

Senator Wayne A. Harper proposes the following substitute bill:

PARENTAL DEFENSE AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to parental representation in a child welfare case.

Highlighted Provisions:

This bill:

- ▶ modifies definitions and terminology referring to "parental defense";
- ▶ changes the name of the "Child Welfare Parental Defense Program" to the "Child Welfare Parental Representation Program";
- ▶ changes the name of the "Child Welfare Parental Defense Fund" to the "Child Welfare Parental Representation Fund"; and
- ▶ make technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-22-102, as last amended by Laws of Utah 2020, Chapters 371, 392, and 395

78B-22-402, as last amended by Laws of Utah 2020, Chapters 352, 371, 373, 392, 395



26 and last amended by Coordination Clause, Laws of Utah 2020, Chapter 395
 27 [78B-22-404](#), as last amended by Laws of Utah 2020, Chapters 371, 392, and 395
 28 [78B-22-406](#), as last amended by Laws of Utah 2020, Chapters 371, 392, and 395
 29 [78B-22-452](#), as enacted by Laws of Utah 2020, Chapters 371, 392, 395 and last
 30 amended by Coordination Clause, Laws of Utah 2020, Chapters 392, and 395
 31 [78B-22-453](#), as renumbered and amended by Laws of Utah 2020, Chapters 371, 392,
 32 395 and last amended by Coordination Clause, Laws of Utah 2020, Chapters 392,
 33 and 395
 34 [78B-22-801](#), as enacted by Laws of Utah 2020, Chapter 395
 35 [78B-22-802](#), as renumbered and amended by Laws of Utah 2020, Chapter 395
 36 [78B-22-803](#), as renumbered and amended by Laws of Utah 2020, Chapter 395 and last
 37 amended by Coordination Clause, Laws of Utah 2020, Chapter 395
 38 [78B-22-804](#), as renumbered and amended by Laws of Utah 2020, Chapter 395

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

41 Section 1. Section **78B-22-102** is amended to read:

42 **78B-22-102. Definitions.**

43 As used in this chapter:

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

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

47 (3) "Commission" means the Utah Indigent Defense Commission created in Section
 48 [78B-22-401](#).

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

51 ~~[(4)]~~ (5) "Director" means the director of the Office of Indigent Defense Services,
 52 created in Section [78B-22-451](#), who is appointed in accordance with Section [78B-22-453](#).

53 ~~[(5)]~~ (6) (a) "Indigent defense resources" means the resources necessary to provide an
 54 effective defense for an indigent individual, including the costs for a competent investigator,
 55 expert witness, scientific or medical testing, transcripts, and printing briefs.

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

57 ~~[(6)]~~ (7) "Indigent defense service provider" means an attorney or entity appointed to
58 represent an indigent individual pursuant to:

- 59 (a) a contract with an indigent defense system to provide indigent defense services; or
- 60 (b) an order issued by the court under Subsection [78B-22-203\(2\)\(a\)](#).

61 ~~[(7)]~~ (8) "Indigent defense services" means:

- 62 (a) the representation of an indigent individual by an indigent defense service provider;
- 63 and
- 64 (b) the provision of indigent defense resources for an indigent individual.

65 ~~[(8)]~~ (9) "Indigent defense system" means:

- 66 (a) a city or town that is responsible for providing indigent defense services;
- 67 (b) a county that is responsible for providing indigent defense services in the district
68 court, juvenile court, and the county's justice courts; or
- 69 (c) an interlocal entity, created pursuant to Title 11, Chapter 13, Interlocal Cooperation
70 Act, that is responsible for providing indigent defense services according to the terms of an
71 agreement between a county, city, or town.

72 ~~[(9)]~~ (10) "Indigent individual" means:

- 73 (a) a minor who is:
 - 74 (i) arrested and admitted into detention for an offense under Section [78A-6-103](#);
 - 75 (ii) charged by petition or information in the juvenile or district court; or
 - 76 (iii) described in this Subsection (9)(a), who is appealing an adjudication or other final
77 court action; and
- 78 (b) an individual listed in Subsection [78B-22-201\(1\)](#) who is found indigent pursuant to
79 Section [78B-22-202](#).

80 ~~[(10)]~~ (11) "Minor" means the same as that term is defined in Section [78A-6-105](#).

81 ~~[(11)]~~ (12) "Office" means the Office of Indigent Defense Services created in Section
82 [78B-22-451](#).

83 ~~[(12)]~~ (13) "Participating county" means a county that complies with this chapter for
84 participation in the Indigent Aggravated Murder Defense Trust Fund as provided in Sections
85 [78B-22-702](#) and [78B-22-703](#).

86 Section 2. Section **78B-22-402** is amended to read:

87 **78B-22-402. Commission members -- Member qualifications -- Terms -- Vacancy.**

- 88 (1) (a) The commission is composed of 15 members.
- 89 (b) The governor, with the advice and consent of the Senate, and in accordance with
90 Title 63G, Chapter 24, Part 2, Vacancies, shall appoint the following 11 members:
- 91 (i) two practicing criminal defense attorneys recommended by the Utah Association of
92 Criminal Defense Lawyers;
- 93 (ii) one attorney practicing in juvenile delinquency defense recommended by the Utah
94 Association of Criminal Defense Lawyers;
- 95 (iii) one attorney [~~practicing in the area of parental defense~~] who represents parents in
96 child welfare cases, recommended by an entity funded under the Child Welfare Parental
97 [~~Defense~~] Representation Program created in Section [78B-22-802](#);
- 98 (iv) one attorney representing minority interests recommended by the Utah Minority
99 Bar Association;
- 100 (v) one member recommended by the Utah Association of Counties from a county of
101 the first or second class;
- 102 (vi) one member recommended by the Utah Association of Counties from a county of
103 the third through sixth class;
- 104 (vii) a director of a county public defender organization recommended by the Utah
105 Association of Criminal Defense Lawyers;
- 106 (viii) two members recommended by the Utah League of Cities and Towns from its
107 membership; and
- 108 (ix) one retired judge recommended by the Judicial Council.
- 109 (c) The speaker of the House of Representatives and the president of the Senate shall
110 appoint two members of the Utah Legislature, one from the House of Representatives and one
111 from the Senate.
- 112 (d) The Judicial Council shall appoint a member from the Administrative Office of the
113 Courts.
- 114 (e) The executive director of the State Commission on Criminal and Juvenile Justice or
115 the executive director's designee is a member of the commission.
- 116 (2) A member appointed by the governor shall serve a four-year term, except as
117 provided in Subsection (3).
- 118 (3) The governor shall stagger the initial terms of appointees so that approximately half

119 of the members appointed by the governor are appointed every two years.

120 (4) A member appointed to the commission shall have significant experience in
121 indigent criminal defense, [~~parental defense~~] representing parents in child welfare cases, or in
122 juvenile defense in delinquency proceedings or have otherwise demonstrated a strong
123 commitment to providing effective representation in indigent defense services.

124 (5) An individual who is currently employed solely as a criminal prosecuting attorney
125 may not serve as a member of the commission.

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

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

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

131 (9) (a) The commission shall elect annually a chair from the commission's membership
132 to serve a one-year term.

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

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

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

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

139 (c) rules made by the Division of Finance in accordance with Sections [63A-3-106](#) and
140 [63A-3-107](#).

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

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

144 (c) A member shall comply with the conflict of interest provisions described in Title
145 63G, Chapter 24, Part 3, Conflicts of Interest.

146 Section 3. Section **78B-22-404** is amended to read:

147 **78B-22-404. Powers and duties of the commission.**

148 (1) The commission shall:

149 (a) adopt core principles for an indigent defense system to ensure the effective

150 representation of indigent individuals consistent with the requirements of the United States
151 Constitution, the Utah Constitution, and the Utah Code, which principles at a minimum shall
152 address the following:

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

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

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

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

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

160 (B) adequate access to indigent defense resources;

161 (C) the ability to provide representation to accused individuals in criminal cases at the
162 critical stages of proceedings, and at all stages to indigent individuals in juvenile delinquency
163 and child welfare proceedings;

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

167 (E) adequate compensation without financial disincentives;

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

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

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

175 (b) encourage and aid indigent defense systems in the state in the regionalization of
176 indigent defense services to provide for effective and efficient representation to the indigent
177 individuals;

178 (c) emphasize the importance of ensuring constitutionally effective indigent defense
179 services;

180 (d) encourage members of the judiciary to provide input regarding the delivery of

181 indigent defense services; and

182 (e) oversee individuals and entities involved in providing indigent defense services.

183 (2) The commission may:

184 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative

185 Rulemaking Act, to carry out the commission's duties under this part;

186 (b) assign duties related to indigent defense services to the office to assist the

187 commission with the commission's statutory duties;

188 (c) request supplemental appropriations from the Legislature to address a deficit in the

189 Indigent Inmate Trust Fund created in Section [78B-22-455](#); and

190 (d) request supplemental appropriations from the Legislature to address a deficit in the

191 Child Welfare Parental [~~Defense~~] Representation Fund created in Section [78B-22-804](#).

192 Section 4. Section **78B-22-406** is amended to read:

193 **78B-22-406. Indigent defense services grant program.**

194 (1) The commission may award grants:

195 (a) to supplement local spending by an indigent defense system for indigent defense

196 services; and

197 (b) for contracts to provide indigent defense services for appeals from juvenile court

198 proceedings in a county of the third, fourth, fifth, or sixth class.

199 (2) The commission may use grant money:

200 (a) to assist an indigent defense system to provide indigent defense services that meet

201 the commission's core principles for the effective representation of indigent individuals;

202 (b) to establish and maintain local indigent defense data collection systems;

203 (c) to provide indigent defense services in addition to indigent defense services that are

204 currently being provided by an indigent defense system;

205 (d) to provide training and continuing legal education for indigent defense service

206 providers;

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

208 (f) to pay for indigent defense resources and costs and expenses for parental [~~defense~~]

209 representation attorneys as described in Subsection [78B-22-804\(2\)](#); and

210 (g) to reimburse an indigent defense system for the cost of providing indigent defense

211 services in an action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination

212 of Parental Rights, if the indigent defense system has complied with the commission's policies
213 and procedures for reimbursement.

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

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

220 (b) a grant from the commission is necessary for the indigent defense system to meet
221 the commission's core principles for the effective representation of indigent individuals.

222 (4) The commission may revoke a grant if an indigent defense system fails to meet
223 requirements of the grant or any of the commission's core principles for the effective
224 representation of indigent individuals.

225 Section 5. Section **78B-22-452** is amended to read:

226 **78B-22-452. Duties of the office.**

227 (1) The office shall:

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

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

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

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

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

237 (d) assist indigent defense systems by reviewing contracts and other agreements, to
238 ensure compliance with the commission's core principles for effective representation of
239 indigent individuals;

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

242 (f) establish procedures to award grants to indigent defense systems under Section

243 78B-22-406 that are consistent with the commission's core principles;

244 (g) create and enter into contracts consistent with Section 78B-22-454 to provide
245 indigent defense services for an indigent defense inmate who:

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

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

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

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

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

255 (j) administer the Child Welfare Parental [~~Defense~~] Representation Program in
256 accordance with Part 8, Child Welfare Parental [~~Defense~~] Representation Program;

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

259 (i) the operations of the commission;

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

261 (iii) compliance with the commission's core principles by indigent defense systems
262 receiving grants from the commission;

263 (l) submit recommendations to the commission for improving indigent defense services
264 in the state;

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

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

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

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

273 Section 6. Section 78B-22-453 is amended to read:

274 **78B-22-453. Director -- Qualifications -- Staff.**

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

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

279 (3) The director shall hire staff as necessary to carry out the duties of the office as
280 described in Section 78B-22-452, including:

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

283 (b) one individual with data collection and analysis skills.

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

288 (5) When hiring the assistant director, the director shall give preference to an
289 individual with experience in adult criminal defense, representing parents in child welfare
290 [parental defense] cases, or in juvenile delinquency defense.

291 Section 7. Section 78B-22-801 is amended to read:

292 **78B-22-801. Definitions.**

293 As used in this part:

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

296 ~~[(2)]~~ (1) "Contracted parental ~~[defense]~~ representation attorney" means an attorney who
297 represents an indigent individual who is a parent in a child welfare case under a contract with
298 the office or a contributing county.

299 ~~[(3)]~~ (2) "Contributing county" means a county that complies with this part for
300 participation in the ~~[Child Welfare Parental Defense Fund]~~ fund described in Section
301 78B-22-804.

302 ~~[(4)]~~ (3) "Fund" means the Child Welfare Parental ~~[Defense]~~ Representation Fund
303 created in Section 78B-22-804.

304 ~~[(5)]~~ (4) "Program" means the Child Welfare Parental ~~[Defense]~~ Representation

305 Program created in Section [78B-22-802](#).

306 Section 8. Section **78B-22-802** is amended to read:

307 **78B-22-802. Child Welfare Parental Representation Program -- Creation --**
308 **Duties -- Annual report -- Budget.**

309 (1) There is created within the office the Child Welfare Parental [~~Defense~~]
310 Representation Program.

311 (2) (a) The office shall:

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

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

314 (iii) develop and provide educational and training programs for contracted parental
315 [~~defense~~] representation attorneys; and

316 (iv) provide information and advice to assist a contracted parental [~~defense~~]
317 representation attorney to comply with the attorney's professional, contractual, and ethical
318 duties.

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

320 (i) a person who is qualified to perform the program duties under this section; and

321 (ii) an attorney, as an independent contractor, in accordance with Section [78B-22-803](#).

322 (3) (a) The director shall prepare a budget of:

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

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

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

328 Section 9. Section **78B-22-803** is amended to read:

329 **78B-22-803. Child welfare parental representation contracts.**

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

333 (b) The office shall make payment for the representation, costs, and expenses of a
334 contracted parental [~~defense~~] representation attorney from the [~~Child Welfare Parental Defense~~
335 ~~Fund~~] fund in accordance with Section [78B-22-804](#).

336 (2) (a) Except as provided in Subsection (2)(b), a contracted parental [~~defense~~
337 representation] attorney shall:

- 338 (i) complete a basic training course provided by the office;
- 339 (ii) provide parental [~~defense~~] representation services consistent with the commission's
340 core principles described in Section 78B-22-404;
- 341 (iii) have experience in child welfare cases; and
- 342 (iv) participate each calendar year in continuing legal education courses providing no
343 fewer than eight hours of instruction in child welfare law.

344 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
345 commission may, by rule, exempt from the requirements of Subsection (2)(a) an attorney who
346 has equivalent training or adequate experience.

347 Section 10. Section 78B-22-804 is amended to read:

348 **78B-22-804. Child Welfare Parental Representation Fund -- Contracts for**
349 **coverage by the Child Welfare Parental Representation Fund.**

350 (1) There is created an expendable special revenue fund known as the "Child Welfare
351 Parental [~~Defense~~] Representation Fund."

352 (2) Subject to availability, the office may make distributions from the fund for the
353 following purposes:

- 354 (a) to pay for indigent defense resources for contracted parental [~~defense~~]
355 representation attorneys;
- 356 (b) for administrative costs of the program; and
- 357 (c) for reasonable expenses directly related to the functioning of the program, including
358 training and travel expenses.

359 (3) The fund consists of:

- 360 (a) appropriations made to the fund by the Legislature;
- 361 (b) interest and earnings from the investment of fund money;
- 362 (c) proceeds deposited by contributing counties under this section; and
- 363 (d) private contributions to the fund.

364 (4) The state treasurer shall invest the money in the fund by following the procedures
365 and requirements of Title 51, Chapter 7, State Money Management Act.

366 (5) (a) If the office anticipates a deficit in the fund during a fiscal year:

367 (i) the commission may request an appropriation from the Legislature; and

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

369 (b) If the anticipated deficit is not funded by the Legislature, the office may request an
370 interim assessment [~~to participating~~] from contributing counties as described in Subsection (6)
371 to fund the anticipated deficit.

372 (6) (a) A county legislative body and the office may annually enter into a contract for
373 the office to provide [~~parental defense attorney services~~] indigent defense services for a parent
374 in a child welfare case in the [contributing] county out of the fund.

375 (b) The contract described [~~under~~] in Subsection (6)(a) shall:

376 (i) require the contributing county described in Subsection (6)(a) to pay into the fund
377 an amount defined by a formula established by the commission by rule under Title 63G,
378 Chapter 3, Utah Administrative Rulemaking Act; and

379 (ii) provide for revocation of the [~~agreement~~] contract for the contributing county's
380 failure to pay [an] the assessment described in Subsection (5) on the due date established by the
381 commission by rule under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

382 (7) (a) After the first year of operation of the fund, [~~any~~] a contributing county that
383 [~~elects~~] enters into a contract under Subsection (6) to initiate or reestablish participation in the
384 fund[~~or reestablish participation in the fund after participation was terminated;~~] is required to
385 make an equity payment[~~;~~] in addition to the assessment [~~provided~~] described in Subsection
386 (5).

387 (b) [~~The~~] If the office enters into a contract with a contributing county under
388 Subsection (6), the commission shall determine the amount of the equity payment described in
389 Subsection (7)(a) by rule established by the commission under Title 63G, Chapter 3, Utah
390 Administrative Rulemaking Act.

391 (8) A contributing county that [~~elects to withdraw~~] withdraws from participation in the
392 fund, or whose participation in the fund is revoked [~~due to~~] as described in Subsection (6) for
393 failure to pay the contributing county's assessment[~~, as described in Subsection (6), when due,~~
394 when due, shall forfeit any right to any previously paid assessment by the contributing county
395 or coverage from the fund.

396