

Indigent Defense Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor:

LONG TITLE**General Description:**

This bill addresses indigent defense.

Highlighted Provisions:

This bill:

- renames the "Child Welfare Parental Representation Program" to the "Child Welfare Parental Representation Division";
- requires the Office of Indigent Defense Services to employ or contract with attorneys to represent indigent parents in abuse, neglect, and dependency proceedings initiated in the fifth or sixth judicial district;
- allows the Office of Indigent Defense Services to employ or contract with attorneys to represent indigent parents in abuse, neglect, and dependency proceedings initiated in a judicial district that is not the fifth or sixth judicial district;
- creates the Youth Defense Fund to pay for indigent defense services for a minor referred to the juvenile court for an offense;
- requires the Utah Indigent Defense Commission to establish the rules and procedures for an application by a county seeking to participate in the Youth Defense Fund;
- requires certain administrative duties from the Office of Indigent Defense Services with regard to the Youth Defense Fund;
- addresses county participation in the Youth Defense Fund; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-22-402, as last amended by Laws of Utah 2024, Chapter 529

31 **78B-22-801**, as last amended by Laws of Utah 2021, Chapters 228, 262 and last amended
32 by Coordination Clause, Laws of Utah 2021, Chapter 262

33 **78B-22-802**, as last amended by Laws of Utah 2021, Chapters 228, 235

34 **78B-22-803**, as last amended by Laws of Utah 2021, Chapters 228, 262

35 **78B-22-804**, as last amended by Laws of Utah 2023, Chapter 438

36 ENACTS:

37 **78B-22-1101**, Utah Code Annotated 1953

38 **78B-22-1102**, Utah Code Annotated 1953

39 **78B-22-1103**, Utah Code Annotated 1953

40 **78B-22-1104**, Utah Code Annotated 1953

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

43 Section 1. Section **78B-22-402** is amended to read:

44 **78B-22-402 . Commission members -- Member qualifications -- Terms --**
45 **Vacancy.**

46 (1)(a) The commission is composed of 15 members.

47 (b) The governor, with the advice and consent of the Senate, and in accordance with
48 Title 63G, Chapter 24, Part 2, Vacancies, shall appoint the following 11 members:

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

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

53 (iii) one attorney who represents parents in child welfare cases, recommended by an
54 entity funded under the Child Welfare Parental Representation [Program] Division
55 created in Section 78B-22-802;

56 (iv) one attorney representing minority interests recommended by the Utah Minority
57 Bar Association;

58 (v) one member recommended by the Utah Association of Counties from a county of
59 the first or second class;

60 (vi) one member recommended by the Utah Association of Counties from a county of
61 the third through sixth class;

62 (vii) a director of a county public defender organization recommended by the Utah
63 Association of Criminal Defense Lawyers;

64 (viii) two members recommended by the Utah League of Cities and Towns from its

- 65 membership; and
- 66 (ix) one retired judge recommended by the Judicial Council.
- 67 (c) The speaker of the House of Representatives and the president of the Senate shall
- 68 appoint two members of the Utah Legislature, one from the House of Representatives
- 69 and one from the Senate.
- 70 (d) The Judicial Council shall appoint a member from the Administrative Office of the
- 71 Courts.
- 72 (e) The executive director of the State Commission on Criminal and Juvenile Justice or
- 73 the executive director's designee is a member of the commission.
- 74 (2) A member appointed by the governor shall serve a four-year term, except as provided in
- 75 Subsection (3).
- 76 (3) The governor shall stagger the initial terms of appointees so that approximately half of
- 77 the members appointed by the governor are appointed every two years.
- 78 (4) A member appointed to the commission shall have significant experience in indigent
- 79 criminal defense , representing parents in child welfare cases, or in juvenile defense in
- 80 delinquency proceedings or have otherwise demonstrated a strong commitment to
- 81 providing effective representation in indigent defense services.
- 82 (5) An individual who is currently employed solely as a criminal prosecuting attorney may
- 83 not serve as a member of the commission .
- 84 (6) A commission member shall hold office until the member's successor is appointed.
- 85 (7) The commission may remove a member for incompetence, dereliction of duty,
- 86 malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.
- 87 (8) If a vacancy occurs in the membership for any reason, a replacement shall be appointed
- 88 for the remaining unexpired term in the same manner, and in accordance with the same
- 89 procedure, as the original appointment.
- 90 (9)(a) The commission shall elect annually a chair from the commission's membership to
- 91 serve a one-year term.
- 92 (b) A commission member may not serve as chair of the commission for more than three
- 93 consecutive terms.
- 94 (10) A member may not receive compensation or benefits for the member's service, but
- 95 may receive per diem and travel expenses in accordance with:
- 96 (a) Section 63A-3-106;
- 97 (b) Section 63A-3-107; and
- 98 (c) rules made by the Division of Finance in accordance with Sections 63A-3-106 and

63A-3-107.

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

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

(c) A member shall comply with the conflict of interest provisions described in Title 63G, Chapter 24, Part 3, Conflicts of Interest.

Section 2. Section **78B-22-801** is amended to read:

Part 8. Child Welfare Parental Representation Division

78B-22-801 . Definitions.

As used in this part:

(1) "Child welfare case" means an action initiated by the state under Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings.

~~[(1)]~~ (2) "Contracted parental representation attorney" means an attorney who represents an indigent individual who is a parent in a child welfare case under a contract with the office or a contributing county.

~~[(2)]~~ (3) "Contributing county" means a county that complies with this part for participation in the fund described in Section 78B-22-804.

(4) "Division" means the Child Welfare Parental Representation Division created in Section 78B-22-802.

~~[(3)]~~ (5) "Fund" means the Child Welfare Parental Representation Fund created in Section 78B-22-804.

~~[(4)]~~ "Program" means the Child Welfare Parental Representation Program created in Section 78B-22-802.]

Section 3. Section **78B-22-802** is amended to read:

78B-22-802 . Child Welfare Parental Representation Division -- Creation -- Duties -- Annual report -- Budget.

(1) There is created ~~[within the office the Child Welfare Parental Representation Program]~~ the Child Welfare Parental Representation Division within the office.

(2)~~[(a)]~~ The office shall:

~~[(i)]~~ (a) administer ~~[and enforce the program]~~ the division in accordance with this part;

~~[(ii)]~~ manage the operation and budget of the program;]

(b) employ, or contract with, an attorney to represent a parent who is:

(i) facing a child welfare case in the fifth or sixth judicial district; and

(ii) found to be an indigent individual under this chapter in the child welfare case;

~~[(iii)] (c) develop and provide educational and training programs for employed and
contracted parental representation attorneys; and~~

~~[(iv)] (d) provide information and advice to assist a contracted parental representation
attorney to comply with the attorney's professional, contractual, and ethical duties.~~

~~[(b) In administering the program, the office shall contract with:]~~

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

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

~~(3) The office may employ, or contract with, an attorney to represent a parent who is:~~

~~(a) facing a child welfare case in a judicial district that is not the fifth or sixth judicial
district; and~~

~~(b) found to be an indigent individual under this chapter in the child welfare case.~~

~~[(3)] (4) [(a) The executive director shall prepare a budget of:]~~

~~[(i) the administrative expenses for the program; and]~~

~~[(ii) the amount estimated to fund needed contracts and other costs.]~~

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

Section 4. Section **78B-22-803** is amended to read:

78B-22-803 . Child welfare parental defense contracts.

~~[(1)(a) The office may enter into a contract with an attorney to provide indigent defense
services for a parent who is the subject of a petition alleging abuse, neglect, or
dependency, and requires indigent defense services under Section 80-3-104.]~~

~~[(b) The office shall make payment for the representation, costs, and expenses of a
contracted parental representation attorney from the fund in accordance with Section
78B-22-804.]~~

~~(1) For a contracted parental representation attorney, the office shall make payment for the
representation, costs, and expenses of the contracted parental representation attorney
from the fund in accordance with Section 78B-22-804.~~

~~(2)(a) Except as provided in Subsection (2)(b), a contracted parental representation
attorney shall:~~

~~(i) complete a basic training course provided by the office;~~

~~(ii) provide parental representation services consistent with the commission's core
principles described in Section 78B-22-404;~~

- (iii) have experience in child welfare cases; and
- (iv) participate each calendar year in continuing legal education courses providing no fewer than eight hours of instruction in child welfare law.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may, by rule, exempt from the requirements of Subsection (2)(a) an attorney who has equivalent training or adequate experience.

Section 5. Section **78B-22-804** is amended to read:

78B-22-804 . Child Welfare Parental Representation Fund -- Contracts for coverage by the fund.

- (1) There is created an expendable special revenue fund known as the "Child Welfare Parental Representation Fund."
- (2) Subject to availability, the office may make distributions from the fund for the following purposes:
 - (a) to pay for indigent defense resources for contracted parental representation attorneys;
 - (b) for administrative costs of the ~~[program]~~ division; and
 - (c) for reasonable expenses directly related to the functioning of the ~~[program]~~ division, including training and travel expenses.
- (3) The fund consists of:
 - (a) federal funds received by the state as partial reimbursement for amounts expended by the ~~[Utah Indigent Defense Commission]~~ commission to pay for parental representation;
 - (b) appropriations made to the fund by the Legislature;
 - (c) interest and earnings from the investment of fund money;
 - (d) proceeds deposited by contributing counties under this section; and
 - (e) private contributions to the fund.
- (4) The state treasurer shall invest the money in the fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act.
- (5)(a) If the office anticipates a deficit in the fund during a fiscal year:
 - (i) the commission may request an appropriation from the Legislature; and
 - (ii) the Legislature may fund the anticipated deficit through appropriation.
- (b) If the anticipated deficit is not funded by the Legislature under Subsection (5)(a), the office may request an interim assessment from contributing counties as described in Subsection (6) to fund the anticipated deficit.
- (6)(a) A county legislative body and the office may annually enter into a contract for the

office to provide indigent defense services for a parent in a child welfare case in the county out of the fund.

(b) A contract described in Subsection (6)(a) shall:

- (i) require the contributing county described in Subsection (6)(a) to pay into the fund an amount defined by a formula established by the commission; and
- (ii) provide for revocation of the contract for the contributing county's failure to pay the assessment described in Subsection (5) on the due date established by the commission.

(7) After the first year of operation of the fund, a contributing county that enters into a contract under Subsection (6) to initiate or reestablish participation in the fund is required to make an equity payment in the amount determined by the commission, in addition to the assessment described in Subsection (5).

(8) A contributing county that withdraws from participation in the fund, or whose participation in the fund is revoked as described in Subsection (6) for failure to pay the contributing county's assessment when due, shall forfeit any right to any previously paid assessment by the contributing county or coverage from the fund.

Section 6. Section **78B-22-1101** is enacted to read:

Part 11. Youth Defense Fund

78B-22-1101 . Definitions for part.

As used in this part:

(1) "Fund" means the Youth Defense Fund created in Section 78B-22-1102.

(2) "Participating county" means a county that complies with this part for participation in the fund.

Section 7. Section **78B-22-1102** is enacted to read:

78B-22-1102 . Establishment of Youth Defense Fund -- Use of fund --

Compensation from fund.

(1) There is established a custodial fund known as the Youth Defense Fund.

(2) The fund consists of:

- (a) money received from participating counties as described in Section 78B-22-1104;
- (b) appropriations made to the fund by the Legislature; and
- (c) interest and earnings from the investment of fund money.

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

(4) The fund shall be used to fulfill the constitutional and statutory mandates for the

provision of constitutionally effective defense for juveniles referred to the juvenile court.

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

(a) to pay an indigent defense service provider appointed to represent a minor referred to the juvenile court;

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

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

Section 8. Section **78B-22-1103** is enacted to read:

78B-22-1103 . Administration of Youth Defense Fund.

(1) The commission shall establish rules and procedures for the application by a county for participation in the fund.

(2) The office shall:

(a) receive, screen, and approve or disapprove the application of a county seeking to participate in the fund;

(b) calculate the amount of the annual contribution to be made to the fund by each participating county;

(c) oversee and approve disbursement of money from the fund; and

(d) negotiate, enter into, and administer a contract with an attorney or entity to provide indigent defense services to a minor referred to the juvenile court in a participating county if the attorney or entity:

(i) is qualified to provide indigent defense services under this chapter; and

(ii) meets the standards consistent for providing indigent defense services under this chapter.

Section 9. Section **78B-22-1104** is enacted to read:

78B-22-1104 . County participation in the Youth Defense Fund.

(1) A county may participate in the fund in accordance with the provisions of this section.

(2) A county that does not participate in the fund, or is not current in the county's assessments for the fund, is ineligible to receive indigent defense services provided for by the fund.

(3) The commission may revoke a county's participation in the fund if the county fails to pay the county's assessments when the assessments are due.

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

(a) adopt a resolution that approves participation in the fund and commits the county to fulfilling the assessment requirements; and

- 269 (b) submit a certified copy of that resolution together with an application to the
270 commission.
- 271 (5) On or before January 15 of each year, a participating county shall contribute to the fund
272 an amount determined by the office.
- 273 (6) A participating county may withdraw from participation in the fund upon:
274 (a) adoption by the county's legislative body of a resolution to withdraw; and
275 (b) notice to the commission on or before January 1 of the year in which the county
276 intends to withdraw.
- 277 (7) A county withdrawing from participation in the fund, or whose participation in the fund
278 has been revoked for failure to pay the county's assessments when the assessments are
279 due, shall forfeit the right to:
280 (a) any previously paid assessment;
281 (b) relief from the county's obligation to pay the county's assessment during the period
282 of the county's participation in the fund; and
283 (c) any benefit from the fund, including reimbursement of costs that accrued after the
284 last day of the period for which the county has paid the county's assessment.
- 285 Section 10. **Effective Date.**
286 This bill takes effect on May 7, 2025.