

## SB0160S01 compared with SB0160

~~text~~ shows text that was in SB0160 but was deleted in SB0160S01.

text shows text that was not in SB0160 but was inserted into SB0160S01.

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Senator Todd D. Weiler proposes the following substitute bill:

### INDIGENT DEFENSE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd D. Weiler**

House Sponsor: ~~\_\_\_\_\_~~ Tyler Clancy

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#### 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

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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:

AMENDS:

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

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

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

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

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

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

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

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

RENUMBERS AND AMENDS:

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

REPEALS:

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

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

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

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

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

As used in this chapter:

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

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

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

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

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

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

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

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

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

- (a) the representation of an indigent individual by an indigent defense service provider;

and

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

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

- (a) a city or town that is responsible for providing indigent defense services;
- (b) a county that is responsible for providing indigent defense services in the district

court, juvenile court, and the county's justice courts; or

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

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

- (a) a minor who is:

- (i) arrested and admitted into detention for an offense under Section 78A-6-103;
- (ii) charged by petition or information in the juvenile or district court; or

- (iii) described in this Subsection ~~[(10)]~~ (9)(a), who is appealing an adjudication or

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other final court action; and

(b) an individual listed in Subsection 78B-22-201(1) who is found indigent pursuant to Section 78B-22-202.

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

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

~~[(13)]~~ (12) "Participating county" means a county that complies with this chapter for participation in the Indigent Aggravated Murder Defense Fund as provided in Sections 78B-22-702 and 78B-22-703.

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

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

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

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

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

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

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

(b) A court may not order indigent defense services under Subsection (2)(a) unless the court conducts a hearing with proper notice to the indigent defense system by sending notice of

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the hearing to the county clerk or municipal recorder.

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

(i) the individual is an indigent individual;

(ii) the individual would be prejudiced by the substitution of a contracted indigent defense service provider and the prejudice cannot be remedied;

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

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

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

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

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

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

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

(i) the private counsel contract;

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

(iii) other relevant records.

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

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

~~[(a) Subsection (3), or]~~

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

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

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indigency.

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

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

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

(1) The commission shall:

(a) adopt core principles for an indigent defense system to ensure the effective representation of indigent individuals consistent with the requirements of the United States Constitution, the Utah Constitution, and the Utah Code, which principles at a minimum shall address the following:

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

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

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

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

(A) the ability to exercise independent judgment without fear of retaliation and is free to represent an indigent individual based on the indigent defense service provider's own independent judgment;

(B) adequate access to indigent defense resources;

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

(D) a workload that allows for sufficient time to meet with clients, investigate cases, file appropriate documents with the courts, and otherwise provide effective assistance of counsel to each client;

(E) adequate compensation without financial disincentives;

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

(G) compensation for legal training and education in the areas of the law relevant to the types of cases for which the indigent defense service provider is representing indigent individuals; and

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

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

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

(d) encourage members of the judiciary to provide input regarding the delivery of indigent defense services; [~~and~~]

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

(f) manage county participation in the Indigent Aggravated Murder Defense Fund created in Section 78B-22-701.

(2) The commission may:

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

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

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

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

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

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

(1) The office shall:

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

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

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

(i) aid, oversee, and review compliance by indigent defense systems with the

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commission's core principles for the effective representation of indigent individuals; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the operations of the commission;

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



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

~~[(t)]~~ (n) submit recommendations to the commission for improving indigent defense services in the state;

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

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

(2) The office may enter into contracts and accept, allocate, and administer funds and grants from any public or private person to accomplish the duties of the office.

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

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

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

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

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

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

(3) The fund consists of:

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

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

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

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

(5) The fund shall be used to ~~[assist participating counties with expenses for indigent defense services, as provided in Subsection (6), to]~~ fulfill the constitutional and statutory mandates for the provision of constitutionally effective defense for indigent individuals

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prosecuted for the violation of state laws in cases involving aggravated murder.

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

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

(b) for defense resources necessary to effectively represent the individual~~(f)~~; and

(c) for costs associated with the management of the fund and defense service providers.

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

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

~~[78B-22-502].~~      **78B-22-701.5. Administration of Indigent Aggravated**

### **Murder Defense Fund.**

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

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

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

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

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

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

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

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

~~[(g)]~~ (e) negotiate, enter into, and administer contracts with legal counsel, qualified under and meeting the standards consistent with this chapter, to provide indigent defense

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services to an indigent individual prosecuted in a participating county for an offense involving aggravated murder.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) any previously paid assessment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) A participating county may apply to the [board] office for benefits from the fund if that county has incurred, or reasonably anticipates incurring, expenses for indigent defense services provided to an indigent individual for an offense involving aggravated murder.

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

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

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

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

### Section 10. **Repealer.**

This bill repeals:

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

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

### Section 11. **Effective date.**

This bill takes effect on May 1, 2024.