

INDIGENT DEFENSE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Tyler Clancy

LONG TITLE

General Description:

This bill amends provisions related to indigent defense.

Highlighted Provisions:

This bill:

- ▶ repeals the Indigent Defense Funds Board;
- ▶ amends provisions related to assigning an indigent defense service provider to represent an indigent individual;
- ▶ amends the duties of the Indigent Defense Commission and the Office of Indigent Defense Services to incorporate the duties of the Indigent Defense Funds Board;
- ▶ amends provisions related to using and administering the Indigent Aggravated Murder Defense Fund;
- ▶ repeals provisions that allow an indigent defense service provider to file a motion with the court for an order for the payment of extraordinary indigent defense expenses; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **78B-22-102**, as last amended by Laws of Utah 2022, Chapters 281, 451

30 **78B-22-203**, as last amended by Laws of Utah 2023, Chapter 182

31 **78B-22-404**, as last amended by Laws of Utah 2022, Chapter 451

32 **78B-22-452**, as last amended by Laws of Utah 2021, Chapter 228

33 **78B-22-701**, as last amended by Laws of Utah 2023, Chapter 182

34 **78B-22-702**, as last amended by Laws of Utah 2023, Chapter 182

35 **78B-22-703**, as last amended by Laws of Utah 2023, Chapter 182

36 **78B-22-704**, as last amended by Laws of Utah 2023, Chapter 182

37 RENUMBERS AND AMENDS:

38 **78B-22-701.5**, (Renumbered from 78B-22-502, as last amended by Laws of Utah 2020,
39 Chapter 392)

40 REPEALS:

41 **78B-22-501**, as last amended by Laws of Utah 2022, Chapter 451

42 **78B-22-705**, as enacted by Laws of Utah 2023, Chapter 182



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

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

46 **78B-22-102. Definitions.**

47 As used in this chapter:

48 (1) "Account" means the Indigent Defense Resources Restricted Account created in
49 Section **78B-22-405**.

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

51 [~~(3)~~ (2) "Commission" means the Utah Indigent Defense Commission created in
52 Section **78B-22-401**.

53 [~~(4)~~ (3) "Child welfare case" means a proceeding under Title 80, Chapter 3, Abuse,
54 Neglect, and Dependency Proceedings, or Title 80, Chapter 4, Termination and Restoration of
55 Parental Rights.

56 [~~(5)~~ (4) "Executive Director" means the executive director of the Office of Indigent
57 Defense Services, created in Section **78B-22-451**, who is appointed in accordance with Section
58 **78B-22-453**.

59 ~~[(6)]~~ (5) "Indigent defense resources" means the resources necessary to provide an
60 effective defense for an indigent individual.

61 ~~[(7)]~~ (6) "Indigent defense service provider" means an attorney or entity appointed to
62 represent an indigent individual through:

- 63 (a) a contract with an indigent defense system to provide indigent defense services;
64 (b) an order issued by the court under Subsection [78B-22-203\(2\)\(a\)](#); or
65 (c) direct employment with an indigent defense system.

66 ~~[(8)]~~ (7) "Indigent defense services" means:

67 (a) the representation of an indigent individual by an indigent defense service provider;
68 and

69 (b) the provision of indigent defense resources for an indigent individual.

70 ~~[(9)]~~ (8) "Indigent defense system" means:

- 71 (a) a city or town that is responsible for providing indigent defense services;
72 (b) a county that is responsible for providing indigent defense services in the district
73 court, juvenile court, and the county's justice courts; or

74 (c) an interlocal entity, created pursuant to Title 11, Chapter 13, Interlocal Cooperation
75 Act, that is responsible for providing indigent defense services according to the terms of an
76 agreement between a county, city, or town.

77 ~~[(10)]~~ (9) "Indigent individual" means:

78 (a) a minor who is:

- 79 (i) arrested and admitted into detention for an offense under Section [78A-6-103](#);
80 (ii) charged by petition or information in the juvenile or district court; or
81 (iii) described in this Subsection ~~[(10)]~~ (9)(a), who is appealing an adjudication or

82 other final court action; and

83 (b) an individual listed in Subsection [78B-22-201\(1\)](#) who is found indigent pursuant to
84 Section [78B-22-202](#).

85 ~~[(11)]~~ (10) "Minor" means the same as that term is defined in Section [80-1-102](#).

86 ~~[(12)]~~ (11) "Office" means the Office of Indigent Defense Services created in Section
87 [78B-22-451](#).

88 ~~[(13)]~~ (12) "Participating county" means a county that complies with this chapter for
89 participation in the Indigent Aggravated Murder Defense Fund as provided in Sections

90 78B-22-702 and 78B-22-703.

91 Section 2. Section 78B-22-203 is amended to read:

92 **78B-22-203. Order for indigent defense services.**

93 (1) (a) [A] Except as provided in Subsection (6), a court shall appoint an indigent
94 defense service provider who is employed by an indigent defense system or who has a contract
95 with an indigent defense system to provide indigent defense services for an individual over
96 whom the court has jurisdiction if:

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

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

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

- 105 (i) all the contracted indigent defense service providers:
 - 106 (A) have a conflict of interest; or
 - 107 (B) do not have sufficient expertise to provide indigent defense services for the

108 indigent individual; or

109 (ii) the indigent defense system does not have a contract with an indigent defense
110 service provider for indigent defense services.

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

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

- 116 (i) the individual is an indigent individual;
- 117 (ii) the individual would be prejudiced by the substitution of a contracted indigent
118 defense service provider and the prejudice cannot be remedied;
- 119 (iii) at the time that private counsel was retained, the individual:

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

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

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

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

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

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

132 (i) the private counsel contract;

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

134 (iii) other relevant records.

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

137 (5) A court may not order indigent defense resources be provided to an indigent
138 individual, except as provided in~~[-]~~ Subsection (3).

139 ~~[(a) Subsection (3); or]~~

140 ~~[(b) Section 78B-22-705.]~~

141 (6) (a) For an individual prosecuted for aggravated murder and found indigent, a court
142 from a county participating in the Indigent Aggravated Murder Defense Fund created in
143 Section 78B-22-701 shall notify the Office of Indigent Defense Services of the finding of
144 indigency.

145 (b) The office shall assign an indigent defense service provider qualified under Utah
146 Rules of Criminal Procedure, Rule 8, with whom the office has a preliminary contract to
147 provide indigent defense services for an assigned rate.

148 Section 3. Section 78B-22-404 is amended to read:

149 **78B-22-404. Powers and duties of the commission.**

150 (1) The commission shall:

151 (a) adopt core principles for an indigent defense system to ensure the effective

152 representation of indigent individuals consistent with the requirements of the United States
153 Constitution, the Utah Constitution, and the Utah Code, which principles at a minimum shall
154 address the following:

155 (i) an indigent defense system shall ensure that in providing indigent defense services:

156 (A) an indigent individual receives conflict-free indigent defense services; and

157 (B) there is a separate contract for each type of indigent defense service; and

158 (ii) an indigent defense system shall ensure an indigent defense service provider has:

159 (A) the ability to exercise independent judgment without fear of retaliation and is free

160 to represent an indigent individual based on the indigent defense service provider's own

161 independent judgment;

162 (B) adequate access to indigent defense resources;

163 (C) the ability to provide representation to accused individuals in criminal cases at the
164 critical stages of proceedings, and at all stages to indigent individuals in juvenile delinquency
165 and child welfare proceedings;

166 (D) a workload that allows for sufficient time to meet with clients, investigate cases,

167 file appropriate documents with the courts, and otherwise provide effective assistance of

168 counsel to each client;

169 (E) adequate compensation without financial disincentives;

170 (F) appropriate experience or training in the area for which the indigent defense service
171 provider is representing indigent individuals;

172 (G) compensation for legal training and education in the areas of the law relevant to the

173 types of cases for which the indigent defense service provider is representing indigent

174 individuals; and

175 (H) the ability to meet the obligations of the Utah Rules of Professional Conduct,
176 including expectations on client communications and managing conflicts of interest;

177 (b) encourage and aid indigent defense systems in the state in the regionalization of
178 indigent defense services to provide for effective and efficient representation to the indigent
179 individuals;

180 (c) emphasize the importance of ensuring constitutionally effective indigent defense
181 services;

182 (d) encourage members of the judiciary to provide input regarding the delivery of

183 indigent defense services; ~~and~~

184 (e) oversee individuals and entities involved in providing indigent defense services[-];

185 and

186 (f) manage county participation in the Indigent Aggravated Murder Defense Fund

187 created in Section 78B-22-701.

188 (2) The commission may:

189 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
190 Rulemaking Act, to carry out the commission's duties under this part;

191 (b) assign duties related to indigent defense services to the office to assist the
192 commission with the commission's statutory duties;

193 (c) request supplemental appropriations from the Legislature to address a deficit in the
194 Indigent Inmate Fund created in Section 78B-22-455; and

195 (d) request supplemental appropriations from the Legislature to address a deficit in the
196 Child Welfare Parental Representation Fund created in Section 78B-22-804.

197 Section 4. Section 78B-22-452 is amended to read:

198 **78B-22-452. Duties of the office.**

199 (1) The office shall:

200 (a) establish an annual budget for the office for the Indigent Defense Resources
201 Restricted Account created in Section 78B-22-405;

202 (b) assist the commission in performing the commission's statutory duties described in
203 this chapter;

204 (c) identify and collect data that is necessary for the commission to:

205 (i) aid, oversee, and review compliance by indigent defense systems with the
206 commission's core principles for the effective representation of indigent individuals; and

207 (ii) provide reports regarding the operation of the commission and the provision of
208 indigent defense services by indigent defense systems in the state;

209 (d) assist indigent defense systems by reviewing contracts and other agreements, to
210 ensure compliance with the commission's core principles for effective representation of
211 indigent individuals;

212 (e) establish procedures for the receipt and acceptance of complaints regarding the
213 provision of indigent defense services in the state;

214 (f) establish procedures to award grants to indigent defense systems under Section
215 [78B-22-406](#) that are consistent with the commission's core principles;

216 (g) create and enter into contracts consistent with Section [78B-22-454](#) to provide
217 indigent defense services for an indigent defense inmate who:

218 (i) is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth
219 class as classified in Section [17-50-501](#);

220 (ii) is charged with having committed a crime within that state prison; and

221 (iii) has been appointed counsel in accordance with Section [78B-22-203](#);

222 (h) assist the commission in developing and reviewing advisory caseload guidelines
223 and procedures;

224 (i) investigate, audit, and review the provision of indigent defense services to ensure
225 compliance with the commission's core principles for the effective representation of indigent
226 individuals;

227 (j) administer the Child Welfare Parental Representation Program in accordance with
228 Part 8, Child Welfare Parental Representation Program;

229 (k) administer the Indigent Aggravated Murder Defense Fund in accordance with Part
230 7, Indigent Aggravated Murder Defense Fund;

231 (l) assign an indigent defense service provider to represent an individual prosecuted for
232 aggravated murder in accordance with Part 7, Indigent Aggravated Murder Defense Fund;

233 ~~(k)~~ (m) annually report to the governor, Legislature, Judiciary Interim Committee,
234 and Judicial Council, regarding:

235 (i) the operations of the commission;

236 (ii) the operations of the indigent defense systems in the state; and

237 (iii) compliance with the commission's core principles by indigent defense systems
238 receiving grants from the commission;

239 ~~(l)~~ (n) submit recommendations to the commission for improving indigent defense
240 services in the state;

241 ~~(m)~~ (o) publish an annual report on the commission's website; and

242 ~~(n)~~ (p) perform all other duties assigned by the commission related to indigent
243 defense services.

244 (2) The office may enter into contracts and accept, allocate, and administer funds and

245 grants from any public or private person to accomplish the duties of the office.

246 (3) Any contract entered into under this part shall require that indigent defense services
247 are provided in a manner consistent with the commission's core principles implemented under
248 Section [78B-22-404](#).

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

250 **78B-22-701. Establishment of Indigent Aggravated Murder Defense Fund -- Use**
251 **of fund -- Compensation for indigent legal defense from fund.**

252 (1) As used in this part, "fund" means the Indigent Aggravated Murder Defense Fund.

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

255 (b) The ~~[Division of Finance]~~ office shall disburse money from the fund at the
256 direction of the ~~[board]~~ commission and subject to this chapter.

257 (3) The fund consists of:

258 (a) money received from participating counties as provided in Sections [78B-22-702](#)
259 and [78B-22-703](#);

260 (b) appropriations made to the fund by the Legislature as provided in Section
261 [78B-22-703](#); and

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

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

265 (5) The fund shall be used to ~~[assist participating counties with expenses for indigent~~
266 ~~defense services, as provided in Subsection (6), to]~~ fulfill the constitutional and statutory
267 mandates for the provision of constitutionally effective defense for indigent individuals
268 prosecuted for the violation of state laws in cases involving aggravated murder.

269 (6) Money allocated to or deposited into the fund is used only:

270 (a) ~~[to reimburse participating counties for expenses incurred for indigent defense~~
271 ~~services provided to an indigent individual, other than a state inmate in a state prison, who is~~
272 ~~prosecuted for aggravated murder in a participating county]~~ to pay an indigent defense service
273 provider appointed to represent an individual prosecuted for aggravated murder; and

274 (b) for defense resources necessary to effectively represent the individual.

275 ~~[(b) for administrative costs pursuant to Section [78B-22-501](#).]~~

276 Section 6. Section **78B-22-701.5**, which is renumbered from Section 78B-22-502 is
 277 renumbered and amended to read:

278 ~~[78B-22-502].~~ **78B-22-701.5. Administration of Indigent Aggravated**
 279 **Murder Defense Fund.**

280 (1) The commission shall establish rules and procedures for the application by a county
 281 for disbursements, and the screening and approval of the applications for the money from the
 282 fund.

283 ~~[(1)]~~ (2) The ~~[board]~~ office shall:

284 ~~[(a) establish rules and procedures for the application by a county for disbursements,~~
 285 ~~and the screening and approval of the applications for money from the fund;]~~

286 ~~[(b)]~~ (a) receive, screen, and approve, or disapprove the application of a county for
 287 disbursements from the fund;

288 ~~[(c)]~~ (b) calculate the amount of the annual contribution to be made to the fund by each
 289 participating county;

290 ~~[(d)]~~ (c) prescribe forms for the application for money from the fund;

291 ~~[(e)]~~ (d) oversee and approve the disbursement of money from the fund as described in
 292 Section **78B-22-701**; and

293 ~~[(f) establish the board's own rules of procedure, elect the board's own officers, and~~
 294 ~~appoint committees of the board's members and other people as may be reasonable and~~
 295 ~~necessary; and]~~

296 ~~[(g)]~~ (e) negotiate, enter into, and administer contracts with legal counsel, qualified
 297 under and meeting the standards consistent with this chapter, to provide indigent defense
 298 services to an indigent individual prosecuted in a participating county for an offense involving
 299 aggravated murder.

300 ~~[(2) The board may provide to the court a list of attorneys qualified under Utah Rules~~
 301 ~~of Criminal Procedure, Rule 8, with which the board has a preliminary contract to provide~~
 302 ~~indigent defense services for an assigned rate.]~~

303 Section 7. Section **78B-22-702** is amended to read:

304 **78B-22-702. County participation.**

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

306 (b) A county that does not participate in the fund, or is not current in the county's

307 assessments for the fund, is ineligible to receive money from the fund.

308 (c) The [board] commission may revoke a county's participation in the fund if the
309 county fails to pay the county's assessments when due.

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

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

313 (b) submit a certified copy of that resolution together with an application to the [board]
314 commission.

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

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

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

319 (b) notice to the [board] commission by January 1 of the year before withdrawal.

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

323 (a) any previously paid assessment;

324 (b) relief from the county's obligation to pay the county's assessment during the period
325 of the county's participation in the fund; and

326 (c) any benefit from the fund, including reimbursement of costs that accrued after the
327 last day of the period for which the county has paid the county's assessment.

328 Section 8. Section 78B-22-703 is amended to read:

329 **78B-22-703. County and state obligations.**

330 (1) (a) Except as provided in Subsection (1)(b), a participating county shall pay into the
331 fund annually an amount calculated by multiplying the average of the percent of the county's
332 population to the total population of all participating counties and of the percent of the county's
333 taxable value of the locally and centrally assessed property located within that county to the
334 total taxable value of the locally and centrally assessed property to all participating counties by
335 the total fund assessment for that year to be paid by all participating counties as is determined
336 by the [board] commission to be sufficient such that it is unlikely that a deficit will occur in the
337 fund in any calendar year.

338 (b) The fund minimum is equal to or greater than 50 cents per person of all counties
339 participating.

340 (c) The amount paid by a participating county under this Subsection (1) is the total
341 county obligation for payment of costs in accordance with Section 78B-22-701.

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

345 (b) The equity payment is determined by the [board] commission and represent what
346 the county's equity in the fund would be if the county had made assessments into the fund for
347 each of the previous two years.

348 (3) If the fund balance after contribution by the state and participating counties is
349 insufficient to replenish the fund annually to at least \$250,000, the [board] commission by a
350 majority vote may terminate the fund.

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

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

356 (b) In the calendar year following a deficit year, the [board] commission shall increase
357 the assessment required by Subsection (1) by an amount at least equal to the deficit of the
358 previous year, which combined amount becomes the base assessment until another deficit year
359 occurs.

360 (6) In a calendar year in which the fund runs a deficit, or is projected to run a deficit,
361 the [board] commission shall request a supplemental appropriation to pay for the deficit from
362 the Legislature in the following general session.

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

365 Section 9. Section 78B-22-704 is amended to read:

366 **78B-22-704. Application and qualification for fund money.**

367 (1) A participating county may apply to the [board] office for benefits from the fund if
368 that county has incurred, or reasonably anticipates incurring, expenses for indigent defense

369 services provided to an indigent individual for an offense involving aggravated murder.

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

372 (3) [~~Except as provided in Subsection (4), if~~] If the application of a participating
373 county is approved by the [~~board~~] office, the [~~board~~] office shall negotiate, enter into, and
374 administer a contract for the cost of indigent defense services with an attorney or entity
375 appointed to represent the indigent individual.

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

378 [(5)] (4) A nonparticipating county is responsible for paying for indigent defense
379 services in the nonparticipating county and is not eligible for any legislative relief.

380 Section 10. **Repealer.**

381 This bill repeals:

382 Section **78B-22-501, Indigent Defense Funds Board -- Members -- Administrative**
383 **support.**

384 Section **78B-22-705, Extraordinary expense -- Motion.**

385 Section 11. **Effective date.**

386 This bill takes effect on May 1, 2024.