

SB0090S01 compared with SB0090

~~deleted text~~ shows text that was in SB0090 but was deleted in SB0090S01.

inserted text shows text that was not in SB0090 but was inserted into SB0090S01.

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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

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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
and last amended by Coordination Clause, Laws of Utah 2020, Chapter 395

78B-22-404, as last amended by Laws of Utah 2020, Chapters 371, 392, and 395

78B-22-406, as last amended by Laws of Utah 2020, Chapters 371, 392, and 395

78B-22-452, as enacted by Laws of Utah 2020, Chapters 371, 392, 395 and last
amended by Coordination Clause, Laws of Utah 2020, Chapters 392, and 395

78B-22-453, as renumbered and amended by Laws of Utah 2020, Chapters 371, 392,
395 and last amended by Coordination Clause, Laws of Utah 2020, Chapters 392,
and 395

78B-22-801, as enacted by Laws of Utah 2020, Chapter 395

78B-22-802, as renumbered and amended by Laws of Utah 2020, Chapter 395

78B-22-803, as renumbered and amended by Laws of Utah 2020, Chapter 395 and last
amended by Coordination Clause, Laws of Utah 2020, Chapter 395

78B-22-804, as renumbered and amended by Laws of Utah 2020, Chapter 395

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

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

78B-22-102. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) a city or town that is responsible for providing indigent defense services;

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

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

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

(a) a minor who is:

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

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

(iii) described in this Subsection (9)(a), who is appealing an adjudication or other final court action; and

(b) an individual listed in Subsection 78B-22-201(1) who is found indigent pursuant to Section 78B-22-202.

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

~~[(11)]~~ (12) "Office" means the Office of Indigent Defense Services created in Section

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78B-22-451.

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

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

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

(1) (a) The commission is composed of 15 members.

(b) The governor, with the advice and consent of the Senate, and in accordance with Title 63G, Chapter 24, Part 2, Vacancies, shall appoint the following 11 members:

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

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

(iii) one attorney [~~practicing in the area of parental defense~~] who represents parents in child welfare cases, recommended by an entity funded under the Child Welfare Parental ~~[Defense]~~ Representation Program created in Section 78B-22-802;

(iv) one attorney representing minority interests recommended by the Utah Minority Bar Association;

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

(vi) one member recommended by the Utah Association of Counties from a county of the third through sixth class;

(vii) a director of a county public defender organization recommended by the Utah Association of Criminal Defense Lawyers;

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

(ix) one retired judge recommended by the Judicial Council~~(1)~~;

(c) The speaker of the House of Representatives and the president of the Senate shall appoint two members of the Utah Legislature, one from the House of Representatives and one from the Senate.

(d) The Judicial Council shall appoint a member from the Administrative Office of the

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Courts.

(e) The executive director of the State Commission on Criminal and Juvenile Justice or the executive director's designee is a member of the commission.

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

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

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

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

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

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

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

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

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

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

(a) Section 63A-3-106;

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

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

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

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

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

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

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

(1) The commission shall:

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

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

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

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

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

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

(B) adequate access to indigent defense resources;

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

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

(E) adequate compensation without financial disincentives;

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

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

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

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

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

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

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

(2) The commission may:

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

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

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

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

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

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

(1) The commission may award grants:

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

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

(2) The commission may use grant money:

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

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

(c) to provide indigent defense services in addition to indigent defense services that are currently being provided by an indigent defense system;

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

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providers;

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

(f) to pay for indigent defense resources and costs and expenses for parental [~~defense~~] representation attorneys as described in Subsection 78B-22-804(2); and

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

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

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

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

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

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

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

(1) The office shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the operations of the commission;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

78B-22-801. Definitions.

As used in this part:

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

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

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

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

~~[(5)]~~ (4) "Program" means the Child Welfare Parental ~~[Defense]~~ Representation Program created in Section 78B-22-802.

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

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

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

(2) (a) The office shall:

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

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

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

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

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

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

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

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

(i) the administrative expenses for the program; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The fund consists of:

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

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- (b) interest and earnings from the investment of fund money;
- (c) proceeds deposited by contributing counties under this section; and
- (d) private contributions to the fund.

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

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

- (i) the commission may request an appropriation from the Legislature; and
- (ii) the Legislature may fund the anticipated deficit through appropriation.

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

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

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

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

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

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

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

(8) A contributing county that ~~[elects to withdraw]~~ withdraws from participation in the

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fund, or whose participation in the fund is revoked ~~[due to]~~ as described in Subsection (6) for
failure to pay the contributing county's assessment ~~[, as described in Subsection (6), when due,]~~
when due, shall forfeit any right to any previously paid assessment by the contributing county
or coverage from the fund.