

Senator Todd D. Weiler proposes the following substitute bill:

**JOINT RESOLUTION AMENDING RULES OF CRIMINAL
PROCEDURE ON APPOINTMENT OF COUNSEL**

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: _____

LONG TITLE

General Description:

This joint resolution amends the Utah Rules of Criminal Procedure, Rule 8, regarding the appointment of counsel.

Highlighted Provisions:

This resolution:

- ▶ amends the Utah Rules of Criminal Procedure, Rule 8, regarding the appointment of counsel in a capital case; and
- ▶ makes technical and conforming changes.

Special Clauses:

This resolution provides a contingent effective date.

Utah Rules of Criminal Procedure Affected:

AMENDS:

Rule 8, Utah Rules of Criminal Procedure

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend



26 rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of
27 all members of both houses of the Legislature:

28 Section 1. **Rule 8**, Utah Rules of Criminal Procedure is amended to read:

29 **Rule 8. Appointment of counsel.**

30 (a) **Right to counsel.** A defendant charged with a public offense has the right to
31 self-representation, and if indigent, has the right to court-appointed counsel if the defendant
32 faces any possibility of the deprivation of liberty.

33 (b) [~~Capital case qualifications~~] **Qualifications for aggravated murder case.**

34 (b) (1) In all cases in which counsel is appointed to represent an indigent defendant
35 who is charged with an offense for [~~which the punishment may be death~~] aggravated murder,
36 the court [~~shall~~] must:

37 (b) (1) (A) appoint two or more attorneys to represent such defendant [~~and shall~~]; and

38 (b) (1) (B) make a finding on the record based on the requirements set forth below that
39 appointed counsel is competent in the trial of [~~capital~~] aggravated murder cases.

40 (b) (2) In making [~~its~~] the court's determination, the court [~~shall~~] must ensure that the
41 experience of counsel who are under consideration for appointment have met the following
42 minimum requirements:

43 [~~(b) (1)~~] (b) (2) (A) at least one of the appointed attorneys must have tried to verdict six
44 felony cases within the past four years or twenty-five felony cases total;

45 (b) (2) (B) at least one of the appointed attorneys must have appeared as counsel or
46 co-counsel in [~~a capital or~~] a felony homicide case which was tried to a jury and which went to
47 final verdict;

48 [~~(b) (3)~~] (b) (2) (C) at least one of the appointed attorneys must have completed or
49 taught within the past five years an approved continuing legal education course or courses at
50 least eight hours of which deal, in substantial part, with the trial of [~~death penalty~~] homicide
51 cases; and

52 [~~(b) (4)~~] (b) (2) (D) the experience of one of the appointed attorneys must total not less
53 than five years in the active practice of law.

54 (c) [~~Capital case~~] **Aggravated murder case appointment considerations.** In making
55 [~~its~~] the court's selection of attorneys for appointment in [~~a capital~~] an aggravated murder case,
56 the court should also consider at least the following factors:

57 (c) (1) whether one or more of the attorneys under consideration have previously
58 appeared as counsel or co-counsel in ~~[a capital]~~ an aggravated murder case;

59 (c) (2) the extent to which the attorneys under consideration have sufficient time and
60 support and can dedicate those resources to the representation of the defendant in the ~~[capital]~~
61 aggravated murder case now pending before the court with undivided loyalty to the defendant;

62 (c) (3) the extent to which the attorneys under consideration have engaged in the active
63 practice of criminal law in the past five years;

64 (c) (4) the diligence, competency, the total workload, and ability of the attorneys being
65 considered; and

66 (c) (5) any other factor which may be relevant to a determination that counsel to be
67 appointed will fairly, efficiently and effectively provide representation to the defendant.

68 (d) ~~[Capital case]~~ **Aggravated murder appeals.**

69 (d) (1) In all cases where an indigent defendant ~~[is sentenced to death]~~ has been
70 convicted and sentenced for aggravated murder, the court ~~[shall]~~ must:

71 (d) (1) (A) appoint one or more attorneys to represent such defendant on appeal [and
72 shall]; and

73 (d) (1) (B) make a finding that counsel is competent in the appeal of [capital]
74 aggravated murder cases. [To be found competent to represent on appeal persons sentenced to
75 death, the combined experience of the appointed attorneys must meet the following
76 requirements:]

77 (d) (2) To be found competent to represent an indigent defendant convicted and
78 sentenced for aggravated murder on appeal:

79 ~~[(d)(1)]~~ (d) (2) (A) at least one [attorney] of the appointed attorneys must have served
80 as counsel in at least three felony appeals; and

81 ~~[(d)(2)]~~ (d) (2) (B) at least one [attorney] of the appointed attorneys must have
82 attended and completed within the past five years an approved continuing legal education
83 course which deals, in substantial part, with the trial or appeal of ~~[death penalty]~~ homicide
84 cases.

85 (e) **Post-conviction cases.**

86 (e) (1) In all cases in which counsel is appointed to represent an indigent petitioner
87 pursuant to Utah Code [~~§ 78B-9-202(2)(a)~~] section 78B-9-202, the court ~~[shall]~~ must:

88 (e) (1) (A) appoint one or more attorneys to represent such petitioner at post-conviction
89 trial and on post-conviction appeal [~~and shall~~]; and

90 (e) (1) (B) make a finding that counsel is qualified to represent persons sentenced to
91 death in post-conviction cases.

92 (e) (2) To be found qualified, the combined experience of the appointed attorneys must
93 meet the following requirements:

94 ~~[(e)-(1)]~~ (e) (2) (A) at least one of the appointed attorneys must have served as counsel
95 in at least three felony or post-conviction appeals;

96 (e) (2) (B) at least one of the appointed attorneys must have appeared as counsel or
97 co-counsel in a post-conviction case at the evidentiary hearing, on appeal, or otherwise
98 demonstrated proficiency in the area of post-conviction litigation;

99 ~~[(e)-(3)]~~ (e) (2) (C) at least one of the appointed attorneys must have attended and
100 completed or taught within the past five years an approved continuing legal education course
101 which dealt, in substantial part, with the trial and appeal of death penalty cases or with the
102 prosecution or defense of post-conviction proceedings in death penalty cases;

103 ~~[(e)-(4)]~~ (e) (2) (D) at least one of the appointed attorneys must have tried to judgment
104 or verdict three civil jury or felony cases within the past four years or ten cases total; and

105 ~~[(e)-(5)]~~ (e) (2) (E) the experience of at least one of the appointed attorneys must total
106 not less than five years in the active practice of law.

107 (f) **Appointing from appellate roster.** When appointing counsel for an indigent
108 defendant on appeal from a court of record, the court must select an attorney from the appellate
109 roster maintained by the Board of Appellate Judges under rule 11-401 of the Utah Rules of
110 Judicial Administration, subject to any exemptions established by that rule.

111 (g) **Noncompliance.** Mere noncompliance with this rule or failure to follow the
112 guidelines set forth in this rule [~~shall~~] may not of itself be grounds for establishing that
113 appointed counsel ineffectively represented the defendant at trial or on appeal.

114 (h) (1) Cost and [~~attorneys'~~] attorney fees for appointed counsel [~~shall~~] must be paid as
115 described in [~~Chapter 22 of Title 78B~~] Title 78B, Chapter 22, Indigent Defense Act, of the
116 Utah Code.

117 (h) (2) Costs and [~~attorneys~~] attorney fees for post-conviction counsel [~~shall~~] must be
118 paid pursuant to Utah Code [~~§ 78B-9-202(2)(a)~~] section 78B-9-202.

119 Section 2. **Contingent effective date.**

120 This resolution takes effect upon approval by a constitutional two-thirds vote of all
121 members elected to each house only if H.B. 147, Death Penalty Modifications (2022 General
122 Session), passes the Legislature and becomes law on May 4, 2022.