

1 **INDIGENT DEFENSE COMMISSION AMENDMENTS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd D. Weiler**

5 House Sponsor: Joel Ferry

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions relating to the Utah Indigent Defense Commission.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ changes the term "director" to "executive director" in Title 78B, Chapter 22,
13 Indigent Defense Act;
- 14 ▶ provides that the Office of Indigent Defense Services is created under the Utah
15 Indigent Defense Commission;
- 16 ▶ provides that the Utah Indigent Defense Commission shall appoint, and may
17 remove, the executive director of the Office of Indigent Defense Services by a
18 majority vote of the commission; and
- 19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **78B-22-102**, as last amended by Laws of Utah 2020, Chapters 371, 392, and 395

27 **78B-22-451**, as enacted by Laws of Utah 2020, Chapters 371, 392, 395 and last
28 amended by Coordination Clause, Laws of Utah 2020, Chapters 392, and 395

29 **78B-22-453**, as renumbered and amended by Laws of Utah 2020, Chapters 371, 392,

30 395 and last amended by Coordination Clause, Laws of Utah 2020, Chapters 392, and 395

31 [78B-22-802](#), as renumbered and amended by Laws of Utah 2020, Chapter 395

32 [78B-22-903](#), as enacted by Laws of Utah 2020, Chapter 371

33 [78B-22-904](#), as enacted by Laws of Utah 2020, Chapter 371



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

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

37 **78B-22-102. Definitions.**

38 As used in this chapter:

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

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

42 (3) "Commission" means the Utah Indigent Defense Commission created in Section
43 [78B-22-401](#).

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

47 (5) (a) "Indigent defense resources" means the resources necessary to provide an
48 effective defense for an indigent individual, including the costs for a competent investigator,
49 expert witness, scientific or medical testing, transcripts, and printing briefs.

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

51 (6) "Indigent defense service provider" means an attorney or entity appointed to
52 represent an indigent individual pursuant to:

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

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

55 (7) "Indigent defense services" means:

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

57 and

58 (b) the provision of indigent defense resources for an indigent individual.
59 (8) "Indigent defense system" means:
60 (a) a city or town that is responsible for providing indigent defense services;
61 (b) a county that is responsible for providing indigent defense services in the district
62 court, juvenile court, and the county's justice courts; or
63 (c) an interlocal entity, created pursuant to Title 11, Chapter 13, Interlocal Cooperation
64 Act, that is responsible for providing indigent defense services according to the terms of an
65 agreement between a county, city, or town.
66 (9) "Indigent individual" means:
67 (a) a minor who is:
68 (i) arrested and admitted into detention for an offense under Section 78A-6-103;
69 (ii) charged by petition or information in the juvenile or district court; or
70 (iii) described in this Subsection (9)(a), who is appealing an adjudication or other final
71 court action; and
72 (b) an individual listed in Subsection 78B-22-201(1) who is found indigent pursuant to
73 Section 78B-22-202.
74 (10) "Minor" means the same as that term is defined in Section 78A-6-105.
75 (11) "Office" means the Office of Indigent Defense Services created in Section
76 78B-22-451.
77 (12) "Participating county" means a county that complies with this chapter for
78 participation in the Indigent Aggravated Murder Defense Trust Fund as provided in Sections
79 78B-22-702 and 78B-22-703.
80 Section 2. Section 78B-22-451 is amended to read:
81 **78B-22-451. Office of Indigent Defense Services -- Creation.**
82 There is created [~~the Office of Indigent Defense Services within the State Commission~~
83 ~~on Criminal and Juvenile Justice~~] under the commission the Office of Indigent Defense
84 Services.
85 Section 3. Section 78B-22-453 is amended to read:

86 **78B-22-453. Executive director -- Qualifications -- Staff.**

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

89 (1) The commission:

90 (a) shall appoint the executive director, by a majority vote of the commission, to carry
91 out the duties of the office described in Section 78B-22-452; and

92 (b) may remove the executive director by majority vote of the commission.

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

95 (3) The executive director shall hire staff as necessary to carry out the duties of the
96 office as described in Section 78B-22-452, including:

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

99 (b) one individual with data collection and analysis skills.

100 (4) When appointing the executive director of the office under Subsection (1), the
101 [~~executive director of the State Commission on Criminal and Juvenile Justice~~] commission
102 shall give preference to an individual with experience in adult criminal defense, child welfare
103 parental defense, or juvenile delinquency defense.

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

107 Section 4. Section **78B-22-802** is amended to read:

108 **78B-22-802. Child Welfare Parental Defense Program -- Creation -- Duties --**
109 **Annual report -- Budget.**

110 (1) There is created within the office the Child Welfare Parental Defense Program.

111 (2) (a) The office shall:

112 (i) administer and enforce the program in accordance with this part;

113 (ii) manage the operation and budget of the program;

114 (iii) develop and provide educational and training programs for contracted parental
115 defense attorneys; and

116 (iv) provide information and advice to assist a contracted parental defense attorney to
117 comply with the attorney's professional, contractual, and ethical duties.

118 (b) In administering the program, the office shall contract with:

119 (i) a person who is qualified to perform the program duties under this section; and

120 (ii) an attorney, as an independent contractor, in accordance with Section 78B-22-803.

121 (3) (a) The executive director shall prepare a budget of:

122 (i) the administrative expenses for the program; and

123 (ii) the amount estimated to fund needed contracts and other costs.

124 (b) On or before October 1 of each year, the executive director shall report to the
125 governor and the Child Welfare Legislative Oversight Panel regarding the preceding fiscal year
126 on the operations, activities, and goals of the program.

127 Section 5. Section 78B-22-903 is amended to read:

128 **78B-22-903. Powers and duties of the division.**

129 (1) The division shall:

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

132 (b) provide appellate defense services in accordance with the core principles adopted
133 by the commission under Section 78B-22-404 and any other state and federal standards for
134 appellate defense services.

135 (2) Upon consultation with the executive director and the commission, the division
136 shall:

137 (a) adopt a budget for the division;

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

139 (i) appellate performance standards;

140 (ii) case weighting standards; and

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

142 services; and

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

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

145 (ii) the caseloads of appellate attorneys; and

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

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

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

153 Section 6. Section **78B-22-904** is amended to read:

154 **78B-22-904. Chief appellate officer -- Qualifications -- Staff.**

155 (1) (a) After consulting with the commission, the executive director shall appoint a
156 chief appellate officer.

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

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

161 (3) The chief appellate officer shall carry out the duties of the division described in
162 Section **78B-22-903**.

163 (4) The chief appellate officer shall:

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

166 (b) hire staff as necessary to carry out the duties of the division described in Section
167 **78B-22-903**; and

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

