

AMENDMENTS TO INDIGENT DEFENSE

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: Joel Ferry

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

Utah Code Sections Affected:

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)



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

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

54 **78A-6-1111. Order for indigent defense service or guardian ad litem.**

55 ~~[(1) A court shall order indigent defense services for a minor, parent, or legal guardian~~
56 ~~as provided by Title 78B, Chapter 22, Indigent Defense Act.]~~

57 (1) A court shall order indigent defense services in accordance with Title 78B, Chapter

58 22, Indigent Defense Act, for a minor, parent, or legal guardian facing an action filed by a
59 private party or the state under this title.

60 (2) (a) In any action under Part 3, Abuse, Neglect, and Dependency Proceedings, or
61 Part 5, Termination of Parental Rights Act, the child shall be represented by a guardian ad
62 litem in accordance with Sections 78A-6-317 and 78A-6-902.

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

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

67 **78B-6-112. District court jurisdiction over termination of parental rights**
68 **proceedings.**

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

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

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

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

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

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

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

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

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

85 (i) the requirements of this chapter; or

- 86 (ii) the laws of another state or country, if the consent is valid and irrevocable;
- 87 (b) the individual is an unmarried biological father who is not entitled to consent to
- 88 adoption, or relinquishment for adoption, under Section 78B-6-120 or 78B-6-121;
- 89 (c) the individual:
 - 90 (i) received notice of the adoption proceeding relating to the child under Section
 - 91 78B-6-110; and
 - 92 (ii) failed to file a motion for relief, under Subsection 78B-6-110(6), within 30 days
 - 93 after the day on which the individual was served with notice of the adoption proceeding;
 - 94 (d) the court finds, under Section 78B-15-607, that the individual is not a parent of the
 - 95 child; or
 - 96 (e) the individual's parental rights are terminated on grounds described in Title 78A,
 - 97 Chapter 6, Part 5, Termination of Parental Rights Act, [~~if terminating the individual's parental~~
 - 98 ~~rights is~~] and termination is in the best interests of the child.
- 99 (6) The court shall appoint an indigent defense service provider~~[, under]~~ in accordance
- 100 with Title 78B, Chapter 22, Indigent Defense Act, to represent [~~a party~~] an individual who
- 101 faces any action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination of
- 102 Parental Rights Act, or whose parental rights are subject to termination under this section.
- 103 (7) If a county incurs expenses in providing indigent defense services to an indigent
- 104 individual facing any action initiated by a private party under Title 78A, Chapter 6, Part 5,
- 105 Termination of Parental Rights Act, or termination of parental rights under this section, the
- 106 county may apply for reimbursement from the Utah Indigent Defense Commission [~~under]~~ in
- 107 accordance with Section 78B-22-406.
- 108 (8) A petition filed under this section is subject to the procedural requirements of this
- 109 chapter.

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

111 **78B-22-102. Definitions.**

112 As used in this chapter:

- 113 (1) "Account" means the Indigent Defense Resources Restricted Account created in

114 Section 78B-22-405.

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

116 (3) "Commission" means the Utah Indigent Defense Commission created in Section
117 78B-22-401.

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

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

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

124 [(5)] (6) "Indigent defense service provider" means an attorney or entity appointed to
125 represent an indigent individual pursuant to:

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

127 (b) an order issued by the court under Subsection 78B-22-203(2)(a).

128 [(6)] (7) "Indigent defense services" means:

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

130 and

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

132 [(7)] (8) "Indigent defense system" means:

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

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

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

140 [(8)] (9) "Indigent individual" means:

141 (a) a minor who is:

142 (i) arrested and admitted into detention for an offense under Section [78A-6-103](#);
 143 (ii) charged by petition or information in the juvenile or district court; or
 144 (iii) described in this Subsection ~~[(8)]~~ [\(9\)](#)(a), who is appealing ~~[a first appeal from]~~ an
 145 adjudication or other final court action; and

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

148 ~~[(9)]~~ [\(10\)](#) "Minor" means the same as that term is defined in Section [78A-6-105](#).

149 [\(11\)](#) "Office" means the Office of Indigent Defense Services created in Section
 150 [78B-22-451](#).

151 ~~[(10)]~~ [\(12\)](#) "Participating county" means a county that complies with this chapter for
 152 participation in the Indigent Aggravated Murder Defense Trust Fund as provided in Sections
 153 [78B-22-702](#) and [78B-22-703](#).

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

155 **78B-22-201. Right to counsel.**

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

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

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

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

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

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

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

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

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

167 (ii) Section [78B-6-112](#); or

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

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

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

174 **78B-22-301. Standards for indigent defense systems.**

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

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

179 **78B-22-401. Utah Indigent Defense Commission -- Creation -- Purpose.**

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

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

183 (a) the state in meeting the state's obligations for the provision of indigent defense
184 services, consistent with the United States Constitution, the Utah Constitution, and the Utah
185 Code; and

186 (b) the office with carrying out the statutory duties assigned to the commission and
187 office.

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

189 **78B-22-402. Commission members -- Member qualifications -- Terms -- Vacancy.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

241 (10) A member may not receive compensation or benefits for the member's service~~;~~
242 but may receive per diem and travel expenses in accordance with:

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

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

245 (c) rules made by the Division of Finance ~~[pursuant to]~~ in accordance with Sections
246 [63A-3-106](#) and [63A-3-107](#).

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

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

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

251 **78B-22-404. Powers and duties of the commission.**

252 (1) The commission shall:

253 (a) adopt ~~[minimum guidelines]~~ core principles for an indigent defense system to

254 ensure the effective representation of indigent individuals consistent with the requirements of
255 the United States Constitution, the Utah Constitution, and the Utah Code, which [~~guidelines~~]
256 core principles at a minimum shall address the following:

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

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

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

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

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

264 (B) adequate access to indigent defense resources;

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

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

271 (E) adequate compensation without financial disincentives;

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

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

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

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

282 ~~[(c) identify and collect data from any source, which is necessary for the commission~~
283 ~~to:]~~

284 ~~[(i) aid, oversee, and review compliance by indigent defense systems with the~~
285 ~~commission's minimum guidelines for the effective representation of indigent individuals; and]~~

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

288 ~~[(d) assist indigent defense systems by reviewing contracts and other agreements, to~~
289 ~~ensure compliance with the commission's minimum guidelines for effective representation of~~
290 ~~indigent individuals;]~~

291 ~~[(e) investigate, audit, and review the provision of indigent defense services to ensure~~
292 ~~compliance with the commission's minimum guidelines for the effective representation of~~
293 ~~indigent individuals;]~~

294 ~~[(f) establish procedures for the receipt and acceptance of complaints regarding the~~
295 ~~provision of indigent defense services in the state;]~~

296 ~~[(g) establish procedures to award grants to indigent defense systems under Section~~
297 ~~78B-22-406 consistent with the commission's minimum guidelines for the effective~~
298 ~~representation of indigent individuals and appropriations by the state;]~~

299 ~~[(h)] (c) emphasize the importance of ensuring constitutionally effective indigent~~
300 ~~defense services;~~

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

303 ~~[(j)] (e) oversee individuals and entities involved in providing indigent defense~~
304 ~~services[?].~~

305 ~~[(k) annually report to the governor, Legislature, Judiciary Interim Committee, and~~
306 ~~Judicial Council, regarding:]~~

307 ~~[(i) the operations of the commission;]~~

308 ~~[(ii) the operations of the indigent defense systems in the state; and]~~

309 ~~[(iii) compliance with the commission's minimum guidelines by indigent defense~~

310 ~~systems receiving grants from the commission;]~~
311 ~~[(f) submit recommendations for improving indigent defense services in the state, to~~
312 ~~legislative, executive, and judicial leadership, and]~~

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

314 (2) The commission may:

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

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

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

320 **78B-22-406. Indigent defense services grant program.**

321 (1) The commission may award grants [to]:

322 (a) to supplement local spending by an indigent defense system for indigent defense[-]
323 services; and

324 (b) for contracts to provide indigent defense services for appeals from juvenile court
325 proceedings in a county of the third, fourth, fifth, or sixth class.

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

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

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

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

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

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

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

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

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

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

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

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

352 **78B-22-451. Office of Indigent Defense Services -- Creation.**

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

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

356 **78B-22-452. Duties of the office.**

357 (1) The office shall:

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

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

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

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

365 (ii) provide reports regarding the operation of the commission and the provision of

366 indigent defense services by indigent defense systems in the state;

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

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

372 (f) establish procedures to award grants to indigent defense systems under Section
373 78B-22-406 that are consistent with the commission's core principles;

374 (g) assist the commission in developing and reviewing advisory caseload guidelines
375 and procedures;

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

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

381 (A) the operations of the commission;

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

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

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

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

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

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

392 (3) Any contract entered into under this part shall require that indigent defense services
393 are provided in a manner consistent with the commission's core principles implemented under

394 Section 78B-22-404.

395 Section 12. Section ~~78B-22-453~~, which is renumbered from Section 78B-22-403 is
396 renumbered and amended to read:

397 ~~[78B-22-403].~~ 78B-22-453. Director -- Qualifications -- Staff.

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

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

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

401 ~~[(c) assist the commission in developing and regularly reviewing advisory caseload~~
402 ~~guidelines and procedures; and]~~

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

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

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

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

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

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

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

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

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

422 delinquency defense.

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

424 **78B-22-601. Defense of indigent inmates.**

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

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

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

430 (c) will require defense counsel.

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

433 (3) A contract under this part shall ensure that indigent defense services are provided in
434 a manner consistent with the ~~[minimum guidelines]~~ core principles described in Section
435 [78B-22-301](#).

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

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

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

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

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

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

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

452 **78B-22-801. Definitions.**

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

455 (b) "Appellate defense services" does not include the representation of an indigent
456 individual facing an appeal in a case where the indigent individual was prosecuted for
457 aggravated murder.

458 (2) "Division" means the Indigent Appellate Defense Division created in Section
459 [78B-22-802](#).

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

461 **78B-22-802. Indigent Appellate Defense Division.**

462 There is created the Indigent Appellate Defense Division within the Office of Indigent
463 Defense Services.

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

465 **78B-22-803. Powers and duties of the division.**

466 (1) The division shall:

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

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

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

473 (a) adopt a budget for the division;

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

475 (i) appellate performance standards;

476 (ii) case weighting standards; and

477 (iii) any other relevant measures or information to assist with appellate defense

478 services; and

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

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

481 (ii) the caseloads of appellate attorneys; and

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

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

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

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

490 **78B-22-804. Chief appellate officer -- Qualifications -- Staff.**

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

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

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

497 (3) The chief appellate officer shall carry out the duties of the division described in
498 Section [78B-22-803](#).

499 (4) The chief appellate officer shall:

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

502 (b) hire staff as necessary to carry out the duties of the division described in Section
503 [78A-22-803](#); and

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

