

INDIGENT DEFENSE COMMISSION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Joel Ferry

LONG TITLE

General Description:

This bill amends provisions relating to the Utah Indigent Defense Commission.

Highlighted Provisions:

This bill:

- ▶ changes the term "director" to "executive director" in Title 78B, Chapter 22, Indigent Defense Act;
- ▶ provides that the Office of Indigent Defense Services is created under the Utah Indigent Defense Commission;
- ▶ provides that the Utah Indigent Defense Commission shall appoint, and may remove, the executive director of the Office of Indigent Defense Services by a majority vote of the commission; and
- ▶ makes 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-22-451, as enacted by Laws of Utah 2020, Chapters 371, 392, 395 and last



28 amended by Coordination Clause, Laws of Utah 2020, Chapters 392, and 395
 29 [78B-22-453](#), as renumbered and amended by Laws of Utah 2020, Chapters 371, 392,
 30 395 and last amended by Coordination Clause, Laws of Utah 2020, Chapters 392,
 31 and 395
 32 [78B-22-802](#), as renumbered and amended by Laws of Utah 2020, Chapter 395
 33 [78B-22-903](#), as enacted by Laws of Utah 2020, Chapter 371
 34 [78B-22-904](#), as enacted by Laws of Utah 2020, Chapter 371

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

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

38 **78B-22-102. Definitions.**

39 As used in this chapter:

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

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

43 (3) "Commission" means the Utah Indigent Defense Commission created in Section
 44 [78B-22-401](#).

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

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

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

52 (6) "Indigent defense service provider" means an attorney or entity appointed to
 53 represent an indigent individual pursuant to:

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

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

56 (7) "Indigent defense services" means:

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

58 and

- 59 (b) the provision of indigent defense resources for an indigent individual.
- 60 (8) "Indigent defense system" means:
- 61 (a) a city or town that is responsible for providing indigent defense services;
- 62 (b) a county that is responsible for providing indigent defense services in the district
- 63 court, juvenile court, and the county's justice courts; or
- 64 (c) an interlocal entity, created pursuant to Title 11, Chapter 13, Interlocal Cooperation
- 65 Act, that is responsible for providing indigent defense services according to the terms of an
- 66 agreement between a county, city, or town.
- 67 (9) "Indigent individual" means:
- 68 (a) a minor who is:
- 69 (i) arrested and admitted into detention for an offense under Section 78A-6-103;
- 70 (ii) charged by petition or information in the juvenile or district court; or
- 71 (iii) described in this Subsection (9)(a), who is appealing an adjudication or other final
- 72 court action; and
- 73 (b) an individual listed in Subsection 78B-22-201(1) who is found indigent pursuant to
- 74 Section 78B-22-202.
- 75 (10) "Minor" means the same as that term is defined in Section 78A-6-105.
- 76 (11) "Office" means the Office of Indigent Defense Services created in Section
- 77 78B-22-451.
- 78 (12) "Participating county" means a county that complies with this chapter for
- 79 participation in the Indigent Aggravated Murder Defense Trust Fund as provided in Sections
- 80 78B-22-702 and 78B-22-703.
- 81 Section 2. Section 78B-22-451 is amended to read:
- 82 **78B-22-451. Office of Indigent Defense Services -- Creation.**
- 83 There is created [~~the Office of Indigent Defense Services within the State Commission~~
- 84 ~~on Criminal and Juvenile Justice~~] under the commission the Office of Indigent Defense
- 85 Services.
- 86 Section 3. Section 78B-22-453 is amended to read:
- 87 **78B-22-453. Executive director -- Qualifications -- Staff.**
- 88 [~~(1) The executive director of the State Commission on Criminal and Juvenile Justice~~
- 89 ~~shall appoint a director to carry out the duties of the office described in Section 78B-22-452.]~~

90 (1) The commission:

91 (a) shall appoint the executive director, by a majority vote of the commission, to carry
92 out the duties of the office described in Section 78B-22-452; and

93 (b) may remove the executive director by majority vote of the commission.

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

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

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

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

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

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

108 Section 4. Section 78B-22-802 is amended to read:

109 **78B-22-802. Child Welfare Parental Defense Program -- Creation -- Duties --**
110 **Annual report -- Budget.**

111 (1) There is created within the office the Child Welfare Parental Defense Program.

112 (2) (a) The office shall:

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

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

115 (iii) develop and provide educational and training programs for contracted parental
116 defense attorneys; and

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

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

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

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

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

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

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

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

128 Section 5. Section 78B-22-903 is amended to read:

129 **78B-22-903. Powers and duties of the division.**

130 (1) The division shall:

131 (a) provide appellate defense services in counties of the third, fourth, fifth, and sixth
132 class; and

133 (b) provide appellate defense services in accordance with the core principles adopted
134 by the commission under Section 78B-22-404 and any other state and federal standards for
135 appellate defense services.

136 (2) Upon consultation with the executive director and the commission, the division
137 shall:

138 (a) adopt a budget for the division;

139 (b) adopt and publish on the commission's website:

140 (i) appellate performance standards;

141 (ii) case weighting standards; and

142 (iii) any other relevant measures or information to assist with appellate defense
143 services; and

144 (c) if requested by the commission, provide a report to the commission on:

145 (i) the provision of appellate defense services by the division;

146 (ii) the caseloads of appellate attorneys; and

147 (iii) any other information relevant to appellate defense services in the state.

148 (3) If the division provides appellate defense services to an indigent individual in an
149 indigent defense system, the division shall provide notice to the district court and the indigent
150 defense system that the division intends to be appointed as counsel for the indigent individual.

151 (4) The office shall assist with providing training and continual legal education on

152 appellate defense to indigent defense service providers in counties of the third, fourth, fifth, and
153 sixth class.

154 Section 6. Section **78B-22-904** is amended to read:

155 **78B-22-904. Chief appellate officer -- Qualifications -- Staff.**

156 (1) (a) After consulting with the commission, the executive director shall appoint a
157 chief appellate officer.

158 (b) When appointing the chief appellate officer, the executive director shall give
159 preference to an individual with experience in adult criminal appellate defense representation.

160 (2) The chief appellate officer shall be an active member of the Utah State Bar with an
161 appropriate background and experience to serve as the chief appellate officer.

162 (3) The chief appellate officer shall carry out the duties of the division described in
163 Section **78B-22-903**.

164 (4) The chief appellate officer shall:

165 (a) provide appellate defense services in a county of the third, fourth, fifth, or sixth
166 class;

167 (b) hire staff as necessary to carry out the duties of the division described in Section
168 **78B-22-903**; and

169 (c) perform all other duties that are necessary for the division to carry out the division's
170 statutory duties.