

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: Cheryl K. Acton

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";
- ▶ repeals provisions requiring the Utah Indigent Defense Commission to make administrative rules regarding the Child Welfare Parental Representation Fund; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 78B-22-102, as last amended by Laws of Utah 2020, Chapters 371, 392, and 395

27 78B-22-402, as last amended by Laws of Utah 2020, Chapters 352, 371, 373, 392, 395

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

29 78B-22-404, as last amended by Laws of Utah 2020, Chapters 371, 392, and 395

30 78B-22-406, as last amended by Laws of Utah 2020, Chapters 371, 392, and 395

31 78B-22-452, as enacted by Laws of Utah 2020, Chapters 371, 392, 395 and last

32 amended by Coordination Clause, Laws of Utah 2020, Chapters 392, and 395

33 78B-22-453, as renumbered and amended by Laws of Utah 2020, Chapters 371, 392,

34 395 and last amended by Coordination Clause, Laws of Utah 2020, Chapters 392,

35 and 395

36 78B-22-801, as enacted by Laws of Utah 2020, Chapter 395

37 78B-22-802, as renumbered and amended by Laws of Utah 2020, Chapter 395

38 78B-22-803, as renumbered and amended by Laws of Utah 2020, Chapter 395 and last

39 amended by Coordination Clause, Laws of Utah 2020, Chapter 395

40 78B-22-804, as renumbered and amended by Laws of Utah 2020, Chapter 395

41

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

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

44 **78B-22-102. Definitions.**

45 As used in this chapter:

46 (1) "Account" means the Indigent Defense Resources Restricted Account created in

47 Section 78B-22-405.

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

49 (3) "Commission" means the Utah Indigent Defense Commission created in Section

50 78B-22-401.

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

53 [~~4~~] (5) "Director" means the director of the Office of Indigent Defense Services,
54 created in Section 78B-22-451, who is appointed in accordance with Section 78B-22-453.

55 [~~5~~] (6) (a) "Indigent defense resources" means the resources necessary to provide an
56 effective defense for an indigent individual, including the costs for a competent investigator,

57 expert witness, scientific or medical testing, transcripts, and printing briefs.

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

59 ~~[(6)]~~ (7) "Indigent defense service provider" means an attorney or entity appointed to
60 represent an indigent individual pursuant to:

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

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

63 ~~[(7)]~~ (8) "Indigent defense services" means:

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

65 and

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

67 ~~[(8)]~~ (9) "Indigent defense system" means:

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

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

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

74 ~~[(9)]~~ (10) "Indigent individual" means:

75 (a) a minor who is:

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

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

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

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

82 ~~[(10)]~~ (11) "Minor" means the same as that term is defined in Section 78A-6-105.

83 ~~[(11)]~~ (12) "Office" means the Office of Indigent Defense Services created in Section
84 78B-22-451.

85 ~~[(12)]~~ (13) "Participating county" means a county that complies with this chapter for
86 participation in the Indigent Aggravated Murder Defense Trust Fund as provided in Sections
87 78B-22-702 and 78B-22-703.

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

89 **78B-22-402. Commission members -- Member qualifications -- Terms -- Vacancy.**

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

91 (b) The governor, with the advice and consent of the Senate, and in accordance with

92 Title 63G, Chapter 24, Part 2, Vacancies, shall appoint the following 11 members:

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

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

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

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

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

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

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

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

110 (ix) one retired judge recommended by the Judicial Council.

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

114 (d) The Judicial Council shall appoint a member from the Administrative Office of the
115 Courts.

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

118 (2) A member appointed by the governor shall serve a four-year term, except as

119 provided in Subsection (3).

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

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

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

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

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

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

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

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

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

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

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

141 (c) rules made by the Division of Finance in accordance with Sections [63A-3-106](#) and
142 [63A-3-107](#).

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

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

146 (c) A member shall comply with the conflict of interest provisions described in Title
147 63G, Chapter 24, Part 3, Conflicts of Interest.

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

149 **78B-22-404. Powers and duties of the commission.**

- 150 (1) The commission shall:
- 151 (a) adopt core principles for an indigent defense system to ensure the effective
- 152 representation of indigent individuals consistent with the requirements of the United States
- 153 Constitution, the Utah Constitution, and the Utah Code, which principles at a minimum shall
- 154 address the following:
- 155 (i) an indigent defense system shall ensure that in providing indigent defense services:
- 156 (A) an indigent individual receives conflict-free indigent defense services; and
- 157 (B) there is a separate contract for each type of indigent defense service; and
- 158 (ii) an indigent defense system shall ensure an indigent defense service provider has:
- 159 (A) the ability to exercise independent judgment without fear of retaliation and is free
- 160 to represent an indigent individual based on the indigent defense service provider's own
- 161 independent judgment;
- 162 (B) adequate access to indigent defense resources;
- 163 (C) the ability to provide representation to accused individuals in criminal cases at the
- 164 critical stages of proceedings, and at all stages to indigent individuals in juvenile delinquency
- 165 and child welfare proceedings;
- 166 (D) a workload that allows for sufficient time to meet with clients, investigate cases,
- 167 file appropriate documents with the courts, and otherwise provide effective assistance of
- 168 counsel to each client;
- 169 (E) adequate compensation without financial disincentives;
- 170 (F) appropriate experience or training in the area for which the indigent defense service
- 171 provider is representing indigent individuals;
- 172 (G) compensation for legal training and education in the areas of the law relevant to the
- 173 types of cases for which the indigent defense service provider is representing indigent
- 174 individuals; and
- 175 (H) the ability to meet the obligations of the Utah Rules of Professional Conduct,
- 176 including expectations on client communications and managing conflicts of interest;
- 177 (b) encourage and aid indigent defense systems in the state in the regionalization of
- 178 indigent defense services to provide for effective and efficient representation to the indigent
- 179 individuals;
- 180 (c) emphasize the importance of ensuring constitutionally effective indigent defense

181 services;

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

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

185 (2) The commission may:

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

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

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

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

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

195 **78B-22-406. Indigent defense services grant program.**

196 (1) The commission may award grants:

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

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

201 (2) The commission may use grant money:

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

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

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

207 (d) to provide training and continuing legal education for indigent defense service
208 providers;

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

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

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

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

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

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

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

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

228 **78B-22-452. Duties of the office.**

229 (1) The office shall:

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

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

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

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

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

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

242 (e) establish procedures for the receipt and acceptance of complaints regarding the

243 provision of indigent defense services in the state;

244 (f) establish procedures to award grants to indigent defense systems under Section
245 78B-22-406 that are consistent with the commission's core principles;

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

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

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

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

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

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

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

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

261 (i) the operations of the commission;

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

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

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

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

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

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

272 (3) Any contract entered into under this part shall require that indigent defense services
273 are provided in a manner consistent with the commission's core principles implemented under

274 Section 78B-22-404.

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

276 **78B-22-453. Director -- Qualifications -- Staff.**

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

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

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

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

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

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

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

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

294 **78B-22-801. Definitions.**

295 As used in this part:

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

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

301 ~~[(3)]~~ (2) "Contributing county" means a county that complies with this part for
302 participation in the ~~[Child Welfare Parental Defense Fund]~~ fund described in Section
303 78B-22-804.

304 ~~[(4)]~~ (3) "Fund" means the Child Welfare Parental ~~[Defense]~~ Representation Fund

305 created in Section 78B-22-804.

306 [~~5~~] (4) "Program" means the Child Welfare Parental [~~Defense~~] Representation

307 Program created in Section 78B-22-802.

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

309 **78B-22-802. Child Welfare Parental Representation Program -- Creation --**
310 **Duties -- Annual report -- Budget.**

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

313 (2) (a) The office shall:

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

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

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

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

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

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

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

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

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

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

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

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

331 **78B-22-803. Child welfare parental representation contracts.**

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

335 (b) The office shall make payment for the representation, costs, and expenses of a

336 contracted parental [~~defense~~] representation attorney from the [~~Child Welfare Parental Defense~~
337 ~~Fund~~] fund in accordance with Section 78B-22-804.

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

340 (i) complete a basic training course provided by the office;

341 (ii) provide parental [~~defense~~] representation services consistent with the commission's
342 core principles described in Section 78B-22-404;

343 (iii) have experience in child welfare cases; and

344 (iv) participate each calendar year in continuing legal education courses providing no
345 fewer than eight hours of instruction in child welfare law.

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

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

350 **78B-22-804. Child Welfare Parental Representation Fund -- Contracts for**
351 **coverage by the Child Welfare Parental Representation Fund.**

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

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

356 (a) to pay for indigent defense resources for contracted parental [~~defense~~]
357 representation attorneys;

358 (b) for administrative costs of the program; and

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

361 (3) The fund consists of:

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

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

364 (c) proceeds deposited by contributing counties under this section; and

365 (d) private contributions to the fund.

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

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

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

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

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

371 (b) If the anticipated deficit is not funded by the Legislature under Subsection (5)(a),
372 the office may request an interim assessment [~~to participating~~] from contributing counties as
373 described in Subsection (6) to fund the anticipated deficit.

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

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

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

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

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

389 [~~(b) The commission shall determine the amount of the equity payment described in~~
390 ~~Subsection (7)(a) by rule established by the commission under Title 63G, Chapter 3, Utah~~
391 ~~Administrative Rulemaking Act.~~]

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