

1 **POST CONVICTION REPRESENTATION AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd D. Weiler**

5 House Sponsor: Steven J. Lund

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses the appointment of counsel in a postconviction action or appeal.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ allows a court to appoint the Indigent Appellate Defense Division in an action or
13 appeal for postconviction relief;
- 14 ▶ amends the powers and duties of the Indigent Appellate Defense Division and the
15 chief appellate officer for the Indigent Appellate Defense Division; and
- 16 ▶ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **78B-9-109**, as last amended by Laws of Utah 2021, Chapter 46

24 **78B-22-901**, as enacted by Laws of Utah 2020, Chapter 371

25 **78B-22-903**, as last amended by Laws of Utah 2021, Chapter 235

26 **78B-22-904**, as last amended by Laws of Utah 2021, Chapter 235

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

29 Section 1. Section **78B-9-109** is amended to read:

30 **78B-9-109. Appointment of pro bono counsel or counsel from Indigent Appellate**
31 **Defense Division.**

32 (1) (a) If any portion of the petition is not summarily dismissed, the court may, upon
33 the request of an indigent petitioner, appoint counsel on a pro bono basis or from the Indigent
34 Appellate Defense Division, created in Section 78B-22-902, to represent the petitioner in the
35 postconviction court or on postconviction appeal.

36 (b) Counsel who represented the petitioner at trial or on the direct appeal may not be
37 appointed to represent the petitioner under this section.

38 (2) In determining whether to appoint counsel, the court may consider:

- 39 (a) whether the petitioner is incarcerated;
- 40 (b) the likelihood that an evidentiary hearing will be necessary;
- 41 (c) the likelihood that an investigation will be necessary;
- 42 (d) the complexity of the factual and legal issues; and
- 43 (e) any other factor relevant to the particular case.

44 (3) An allegation that counsel appointed under this section was ineffective cannot be
45 the basis for relief in any subsequent postconviction petition.

46 Section 2. Section **78B-22-901** is amended to read:

47 **78B-22-901. Definitions.**

48 (1) (a) "Appellate defense services" means the representation of an indigent individual:

- 49 (i) facing an appeal under Section 77-18a-1[-]; or
50 (ii) in an action or on appeal for postconviction relief under Title 78B, Chapter 9,

51 Postconviction Remedies Act.

52 (b) "Appellate defense services" does not include the representation of an indigent
53 individual;

54 (i) facing an appeal in a case where the indigent individual was prosecuted for
55 aggravated murder[-]; or

56 (ii) in an action or appeal for postconviction relief under Title 78B, Chapter 9,
57 Postconviction Remedies Act, if the indigent individual has been sentenced to death.

58 (2) "Division" means the Indigent Appellate Defense Division created in Section
59 [78B-22-902](#).

60 Section 3. Section **78B-22-903** is amended to read:

61 **78B-22-903. Powers and duties of the division.**

62 (1) The division shall:

63 (a) provide appellate defense services:

64 (i) for an appeal under Section [77-18a-1](#), in counties of the third, fourth, fifth, and sixth
65 class; and

66 (ii) for an action or an appeal for postconviction relief under Title 78B, Chapter 9,
67 Postconviction Remedies Act, if the court appoints the division to represent the indigent
68 individual; and

69 (b) provide appellate defense services in accordance with the core principles adopted
70 by the commission under Section [78B-22-404](#) and any other state and federal standards for
71 appellate defense services.

72 (2) Upon consultation with the executive director and the commission, the division
73 shall:

74 (a) adopt a budget for the division;

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

76 (i) appellate performance standards;

77 (ii) case weighting standards; and

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

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

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

82 (ii) the caseloads of appellate attorneys; and

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

84 (3) If the division provides appellate defense services to an indigent individual in an
85 indigent defense system, the division shall provide notice to the district court and the indigent

86 defense system that the division intends to be appointed as counsel for the indigent individual.

87 (4) The office shall assist with providing training and continual legal education on
88 appellate defense to indigent defense service providers in counties of the third, fourth, fifth, and
89 sixth class.

90 Section 4. Section **78B-22-904** is amended to read:

91 **78B-22-904. Chief appellate officer -- Qualifications -- Staff -- Duties.**

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

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

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

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

100 (4) The chief appellate officer shall:

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

103 (b) hire staff as necessary to carry out the duties of the division described in Section
104 **78B-22-903**; and

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

107 (5) The chief appellate officer may provide appellate defense services in an action or an
108 appeal for postconviction relief under Title 78B, Chapter 9, Postconviction Remedies Act, if
109 the court appoints the division to represent the indigent individual.