

POST CONVICTION REPRESENTATION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Steven J. Lund

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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.**

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

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

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

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

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

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

46 **78B-22-901. Definitions.**

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

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

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

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

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

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

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

60 **78B-22-903. Powers and duties of the division.**

61 (1) The division shall:

62 (a) provide appellate defense services:

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

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

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

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

73 (a) adopt a budget for the division;

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

75 (i) appellate performance standards;

76 (ii) case weighting standards; and

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

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

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

81 (ii) the caseloads of appellate attorneys; and

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

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

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

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

90 **78B-22-904. Chief appellate officer -- Qualifications -- Staff -- Duties.**

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

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

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

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

99 (4) The chief appellate officer shall:

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

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

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

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