



# Budget Brief: Post Conviction Indigent Defense Fund

CAPITAL FACILITIES AND GOVERNMENT OPERATIONS

FY 2010

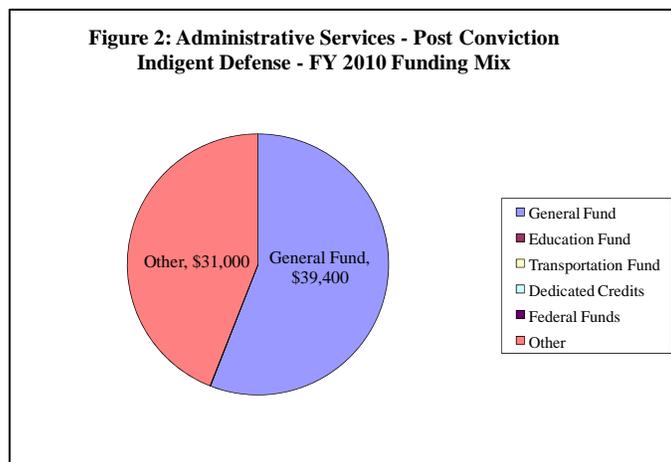
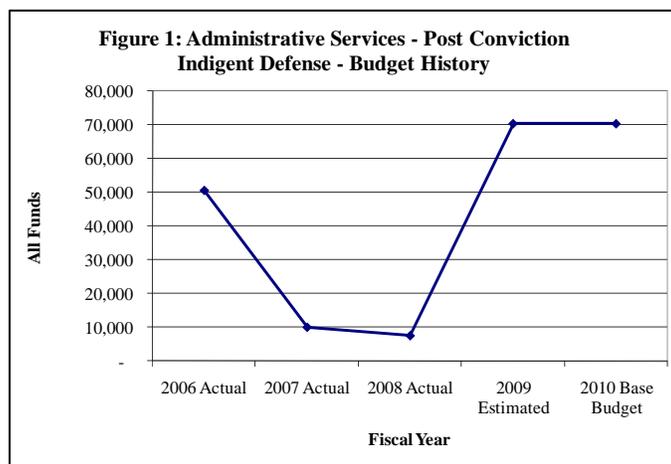
## SUMMARY

UCA 78-35a-202 allows persons convicted of a capital crime and sentenced to death to challenge the conviction and have counsel appointed. If a defendant requests counsel and is determined by the court to be indigent, costs of counsel and other reasonable litigation expenses incurred in providing the representation must be paid from state funds by the Division of Finance.

The program was managed by the Attorney General’s (AG) office for a period of time but was moved into a separate line item to avoid the appearance of a conflict resulting from the AG prosecuting individuals while directly funding their defense. Funds are housed in the Division of Finance for administrative purposes only, though the division does have administrative rule authority to set reimbursement rates.

The Division of Finance also manages two accounts that are similar to the Post Conviction Fund. These accounts are funded by participating counties with statutory language for legislative consideration of any shortfall:

- The *Indigent Inmate Defense Fund* is for inmates convicted of crimes while in prison. Sanpete County uses the program for inmates accused of crimes committed at the state prison in Gunnison. No other counties participate at this time.
- The *Indigent Capital Defense Fund* provides money to defend indigents charged with capital crimes in participating counties. The Division of Finance assesses the twenty-four participating counties annually and should be able to manage the fund in FY 2009 without state assistance.



## ISSUES AND RECOMMENDATIONS

### *Recent Developments*

The association of criminal defense lawyers has approached the Courts with a request for a higher rate from the Division of Finance, which has rulemaking authority to change reimbursement rates. The current rates have not changed for several years. The attorneys ordered by the Court to represent the convicts say that the legal costs necessary to provide a defense exceed the reimbursement by the state. Part of the problem may be a lack of communication from the Courts when an attorney is assigned the case on what the reimbursement will be from the state. Attorneys often learn of the amount only after they have provided some services for the defense.

During the 2008 General Session, the Legislature appropriated \$50,000 ongoing to the Post Conviction Indigent Defense Fund to address these concerns. The Division of Finance concurrently adjusted the rules for payment to attorneys based on milestones. The old payment schedule allowed payments up to \$37,500. The new schedule allows \$125 per hour with a soft cap at \$60,000.

At the end of FY 2008 the Fund had a balance of \$242,500 and spent only \$7,500 in FY 2008.

**BUDGET DETAIL**

In FY 2009 the Legislature appropriated \$43,000 ongoing General Fund to this program, which previously operated on nonlapsing carry-forward balances only.

***Intent Language***

The Analyst recommends the Legislature adopt the following supplemental intent language for Fiscal Year 2009:

*Under terms of UCA 63G-1-402(3), the Legislature intends not to lapse Item 44, Chapter 2, Laws of Utah 2008. Expenditure of these funds is limited to: Legal costs for death row inmates - \$217,000.*

**LEGISLATIVE ACTION**

The Analyst recommends the Legislature consider adopting:

1. A total FY 2010 appropriation of \$70,400 for the Post Conviction Indigent Defense Fund.
2. Intent language making the FY 2009 appropriation nonlapsing but limited to uses specified in the language.

**BUDGET DETAIL TABLE**

<b>Administrative Services - Post Conviction Indigent Defense</b>						
<b>Sources of Finance</b>	<b>FY 2008 Actual</b>	<b>FY 2009 Appropriated</b>	<b>Changes</b>	<b>FY 2009 Revised</b>	<b>Changes</b>	<b>FY 2010* Base Budget</b>
General Fund	0	43,000	(3,600)	39,400	0	39,400
General Fund, One-time	0	5,500	0	5,500	(5,500)	0
Beginning Nonlapsing	250,000	176,000	66,500	242,500	(25,500)	217,000
Closing Nonlapsing	(242,500)	(102,000)	(115,000)	(217,000)	31,000	(186,000)
<b>Total</b>	<b>\$7,500</b>	<b>\$122,500</b>	<b>(\$52,100)</b>	<b>\$70,400</b>	<b>\$0</b>	<b>\$70,400</b>
<b>Programs</b>						
Post Conviction Indigent Defense Fund	7,500	122,500	(52,100)	70,400	0	70,400
<b>Total</b>	<b>\$7,500</b>	<b>\$122,500</b>	<b>(\$52,100)</b>	<b>\$70,400</b>	<b>\$0</b>	<b>\$70,400</b>
<b>Categories of Expenditure</b>						
Current Expense	7,500	122,500	(52,100)	70,400	0	70,400
<b>Total</b>	<b>\$7,500</b>	<b>\$122,500</b>	<b>(\$52,100)</b>	<b>\$70,400</b>	<b>\$0</b>	<b>\$70,400</b>

\*Does not include amounts in excess of subcommittee's state fund allocation that may be recommended by the Fiscal Analyst.