

**INDIGENT DEFENSE AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd D. Weiler**

House Sponsor: Joel Ferry

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**LONG TITLE**

**General Description:**

This bill amends provisions relating to indigent defense.

**Highlighted Provisions:**

This bill:

- ▶ modifies the definition of "indigent defense resource";
- ▶ modifies the definition of "indigent defense service provider";
- ▶ clarifies who a court may appoint to represent an indigent defendant;
- ▶ allows the Indigent Defense Commission to award grants for indigent defense

services that ~~↔~~ [:

~~—————•————— would exceed the commission's core principles regarding indigent defense services; or~~

~~—————▶] ←↔~~ are innovative for meeting or exceeding the commission's core principles regarding indigent defense services;

- ▶ clarifies who is eligible for appellate defense services; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

S.B. 108



90 individual first appears before the court] no later than the individual's first court appearance:

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

93 (b) a parent or legal guardian facing an action initiated by the state under:

94 (i) Title 78A, Chapter 6, Part 4a, Adult Criminal Proceedings;

95 [(†) (ii) Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings; or

96 [(††) (iii) Title 80, Chapter 4, Termination and Restoration of Parental Rights; [or]

97 [(iii) ~~Title 78A, Chapter 6, Part 4a, Adult Criminal Proceedings;~~]

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

99 (i) Section 78B-6-112; or

100 [(†) (ii) Title 80, Chapter 4, Termination and Restoration of Parental Rights; or

101 [(ii) ~~Section 78B-6-112; or~~]

102 (d) an individual described in this Subsection (1), who is appealing a conviction or  
103 other final court action.

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

107 Section 3. Section **78B-22-203** is amended to read:

108 **78B-22-203. Order for indigent defense services.**

109 (1) (a) A court shall appoint an indigent defense service provider who is employed by  
110 an indigent \$→ defense ←\$ system or who has a contract with an indigent defense system to  
provide

110a indigent

111 defense services for an individual over whom the court has jurisdiction if:

112 (i) the individual is an indigent individual [~~as defined in Section 78B-22-102~~]; and

113 (ii) the individual does not have private counsel.

114 (b) An indigent defense service provider appointed by the court under Subsection

115 (1)(a) shall provide indigent defense services for the indigent individual in all court

116 proceedings in the matter for which the indigent defense service provider is appointed.

117 (2) (a) Notwithstanding Subsection (1), the court may order that indigent defense  
118 services be provided by an indigent defense service provider who does not have a contract with  
119 an indigent defense system [~~only~~] if the court finds by clear and convincing evidence that:

120 (i) all [~~of~~] the contracted indigent defense service providers:

152 **78B-22-406. Indigent defense services grant program.**

153 (1) The commission may award grants:

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

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

158 (2) The commission may use grant money:

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

160 ~~H~~→ [or exceed] ←~~H~~ the commission's core principles for the effective representation of indigent  
161 individuals;

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

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

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

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

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

170 (g) to reimburse an indigent defense system for the cost of providing indigent defense  
171 services in an action initiated by a private party under Title 80, Chapter 4, Termination and  
172 Restoration of Parental Rights, if the indigent defense system has complied with the  
173 commission's policies and procedures for reimbursement.

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

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

180 (b) (i) a grant from the commission is necessary for the indigent defense system to  
181 meet ~~H~~→ [or exceed] ←~~H~~ the commission's core principles for the effective representation of  
181a indigent  
182 individuals[-]; or

183 (ii) the indigent defense system shall use the grant in an innovative manner that meets  
184 ~~H→~~ [or exceeds] ~~←H~~ the commission's core principles for the effective representation of indigent  
185 individuals.

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

189 Section 5. Section **78B-22-701** is amended to read:

190 **78B-22-701. Establishment of Indigent Aggravated Murder Defense Trust Fund**  
191 **-- Use of fund -- Compensation for indigent legal defense from fund.**

192 (1) For purposes of this part, "fund" means the Indigent Aggravated Murder Defense  
193 Trust Fund.

194 (2) (a) There is established a private-purpose trust fund known as the "Indigent  
195 Aggravated Murder Defense Trust Fund."

196 (b) The Division of Finance shall disburse money from the fund at the direction of the  
197 board and subject to this chapter.

198 (3) The fund consists of:

199 (a) money received from participating counties as provided in Sections 78B-22-702  
200 and 78B-22-703;

201 (b) appropriations made to the fund by the Legislature as provided in Section  
202 78B-22-703; and

203 (c) interest and earnings from the investment of fund money.

204 (4) The state treasurer shall invest fund money with the earnings and interest accruing  
205 to the fund.

206 (5) The fund shall be used to assist participating counties with financial resources, as  
207 provided in Subsection (6), to fulfill their constitutional and statutory mandates for the  
208 provision of ~~[an adequate]~~ a constitutionally effective defense for indigent individuals  
209 prosecuted for the violation of state laws in cases involving aggravated murder.

210 (6) Money allocated to or deposited in this fund shall be used only:

211 (a) to reimburse participating counties for expenditures made for an attorney appointed  
212 to represent an indigent individual, other than a state inmate in a state prison, prosecuted for  
213 aggravated murder in a participating county; and