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DEFENSE CONTRACTS AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies and enacts provisions related to indigent and parental defense.

Highlighted Provisions:

This bill:

- ▶ creates and modifies definitions;
- ▶ 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;
- ▶ requires the Office of Indigent Defense Services to administer the Child Welfare Parental Defense Program;
- ▶ modifies provisions relating to administration of the Child Welfare Parental Defense Program;
- ▶ creates a reporting requirement for indigent defense services;
- ▶ 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:

This bill provides a coordination clause.



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **63G-2-305**, as last amended by Laws of Utah 2019, Chapters 128, 193, 244, and 277

31 **63M-7-204**, as last amended by Laws of Utah 2019, Chapter 435

32 **78A-6-1111**, as last amended by Laws of Utah 2019, Chapter 326

33 **78B-6-112**, as last amended by Laws of Utah 2019, Chapters 136, 326, and 491

34 **78B-22-102**, as enacted by Laws of Utah 2019, Chapter 326

35 **78B-22-201**, as enacted by Laws of Utah 2019, Chapter 326

36 **78B-22-401**, as renumbered and amended by Laws of Utah 2019, Chapter 326

37 **78B-22-402**, as last amended by Laws of Utah 2019, Chapter 435 and renumbered and
38 amended by Laws of Utah 2019, Chapter 326

39 **78B-22-404**, as renumbered and amended by Laws of Utah 2019, Chapter 326

40 **78B-22-406**, as renumbered and amended by Laws of Utah 2019, Chapter 326

41 ENACTS:

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

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

44 **78B-22-801**, 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-22-802**, (Renumbered from 63M-7-211, as enacted by Laws of Utah 2019, Chapter
49 435)

50 **78B-22-803**, (Renumbered from 63M-7-211.1, as enacted by Laws of Utah 2019,
51 Chapter 435)

52 **78B-22-804**, (Renumbered from 63M-7-211.2, as enacted by Laws of Utah 2019,
53 Chapter 435)

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

55 **78B-22-402**, as last amended by Laws of Utah 2019, Chapter 435 and renumbered and
56 amended by Laws of Utah 2019, Chapter 326

57 **78B-22-406**, as renumbered and amended by Laws of Utah 2019, Chapter 326

58 **78B-22-451**, Utah Code Annotated 1953

59 **78B-22-452**, Utah Code Annotated 1953
60 **78B-22-453**, Renumbered from 78B-22-403, as renumbered and amended by Laws of
61 Utah 2019, Chapter 326
62 **78B-22-803**, Renumbered from 63M-7-211.1, as enacted by Laws of Utah 2019,
63 Chapter 435

64
65 *Be it enacted by the Legislature of the state of Utah:*

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

67 **63G-2-305. Protected records.**

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

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

71 (2) commercial information or nonindividual financial information obtained from a
72 person if:

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

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

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

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

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

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

89 (6) records, the disclosure of which would impair governmental procurement

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

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

96 (i) an invitation for bids;

97 (ii) a request for proposals;

98 (iii) a request for quotes;

99 (iv) a grant; or

100 (v) other similar document; or

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

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

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

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

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

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

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

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

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

120 (d) in the case of records that would identify the appraisal or estimated value of

121 property, the potential sellers have already learned of the governmental entity's estimated value
122 of the property; or

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

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

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

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

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

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

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

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

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

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

- 152 (11) records the disclosure of which would jeopardize the life or safety of an
153 individual;
- 154 (12) records the disclosure of which would jeopardize the security of governmental
155 property, governmental programs, or governmental recordkeeping systems from damage, theft,
156 or other appropriation or use contrary to law or public policy;
- 157 (13) records that, if disclosed, would jeopardize the security or safety of a correctional
158 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
159 with the control and supervision of an offender's incarceration, treatment, probation, or parole;
- 160 (14) records that, if disclosed, would reveal recommendations made to the Board of
161 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
162 Board of Pardons and Parole, or the Department of Human Services that are based on the
163 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
164 jurisdiction;
- 165 (15) records and audit workpapers that identify audit, collection, and operational
166 procedures and methods used by the State Tax Commission, if disclosure would interfere with
167 audits or collections;
- 168 (16) records of a governmental audit agency relating to an ongoing or planned audit
169 until the final audit is released;
- 170 (17) records that are subject to the attorney client privilege;
- 171 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
172 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,
173 quasi-judicial, or administrative proceeding;
- 174 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
175 from a member of the Legislature; and
176 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
177 legislative action or policy may not be classified as protected under this section; and
178 (b) (i) an internal communication that is part of the deliberative process in connection
179 with the preparation of legislation between:
180 (A) members of a legislative body;
181 (B) a member of a legislative body and a member of the legislative body's staff; or
182 (C) members of a legislative body's staff; and

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

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

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

193 (21) research requests from legislators to the Office of Legislative Research and
194 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
195 in response to these requests;

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

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

198 (a) collective bargaining; or

199 (b) imminent or pending litigation;

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

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

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

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

211 (28) records of an institution within the state system of higher education defined in
212 Section [53B-1-102](#) regarding tenure evaluations, appointments, applications for admissions,
213 retention decisions, and promotions, which could be properly discussed in a meeting closed in

214 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
215 the final decisions about tenure, appointments, retention, promotions, or those students
216 admitted, may not be classified as protected under this section;

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

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

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

228 (32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a
229 public body except as provided in Section [52-4-206](#);

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

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

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

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

244 (37) the name of a donor or a prospective donor to a governmental entity, including an

245 institution within the state system of higher education defined in Section 53B-1-102, and other
246 information concerning the donation that could reasonably be expected to reveal the identity of
247 the donor, provided that:

248 (a) the donor requests anonymity in writing;

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

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

256 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
257 73-18-13;

258 (39) a notification of workers' compensation insurance coverage described in Section
259 34A-2-205;

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

263 (i) unpublished lecture notes;

264 (ii) unpublished notes, data, and information:

265 (A) relating to research; and

266 (B) of:

267 (I) the institution within the state system of higher education defined in Section
268 53B-1-102; or

269 (II) a sponsor of sponsored research;

270 (iii) unpublished manuscripts;

271 (iv) creative works in process;

272 (v) scholarly correspondence; and

273 (vi) confidential information contained in research proposals;

274 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
275 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

276 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
277 (41) (a) records in the custody or control of the Office of Legislative Auditor General
278 that would reveal the name of a particular legislator who requests a legislative audit prior to the
279 date that audit is completed and made public; and
280 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
281 Office of the Legislative Auditor General is a public document unless the legislator asks that
282 the records in the custody or control of the Office of Legislative Auditor General that would
283 reveal the name of a particular legislator who requests a legislative audit be maintained as
284 protected records until the audit is completed and made public;
285 (42) records that provide detail as to the location of an explosive, including a map or
286 other document that indicates the location of:
287 (a) a production facility; or
288 (b) a magazine;
289 (43) information:
290 (a) contained in the statewide database of the Division of Aging and Adult Services
291 created by Section [62A-3-311.1](#); or
292 (b) received or maintained in relation to the Identity Theft Reporting Information
293 System (IRIS) established under Section [67-5-22](#);
294 (44) information contained in the Management Information System and Licensing
295 Information System described in Title 62A, Chapter 4a, Child and Family Services;
296 (45) information regarding National Guard operations or activities in support of the
297 National Guard's federal mission;
298 (46) records provided by any pawn or secondhand business to a law enforcement
299 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
300 Secondhand Merchandise Transaction Information Act;
301 (47) information regarding food security, risk, and vulnerability assessments performed
302 by the Department of Agriculture and Food;
303 (48) except to the extent that the record is exempt from this chapter pursuant to Section
304 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or
305 prepared or maintained by the Division of Emergency Management, and the disclosure of
306 which would jeopardize:

- 307 (a) the safety of the general public; or
- 308 (b) the security of:
 - 309 (i) governmental property;
 - 310 (ii) governmental programs; or
 - 311 (iii) the property of a private person who provides the Division of Emergency
 - 312 Management information;
- 313 (49) records of the Department of Agriculture and Food that provides for the
- 314 identification, tracing, or control of livestock diseases, including any program established under
- 315 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control
- 316 of Animal Disease;
- 317 (50) as provided in Section [26-39-501](#):
 - 318 (a) information or records held by the Department of Health related to a complaint
 - 319 regarding a child care program or residential child care which the department is unable to
 - 320 substantiate; and
 - 321 (b) information or records related to a complaint received by the Department of Health
 - 322 from an anonymous complainant regarding a child care program or residential child care;
- 323 (51) unless otherwise classified as public under Section [63G-2-301](#) and except as
- 324 provided under Section [41-1a-116](#), an individual's home address, home telephone number, or
- 325 personal mobile phone number, if:
 - 326 (a) the individual is required to provide the information in order to comply with a law,
 - 327 ordinance, rule, or order of a government entity; and
 - 328 (b) the subject of the record has a reasonable expectation that this information will be
 - 329 kept confidential due to:
 - 330 (i) the nature of the law, ordinance, rule, or order; and
 - 331 (ii) the individual complying with the law, ordinance, rule, or order;
- 332 (52) the portion of the following documents that contains a candidate's residential or
- 333 mailing address, if the candidate provides to the filing officer another address or phone number
- 334 where the candidate may be contacted:
 - 335 (a) a declaration of candidacy, a nomination petition, or a certificate of nomination,
 - 336 described in Section [20A-9-201](#), [20A-9-202](#), [20A-9-203](#), [20A-9-404](#), [20A-9-405](#), [20A-9-408](#),
 - 337 [20A-9-408.5](#), [20A-9-502](#), or [20A-9-601](#);

338 (b) an affidavit of impecuniosity, described in Section 20A-9-201; or
339 (c) a notice of intent to gather signatures for candidacy, described in Section
340 20A-9-408;

341 (53) the name, home address, work addresses, and telephone numbers of an individual
342 that is engaged in, or that provides goods or services for, medical or scientific research that is:
343 (a) conducted within the state system of higher education, as defined in Section
344 53B-1-102; and
345 (b) conducted using animals;

346 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance
347 Evaluation Commission concerning an individual commissioner's vote on whether or not to
348 recommend that the voters retain a judge including information disclosed under Subsection
349 78A-12-203(5)(e);

350 (55) information collected and a report prepared by the Judicial Performance
351 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
352 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
353 the information or report;

354 (56) records contained in the Management Information System created in Section
355 62A-4a-1003;

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

358 (58) information requested by and provided to the 911 Division under Section
359 63H-7a-302;

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

361 (a) a management plan for a water conveyance facility in the possession of the Division
362 of Water Resources or the Board of Water Resources; or
363 (b) an outline of an emergency response plan in possession of the state or a county or
364 municipality;

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

367 (a) records that would disclose information relating to allegations of personal
368 misconduct, gross mismanagement, or illegal activity of a person if the information or

369 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
370 through other documents or evidence, and the records relating to the allegation are not relied
371 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation
372 report or final audit report;

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

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

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

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

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

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

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

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

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

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

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

398 (c) any administrative notes or records made or created for the purpose of, or used to,
399 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim

400 Reparations Fund;

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

- 406 (a) depict the commission of an alleged crime;
- 407 (b) record any encounter between a law enforcement officer and a person that results in
408 death or bodily injury, or includes an instance when an officer fires a weapon;
- 409 (c) record any encounter that is the subject of a complaint or a legal proceeding against
410 a law enforcement officer or law enforcement agency;
- 411 (d) contain an officer involved critical incident as defined in Subsection
412 76-2-408(1)(d); or
- 413 (e) have been requested for reclassification as a public record by a subject or
414 authorized agent of a subject featured in the recording;

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

- 418 (68) an audio recording that is:
 - 419 (a) produced by an audio recording device that is used in conjunction with a device or
420 piece of equipment designed or intended for resuscitating an individual or for treating an
421 individual with a life-threatening condition;
 - 422 (b) produced during an emergency event when an individual employed to provide law
423 enforcement, fire protection, paramedic, emergency medical, or other first responder service:
 - 424 (i) is responding to an individual needing resuscitation or with a life-threatening
425 condition; and
 - 426 (ii) uses a device or piece of equipment designed or intended for resuscitating an
427 individual or for treating an individual with a life-threatening condition; and
 - 428 (c) intended and used for purposes of training emergency responders how to improve
429 their response to an emergency situation;
- 430 (69) records submitted by or prepared in relation to an applicant seeking a

431 recommendation by the Research and General Counsel Subcommittee, the Budget
 432 Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an
 433 employment position with the Legislature;

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

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

437 (72) a record submitted to the Insurance Department in accordance with Section
 438 31A-37-201; [and]

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

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

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

444 (76) a contract, or a record prepared in relation to a contract, between the Office of
 445 Indigent Defense Services, created in Section 78B-22-451, and a contracted parental defense
 446 attorney, as defined in Section 78B-22-801.

447 Section 2. Section 63M-7-204 is amended to read:

448 **63M-7-204. Duties of commission.**

449 (1) The State Commission on Criminal and Juvenile Justice administration shall:

450 (a) promote the commission's purposes as enumerated in Section 63M-7-201;

451 (b) promote the communication and coordination of all criminal and juvenile justice
 452 agencies;

453 (c) study, evaluate, and report on the status of crime in the state and on the
 454 effectiveness of criminal justice policies, procedures, and programs that are directed toward the
 455 reduction of crime in the state;

456 (d) study, evaluate, and report on programs initiated by state and local agencies to
 457 address reducing recidivism, including changes in penalties and sentencing guidelines intended
 458 to reduce recidivism, costs savings associated with the reduction in the number of inmates, and
 459 evaluation of expenses and resources needed to meet goals regarding the use of treatment as an
 460 alternative to incarceration, as resources allow;

461 (e) study, evaluate, and report on policies, procedures, and programs of other

462 jurisdictions which have effectively reduced crime;

463 (f) identify and promote the implementation of specific policies and programs the
464 commission determines will significantly reduce crime in Utah;

465 (g) provide analysis and recommendations on all criminal and juvenile justice
466 legislation, state budget, and facility requests, including program and fiscal impact on all
467 components of the criminal and juvenile justice system;

468 (h) provide analysis, accountability, recommendations, and supervision for state and
469 federal criminal justice grant money;

470 (i) provide public information on the criminal and juvenile justice system and give
471 technical assistance to agencies or local units of government on methods to promote public
472 awareness;

473 (j) promote research and program evaluation as an integral part of the criminal and
474 juvenile justice system;

475 (k) provide a comprehensive criminal justice plan annually;

476 (l) review agency forecasts regarding future demands on the criminal and juvenile
477 justice systems, including specific projections for secure bed space;

478 (m) promote the development of criminal and juvenile justice information systems that
479 are consistent with common standards for data storage and are capable of appropriately sharing
480 information with other criminal justice information systems by:

481 (i) developing and maintaining common data standards for use by all state criminal
482 justice agencies;

483 (ii) annually performing audits of criminal history record information maintained by
484 state criminal justice agencies to assess their accuracy, completeness, and adherence to
485 standards;

486 (iii) defining and developing state and local programs and projects associated with the
487 improvement of information management for law enforcement and the administration of
488 justice; and

489 (iv) establishing general policies concerning criminal and juvenile justice information
490 systems and making rules as necessary to carry out the duties under Subsection (1)(k) and this
491 Subsection (1)(m);

492 (n) allocate and administer grants, from money made available, for approved education

493 programs to help prevent the sexual exploitation of children;

494 (o) allocate and administer grants funded from money from the Law Enforcement
495 Operations Account created in Section 51-9-411 for law enforcement operations and programs
496 related to reducing illegal drug activity and related criminal activity;

497 (p) request, receive, and evaluate data and recommendations collected and reported by
498 agencies and contractors related to policies recommended by the commission regarding
499 recidivism reduction;

500 (q) establish and administer a performance incentive grant program that allocates funds
501 appropriated by the Legislature to programs and practices implemented by counties that reduce
502 recidivism and reduce the number of offenders per capita who are incarcerated;

503 (r) oversee or designate an entity to oversee the implementation of juvenile justice
504 reforms;

505 (s) make rules and administer the juvenile holding room standards and juvenile jail
506 standards to align with the Juvenile Justice and Delinquency Prevention Act requirements
507 pursuant to 42 U.S.C. Sec. 5633;

508 (t) allocate and administer grants, from money made available, for pilot qualifying
509 education programs; and

510 (u) oversee the trauma-informed justice program described in Section 63M-7-209[;
511 and].

512 [~~(v) administer the Child Welfare Parental Defense Program in accordance with~~
513 ~~Sections 63M-7-211, 63M-7-211.1, and 63M-7-211.2.]~~

514 (2) If the commission designates an entity under Subsection (1)(r), the commission
515 shall ensure that the membership of the entity includes representation from the three branches
516 of government and, as determined by the commission, representation from relevant stakeholder
517 groups across all parts of the juvenile justice system, including county representation.

518 Section 3. Section 78A-6-1111 is amended to read:

519 **78A-6-1111. Order for indigent defense service or guardian ad litem.**

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

523 (2) (a) In any action under Part 3, Abuse, Neglect, and Dependency Proceedings, or

524 Part 5, Termination of Parental Rights Act, the child shall be represented by a guardian ad
525 litem in accordance with Sections 78A-6-317 and 78A-6-902.

526 (b) The child shall [~~also~~] be represented by an attorney guardian ad litem in other
527 actions initiated under this chapter when appointed by the court under Section 78A-6-902 or as
528 otherwise provided by law.

529 Section 4. Section 78B-6-112 is amended to read:

530 **78B-6-112. District court jurisdiction over termination of parental rights**
531 **proceedings.**

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

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

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

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

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

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

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

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

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

548 (i) the requirements of this chapter; or

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

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

552 (c) the individual:

553 (i) received notice of the adoption proceeding relating to the child under Section
554 78B-6-110; and

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

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

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

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

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

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

573 Section 5. Section **78B-22-102** is amended to read:

574 **78B-22-102. Definitions.**

575 As used in this chapter:

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

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

579 (3) "Commission" means the Utah Indigent Defense Commission created in Section
580 [78B-22-401](#).

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

583 [~~(4)~~] (5) (a) "Indigent defense resources" means the resources necessary to provide an
584 effective defense for an indigent individual, including the costs for a competent investigator,
585 expert witness, scientific or medical testing, transcripts, and printing briefs.

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

587 ~~[(5)]~~ (6) "Indigent defense service provider" means an attorney or entity appointed to
588 represent an indigent individual pursuant to:

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

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

591 ~~[(6)]~~ (7) "Indigent defense services" means:

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

593 and

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

595 ~~[(7)]~~ (8) "Indigent defense system" means:

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

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

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

603 ~~[(8)]~~ (9) "Indigent individual" means:

604 (a) a minor who is:

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

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

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

609 (b) an individual listed in Subsection [78B-22-201\(1\)](#) who is found indigent pursuant to
610 Section [78B-22-202](#).

611 ~~[(9)]~~ (10) "Minor" means the same as that term is defined in Section [78A-6-105](#).

612 (11) "Office" means the Office of Indigent Defense Services created in Section
613 [78B-22-451](#).

614 ~~[(10)]~~ (12) "Participating county" means a county that complies with this chapter for
615 participation in the Indigent Aggravated Murder Defense Trust Fund as provided in Sections
616 [78B-22-702](#) and [78B-22-703](#).

617 Section 6. Section **78B-22-201** is amended to read:

618 **78B-22-201. Right to counsel.**

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

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

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

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

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

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

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

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

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

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

631 [~~(e)~~] (d) an individual described in this Subsection (1), who is appealing [a first appeal
632 from] a conviction or other final court action.

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

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

637 **78B-22-401. Utah Indigent Defense Commission -- Creation -- Purpose.**

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

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

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

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

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

647 **78B-22-402. Commission members -- Member qualifications -- Terms -- Vacancy.**

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

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

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

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

656 (iii) one attorney practicing in the area of parental defense, recommended by an entity
657 funded under the Child Welfare Parental Defense Program created in Section 78B-22-802;

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

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

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

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

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

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

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

671 ~~[(x)]~~ (c) The speaker of the House of Representatives and the president of the Senate
672 shall jointly select two members of the Utah Legislature, one from the House of
673 Representatives and one from the Senate~~[-selected jointly by the Speaker of the House and~~
674 ~~President of the Senate].~~

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

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

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

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

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

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

689 (5) ~~[A person]~~ An individual who is currently employed solely as a criminal
690 prosecuting attorney may not serve as a member of the commission.

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

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

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

696 (9) (a) The commission shall ~~[annually]~~ elect annually a chair from the commission's
697 membership to serve a one-year term.

698 (b) A commission member may not serve as chair of the commission for more than
699 three consecutive terms.

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

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

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

704 (c) rules made by the Division of Finance ~~[pursuant to]~~ in accordance with Sections
705 63A-3-106 and 63A-3-107.

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

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

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

710 **78B-22-404. Powers and duties of the commission.**

711 (1) The commission shall:

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

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

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

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

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

720 (A) the ability to exercise independent judgment without fear of retaliation and is free

721 to represent an indigent individual based on the indigent defense service provider's own

722 independent judgment;

723 (B) adequate access to indigent defense resources;

724 (C) the ability to provide representation to accused individuals in criminal cases at the

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

726 delinquency and child welfare proceedings;

727 (D) a workload that allows for sufficient time to meet with clients, investigate cases,

728 file appropriate documents with the courts, and otherwise provide effective assistance of

729 counsel to each client;

730 (E) adequate compensation without financial disincentives;

731 (F) appropriate experience or training in the area for which the indigent defense service

732 provider is representing indigent individuals;

733 (G) compensation for legal training and education in the areas of the law relevant to the

734 types of cases for which the indigent defense service provider is representing indigent

735 individuals; and

736 (H) the ability to meet the obligations of the Utah Rules of Professional Conduct,

737 including expectations on client communications and managing conflicts of interest;

738 (b) encourage and aid indigent defense systems in the state in the regionalization of

739 indigent defense services to provide for effective and efficient representation to the indigent

740 individuals;

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

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

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

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

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

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

755 ~~[(g) establish procedures to award grants to indigent defense systems under Section~~
756 ~~78B-22-406 consistent with the commission's minimum guidelines for the effective~~
757 ~~representation of indigent individuals and appropriations by the state;]~~

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

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

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

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

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

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

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

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

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

773 (2) The commission may:

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

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

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

779 **78B-22-406. Indigent defense services grant program.**

780 (1) The commission may:

781 (a) award grants to supplement local spending by an indigent defense system for
782 indigent defense[-] services; and

783 (b) request supplemental appropriations from the Legislature to address a deficit in the
784 Child Welfare Parental Defense Fund created in Section [78B-22-804](#).

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

786 (2) The commission may use grant money:

787 (a) to assist an indigent defense system to provide indigent defense services that meet
788 the commission's minimum guidelines for the effective representation of indigent individuals;

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

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

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

795 (e) to pay for indigent defense resources and costs and expenses for parental defense
796 attorneys as described in Subsection [78B-22-804\(2\)](#).

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

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

803 (b) a grant from the commission is necessary for the indigent defense system to meet
804 the commission's minimum guidelines for the effective representation of indigent individuals.

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

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

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

810 **78B-22-451. Office of Indigent Defense Services -- Creation.**

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

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

814 **78B-22-452. Duties of the office.**

815 (1) The office shall:

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

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

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

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

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

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

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

830 (f) establish procedures to award grants to indigent defense systems under Section
831 [78B-22-406](#) that are consistent with the commission's minimum guidelines;

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

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

837 (i) administer the Child Welfare Parental Defense Program in accordance with Part 8,
838 Child Welfare Parental Defense Program;

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

841 (i) the operations of the commission;

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

843 (iii) compliance with the commission's minimum guidelines by indigent defense
844 systems receiving grants from the commission;

845 (k) submit recommendations to the commission for improving indigent defense
846 services in the state;

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

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

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

852 (3) Any contract entered into under this part shall require that indigent defense services
853 are provided in a manner consistent with the commission's minimum guidelines implemented
854 under Section [78B-22-404](#).

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

857 ~~[78B-22-403].~~ **78B-22-453. Director -- Qualifications -- Staff.**

858 (1) The [~~commission~~] executive director of the State Commission on Criminal and
859 Juvenile Justice shall appoint a director to carry out the [~~following duties:~~] duties of the office
860 described in Section [78B-22-452](#).

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

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

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

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

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

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

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

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

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

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

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

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

884 **Part 8. Child Welfare Parental Defense Program**

885 **78B-22-801. Definitions.**

886 As used in this part:

887 (1) "Child welfare case" means a proceeding under Title 78A, Chapter 6, Part 3,
888 Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of Parental Rights Act.

889 (2) "Contracted parental defense attorney" means an attorney who represents an
890 indigent individual who is a parent in a child welfare case under a contract with the office or a
891 contributing county.

892 (3) "Contributing county" means a county that complies with this part for participation
893 in the Child Welfare Parental Defense Fund described in Section [78B-22-804](#).

894 (4) "Fund" means the Child Welfare Parental Defense Fund created in Section
895 [78B-22-804](#).

896 (5) "Program" means the Child Welfare Parental Defense Program created in Section
897 [78B-22-802](#).

898 Section 15. Section **78B-22-802**, which is renumbered from Section 63M-7-211 is
899 renumbered and amended to read:

900 ~~[63M-7-211].~~ **78B-22-802. Child Welfare Parental Defense Program --**
901 **Creation -- Duties -- Administrator -- Annual report -- Budget -- Records access.**

902 ~~[(1) As used in this section and Sections [63M-7-211.1](#) and [63M-7-211.2](#):]~~

903 ~~[(a) "Child welfare case" means a proceeding under Title 78A, Chapter 6, Part 3,~~
904 ~~Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of Parental Rights Act.]~~

905 ~~[(b) "Commission" means the Commission on Criminal and Juvenile Justice created in~~
906 ~~Section [63M-7-201](#).:]~~

907 ~~[(c) "Contracted parental defense attorney" means a parental defense attorney who is~~
908 ~~under contract with the commission to provide parental defense in a child welfare case.]~~

909 ~~[(d) "Executive director" means the executive director of the commission appointed~~
910 ~~under Section [63M-7-203](#).:]~~

911 ~~[(e) "Fund" means the Child Welfare Parental Defense Fund established in Section~~
912 ~~[63M-7-211.2](#).:]~~

913 ~~[(f) "Parental defense attorney" means an attorney, law firm, or group of attorneys~~
914 ~~who:]~~

915 ~~[(i) are authorized to practice law in the state; and]~~

916 ~~[(ii) provide legal representation under contract with the commission, or a county in the~~
917 ~~state, to a parent who is a party in a child welfare case.]~~

918 ~~[(g) "Program" means the Child Welfare Parental Defense Program created in this~~
919 ~~section.]~~

920 ~~[(2)]~~ (1) There is created within the commission the Child Welfare Parental Defense
921 Program.

922 ~~[(3) The commission shall:]~~

923 ~~[(a) administer and enforce this section;]~~

924 ~~[(b) manage the operation and budget of the program;]~~

925 ~~[(c) provide assistance and advice to parental defense attorneys;]~~

926 ~~[(d) develop and provide educational and training programs for parental defense~~

927 attorneys; and]

928 ~~[(e) provide information and advice to assist a parental defense attorney to comply with~~
929 ~~the attorney's professional, contractual, and ethical duties.]~~

930 ~~[(4) The commission may]~~

931 (2) (a) The office shall:

932 (i) administer and enforce the program in accordance with this part;

933 (ii) manage the operation and budget of the program;

934 (iii) develop and provide educational and training programs for contracted parental
935 defense attorneys; and

936 (iv) provide information and advice to assist a contracted parental defense attorney to
937 comply with the attorney's professional, contractual, and ethical duties.

938 (b) In administering the program, the office shall contract with:

939 ~~[(a)]~~ (i) a person who is qualified to perform the program duties under this section; and

940 ~~[(b)]~~ (ii) an attorney [authorized to practice law in the state], as an independent
941 contractor, [to serve as a parental defense attorney under this section.] in accordance with
942 Section 78B-22-803.

943 ~~[(5) (a) On or before October 1 of each year, the executive director shall report to the~~
944 ~~governor and the Child Welfare Legislative Oversight Panel regarding the preceding fiscal year~~
945 ~~on the operations, activities, and goals of the program.]~~

946 ~~[(b)]~~ (3) (a) The [executive] director shall prepare a budget of:

947 (i) the administrative expenses for the program; and

948 (ii) the amount estimated to fund needed contracts and other costs.

949 ~~[(c) The professional legislative staff may include summary data and nonidentifying~~
950 ~~information in the staff's audits and reports to the Legislature.]~~

951 (b) On or before October 1 of each year, the director shall report to the governor and
952 the Child Welfare Legislative Oversight Panel regarding the preceding fiscal year on the
953 operations, activities, and goals of the program.

954 ~~[(6) (a) (i)]~~ (4) (a) Notwithstanding Title 63G, Chapter 2, Government Records Access
955 and Management Act, [and except as provided in Subsection (6)(b);] a record of a contracted
956 parental defense attorney [is protected and may not be released or made public upon subpoena,
957 search warrant, discovery proceedings, or otherwise. (ii) A record of a contracted parental

958 ~~defense attorney~~] is subject to legislative subpoena, under Title 36, Chapter 14, Legislative
959 Subpoena Powers.

960 (b) ~~[The]~~ Except as provided in Subsection (4)(c), the Legislature shall maintain a
961 record released in accordance with Subsection ~~[(6)(a)(ii)]~~ (4)(a) as confidential.

962 (c) The professional legislative staff may include summary data and nonidentifying
963 information in the staff's audits and reports to the Legislature.

964 Section 16. Section **78B-22-803**, which is renumbered from Section 63M-7-211.1 is
965 renumbered and amended to read:

966 ~~[63M-7-211.1].~~ **78B-22-803. Child welfare parental defense contracts.**

967 (1) (a) The ~~[commission]~~ office may enter into a contract with ~~[a parental defense]~~ an
968 attorney to provide indigent defense services for ~~[an indigent]~~ a parent who is the subject of a
969 petition alleging abuse, neglect, or dependency, and requires ~~[a parental defense attorney~~
970 ~~under]~~ indigent defense services under Section 78A-6-1111.

971 (b) ~~[Payment]~~ The office shall make payment for the representation, costs, and
972 expenses of a contracted parental defense attorney ~~[shall be made]~~ from the Child Welfare
973 Parental Defense Fund in accordance with Section ~~[63M-7-211.2]~~ 78B-22-804.

974 ~~[(c) The parental defense attorney shall maintain the minimum qualifications as~~
975 ~~provided by this section.]~~

976 ~~[(2) A contracted parental defense attorney shall:]~~

977 ~~[(a) adequately prepare for and attend all court hearings, including initial and continued~~
978 ~~shelter hearings and mediations;]~~

979 ~~[(b) fully advise the client of the nature of the proceedings and of the client's rights,~~
980 ~~communicate to the client any offers of settlement or compromise, and advise the client~~
981 ~~regarding the reasonably foreseeable consequences of any course of action in the proceedings;]~~

982 ~~[(c) be reasonably available to consult with the client outside of court proceedings;]~~

983 ~~[(d) where attendance is reasonably necessary, attend meetings regarding the client's~~
984 ~~case with representatives of one or more of the Division of Child and Family Services, the~~
985 ~~Office of the Attorney General, or the Office of Guardian Ad Litem;]~~

986 ~~[(e) represent the interest of the client at all stages of the proceedings before the trial~~
987 ~~court, and on appeal as required by law; and]~~

988 ~~[(f) participate in the training courses and otherwise maintain the standards described~~

989 in Subsection (4).]

990 [~~(3)~~ If the commission enters into a contract with a firm to provide parental defense
 991 attorney services under this section, the contract shall require that each attorney in the firm who
 992 will provide representation of a parent in a child welfare case under the contract perform the
 993 duties described in Subsection (2).]

994 [~~(4)~~] (2) (a) Except as [~~otherwise~~] provided in Subsection [~~(4)~~] (2)(b), a contracted
 995 parental defense attorney shall:

996 (i) complete a basic training course provided by the [~~program~~] office;

997 (ii) provide parental defense services consistent with the commission's minimum
 998 guidelines described in Section [78B-22-404](#);

999 [~~(ii)~~] (iii) have experience in child welfare cases; and

1000 [~~(iii)~~] (iv) participate each calendar year in continuing legal education courses
 1001 providing no fewer than eight hours of instruction in child welfare law.

1002 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 1003 commission may, by rule, exempt from the requirements of Subsection [~~(4)~~] (2)(a) an attorney
 1004 who has equivalent training or adequate experience.

1005 Section 17. Section **78B-22-804**, which is renumbered from Section 63M-7-211.2 is
 1006 renumbered and amended to read:

1007 **~~[63M-7-211.2].~~ [78B-22-804](#). Child Welfare Parental Defense Fund --**
 1008 **Contracts for coverage by the Child Welfare Parental Defense Fund.**

1009 (1) There is created an expendable special revenue fund known as the "Child Welfare
 1010 Parental Defense Fund."

1011 (2) Subject to availability, the [~~commission~~] office may make distributions from the
 1012 fund [~~as required in this section or Section [63M-7-211](#) or [63M-7-211.1](#)]~~ for the following
 1013 purposes:

1014 (a) to pay for [~~the representation, costs, expert witness fees, and expenses of]~~ indigent
 1015 defense resources for contracted parental defense attorneys [~~who are under contract with the~~
 1016 ~~commission to provide parental defense in child welfare cases for an indigent parent that is the~~
 1017 ~~subject of a petition alleging abuse, neglect, or dependency]~~;

1018 (b) for administrative costs [~~under this section or Section [63M-7-211](#) or [63M-7-211.1](#)]~~
 1019 of the program; and

1020 (c) for reasonable expenses directly related to the functioning of the program, including
1021 training and travel expenses.

1022 (3) The fund consists of:

1023 (a) appropriations made to the fund by the Legislature;

1024 (b) interest and earnings from the investment of fund money;

1025 (c) proceeds deposited by [~~participating~~] contributing counties under this section; and

1026 (d) private contributions to the fund.

1027 (4) The state treasurer shall invest the money in the fund by following the procedures

1028 and requirements of Title 51, Chapter 7, State Money Management Act.

1029 (5) (a) If the [~~commission~~] office anticipates a deficit in the fund during a fiscal year:

1030 (i) the commission [~~shall~~] may request an appropriation from the Legislature; and

1031 (ii) the Legislature may fund the anticipated deficit through appropriation.

1032 (b) If the anticipated deficit is not funded by the Legislature, the [~~commission~~] office

1033 may request an interim assessment to participating counties as described in Subsection (6) to

1034 fund the anticipated deficit.

1035 (6) (a) A county legislative body and the [~~commission~~] office may annually enter into a

1036 [~~written agreement~~] contract for the [~~commission~~] office to provide parental defense attorney

1037 services in the contributing county out of the fund.

1038 (b) The [~~agreement~~] contract described under Subsection (6)(a) shall:

1039 (i) require the contributing county to pay into the fund an amount defined by a formula

1040 established by the commission by rule under Title 63G, Chapter 3, Utah Administrative

1041 Rulemaking Act; and

1042 (ii) provide for revocation of the agreement for failure to pay an assessment on the due

1043 date established by the commission by rule under Title 63G, Chapter 3, Utah Administrative

1044 Rulemaking Act.

1045 (7) (a) After the first year of operation of the fund, any contributing county that elects

1046 to initiate participation in the fund, or reestablish participation in the fund after participation

1047 was terminated, [~~shall be~~] is required to make an equity payment, in addition to the assessment

1048 provided in Subsection (5).

1049 (b) The commission shall determine the amount of the equity payment described in

1050 Subsection (7)(a) by rule established by the commission under Title 63G, Chapter 3, Utah

1051 Administrative Rulemaking Act.

1052 (8) A contributing county that elects to withdraw from participation in the fund, or
1053 whose participation in the fund is revoked due to failure to pay the contributing county's
1054 assessment, as described in Subsection (6), when due, shall forfeit any right to any previously
1055 paid assessment by the contributing county or coverage from the fund.

1056 Section 18. **Coordinating S.B. 175 with S.B. 139 -- Substantive and technical**
1057 **amendments.**

1058 If this S.B. 175 and S.B. 139, Amendments to Indigent Defense, both pass and become
1059 law, it is the intent of the Legislature that the Office of Legislative Research and General
1060 Counsel shall prepare the Utah Code database for publication as follows:

1061 (1) Subsection 78B-22-406(1) is amended to read:

1062 "(1) The commission may:

1063 (a) award grants to supplement local spending by an indigent defense system for
1064 indigent defense[-] services;

1065 (b) enter into contracts for indigent defense services for an appeal from a juvenile court
1066 proceeding in a county of the third, fourth, fifth, or sixth class; and

1067 (c) request supplemental appropriations from the Legislature to address a deficit in the
1068 Child Welfare Parental Defense Fund created in Section 78B-22-804.";

1069 (2) the amendments to Section 78B-22-451 in this bill supersede the amendments to
1070 Section 78B-22-451 in S.B. 139;

1071 (3) the amendments to Section 78B-22-403, renumbered and amended by this bill,
1072 supersede the amendments to Section 78B-22-403, renumbered and amended by S.B. 139;

1073 (4) the amendments to Section 78B-22-402 in this bill supersede the amendments to
1074 Section 78B-22-402 in S.B. 139;

1075 (5) the terminology in Subsection 78B-22-803(2)(a)(ii) in this bill is changed from
1076 "minimum guidelines" to "core principles"; and

1077 (6) Section 78B-22-452 is modified to read:

1078 **"78B-22-452. Duties of the office.**

1079 (1) The office shall:

1080 (a) establish an annual budget for the Indigent Defense Resources Restricted Account
1081 created in Section 78B-22-405;

- 1082 (b) assist the commission in performing the commission's statutory duties described in
1083 this chapter;
- 1084 (c) identify and collect data that is necessary for the commission to:
- 1085 (i) aid, oversee, and review compliance by indigent defense systems with the
1086 commission's core principles for the effective representation of indigent individuals; and
- 1087 (ii) provide reports regarding the operation of the commission and the provision of
1088 indigent defense services by indigent defense systems in the state;
- 1089 (d) assist indigent defense systems by reviewing contracts and other agreements to
1090 ensure compliance with the commission's core principles for the effective representation of
1091 indigent individuals;
- 1092 (e) establish procedures for the receipt and acceptance of complaints regarding the
1093 provision of indigent defense services in the state;
- 1094 (f) establish procedures to award grants to indigent defense systems under Section
1095 [78B-22-406](#) that are consistent with the commission's core principles;
- 1096 (g) assist the commission in developing and reviewing advisory caseload guidelines
1097 and procedures;
- 1098 (h) investigate, audit, and review the provision of indigent defense services to ensure
1099 compliance with the commission's core principles for the effective representation of indigent
1100 individuals;
- 1101 (i) administer the Child Welfare Parental Defense Program in accordance with Part 8,
1102 Child Welfare Parental Defense Program;
- 1103 (j) annually report to the governor, Legislature, Judiciary Interim Committee, and
1104 Judicial Council, regarding:
- 1105 (i) the operations of the commission;
- 1106 (ii) the operations of the indigent defense systems in the state; and
- 1107 (iii) compliance with the commission's core principles by indigent defense systems
1108 receiving grants from the commission;
- 1109 (k) submit recommendations to the commission for improving indigent defense
1110 services in the state;
- 1111 (l) publish an annual report on the commission's website; and
- 1112 (m) perform all other duties assigned by the commission related to indigent defense

1113 services.

1114 (2) The office may enter into contracts and accept, allocate, and administer funds and
1115 grants from any public or private person to accomplish the duties of the office.

1116 (3) Any contract entered into under this part shall require that indigent defense services
1117 are provided in a manner consistent with the commission's core principles implemented under
1118 Section [78B-22-404](#)."