

1                                   **INDIGENT DEFENSE ACT AMENDMENTS**

2   2019 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Todd Weiler**

5                                   House Sponsor: Michael K. McKell

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7 **LONG TITLE**

8 **General Description:**

9           This bill modifies provisions relating to indigent defense services.

10 **Highlighted Provisions:**

11           This bill:

12           ▶ recodifies the Indigent Defense Act, including:

- 13           • defining terms;
- 14           • addressing right to counsel;
- 15           • determining indigency;
- 16           • ordering indigent defense services;
- 17           • establishing standards for indigent defense systems;
- 18           • addressing compensation and reimbursement for indigent defense services;
- 19           • addressing the Utah Indigent Defense Commission;
- 20           • addressing the Indigent Defense Funds Board and duties of the board;
- 21           • providing for defense of indigent inmates, including providing for the Indigent

22 Inmate Trust Fund;

23           • addressing the Indigent Aggravated Murder Defense Trust Fund and the roles of  
24 counties and the state;

25           • updating cross references; and

26           • repealing language outdated because of changes made in the bill; and

27           ▶ makes technical changes.

28 **Money Appropriated in this Bill:**

29           None

30 **Other Special Clauses:**

31           None

32 **Utah Code Sections Affected:**

33 AMENDS:

- 34           **10-3-704**, as last amended by Laws of Utah 2018, Chapter 82
- 35           **17-53-223**, as last amended by Laws of Utah 2018, Chapter 82
- 36           **63A-11-201**, as last amended by Laws of Utah 2011, Chapter 265
- 37           **63J-1-602.1**, as last amended by Laws of Utah 2018, Chapters 114, 347, 430 and
- 38 repealed and reenacted by Laws of Utah 2018, Chapter 469
- 39           **63J-1-602.2**, as repealed and reenacted by Laws of Utah 2018, Chapter 469
- 40           **78A-2-408**, as last amended by Laws of Utah 2014, Chapter 48
- 41           **78A-2-703**, as renumbered and amended by Laws of Utah 2014, Chapter 267
- 42           **78A-2-705**, as renumbered and amended by Laws of Utah 2014, Chapter 267
- 43           **78A-6-306**, as last amended by Laws of Utah 2018, Chapter 91
- 44           **78A-6-317**, as last amended by Laws of Utah 2014, Chapters 90 and 275
- 45           **78A-6-703**, as last amended by Laws of Utah 2015, Chapter 338
- 46           **78A-6-1111**, as last amended by Laws of Utah 2018, Chapter 359
- 47           **78A-7-103**, as repealed and reenacted by Laws of Utah 2012, Chapter 205
- 48           **78B-6-112**, as last amended by Laws of Utah 2018, Chapter 359

49 ENACTS:

- 50           **78B-22-102**, Utah Code Annotated 1953
- 51           **78B-22-201**, Utah Code Annotated 1953
- 52           **78B-22-202**, Utah Code Annotated 1953
- 53           **78B-22-203**, Utah Code Annotated 1953
- 54           **78B-22-204**, Utah Code Annotated 1953
- 55           **78B-22-301**, Utah Code Annotated 1953
- 56           **78B-22-302**, Utah Code Annotated 1953
- 57           **78B-22-303**, Utah Code Annotated 1953

58           **78B-22-304**, Utah Code Annotated 1953  
59 RENUMBERS AND AMENDS:  
60           **78B-22-101**, (Renumbered from 77-32-101, as enacted by Laws of Utah 1997, Chapter  
61 354)  
62           **78B-22-401**, (Renumbered from 77-32-801, as last amended by Laws of Utah 2018,  
63 Chapter 296)  
64           **78B-22-402**, (Renumbered from 77-32-802, as last amended by Laws of Utah 2018,  
65 Chapter 296)  
66           **78B-22-403**, (Renumbered from 77-32-803, as last amended by Laws of Utah 2018,  
67 Chapter 296)  
68           **78B-22-404**, (Renumbered from 77-32-804, as repealed and reenacted by Laws of Utah  
69 2018, Chapter 296)  
70           **78B-22-405**, (Renumbered from 77-32-805, as repealed and reenacted by Laws of Utah  
71 2018, Chapter 296)  
72           **78B-22-406**, (Renumbered from 77-32-806, as repealed and reenacted by Laws of Utah  
73 2018, Chapter 296)  
74           **78B-22-407**, (Renumbered from 77-32-807, as repealed and reenacted by Laws of Utah  
75 2018, Chapter 296)  
76           **78B-22-501**, (Renumbered from 77-32-401, as last amended by Laws of Utah 2012,  
77 Chapter 180)  
78           **78B-22-502**, (Renumbered from 77-32-402, as last amended by Laws of Utah 2017,  
79 Chapter 56)  
80           **78B-22-601**, (Renumbered from 77-32-501, as last amended by Laws of Utah 2009,  
81 Chapter 80)  
82           **78B-22-602**, (Renumbered from 77-32-502, as last amended by Laws of Utah 2009,  
83 Chapter 80)  
84           **78B-22-701**, (Renumbered from 77-32-601, as last amended by Laws of Utah 2011,  
85 Chapter 303)

86 78B-22-702, (Renumbered from 77-32-602, as last amended by Laws of Utah 1998,  
87 Chapter 333)

88 78B-22-703, (Renumbered from 77-32-603, as last amended by Laws of Utah 2018,  
89 Chapter 281)

90 78B-22-704, (Renumbered from 77-32-604, as last amended by Laws of Utah 2001,  
91 Chapter 209)

92 REPEALS:

93 77-32-201, as last amended by Laws of Utah 2017, Chapter 56

94 77-32-202, as last amended by Laws of Utah 2013, Chapter 245

95 77-32-301, as last amended by Laws of Utah 2016, Chapter 177

96 77-32-302, as last amended by Laws of Utah 2016, Chapter 177

97 77-32-303, as last amended by Laws of Utah 2012, Chapter 180

98 77-32-304, as last amended by Laws of Utah 2012, Chapter 180

99 77-32-304.5, as last amended by Laws of Utah 2012, Chapters 17 and 180

100 77-32-305, as renumbered and amended by Laws of Utah 1997, Chapter 354

101 77-32-305.5, as last amended by Laws of Utah 2012, Chapter 180

102 77-32-306, as last amended by Laws of Utah 2016, Chapter 177

103 77-32-307, as last amended by Laws of Utah 2012, Chapter 180

104 77-32-308, as renumbered and amended by Laws of Utah 1997, Chapter 354

105 77-32-401.5, as last amended by Laws of Utah 2017, Chapter 56

106 77-32-801.5, as enacted by Laws of Utah 2018, Chapter 296

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

109 Section 1. Section 10-3-704 is amended to read:

110 **10-3-704. Form of ordinance.**

111 The governing body shall ensure that any ordinance that the governing body passes  
112 contains the following, in substantially the following order and form:

113 (1) a number;

- 114 (2) a title which indicates the nature of the subject matter of the ordinance;
- 115 (3) a preamble which states the need or reason for the ordinance;
- 116 (4) an ordaining clause which states "Be it ordained by the \_\_\_\_ (name of the  
117 governing body and municipality):";
- 118 (5) the body or subject of the ordinance;
- 119 (6) when applicable, a statement indicating the penalty for violation of the ordinance or  
120 a reference that the punishment is covered by an ordinance which prescribes the fines and  
121 terms of imprisonment for the violation of a municipal ordinance; or, the penalty may establish  
122 a classification of penalties and refer to such ordinance in which the penalty for such violation  
123 is established;
- 124 (7) when a penalty for a violation of the ordinance includes any possibility of  
125 imprisonment, a statement that the municipality is required, under Section [~~77-32-301~~]  
126 [78B-22-301](#), to provide for indigent [~~legal~~] defense[~~, as those terms are~~] services, as that term  
127 is defined in Section [~~77-32-201~~] [78B-22-102](#);
- 128 (8) a statement indicating the effective date of the ordinance or the date when the  
129 ordinance shall become effective after publication or posting as required by this chapter;
- 130 (9) a line for the signature of the mayor or acting mayor to sign the ordinance;
- 131 (10) a place for the municipal recorder to attest the ordinance and fix the seal of the  
132 municipality; and
- 133 (11) in municipalities where the mayor may disapprove an ordinance passed by the  
134 legislative body, a statement showing:
  - 135 (a) if the mayor approves the ordinance, that the governing body passes the ordinance  
136 with the mayor's approval;
  - 137 (b) if the mayor disapproves the ordinance, that the governing body passes the  
138 ordinance over the mayor's disapproval; or
  - 139 (c) if the mayor neither approves or disapproves the ordinance, that the ordinance  
140 became effective without the approval or disapproval of the mayor.
- 141 Section 2. Section ~~17-53-223~~ is amended to read:

142 **17-53-223. Ordinances -- Power to enact -- Penalty for violation.**

143 (1) A county legislative body may:

144 (a) pass all ordinances and rules and make all regulations, not repugnant to law,  
145 necessary for carrying into effect or discharging the powers and duties conferred by this title,  
146 and as are necessary and proper to provide for the safety, and preserve the health, promote the  
147 prosperity, improve the morals, peace, and good order, comfort, and convenience of the county  
148 and its inhabitants, and for the protection of property in the county;

149 (b) enforce obedience to ordinances with fines or penalties as the county legislative  
150 body considers proper; and

151 (c) pass ordinances to control air pollution.

152 (2) (a) Punishment imposed under Subsection (1)(b) shall be by fine, not to exceed the  
153 maximum fine for a class B misdemeanor under Section 76-3-301, imprisonment, or both fine  
154 and imprisonment.

155 (b) When a penalty for a violation of an ordinance includes any possibility of  
156 imprisonment, the county legislative body shall include in the ordinance a statement that the  
157 county is required, under Section ~~[77-32-301]~~ 78B-22-301, to provide for indigent ~~[legal]~~  
158 ~~defense[, as those terms are]~~ services, as that term is defined in Section [77-32-201]  
159 78B-22-102.

160 (3) (a) Except as specifically authorized by statute, the county legislative body may not  
161 impose a civil penalty for the violation of a county traffic ordinance.

162 (b) Subsection (3)(a) does not apply to an ordinance regulating the parking of vehicles  
163 on a highway.

164 Section 3. Section **63A-11-201** is amended to read:

165 **63A-11-201. Child welfare indigent defense services contracts -- Qualifications.**

166 (1) The department may enter into ~~[contracts]~~ a contract with a qualified ~~[parental~~  
167 ~~defense attorneys]~~ indigent defense service provider as defined in Section 78B-22-102 to  
168 provide indigent defense services for an indigent ~~[parent or parents]~~ individual who ~~[are]~~ is the  
169 subject of a petition alleging abuse, neglect, or dependency~~[, and will require a parental defense~~

170 attorney under Section [78A-6-1111](#)].

171 (2) Payment for the representation, costs, and expenses of a contracted parental defense  
172 attorney shall be made from the Child Welfare Parental Defense Fund as provided in Section  
173 [63A-11-203](#).

174 (3) The parental defense attorney shall maintain the minimum qualifications as  
175 provided by this chapter.

176 Section 4. Section **63J-1-602.1** is amended to read:

177 **63J-1-602.1. List of nonlapsing appropriations from accounts and funds.**

178 Appropriations made from the following accounts or funds are nonlapsing:

179 (1) The Utah Intracurricular Student Organization Support for Agricultural Education  
180 and Leadership Restricted Account created in Section [4-42-102](#).

181 (2) The Native American Repatriation Restricted Account created in Section [9-9-407](#).

182 (3) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in  
183 Section [9-18-102](#).

184 (4) The National Professional Men's Soccer Team Support of Building Communities  
185 Restricted Account created in Section [9-19-102](#).

186 (5) Funds collected for directing and administering the C-PACE district created in  
187 Section [11-42a-302](#).

188 (6) Award money under the State Asset Forfeiture Grant Program, as provided under  
189 Section [24-4-117](#).

190 (7) Funds collected from the program fund for local health department expenses  
191 incurred in responding to a local health emergency under Section [26-1-38](#).

192 (8) Funds collected from the emergency medical services grant program, as provided in  
193 Section [26-8a-207](#).

194 (9) The Prostate Cancer Support Restricted Account created in Section [26-21a-303](#).

195 (10) The Children with Cancer Support Restricted Account created in Section  
196 [26-21a-304](#).

197 (11) State funds for matching federal funds in the Children's Health Insurance Program

- 198 as provided in Section [26-40-108](#).
- 199 (12) The Children with Heart Disease Support Restricted Account created in Section  
200 [26-58-102](#).
- 201 (13) The Nurse Home Visiting Restricted Account created in Section [26-62-601](#).
- 202 (14) The Technology Development Restricted Account created in Section [31A-3-104](#).
- 203 (15) The Criminal Background Check Restricted Account created in Section  
204 [31A-3-105](#).
- 205 (16) The Captive Insurance Restricted Account created in Section [31A-3-304](#), except  
206 to the extent that Section [31A-3-304](#) makes the money received under that section free revenue.
- 207 (17) The Title Licensee Enforcement Restricted Account created in Section  
208 [31A-23a-415](#).
- 209 (18) The Health Insurance Actuarial Review Restricted Account created in Section  
210 [31A-30-115](#).
- 211 (19) The Insurance Fraud Investigation Restricted Account created in Section  
212 [31A-31-108](#).
- 213 (20) The Underage Drinking Prevention Media and Education Campaign Restricted  
214 Account created in Section [32B-2-306](#).
- 215 (21) The School Readiness Restricted Account created in Section [35A-3-210](#).
- 216 (22) The Youth Development Organization Restricted Account created in Section  
217 [35A-8-1903](#).
- 218 (23) The Youth Character Organization Restricted Account created in Section  
219 [35A-8-2003](#).
- 220 (24) Money received by the Utah State Office of Rehabilitation for the sale of certain  
221 products or services, as provided in Section [35A-13-202](#).
- 222 (25) The Oil and Gas Conservation Account created in Section [40-6-14.5](#).
- 223 (26) The Electronic Payment Fee Restricted Account created by Section [41-1a-121](#) to  
224 the Motor Vehicle Division.
- 225 (27) The Motor Vehicle Enforcement Division Temporary Permit Restricted Account



226 created by Section 41-3-110 to the State Tax Commission.

227 (28) The Utah Law Enforcement Memorial Support Restricted Account created in  
228 Section 53-1-120.

229 (29) The State Disaster Recovery Restricted Account to the Division of Emergency  
230 Management, as provided in Section 53-2a-603.

231 (30) The Department of Public Safety Restricted Account to the Department of Public  
232 Safety, as provided in Section 53-3-106.

233 (31) The Utah Highway Patrol Aero Bureau Restricted Account created in Section  
234 53-8-303.

235 (32) The DNA Specimen Restricted Account created in Section 53-10-407.

236 (33) The Canine Body Armor Restricted Account created in Section 53-16-201.

237 (34) A certain portion of money collected for administrative costs under the School  
238 Institutional Trust Lands Management Act, as provided under Section 53C-3-202.

239 (35) The Public Utility Regulatory Restricted Account created in Section 54-5-1.5,  
240 subject to Subsection 54-5-1.5(4)(d).

241 (36) Certain fines collected by the Division of Occupational and Professional Licensing  
242 for violation of unlawful or unprofessional conduct that are used for education and enforcement  
243 purposes, as provided in Section 58-17b-505.

244 (37) Certain fines collected by the Division of Occupational and Professional Licensing  
245 for use in education and enforcement of the Security Personnel Licensing Act, as provided in  
246 Section 58-63-103.

247 (38) The Relative Value Study Restricted Account created in Section 59-9-105.

248 (39) The Cigarette Tax Restricted Account created in Section 59-14-204.

249 (40) Funds paid to the Division of Real Estate for the cost of a criminal background  
250 check for a mortgage loan license, as provided in Section 61-2c-202.

251 (41) Funds paid to the Division of Real Estate for the cost of a criminal background  
252 check for principal broker, associate broker, and sales agent licenses, as provided in Section  
253 61-2f-204.

- 254 (42) Certain funds donated to the Department of Human Services, as provided in  
255 Section [62A-1-111](#).
- 256 (43) The National Professional Men's Basketball Team Support of Women and  
257 Children Issues Restricted Account created in Section [62A-1-202](#).
- 258 (44) Certain funds donated to the Division of Child and Family Services, as provided  
259 in Section [62A-4a-110](#).
- 260 (45) The Choose Life Adoption Support Restricted Account created in Section  
261 [62A-4a-608](#).
- 262 (46) Funds collected by the Office of Administrative Rules for publishing, as provided  
263 in Section [63G-3-402](#).
- 264 (47) The Immigration Act Restricted Account created in Section [63G-12-103](#).
- 265 (48) Money received by the military installation development authority, as provided in  
266 Section [63H-1-504](#).
- 267 (49) The Computer Aided Dispatch Restricted Account created in Section [63H-7a-303](#).
- 268 (50) The Unified Statewide 911 Emergency Service Account created in Section  
269 [63H-7a-304](#).
- 270 (51) The Utah Statewide Radio System Restricted Account created in Section  
271 [63H-7a-403](#).
- 272 (52) The Employability to Careers Program Restricted Account created in Section  
273 [63J-4-703](#).
- 274 (53) The Motion Picture Incentive Account created in Section [63N-8-103](#).
- 275 (54) Certain money payable for expenses of the Pete Suazo Utah Athletic Commission,  
276 as provided under Section [63N-10-301](#).
- 277 (55) Funds collected by the housing of state probationary inmates or state parole  
278 inmates, as provided in Subsection [64-13e-104\(2\)](#).
- 279 (56) Certain forestry and fire control funds utilized by the Division of Forestry, Fire,  
280 and State Lands, as provided in Section [65A-8-103](#).
- 281 (57) Certain funds received by the Office of the State Engineer for well drilling fines or

282 bonds, as provided in Section 73-3-25.

283 (58) The Water Resources Conservation and Development Fund, as provided in  
284 Section 73-23-2.

285 (59) Funds donated or paid to a juvenile court by private sources, as provided in  
286 Subsection 78A-6-203(1)(c).

287 (60) Fees for certificate of admission created under Section 78A-9-102.

288 (61) Funds collected for adoption document access as provided in Sections 78B-6-141,  
289 78B-6-144, and 78B-6-144.5.

290 (62) Revenue for golf user fees at the Wasatch Mountain State Park, Palisades State  
291 Park, Jordan River State Park, and Green River State Park, as provided under Section  
292 79-4-403.

293 (63) Certain funds received by the Division of Parks and Recreation from the sale or  
294 disposal of buffalo, as provided under Section 79-4-1001.

295 (64) Funds collected for indigent defense as provided in Title [~~77, Chapter 32, Part 8~~]  
296 78B, Chapter 22, Part 4, Utah Indigent Defense Commission.

297 Section 5. Section 63J-1-602.2 is amended to read:

298 **63J-1-602.2. List of nonlapsing appropriations to programs.**

299 Appropriations made to the following programs are nonlapsing:

300 (1) The Legislature and its committees.

301 (2) The Percent-for-Art Program created in Section 9-6-404.

302 (3) The LeRay McAllister Critical Land Conservation Program created in Section  
303 11-38-301.

304 (4) Dedicated credits accrued to the Utah Marriage Commission as provided under  
305 Subsection 17-16-21(2)(d)(ii).

306 (5) The Division of Wildlife Resources for the appraisal and purchase of lands under  
307 the Pelican Management Act, as provided in Section 23-21a-6.

308 (6) The primary care grant program created in Section 26-10b-102.

309 (7) Sanctions collected as dedicated credits from Medicaid provider under Subsection

- 310 26-18-3(7).
- 311 (8) The Utah Health Care Workforce Financial Assistance Program created in Section  
312 26-46-102.
- 313 (9) The Rural Physician Loan Repayment Program created in Section 26-46a-103.
- 314 (10) The Opiate Overdose Outreach Pilot Program created in Section 26-55-107.
- 315 (11) Funds that the Department of Alcoholic Beverage Control retains in accordance  
316 with Subsection 32B-2-301(7)(a)(ii) or (b).
- 317 (12) The General Assistance program administered by the Department of Workforce  
318 Services, as provided in Section 35A-3-401.
- 319 (13) A new program or agency that is designated as nonlapsing under Section  
320 36-24-101.
- 321 (14) The Utah National Guard, created in Title 39, Militia and Armories.
- 322 (15) The State Tax Commission under Section 41-1a-1201 for the:
- 323 (a) purchase and distribution of license plates and decals; and
- 324 (b) administration and enforcement of motor vehicle registration requirements.
- 325 (16) The Search and Rescue Financial Assistance Program, as provided in Section  
326 53-2a-1102.
- 327 (17) The Motorcycle Rider Education Program, as provided in Section 53-3-905.
- 328 (18) The State Board of Regents for teacher preparation programs, as provided in  
329 Section 53B-6-104.
- 330 (19) The Medical Education Program administered by the Medical Education Council,  
331 as provided in Section 53B-24-202.
- 332 (20) The State Board of Education, as provided in Section 53F-2-205.
- 333 (21) The Division of Services for People with Disabilities, as provided in Section  
334 62A-5-102.
- 335 (22) The Division of Fleet Operations for the purpose of upgrading underground  
336 storage tanks under Section 63A-9-401.
- 337 (23) The Utah Seismic Safety Commission, as provided in Section 63C-6-104.

- 338           (24) Appropriations to the Department of Technology Services for technology  
339 innovation as provided under Section [63F-4-202](#).
- 340           (25) The Office of Administrative Rules for publishing, as provided in Section  
341 [63G-3-402](#).
- 342           (26) The Utah Science Technology and Research Initiative created in Section  
343 [63M-2-301](#).
- 344           (27) The Governor's Office of Economic Development to fund the Enterprise Zone  
345 Act, as provided in Title 63N, Chapter 2, Part 2, Enterprise Zone Act.
- 346           (28) Appropriations to fund the Governor's Office of Economic Development's Rural  
347 Employment Expansion Program, as described in Title 63N, Chapter 4, Part 4, Rural  
348 Employment Expansion Program.
- 349           (29) The Department of Human Resource Management user training program, as  
350 provided in Section [67-19-6](#).
- 351           (30) The University of Utah Poison Control Center program, as provided in Section  
352 [69-2-5.5](#).
- 353           (31) A public safety answering point's emergency telecommunications service fund, as  
354 provided in Section [69-2-301](#).
- 355           (32) The Traffic Noise Abatement Program created in Section [72-6-112](#).
- 356           (33) The Judicial Council for compensation for special prosecutors, as provided in  
357 Section [77-10a-19](#).
- 358           (34) A state rehabilitative employment program, as provided in Section [78A-6-210](#).
- 359           (35) The Utah Geological Survey, as provided in Section [79-3-401](#).
- 360           (36) The Bonneville Shoreline Trail Program created under Section [79-5-503](#).
- 361           (37) Adoption document access as provided in Sections [78B-6-141](#), [78B-6-144](#), and  
362 [78B-6-144.5](#).
- 363           (38) Indigent defense as provided in Title [~~77, Chapter 32, Part 8~~] 78B, Chapter 22,  
364 Part 4, Utah Indigent Defense Commission.
- 365           Section 6. Section **78A-2-408** is amended to read:

366           **78A-2-408. Transcripts and copies -- Fees.**

367           (1) The Judicial Council shall by rule provide for a standard page format for transcripts  
368 of court hearings.

369           (2) (a) The fee for a transcript of a court session, or any part of a court session, shall be  
370 \$4.50 per page, which includes the initial preparation of the transcript and one certified copy.  
371 The preparer shall deposit the original text file and printed transcript with the clerk of the court  
372 and provide the person requesting the transcript with the certified copy. The cost of additional  
373 copies shall be as provided in Subsection [78A-2-301\(1\)](#). The transcript for an appeal shall be  
374 prepared within the time period permitted by the rules of Appellate Procedure. The fee for a  
375 transcript prepared within three business days of the request shall be 1-1/2 times the base rate.  
376 The fee for a transcript prepared within one business day of the request shall be double the base  
377 rate.

378           (b) When a transcript is ordered by the court, the fees shall be paid by the parties to the  
379 action in equal proportion or as ordered by the court. The fee for a transcript in a criminal case  
380 in which the defendant is found to be [~~impecunious~~] indigent shall be paid pursuant to Section  
381 [~~77-32-305~~] [78B-22-302](#).

382           (3) The fee for the preparation of a transcript of a court hearing by an official court  
383 transcriber and the fee for the preparation of the transcript by a certified court reporter of a  
384 hearing before any court, referee, master, board, or commission of this state shall be as  
385 provided in Subsection (2)(a), and shall be payable to the person preparing the transcript.  
386 Payment for a transcript under this section is the responsibility of the party requesting the  
387 transcript.

388           Section 7. Section **78A-2-703** is amended to read:

389           **78A-2-703. Appointment of attorney guardian ad litem in district court matters.**

390           (1) A district court may appoint an attorney guardian ad litem to represent the best  
391 interests of a minor in the following district court matters:

392           (a) protective order proceedings; and

393           (b) district court actions when:

394 (i) child abuse, child sexual abuse, or neglect is alleged in a formal complaint, petition,  
395 or counterclaim;

396 (ii) the child abuse, child sexual abuse, or neglect described in Subsection (1)(b)(i) has  
397 been reported to Child Protective Services;

398 (iii) the court makes a finding that the adult parties to the case are indigent individuals,  
399 as defined in Section [~~77-32-202~~] 78B-22-102; and

400 (iv) the district court determines that there are no private attorney guardians ad litem  
401 who are reasonably available to be appointed in the district court action.

402 (2) (a) A court may not appoint an attorney guardian ad litem in a criminal case.

403 (b) Subsection (2)(a) does not prohibit the appointment of an attorney guardian ad  
404 litem in a case where a court is determining whether to adjudicate a minor for committing an  
405 act that would be a crime if committed by an adult.

406 (c) Subsection (2)(a) does not prohibit an attorney guardian ad litem from entering an  
407 appearance, filing motions, or taking other action in a criminal case on behalf of a minor, if:

408 (i) the attorney guardian ad litem is appointed to represent the minor in a case that is  
409 not a criminal case; and

410 (ii) the interests of the minor may be impacted by:

411 (A) an order that has been, or may be, issued in the criminal case; or

412 (B) other proceedings that have occurred, or may occur, in the criminal case.

413 (3) If a court appoints an attorney guardian ad litem in a divorce or child custody case,  
414 the court shall:

415 (a) specify in the order appointing the attorney guardian ad litem the specific issues in  
416 the proceeding that the attorney guardian ad litem is required to be involved in resolving, which  
417 may include issues relating to the custody of children and parent-time schedules;

418 (b) to the extent possible, bifurcate the issues specified in the order described in  
419 Subsection (3)(a) from the other issues in the case, in order to minimize the time constraints  
420 placed upon the attorney guardian ad litem in the case; and

421 (c) except as provided in Subsection (5), within one year after the day on which the

422 attorney guardian ad litem is appointed in the case, issue a final order:

423 (i) resolving the issues in the order described in Subsection (3)(a); and

424 (ii) terminating the appointment of the attorney guardian ad litem in the case.

425 (4) A court shall issue an order terminating the appointment of an attorney guardian ad  
426 litem made under this section, if:

427 (a) the court determines that the allegations of abuse or neglect are unfounded;

428 (b) after receiving input from the attorney guardian ad litem, the court determines that  
429 the children are no longer at risk of abuse or neglect; or

430 (c) there has been no activity in the case for which the attorney guardian ad litem is  
431 appointed for a period of six consecutive months.

432 (5) A court may issue a written order extending the one-year period described in  
433 Subsection (3)(c) for a time certain, if the court makes a written finding that there is a  
434 compelling reason that the court cannot comply with the requirements described in Subsection  
435 (3)(c) within the one-year period.

436 (6) When appointing an attorney guardian ad litem for a minor under this section, a  
437 court may appoint the same attorney guardian ad litem who represents the minor in another  
438 proceeding, or who has represented the minor in a previous proceeding, if that attorney  
439 guardian ad litem is available.

440 (7) The court is responsible for all costs resulting from the appointment of an attorney  
441 guardian ad litem and shall use funds appropriated by the Legislature for the guardian ad litem  
442 program to cover those costs.

443 (8) An attorney guardian ad litem appointed in accordance with the requirements of  
444 this section and Chapter 6, Part 9, Guardian Ad Litem, is, when serving in the scope of duties  
445 of an attorney guardian ad litem, considered an employee of this state for purposes of  
446 indemnification under the Governmental Immunity Act.

447 Section 8. Section **78A-2-705** is amended to read:

448 **78A-2-705. Private attorney guardian ad litem -- Appointment -- Costs and fees --**  
449 **Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum**



450 **qualifications.**

451 (1) The court may appoint an attorney as a private attorney guardian ad litem to  
452 represent the best interests of the minor in any district court action when:

453 (a) child abuse, child sexual abuse, or neglect is alleged in any proceeding, and the  
454 court has made a finding that an adult party is not indigent~~[, as defined by Section 77-32-202]~~  
455 as determined under Section 78B-22-202; or

456 (b) the custody of, or parent-time with, a child is at issue.

457 (2) (a) The court shall consider the limited number of eligible private attorneys  
458 guardian ad litem, as well as the limited time and resources available to a private attorney  
459 guardian ad litem, when making an appointment under Subsection (1) and prioritize case  
460 assignments accordingly.

461 (b) The court shall make findings regarding the need and basis for the appointment of a  
462 private attorney guardian ad litem.

463 (c) A court may not appoint a private attorney guardian ad litem in a criminal case.

464 (3) (a) If the parties stipulate to a private attorney guardian ad litem, the office shall  
465 assign the stipulated private attorney guardian ad litem to the case in accordance with this  
466 section.

467 (b) If, under Subsection (3)(a), the parties have not stipulated to a private attorney  
468 guardian ad litem, or if the stipulated private attorney guardian ad litem is unable to take the  
469 case, the court shall appoint a private attorney guardian ad litem in accordance with Subsection  
470 (3)(c).

471 (c) The court shall state in an order that the court is appointing a private attorney  
472 guardian ad litem, to be assigned by the office, to represent the best interests of the child in the  
473 matter.

474 (d) The court shall send the order described in Subsection (3)(c) to the office, in care of  
475 the Private Attorney Guardian ad Litem program.

476 (4) The court shall:

477 (a) specify in the order appointing a private attorney guardian ad litem the specific

478 issues in the proceeding that the private attorney guardian ad litem shall be involved in  
479 resolving, which may include issues relating to the custody of the child and a parent-time  
480 schedule;

481 (b) to the extent possible, bifurcate the issues described in Subsection (4)(a) from the  
482 other issues in the case in order to minimize the time constraints placed upon the private  
483 attorney guardian ad litem; and

484 (c) except as provided in Subsection (6), issue a final order within one year after the  
485 day on which the private attorney guardian ad litem is appointed in the case:

486 (i) resolving the issues described in Subsection (4)(a); and

487 (ii) terminating the private attorney guardian ad litem from the appointment to the case.

488 (5) The court shall issue an order terminating the appointment of a private attorney  
489 guardian ad litem made under this section if:

490 (a) after receiving input from the private attorney guardian ad litem, the court  
491 determines that the minor no longer requires the services of the private attorney guardian ad  
492 litem; or

493 (b) there has been no activity in the case for a period of six consecutive months.

494 (6) A court may issue an order extending the one-year period described in Subsection  
495 (4)(c) for a specified amount of time if the court makes a written finding that there is a  
496 compelling reason that the court cannot comply with the requirements described in Subsection  
497 (4)(c) within the one-year period.

498 (7) When appointing a private attorney guardian ad litem under this section, a court  
499 may appoint the same private attorney guardian ad litem who represents the minor in another  
500 proceeding, or who has represented the minor in a previous proceeding, if that private attorney  
501 guardian ad litem is available.

502 (8) (a) Upon receipt of the court's order, described in Subsections (3)(c) and (d), the  
503 office shall assign the case to a private attorney guardian ad litem, if available, in accordance  
504 with this section.

505 (b) (i) If, after the initial assignment of a private attorney guardian ad litem, either party

506 objects to the assigned private attorney guardian ad litem, that party may file an objection with  
507 the court within seven days after the day on which the party received notice of the assigned  
508 private attorney guardian ad litem.

509 (ii) If, after the initial assignment of a private attorney guardian ad litem, either  
510 attorney for a party discovers that the private attorney guardian ad litem represents an adverse  
511 party in a separate matter, that attorney may file an objection with the court within seven days  
512 after the day on which the attorney received notice of the private attorney guardian ad litem's  
513 representation of an adverse party in a separate matter.

514 (iii) Upon receipt of an objection, the court shall determine whether grounds exist for  
515 the objection, and if grounds exist, the court shall order, without a hearing, the office to assign  
516 a new private attorney guardian ad litem, in consultation with the parties and in accordance  
517 with this section.

518 (iv) If no alternative private attorney guardian ad litem is available, the office shall  
519 notify the court.

520 (9) (a) When appointing a private attorney guardian ad litem, the court shall:

521 (i) assess all or part of the private attorney guardian ad litem fees, court costs, and  
522 paralegal, staff, and volunteer expenses against the parties in a proportion the court determines  
523 to be just; and

524 (ii) designate in the order whether the private attorney guardian ad litem shall, as  
525 established by rule under Subsection (17):

526 (A) be paid a set fee and initial retainer;

527 (B) not be paid and serve pro bono; or

528 (C) be paid at a rate less than the set fee established by court rule.

529 (b) If a party claims to be impecunious, the court shall follow the procedure and make a  
530 determination, described in Section [78A-2-302](#), to set the amount that the party is required to  
531 pay, if any, toward the private attorney guardian ad litem's fees and expenses.

532 (c) The private attorney guardian ad litem may adjust the court-ordered fees or retainer  
533 to an amount less than what was ordered by the court at any time before being released from

534 representation by the court.

535 (10) Upon accepting the court's appointment, the assigned private attorney guardian ad  
536 litem shall:

537 (a) file a notice of appearance with the court within five business days of the day on  
538 which the attorney was assigned; and

539 (b) represent the best interests of the minor until released by the court.

540 (11) The private attorney guardian ad litem:

541 (a) shall be certified by the director of the office as meeting the minimum  
542 qualifications for appointment; and

543 (b) may not be employed by, or under contract with, the office unless under contract as  
544 a conflict private attorney guardian ad litem in an unrelated case.

545 (12) The private attorney guardian ad litem appointed under the provisions of this  
546 section shall:

547 (a) represent the best interests of the minor from the date of the appointment until  
548 released by the court;

549 (b) conduct or supervise an ongoing, independent investigation in order to obtain,  
550 first-hand, a clear understanding of the situation and needs of the minor;

551 (c) interview witnesses and review relevant records pertaining to the minor and the  
552 minor's family, including medical, psychological, and school records;

553 (d) (i) personally meet with the minor, unless:

554 (A) the minor is outside of the state; or

555 (B) meeting with the minor would be detrimental to the minor;

556 (ii) personally interview the minor, unless:

557 (A) the minor is not old enough to communicate;

558 (B) the minor lacks the capacity to participate in a meaningful interview; or

559 (C) the interview would be detrimental to the minor;

560 (iii) to the extent possible, determine the minor's goals and concerns regarding custody  
561 or visitation; and

562 (iv) to the extent possible, and unless it would be detrimental to the minor, keep the  
563 minor advised of:

564 (A) the status of the minor's case;

565 (B) all court and administrative proceedings;

566 (C) discussions with, and proposals made by, other parties;

567 (D) court action; and

568 (E) the psychiatric, medical, or other treatment or diagnostic services that are to be  
569 provided to the minor;

570 (e) unless excused by the court, prepare for and attend all mediation hearings and all  
571 court conferences and hearings, and present witnesses and exhibits as necessary to protect the  
572 best interests of the minor;

573 (f) identify community resources to protect the best interests of the minor and advocate  
574 for those resources; and

575 (g) participate in all appeals unless excused by the court.

576 (13) (a) The private attorney guardian ad litem shall represent the best interests of a  
577 minor.

578 (b) If the minor's intent and desires differ from the private attorney guardian ad litem's  
579 determination of the minor's best interests, the private attorney guardian ad litem shall  
580 communicate to the court the minor's intent and desires and the private attorney guardian ad  
581 litem's determination of the minor's best interests.

582 (c) A difference between the minor's intent and desires and the private attorney  
583 guardian ad litem's determination of best interests is not sufficient to create a conflict of  
584 interest.

585 (d) The private attorney guardian ad litem shall disclose the intent and desires of the  
586 minor unless the minor:

587 (i) instructs the private attorney guardian ad litem to not disclose the minor's intent and  
588 desires; or

589 (ii) has not expressed an intent and desire.

590 (e) The court may appoint one private attorney guardian ad litem to represent the best  
591 interests of more than one child of a marriage.

592 (14) In every court hearing where the private attorney guardian ad litem makes a  
593 recommendation regarding the best interest of the minor, the court shall require the private  
594 attorney guardian ad litem to disclose the factors that form the basis of the recommendation.

595 (15) A private attorney guardian ad litem appointed under this section is immune from  
596 any civil liability that might result by reason of acts performed within the scope of duties of the  
597 private attorney guardian ad litem.

598 (16) The office and the Guardian ad Litem Oversight Committee shall compile a list of  
599 attorneys willing to accept an appointment as a private attorney guardian ad litem.

600 (17) Upon the advice of the director and the Guardian ad Litem Oversight Committee,  
601 the Judicial Council shall establish by rule:

602 (a) the minimum qualifications and requirements for appointment by the court as a  
603 private attorney guardian ad litem;

604 (b) the standard fee rate and retainer amount for a private attorney guardian ad litem;

605 (c) the percentage of cases a private attorney guardian ad litem may be expected to take  
606 on pro bono;

607 (d) a system to:

608 (i) select a private attorney guardian ad litem for a given appointment; and

609 (ii) determine when a private attorney guardian ad litem shall be expected to accept an  
610 appointment pro bono; and

611 (e) the process for handling a complaint relating to the eligibility status of a private  
612 attorney guardian ad litem.

613 (18) (a) Any savings that result from assigning a private attorney guardian ad litem in a  
614 district court case, instead of an office guardian ad litem, shall be applied to the office to recruit  
615 and train attorneys for the private attorney guardian ad litem program.

616 (b) After complying with Subsection (18)(a), the office shall use any additional savings  
617 to reduce caseloads and improve current practices in juvenile court.

618 Section 9. Section 78A-6-306 is amended to read:

619 **78A-6-306. Shelter hearing.**

620 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays  
621 after any one or all of the following occur:

- 622 (a) removal of the child from the child's home by the division;
- 623 (b) placement of the child in the protective custody of the division;
- 624 (c) emergency placement under Subsection 62A-4a-202.1(4);
- 625 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter  
626 at the request of the division; or

627 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under  
628 Subsection 78A-6-106(4).

629 (2) If one of the circumstances described in Subsections (1)(a) through (e) occurs, the  
630 division shall issue a notice that contains all of the following:

- 631 (a) the name and address of the person to whom the notice is directed;
- 632 (b) the date, time, and place of the shelter hearing;
- 633 (c) the name of the child on whose behalf a petition is being brought;
- 634 (d) a concise statement regarding:
  - 635 (i) the reasons for removal or other action of the division under Subsection (1); and
  - 636 (ii) the allegations and code sections under which the proceeding has been instituted;
- 637 (e) a statement that the parent or guardian to whom notice is given, and the child, are  
638 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is  
639 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be  
640 provided in accordance with [~~the provisions of Section 78A-6-1111~~] Title 78B, Chapter 22,  
641 Indigent Defense Act; and
- 642 (f) a statement that the parent or guardian is liable for the cost of support of the child in  
643 the protective custody, temporary custody, and custody of the division, and the cost for legal  
644 counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial  
645 ability of the parent or guardian.

646 (3) The notice described in Subsection (2) shall be personally served as soon as  
647 possible, but no later than one business day after removal of the child from the child's home, or  
648 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection  
649 78A-6-106(4), on:

650 (a) the appropriate guardian ad litem; and

651 (b) both parents and any guardian of the child, unless the parents or guardians cannot  
652 be located.

653 (4) The following persons shall be present at the shelter hearing:

654 (a) the child, unless it would be detrimental for the child;

655 (b) the child's parents or guardian, unless the parents or guardian cannot be located, or  
656 fail to appear in response to the notice;

657 (c) counsel for the parents, if one is requested;

658 (d) the child's guardian ad litem;

659 (e) the caseworker from the division who is assigned to the case; and

660 (f) the attorney from the attorney general's office who is representing the division.

661 (5) (a) At the shelter hearing, the court shall:

662 (i) provide an opportunity to provide relevant testimony to:

663 (A) the child's parent or guardian, if present; and

664 (B) any other person having relevant knowledge; and

665 (ii) subject to Section 78A-6-305, provide an opportunity for the child to testify.

666 (b) The court:

667 (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile  
668 Procedure;

669 (ii) shall hear relevant evidence presented by the child, the child's parent or guardian,  
670 the requesting party, or their counsel; and

671 (iii) may in its discretion limit testimony and evidence to only that which goes to the  
672 issues of removal and the child's need for continued protection.

673 (6) If the child is in the protective custody of the division, the division shall report to



674 the court:

675 (a) the reason why the child was removed from the parent's or guardian's custody;

676 (b) any services provided to the child and the child's family in an effort to prevent

677 removal;

678 (c) the need, if any, for continued shelter;

679 (d) the available services that could facilitate the return of the child to the custody of

680 the child's parent or guardian; and

681 (e) subject to Subsections [78A-6-307](#)(18)(c) through (e), whether any relatives of the

682 child or friends of the child's parents may be able and willing to accept temporary placement of

683 the child.

684 (7) The court shall consider all relevant evidence provided by persons or entities

685 authorized to present relevant evidence pursuant to this section.

686 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good

687 cause shown, the court may grant no more than one continuance, not to exceed five judicial

688 days.

689 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for

690 a continuance under Subsection (8)(a).

691 (c) Notwithstanding Subsection (8)(a), if the division fails to provide the notice

692 described in Subsection (2) within the time described in Subsection (3), the court may grant the

693 request of a parent or guardian for a continuance, not to exceed five judicial days.

694 (9) (a) If the child is in the protective custody of the division, the court shall order that

695 the child be returned to the custody of the parent or guardian unless it finds, by a

696 preponderance of the evidence, consistent with the protections and requirements provided in

697 Subsection [62A-4a-201](#)(1), that any one of the following exists:

698 (i) subject to Subsection (9)(b)(i), there is a serious danger to the physical health or

699 safety of the child and the child's physical health or safety may not be protected without

700 removing the child from the custody of the child's parent;

701 (ii) (A) the child is suffering emotional damage that results in a serious impairment in

702 the child's growth, development, behavior, or psychological functioning;

703 (B) the parent or guardian is unwilling or unable to make reasonable changes that

704 would sufficiently prevent future damage; and

705 (C) there are no reasonable means available by which the child's emotional health may

706 be protected without removing the child from the custody of the child's parent or guardian;

707 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is

708 not removed from the custody of the child's parent or guardian;

709 (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same

710 household has been, or is considered to be at substantial risk of being, physically abused,

711 sexually abused, or sexually exploited by a:

712 (A) parent or guardian;

713 (B) member of the parent's household or the guardian's household; or

714 (C) person known to the parent or guardian;

715 (v) the parent or guardian is unwilling to have physical custody of the child;

716 (vi) the child is without any provision for the child's support;

717 (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe

718 and appropriate care for the child;

719 (viii) (A) a relative or other adult custodian with whom the child is left by the parent or

720 guardian is unwilling or unable to provide care or support for the child;

721 (B) the whereabouts of the parent or guardian are unknown; and

722 (C) reasonable efforts to locate the parent or guardian are unsuccessful;

723 (ix) subject to Subsections [78A-6-105\(35\)\(c\)\(i\)](#) through (iii) and [78A-6-117\(2\)](#) and

724 Section [78A-6-301.5](#), the child is in immediate need of medical care;

725 (x) (A) the physical environment or the fact that the child is left unattended beyond a

726 reasonable period of time poses a threat to the child's health or safety; and

727 (B) the parent or guardian is unwilling or unable to make reasonable changes that

728 would remove the threat;

729 (xi) (A) the child or a minor residing in the same household has been neglected; and

730 (B) the parent or guardian is unwilling or unable to make reasonable changes that  
731 would prevent the neglect;

732 (xii) the parent, guardian, or an adult residing in the same household as the parent or  
733 guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act,  
734 and any clandestine laboratory operation was located in the residence or on the property where  
735 the child resided;

736 (xiii) (A) the child's welfare is substantially endangered; and

737 (B) the parent or guardian is unwilling or unable to make reasonable changes that  
738 would remove the danger; or

739 (xiv) the child's natural parent:

740 (A) intentionally, knowingly, or recklessly causes the death of another parent of the  
741 child;

742 (B) is identified by a law enforcement agency as the primary suspect in an investigation  
743 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

744 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or  
745 recklessly causing the death of another parent of the child.

746 (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is  
747 established if:

748 (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency  
749 involving the parent; and

750 (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

751 (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly  
752 allowed the child to be in the physical care of a person after the parent received actual notice  
753 that the person physically abused, sexually abused, or sexually exploited the child, that fact  
754 constitutes prima facie evidence that there is a substantial risk that the child will be physically  
755 abused, sexually abused, or sexually exploited.

756 (10) (a) (i) The court shall also make a determination on the record as to whether  
757 reasonable efforts were made to prevent or eliminate the need for removal of the child from the

758 child's home and whether there are available services that would prevent the need for continued  
759 removal.

760 (ii) If the court finds that the child can be safely returned to the custody of the child's  
761 parent or guardian through the provision of those services, the court shall place the child with  
762 the child's parent or guardian and order that those services be provided by the division.

763 (b) In making the determination described in Subsection (10)(a), and in ordering and  
764 providing services, the child's health, safety, and welfare shall be the paramount concern, in  
765 accordance with federal law.

766 (11) Where the division's first contact with the family occurred during an emergency  
767 situation in which the child could not safely remain at home, the court shall make a finding that  
768 any lack of preplacement preventive efforts was appropriate.

769 (12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe  
770 abuse, or severe neglect are involved, neither the division nor the court has any duty to make  
771 "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home,  
772 return a child to the child's home, provide reunification services, or attempt to rehabilitate the  
773 offending parent or parents.

774 (13) The court may not order continued removal of a child solely on the basis of  
775 educational neglect as described in Subsection 78A-6-105(35)(b), truancy, or failure to comply  
776 with a court order to attend school.

777 (14) (a) Whenever a court orders continued removal of a child under this section, the  
778 court shall state the facts on which that decision is based.

779 (b) If no continued removal is ordered and the child is returned home, the court shall  
780 state the facts on which that decision is based.

781 (15) If the court finds that continued removal and temporary custody are necessary for  
782 the protection of a child pursuant to Subsection (9)(a), the court shall order continued removal  
783 regardless of:

784 (a) any error in the initial removal of the child;

785 (b) the failure of a party to comply with notice provisions; or

786 (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child  
787 and Family Services.

788 Section 10. Section 78A-6-317 is amended to read:

789 **78A-6-317. All proceedings -- Persons entitled to be present.**

790 (1) A child who is the subject of a juvenile court hearing, any person entitled to notice  
791 pursuant to Section 78A-6-306 or 78A-6-310, preadoptive parents, foster parents, and any  
792 relative providing care for the child, are:

793 (a) entitled to notice of, and to be present at, each hearing and proceeding held under  
794 this part, including administrative reviews; and

795 (b) have a right to be heard at each hearing and proceeding described in Subsection  
796 (1)(a).

797 (2) A child shall be represented at each hearing by the guardian ad litem appointed to  
798 the child's case by the court. The child has a right to be present at each hearing, subject to the  
799 discretion of the guardian ad litem or the court regarding any possible detriment to the child.

800 (3) (a) The parent or guardian of a child who is the subject of a petition under this part  
801 has the right to be represented by counsel, and to present evidence, at each hearing.

802 (b) [~~When it appears to the court that a parent or guardian of the child desires counsel~~  
803 ~~but is financially unable to afford and cannot for that reason employ counsel, the] A court  
804 [shall] may appoint [~~counsel~~] an indigent defense service provider as provided in [~~Section~~  
805 ~~78A-6-1111~~] Title 78B, Chapter 22, Indigent Defense Act.~~

806 (4) In every abuse, neglect, or dependency proceeding under this chapter, the court  
807 shall order that the child be represented by a guardian ad litem, in accordance with Section  
808 78A-6-902. The guardian ad litem shall represent the best interest of the child, in accordance  
809 with the requirements of that section, at the shelter hearing and at all subsequent court and  
810 administrative proceedings, including any proceeding for termination of parental rights in  
811 accordance with Part 5, Termination of Parental Rights Act.

812 (5) (a) Except as provided in Subsection (5)(b), and notwithstanding any other  
813 provision of law:

814 (i) counsel for all parties to the action shall be given access to all records, maintained  
815 by the division or any other state or local public agency, that are relevant to the abuse, neglect,  
816 or dependency proceeding under this chapter; and

817 (ii) if the natural parent of a child is not represented by counsel, the natural parent shall  
818 have access to the records described in Subsection (5)(a)(i).

819 (b) The disclosures described in Subsection (5)(a) are not required in the following  
820 circumstances:

821 (i) subject to Subsection (5)(c), the division or other state or local public agency did not  
822 originally create the record being requested;

823 (ii) disclosure of the record would jeopardize the life or physical safety of a child who  
824 has been a victim of abuse or neglect, or any person who provided substitute care for the child;

825 (iii) disclosure of the record would jeopardize the anonymity of the person or persons  
826 making the initial report of abuse or neglect or any others involved in the subsequent  
827 investigation;

828 (iv) disclosure of the record would jeopardize the life or physical safety of a person  
829 who has been a victim of domestic violence;

830 (v) the record is a report maintained in the Management Information System, for which  
831 a finding of unsubstantiated, unsupported, or without merit has been made, unless the person  
832 requesting the information is the alleged perpetrator in the report or counsel for the alleged  
833 perpetrator in the report; or

834 (vi) the record is a Children's Justice Center interview, including a video or audio  
835 recording, and a transcript of the recording, the release of which is governed by Section  
836 [77-37-4](#).

837 (c) If a disclosure is denied under Subsection (5)(b)(i), the division shall inform the  
838 person making the request of the following:

839 (i) the existence of all records in the possession of the division or any other state or  
840 local public agency;

841 (ii) the name and address of the person or agency that originally created the record; and

842 (iii) that the person must seek access to the record from the person or agency that  
843 originally created the record.

844 Section 11. Section 78A-6-703 is amended to read:

845 **78A-6-703. Certification hearings -- Juvenile court to hold preliminary hearing --**  
846 **Factors considered by juvenile court for waiver of jurisdiction to district court.**

847 (1) If a criminal information filed in accordance with Subsection 78A-6-602(3) alleges  
848 the commission of an act which would constitute a felony if committed by an adult, the  
849 juvenile court shall conduct a preliminary hearing.

850 (2) At the preliminary hearing the state shall have the burden of going forward with its  
851 case and the burden of establishing:

852 (a) probable cause to believe that a crime was committed and that the defendant  
853 committed it; and

854 (b) by a preponderance of the evidence, that it would be contrary to the best interests of  
855 the minor or of the public for the juvenile court to retain jurisdiction.

856 (3) In considering whether or not it would be contrary to the best interests of the minor  
857 or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider,  
858 and may base its decision on, the finding of one or more of the following factors:

859 (a) the seriousness of the offense and whether the protection of the community requires  
860 isolation of the minor beyond that afforded by juvenile facilities;

861 (b) whether the alleged offense was committed by the minor under circumstances  
862 which would subject the minor to enhanced penalties under Section 76-3-203.1 if the minor  
863 were adult and the offense was committed:

864 (i) in concert with two or more persons;

865 (ii) for the benefit of, at the direction of, or in association with any criminal street gang  
866 as defined in Section 76-9-802; or

867 (iii) to gain recognition, acceptance, membership, or increased status with a criminal  
868 street gang as defined in Section 76-9-802;

869 (c) whether the alleged offense was committed in an aggressive, violent, premeditated,

870 or willful manner;

871 (d) whether the alleged offense was against persons or property, greater weight being  
872 given to offenses against persons, except as provided in Section 76-8-418;

873 (e) the maturity of the minor as determined by considerations of the minor's home,  
874 environment, emotional attitude, and pattern of living;

875 (f) the record and previous history of the minor;

876 (g) the likelihood of rehabilitation of the minor by use of facilities available to the  
877 juvenile court;

878 (h) the desirability of trial and disposition of the entire offense in one court when the  
879 minor's associates in the alleged offense are adults who will be charged with a crime in the  
880 district court;

881 (i) whether the minor used a firearm in the commission of an offense; and

882 (j) whether the minor possessed a dangerous weapon on or about school premises as  
883 provided in Section 76-10-505.5.

884 (4) The amount of weight to be given to each of the factors listed in Subsection (3) is  
885 discretionary with the court.

886 (5) (a) Written reports and other materials relating to the minor's mental, physical,  
887 educational, and social history may be considered by the court.

888 (b) If requested by the minor, the minor's parent, guardian, or other interested party, the  
889 court shall require the person or agency preparing the report and other material to appear and  
890 be subject to both direct and cross-examination.

891 (6) At the conclusion of the state's case, the minor may testify under oath, call  
892 witnesses, cross-examine adverse witnesses, and present evidence on the factors required by  
893 Subsection (3).

894 (7) At the time the minor is bound over to the district court, the juvenile court shall  
895 make the initial determination on where the minor shall be held.

896 (8) The juvenile court shall consider the following when determining where the minor  
897 will be held until the time of trial:



- 898 (a) the age of the minor;
- 899 (b) the nature, seriousness, and circumstances of the alleged offense;
- 900 (c) the minor's history of prior criminal acts;
- 901 (d) whether detention in a juvenile detention facility will adequately serve the need for  
902 community protection pending the outcome of any criminal proceedings;
- 903 (e) whether the minor's placement in a juvenile detention facility will negatively impact  
904 the functioning of the facility by compromising the goals of the facility to maintain a safe,  
905 positive, and secure environment for all minors within the facility;
- 906 (f) the relative ability of the facility to meet the needs of the minor and protect the  
907 public;
- 908 (g) whether the minor presents an imminent risk of harm to the minor or others within  
909 the facility;
- 910 (h) the physical maturity of the minor;
- 911 (i) the current mental state of the minor as evidenced by relevant mental health or  
912 psychological assessments or screenings that are made available to the court; and
- 913 (j) any other factors the court considers relevant.
- 914 (9) If a minor is ordered to a juvenile detention facility under Subsection (8), the minor  
915 shall remain in the facility until released by a district court judge, or if convicted, until  
916 sentencing.
- 917 (10) A minor held in a juvenile detention facility under this section shall have the same  
918 right to bail as any other criminal defendant.
- 919 (11) If the minor ordered to a juvenile detention facility under Subsection (8) attains  
920 the age of 18 years, the minor shall be transferred within 30 days to an adult jail until released  
921 by the district court judge, or if convicted, until sentencing.
- 922 (12) A minor 16 years of age or older whose conduct or condition endangers the safety  
923 or welfare of others in the juvenile detention facility may, by court order that specifies the  
924 reasons, be detained in another place of confinement considered appropriate by the court,  
925 including jail or other place of confinement for adults.

926 (13) The district court may reconsider the decision on where the minor shall be held  
927 pursuant to Subsection (7).

928 (14) If the court finds the state has met its burden under Subsection (2), the court may  
929 enter an order:

930 (a) certifying that finding; and

931 (b) directing that the minor be held for criminal proceedings in the district court.

932 (15) If an indictment is returned by a grand jury, the preliminary examination held by  
933 the juvenile court need not include a finding of probable cause, but the juvenile court shall  
934 proceed in accordance with this section regarding the additional consideration referred to in  
935 Subsection (2)(b).

936 (16) [~~The provisions of~~] Title 78B, Chapter 22, Indigent Defense Act, Section  
937 [78A-6-115](#), [~~Section 78A-6-111~~];] and other provisions relating to proceedings in juvenile  
938 cases are applicable to the hearing held under this section to the extent they are pertinent.

939 (17) A minor who has been directed to be held for criminal proceedings in the district  
940 court is not entitled to a preliminary examination in the district court.

941 (18) A minor who has been certified for trial in the district court shall have the same  
942 right to bail as any other criminal defendant and shall be advised of that right by the juvenile  
943 court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20,  
944 Bail.

945 (19) When a minor has been certified to the district court under this section, the  
946 jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile  
947 court over the minor is terminated regarding that offense, any other offenses arising from the  
948 same criminal episode, and any subsequent misdemeanors or felonies charged against the  
949 minor, except as provided in Subsection (21) or Section [78A-6-705](#).

950 (20) If a minor enters a plea to, or is found guilty of any of the charges filed or on any  
951 other offense arising out of the same criminal episode, the district court retains jurisdiction  
952 over the minor for all purposes, including sentencing.

953 (21) The juvenile court under Section [78A-6-103](#) and the Division of Juvenile Justice

954 Services regain jurisdiction and any authority previously exercised over the minor when there  
955 is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

956 Section 12. Section ~~78A-6-1111~~ is amended to read:

957 **78A-6-1111. Order for indigent defense service or guardian ad litem.**

958 [~~(1) (a) In any action in juvenile court initiated by the state, a political subdivision of  
959 the state, or a private party, the parents, legal guardian, and the minor, where applicable, shall  
960 be informed that they may be represented by counsel at every stage of the proceedings.]~~

961 [~~(b) In any action initiated by a private party:]~~

962 [~~(i) the parents or legal guardian shall have the right to employ counsel of their own  
963 choice at their own expense; and]~~

964 [~~(ii) the court shall appoint counsel designated by the county where the petition is filed  
965 to represent a parent or legal guardian facing any action initiated by a private party under Title  
966 78A, Chapter 6, Part 5, Termination of Parental Rights Act or termination of parental rights  
967 under Section ~~78B-6-112~~, if the parent or legal guardian:]~~

968 [~~(A) qualifies as indigent under Section ~~77-32-202~~; and]~~

969 [~~(B) does not, after being fully advised of the right to counsel, knowingly, intelligently,  
970 and voluntarily waive the right to counsel.]~~

971 [~~(c) If, in any action initiated by the state or a political subdivision of the state under  
972 Part 3, Abuse, Neglect, and Dependency Proceedings; Part 5, Termination of Parental Rights  
973 Act; or Part 10, Adult Offenses, of this chapter or under Section ~~78A-6-1101~~, a parent or legal  
974 guardian requests an attorney and is found by the court to be indigent, counsel shall be  
975 appointed by the court to represent the parent or legal guardian in all proceedings directly  
976 related to the petition or motion filed by the state, or a political subdivision of the state, subject  
977 to the provisions of this section.]~~

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

980 [~~(d) (2) In any action [initiated by the state, a political subdivision of the state, or a  
981 private party] under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5,~~

982 Termination of Parental Rights Act, [of this chapter,] the child shall be represented by a  
983 guardian ad litem in accordance with Sections 78A-6-317 and 78A-6-902. The child shall also  
984 be represented by an attorney guardian ad litem in other actions initiated under this chapter  
985 when appointed by the court under Section 78A-6-902 or as otherwise provided by law.

986 ~~[(e) In any action initiated by the state or a political subdivision of the state under Part~~  
987 ~~6, Delinquency and Criminal Actions, or Part 7, Transfer of Jurisdiction, of this chapter, or~~  
988 ~~against a minor under Section 78A-6-1101, the parents or legal guardian and the minor shall be~~  
989 ~~informed that the minor has the right to be represented by counsel at every stage of the~~  
990 ~~proceedings.]~~

991 ~~[(i) In cases where a petition or information alleging a felony-level offense is filed, the~~  
992 ~~court shall appoint counsel, who shall appear until counsel is retained on the minor's behalf.~~  
993 ~~The minor may not waive counsel unless the minor has had a meaningful opportunity to~~  
994 ~~consult with a defense attorney. The court shall make findings on the record, taking into~~  
995 ~~consideration the minor's unique circumstances and attributes, that the waiver is knowing and~~  
996 ~~voluntary and the minor understands the consequences of waiving the right to counsel.]~~

997 ~~[(ii) In all other cases in which a petition is filed the right to counsel may not be waived~~  
998 ~~by a minor unless there has been a finding on the record, taking into consideration the minor's~~  
999 ~~unique circumstances and attributes, that the waiver is knowing and voluntary, and the minor~~  
1000 ~~understands the consequences of waiving the right to counsel.]~~

1001 ~~[(iii) If the minor is found to be indigent, counsel shall be appointed by the court to~~  
1002 ~~represent the minor in all proceedings directly related to the petition or motion filed by the state~~  
1003 ~~or a political subdivision of the state, subject to the provisions of this section.]~~

1004 ~~[(f) Indigency of a parent, legal guardian, or minor shall be determined in accordance~~  
1005 ~~with the process and procedure defined in Section 77-32-202. The court shall take into account~~  
1006 ~~the income and financial ability of the parent or legal guardian to retain counsel in determining~~  
1007 ~~the indigency of the minor.]~~

1008 ~~[(g) The cost of appointed counsel for a party found to be indigent, including the cost~~  
1009 ~~of counsel and expense of the first appeal, shall be paid by the county in which the trial court~~

1010 proceedings are held. ~~Counties may levy and collect taxes for these purposes or may apply for~~  
1011 ~~a grant for reimbursement, as provided in Subsection (6).]~~

1012 ~~[(2) Counsel appointed by the court may not provide representation as court-appointed~~  
1013 ~~counsel for a parent or legal guardian in any action initiated by, or in any proceeding to modify~~  
1014 ~~court orders in a proceeding initiated by, a private party, except as provided under Subsection~~  
1015 ~~(1)(b).]~~

1016 ~~[(3) If the county responsible to provide legal counsel for an indigent under Subsection~~  
1017 ~~(1)(g) has arranged by contract to provide services, the court shall appoint the contracting~~  
1018 ~~attorney as legal counsel to represent that indigent.]~~

1019 ~~[(4) The court may order a parent or legal guardian for whom counsel is appointed, and~~  
1020 ~~the parents or legal guardian of any minor for whom counsel is appointed, to reimburse the~~  
1021 ~~county for the cost of appointed counsel.]~~

1022 ~~[(5) The state, or an agency of the state, may not be ordered to reimburse the county for~~  
1023 ~~expenses incurred under Subsection (1)(g).]~~

1024 ~~[(6) If a county incurs expenses in providing defense services to indigent individuals~~  
1025 ~~facing any action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination of~~  
1026 ~~Parental Rights Act or termination of parental rights under Section ~~78B-6-112~~, the county may~~  
1027 ~~apply for a grant for reimbursement from the Utah Indigent Defense Commission under~~  
1028 ~~Section ~~77-32-806~~.]~~

1029 Section 13. Section **78A-7-103** is amended to read:

1030 **78A-7-103. Minimum standards of justice courts -- Authority of Judicial Council**  
1031 **over justice courts.**

1032 The Judicial Council shall ensure that:

1033 (1) procedures include requirements that every municipality or county that establishes  
1034 or maintains a justice court provide for the following minimum operating standards:

1035 (a) a system to ensure the justice court records all proceedings with a digital audio  
1036 recording device and maintains the audio recordings for a minimum of one year;

1037 (b) sufficient prosecutors to perform the prosecutorial duties before the justice court;

1038 (c) adequate funding to [~~defend all persons charged with a public offense who are~~  
1039 ~~determined by the justice court to be indigent~~] provide indigent defense services for indigent  
1040 individuals under Title [~~77, Chapter 32~~] 78B, Chapter 22, Indigent Defense Act;

1041 (d) sufficient local peace officers to provide security for the justice court and to attend  
1042 to the justice court when required;

1043 (e) sufficient clerical personnel to serve the needs of the justice court;

1044 (f) sufficient funds to cover the cost of travel and training expenses of clerical  
1045 personnel and judges at training sessions mandated by the Judicial Council;

1046 (g) adequate courtroom and auxiliary space for the justice court, which need not be  
1047 specifically constructed for or allocated solely for the justice court when existing facilities  
1048 adequately serve the purposes of the justice court; and

1049 (h) for each judge of its justice court, a current copy of the Utah Code, the Utah Court  
1050 Rules Annotated, the justice court manual published by the state court administrator, the  
1051 county, city, or town ordinances as appropriate, and other legal reference materials as  
1052 determined to be necessary by the judge; and

1053 (2) the Judicial Council's rules and procedures shall:

1054 (a) presume that existing justice courts will be recertified at the end of each four-year  
1055 term if the court continues to meet the minimum requirements for the establishment of a new  
1056 justice court; or

1057 (b) authorize the Judicial Council, upon request of a municipality or county or upon its  
1058 own review, when a justice court does not meet the minimum requirements, to:

1059 (i) decline recertification of a justice court;

1060 (ii) revoke the certification of a justice court;

1061 (iii) extend the time for a justice court to comply with the minimum requirements; or

1062 (iv) suspend rules of the Judicial Council governing justice courts, if the council  
1063 believes suspending those rules is the appropriate administrative remedy for the justice courts  
1064 of this state.

1065 Section 14. Section **78B-6-112** is amended to read:

1066           **78B-6-112. District court jurisdiction over termination of parental rights**  
1067 **proceedings.**

1068           (1) A district court has jurisdiction to terminate parental rights in a child if the party  
1069 who filed the petition is seeking to terminate parental rights in the child for the purpose of  
1070 facilitating the adoption of the child.

1071           (2) A petition to terminate parental rights under this section may be:

1072           (a) joined with a proceeding on an adoption petition; or

1073           (b) filed as a separate proceeding before or after a petition to adopt the child is filed.

1074           (3) A court may enter a final order terminating parental rights before a final decree of  
1075 adoption is entered.

1076           (4) (a) Nothing in this section limits the jurisdiction of a juvenile court relating to  
1077 proceedings to terminate parental rights as described in Section [78A-6-103](#).

1078           (b) This section does not grant jurisdiction to a district court to terminate parental  
1079 rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse,  
1080 neglect, dependency, or termination of parental rights proceeding.

1081           (5) The district court may terminate an individual's parental rights in a child if:

1082           (a) the individual executes a voluntary consent to adoption, or relinquishment for  
1083 adoption, of the child, in accordance with:

1084           (i) the requirements of this chapter; or

1085           (ii) the laws of another state or country, if the consent is valid and irrevocable;

1086           (b) the individual is an unmarried biological father who is not entitled to consent to  
1087 adoption, or relinquishment for adoption, under Section [78B-6-120](#) or [78B-6-121](#);

1088           (c) the individual:

1089           (i) received notice of the adoption proceeding relating to the child under Section  
1090 [78B-6-110](#); and

1091           (ii) failed to file a motion for relief, under Subsection [78B-6-110\(6\)](#), within 30 days  
1092 after the day on which the individual was served with notice of the adoption proceeding;

1093           (d) the court finds, under Section [78B-15-607](#), that the individual is not a parent of the

1094 child; or

1095 (e) the individual's parental rights are terminated on grounds described in Title 78A,  
1096 Chapter 6, Part 5, Termination of Parental Rights Act, if terminating the person's parental  
1097 rights is in the best interests of the child.

1098 (6) The court shall appoint [~~counsel designated by the county where the petition is~~  
1099 ~~filed~~] an indigent defense service provider, under Title 78B, Chapter 22, Indigent Defense Act,  
1100 to represent a party who faces any action initiated by a private party under Title 78A, Chapter  
1101 6, Part 5, Termination of Parental Rights Act or whose parental rights are subject to  
1102 termination under this section[~~; if~~].

1103 [~~(a) the court determines that the party is indigent under Section 77-32-202; and]~~

1104 [~~(b) the party does not, after being fully advised of the right to counsel, knowingly,~~  
1105 ~~intelligently and voluntarily waive the right to counsel.]~~

1106 (7) If a county incurs expenses in providing indigent defense services to an indigent  
1107 [~~individuals~~] individual facing any action initiated by a private party under Title 78A, Chapter  
1108 6, Part 5, Termination of Parental Rights Act or termination of parental rights under this  
1109 section, the county may apply for [~~a grant for~~] reimbursement from the Utah Indigent Defense  
1110 Commission under Section [~~77-32-806~~] 78B-22-406.

1111 Section 15. Section **78B-22-101**, which is renumbered from Section 77-32-101 is  
1112 renumbered and amended to read:

1113 **CHAPTER 22. INDIGENT DEFENSE ACT**

1114 **Part 1. General Provisions**

1115 [~~77-32-101~~]. **78B-22-101. Title.**

1116 This chapter is known as the "Indigent Defense Act."

1117 Section 16. Section **78B-22-102** is enacted to read:

1118 **78B-22-102. Definitions.**

1119 As used in this chapter:

1120 (1) "Account" means the Indigent Defense Resources Restricted Account created in  
1121 Section 78B-22-405.



1122 (2) "Board" means the Indigent Defense Funds Board created in Section [78B-22-501](#).

1123 (3) "Commission" means the Utah Indigent Defense Commission created in Section  
1124 [78B-22-401](#).

1125 (4) (a) "Indigent defense resources" means the resources necessary to provide an  
1126 effective defense for an indigent individual, including the costs for a competent investigator,  
1127 expert witness, scientific or medical testing, transcripts, and printing briefs.

1128 (b) "Indigent defense resources" does not include an indigent defense service provider.

1129 (5) "Indigent defense service provider" means an attorney or entity appointed to  
1130 represent an indigent individual pursuant to:

1131 (a) a contract with an indigent defense system to provide indigent defense services; or

1132 (b) an order issued by the court under Subsection [78B-22-203\(2\)\(a\)](#).

1133 (6) "Indigent defense services" means:

1134 (a) the representation of an indigent individual by an indigent defense service provider;

1135 and

1136 (b) the provision of indigent defense resources for an indigent individual.

1137 (7) "Indigent defense system" means:

1138 (a) a city or town that is responsible for providing indigent defense services in the city's  
1139 or town's justice court;

1140 (b) a county that is responsible for providing indigent defense services in the district  
1141 court, juvenile court, or the county's justice courts; or

1142 (c) an interlocal entity, created pursuant to Title 11, Chapter 13, Interlocal Cooperation  
1143 Act, that is responsible for providing indigent defense services according to the terms of an  
1144 agreement between a county, city, or town.

1145 (8) "Indigent individual" means:

1146 (a) a minor who is:

1147 (i) arrested and admitted into detention for an offense under Section [78A-6-103](#);

1148 (ii) charged by petition or information in the juvenile or district court; or

1149 (iii) described in this Subsection (8)(a), who is appealing a first appeal from an

1150 adjudication or other final court action; and

1151 (b) an individual listed in Subsection 78B-22-201(1) who is found indigent pursuant to  
1152 Section 78B-22-202.

1153 (9) "Minor" means the same as that term is defined in Section 78A-6-105.

1154 (10) "Participating county" means a county that complies with this chapter for  
1155 participation in the Indigent Aggravated Murder Defense Trust Fund as provided in Sections  
1156 78B-22-702 and 78B-22-703.

1157 Section 17. Section 78B-22-201 is enacted to read:

1158 **Part 2. Appointment of Counsel**

1159 **78B-22-201. Right to counsel.**

1160 (1) A court shall advise the following of the individual's right to counsel when the  
1161 individual first appears before the court:

1162 (a) an adult charged with a criminal offense the penalty for which includes the  
1163 possibility of incarceration regardless of whether actually imposed;

1164 (b) a parent or legal guardian facing any action under:

1165 (i) Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;

1166 (ii) Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act;

1167 (iii) Title 78A, Chapter 6, Part 10, Adult Offenses; or

1168 (iv) Section 78B-6-112; or

1169 (c) an individual described in this Subsection (1), who is appealing a first appeal from  
1170 a conviction or other final court action.

1171 (2) If an individual described in Subsection (1) does not knowingly and voluntarily  
1172 waive the right to counsel, the court shall determine whether the individual is indigent under  
1173 Section 78B-22-202.

1174 Section 18. Section 78B-22-202 is enacted to read:

1175 **78B-22-202. Determining indigency.**

1176 (1) A court shall find an individual indigent if the individual:

1177 (a) has an income level at or below 150% of the United States poverty level as defined

1178 by the most recent poverty income guidelines published by the United States Department of  
 1179 Health and Human Services; or

1180 (b) has insufficient income or other means to pay for legal counsel and the necessary  
 1181 expenses of representation without depriving the individual or the individual's family of food,  
 1182 shelter, clothing, or other necessities, considering:

1183 (i) the individual's ownership of, or any interest in, personal or real property;

1184 (ii) the amount of debt owed by the individual or that might reasonably be incurred by  
 1185 the individual because of illness or other needs within the individual's family;

1186 (iii) the number, ages, and relationships of any dependents;

1187 (iv) the probable expense and burden of defending the case;

1188 (v) the reasonableness of fees and expenses charged by an attorney and the scope of  
 1189 representation undertaken when represented by privately retained defense counsel; and

1190 (vi) any other factor the court considers relevant.

1191 (2) Notwithstanding Subsection (1), a court may not find an individual indigent if the  
 1192 individual transferred or otherwise disposed of assets since the commission of the offense with  
 1193 the intent of becoming eligible to receive indigent defense services.

1194 (3) The court may make a finding of indigency at any time.

1195 Section 19. Section **78B-22-203** is enacted to read:

1196 **78B-22-203. Order for indigent defense services.**

1197 (1) (a) A court shall appoint an indigent defense service provider who has a contract  
 1198 with an indigent defense system to provide indigent defense services for an individual over  
 1199 whom the court has jurisdiction if:

1200 (i) the individual is an indigent individual as defined in Section [77B-22-102](#); and

1201 (ii) the individual does not have private counsel.

1202 (b) An indigent defense service provider appointed by the court under Subsection  
 1203 (1)(a) shall provide indigent defense services for the indigent individual in all court  
 1204 proceedings in the matter for which the indigent defense service provider is appointed.

1205 (2) (a) Notwithstanding Subsection (1), the court may order that indigent defense

1206 services be provided by an indigent defense service provider who does not have a contract with  
1207 an indigent defense system only if the court finds by clear and convincing evidence that:

1208 (i) all of the contracted indigent defense service providers:

1209 (A) have a conflict of interest; or

1210 (B) do not have sufficient expertise to provide indigent defense services for the  
1211 indigent individual; or

1212 (ii) the indigent defense system does not have a contract with an indigent defense  
1213 service provider for indigent defense services.

1214 (b) A court may not order indigent defense services under Subsection (2)(a) unless the  
1215 court conducts a hearing with proper notice to the indigent defense system by sending notice of  
1216 the hearing to the county clerk or municipal recorder.

1217 (3) (a) A court may order reasonable indigent defense resources for an individual who  
1218 has retained private counsel only if the court finds by clear and convincing evidence that:

1219 (i) the individual is an indigent individual;

1220 (ii) the individual would be prejudiced by the substitution of a contracted indigent  
1221 defense service provider and the prejudice cannot be remedied;

1222 (iii) at the time that private counsel was retained, the individual:

1223 (A) entered into a written contract with private counsel; and

1224 (B) had the ability to pay for indigent defense resources, but no longer has the ability to  
1225 pay for the indigent defense resources in addition to the cost of private counsel;

1226 (iv) there has been an unforeseen change in circumstances that requires indigent  
1227 defense resources beyond the individual's ability to pay; and

1228 (v) any representation under this Subsection (3)(a) is made in good faith and is not  
1229 calculated to allow the individual or retained private counsel to avoid the requirements of this  
1230 section.

1231 (b) A court may not order indigent defense resources under Subsection (3)(a) until the  
1232 court conducts a hearing with proper notice to the indigent defense system by sending notice of  
1233 the hearing to the county clerk or municipal recorder.

- 1234 (c) At the hearing, the court shall conduct an in camera review of:  
1235 (i) the private counsel contract;  
1236 (ii) the costs or anticipated costs of the indigent defense resources; and  
1237 (iii) other relevant records.  
1238 (4) Except as provided in this section, a court may not order indigent defense services.

1239 Section 20. Section **78B-22-204** is enacted to read:

1240 **78B-22-204. Waiver by a minor.**

1241 A minor may not waive the right to counsel before:

- 1242 (1) the minor has consulted with counsel; and  
1243 (2) the court is satisfied that in light of the minor's unique circumstances and attributes:  
1244 (a) the minor's waiver is knowing and voluntary; and  
1245 (b) the minor understands the consequences of the waiver.

1246 Section 21. Section **78B-22-301** is enacted to read:

1247 **Part 3. Indigent Defense Systems and Services**

1248 **78B-22-301. Standards for indigent defense systems.**

1249 An indigent defense system shall provide indigent defense services for an indigent  
1250 individual in accordance with the minimum guidelines adopted by the commission under  
1251 Section [78B-22-404](#).

1252 Section 22. Section **78B-22-302** is enacted to read:

1253 **78B-22-302. Compensation for indigent defense services.**

1254 An indigent defense system shall fund indigent defense services ordered by a court in  
1255 accordance with Section [78B-22-203](#).

1256 Section 23. Section **78B-22-303** is enacted to read:

1257 **78B-22-303. Pro bono provision of indigent defense services -- Liability limits.**

1258 A defense attorney is immune from suit if the defense attorney provides indigent  
1259 defense services to an indigent individual:

- 1260 (1) at no cost; and  
1261 (2) without gross negligence or willful misconduct.

1262 Section 24. Section **78B-22-304** is enacted to read:

1263 **78B-22-304. Reimbursement for indigent defense services.**

1264 A court may order a parent or legal guardian of a minor who is appointed indigent

1265 defense services under this chapter to reimburse the cost of the minor's indigent defense

1266 services, as determined by the court, unless the court finds the parent or legal guardian indigent

1267 under Section [78B-22-202](#).

1268 Section 25. Section **78B-22-401**, which is renumbered from Section 77-32-801 is

1269 renumbered and amended to read:

1270 **Part 4. Utah Indigent Defense Commission**

1271 ~~[77-32-801].~~ **78B-22-401. Utah Indigent Defense Commission -- Creation**

1272 **-- Purpose.**

1273 (1) There is created within the State Commission on Criminal and Juvenile Justice the  
1274 "Utah Indigent Defense Commission."

1275 (2) The purpose of the commission is to assist the state in meeting the state's  
1276 obligations for the provision of indigent defense services, consistent with the United States  
1277 Constitution, the Utah Constitution, and the Utah Code.

1278 Section 26. Section **78B-22-402**, which is renumbered from Section 77-32-802 is

1279 renumbered and amended to read:

1280 ~~[77-32-802].~~ **78B-22-402. Commission members -- Member qualifications**

1281 **-- Terms -- Vacancy.**

1282 (1) The commission is composed of [~~14~~] 15 voting members and one ex officio,  
1283 nonvoting member.

1284 (a) The governor, with the consent of the Senate, shall appoint the following [~~12~~] 13  
1285 voting members:

1286 (i) two practicing criminal defense attorneys recommended by the Utah Association of  
1287 Criminal Defense Lawyers;

1288 (ii) one attorney practicing in juvenile delinquency defense recommended by the Utah  
1289 Association of Criminal Defense Lawyers;

1290 (iii) an attorney representing minority interests recommended by the Utah Minority Bar  
1291 Association;

1292 (iv) one member recommended by the Utah Association of Counties from a county of  
1293 the first or second class;

1294 (v) one member recommended by the Utah Association of Counties from a county of  
1295 the third through sixth class;

1296 (vi) a director of a county public defender organization recommended by the Utah  
1297 Association of Criminal Defense Lawyers;

1298 (vii) two members recommended by the Utah League of Cities and Towns from its  
1299 membership;

1300 (viii) a retired judge recommended by the Judicial Council;

1301 (ix) ~~one member~~ two members of the Utah Legislature, one from the House of  
1302 Representatives and one from the Senate, selected jointly by the Speaker of the House and  
1303 President of the Senate; and

1304 (x) one attorney practicing in the area of parental defense, recommended by an entity  
1305 funded under Title 63A, Chapter 11, Child Welfare Parental Defense Program.

1306 (b) The Judicial Council shall appoint a voting member from the Administrative Office  
1307 of the Courts.

1308 (c) The executive director of the State Commission on Criminal and Juvenile Justice or  
1309 the executive director's designee is a voting member of the commission.

1310 (d) The director of the commission, appointed under Section ~~[77-32-803]~~ 78B-22-403,  
1311 is an ex officio, nonvoting member of the commission.

1312 (2) A member appointed by the governor shall serve a four-year term, except as  
1313 provided in Subsection (3).

1314 (3) The governor shall stagger the initial terms of appointees so that approximately half  
1315 of the members appointed by the governor are appointed every two years.

1316 (4) A member appointed to the commission shall have significant experience in  
1317 indigent criminal defense, parental defense, or juvenile defense in delinquency proceedings or

1318 have otherwise demonstrated a strong commitment to providing effective representation in  
1319 indigent defense services.

1320 (5) A person who is currently employed solely as a criminal prosecuting attorney may  
1321 not serve as a member of the commission.

1322 (6) A commission member shall hold office until the member's successor is appointed.

1323 (7) The commission may remove a member for incompetence, dereliction of duty,  
1324 malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.

1325 (8) If a vacancy occurs in the membership for any reason, a replacement shall be  
1326 appointed for the remaining unexpired term in the same manner as the original appointment.

1327 (9) The commission shall annually elect a chair from the commission's membership to  
1328 serve a one-year term. A commission member may not serve as chair of the commission for  
1329 more than three consecutive terms.

1330 (10) A member may not receive compensation or benefits for the member's service, but  
1331 may receive per diem and travel expenses in accordance with:

1332 (a) Section [63A-3-106](#);

1333 (b) Section [63A-3-107](#); and

1334 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and  
1335 [63A-3-107](#).

1336 (11) (a) A majority of the members of the commission constitutes a quorum.

1337 (b) If a quorum is present, the action of a majority of the voting members present  
1338 constitutes the action of the commission.

1339 Section 27. Section **78B-22-403**, which is renumbered from Section 77-32-803 is  
1340 renumbered and amended to read:

1341 ~~[77-32-803]~~. **78B-22-403. Director -- Qualifications -- Staff.**

1342 (1) The commission shall appoint a director to carry out the following duties:

1343 (a) establish an annual budget;

1344 (b) assist the commission in performing the commission's statutory duties;

1345 (c) assist the commission in developing and regularly reviewing advisory caseload



1346 guidelines and procedures; and

1347 (d) perform all other duties as assigned.

1348 (2) The director shall be an active member of the Utah State Bar with an appropriate  
1349 background and experience to serve as the full-time director.

1350 (3) The director shall hire staff as necessary to carry out the duties of the commission,  
1351 including:

1352 (a) one individual who is an active member of the Utah State Bar to serve as a full-time  
1353 assistant director; and

1354 (b) one individual with data collection and analysis skills to carry out duties as outlined  
1355 in Subsection [~~77-32-804~~] 78B-22-404(1)(c).

1356 (4) The commission in appointing the director, and the director in hiring the assistant  
1357 director, shall give a preference to individuals with experience in adult criminal defense, child  
1358 welfare parental defense, or juvenile delinquency defense.

1359 Section 28. Section ~~78B-22-404~~, which is renumbered from Section 77-32-804 is  
1360 renumbered and amended to read:

1361 [~~77-32-804~~]. **78B-22-404. Powers and duties of the commission.**

1362 (1) The commission shall:

1363 (a) adopt minimum guidelines for an indigent defense system to ensure the effective  
1364 representation of indigent individuals consistent with the requirements of the United States  
1365 Constitution, the Utah Constitution, and the Utah Code, which guidelines at a minimum shall  
1366 address the following:

1367 (i) an indigent defense system shall ensure that in providing indigent defense services:

1368 (A) an indigent individual receives conflict-free indigent defense services; and

1369 (B) there is a separate contract for each type of indigent defense service [~~and conflict~~  
1370 ~~cases~~]; and

1371 (ii) an indigent defense system shall ensure an indigent defense service provider has:

1372 (A) the ability to exercise independent judgment without fear of retaliation and is free  
1373 to represent an indigent individual based on the indigent defense service provider's own

- 1374 independent judgment;
- 1375 (B) adequate access to indigent defense resources;
- 1376 (C) the ability to provide representation to accused [~~persons~~] individuals in criminal  
1377 cases at [~~all~~] the critical stages, and at [~~all~~] the stages to indigent [~~parties~~] individuals in  
1378 juvenile delinquency and child welfare proceedings;
- 1379 (D) a workload that allows for sufficient time to meet with clients, investigate cases,  
1380 file appropriate documents with the courts, and otherwise provide effective assistance of  
1381 counsel to each client;
- 1382 (E) adequate compensation without financial disincentives;
- 1383 (F) appropriate experience or training in the area for which the indigent defense service  
1384 provider is representing indigent individuals;
- 1385 (G) compensation for legal training and education in the areas of the law relevant to the  
1386 types of cases for which the indigent defense service provider is representing indigent  
1387 individuals; and
- 1388 (H) the ability to meet the obligations of the Utah Rules of Professional Conduct,  
1389 including expectations on client communications and managing conflicts of interest;
- 1390 (b) encourage and aid indigent defense systems in the state in the regionalization of  
1391 indigent defense services to provide for effective and efficient representation to [~~all~~] the  
1392 indigent individuals;
- 1393 (c) identify and collect data from any source, which is necessary for the commission to:
- 1394 (i) aid, oversee, and review compliance by indigent defense systems with the  
1395 commission's minimum guidelines for the effective representation of indigent individuals; and
- 1396 (ii) provide reports regarding the operation of the commission and the provision of  
1397 indigent defense services by indigent defense systems in the state;
- 1398 (d) assist indigent defense systems by reviewing contracts and other agreements, to  
1399 ensure compliance with the commission's minimum guidelines for effective representation of  
1400 indigent individuals;
- 1401 (e) investigate, audit, and review the provision of indigent defense services to ensure

1402 compliance with the commission's minimum guidelines for the effective representation of  
1403 indigent individuals;

1404 (f) establish procedures for the receipt and acceptance of complaints regarding the  
1405 provision of indigent defense services in the state;

1406 (g) establish procedures to award grants to indigent defense systems under Section  
1407 ~~[77-32-806]~~ 78B-22-406 consistent with the commission's minimum guidelines for the  
1408 effective representation of indigent individuals and appropriations by the state;

1409 (h) emphasize the importance of ensuring constitutionally effective indigent defense  
1410 services;

1411 (i) encourage members of the judiciary to provide input regarding the delivery of  
1412 indigent defense services;

1413 (j) oversee individuals and entities involved in providing indigent defense services;

1414 (k) annually report to the governor, Legislature, Judiciary Interim Committee, and  
1415 Judicial Council, regarding:

1416 (i) the operations of the commission;

1417 (ii) the operations of the indigent defense systems in the state; and

1418 (iii) compliance with the commission's minimum guidelines by indigent defense  
1419 systems receiving grants from the commission;

1420 (l) submit recommendations for improving indigent defense services in the state, to  
1421 legislative, executive, and judicial leadership; and

1422 (m) publish an annual report on the commission's website.

1423 ~~[(2) An indigent defense system within the state shall meet the minimum guidelines~~  
1424 ~~adopted by the commission under Subsection (1)(a).]~~

1425 ~~[(3)]~~ (2) The commission may make rules in accordance with Title 63G, Chapter 3,  
1426 Utah Administrative Rulemaking Act, to carry out the commission's duties under this part.

1427 Section 29. Section **78B-22-405**, which is renumbered from Section 77-32-805 is  
1428 renumbered and amended to read:

1429 ~~[77-32-805].~~            **78B-22-405. Indigent Defense Resources Restricted Account**

1430 -- Administration.

1431 (1) (a) There is created within the General Fund a restricted account known as the  
1432 "Indigent Defense Resources Restricted Account."

1433 (b) Appropriations from the account are nonlapsing.

1434 (2) The account consists of:

1435 (a) money appropriated by the Legislature based upon recommendations from the  
1436 commission consistent with principles of shared state and local funding;

1437 (b) any other money received by the commission from any source to carry out the  
1438 purposes of this part; and

1439 (c) any interest and earnings from the investment of account money.

1440 (3) The commission shall administer the account and, subject to appropriation,  
1441 disburse money from the account for the following purposes:

1442 (a) to establish and maintain a statewide indigent defense data collection system;

1443 (b) to establish and administer a grant program to provide grants of state money to  
1444 indigent defense systems as set forth in Section [~~77-32-806~~] [78B-22-406](#);

1445 (c) to provide training and continuing legal education for indigent defense service  
1446 providers; and

1447 (d) for administrative costs.

1448 Section 30. Section ~~78B-22-406~~, which is renumbered from Section 77-32-806 is  
1449 renumbered and amended to read:

1450 [~~77-32-806~~]. **78B-22-406. Indigent defense services grant program.**

1451 (1) The commission may award grants to supplement local spending by [~~a county or~~  
1452 ~~municipality~~] an indigent defense system for indigent defense [~~services and defense resources~~].

1453 (2) Commission grant money may be used for the following expenses:

1454 (a) to assist [~~a county or municipality~~] an indigent defense system to provide indigent  
1455 defense services that meet the commission's minimum guidelines for the effective  
1456 representation of indigent individuals;

1457 (b) the establishment and maintenance of local indigent defense data collection

1458 systems;

1459 (c) indigent defense services in addition to those currently being provided by [~~a county~~  
1460 ~~or municipality~~] an indigent defense system; and

1461 (d) to provide training and continuing legal education for indigent defense service  
1462 providers.

1463 (3) To receive a grant from the commission, [~~a county or municipality~~] an indigent  
1464 defense system shall demonstrate to the commission's satisfaction that:

1465 (a) the [~~county or municipality~~] indigent defense system has incurred or reasonably  
1466 anticipates incurring expenses for indigent defense services that are in addition to the [~~county's~~  
1467 ~~or municipality's~~] indigent defense system's average annual spending on indigent defense  
1468 services in the three fiscal years immediately preceding the grant application; and

1469 (b) a grant from the commission is necessary for the [~~county or municipality~~] indigent  
1470 defense system to meet the commission's minimum guidelines for the effective representation  
1471 of indigent individuals.

1472 (4) The commission may revoke a grant if an indigent defense system fails to meet  
1473 requirements of the grant or any of the commission's minimum guidelines for the effective  
1474 representation of indigent individuals.

1475 Section 31. Section **78B-22-407**, which is renumbered from Section 77-32-807 is  
1476 renumbered and amended to read:

1477 [~~77-32-807~~]. **78B-22-407. Cooperation and participation with the**  
1478 **commission.**

1479 Indigent defense systems and [~~entities or individuals engaged in providing~~] indigent  
1480 defense [~~services in the state~~] service providers shall cooperate and participate with the  
1481 commission in the collection of data, investigation, audit, and review of [~~all~~] indigent defense  
1482 services.

1483 Section 32. Section **78B-22-501**, which is renumbered from Section 77-32-401 is  
1484 renumbered and amended to read:

1485 **Part 5. Indigent Defense Funds Board**

1486 ~~[77-32-401].~~ 78B-22-501. Indigent Defense Funds Board -- Members --

1487 **Administrative support.**

1488 (1) There is created within the Division of Finance the Indigent Defense Funds Board  
1489 composed of the following nine members:

1490 (a) two members who are current commissioners or county executives of participating  
1491 counties appointed by the board of directors of the Utah Association of Counties;

1492 (b) one member at large appointed by the board of directors of the Utah Association of  
1493 Counties;

1494 (c) two members who are current county attorneys of participating counties appointed  
1495 by the Utah Prosecution Council;

1496 (d) the director of the Division of Finance or ~~[his]~~ the director's designee;

1497 (e) one member appointed by the Administrative Office of the Courts; and

1498 (f) two members who are private attorneys engaged in or familiar with the criminal  
1499 defense practice appointed by the members of the board listed in Subsections (1)(a) through  
1500 (e).

1501 (2) Members appointed under Subsection (1)(a), (b), (c), or (f) shall serve four-year  
1502 terms. ~~[One of the county commissioners and one of the county attorneys appointed to the  
1503 initial board shall serve two-year terms, and the remaining other members of the initial board  
1504 shall be appointed for four-year terms. After the initial two-year terms of the county  
1505 commissioner and county attorney, those board positions shall have four-year terms.]~~

1506 (3) A vacancy is created if a member appointed under:

1507 (a) Subsection (1)(a) no longer serves as a county commissioner or county executive;

1508 or

1509 (b) Subsection (1)(c) no longer serves as a county attorney.

1510 (4) ~~[When]~~ If a vacancy occurs in the membership for any reason, a replacement shall  
1511 be appointed for the remaining unexpired term in the same manner as the original appointment.

1512 (5) The Division of Finance may provide administrative support and may seek payment  
1513 for the costs or the board may contract for administrative support ~~[for up to \$15,000 annually]~~

1514 to be paid [~~proportionally from each fund~~] from the funds described in Subsection  
1515 78B-22-502(1)(a).

1516 (6) A member may not receive compensation or benefits for the member's service, but  
1517 may receive per diem and travel expenses in accordance with:

1518 (a) Section 63A-3-106;

1519 (b) Section 63A-3-107; and

1520 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
1521 63A-3-107.

1522 (7) Per diem and expenses for board members shall be paid [~~proportionally from each~~  
1523 ~~fund~~] from the funds described in Subsection 78B-22-502(1)(a).

1524 (8) Five members shall constitute a quorum and, if a quorum is present, the action of a  
1525 majority of the members present shall constitute the action of the board.

1526 Section 33. Section **78B-22-502**, which is renumbered from Section 77-32-402 is  
1527 renumbered and amended to read:

1528 [~~77-32-402~~]. **78B-22-502. Duties of board.**

1529 (1) The board shall:

1530 (a) establish rules and procedures for the application by [~~counties~~] a county for  
1531 disbursements, and the screening and approval of the applications for money from the:

1532 (i) Indigent Inmate Trust Fund established in Part [~~5~~] 6, Indigent Inmates; and

1533 (ii) [~~Indigent Capital Defense Trust Fund~~] Indigent Aggravated Murder Defense Trust  
1534 Fund, established in Part [~~6, Indigent Capital Defense Trust Fund~~] 7, Indigent Aggravated  
1535 Murder Defense Trust Fund;

1536 (b) receive, screen, and approve, or disapprove the application of [~~counties~~] a county  
1537 for disbursements from [~~each~~] a fund described in Subsection (1)(a);

1538 (c) calculate the amount of the annual contribution to be made to the [~~funds~~] fund  
1539 described in Subsection (1)(a)(ii) by each participating county;

1540 (d) prescribe forms for the application for money from [~~each~~] a fund described in  
1541 Subsection (1)(a);

1542 (e) oversee and approve the disbursement of money from ~~[each]~~ a fund described in  
 1543 Subsection (1)(a) as provided in Sections ~~[77-32-502 and 77-32-601]~~ 78B-22-602 and  
 1544 78B-22-701;

1545 (f) establish ~~[its]~~ the board's own rules of procedure, elect ~~[its]~~ the board's own officers,  
 1546 and appoint committees of ~~[its]~~ the board's members and other people as may be reasonable  
 1547 and necessary; and

1548 (g) negotiate, enter into, and administer contracts with legal counsel, qualified under  
 1549 and meeting the standards consistent with this chapter, to provide indigent defense ~~[counsel]~~  
 1550 services to:

1551 (i) ~~[indigents]~~ an indigent individual prosecuted in a participating ~~[counties for serious~~  
 1552 ~~offenses in violation of state law]~~ county for an offense involving aggravated murder; and

1553 (ii) an indigent inmate who is incarcerated in ~~[certain counties]~~ a county described in  
 1554 Section 78B-22-601.

1555 (2) The board may provide to the court a list of attorneys qualified under Utah Rules of  
 1556 Criminal Procedure, Rule 8, with which the board has a preliminary contract to ~~[defend~~  
 1557 ~~indigent cases]~~ provide indigent defense services for an assigned rate.

1558 Section 34. Section **78B-22-601**, which is renumbered from Section 77-32-501 is  
 1559 renumbered and amended to read:

1560 **Part 6. Indigent Inmates.**

1561 ~~[77-32-501].~~ **78B-22-601. Defense of indigent inmates.**

1562 (1) The board shall enter into contracts ~~[with qualified legal defense counsel]~~ to  
 1563 provide indigent defense ~~[counsel]~~ services for an indigent inmate who:

1564 (a) is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth  
 1565 class as defined in Section ~~17-50-501~~ [7];

1566 (b) is charged with having committed a crime within that ~~[facility,]~~ state prison; and

1567 (c) will require defense counsel.

1568 (2) Payment for ~~[the representation, costs, and expenses of legal defense counsel]~~  
 1569 indigent defense services shall be made from the Indigent Inmate Trust Fund as provided in



1570 Section ~~[77-32-502]~~ 78B-22-602.

1571 (3) ~~[The]~~ A contract under this part shall ensure that indigent defense ~~[counsel shall~~  
1572 ~~maintain]~~ services are provided in a manner consistent with the minimum ~~[qualifications as~~  
1573 ~~provided in Section 77-32-301]~~ guidelines described in Section 78B-22-301.

1574 (4) The county attorney or district attorney of a county of the third, fourth, fifth, or  
1575 sixth class shall function as the prosecuting entity.

1576 (5) (a) ~~[The]~~ A county of the third, fourth, fifth, or sixth class where a state prison is  
1577 located may impose an additional tax levy by ordinance at .0001 per dollar of taxable value in  
1578 the county.

1579 (b) If the county governing body imposes the additional tax levy by ordinance, the  
1580 money shall be deposited ~~[in]~~ into the Indigent Inmate Trust Fund as provided in Section  
1581 ~~[77-32-502]~~ 78B-22-602 to fund the purposes of this ~~[section]~~ part.

1582 (c) Upon notification that the fund has reached the amount specified in Subsection  
1583 ~~[77-32-502(6), the]~~ 78B-22-602(6), a county shall deposit money derived from the levy into a  
1584 county account used exclusively to provide ~~[defense counsel and defense]~~ indigent defense  
1585 ~~[related]~~ services ~~[for indigent defendants].~~

1586 (d) A county that chooses not to impose the additional levy by ordinance may not  
1587 receive any benefit from the Indigent Inmate Trust ~~[fund]~~ Fund.

1588 Section 35. Section **78B-22-602**, which is renumbered from Section 77-32-502 is  
1589 renumbered and amended to read:

1590 ~~[77-32-502].~~ **78B-22-602. Indigent Inmate Trust Fund.**

1591 (1) There is created a private-purpose trust fund known as the "Indigent Inmate Trust  
1592 Fund" to be disbursed by the Division of Finance at the direction of the board and in  
1593 accordance with contracts made under Section ~~[77-32-402]~~ 78B-22-502.

1594 (2) Money deposited ~~[in]~~ into this trust fund shall only ~~[shall]~~ be used:

1595 (a) to pay ~~[for the representation, costs, and expenses of legal defense counsel]~~ indigent  
1596 defense services for an indigent inmate in a state prison located in a county of the third, fourth,  
1597 fifth, or sixth class as defined in Section 17-50-501 who is charged with having committed a

1598 crime within the [~~facility~~] state prison, and who will require indigent defense [~~counsel~~]  
1599 services; and

1600 (b) for administrative costs pursuant to Section [~~77-32-401~~] 78B-22-501.

1601 (3) The trust fund consists of:

1602 (a) proceeds received from counties that impose the additional tax levy by ordinance  
1603 under Subsection [~~77-32-501(5)~~] 78B-22-601(5), which shall be the total county obligation for  
1604 payment of costs listed in Subsection (2) for defense [~~of~~] services for indigent inmates;

1605 (b) appropriations made to the fund by the Legislature; and

1606 (c) interest and earnings from the investment of fund money.

1607 (4) Fund money shall be invested by the state treasurer with the earnings and interest  
1608 accruing to the fund.

1609 (5) In any calendar year in which the fund runs a deficit, or is projected to run a deficit,  
1610 the board shall request a supplemental appropriation from the Legislature in the following  
1611 general session to pay for the deficit. The state shall pay any or all of the reasonable and  
1612 necessary money for the deficit into the Indigent Inmate Trust Fund.

1613 (6) The fund [~~shall be~~] is capped at \$1,000,000.

1614 (7) The Division of Finance shall notify [~~at~~] the contributing counties when the fund  
1615 approaches \$1,000,000 and provide each county with the amount of the balance in the fund.

1616 (8) Upon notification by the Division of Finance that the fund is near the limit imposed  
1617 in Subsection (6), the counties may contribute enough money to enable the fund to reach  
1618 \$1,000,000 and discontinue contributions until notified by the Division of Finance that the  
1619 balance has fallen below \$1,000,000, at which time counties that meet the requirements of  
1620 Section [~~77-32-501~~] 78B-22-601 shall resume contributions.

1621 Section 36. Section **78B-22-701**, which is renumbered from Section 77-32-601 is  
1622 renumbered and amended to read:

**Part 7. Indigent Aggravated Murder Defense Trust Fund.**

1624 [~~77-32-601~~]. **78B-22-701. Establishment of Indigent Aggravated Murder**  
1625 **Defense Trust Fund -- Use of fund -- Compensation for indigent legal defense from fund.**

1626 (1) For purposes of this part, "fund" means the Indigent Aggravated Murder Defense  
 1627 Trust Fund.

1628 (2) (a) There is established a private-purpose trust fund known as the "Indigent  
 1629 Aggravated Murder Defense Trust Fund."

1630 (b) The [~~fund shall be disbursed by the~~] Division of Finance shall disburse money from  
 1631 the fund at the direction of the board and subject to this chapter.

1632 (3) The fund consists of:

1633 (a) money received from participating counties as provided in Sections [~~77-32-602 and~~  
 1634 ~~77-32-603~~] 78B-22-702 and 78B-22-703;

1635 (b) appropriations made to the fund by the Legislature as provided in Section  
 1636 [~~77-32-603~~] 78B-22-703; and

1637 (c) interest and earnings from the investment of fund money.

1638 (4) [~~Fund~~] The state treasurer shall invest fund money [~~shall be invested by the state~~  
 1639 ~~treasurer~~] with the earnings and interest accruing to the fund.

1640 (5) The fund shall be used to assist participating counties with financial resources, as  
 1641 provided in Subsection (6), to fulfill their constitutional and statutory mandates for the  
 1642 provision of an adequate defense for [~~indigents~~] indigent individuals prosecuted for the  
 1643 violation of state laws in cases involving aggravated murder.

1644 (6) Money allocated to or deposited in this fund shall be used only:

1645 (a) to reimburse participating counties for expenditures made for an attorney appointed  
 1646 to represent an indigent individual, other than a state inmate in a state prison, prosecuted for  
 1647 aggravated murder in a participating county; and

1648 (b) for administrative costs pursuant to Section [~~77-32-401~~] 78B-22-501.

1649 Section 37. Section **78B-22-702**, which is renumbered from Section 77-32-602 is  
 1650 renumbered and amended to read:

1651 [~~77-32-602~~]. **78B-22-702. County participation.**

1652 (1) (a) [~~Any~~] A county may participate in the fund subject to the provisions of this  
 1653 chapter. [~~Any~~] A county that [~~chooses~~] does not [~~to~~] participate, or is not current in [~~its~~

1654 ~~contributions]~~ the county's assessments, is ineligible to receive money from the fund.

1655 (b) The board may revoke a county's participation in the fund if the county fails to pay  
1656 ~~[its]~~ the county's assessments when due.

1657 (2) To participate in the fund, the legislative body of a county shall:

1658 (a) adopt a resolution approving participation in the fund and committing that county to  
1659 fulfill the assessment requirements as set forth in Subsection (3) and Section ~~[77-32-603]~~  
1660 78B-22-703; and

1661 (b) submit a certified copy of that resolution together with an application to the board.

1662 (3) By January 15 of each year, a participating county shall contribute to the fund an  
1663 amount computed in accordance with Section ~~[77-32-603]~~ 78B-22-703.

1664 (4) ~~[Any]~~ A participating county may withdraw from participation in the fund upon:

1665 (a) adoption by ~~[its]~~ the county's legislative body of a resolution to withdraw; and

1666 (b) notice to the board by January 1 of the year ~~[prior to]~~ before withdrawal.

1667 (5) A county withdrawing from participation in the fund, or whose participation in the  
1668 fund has been revoked for failure to pay ~~[its]~~ the county's assessments when due, shall forfeit  
1669 the right to:

1670 (a) any previously payed assessment;

1671 (b) relief from ~~[its]~~ the county's obligation to pay its assessment during the period of its  
1672 participation in the fund; and

1673 (c) any benefit from the fund, including reimbursement of costs ~~[which]~~ that accrued  
1674 after the last day of the period for which the county has paid its assessment.

1675 Section 38. Section **78B-22-703**, which is renumbered from Section 77-32-603 is  
1676 renumbered and amended to read:

1677 ~~[77-32-603]~~. **78B-22-703. County and state obligations.**

1678 (1) (a) Except as provided in Subsection (1)(b), ~~[each]~~ a participating county shall pay  
1679 into the fund annually an amount calculated by multiplying the average of the percent of its  
1680 population to the total population of all participating counties and of the percent its taxable  
1681 value of the locally and centrally assessed property located within that county to the total

1682 taxable value of the locally and centrally assessed property to all participating counties by the  
1683 total fund assessment for that year to be paid by all participating counties as is determined by  
1684 the board to be sufficient such that it is unlikely that a deficit will occur in the fund in any  
1685 calendar year.

1686 (b) The fund minimum shall be equal to or greater than 50 cents per person of all  
1687 counties participating.

1688 (c) The amount paid by ~~the~~ a participating county pursuant to this Subsection (1)  
1689 shall be the total county obligation for payment of costs pursuant to Section ~~[77-32-601]~~  
1690 78B-22-701.

1691 (2) (a) ~~[After the first year of operation of the fund, any]~~ A county that elects to initiate  
1692 participation in the fund, or reestablish participation in the fund after participation was  
1693 terminated, ~~[shall be]~~ is required to make an equity payment in addition to the assessment  
1694 ~~[provided in]~~ required by Subsection (1).

1695 (b) The equity payment shall be determined by the board and represent what the  
1696 county's equity in the fund would be if the county had made assessments into the fund for each  
1697 of the previous two years.

1698 (3) If the fund balance after contribution by the state and participating counties is  
1699 insufficient to replenish the fund annually to at least \$250,000, the board by a majority vote  
1700 may terminate the fund.

1701 (4) If the fund is terminated, ~~all~~ the remaining ~~[funds]~~ money shall continue to be  
1702 administered and disbursed in accordance with the provision of this chapter until exhausted, at  
1703 which time the fund shall cease to exist.

1704 (5) (a) If the fund runs a deficit during any calendar year, the state is responsible for the  
1705 deficit.

1706 (b) In the calendar year following a deficit year, the board shall increase the assessment  
1707 required by Subsection (1) by an amount at least equal to the deficit of the previous year, which  
1708 combined amount becomes the base assessment until another deficit year occurs.

1709 (6) In ~~[any]~~ a calendar year in which the fund runs a deficit, or is projected to run a

1710 deficit, the board shall request a supplemental appropriation to pay for the deficit from the  
 1711 Legislature in the following general session. The state shall pay any or all of the reasonable  
 1712 and necessary money for the deficit into the [~~Indigent Capital Defense Trust Fund~~] fund.

1713 Section 39. Section **78B-22-704**, which is renumbered from Section 77-32-604 is  
 1714 renumbered and amended to read:

1715 ~~[77-32-604].~~ **78B-22-704. Application and qualification for fund money.**

1716 (1) ~~[Any]~~ A participating county may apply to the board for benefits from the fund if  
 1717 that county has incurred, or reasonably anticipates incurring, expenses in the defense of an  
 1718 indigent individual for [~~capital felonies in violation of state law arising out of a single criminal~~  
 1719 ~~episode~~] an offense involving aggravated murder.

1720 (2) ~~[No]~~ An application [~~shall~~] may not be made nor benefits provided from the fund  
 1721 for [~~cases~~] a case filed before September 1, 1998.

1722 (3) If the application of a participating county is approved by the board, the board shall  
 1723 negotiate, enter into, and administer a contract with counsel for the indigent individual and  
 1724 costs incurred for the defense of that indigent individual, including fees for counsel and  
 1725 reimbursement for indigent defense [~~costs~~] services incurred by [~~defense counsel~~] an indigent  
 1726 defense service provider.

1727 (4) [~~Nonparticipating counties are~~] A nonparticipating county is responsible for paying  
 1728 for indigent [~~costs in their~~] defense services in the nonparticipating county and [~~shall not be~~] is  
 1729 not eligible for any legislative relief. [~~However, a nonparticipating counties may provide for~~  
 1730 ~~payment of indigent costs through an increase in the county tax levy as provided in Section~~  
 1731 ~~77-32-307.~~]

1732 [~~(5) This part may not become effective unless the board has received resolutions~~  
 1733 ~~before August 1, 1998, from at least 15 counties adopted as described in Subsection~~  
 1734 ~~77-32-602(2).~~]

1735 Section 40. **Repealer.**

1736 This bill repeals:

1737 Section **77-32-201, Definitions.**

- 1738           Section **77-32-202**, Procedure for determination of indigency -- Standards.
- 1739           Section **77-32-301**, Minimum standards for defense of an indigent.
- 1740           Section **77-32-302**, Assignment of counsel on request of indigent or order of court.
- 1741           Section **77-32-303**, Standard for court to appoint noncontracting attorney or order
- 1742 **the provision of defense resources -- Hearing.**
- 1743           Section **77-32-304**, Duties of assigned counsel -- Compensation.
- 1744           Section **77-32-304.5**, Reasonable compensation for defense counsel for indigents.
- 1745           Section **77-32-305**, Expenses of printing briefs, depositions, and transcripts.
- 1746           Section **77-32-305.5**, Reimbursement of extraordinary expense.
- 1747           Section **77-32-306**, County or municipal legislative body to provide legal defense.
- 1748           Section **77-32-307**, Expenditures of county or municipal funds declared proper --
- 1749 **Tax levy authorized.**
- 1750           Section **77-32-308**, Pro bono criminal representation -- Liability limits.
- 1751           Section **77-32-401.5**, Interim board -- Members -- Administrative support --
- 1752 **Duties.**
- 1753           Section **77-32-801.5**, Definitions.