

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

AMENDMENTS TO INDIGENT DEFENSE

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses indigent defense services.

Highlighted Provisions:

This bill:

- ▶ creates and modifies definitions;
- ▶ amends the right to counsel for certain parties;
- ▶ amends the powers, duties, and membership of the Utah Indigent Defense Commission;
- ▶ creates the Office of Indigent Defense Services;
- ▶ creates the powers and duties of the Office of Indigent Defense Services;
- ▶ amends provisions related to indigent defense grants;
- ▶ creates the Indigent Appellate Defense Division to serve rural counties;
- ▶ provides the powers and duties of the Indigent Appellate Defense Division;
- ▶ creates the position of chief appellate officer within the Indigent Appellate Defense Division; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 **78A-6-1111**, as last amended by Laws of Utah 2019, Chapter 326
- 31 **78B-6-112**, as last amended by Laws of Utah 2019, Chapters 136, 326, and 491
- 32 **78B-22-102**, as enacted by Laws of Utah 2019, Chapter 326
- 33 **78B-22-201**, as enacted by Laws of Utah 2019, Chapter 326
- 34 **78B-22-301**, as enacted by Laws of Utah 2019, Chapter 326
- 35 **78B-22-401**, as renumbered and amended by Laws of Utah 2019, Chapter 326
- 36 **78B-22-402**, as last amended by Laws of Utah 2019, Chapter 435 and renumbered and
- 37 amended by Laws of Utah 2019, Chapter 326
- 38 **78B-22-404**, as renumbered and amended by Laws of Utah 2019, Chapter 326
- 39 **78B-22-406**, as renumbered and amended by Laws of Utah 2019, Chapter 326
- 40 **78B-22-601**, as renumbered and amended by Laws of Utah 2019, Chapter 326

41 ENACTS:

- 42 **78B-22-451**, Utah Code Annotated 1953
- 43 **78B-22-452**, Utah Code Annotated 1953
- 44 **78B-22-801**, Utah Code Annotated 1953
- 45 **78B-22-802**, Utah Code Annotated 1953
- 46 **78B-22-803**, Utah Code Annotated 1953
- 47 **78B-22-804**, Utah Code Annotated 1953

48 RENUMBERS AND AMENDS:

- 49 **78B-22-453**, (Renumbered from 78B-22-403, as renumbered and amended by Laws of
- 50 Utah 2019, Chapter 326)



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

52 Section 1. Section **78A-6-1111** is amended to read:

53 **78A-6-1111. Order for indigent defense service or guardian ad litem.**

54 (1) A court shall order indigent defense services for a minor, parent, or legal guardian
55 ~~[as provided by]~~ facing an action under this title filed by a private party or the state in
56 accordance with Title 78B, Chapter 22, Indigent Defense Act.

57 (2) (a) In any action under Part 3, Abuse, Neglect, and Dependency Proceedings, or
58

59 Part 5, Termination of Parental Rights Act, the child shall be represented by a guardian ad
60 litem in accordance with Sections 78A-6-317 and 78A-6-902.

61 (b) The child shall [~~also~~] be represented by an attorney guardian ad litem in other
62 actions initiated under this chapter when appointed by the court under Section 78A-6-902 or as
63 otherwise provided by law.

64 Section 2. Section 78B-6-112 is amended to read:

65 **78B-6-112. District court jurisdiction over termination of parental rights**
66 **proceedings.**

67 (1) A district court has jurisdiction to terminate parental rights in a child if the party
68 [~~who~~] that filed the petition is seeking to terminate parental rights in the child for the purpose
69 of facilitating the adoption of the child.

70 (2) A petition to terminate parental rights under this section may be:

71 (a) joined with a proceeding on an adoption petition; or

72 (b) filed as a separate proceeding before or after a petition to adopt the child is filed.

73 (3) A court may enter a final order terminating parental rights before a final decree of
74 adoption is entered.

75 (4) (a) Nothing in this section limits the jurisdiction of a juvenile court relating to
76 proceedings to terminate parental rights as described in Section 78A-6-103.

77 (b) This section does not grant jurisdiction to a district court to terminate parental
78 rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse,
79 neglect, dependency, or termination of parental rights proceeding.

80 (5) The district court may terminate an individual's parental rights in a child if:

81 (a) the individual executes a voluntary consent to adoption, or relinquishment for
82 adoption, of the child, in accordance with:

83 (i) the requirements of this chapter; or

84 (ii) the laws of another state or country, if the consent is valid and irrevocable;

85 (b) the individual is an unmarried biological father who is not entitled to consent to
86 adoption, or relinquishment for adoption, under Section 78B-6-120 or 78B-6-121;

87 (c) the individual:

88 (i) received notice of the adoption proceeding relating to the child under Section

89 78B-6-110; and

90 (ii) failed to file a motion for relief, under Subsection [78B-6-110\(6\)](#), within 30 days
91 after the day on which the individual was served with notice of the adoption proceeding;

92 (d) the court finds, under Section [78B-15-607](#), that the individual is not a parent of the
93 child; or

94 (e) the individual's parental rights are terminated on grounds described in Title 78A,
95 Chapter 6, Part 5, Termination of Parental Rights Act, [~~if terminating the individual's parental~~
96 ~~rights is~~] and termination is in the best interests of the child.

97 (6) The court shall appoint an indigent defense service provider[~~, under~~] in accordance
98 with Title 78B, Chapter 22, Indigent Defense Act, to represent [~~a party~~] an individual who
99 faces any action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination of
100 Parental Rights Act, or whose parental rights are subject to termination under this section.

101 (7) If a county incurs expenses in providing indigent defense services to an indigent
102 individual facing any action initiated by a private party under Title 78A, Chapter 6, Part 5,
103 Termination of Parental Rights Act, or termination of parental rights under this section, the
104 county may apply for reimbursement from the Utah Indigent Defense Commission [~~under~~] in
105 accordance with Section [78B-22-406](#).

106 (8) A petition filed under this section is subject to the procedural requirements of this
107 chapter.

108 Section 3. Section **78B-22-102** is amended to read:

109 **78B-22-102. Definitions.**

110 As used in this chapter:

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

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

114 (3) "Commission" means the Utah Indigent Defense Commission created in Section
115 [78B-22-401](#).

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

118 [~~(4)~~] (5) (a) "Indigent defense resources" means the resources necessary to provide an
119 effective defense for an indigent individual, including the costs for a competent investigator,
120 expert witness, scientific or medical testing, transcripts, and printing briefs.

121 (b) "Indigent defense resources" does not include an indigent defense service provider.

122 ~~[(5)]~~ (6) "Indigent defense service provider" means an attorney or entity appointed to
123 represent an indigent individual pursuant to:

124 (a) a contract with an indigent defense system to provide indigent defense services; or

125 (b) an order issued by the court under Subsection [78B-22-203\(2\)\(a\)](#).

126 ~~[(6)]~~ (7) "Indigent defense services" means:

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

128 and

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

130 ~~[(7)]~~ (8) "Indigent defense system" means:

131 (a) a city or town that is responsible for providing indigent defense services [~~in the~~
132 ~~city's or town's justice court~~];

133 (b) a county that is responsible for providing indigent defense services in the district
134 court, juvenile court, [~~or~~] and the county's justice courts; or

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

138 ~~[(8)]~~ (9) "Indigent individual" means:

139 (a) a minor who is:

140 (i) arrested and admitted into detention for an offense under Section [78A-6-103](#);

141 (ii) charged by petition or information in the juvenile or district court; or

142 (iii) described in this Subsection ~~[(8)]~~ (9)(a), who is appealing [~~a first appeal from~~] an
143 adjudication or other final court action; and

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

146 ~~[(9)]~~ (10) "Minor" means the same as that term is defined in Section [78A-6-105](#).

147 (11) "Office" means the Office of Indigent Defense Services created in Section
148 [78B-22-451](#).

149 ~~[(10)]~~ (12) "Participating county" means a county that complies with this chapter for
150 participation in the Indigent Aggravated Murder Defense Trust Fund as provided in Sections
151 [78B-22-702](#) and [78B-22-703](#).

152 Section 4. Section 78B-22-201 is amended to read:

153 **78B-22-201. Right to counsel.**

154 (1) A court shall advise the following of the individual's right to counsel when the
155 individual first appears before the court:

156 (a) an adult charged with a criminal offense the penalty for which includes the
157 possibility of incarceration regardless of whether actually imposed;

158 (b) a parent or legal guardian facing ~~[any]~~ an action initiated by the state under:

159 (i) Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;

160 (ii) Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act; or

161 (iii) Title 78A, Chapter 6, Part 10, Adult Offenses; ~~[or]~~

162 ~~[(iv) Section 78B-6-112; or]~~

163 (c) a parent or legal guardian facing an action initiated by a private party under:

164 (i) Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act; or

165 (ii) Section 78B-6-112; or

166 ~~[(e)]~~ (d) an individual described in this Subsection (1), who is appealing ~~[a first appeal~~
167 ~~from]~~ a conviction or other final court action.

168 (2) If an individual described in Subsection (1) does not knowingly and voluntarily
169 waive the right to counsel, the court shall determine whether the individual is indigent under
170 Section 78B-22-202.

171 Section 5. Section 78B-22-301 is amended to read:

172 **78B-22-301. Standards for indigent defense systems.**

173 An indigent defense system shall provide indigent defense services for an indigent
174 individual in accordance with the ~~[minimum guidelines]~~ core principles adopted by the
175 commission under Section 78B-22-404.

176 Section 6. Section 78B-22-401 is amended to read:

177 **78B-22-401. Utah Indigent Defense Commission -- Creation -- Purpose.**

178 (1) There is created the Utah Indigent Defense Commission within the State
179 Commission on Criminal and Juvenile Justice ~~[the "Utah Indigent Defense Commission."].~~

180 (2) The purpose of the commission is to assist:

181 (a) the state in meeting the state's obligations for the provision of indigent defense
182 services, consistent with the United States Constitution, the Utah Constitution, and the Utah

183 Code; and

184 (b) the office with carrying out the statutory duties assigned to the commission and
 185 office.

186 Section 7. Section **78B-22-402** is amended to read:

187 **78B-22-402. Commission members -- Member qualifications -- Terms -- Vacancy.**

188 (1) The commission is composed of 15 ~~[voting]~~ members ~~[and one ex officio,~~
 189 ~~nonvoting member]~~.

190 (a) The governor, with the consent of the Senate, shall appoint the following ~~[13~~
 191 ~~voting]~~ 11 members:

192 (i) two practicing criminal defense attorneys recommended by the Utah Association of
 193 Criminal Defense Lawyers;

194 (ii) one attorney practicing in juvenile delinquency defense recommended by the Utah
 195 Association of Criminal Defense Lawyers;

196 (iii) one attorney practicing in the area of parental defense, recommended by an entity
 197 funded under the Child Welfare Parental Defense Program created in Section [63M-7-211](#);

198 ~~[(iii)]~~ (iv) [an] one attorney representing minority interests recommended by the Utah
 199 Minority Bar Association;

200 ~~[(iv)]~~ (v) one member recommended by the Utah Association of Counties from a
 201 county of the first or second class;

202 ~~[(v)]~~ (vi) one member recommended by the Utah Association of Counties from a
 203 county of the third through sixth class;

204 ~~[(vi)]~~ (vii) [a] one director of a county public defender organization recommended by
 205 the Utah Association of Criminal Defense Lawyers;

206 ~~[(vii)]~~ (viii) two members recommended by the Utah League of Cities and Towns from
 207 its membership; and

208 ~~[(viii)]~~ (ix) [a] one retired judge recommended by the Judicial Council[;].

209 ~~[(ix) one attorney practicing in the area of parental defense, recommended by an entity~~
 210 ~~funded under the Child Welfare Parental Defense Program created in Section [63M-7-211](#); and]~~

211 ~~[(x)]~~ (b) The speaker of the House of Representatives and the president of the Senate
 212 shall appoint two members of the Utah Legislature, one from the House of Representatives and
 213 one from the Senate~~[-selected jointly by the Speaker of the House and President of the Senate].~~

214 ~~[(b)]~~ (c) The Judicial Council shall appoint a ~~[voting]~~ member from the Administrative
215 Office of the Courts.

216 ~~[(c)]~~ (d) The executive director of the State Commission on Criminal and Juvenile
217 Justice or the executive director's designee is a ~~[voting]~~ member of the commission.

218 ~~[(d) The director of the commission, appointed under Section 78B-22-403, is an ex~~
219 ~~officio, nonvoting member of the commission.]~~

220 (2) A member appointed by the governor shall serve a four-year term, except as
221 provided in Subsection (3).

222 (3) The governor shall stagger the initial terms of appointees so that approximately half
223 of the members appointed by the governor are appointed every two years.

224 (4) A member appointed to the commission shall have significant experience in
225 indigent criminal defense, parental defense, or juvenile defense in delinquency proceedings or
226 have otherwise demonstrated a strong commitment to providing effective representation in
227 indigent defense services.

228 (5) ~~[A person]~~ An individual who is currently employed solely as a criminal
229 prosecuting attorney may not serve as a member of the commission.

230 (6) A commission member shall hold office until the member's successor is appointed.

231 (7) The commission may remove a member for incompetence, dereliction of duty,
232 malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.

233 (8) If a vacancy occurs in the membership for any reason, a replacement shall be
234 appointed for the remaining unexpired term in the same manner as the original appointment.

235 (9) (a) The commission shall ~~[annually elect]~~ elect annually a chair from the
236 commission's membership to serve a one-year term.

237 **(b)** A commission member may not serve as chair of the commission for more than
238 three consecutive terms.

239 (10) A member may not receive compensation or benefits for the member's service[;]
240 but may receive per diem and travel expenses in accordance with:

241 (a) Section [63A-3-106](#);

242 (b) Section [63A-3-107](#); and

243 (c) rules made by the Division of Finance ~~[pursuant to]~~ in accordance with Sections
244 [63A-3-106](#) and [63A-3-107](#).

245 (11) (a) A majority of the members of the commission constitutes a quorum.

246 (b) If a quorum is present, the action of a majority of the voting members present
247 constitutes the action of the commission.

248 Section 8. Section **78B-22-404** is amended to read:

249 **78B-22-404. Powers and duties of the commission.**

250 (1) The commission shall:

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

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

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

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

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

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

262 (B) adequate access to indigent defense resources;

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

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

269 (E) adequate compensation without financial disincentives;

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

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

275 (H) the ability to meet the obligations of the Utah Rules of Professional Conduct,

276 including expectations on client communications and managing conflicts of interest;
277 (b) encourage and aid indigent defense systems in the state in the regionalization of
278 indigent defense services to provide for effective and efficient representation to the indigent
279 individuals;
280 ~~[(e) identify and collect data from any source, which is necessary for the commission~~
281 ~~to:]~~
282 ~~[(i) aid, oversee, and review compliance by indigent defense systems with the~~
283 ~~commission's minimum guidelines for the effective representation of indigent individuals; and]~~
284 ~~[(ii) provide reports regarding the operation of the commission and the provision of~~
285 ~~indigent defense services by indigent defense systems in the state;]~~
286 ~~[(d) assist indigent defense systems by reviewing contracts and other agreements, to~~
287 ~~ensure compliance with the commission's minimum guidelines for effective representation of~~
288 ~~indigent individuals;]~~
289 ~~[(e) investigate, audit, and review the provision of indigent defense services to ensure~~
290 ~~compliance with the commission's minimum guidelines for the effective representation of~~
291 ~~indigent individuals;]~~
292 ~~[(f) establish procedures for the receipt and acceptance of complaints regarding the~~
293 ~~provision of indigent defense services in the state;]~~
294 ~~[(g) establish procedures to award grants to indigent defense systems under Section~~
295 ~~78B-22-406 consistent with the commission's minimum guidelines for the effective~~
296 ~~representation of indigent individuals and appropriations by the state;]~~
297 ~~[(h)]~~ (c) emphasize the importance of ensuring constitutionally effective indigent
298 defense services;
299 ~~[(i)]~~ (d) encourage members of the judiciary to provide input regarding the delivery of
300 indigent defense services[;]; and
301 ~~[(j)]~~ (e) oversee individuals and entities involved in providing indigent defense
302 services[;].
303 ~~[(k) annually report to the governor, Legislature, Judiciary Interim Committee, and~~
304 ~~Judicial Council, regarding:]~~
305 ~~[(i) the operations of the commission;]~~
306 ~~[(ii) the operations of the indigent defense systems in the state; and]~~

307 ~~[(iii) compliance with the commission's minimum guidelines by indigent defense~~
 308 ~~systems receiving grants from the commission;]~~

309 ~~[(f) submit recommendations for improving indigent defense services in the state, to~~
 310 ~~legislative, executive, and judicial leadership, and]~~

311 ~~[(m) publish an annual report on the commission's website.]~~

312 (2) The commission may:

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

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

317 Section 9. Section **78B-22-406** is amended to read:

318 **78B-22-406. Indigent defense services grant program.**

319 (1) The commission may award grants to:

320 (a) supplement local spending by an indigent defense system for indigent defense[-]
 321 services; and

322 (b) enter into contracts for indigent defense services for an appeal from a juvenile court
 323 proceeding in a county of the third, fourth, fifth, or sixth class.

324 (2) ~~[Commission grant money may be used for the following expenses:]~~ The
 325 commission may use grant money:

326 (a) to assist an indigent defense system to provide indigent defense services that meet
 327 the commission's ~~[minimum guidelines]~~ core principles for the effective representation of
 328 indigent individuals;

329 (b) ~~[the establishment and maintenance of]~~ to establish and maintain local indigent
 330 defense data collection systems;

331 (c) to provide indigent defense services in addition to ~~[those]~~ indigent defense services
 332 that are currently being provided by an indigent defense system; ~~[and]~~

333 (d) to provide training and continuing legal education for indigent defense service
 334 providers[-]; and

335 (e) to assist indigent defense systems with appeals from juvenile court proceedings.

336 (3) To receive a grant from the commission, an indigent defense system shall
 337 demonstrate to the commission's satisfaction that:

338 (a) the indigent defense system has incurred or reasonably anticipates incurring
339 expenses for indigent defense services that are in addition to the indigent defense system's
340 average annual spending on indigent defense services in the three fiscal years immediately
341 preceding the grant application; and

342 (b) a grant from the commission is necessary for the indigent defense system to meet
343 the commission's [~~minimum guidelines~~] core principles for the effective representation of
344 indigent individuals.

345 (4) The commission may revoke a grant if an indigent defense system fails to meet
346 requirements of the grant or any of the commission's [~~minimum guidelines~~] core principles for
347 the effective representation of indigent individuals.

348 Section 10. Section **78B-22-451** is enacted to read:

349 **Part 4a. Office of Indigent Defense Services**

350 **78B-22-451. Office of Indigent Defense Services -- Creation.**

351 There is created the Office of Indigent Defense Services within the State Commission
352 of Criminal and Juvenile Justice.

353 Section 11. Section **78B-22-452** is enacted to read:

354 **78B-22-452. Duties of the office.**

355 (1) The office shall:

356 (a) establish an annual budget for the Indigent Defense Resources Restricted Account
357 created in Section [78B-22-405](#);

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

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

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

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

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

368 (e) establish procedures for the receipt and acceptance of complaints regarding the

369 provision of indigent defense services in the state;

370 (f) establish procedures to award grants to indigent defense systems under Section
 371 78B-22-406 that are consistent with the commission's core principles;

372 (g) assist the commission in developing and reviewing advisory caseload guidelines
 373 and procedures;

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

377 (i) annually report to the governor, Legislature, Judiciary Interim Committee, and
 378 Judicial Council, regarding:

379 (i) the operations of the commission;

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

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

383 (j) submit recommendations to the commission for improving indigent defense services
 384 in the state;

385 (k) publish an annual report on the commission's website; and

386 (l) perform all other duties assigned by the commission related to indigent defense
 387 services.

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

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

393 Section 12. Section **78B-22-453**, which is renumbered from Section 78B-22-403 is
 394 renumbered and amended to read:

395 ~~[78B-22-403].~~ **78B-22-453. Director -- Qualifications -- Staff.**

396 ~~[(1) The commission shall appoint a director to carry out the following duties:]~~

397 ~~[(a) establish an annual budget;]~~

398 ~~[(b) assist the commission in performing the commission's statutory duties;]~~

399 ~~[(c) assist the commission in developing and regularly reviewing advisory caseload~~

400 ~~guidelines and procedures; and]~~

401 ~~[(d) perform all other duties as assigned.]~~

402 (1) The executive director of the State Commission on Criminal and Juvenile Justice
403 shall appoint a director to carry out the duties of the office described in Section [78B-22-452](#).

404 (2) The director shall be an active member of the Utah State Bar with an appropriate
405 background and experience to serve as the full-time director.

406 (3) The director shall hire staff as necessary to carry out the duties of the ~~[commission]~~
407 office described in Section [78B-22-452](#), including:

408 (a) one individual who is an active member of the Utah State Bar to serve as a full-time
409 assistant director; and

410 (b) one individual with data collection and analysis skills ~~[to carry out duties as~~
411 ~~outlined in Subsection [78B-22-404\(1\)\(c\)](#)].~~

412 (4) When appointing the director of the office under Subsection (1), the executive
413 director of the State Commission on Criminal and Juvenile Justice shall give preference to an
414 individual with experience in adult criminal defense, child welfare parental defense, or juvenile
415 delinquency defense.

416 ~~[(4) The commission in appointing the director, and the director in hiring the assistant~~
417 ~~director, shall give a preference to individuals]~~

418 (5) When hiring the assistant director, the director shall give preference to an
419 individual with experience in adult criminal defense, child welfare parental defense, or juvenile
420 delinquency defense.

421 Section 13. Section **78B-22-601** is amended to read:

422 **78B-22-601. Defense of indigent inmates.**

423 (1) The board shall enter into contracts to provide indigent defense services for an
424 indigent inmate who:

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

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

428 (c) will require defense counsel.

429 (2) Payment for indigent defense services shall be made from the Indigent Inmate Trust
430 Fund as provided in Section [78B-22-602](#).

431 (3) A contract under this part shall ensure that indigent defense services are provided in
432 a manner consistent with the [~~minimum guidelines~~] core principles described in Section
433 [78B-22-301](#).

434 (4) The county attorney or district attorney of a county of the third, fourth, fifth, or
435 sixth class shall function as the prosecuting entity.

436 (5) (a) A county of the third, fourth, fifth, or sixth class where a state prison is located
437 may impose an additional property tax levy by ordinance at .0001 per dollar of taxable value in
438 the county.

439 (b) If the county governing body imposes the additional property tax levy by ordinance,
440 the [~~money~~] revenue shall be deposited into the Indigent Inmate Trust Fund as provided in
441 Section [78B-22-602](#) to fund the purposes of this part.

442 (c) Upon notification that the fund has reached the amount specified in Subsection
443 [78B-22-602](#)(6), a county shall deposit [~~money~~] revenue derived from the property tax levy after
444 the county receives the notice into a county account used exclusively to provide indigent
445 defense services.

446 (d) A county that chooses not to impose the additional levy by ordinance may not
447 receive any benefit from the Indigent Inmate Trust Fund.

448 Section 14. Section **78B-22-801** is enacted to read:

449 **Part 8. Indigent Appellate Defense Division**

450 **78B-22-801. Definitions.**

451 (1) "Appellate defense services" means the representation of an indigent individual
452 facing an appeal under Section [77-18a-1](#).

453 (2) "Division" means the Indigent Appellate Defense Division created in Section
454 [78B-22-802](#).

455 Section 15. Section **78B-22-802** is enacted to read:

456 **78B-22-802. Indigent Appellate Defense Division.**

457 There is created the Indigent Appellate Defense Division within the Office of Indigent
458 Defense Services.

459 Section 16. Section **78B-22-803** is enacted to read:

460 **78B-22-803. Powers and duties of the division.**

461 (1) The division shall:

462 (a) provide appellate defense services in counties of the third, fourth, fifth, and sixth
463 class; and

464 (b) provide appellate defense services in accordance with the core principles adopted
465 by the commission under Section 78A-22-404 and any other state and federal standards for
466 appellate defense services.

467 (2) Upon consultation with the director and the commission, the division shall:

468 (a) adopt a budget for the division;

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

470 (i) appellate performance standards;

471 (ii) case weighting standards; and

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

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

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

476 (ii) the caseloads of appellate attorneys; and

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

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

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

484 Section 17. Section **78B-22-804** is enacted to read:

485 **78B-22-804. Chief appellate officer -- Qualifications -- Staff.**

486 (1) (a) After consulting with the commission, the director shall appoint a chief
487 appellate officer.

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

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

492 (3) The chief appellate officer shall carry out the duties of the division described in

493 Section 78B-22-802.

494 (4) The chief appellate officer shall:

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

497 (b) hire staff as necessary to carry out the duties of the division described in Section
498 78A-22-802; and

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