THE UTAH INDIGENT DEFENSE COMMISSION

Judiciary Interim Committee
United States Constitution
Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury ... and to have the Assistance of Counsel for his defense.
6th & 14th Amendments require states to provide counsel to people accused of serious crimes, regardless of wealth.

*Gideon v. Wainwright*, 373 U.S. 335 (1963)

14th Amendment requires states to provide counsel to juveniles in delinquency proceedings.

*In RE Gault*, 387 U.S. 1 (1967)

The right to counsel is **not** governed by the classification of the offense, but by the possibility of imprisonment/loss of liberty.

*Argersinger v Hamlin*, 407 U.S. 25 (1972)
YOU HAVE THE **RIGHT** TO AN ATTORNEY IN UTAH

Utah Constitution, Article I, Section 12.
- In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel.

**Utah Code § 78A-6-1111. Right to counsel in:**
- Juvenile Delinquency Proceedings
- Abuse, Neglect, and Dependency Proceedings
- Certain Termination of Parental Rights Proceedings

**Provision of Services Delegated by Statute:**
- Every county, city, & town shall provide for the legal defense of an indigent defendant in criminal cases in the courts of the state; and
- Every county shall pay for the cost of any appointed counsel for an indigent party in juvenile and parental defense cases.
PATCHWORK OF INDIGENT DEFENSE SYSTEMS

Results:

• Patchwork of independent systems with diverse delivery methods, resources, quality, oversight, & court practices.
• No substantive accountability/quality assurance.
• Local governments may lack sufficient funding for indigent defense services.

Nearly every county, city, & town in Utah separately provides for indigent defense representation in Utah’s:

36 District Courts (40,082 criminal cases FY16) &
118 Justice Courts (68,612 criminal cases FY16)
THE UTAH INDIGENT DEFENSE COMMISSION

Created in 2016, to give constitutional guidance and financial support to local governments, to help ensure quality, cost-efficient, effective assistance of counsel in all appointed cases.

- **IDC Scope:**
  - Adult Criminal Indigent Defense
  - Juvenile Delinquency
  - Abuse, Neglect, & Dependency Proceedings
  - Parental Termination Cases

- **IDC Duties:**
  - Collect Data
  - Give Constitutional Guidance
  - Award Grants
  - Encourage Regionalization
THE UTAH INDIGENT DEFENSE COMMISSION IN 2017

- 15 Commissioners
- 4 Staff
- $655,000 Operating Budget
- $2.5 Million in One-Time Grant Funds
- $560,000 in Ongoing Grant Funds
THE IDC’S STATUTORY DUTIES:
COLLECT STATEWIDE DATA

“The IDC shall identify and collect data necessary to review, report, and guide Utah’s indigent defense systems.”

First effort to understand statewide indigent defense services.

Sources:
• Contracts with defense attorneys.
• Administrative Office of the Courts data.
• Local court data.
• Surveys & studies.

• Data will inform state/local policymakers’ decisions on how to help structure and fund effective indigent defense
THE IDC’S STATUTORY DUTIES: GIVE GUIDANCE (“STANDARDS”)

“The IDC shall develop and adopt guiding principles for the assessment and oversight of indigent defense systems.”

To help local governments ensure effective representation in all court-appointed cases.

“Procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law.” — Gideon v. Wainwright

System Guidance to ensure fairness:
- Independence
- Quality Assurances
- Appropriate Compensation
- Sufficient Resources

Attorney Performance Guidance to ensure effective assistance:
- Professional conduct
- Experience & training
- Zealous representation
- Appropriate workloads

**Standard to evaluate whether an attorney rendered ineffective assistance.**

Did attorney’s representation fall below an objective standard of reasonableness in a particular case and prejudice the outcome?

**Attorney Guidance to ensure effective assistance:**
- Professional Conduct
- Experience & Training
- Zealous Representation
- Appropriate Workloads


**Standard to determine whether there is systemic, actual or constructive denial of counsel by state/local govt.**

Asks if certain *systemic factors* were present (or necessary factors absent)—inexperienced attorneys, conflicts, etc.—such that court can presume ineffective assistance of counsel would occur in system.

**System Guidance to ensure effectiveness & fairness:**
- Independence
- Quality Assurances
- Appropriate Compensation
- Sufficient Resources
ENSURING EFFECTIVE ASSISTANCE PREVENTS WORST CASE SCENARIOS

Money and property stolen from vulnerable individuals.

Physical destruction of court documents

Convictions reversed for ineffective assistance of counsel

Waste of resources. Unjust incarcerations. Loss of trust in system.

Utah v. Hummel, 2017 UT 19

Utah v. Martinez-Castellanos, 2017 UT app 13
"The IDC shall encourage & aid in the regionalization of indigent defense systems in the state."

Regionalized indigent defense services help ensure:

### Effective Assistance

- Independence – eliminate risk of improper government interference *(Cronic)*
- Oversight & supervision – ensure competent and effective assistance *(Strickland)*
- Access to pooled resources: easier access to cheaper experts & investigators *(Strickland)*

### Efficiencies

- Decreased expense of unnecessary incarceration, appeals, re-trials & exonerations.
- Competent Counsel Increases the Efficiency of all attorneys: prosecutors, & judges
- Eliminate RFP process & streamline appointment process
- Stretch local $ – for full service office – economies of scale
THE IDC’S STATUTORY DUTIES: AWARD GRANTS

“The IDC shall establish procedures to allow indigent defense systems to apply for state funding and award grants from state appropriations.”

<table>
<thead>
<tr>
<th>Critical Needs Grants</th>
<th>Matching Grants</th>
<th>Other Grants</th>
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</thead>
<tbody>
<tr>
<td>System can show:</td>
<td>System can show:</td>
<td>System wants to:</td>
</tr>
<tr>
<td>1) Will incur expenses over adjusted annual spending to provide necessary effective assistance; and</td>
<td></td>
<td></td>
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<tr>
<td>2) Increasing local spending is an undue burden.</td>
<td>1) Already increased spending above adjusted annual spending to improve constitutionality of indigent defense services.</td>
<td></td>
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<tr>
<td>Discretionary Grant</td>
<td>Formula Grant</td>
<td>1) Establish and maintain an indigent defense data collection system; or</td>
</tr>
<tr>
<td></td>
<td>Amount Prorated By County Class</td>
<td>2) Provide for other defense resources.</td>
</tr>
<tr>
<td></td>
<td>Discretionary Grant</td>
<td></td>
</tr>
</tbody>
</table>

Note: "The IDC shall establish procedures to allow indigent defense systems to apply for state funding and award grants from state appropriations."
Juab County using IDC grant money to supplement local share & regionalize indigent defense services, by contracting with qualified, experienced attorneys supervised by the Utah County Public Defenders’ Office to provide effective representation in Juab.

Juab Case Totals FY16

- Felonies: 99 appointed – 80%
- Misdemeanors: 46 appointed – 50%
- Orders to Show Cause: 125 appointed – 100%
- Juvenile Delinquency: 72 appointed – 100%
- Abuse & Neglect: 43+ appointed – 100%

TOTAL APPOINTED CASES FY16: 385+

Juab Indigent Defense Spending Budget (2017): $140,200
IDC Grant: $183,264

- Increased number, quality, & experience of attorneys in court
- Reserve funds for investigators, experts, trial days, appeals
INITIAL RESULTS OF IDC GRANT TO JUAB COUNTY

- Independence – no risk of improper interference
- Independent conflict counsel ensured – rules of professional conduct require
- Adequate access to resources – investigators/experts/appeals
- Oversight, Supervision, & Training - Ensuring qualified attorneys appropriately testing state’s evidence
- Efficiencies – Better communication between prosecution, defense counsel, judges and clients
- System-wide Improvements – local law enforcement improving quality of investigations
## Operating Budget Expenditures

Established office (rented, furnished)
Office occupied since January 2017

Staff
Director – October 2016
Staff – January 2017 & June 2017

## Grants

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>One-Time Funds:</td>
<td>$2.5 Million</td>
</tr>
<tr>
<td>Ongoing Funds:</td>
<td>$560,000</td>
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<tr>
<td>Grant Award: Juab County</td>
<td>$183,264</td>
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<tr>
<td>Future: Sanpete County, Utah County</td>
<td></td>
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<tr>
<td>Ogden City, SLC Conflict Office, Sevier Regional Office</td>
<td>In development</td>
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Idaho Supreme Court said sovereign immunity DOES NOT shield a state from liability for unconstitutional indigent defense.

“The right to counsel is ‘made obligatory upon the States by the Fourteenth Amendment.’ Gideon, 372 U.S. at 342 ... The State, therefore, has ultimate responsibility to ensure that the public defense system passes constitutional muster. While the provision of public defense has been delegated to Idaho’s forty-four counties under Idaho Code section 19-859, ‘the ultimate responsibility for fulfilling the . . . constitutional duty cannot be delegated.’”
Contact the IDC:
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Direct: 801-209-5440
https://justice.utah.gov/indigent-defense.html