

Senator Todd Weiler proposes the following substitute bill:

# INDIGENT DEFENSE COMMISSION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: Craig Hall

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## LONG TITLE

### General Description:

This bill modifies the Indigent Defense Act.

### Highlighted Provisions:

This bill:

- ▶ expands the Utah Indigent Defense Commission to include juvenile defense;
- ▶ addresses the make up of the commission;
- ▶ ~~§→ [—changes the director of the commission to executive director and]~~ ←§ addresses the
- 14a the
- 15 qualifications and duties ~~§→~~ of the director ←§ , including the hiring of staff;
- 16 ▶ addresses the powers and duties of the commission;
- 17 ▶ modifies provisions related to the Indigent Defense Resources Account;
- 18 ▶ addresses indigent criminal and juvenile defense system participation;
- 19 ▶ amends provisions related to application for grant money;
- 20 ▶ addresses cooperation with the commission; and
- 21 ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None



**Utah Code Sections Affected:**

## AMENDS:

**77-32-801**, as enacted by Laws of Utah 2016, Chapter 177

**77-32-802**, as enacted by Laws of Utah 2016, Chapter 177

**77-32-803**, as enacted by Laws of Utah 2016, Chapter 177

**77-32-804**, as enacted by Laws of Utah 2016, Chapter 177

**77-32-805**, as enacted by Laws of Utah 2016, Chapter 177

**77-32-806**, as enacted by Laws of Utah 2016, Chapter 177

**77-32-807**, as enacted by Laws of Utah 2016, Chapter 177

**77-32-808**, as enacted by Laws of Utah 2016, Chapter 177

**77-32-809**, as enacted by Laws of Utah 2016, Chapter 177

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

Section 1. Section **77-32-801** is amended to read:

**77-32-801. Indigent Defense Commission creation -- Purpose -- Definition.**

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

(2) The purpose of the commission is to assist the state in meeting the state's obligations for the provision of indigent ~~[criminal]~~ defense services, consistent with the United States Constitution, the Utah Constitution, and ~~[this chapter]~~ the Utah Code.

(3) Notwithstanding Section **77-32-201**, for purposes of this part:

(a) "Indigent defense services" means the representation of indigent persons in criminal, juvenile delinquency, and child welfare cases.

(b) "Indigent defense system" means indigent defense services provided by:

(i) local units of government, including a county, city, or town; or

(ii) a regional legal defense organization.

Section 2. Section **77-32-802** is amended to read:

**77-32-802. Commission members -- Membership qualifications -- Terms -- Vacancy -- Administrative support.**

(1) The commission is composed of ~~[11]~~ 13 voting and two ex officio, nonvoting members.

(a) The governor, with the consent of the Senate, shall appoint the following ~~nine~~ 12 members:

(i) two practicing criminal defense attorneys and one attorney practicing in the area of juvenile delinquency defense recommended by the Utah Association of Criminal Defense Lawyers;

(ii) an attorney representing minority interests recommended by the Utah Minority Bar Association;

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

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

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

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

(vii) a retired judge recommended by the Judicial Council; ~~and~~

(viii) one member of the Utah Legislature selected jointly by the Speaker of the House and President of the Senate[-]; and

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

(b) The executive director of the Commission on Criminal and Juvenile Justice or the executive director's designee shall be a voting member of the commission.

(c) The ex officio, nonvoting members of the commission are:

(i) the ~~Ŝ~~→ ~~[executive]~~ ←~~Ŝ~~ director of the ~~[Utah Indigent Defense Commission]~~ commission appointed in Section ~~77-32-803~~; and

(ii) a representative from the Administrative Office of the Courts appointed by the Judicial Council.

(2) Members appointed by the governor shall serve four-year terms, except as provided in Subsection (3).

(3) The governor shall stagger the initial terms of appointees so that approximately half of the commission is appointed every two years.

(4) Members appointed to the commission shall have significant experience in indigent criminal defense, child welfare parental defense, or juvenile defense in delinquency proceedings or have otherwise demonstrated a strong commitment to providing effective representation in indigent ~~[criminal]~~ defense services.

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

~~[(5)]~~ (6) Commission members shall hold office until their successors are appointed.

~~[(6)]~~ (7) The commission may remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.

~~[(7)]~~ (8) When a vacancy occurs in the membership for any reason, a replacement shall be appointed for the remaining unexpired term in the same manner as the original appointment.

~~[(8)]~~ (9) The governor shall appoint one of the initial commission members to serve as chair of the commission for a term of one year. At the expiration of that year, or upon the vacancy in the membership of the appointed chair, the commission shall annually elect a chair from the commission's membership to serve a one-year term. A commission member may not serve as chair of the commission for more than three consecutive terms.

~~[(9)]~~ (10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

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

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

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

~~[(10)]~~ (11) Six members constitute a quorum, however, the affirmative vote of at least six members of the commission is required for official action of the commission.

Section 3. Section ~~77-32-803~~ is amended to read:

**77-32-803. ~~Ŝ→~~ [Executive director] Director ~~←Ŝ~~ -- Qualifications -- Staff.**

(1) The commission shall appoint ~~Ŝ→~~ [f] ~~←Ŝ~~ a ~~Ŝ→~~ [~~an executive~~] ~~←Ŝ~~ director to carry out the following duties:

(a) establish an annual budget;

(b) assist the commission in ~~[developing and regularly reviewing advisory caseload guidelines and procedures, including recommending to the commission suggested changes to~~

the criteria for an indigent defendant's eligibility to receive criminal defense services under this chapter; and] the performance of the commission's statutory duties;

(c) assist the commission in developing and regularly reviewing advisory caseload guidelines and procedures, including recommending to the commission suggested changes to the criteria for an indigent person's eligibility to receive defense services under this chapter; and

[~~(c)~~] (d) perform all other duties as assigned.

(2) The ~~§~~ → **[executive]** ← ~~§~~ director shall be ~~[a full-time licensed attorney]~~ an active member of the Utah State Bar with an appropriate background and experience to serve as the full-time ~~§~~ → **[executive]** ← ~~§~~ director.

(3) The ~~§~~ → **[executive]** ← ~~§~~ director shall hire staff as necessary to carry out the duties of the commission, including ~~[at least one individual with data collection and analysis skills to carry out duties as outlined in Subsection 77-32-804(1)(a).];~~

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

(b) one individual with data collection and analysis skills to carry out duties as outlined in Subsection 77-32-804(1)(a).

(4) The commission in appointing the ~~§~~ → **[executive]** ← ~~§~~ director, and the ~~§~~ → **[executive]** ← ~~§~~ director in hiring the assistant director, shall give a preference to individuals with experience in adult criminal defense, child welfare parental defense, or juvenile delinquency defense.

Section 4. Section **77-32-804** is amended to read:

**77-32-804. Powers and duties of the commission -- Annual report.**

(1) The commission shall:

(a) develop and adopt guiding principles for the assessment and oversight of ~~[criminal]~~ indigent defense systems with the state that, at a minimum, address the following:

(i) Indigent defense service providers shall have independent judgment without fear of retaliation.

(ii) Service providers shall provide conflict-free representation, including the need for a separate contract for conflict counsel.

(iii) Service providers shall provide contracts that separately account for indigent criminal defense, parental defense, and juvenile delinquency defense.

150           ~~[(iii)]~~ (iv) The state may not interfere with the service provider's access to clients and  
151 the service provider is free to defend the client based on the service provider's own independent  
152 judgment[.];

153           ~~[(iv)]~~ (A) Accused persons in criminal cases shall be provided counsel at all critical  
154 stages ~~[of the criminal process]~~.

155           (B) Indigent parties in juvenile delinquency and child welfare proceedings shall be  
156 provided counsel at all stages.

157           ~~[(v)]~~ (v) Counsel shall be free to provide meaningful~~[-adversarial testing of the~~  
158 ~~evidence]~~ representation, including:

159           (A) adequate access to defense resources; and

160           (B) workloads that allow for time to meet with clients, investigate cases, and file  
161 appropriate motions.

162           ~~[(vi)]~~ (vi) Service providers shall be fairly compensated and incentivized to represent  
163 clients fully through:

164           (A) compensation, that shall be independent from prosecutors' compensation;

165           (B) incentives that are structured to effectively represent ~~[criminal defendants well;~~  
166 ~~and]~~ indigent persons;

167           (C) contract provisions that address legal training and education in the areas of the law  
168 relevant to the types of cases the service provider is contracted to appear on;

169           ~~[(C)]~~ (D) separate contracts ~~[that are offered]~~ for appellate attorneys to ensure the right  
170 to appeal[.]; and

171           (E) compensation sufficient to attract applicants qualified with adequate experience in  
172 the relevant areas of the law to provide effective representation in the defense of clients.

173           (vii) Contracts that address counsel's obligation under the Utah Rules of Professional  
174 Conduct, including expectations on client communications and managing conflicts of interest.

175           ~~[(vii)]~~ (viii) The commission may maintain oversight to collect data, audit attorney  
176 performance, establish standards, and enforce the principles listed ~~[above]~~ in this Subsection  
177 (1)(a);

178           (b) identify and collect data necessary for the commission to:

179           (i) review compliance by ~~[criminal]~~ indigent defense systems of minimum principles  
180 for effective representation;

181 (ii) establish procedures for the collection and analysis of the data; and  
182 (iii) provide reports regarding the operation of the commission and the provision of  
183 indigent ~~[criminal]~~ defense services by each indigent ~~[criminal]~~ defense system;  
184 (c) develop and oversee the establishment of advisory caseload principles and  
185 guidelines to aid indigent ~~[criminal]~~ defense systems in delivering effective representation in  
186 the state consistent with the safeguards of the United States Constitution, the Utah  
187 Constitution, and ~~[this chapter]~~ the Utah Code;  
188 (d) review ~~[all]~~ contracts and interlocal agreements in the state for the provision of  
189 indigent ~~[criminal]~~ defense services and provide assistance and recommendations regarding  
190 compliance with minimum principles for effective representation of indigent individuals in  
191 court;  
192 (e) investigate, audit, and review the provision of indigent ~~[criminal]~~ defense services  
193 for compliance with minimum principles;  
194 (f) establish procedures for the receipt, acceptance, and resolution of complaints  
195 regarding the provision of indigent ~~[criminal]~~ defense services;  
196 (g) establish procedures that enable indigent ~~[criminal]~~ defense systems to apply for  
197 state funding as provided under Section 77-32-805;  
198 (h) establish procedures for annually reporting to the governor, Legislature, and  
199 Judicial Council, ~~[and indigent criminal defense systems throughout the state that]~~ which  
200 include reporting the following:  
201 (i) the operations of the commission;  
202 (ii) the operations of each indigent ~~[criminal]~~ defense system to which the commission  
203 has granted money; and  
204 (iii) the compliance by each indigent [criminal] defense [system's compliance] system  
205 that has received a grant of money from the commission, with minimum [standards] principles  
206 for the provision of indigent [criminal] defense services and for effective representation of  
207 indigent individuals in court;  
208 (i) award grants to indigent ~~[criminal]~~ defense systems consistent with metrics  
209 established by the commission under this part and appropriations by the state;  
210 (j) encourage and aid in the regionalization of indigent ~~[criminal]~~ defense services  
211 within the state for effective representation and for efficiency and cost savings to local

212 systems;

213 (k) submit to legislative, executive, and judicial leadership, from time to time,  
214 proposed recommendations for improvement in the provision of indigent ~~[criminal]~~ defense  
215 services to ensure effective representation in the state, consistent with the safeguards of the  
216 United States Constitution ~~[and]~~, the Utah Constitution, and the Utah Code; and

217 (l) identify and encourage best practices for effective representation ~~[to indigent~~  
218 ~~defendants charged with crimes]~~.

219 (2) The commission shall emphasize the importance of effective indigent ~~[criminal]~~  
220 defense services ~~[provided to defendants, whether charged with a misdemeanor or felony]~~.

221 (3) The commission shall establish procedures for the conduct of the commission's  
222 affairs and internal policies necessary to carry out the commission's duties and responsibilities  
223 under this part.

224 (4) Commission policies shall be ~~[placed in an appropriate manual,]~~ made publicly  
225 available on a website~~[, and made available to all attorneys and professionals providing~~  
226 ~~indigent criminal defense services, the Judicial Council, the governor, and the Legislature]~~.

227 (5) The delivery of indigent ~~[criminal]~~ defense services shall be independent of the  
228 judiciary, but the commission shall ensure that judges are permitted and encouraged to  
229 contribute information and advice concerning the delivery of indigent ~~[criminal]~~ defense  
230 services.

231 (6) The commission may make rules in accordance with Title 63G, Chapter 3, Utah  
232 Administrative Rulemaking Act, to establish guiding principles for the constitutional provision  
233 of indigent defense services in the state.

234 ~~[(6)]~~ (7) An indigent ~~[criminal]~~ defense system that is in compliance with minimum  
235 principles and procedures may not be required to provide indigent ~~[criminal]~~ defense services  
236 in excess of those principles and procedures.

237 ~~[(7)]~~ (8) The commission shall ~~[submit a]~~ report annually to the Judiciary Interim  
238 Committee on the commission's efforts to improve the provision of indigent ~~[criminal]~~ defense  
239 services statewide.

240 Section 5. Section **77-32-805** is amended to read:

241 **77-32-805. Indigent Defense Resources Account -- Administration.**

242 (1) For purposes of this part, "account" means the Indigent Defense Resources

Account.

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

(b) ~~[Funds]~~ Money in the account shall be nonlapsing.

(c) Subject to appropriation, ~~[funds]~~ money from the account shall be disbursed by the ~~[Utah Indigent Defense Commission]~~ commission in accordance with ~~[the provisions of this chapter]~~ this part.

(3) The account consists of:

(a) ~~[funds]~~ money appropriated by the Legislature based upon recommendations from the commission consistent with principles of shared state and local funding;

(b) other ~~[moneys]~~ money received by the commission pursuant to Subsection ~~77-32-809~~(3); and

(c) interest and earnings from the investment of account ~~[funds]~~ money.

(4) ~~[Funds]~~ Money from the account shall be invested by the state treasurer with the earnings and interest accruing to the account.

(5) The account shall be administered by the commission for:

(a) the establishment and maintenance of a statewide indigent ~~[criminal]~~ defense data collection system;

(b) grants to indigent ~~[criminal]~~ defense systems for defense resources; and

(c) grants to indigent ~~[criminal]~~ defense systems for defense services providers.

(6) Money allocated to or deposited into the account shall be used:

(a) to reimburse participating systems for commission-approved expenditures for the purposes listed in Subsection (5); and

(b) for administrative costs.

Section 6. Section ~~77-32-806~~ is amended to read:

**~~77-32-806. Indigent and juvenile defense system participation.~~**

(1) To qualify for grant ~~[funds]~~ money described in Subsection ~~77-32-805~~(5), the legislative body responsible for an indigent ~~[criminal]~~ defense system shall:

(a) adopt a resolution stating the intent to apply for grant ~~[funds]~~ money from the account and committing that the indigent ~~[criminal]~~ defense system shall meet minimum principles for the effective representation of indigent individuals in court; and

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

(2) The commission may revoke an indigent ~~[criminal]~~ defense system's grant award if the system fails to meet minimum principles for the effective representation of indigent individuals in court or other grant conditions established by the commission.

Section 7. Section **77-32-807** is amended to read:

**77-32-807. Application for grant money.**

(1) Applications for grant ~~[moneys]~~ money from the commission may seek resources for the following expenses:

(a) establishment and maintenance of an indigent ~~[criminal]~~ defense data collection system;

(b) defense resources;

(c) matching ~~[fund]~~ money grants for defense services providers; and

(d) critical need grants for defense services providers.

(2) (a) Matching ~~[fund]~~ money grants, as described in Subsection (1)(c), may be awarded if the indigent ~~[criminal]~~ defense system spends an amount greater than the system's baseline budget, as described in Subsection ~~77-32-809~~(2)(a), for defense services providers.

(b) For the purposes of Subsection (2)(a), matching ~~[funds is an amount equal to the product of]~~ money grants may be awarded by the commission in an amount up to:

(i) for a city or town, the indigent ~~[criminal]~~ defense system's spending above the system's baseline budget; and

(ii) for a county, the product of the indigent defense system's spending above the system's baseline budget and:

(A) 50% for counties of the first class;

(B) 100% for counties of the second or third class; or

(C) 200% for counties of the fourth through sixth class.

(3) Critical need grant ~~[moneys]~~ money, as described in Subsection (1)(d), may be awarded if the indigent ~~[criminal]~~ defense system can demonstrate to the commission's satisfaction that:

(a) the system has incurred or reasonably anticipates incurring expenses in excess of the system's annual local funding, as adjusted for population growth and inflation;

(b) the funding for the expenses described in Subsection (3)(a) is necessary for the indigent [~~criminal~~] defense system to meet minimum [~~standards~~] principles for effective representation; and

(c) increasing the system's local share for indigent [~~criminal~~] defense providers would constitute an undue burden on the indigent [~~criminal~~] defense system.

(4) If the application of a participating indigent [~~criminal~~] defense system is approved by the commission, the director of the commission shall negotiate, enter into, and administer a contract with the participating indigent [~~criminal~~] defense system for the purposes listed in Subsection (1).

(5) Nonparticipating systems remain responsible for meeting minimum principles for effective representation but may not be eligible for any legislative relief.

(6) A county or municipality may not be required to increase the county or municipality's certified tax rate pursuant to Section 59-2-924 to participate in the fund.

Section 8. Section 77-32-808 is amended to read:

**77-32-808. Annual report, budget, and listing of expenditures -- Availability on website.**

(1) As used in this section, "expenditures" means all payments or disbursements of commission [~~funds~~] money, received from any source, made by the commission.

(2) The commission shall publish and make available to the public on a website the commission's annual report, budget, salary information, a listing of all expenditures, and a list of all indigent [~~criminal~~] defense systems.

(3) Publication and availability of the listing of expenditures shall be on a quarterly basis. The commission's budget and salary information may be published and made available on an annual basis.

Section 9. Section 77-32-809 is amended to read:

**77-32-809. Investigation, audit, and review of indigent and juvenile defense services -- Cooperation and participation with commission -- Maintenance of local share -- Necessity for excess funding.**

(1) [~~All indigent criminal~~] Indigent defense systems and attorneys engaged in providing indigent [~~criminal~~] defense services shall cooperate and participate with the commission in the investigation, audit, and review of all indigent [~~criminal~~] defense services.

(2) (a) For purposes of this part, "baseline budget" means an indigent [criminal] defense system's [~~share of local funding, adjusted annually for growth in population and inflation~~] annual expenditure for the indigent defense services. The baseline budget shall be adjusted for indigent defense case load fluctuations and inflations whenever subsequent grant requests are submitted to the commission.

(b) An indigent [criminal] defense system shall maintain the system's baseline budget each year.

(c) If the commission determines that [funding] money in excess of the indigent [criminal] defense system's baseline budget is necessary to achieve minimum principles for effective representation, the excess [funding] money shall be paid from state or local funding, or a combination of both, as determined by the grant application process described in Section 77-32-807.

(d) An indigent [criminal] defense system is not required to expend all of the system's local funding if minimum principles for effective representation may be met for less than local funding.

(3) The commission may apply for and obtain state funding from any source to carry out the purposes of this part. [~~All funds~~] Money received by the commission, from any source, are state funds and shall be appropriated as provided by law.