includes the
- 540 possibility of incarceration regardless of whether actually imposed;
- 541 (b) a parent or legal guardian facing ~~[any]~~ an action initiated by the state under:
- 542 (i) Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;
- 543 (ii) Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act; or
- 544 (iii) Title 78A, Chapter 6, Part 10, Adult Offenses; ~~[or]~~
- 545 ~~[(iv)]~~ ~~Section [78B-6-112](#); or]~~
- 546 (c) a parent or legal guardian facing an action initiated by a private party under:
- 547 (i) Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act; or
- 548 (ii) Section [78B-6-112](#); or
- 549 ~~[(c)]~~ (d) an individual described in this Subsection (1), who is appealing ~~[a first appeal~~
- 550 ~~from]~~ a conviction or other final court action.
- 551 (2) If an individual described in Subsection (1) does not knowingly and voluntarily
- 552 waive the right to counsel, the court shall determine whether the individual is indigent under
- 553 Section [78B-22-202](#).
- 554 Section 6. Section **78B-22-301** is amended to read:

555 **78B-22-301. Standards for indigent defense systems.**

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

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

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

565 Section 7. Section **78B-22-401** is amended to read:

566 **78B-22-401. Utah Indigent Defense Commission -- Creation -- Purpose.**

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

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

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

573 (b) the Office of Indigent Defense Services, created in Section [78A-22-451](#), with
 574 carrying out the statutory duties assigned to the commission and the Office of Indigent Defense
 575 Services.

576 Section 8. Section **78B-22-402** is amended to read:

577 **78B-22-402. Commission members -- Member qualifications -- Terms -- Vacancy.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

617 indigent defense services.

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

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

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

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

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

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

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

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

632 (c) rules made by the Division of Finance [~~pursuant to~~] in accordance with Sections
633 [63A-3-106](#) and [63A-3-107](#).

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

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

637 Section 9. Section **78B-22-404** is amended to read:

638 **78B-22-404. Powers and duties of the commission.**

639 (1) The commission shall:

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

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

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

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

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

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

651 (B) adequate access to indigent defense resources;

652 (C) the ability to provide representation to accused individuals in criminal cases at the
653 critical stages of proceedings, and at ~~the~~ all stages to indigent individuals in juvenile
654 delinquency and child welfare proceedings;

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

658 (E) adequate compensation without financial disincentives;

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

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

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

666 (b) encourage and aid indigent defense systems in the state in the regionalization of
667 indigent defense services to provide for effective and efficient representation to the indigent
668 individuals;

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

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

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

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

678 ~~[(e) investigate, audit, and review the provision of indigent defense services to ensure~~

679 ~~compliance with the commission's minimum guidelines for the effective representation of~~
 680 ~~indigent individuals;]~~

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

683 ~~[(g) establish procedures to award grants to indigent defense systems under Section~~
 684 ~~78B-22-406 consistent with the commission's minimum guidelines for the effective~~
 685 ~~representation of indigent individuals and appropriations by the state;]~~

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

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

690 ~~[(j)] (e) oversee individuals and entities involved in providing indigent defense~~
 691 ~~services[;].~~

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

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

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

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

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

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

701 (2) The commission may:

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

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

706 Section 10. Section **78B-22-405** is amended to read:

707 **78B-22-405. Indigent Defense Resources Restricted Account -- Administration.**

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

- 710 (b) Appropriations from the account are nonlapsing.
- 711 (2) The account consists of:
- 712 (a) money appropriated by the Legislature based upon recommendations from the
713 commission consistent with principles of shared state and local funding;
- 714 (b) any other money received by the commission from any source to carry out the
715 purposes of this part; and
- 716 (c) any interest and earnings from the investment of account money.
- 717 (3) The commission shall administer the account and, subject to appropriation,
718 disburse money from the account for the following purposes:
- 719 (a) to establish and maintain a statewide indigent defense data collection system;
- 720 (b) to establish and administer a grant program to provide grants of state money and
721 other money to indigent defense systems as set forth in Section [78B-22-406](#);
- 722 (c) to provide training and continuing legal education for indigent defense service
723 providers; and
- 724 (d) for administrative costs.
- 725 Section 11. Section **78B-22-406** is amended to read:
- 726 **78B-22-406. Indigent defense services grant program.**
- 727 (1) The commission may:
- 728 (a) award grants to supplement local spending by an indigent defense system for
729 indigent defense[-] services; and
- 730 (b) request supplemental appropriations from the Legislature to address a deficit in the
731 Indigent Inmate Trust Fund created in Section [78B-22-455](#).
- 732 [~~(2) Commission grant money may be used for the following expenses:~~]
- 733 (2) The commission may use grant money:
- 734 (a) to assist an indigent defense system to provide indigent defense services that meet
735 the commission's [~~minimum guidelines~~] core principles for the effective representation of
736 indigent individuals;
- 737 (b) [~~the establishment and maintenance of~~] to establish and maintain local indigent
738 defense data collection systems;
- 739 (c) to provide indigent defense services in addition to [~~those~~] indigent defense services
740 that are currently being provided by an indigent defense system; [and]

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

743 (e) to reimburse an indigent defense system for the cost of providing indigent defense
744 services in an action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination
745 of Parental Rights, if the indigent defense system has complied with the commission's policies
746 and procedures for reimbursement.

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

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

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

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

759 Section 12. Section **78B-22-451** is enacted to read:

760 **78B-22-451. Office of Indigent Defense Services -- Creation.**

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

763 Section 13. Section **78B-22-452** is enacted to read:

764 **78B-22-452. Duties of the office.**

765 (1) The office shall:

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

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

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

771 (i) aid, oversee, and review compliance by indigent defense systems with the

772 commission's core principles for the effective representation of indigent individuals; and
773 (ii) provide reports regarding the operation of the commission and the provision of
774 indigent defense services by indigent defense systems in the state;
775 (d) assist indigent defense systems by reviewing contracts, and other agreements, to
776 ensure compliance with the commission's core principles for the effective representation of
777 indigent individuals;
778 (e) establish procedures for the receipt and acceptance of complaints regarding the
779 provision of indigent defense services in the state;
780 (f) establish procedures to award grants to indigent defense systems under Section
781 78B-22-406 that are consistent with the commission's core principles;
782 (g) create and enter into contracts consistent with Section 78B-22-454 to provide
783 indigent defense services for an indigent inmate who:
784 (i) is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth
785 class as defined in Section 17-50-501;
786 (ii) is charged with having committed a crime within that state prison; and
787 (iii) has been appointed counsel in accordance with Section 78B-22-203;
788 (h) assist the commission in developing and reviewing advisory caseload guidelines
789 and procedures;
790 (i) annually report to the governor, Legislature, Judiciary Interim Committee, and
791 Judicial Council, regarding:
792 (i) the operations of the commission;
793 (ii) the operations of the indigent defense systems in the state; and
794 (iii) compliance with the commission's core principles by indigent defense systems
795 receiving grants from the commission;
796 (j) submit recommendations to the commission for improving indigent defense services
797 in the state;
798 (k) publish an annual report on the commission's website; and
799 (l) perform all other duties assigned by the commission related to indigent defense
800 services.
801 (2) The office may enter into contracts and accept, allocate, and administer funds and
802 grants from any public or private person to accomplish the duties of the office.

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

806 (4) A contract, or a record prepared in relation to a contract, between the office and an
807 indigent defense service provider is a protected record in accordance with Section [63G-2-305](#).

808 Section 14. Section **78B-22-453**, which is renumbered from Section 78B-22-403 is
809 renumbered and amended to read:

810 ~~[78B-22-403].~~ **78B-22-453. Director -- Qualifications -- Staff.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

836 Section 15. Section **78B-22-454**, which is renumbered from Section 78B-22-601 is
837 renumbered and amended to read:

838 ~~[78B-22-601].~~ **78B-22-454. Defense of indigent inmates.**

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

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

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

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

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

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

849 ~~[(3)]~~ (2) A contract under this part shall ensure that indigent defense services are
850 provided in a manner consistent with ~~[the minimum guidelines]~~ the core principles described in
851 Section ~~[78B-22-301]~~ 78B-22-404.

852 ~~[(4)]~~ (3) The county attorney or district attorney of a county of the third, fourth, fifth, or
853 sixth class shall function as the prosecuting entity.

854 ~~[(5)]~~ (4) (a) A county of the third, fourth, fifth, or sixth class where a state prison is
855 located may impose an additional property tax levy by ordinance at .0001 per dollar of taxable
856 value in the county.

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

860 (c) Upon notification that the fund has reached the amount specified in Subsection
861 ~~[78B-22-602]~~ 78B-22-455(6), a county shall deposit ~~[money]~~ revenue derived from the
862 property tax levy after the county receives the notice into a county account used exclusively to
863 provide indigent defense services.

864 (d) A county that chooses not to impose the additional levy by ordinance may not

865 receive any benefit from the Indigent Inmate Trust Fund.

866 Section 16. Section **78B-22-455**, which is renumbered from Section 78B-22-602 is
867 renumbered and amended to read:

868 ~~[78B-22-602].~~ **78B-22-455. Indigent Inmate Trust Fund.**

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

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

874 (a) to pay indigent defense services for an indigent inmate in a state prison located in a
875 county of the third, fourth, fifth, or sixth class as defined in Section 17-50-501 who:

876 (i) is charged with having committed a crime within the state prison~~[-and who will~~
877 ~~require indigent defense services];~~

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

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

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

881 (3) The trust fund consists of:

882 (a) proceeds received from counties that impose the additional tax levy by ordinance
883 under Subsection ~~[78B-22-601]~~ 78B-22-454(5), which shall be the total county obligation for
884 payment of costs listed in Subsection (2) for defense services for indigent inmates;

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

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

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

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

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

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

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

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

904 Section 17. Section **78B-22-501** is amended to read:

905 **78B-22-501. Indigent Defense Funds Board -- Members -- Administrative**
906 **support.**

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

909 ~~[(1)]~~ (2) There is created the Indigent Defense Funds Board within the Division of
910 Finance ~~[the Indigent Defense Funds Board]~~.

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

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

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

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

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

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

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

923 ~~[(2)]~~ (4) Members appointed under Subsection ~~[(1)]~~ (3)(a), (b), (c), or (f) shall serve
924 four-year terms.

925 ~~[(3)]~~ (5) A vacancy is created if a member appointed under:

926 (a) Subsection ~~[(1)]~~ (3)(a) no longer serves as a county commissioner or county

927 executive; or

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

929 ~~[(4)]~~ (6) If a vacancy occurs in the membership for any reason, a replacement shall be
930 appointed for the remaining unexpired term in the same manner as the original appointment.

931 ~~[(5)]~~ (7) The Division of Finance may provide administrative support and may seek
932 payment for the costs or the board may contract for administrative support to be paid from the
933 ~~[funds described in Subsection 78B-22-502(1)(a)]~~ fund.

934 ~~[(6)]~~ (8) A member may not receive compensation or benefits for the member's service,
935 but may receive per diem and travel expenses in accordance with:

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

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

938 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
939 63A-3-107.

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

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

943 ~~[(8)]~~ (10) Five members shall constitute a quorum and, if a quorum is present, the
944 action of a majority of the members present shall constitute the action of the board.

945 Section 18. Section **78B-22-502** is amended to read:

946 **78B-22-502. Duties of board.**

947 (1) The board shall:

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

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

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

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

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

957 (d) prescribe forms for the application for money from ~~[a fund described in Subsection~~

958 ~~(1)(a)~~ the fund;

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

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

965 (g) negotiate, enter into, and administer contracts with legal counsel, qualified under
966 and meeting the standards consistent with this chapter, to provide indigent defense services to[
967 ~~(i)~~] an indigent individual prosecuted in a participating county for an offense involving
968 aggravated murder[~~; and~~].

969 [~~(ii) an indigent inmate who is incarcerated in a county described in Section~~
970 ~~78B-22-601.~~]

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