

1 **INDIGENT DEFENSE AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

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

5 House Sponsor: Joel Ferry

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7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions relating to indigent defense.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies the definition of "indigent defense resource";
- 13 ▶ modifies the definition of "indigent defense service provider";
- 14 ▶ clarifies who a court may appoint to represent an indigent defendant;
- 15 ▶ allows the Indigent Defense Commission to award grants for indigent defense
- 16 services that are innovative for meeting or exceeding the commission's core
- 17 principles regarding indigent defense services;
- 18 ▶ clarifies who is eligible for appellate defense services; and
- 19 ▶ makes technical 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 2021, Chapters 228, 235, 262 and last  
27 amended by Coordination Clause, Laws of Utah 2021, Chapter 262

28 **78B-22-201**, as last amended by Laws of Utah 2021, Chapter 262

29 **78B-22-203**, as enacted by Laws of Utah 2019, Chapter 326

30 78B-22-406, as last amended by Laws of Utah 2021, Chapters 228 and 262

31 78B-22-701, as renumbered and amended by Laws of Utah 2019, Chapter 326

32 78B-22-901, as enacted by Laws of Utah 2020, Chapter 371

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

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

36 **78B-22-102. Definitions.**

37 As used in this chapter:

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

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

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

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

46 (5) "Executive Director" means the executive director of the Office of Indigent Defense  
47 Services, created in Section 78B-22-451, who is appointed in accordance with Section  
48 78B-22-453.

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

52 [(b)] "~~Indigent defense resources~~" ~~does not include an indigent defense service~~  
53 ~~provider.~~]

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

56 (a) a contract with an indigent defense system to provide indigent defense services; [~~or~~]

57 (b) an order issued by the court under Subsection 78B-22-203(2)(a) [~~;~~]; or

58 (c) direct employment with an indigent defense system.

59 (8) "Indigent defense services" means:

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

61 and

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

63 (9) "Indigent defense system" means:

64 (a) a city or town that is responsible for providing indigent defense services;

65 (b) a county that is responsible for providing indigent defense services in the district

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

67 (c) an interlocal entity, created pursuant to Title 11, Chapter 13, Interlocal Cooperation

68 Act, that is responsible for providing indigent defense services according to the terms of an

69 agreement between a county, city, or town.

70 (10) "Indigent individual" means:

71 (a) a minor who is:

72 (i) arrested and admitted into detention for an offense under Section 78A-6-103;

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

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

75 other final court action; and

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

77 Section 78B-22-202.

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

79 (12) "Office" means the Office of Indigent Defense Services created in Section

80 78B-22-451.

81 (13) "Participating county" means a county that complies with this chapter for

82 participation in the Indigent Aggravated Murder Defense Trust Fund as provided in Sections

83 78B-22-702 and 78B-22-703.

84 Section 2. Section 78B-22-201 is amended to read:

85 **78B-22-201. Right to counsel.**

86 (1) A court shall advise the following of the individual's right to counsel [~~when the~~  
87 ~~individual first appears before the court~~] no later than the individual's first court appearance:

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

90 (b) a parent or legal guardian facing an action initiated by the state under:

91 (i) Title 78A, Chapter 6, Part 4a, Adult Criminal Proceedings;

92 ~~[(i)]~~ (ii) Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings; or

93 ~~[(ii)]~~ (iii) Title 80, Chapter 4, Termination and Restoration of Parental Rights; [or]

94 ~~[(iii) Title 78A, Chapter 6, Part 4a, Adult Criminal Proceedings;]~~

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

96 (i) Section 78B-6-112; or

97 ~~[(i)]~~ (ii) Title 80, Chapter 4, Termination and Restoration of Parental Rights; or

98 ~~[(ii) Section 78B-6-112; or]~~

99 (d) an individual described in this Subsection (1), who is appealing a conviction or  
100 other final court action.

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

104 Section 3. Section 78B-22-203 is amended to read:

105 **78B-22-203. Order for indigent defense services.**

106 (1) (a) A court shall appoint an indigent defense service provider who is employed by  
107 an indigent defense system or who has a contract with an indigent defense system to provide  
108 indigent defense services for an individual over whom the court has jurisdiction if:

109 (i) the individual is an indigent individual [~~as defined in Section 78B-22-102~~]; and

110 (ii) the individual does not have private counsel.

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

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

117 (i) all [~~of~~] the contracted indigent defense service providers:

118 (A) have a conflict of interest; or

119 (B) do not have sufficient expertise to provide indigent defense services for the  
120 indigent individual; or

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

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

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

128 (i) the individual is an indigent individual;

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

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

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

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

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

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

140 (b) A court may not order indigent defense resources under Subsection (3)(a) until the  
141 court conducts a hearing with proper notice to the indigent defense system by sending notice of

142 the hearing to the county clerk or municipal recorder.

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

144 (i) the private counsel contract;

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

146 (iii) other relevant records.

147 (4) Except as provided in this section, a court may not order indigent defense services.

148 Section 4. Section **78B-22-406** is amended to read:

149 **78B-22-406. Indigent defense services grant program.**

150 (1) The commission may award grants:

151 (a) to supplement local spending by an indigent defense system for indigent defense  
152 services; and

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

155 (2) The commission may use grant money:

156 (a) to assist an indigent defense system to provide indigent defense services that meet  
157 the commission's core principles for the effective representation of indigent individuals;

158 (b) to establish and maintain local indigent defense data collection systems;

159 (c) to provide indigent defense services in addition to indigent defense services that are  
160 currently being provided by an indigent defense system;

161 (d) to provide training and continuing legal education for indigent defense service  
162 providers;

163 (e) to assist indigent defense systems with appeals from juvenile court proceedings;

164 (f) to pay for indigent defense resources and costs and expenses for parental  
165 representation attorneys as described in Subsection [78B-22-804\(2\)](#); and

166 (g) to reimburse an indigent defense system for the cost of providing indigent defense  
167 services in an action initiated by a private party under Title 80, Chapter 4, Termination and  
168 Restoration of Parental Rights, if the indigent defense system has complied with the  
169 commission's policies and procedures for reimbursement.

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

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

176 (b) (i) a grant from the commission is necessary for the indigent defense system to  
177 meet the commission's core principles for the effective representation of indigent  
178 individuals[-]; or

179 (ii) the indigent defense system shall use the grant in an innovative manner that meets  
180 the commission's core principles for the effective representation of indigent individuals.

181 (4) The commission may revoke a grant if an indigent defense system fails to meet  
182 requirements of the grant or any of the commission's core principles for the effective  
183 representation of indigent individuals.

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

185 **78B-22-701. Establishment of Indigent Aggravated Murder Defense Trust Fund**  
186 **-- Use of fund -- Compensation for indigent legal defense from fund.**

187 (1) For purposes of this part, "fund" means the Indigent Aggravated Murder Defense  
188 Trust Fund.

189 (2) (a) There is established a private-purpose trust fund known as the "Indigent  
190 Aggravated Murder Defense Trust Fund."

191 (b) The Division of Finance shall disburse money from the fund at the direction of the  
192 board and subject to this chapter.

193 (3) The fund consists of:

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

196 (b) appropriations made to the fund by the Legislature as provided in Section  
197 [78B-22-703](#); and

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

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

201 (5) The fund shall be used to assist participating counties with financial resources, as  
202 provided in Subsection (6), to fulfill their constitutional and statutory mandates for the  
203 provision of ~~[an adequate]~~ a constitutionally effective defense for indigent individuals  
204 prosecuted for the violation of state laws in cases involving aggravated murder.

205 (6) Money allocated to or deposited in this fund shall be used only:

206 (a) to reimburse participating counties for expenditures made for an attorney appointed  
207 to represent an indigent individual, other than a state inmate in a state prison, prosecuted for  
208 aggravated murder in a participating county; and

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

210 Section 6. Section **78B-22-901** is amended to read:

211 **78B-22-901. Definitions.**

212 (1) (a) "Appellate defense services" means the representation of an indigent individual  
213 ~~[facing]~~ described in Subsection [78B-22-201\(1\)\(d\)](#) or who is a party to an appeal under Section  
214 [77-18a-1](#).

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

218 (2) "Division" means the Indigent Appellate Defense Division created in Section  
219 [78B-22-902](#).