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**INDIGENT DEFENSE AMENDMENTS**  
2024 GENERAL SESSION  
STATE OF UTAH  
**Chief Sponsor: Todd D. Weiler**  
House Sponsor: Tyler Clancy

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**LONG TITLE**

**General Description:**

This bill amends provisions related to indigent defense.

**Highlighted Provisions:**

This bill:

- repeals the Indigent Defense Funds Board;
- amends provisions related to assigning an indigent defense service provider to represent an indigent individual;
- amends the duties of the Indigent Defense Commission and the Office of Indigent Defense Services to incorporate the duties of the Indigent Defense Funds Board;
- amends provisions related to using and administering the Indigent Aggravated Murder Defense Fund;
- repeals provisions that allow an indigent defense service provider to file a motion with the court for an order for the payment of extraordinary indigent defense expenses; and
- makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

- 78B-22-102**, as last amended by Laws of Utah 2022, Chapters 281, 451
- 78B-22-203**, as last amended by Laws of Utah 2023, Chapter 182
- 78B-22-404**, as last amended by Laws of Utah 2022, Chapter 451
- 78B-22-452**, as last amended by Laws of Utah 2021, Chapter 228

28 **78B-22-701**, as last amended by Laws of Utah 2023, Chapter 182

29 **78B-22-702**, as last amended by Laws of Utah 2023, Chapter 182

30 **78B-22-703**, as last amended by Laws of Utah 2023, Chapter 182

31 **78B-22-704**, as last amended by Laws of Utah 2023, Chapter 182

32 RENUMBERS AND AMENDS:

33 **78B-22-701.5**, (Renumbered from 78B-22-502, as last amended by Laws of Utah 2020,  
34 Chapter 392)

35 REPEALS:

36 **78B-22-501**, as last amended by Laws of Utah 2022, Chapter 451

37 **78B-22-705**, as enacted by Laws of Utah 2023, Chapter 182

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

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

41 **78B-22-102 . Definitions.**

42 As used in this chapter:

43 (1) "Account" means the Indigent Defense Resources Restricted Account created in Section  
44 78B-22-405.

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

46 [~~(3)~~] (2) "Commission" means the Utah Indigent Defense Commission created in Section  
47 78B-22-401.

48 [~~(4)~~] (3) "Child welfare case" means a proceeding under Title 80, Chapter 3, Abuse,  
49 Neglect, and Dependency Proceedings, or Title 80, Chapter 4, Termination and  
50 Restoration of Parental Rights.

51 [~~(5)~~] (4) "Executive Director" means the executive director of the Office of Indigent  
52 Defense Services, created in Section 78B-22-451, who is appointed in accordance with  
53 Section 78B-22-453.

54 [~~(6)~~] (5) "Indigent defense resources" means the resources necessary to provide an effective  
55 defense for an indigent individual.

56 [~~(7)~~] (6) "Indigent defense service provider" means an attorney or entity appointed to  
57 represent an indigent individual through:

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

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

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

61 [~~(8)~~] (7) "Indigent defense services" means:

62 (a) the representation of an indigent individual by an indigent defense service provider;  
 63 and

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

65 ~~[(9)]~~ (8) "Indigent defense system" means:

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

67 (b) a county that is responsible for providing indigent defense services in the district  
 68 court, juvenile court, and the county's justice courts; or

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

72 ~~[(10)]~~ (9) "Indigent individual" means:

73 (a) a minor who is:

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

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

76 (iii) described in this Subsection ~~[(10)]~~ (9)(a), who is appealing an adjudication or  
 77 other final court action; and

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

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

81 ~~[(12)]~~ (11) "Office" means the Office of Indigent Defense Services created in Section  
 82 78B-22-451.

83 ~~[(13)]~~ (12) "Participating county" means a county that complies with this chapter for  
 84 participation in the Indigent Aggravated Murder Defense Fund as provided in Sections  
 85 78B-22-702 and 78B-22-703.

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

87 **78B-22-203 . Order for indigent defense services.**

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

92 (i) the individual is an indigent individual; and

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

94 (b) An indigent defense service provider appointed by the court under Subsection (1)(a)  
 95 shall provide indigent defense services for the indigent individual in all court

96 proceedings in the matter for which the indigent defense service provider is  
97 appointed.

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

102 (i) all the contracted indigent defense service providers:

103 (A) have a conflict of interest; or

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

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

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

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

114 (i) the individual is an indigent individual;

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

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

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

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

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

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

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

- 130 (c) At the hearing, the court shall conduct an in camera review of:
- 131 (i) the private counsel contract;
- 132 (ii) the costs or anticipated costs of the indigent defense resources; and
- 133 (iii) other relevant records.
- 134 (4) A court may only order the representation of an indigent individual by an indigent
- 135 defense service provider in accordance with this section.
- 136 (5) A court may not order indigent defense resources be provided to an indigent individual,
- 137 except as provided in ~~the~~ Subsection (3).
- 138 ~~[(a) Subsection (3); or]~~
- 139 ~~[(b) Section 78B-22-705.]~~
- 140 (6) (a) For an individual prosecuted for aggravated murder and found indigent, a court
- 141 from a county participating in the Indigent Aggravated Murder Defense Fund created
- 142 in Section 78B-22-701 shall notify the Office of Indigent Defense Services of the
- 143 finding of indigency.
- 144 (b) The office shall assign an indigent defense service provider qualified under Utah
- 145 Rules of Criminal Procedure, Rule 8, with whom the office has a preliminary contract
- 146 to provide indigent defense services for an assigned rate.
- 147 Section 3. Section **78B-22-404** is amended to read:
- 148 **78B-22-404 . Powers and duties of the commission.**
- 149 (1) The commission shall:
- 150 (a) adopt core principles for an indigent defense system to ensure the effective
- 151 representation of indigent individuals consistent with the requirements of the United
- 152 States Constitution, the Utah Constitution, and the Utah Code, which principles at a
- 153 minimum shall address the following:
- 154 (i) an indigent defense system shall ensure that in providing indigent defense services:
- 155 (A) an indigent individual receives conflict-free indigent defense services; and
- 156 (B) there is a separate contract for each type of indigent defense service; and
- 157 (ii) an indigent defense system shall ensure an indigent defense service provider has:
- 158 (A) the ability to exercise independent judgment without fear of retaliation and is
- 159 free to represent an indigent individual based on the indigent defense service
- 160 provider's own independent judgment;
- 161 (B) adequate access to indigent defense resources;
- 162 (C) the ability to provide representation to accused individuals in criminal cases at
- 163 the critical stages of proceedings, and at all stages to indigent individuals in

- 164 juvenile delinquency and child welfare proceedings;
- 165 (D) a workload that allows for sufficient time to meet with clients, investigate
- 166 cases, file appropriate documents with the courts, and otherwise provide
- 167 effective assistance of counsel to each client;
- 168 (E) adequate compensation without financial disincentives;
- 169 (F) appropriate experience or training in the area for which the indigent defense
- 170 service provider is representing indigent individuals;
- 171 (G) compensation for legal training and education in the areas of the law relevant
- 172 to the types of cases for which the indigent defense service provider is
- 173 representing indigent individuals; and
- 174 (H) the ability to meet the obligations of the Utah Rules of Professional Conduct,
- 175 including expectations on client communications and managing conflicts of
- 176 interest;
- 177 (b) encourage and aid indigent defense systems in the state in the regionalization of
- 178 indigent defense services to provide for effective and efficient representation to the
- 179 indigent individuals;
- 180 (c) emphasize the importance of ensuring constitutionally effective indigent defense
- 181 services;
- 182 (d) encourage members of the judiciary to provide input regarding the delivery of
- 183 indigent defense services; ~~and~~
- 184 (e) oversee individuals and entities involved in providing indigent defense services[-] ;
- 185 and
- 186 (f) manage county participation in the Indigent Aggravated Murder Defense Fund
- 187 created in Section 78B-22-701.
- 188 (2) The commission may:
- 189 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
- 190 Rulemaking Act, to carry out the commission's duties under this part;
- 191 (b) assign duties related to indigent defense services to the office to assist the
- 192 commission with the commission's statutory duties;
- 193 (c) request supplemental appropriations from the Legislature to address a deficit in the
- 194 Indigent Inmate Fund created in Section 78B-22-455; and
- 195 (d) request supplemental appropriations from the Legislature to address a deficit in the
- 196 Child Welfare Parental Representation Fund created in Section 78B-22-804.
- 197 Section 4. Section **78B-22-452** is amended to read:

198           **78B-22-452 . Duties of the office.**

- 199   (1) The office shall:
- 200       (a) establish an annual budget for the office for the Indigent Defense Resources  
201           Restricted Account created in Section 78B-22-405;
- 202       (b) assist the commission in performing the commission's statutory duties described in  
203           this chapter;
- 204       (c) identify and collect data that is necessary for the commission to:
- 205           (i) aid, oversee, and review compliance by indigent defense systems with the  
206               commission's core principles for the effective representation of indigent  
207               individuals; and
- 208           (ii) provide reports regarding the operation of the commission and the provision of  
209               indigent defense services by indigent defense systems in the state;
- 210       (d) assist indigent defense systems by reviewing contracts and other agreements, to  
211           ensure compliance with the commission's core principles for effective representation  
212           of indigent individuals;
- 213       (e) establish procedures for the receipt and acceptance of complaints regarding the  
214           provision of indigent defense services in the state;
- 215       (f) establish procedures to award grants to indigent defense systems under Section  
216           78B-22-406 that are consistent with the commission's core principles;
- 217       (g) create and enter into contracts consistent with Section 78B-22-454 to provide  
218           indigent defense services for an indigent defense inmate who:
- 219           (i) is incarcerated in a state prison located in a county of the third, fourth, fifth, or  
220               sixth class as classified in Section 17-50-501;
- 221           (ii) is charged with having committed a crime within that state prison; and
- 222           (iii) has been appointed counsel in accordance with Section 78B-22-203;
- 223       (h) assist the commission in developing and reviewing advisory caseload guidelines and  
224           procedures;
- 225       (i) investigate, audit, and review the provision of indigent defense services to ensure  
226           compliance with the commission's core principles for the effective representation of  
227           indigent individuals;
- 228       (j) administer the Child Welfare Parental Representation Program in accordance with  
229           Part 8, Child Welfare Parental Representation Program;
- 230       (k) administer the Indigent Aggravated Murder Defense Fund in accordance with Part 7,  
231           Indigent Aggravated Murder Defense Fund;

232 (l) assign an indigent defense service provider to represent an individual prosecuted for  
 233 aggravated murder in accordance with Part 7, Indigent Aggravated Murder Defense  
 234 Fund;  
 235 [(k)] (m) annually report to the governor, Legislature, Judiciary Interim Committee, and  
 236 Judicial Council, regarding:  
 237 (i) the operations of the commission;  
 238 (ii) the operations of the indigent defense systems in the state; and  
 239 (iii) compliance with the commission's core principles by indigent defense systems  
 240 receiving grants from the commission;  
 241 [(h)] (n) submit recommendations to the commission for improving indigent defense  
 242 services in the state;  
 243 [(m)] (o) publish an annual report on the commission's website; and  
 244 [(n)] (p) perform all other duties assigned by the commission related to indigent defense  
 245 services.

246 (2) The office may enter into contracts and accept, allocate, and administer funds and grants  
 247 from any public or private person to accomplish the duties of the office.  
 248 (3) Any contract entered into under this part shall require that indigent defense services are  
 249 provided in a manner consistent with the commission's core principles implemented  
 250 under Section 78B-22-404.

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

252 **78B-22-701 . Establishment of Indigent Aggravated Murder Defense Fund -- Use**  
 253 **of fund -- Compensation for indigent legal defense from fund.**

254 (1) As used in this part, "fund" means the Indigent Aggravated Murder Defense Fund.  
 255 (2) (a) There is established a custodial fund known as the "Indigent Aggravated Murder  
 256 Defense Fund."  
 257 (b) The [~~Division of Finance~~] office shall disburse money from the fund at the direction  
 258 of the [~~board~~] commission and subject to this chapter.  
 259 (3) The fund consists of:  
 260 (a) money received from participating counties as provided in Sections 78B-22-702 and  
 261 78B-22-703;  
 262 (b) appropriations made to the fund by the Legislature as provided in Section  
 263 78B-22-703; and  
 264 (c) interest and earnings from the investment of fund money.  
 265 (4) The state treasurer shall invest fund money with the earnings and interest accruing to the



266 fund.

267 (5) The fund shall be used to ~~[assist participating counties with expenses for indigent~~  
 268 ~~defense services, as provided in Subsection (6), to ]~~ fulfill the constitutional and statutory  
 269 mandates for the provision of constitutionally effective defense for indigent individuals  
 270 prosecuted for the violation of state laws in cases involving aggravated murder.

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

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

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

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

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

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

282 ~~[78B-22-502]~~ **78B-22-701.5. . Administration of Indigent Aggravated Murder Defense Fund.**

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

286 ~~[(1)]~~ (2) The ~~[board]~~ office shall:

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

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

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

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

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

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

299 ~~[(g)]~~ (e) negotiate, enter into, and administer contracts with legal counsel, qualified under

300 and meeting the standards consistent with this chapter, to provide indigent defense  
301 services to an indigent individual prosecuted in a participating county for an offense  
302 involving aggravated murder.

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

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

307 **78B-22-702 . County participation.**

- 308 (1) (a) A county may participate in the fund subject to the provisions of this chapter.  
309 (b) A county that does not participate in the fund, or is not current in the county's  
310 assessments for the fund, is ineligible to receive money from the fund.  
311 (c) The [board] commission may revoke a county's participation in the fund if the county  
312 fails to pay the county's assessments when due.
- 313 (2) To participate in the fund, the legislative body of a county shall:  
314 (a) adopt a resolution approving participation in the fund and committing that county to  
315 fulfill the assessment requirements as set forth in Subsection (3) and Section  
316 78B-22-703; and  
317 (b) submit a certified copy of that resolution together with an application to the [board]  
318 commission.
- 319 (3) By January 15 of each year, a participating county shall contribute to the fund an  
320 amount computed in accordance with Section 78B-22-703.
- 321 (4) A participating county may withdraw from participation in the fund upon:  
322 (a) adoption by the county's legislative body of a resolution to withdraw; and  
323 (b) notice to the [board] commission by January 1 of the year before withdrawal.
- 324 (5) A county withdrawing from participation in the fund, or whose participation in the fund  
325 has been revoked for failure to pay the county's assessments when due, shall forfeit the  
326 right to:  
327 (a) any previously paid assessment;  
328 (b) relief from the county's obligation to pay the county's assessment during the period  
329 of the county's participation in the fund; and  
330 (c) any benefit from the fund, including reimbursement of costs that accrued after the  
331 last day of the period for which the county has paid the county's assessment.

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

333 **78B-22-703 . County and state obligations.**

- 334 (1) (a) Except as provided in Subsection (1)(b), a participating county shall pay into the  
335 fund annually an amount calculated by multiplying the average of the percent of the  
336 county's population to the total population of all participating counties and of the  
337 percent of the county's taxable value of the locally and centrally assessed property  
338 located within that county to the total taxable value of the locally and centrally  
339 assessed property to all participating counties by the total fund assessment for that  
340 year to be paid by all participating counties as is determined by the [board]  
341 commission to be sufficient such that it is unlikely that a deficit will occur in the fund  
342 in any calendar year.
- 343 (b) The fund minimum is equal to or greater than 50 cents per person of all counties  
344 participating.
- 345 (c) The amount paid by a participating county under this Subsection (1) is the total  
346 county obligation for payment of costs in accordance with Section 78B-22-701.
- 347 (2) (a) A county that elects to initiate participation in the fund, or reestablish  
348 participation in the fund after participation was terminated, is required to make an  
349 equity payment in addition to the assessment required by Subsection (1).
- 350 (b) The equity payment is determined by the [board] commission and represent what the  
351 county's equity in the fund would be if the county had made assessments into the  
352 fund for each of the previous two years.
- 353 (3) If the fund balance after contribution by the state and participating counties is  
354 insufficient to replenish the fund annually to at least \$250,000, the [board] commission  
355 by a majority vote may terminate the fund.
- 356 (4) If the fund is terminated, the remaining money shall continue to be administered and  
357 disbursed in accordance with the provision of this chapter until exhausted, at which time  
358 the fund shall cease to exist.
- 359 (5) (a) If the fund runs a deficit during any calendar year, the state is responsible for the  
360 deficit.
- 361 (b) In the calendar year following a deficit year, the [board] commission shall increase  
362 the assessment required by Subsection (1) by an amount at least equal to the deficit of  
363 the previous year, which combined amount becomes the base assessment until  
364 another deficit year occurs.
- 365 (6) In a calendar year in which the fund runs a deficit, or is projected to run a deficit, the [  
366 board] commission shall request a supplemental appropriation to pay for the deficit from  
367 the Legislature in the following general session.

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

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

371 **78B-22-704 . Application and qualification for fund money.**

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

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

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

381 [~~(4) The board shall pay an indigent defense service provider with a contract under~~  
382 ~~Subsection (3) for indigent defense resources approved by a court under Section~~  
383 ~~78B-22-705.]~~

384 [(5)] (4) A nonparticipating county is responsible for paying for indigent defense services in  
385 the nonparticipating county and is not eligible for any legislative relief.

386 Section 10. **Repealer.**

387 This bill repeals:

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

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

391 Section 11. **Effective date.**

392 This bill takes effect on May 1, 2024.