



INDIGENT DEFENSE

BUILDING BLOCK PRIORITY 1

\$1,500,000 ONE-TIME APPROPRIATION FY18

FUNDING SOURCE: INDIGENT DEFENSE RESTRICTED

ACCOUNT BY TRANSFERRING MONEY FROM THE
GENERAL FUND

Background

In the 2016 general session, the Legislature created the Indigent Defense Commission (IDC), in response to the Report issued by the Judicial Council's Study Committee on the Representation of Indigent Criminal Defendants in Trial Courts (the Committee). The purpose of the IDC is to assist the State of Utah in meeting its obligation to provide effective assistance of counsel to indigent defendants, consistent with the state and federal Constitutions and the Utah Code.

Utah has elected to fulfill its constitutional obligation to ensure indigent defendants' right to effective assistance of counsel, by delegating that responsibility to local governments. Notably a state may delegate such responsibilities, but the constitutional responsibility of ensuring adequate indigent defense remains with the state. And Utah's approach has many advantages--such as local control and decision-making--and can work. There are places in Utah where Sixth Amendment obligations are being fulfilled. The challenge however, with each local government operating independently, is to ensure that this widely disbursed responsibility is actually achieving the constitutionally mandated results in each case. That challenge is complicated by the lack of any systematic data collected on caseloads, an absence of performance standards or any guidance as to how to ensure constitutional representation, making it nearly impossible to determine how well each governmental entity is actually fulfilling the state's Sixth Amendment responsibility.

The constitution mandates effective assistance of counsel for all indigent defendants, at all critical stages of criminal cases where a loss of personal liberty is at stake, no matter how remote. The United States Supreme Court has repeatedly said that the right to counsel is the right to an effective attorney, and lawyers cannot be effective unless they work within indigent defense systems that ensure their independence, provide training, provide supervision, and other systematic safeguards.

Request

CCJJ requests a one-time appropriation of \$1,500,000 to support the mission of the indigent defense commission. The restricted account is funded from transfers from the General Fund. By funding this request, the state will continue in an active coordinating and support role to assist the local governments that are actually providing indigent defense services, by awarding grants to assist local governments in assuring the state's compliance with constitutional standards for right-to-counsel obligations. This will be an ongoing effort as independent, statewide, oversight of indigent defense is a critical element to fulfilling the state's constitutional obligations.