

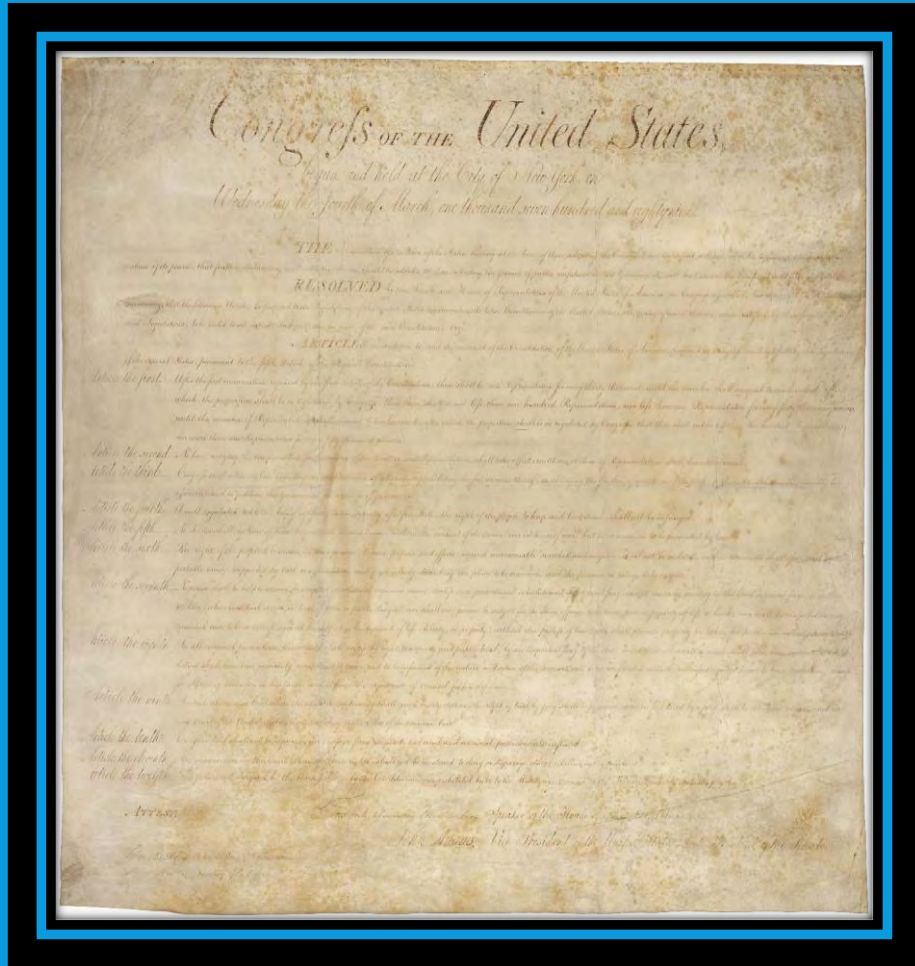
# THE UTAH INDIGENT DEFENSE COMMISSION

Judiciary Interim Committee



Utah Indigent Defense  
Commission

# THE SIXTH AMENDMENT



## 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.*

# U.S. SUPREME COURT CASE LAW

6<sup>th</sup> & 14<sup>th</sup> Amendments require states to provide counsel to people accused of serious crimes, regardless of wealth.

*Gideon v. Wainwright*, 373 US 335 (1963)

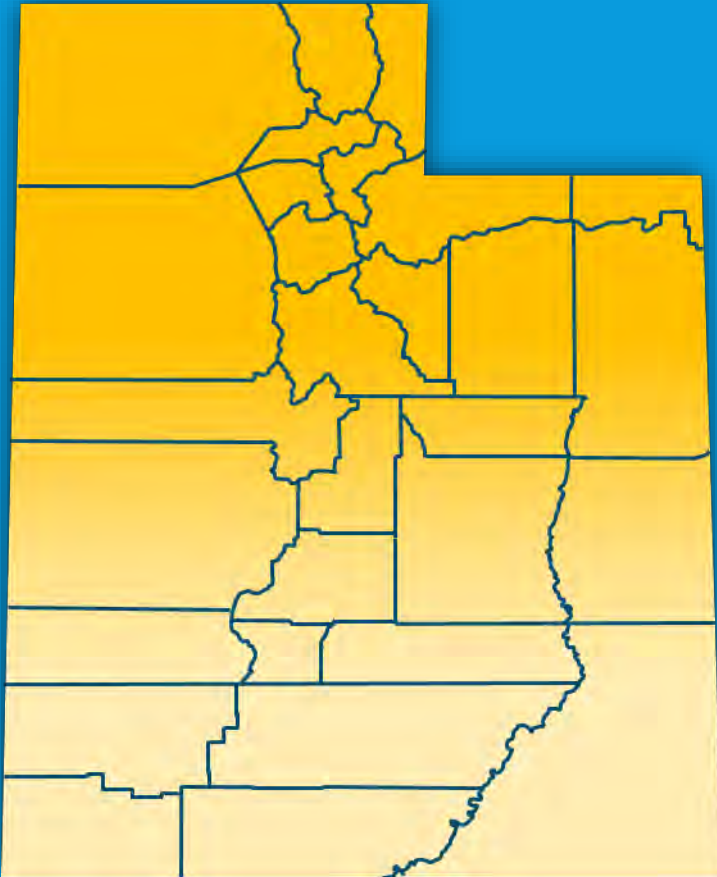
14<sup>th</sup> Amendment requires states to provide counsel to juveniles in delinquency proceedings.

*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 US 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.

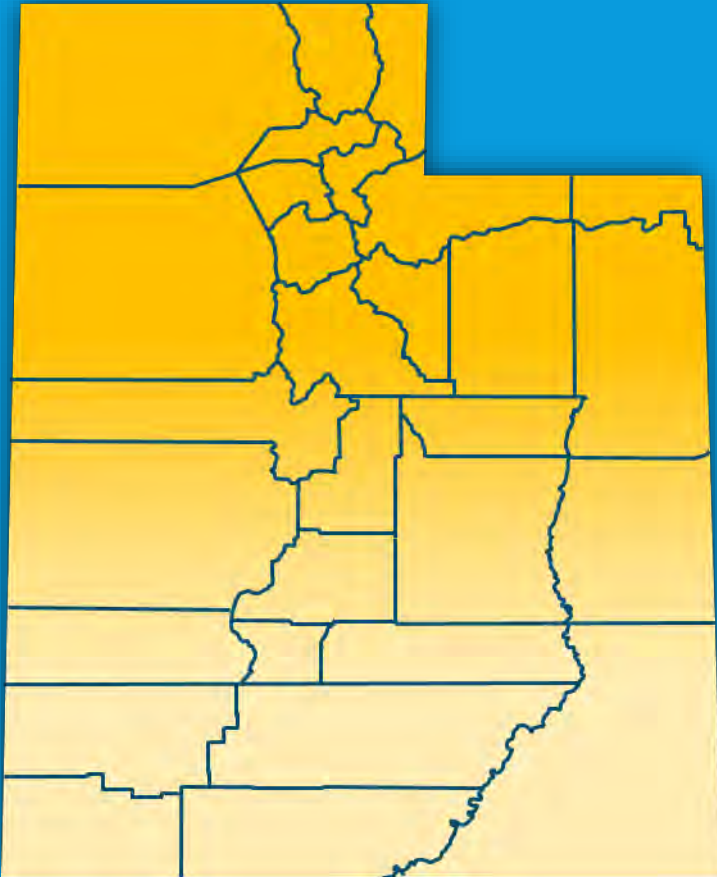
## Utah Code § 78A-6-1111. Right to counsel in:

- 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



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)

## 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.

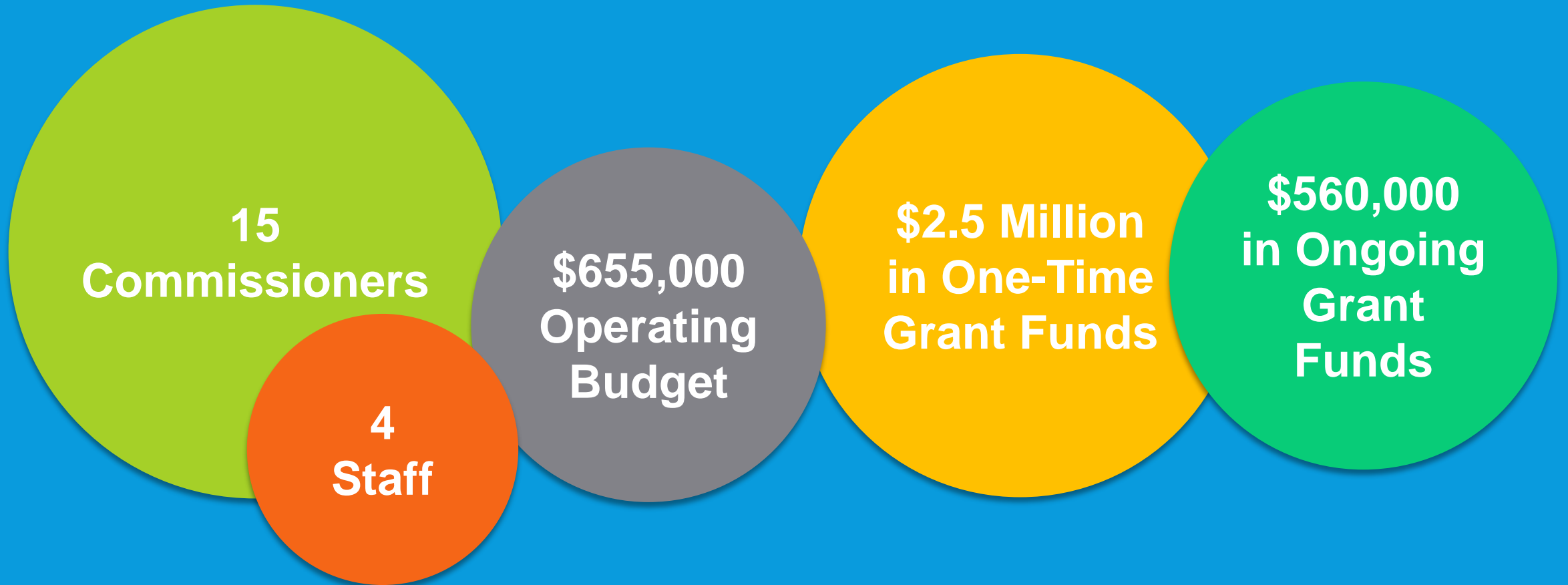
# THE UTAH INDIGENT DEFENSE COMMISSION

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



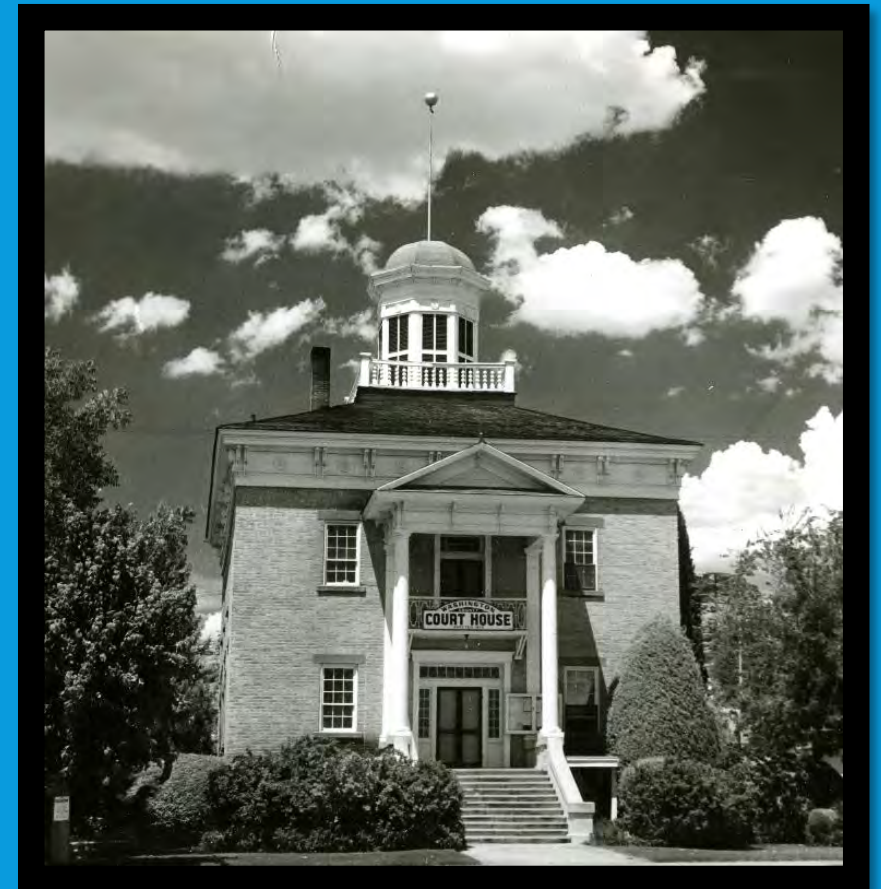
# THE IDC'S STATUTORY DUTIES: COLLECT STATEWIDE DATA

*"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



# RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL

## *Strickland v. Washington (1984)*

*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

## *US v. Cronin (1984)*

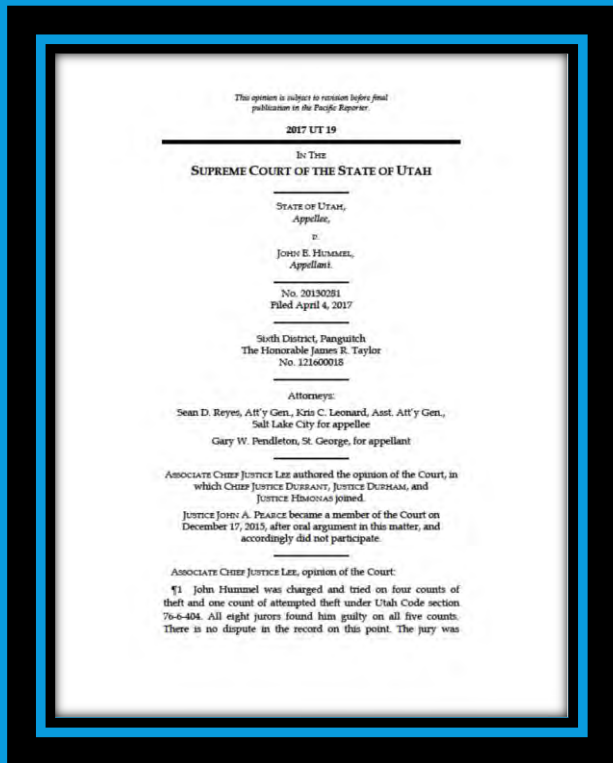
*Standard to determine whether there is systemic, actual or constructive denial of counsel by state/local govt.*

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



*Utah v. Hummel,  
2017 UT 19*

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. Martinez-Castellanos,  
2017 UT app 13*

# THE IDC'S STATUTORY DUTIES: ENCOURAGE REGIONALIZATION

*"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."*

Critical Needs Grants	Matching Grants	Other Grants
<p>System can show:</p> <ol style="list-style-type: none"> <li>1) Will incur expenses over adjusted annual spending to provide necessary effective assistance; <u>and</u></li> <li>2) Increasing local spending is an undue burden.</li> </ol> <p style="text-align: right;"><b>Discretionary Grant</b></p>	<p>System can show:</p> <ol style="list-style-type: none"> <li>1) Already increased spending above adjusted annual spending to improve constitutionality of indigent defense services.</li> </ol> <p style="text-align: right;"><b>Formula Grant Amount Prorated By County Class</b></p>	<p>System wants to:</p> <ol style="list-style-type: none"> <li>1) Establish and maintain an indigent defense data collection system; <u>or</u></li> <li>2) Provide for other defense resources.</li> </ol> <p style="text-align: right;"><b>Discretionary Grant</b></p>

# IDC GRANT TO JUAB COUNTY

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%

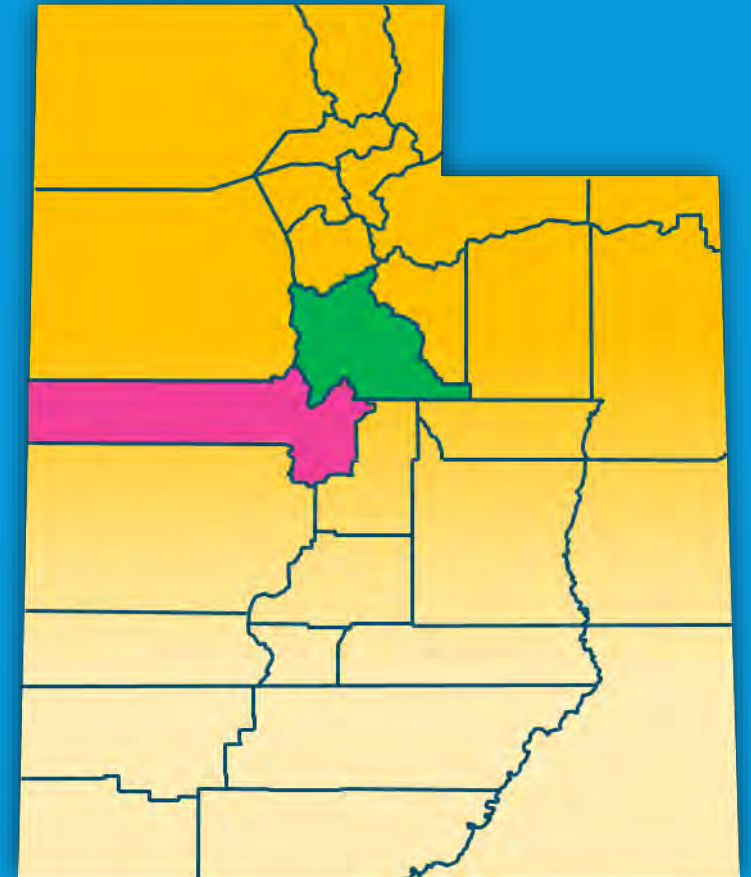
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TOTAL APPOINTED CASES FY16: 385+

**Juab Indigent Defense Spending Budget (2017): \$140,200**

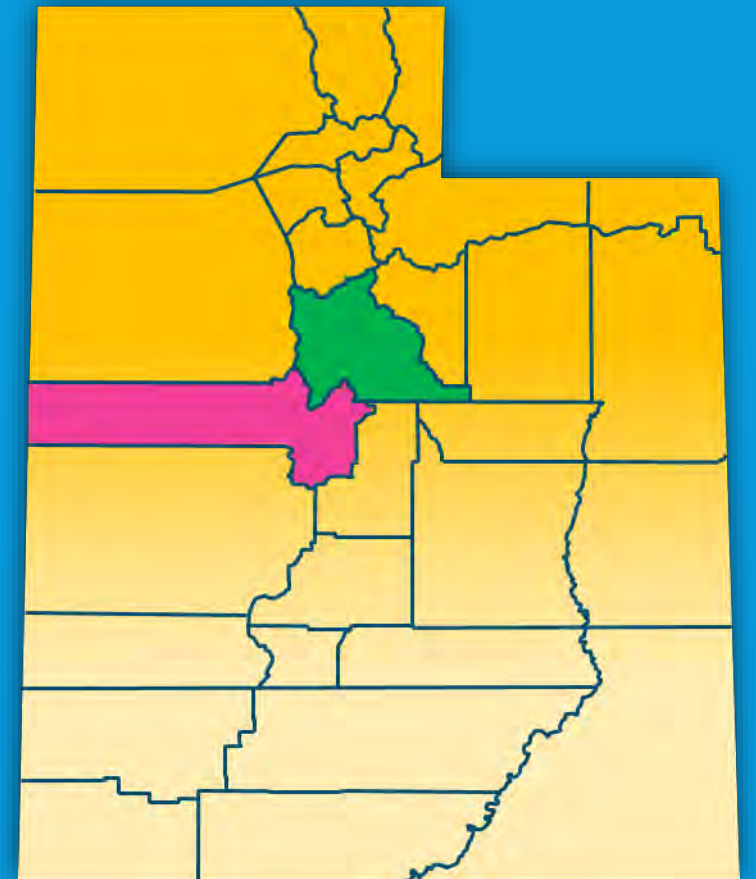
**IDC Grant : \$183,264**

- 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



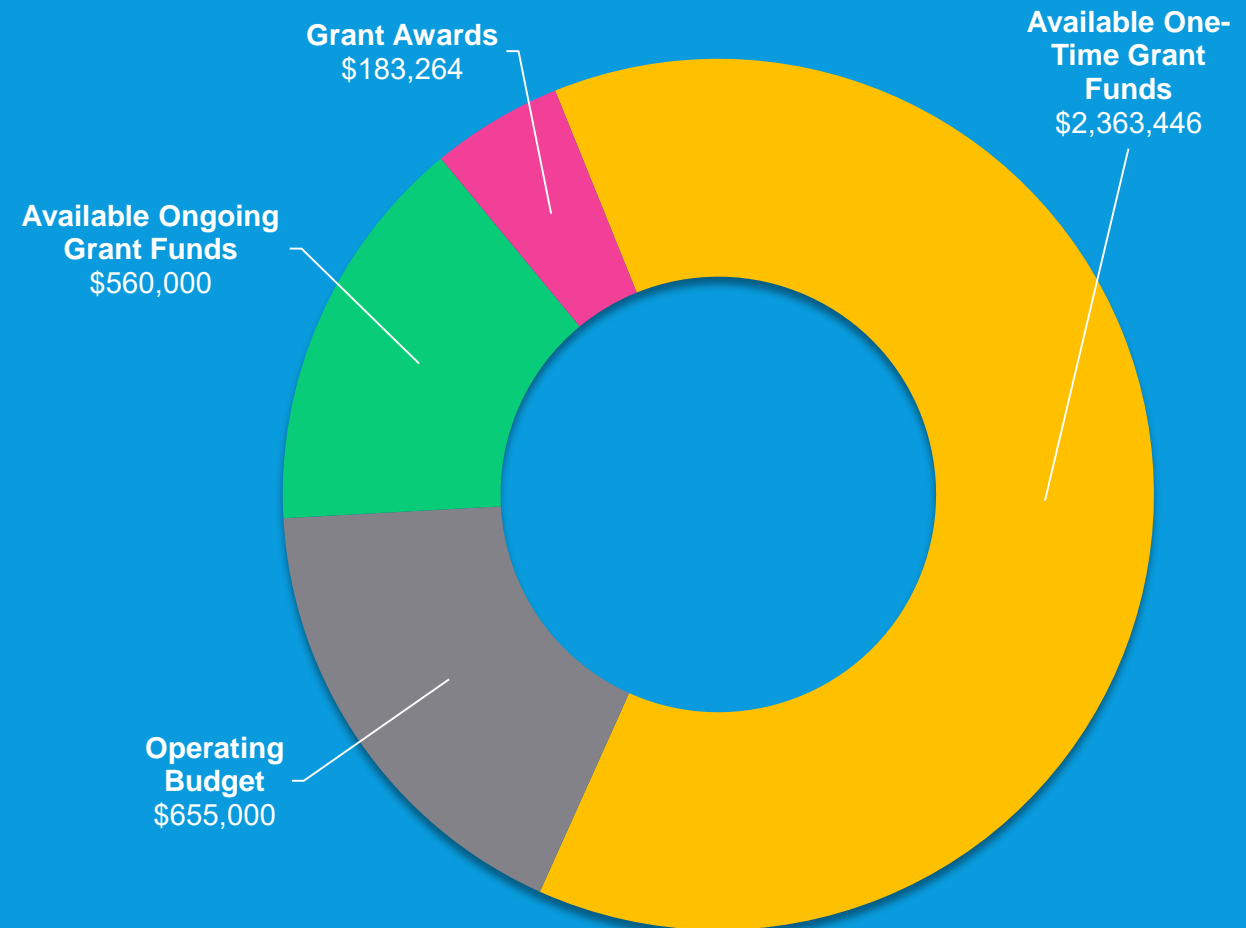
# INDIGENT DEFENSE COMMISSION FUNDING AND EXPENDITURES

## Operating Budget Expenditures

Established office (rented, furnished)  
Office occupied since January 2017  
Staff  
Director – October 2016  
Staff – January 2017 & June 2017

## Grants

One-Time Funds:	\$2.5 Million
Ongoing Funds:	\$560,000
Grant Award:	
Juab County (Critical)	\$183,264
<u>Future</u> : Sanpete County, Utah County Ogden City, SLC Conflict Office, Sevier Regional Office . . . In development	





# IDAHO SUPREME COURT: TUCKER V. IDAHO

## *Tucker v. Idaho*

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.’”

IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 43922

TRACY TUCKER, JASON SHARP, NAOMI MORLEY, JEREMY PAYNE, on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

v.

STATE OF IDAHO; C.L. "BUTCH" OTTER, in his official capacity as Governor of Idaho; HON. LINDA COPPLE TROUT, DARRELL G. BOLZ, SARA B. THOMAS, WILLIAM H. WELLMAN, KIMBER RICKS, SEN. CHUCK WINDER, and REP. CHRISTY PERRY, in their official capacities as members of the Idaho State Public Defense Commission,

Defendants-Respondents.

Boise, January 2017 Term

2017 Opinion No. 38

Filed: April 28, 2017

Stephen W. Kenyon, Clerk

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Samuel A. Hoagland, District Judge.

District court order dismissing class action complaint, affirmed in part, reversed in part and remanded.

American Civil Liberties Union of Idaho Foundation, Richard Alan Eppink, Boise, for appellants. Jason D. Williamson argued.

Hon. Lawrence G. Wasden, Idaho Attorney General, Boise, for respondents Governor C.L. "Butch" Otter, Trout, Bolz, Ricks, Winder and Perry. Michael S. Gilmore, Deputy Attorney General argued.

Cantrill, Skinner, Lewis, Casey & Sorensen, LLP, Boise, for respondents Thomas and Wellman. Daniel J. Skinner argued.

\_\_\_\_\_  
BURDICK, Chief Justice.

Tracy Tucker, Jason Sharp, Naomi Morley, and Jeremy Payne, on behalf of themselves and all other similarly situated (Appellants), bring this appeal from the Ada County District



Utah Indigent Defense Commission

## Contact the IDC:

Director, Joanna Landau  
Jlandau@utah.gov

Direct: 801-209-5440

<https://justice.utah.gov/indigent-defense.html>