

**Senator Todd D. Weiler** proposes the following substitute bill:

**INDIGENT DEFENSE AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ryan D. Wilcox**

Senate Sponsor: Todd D. Weiler

---

---

**LONG TITLE**

**General Description:**

This bill amends provisions related to indigent defense.

**Highlighted Provisions:**

This bill:

- ▶ clarifies when a court may order indigent defense services and resources;
- ▶ amends provisions related to the Indigent Aggravated Murder Defense Fund; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78B-22-203**, as last amended by Laws of Utah 2022, Chapter 281

**78B-22-302**, as enacted by Laws of Utah 2019, Chapter 326

**78B-22-701**, as last amended by Laws of Utah 2022, Chapters 281, 451

**78B-22-702**, as renumbered and amended by Laws of Utah 2019, Chapter 326

**78B-22-703**, as renumbered and amended by Laws of Utah 2019, Chapter 326



26 **78B-22-704**, as renumbered and amended by Laws of Utah 2019, Chapter 326

27 ENACTS:

28 **78B-22-705**, Utah Code Annotated 1953

29 

---

---

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

31 Section 1. Section **78B-22-203** is amended to read:

32 **78B-22-203. Order for indigent defense services.**

33 (1) (a) A court shall appoint an indigent defense service provider who is employed by  
34 an indigent defense system or who has a contract with an indigent defense system to provide  
35 indigent defense services for an individual over whom the court has jurisdiction if:

- 36 (i) the individual is an indigent individual; and
- 37 (ii) the individual does not have private counsel.

38 (b) An indigent defense service provider appointed by the court under Subsection  
39 (1)(a) shall provide indigent defense services for the indigent individual in all court  
40 proceedings in the matter for which the indigent defense service provider is appointed.

41 (2) (a) Notwithstanding Subsection (1), the court may order that indigent defense  
42 services be provided by an indigent defense service provider who does not have a contract with  
43 an indigent defense system if the court finds by clear and convincing evidence that:

- 44 (i) all the contracted indigent defense service providers:
  - 45 (A) have a conflict of interest; or
  - 46 (B) do not have sufficient expertise to provide indigent defense services for the
- 47 indigent individual; or
- 48 (ii) the indigent defense system does not have a contract with an indigent defense  
49 service provider for indigent defense services.

50 (b) A court may not order indigent defense services under Subsection (2)(a) unless the  
51 court conducts a hearing with proper notice to the indigent defense system by sending notice of  
52 the hearing to the county clerk or municipal recorder.

53 (3) (a) A court may order reasonable indigent defense resources for an individual who  
54 has retained private counsel only if the court finds by clear and convincing evidence that:

- 55 (i) the individual is an indigent individual;
- 56 (ii) the individual would be prejudiced by the substitution of a contracted indigent

57 defense service provider and the prejudice cannot be remedied;

58 (iii) at the time that private counsel was retained, the individual:

59 (A) entered into a written contract with private counsel; and

60 (B) had the ability to pay for indigent defense resources, but no longer has the ability to  
61 pay for the indigent defense resources in addition to the cost of private counsel;

62 (iv) there has been an unforeseen change in circumstances that requires indigent  
63 defense resources beyond the individual's ability to pay; and

64 (v) any representation under this Subsection (3)(a) is made in good faith and is not  
65 calculated to allow the individual or retained private counsel to avoid the requirements of this  
66 section.

67 (b) A court may not order indigent defense resources under Subsection (3)(a) until the  
68 court conducts a hearing with proper notice to the indigent defense system by sending notice of  
69 the hearing to the county clerk or municipal recorder.

70 (c) At the hearing, the court shall conduct an in camera review of:

71 (i) the private counsel contract;

72 (ii) the costs or anticipated costs of the indigent defense resources; and

73 (iii) other relevant records.

74 (4) A court may only order the representation of an indigent individual by an indigent  
75 defense service provider in accordance with this section.

76 (5) A court may not order indigent defense resources be provided to an indigent  
77 individual, except as provided in:

78 (a) Subsection (3); or

79 (b) Section 78B-22-705.

80 [~~(4) Except as provided in this section, a court may not order indigent defense~~  
81 ~~services.]~~

82 Section 2. Section **78B-22-302** is amended to read:

83 **78B-22-302. Compensation for indigent defense services.**

84 (1) An indigent defense system shall fund indigent defense services ordered by a court  
85 [in accordance with] under Section 78B-22-203.

86 (2) An indigent defense system shall ensure that there are adequate funds for indigent  
87 defense resources when a court orders indigent defense services under Section 78B-22-203.

88 Section 3. Section 78B-22-701 is amended to read:

89 **78B-22-701. Establishment of Indigent Aggravated Murder Defense Fund -- Use**  
90 **of fund -- Compensation for indigent legal defense from fund.**

91 (1) ~~[For purposes of this part]~~ As used in this part, "fund" means the Indigent  
92 Aggravated Murder Defense Fund.

93 (2) (a) There is established a custodial fund known as the "Indigent Aggravated Murder  
94 Defense Fund."

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

97 (3) The fund consists of:

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

100 (b) appropriations made to the fund by the Legislature as provided in Section  
101 78B-22-703; and

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

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

105 (5) The fund shall be used to assist participating counties with ~~[financial resources]~~  
106 expenses for indigent defense services, as provided in Subsection (6), to fulfill ~~[their]~~ the  
107 constitutional and statutory mandates for the provision of constitutionally effective defense for  
108 indigent individuals prosecuted for the violation of state laws in cases involving aggravated  
109 murder.

110 (6) Money allocated to or deposited ~~[in this fund shall be]~~ into the fund is used only:

111 (a) to reimburse participating counties for ~~[expenditures made for an attorney~~  
112 ~~appointed to represent]~~ expenses incurred for indigent defense services provided to an indigent  
113 individual, other than a state inmate in a state prison, who is prosecuted for aggravated murder  
114 in a participating county; and

115 (b) for administrative costs pursuant to Section 78B-22-501.

116 Section 4. Section 78B-22-702 is amended to read:

117 **78B-22-702. County participation.**

118 (1) (a) A county may participate in the fund subject to the provisions of this chapter.

119 (b) A county that does not participate in the fund, or is not current in the county's  
120 assessments for the fund, is ineligible to receive money from the fund.

121 [~~(b)~~] (c) The board may revoke a county's participation in the fund if the county fails to  
122 pay the county's assessments when due.

123 (2) To participate in the fund, the legislative body of a county shall:

124 (a) adopt a resolution approving participation in the fund and committing that county to  
125 fulfill the assessment requirements as set forth in Subsection (3) and Section 78B-22-703; and

126 (b) submit a certified copy of that resolution together with an application to the board.

127 (3) By January 15 of each year, a participating county shall contribute to the fund an  
128 amount computed in accordance with Section 78B-22-703.

129 (4) A participating county may withdraw from participation in the fund upon:

130 (a) adoption by the county's legislative body of a resolution to withdraw; and

131 (b) notice to the board by January 1 of the year before withdrawal.

132 (5) A county withdrawing from participation in the fund, or whose participation in the  
133 fund has been revoked for failure to pay the county's assessments when due, shall forfeit the  
134 right to:

135 (a) any previously [~~payed~~] paid assessment;

136 (b) relief from the county's obligation to pay [~~its~~] the county's assessment during the  
137 period of [~~its~~] the county's participation in the fund; and

138 (c) any benefit from the fund, including reimbursement of costs that accrued after the  
139 last day of the period for which the county has paid [~~its~~] the county's assessment.

140 Section 5. Section 78B-22-703 is amended to read:

141 **78B-22-703. County and state obligations.**

142 (1) (a) Except as provided in Subsection (1)(b), a participating county shall pay into the  
143 fund annually an amount calculated by multiplying the average of the percent of [~~its~~] the  
144 county's population to the total population of all participating counties and of the percent [~~its~~]  
145 of the county's taxable value of the locally and centrally assessed property located within that  
146 county to the total taxable value of the locally and centrally assessed property to all  
147 participating counties by the total fund assessment for that year to be paid by all participating  
148 counties as is determined by the board to be sufficient such that it is unlikely that a deficit will  
149 occur in the fund in any calendar year.

150 (b) The fund minimum [~~shall be~~] is equal to or greater than 50 cents per person of all  
151 counties participating.

152 (c) The amount paid by a participating county [~~pursuant to~~] under this Subsection (1)  
153 [~~shall be~~] is the total county obligation for payment of costs [~~pursuant to~~] in accordance with  
154 Section 78B-22-701.

155 (2) (a) A county that elects to initiate participation in the fund, or reestablish  
156 participation in the fund after participation was terminated, is required to make an equity  
157 payment in addition to the assessment required by Subsection (1).

158 (b) The equity payment [~~shall be~~] is determined by the board and represent what the  
159 county's equity in the fund would be if the county had made assessments into the fund for each  
160 of the previous two years.

161 (3) If the fund balance after contribution by the state and participating counties is  
162 insufficient to replenish the fund annually to at least \$250,000, the board by a majority vote  
163 may terminate the fund.

164 (4) If the fund is terminated, the remaining money shall continue to be administered  
165 and disbursed in accordance with the provision of this chapter until exhausted, at which time  
166 the fund shall cease to exist.

167 (5) (a) If the fund runs a deficit during any calendar year, the state is responsible for the  
168 deficit.

169 (b) In the calendar year following a deficit year, the board shall increase the assessment  
170 required by Subsection (1) by an amount at least equal to the deficit of the previous year, which  
171 combined amount becomes the base assessment until another deficit year occurs.

172 (6) In a calendar year in which the fund runs a deficit, or is projected to run a deficit,  
173 the board shall request a supplemental appropriation to pay for the deficit from the Legislature  
174 in the following general session.

175 (7) The state shall pay any or all of the reasonable and necessary money for the deficit  
176 into the fund.

177 Section 6. Section 78B-22-704 is amended to read:

178 **78B-22-704. Application and qualification for fund money.**

179 (1) A participating county may apply to the board for benefits from the fund if that  
180 county has incurred, or reasonably anticipates incurring, expenses [~~in the defense of~~] for

181 indigent defense services provided to an indigent individual for an offense involving  
182 aggravated murder.

183 (2) An application may not be made nor benefits provided from the fund for a case  
184 filed before September 1, 1998.

185 (3) ~~[H] Except as provided in Subsection (4), if the application of a participating~~  
186 ~~county is approved by the board, the board shall negotiate, enter into, and administer a contract~~  
187 ~~[with counsel for the indigent individual and costs incurred for the defense of that indigent~~  
188 ~~individual, including fees for counsel and reimbursement for indigent defense services incurred~~  
189 ~~by an indigent defense service provider]~~ for the cost of indigent defense services with an  
190 attorney or entity appointed to represent the indigent individual.

191 (4) The board shall pay an indigent defense service provider with a contract under  
192 Subsection (3) for indigent defense resources approved by a court under Section [78B-22-705](#).

193 ~~[(4)]~~ (5) A nonparticipating county is responsible for paying for indigent defense  
194 services in the nonparticipating county and is not eligible for any legislative relief.

195 Section 7. Section **78B-22-705** is enacted to read:

196 **78B-22-705. Extraordinary expense -- Motion.**

197 (1) If an indigent defense service provider is representing an indigent individual for an  
198 offense involving aggravated murder and the indigent defense service provider has a contract  
199 with the board under Section [78B-22-704](#), the indigent defense service provider may file an ex  
200 parte motion with the court for an order for the payment of indigent defense resources not  
201 covered by the contract between the indigent defense service provider and the board.

202 (2) (a) Except as provided in Subsection (2)(b), an indigent defense service provider  
203 shall file an ex parte motion under Subsection (1) before the cost for indigent defense resources  
204 is incurred.

205 (b) An indigent defense service provider may file an ex parte motion under Subsection  
206 (1) for a cost incurred for indigent defense resources on and after May 14, 2019, but before  
207 May 3, 2023.

208 (3) Upon an ex parte motion under this section, the court shall conduct an in camera  
209 review of:

210 (a) the indigent defense service provider's contract with the board;

211 (b) the cost, or the anticipated cost, of the indigent defense resources for which the

212 indigent service provider seeks approval; and

213 (c) any other relevant record.

214 (4) The court may order the board to pay for indigent defense resources sought by the

215 indigent defense service provider under this section.