

SB0170S01 compared with SB0170

~~deleted text~~ shows text that was in SB0170 but was deleted in SB0170S01.

inserted text shows text that was not in SB0170 but was inserted into SB0170S01.

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Senator Todd Weiler proposes the following substitute bill:

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;

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- ▶ 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 }~~ This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

- ~~{ 63G-2-305, as last amended by Laws of Utah 2019, Chapters 128, 193, 244, and 277 }~~
- { 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-22-405, 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-22-501, as renumbered and amended by Laws of Utah 2019, Chapter 326
- 78B-22-502, 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

RENUMBERS AND AMENDS:

- 78B-22-453, (Renumbered from 78B-22-403, as renumbered and amended by Laws of Utah 2019, Chapter 326)
- 78B-22-454, (Renumbered from 78B-22-601, as renumbered and amended by Laws of Utah 2019, Chapter 326)
- 78B-22-455, (Renumbered from 78B-22-602, as renumbered and amended by Laws of

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Utah 2019, Chapter 326)

Utah Code Sections Affected by Coordination Clause:

78B-22-451, Utah Code Annotated 1953

78B-22-452, Utah Code Annotated 1953

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

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

Section 1. Section ~~{63G-2-305}~~78A-6-1111 is amended to read:

~~{~~ ~~**63G-2-305. Protected records.**~~

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

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

~~— (2) commercial information or nonindividual financial information obtained from a person if:~~

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

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

~~— (c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;~~

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

~~— (4) records, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);~~

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

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

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

~~—— (i) an invitation for bids;~~

~~—— (ii) a request for proposals;~~

~~—— (iii) a request for quotes;~~

~~—— (iv) a grant; or~~

~~—— (v) other similar document; or~~

~~—— (b) an unsolicited proposal, as defined in Section 63G-6a-712;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~—— (e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would~~

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~~interfere with enforcement or audit efforts;~~

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

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

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

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

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

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

~~—— (17) records that are subject to the attorney-client privilege;~~

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

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

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

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

~~—— (A) members of a legislative body;~~

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

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- ~~—— (C) members of a legislative body's staff; and~~
- ~~—— (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;~~
- ~~—— (20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and~~
- ~~—— (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;~~
- ~~—— (21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;~~
- ~~—— (22) drafts, unless otherwise classified as public;~~
- ~~—— (23) records concerning a governmental entity's strategy about:~~
 - ~~—— (a) collective bargaining; or~~
 - ~~—— (b) imminent or pending litigation;~~
- ~~—— (24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;~~
- ~~—— (25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;~~
- ~~—— (26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;~~
- ~~—— (27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;~~
- ~~—— (28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions;~~

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~~retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;~~

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

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

~~———(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;~~

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

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

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

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

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

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

~~—— (a) the donor requests anonymity in writing;~~

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

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

~~—— (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;~~

~~—— (39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;~~

~~—— (40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:~~

~~—— (i) unpublished lecture notes;~~

~~—— (ii) unpublished notes, data, and information:~~

~~—— (A) relating to research; and~~

~~—— (B) of:~~

~~—— (I) the institution within the state system of higher education defined in Section 53B-1-102; or~~

~~—— (II) a sponsor of sponsored research;~~

~~—— (iii) unpublished manuscripts;~~

~~—— (iv) creative works in process;~~

~~—— (v) scholarly correspondence; and~~

~~—— (vi) confidential information contained in research proposals;~~

~~—— (b) Subsection (40)(a) may not be construed to prohibit disclosure of public~~

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~~information required pursuant to Subsection 53B-16-302(2)(a) or (b); and~~

~~—— (c) Subsection (40)(a) may not be construed to affect the ownership of a record;~~

~~—— (41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and~~

~~—— (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;~~

~~—— (42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:~~

~~—— (a) a production facility; or~~

~~—— (b) a magazine;~~

~~—— (43) information:~~

~~—— (a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or~~

~~—— (b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;~~

~~—— (44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;~~

~~—— (45) information regarding National Guard operations or activities in support of the National Guard's federal mission;~~

~~—— (46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;~~

~~—— (47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;~~

~~—— (48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of~~

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~~which would jeopardize:~~

~~—— (a) the safety of the general public; or~~

~~—— (b) the security of:~~

~~—— (i) governmental property;~~

~~—— (ii) governmental programs; or~~

~~—— (iii) the property of a private person who provides the Division of Emergency Management information;~~

~~—— (49) records of the Department of Agriculture and Food that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control of Animal Disease;~~

~~—— (50) as provided in Section 26-39-501:~~

~~—— (a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and~~

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

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

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

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

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

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

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

~~—— (a) a declaration of candidacy, a nomination petition, or a certificate of nomination, described in Section 20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408,~~

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~~20A-9-408.5, 20A-9-502, or 20A-9-601;~~

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

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

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

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

~~—— (b) conducted using animals;~~

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

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

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

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

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

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

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

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

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

~~—— (a) records that would disclose information relating to allegations of personal~~

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~~misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;~~

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

~~—— (c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;~~

~~—— (d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or~~

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

~~—— (61) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or abuse;~~

~~—— (62) information provided to the Department of Health or the Division of Occupational and Professional Licensing under Subsection 58-68-304(3) or (4);~~

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

~~—— (64) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003;~~

~~—— (65) any record in the custody of the Utah Office for Victims of Crime relating to a victim, including:~~

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

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

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

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~~evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund;~~

~~—— (66) an audio or video recording created by a body-worn camera, as that term is defined in Section 77-7a-103, that records sound or images inside a hospital or health care facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider, as that term is defined in Section 78B-3-403, or inside a human service program as that term is defined in Section 62A-2-101, except for recordings that:~~

~~—— (a) depict the commission of an alleged crime;~~

~~—— (b) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;~~

~~—— (c) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;~~

~~—— (d) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(d); or~~

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

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

~~—— (68) an audio recording that is:~~

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

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

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

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

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

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

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

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

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

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

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

~~— (75) a record described in Section 72-16-306 that relates to the reporting of an injury involving an amusement ride[.]; and~~

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

~~— Section 2. 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 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) 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. 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 ~~33~~2. Section 78B-6-112 is amended to read:~~

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

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proceedings.

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

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

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

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

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

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

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

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

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

(i) the requirements of this chapter; or

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

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

(c) the individual:

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

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

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

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

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(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 Section 78B-22-406.

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

Section ~~{4}~~3. Section **78B-22-102** is amended to read:

78B-22-102. Definitions.

As used in this chapter:

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

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

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

(4) "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;

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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;

(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 ~~[(5)]~~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:

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(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 ~~76~~5. Section **78B-22-301** is amended to read:

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

(1) 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.

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

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

Section ~~77~~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~~

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

Section ~~{8}~~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 county of the third through sixth class;

~~[(vi)]~~ (vii) a 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~~].

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

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

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

(a) Section 63A-3-106;

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

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

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

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

Section ~~9~~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~~] 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 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;

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(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 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~~

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~~systems receiving grants from the commission;]~~

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

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

(2) 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; and

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

Section ~~{10}~~9. Section **78B-22-405** is amended to read:

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

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

(b) Appropriations from the account are nonlapsing.

(2) The account consists of:

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

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

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

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

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

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

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

(d) for administrative costs.

Section ~~{11}~~10. Section **78B-22-406** is amended to read:

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

(1) The commission may ~~+~~

~~— (a) }~~ award grants to supplement local spending by an indigent defense system for indigent defense~~[-]~~ services~~+~~; ~~and~~ ~~+~~.

~~{ — (b) request supplemental appropriations from the Legislature to address a deficit in the Indigent Inmate Trust Fund created in Section 78B-22-455.~~

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

(2) The commission may use grant money:

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

(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

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requirements of the grant or any of the commission's [~~minimum guidelines~~] core principles for the effective representation of indigent individuals.

Section ~~{12}~~11. 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 ~~{13}~~12. 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 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) create and enter into contracts consistent with Section 78B-22-454 to provide indigent defense services for an indigent inmate who:
 - (i) 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;
 - (ii) is charged with having committed a crime within that state prison; and

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

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

(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.

(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.

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

~~}~~ Section ~~{14}~~13. 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

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

Section ~~{15}~~14. Section **78B-22-454**, which is renumbered from Section 78B-22-601 is renumbered and amended to read:

~~[78B-22-601].~~ **78B-22-454. 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.]~~

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

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

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

~~[(5)]~~ (4) (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]~~ 78B-22-455 to fund the purposes of this part.

(c) Upon notification that the fund has reached the amount specified in Subsection ~~[78B-22-602]~~ 78B-22-455(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 ~~116~~ 15. Section **78B-22-455**, which is renumbered from Section 78B-22-602 is renumbered and amended to read:

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

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

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

(a) to pay indigent defense services for an indigent inmate who:
(i) 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 ~~[who]~~ is:

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

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

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

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

(3) The trust fund consists of:

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

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

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

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

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

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

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

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

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

Section ~~(17)~~ 16. Section **78B-22-501** is amended to read:

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

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

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

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Finance [~~the Indigent Defense Funds Board~~].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Section 63A-3-106;

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

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

~~[(7)]~~ Per diem and expenses for board members shall be paid from the funds described

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~~in Subsection 78B-22-502(1)(a).]~~

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

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

Section ~~{18}~~17. Section **78B-22-502** is amended to read:

78B-22-502. Duties of board.

(1) The board shall:

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

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

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

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

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

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

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

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

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

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

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

SB0170S01 compared with SB0170

Criminal Procedure, Rule 8, with which the board has a preliminary contract to provide indigent defense services for an assigned rate.

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

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

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

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

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