

UTAH INDIGENT DEFENSE COMMISSION

Annual Report
2019



*Protecting constitutionally guaranteed liberties
through ongoing support for effective indigent
defense services throughout the state.*

Commission Members (2018-2019)

Sam Alba, IDC Chair
Federal Magistrate Judge (Ret.)
Stakeholder, Snow Christensen &
Martineau

Michael Zimmerman, Past Chair
Utah Supreme Court Chief Justice (Ret.)
Founding Member, Zimmerman Booher

Senator Todd Weiler
Senate District 23

Representative Joel Ferry
House District 1

Kim Cordova
Executive Director, CCJJ

Mary T. Noonan
State Court Administrator

Pamela Vickrey
Executive Director
Utah Juvenile Defender Attorneys

Richard Mauro
Executive Director
Salt Lake Legal Defender Assoc.

Ryan Loose
City Attorney, South Jordan

***Nicole Cottle**
City Manager, West Valley City

Shawn Milne
Tooele County Commissioner

***Aimee Winder Newton**
Salt Lake County Councilmember

Margaret Lindsay
Supervising Attorney
Utah County Public Defender

Wally Bugden
Private Defense Attorney

Mary Corporon
Private Defense Attorney

* Stepped down as IDC Commissioner in October 2019. At the time of publication, no replacement for the position of a representative from a 1st/2nd class county or the city representative has been named.

LETTER FROM THE IDC CHAIRS



Michael Zimmerman has served as the Chair of the Indigent Defense Commission from its creation in 2016 to October 2019, when his term as chair expired.

Mr. Zimmerman is a former Chief Justice of the Utah Supreme Court and a founding attorney at the appellate firm of Zimmerman Booher. He has served on the Utah Courts' study committees and task forces on indigent defense, most recently the Judicial Council Study Committee on the Representation of Indigent Criminal Defendants in Trial Courts, which led to the IDC's creation.

In October 2019, IDC elected Sam Alba as the new IDC chair for 2019-2020.

Mr. Alba is a former federal magistrate judge, federal public defender, and federal prosecutor. He is currently a Shareholder at Snow Christensen & Martineau in Salt Lake City.

As two original IDC members, we are pleased to see Utah's commitment to its responsibility for indigent defense grow significantly since the IDC's creation in 2016.

IDC membership is diverse and committed to its mission to help the state and local governments improve criminal justice outcomes in Utah through investments in indigent defense.

In three short years, the IDC has expanded to work with 70% of Utah's 29 counties. And it is developing other ways to aid the state, including partnering with the RAND Corporation to create Utah-specific metrics for appropriate public defender workloads.

Aided by IDC grant funding, counties have made significant progress. One example is Utah County - an enduring supporter of independent public defense through its Public Defender Association, which now serves as a regional hub for services in multiple counties, and as the center of Utah's first effort to organize appellate indigent defense to provide an appropriate counterweight to the state-funded prosecution of appeals.

The Legislature's continued support will ensure the IDC's ability to maintain and expand its critical role in the state.

-Sam Alba & Michael Zimmerman

Indigent Defense: Return on Investment

STATE-LEVEL FISCAL AND ADMINISTRATIVE OVERSIGHT

The provision of indigent defense is a state obligation. Utah fulfills that obligation through delegation to local government and ensuring fiscal and administrative oversight over that delegation.

The IDC's grant program is the state's primary means of ensuring adequate oversight.

Effective indigent defense services are constitutionally mandated and ensure the proper functioning of the criminal justice system, the juvenile justice system, and the child welfare system.

PROPER FUNCTIONING OF JUSTICE SYSTEMS

EFFICIENCIES AND COST SAVINGS

Effective indigent defense services help ensure that public funds are not wasted on unnecessary pretrial incarceration, unnecessary removal of children from their homes, or wrongful conviction.

Funding Landscape

Utah signaled a long-term commitment to increased constitutional oversight for indigent defense services with the creation of the IDC.

The executive and legislative branches have worked to increase funding for the IDC's grant program. Funding has increased each year since the IDC's creation in 2016, reaching a high of \$4.3 million for grants to supplement local government spending in 2019. Utah's counties and cities spend \$35 million on indigent defense services annually, and the legislature's commitment is moving Utah towards a more balanced partnership and a Utah Solution to indigent defense.

2019 IDC FUNDING

Governor's
Recommended Budget: **\$5,000,000**

EOCJ's
Recommended Budget: **\$5,000,000**

Final IDC Budget: **\$5,141,800**

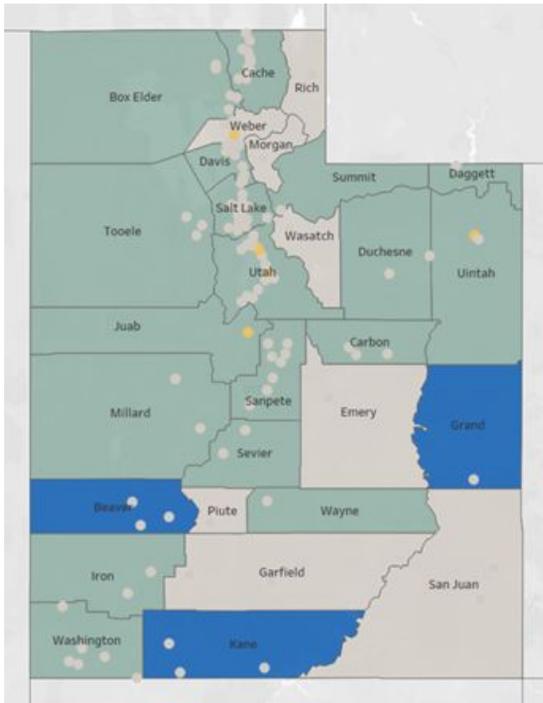
INCLUDES OPERATIONS \$, ISF \$, GRANT \$, AND MORE.
IDC STAFF OPERATIONS BUDGET IS ~ \$840,000.

Total IDC Grant Budget: **\$4,300,000**

The Legislature also demonstrated its commitment to indigent defense in policy initiatives, passing Senate Bill 32 by an overwhelming majority, thus ensuring youth do not face formal court proceedings without counsel by their side.

With ongoing funding for IDC's grant program and other initiatives, IDC will be able to achieve its statutory, statewide mandate. The IDC is committed to working with state and local partners to continue improving indigent defense services and ensuring no one is denied their constitutional rights in Utah's courts.

IDC Grant Program



- County receiving IDC grant funds
- County participating only in appellate pilot program

- The IDC awards grants to promote compliance with the IDC Core Principles.
- For FY20, the IDC has grant programming in **twenty-one counties** and **six cities**.
- In April 2019, the IDC received over **\$12 million in grant funding requests** from local governments.
- The IDC **awarded approximately \$3.6 million in grants**, with about \$700,000 available for additional programming to benefit local defense systems, including the appellate pilot and legal training programs.

CONTINUOUS IMPROVEMENT HIGHLIGHTS



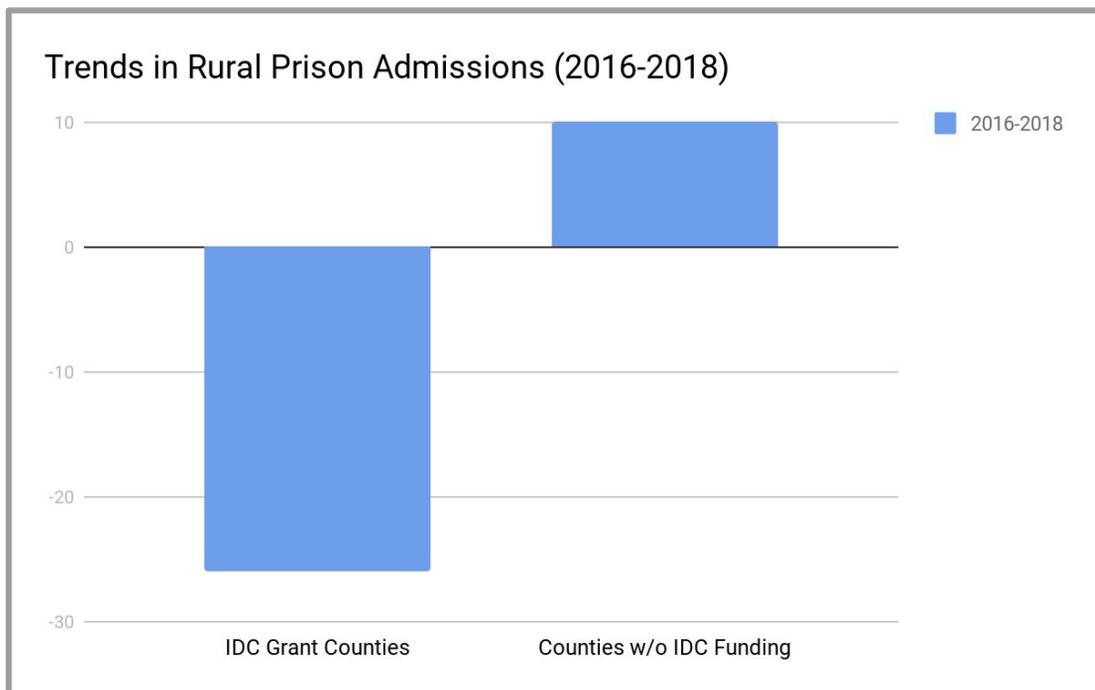
- Aligned grant reporting with IDC Core Principles to track performance and compliance.
- Trained project directors one-on-one, covering the grant award, core principles, available resources, and data reporting.
- Streamlined all grants to a one-year cycle (state fiscal year).
- Implemented tools that help simplify financial reporting for grantees.

GRANT IMPACT: Rural Incarceration Rates

Effective indigent defense services support the proper functioning of the criminal justice system and help ensure that public funds are not wasted, for example, on unnecessary incarceration.

A CCJJ analysis of prison admission rates from 2016-2018 provides a striking example of the potential impact of IDC's grant program.

The analysis found that rural counties awarded IDC grants experienced, on average, a **26% decline in prison admissions between 2016 and 2018, compared to a 10% increase for non-IDC grant recipients.**



GRANT IMPACT: 8th District Regional

This example of an IDC grant was funded with \$510,107 of IDC Funding + \$643,850 Uintah County + \$6k Daggett County Funding.

System Challenges Prior to IDC Funding:

NO INDEPENDENCE



COUNTY ATTORNEY'S OFFICE PROVIDED PARTIAL OVERSIGHT OF INDIGENT DEFENSE CONTRACTS

HIGH CASELOADS



PRIMARY DEFENSE ATTORNEYS AVERAGED 415+ APPOINTED CASES

SYSTEM INEFFICIENCIES



DEFENSE ATTORNEYS WERE ACCEPTING APPOINTED CASES IN 11 DIFFERENT COURTS

IDC GRANT HELPS TO PROVIDE:

INDEPENDENT OVERSIGHT



A MANAGING PUBLIC DEFENDER PROVIDES SUPERVISION OF INDIGENT DEFENSE SERVICES

REGIONALIZATION



INCREASE LOCAL CAPACITY FOR INDIGENT DEFENSE SERVICES THROUGHOUT THE 8TH JUDICIAL DISTRICT

RIGHT TO APPEAL



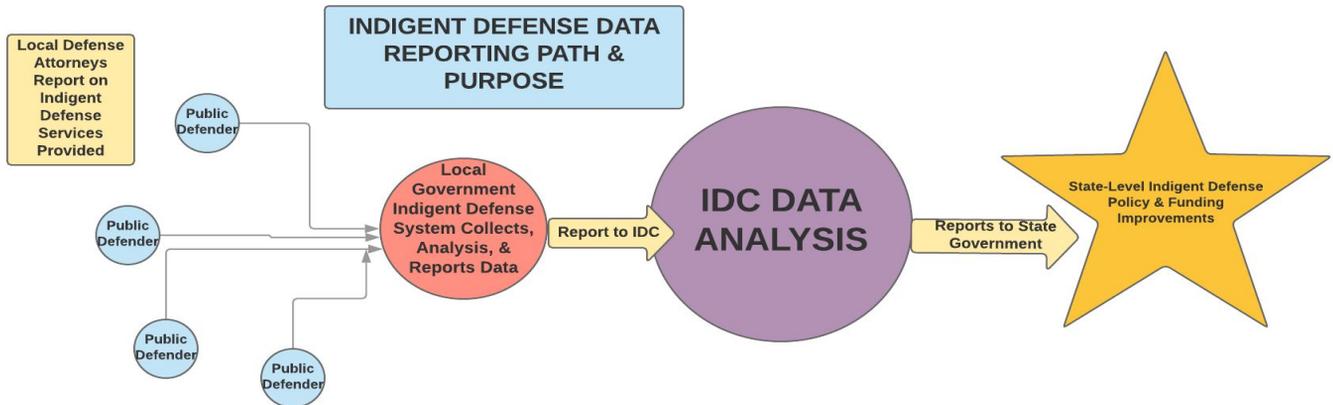
INCREASED FUNDING FOR INDIGENT APPELLATE REPRESENTATION

DATA COLLECTION



HIRING SUPPORT STAFF IMPROVES GRANT REPORTING

IDC Grant Data



WHY DO LOCAL GOVERNMENTS NEED TO COLLECT & REPORT DATA?

- Ensure public funds are utilized effectively/efficiently.
- Show they adequately provide constitutionally required services and identify areas for improvement.
- Access state and federal supplemental indigent defense funding.
- Be able to plan, budget, and forecast criminal justice expenses.
- Help convey information about local services.

WHY DO INDIGENT DEFENSE ATTORNEYS NEED TO COLLECT & REPORT DATA?

- Support budget/resource requests.
- Show effective defense promotes better outcomes & cost savings.
- Comply with the requirements of contract requirements.
- Properly identify conflicts of interests and track caseloads.

IDC Grant Data



The IDC collects data from local indigent defense systems that receive IDC funding to help demonstrate to systems and the state **1) grant effectiveness**; and **2) improved outcomes in indigent defense services** statewide as a result of IDC funding.

This reporting on financial and caseload data helps the IDC monitor and report on the impact of state funding, as well as identify progress and persistent gaps in indigent defense services.

In July 2019, the IDC implemented **new data reporting requirements** to:

1. Establish **baseline information** about Utah's indigent defense services;
2. Assist systems in meeting the Core Principles for Indigent Defense Systems; and
3. **Demonstrate compliance** with those principles to the Utah Legislature to support IDC's requests for renewed funding.

Because knowing the full picture of indigent defense services assists in communicating the needs of systems to the legislature, the IDC collects data for all courts within a grantee's jurisdiction (District, County Justice, Juvenile Delinquency, Child Welfare, City Justice, and Appellate). Additionally, the IDC requests attorney-specific data to assess caseloads and compensation.

The IDC continues to grow its capacity for data collection in order to connect its grant funding to larger system and social outcomes.

Senate Bill 32 (2019)

Indigent Defense Act Amendments



Senate Bill 32

Indigent Defense Act Amendments

THIS BILL RECODIFIES THE INDIGENT DEFENSE ACT, INCLUDING: ADDRESSING RIGHT TO COUNSEL; DETERMINING INDIGENCY; ORDERING INDIGENT DEFENSE SERVICES; ESTABLISHING STANDARDS FOR INDIGENT DEFENSE SYSTEMS; ADDRESSING COMPENSATION AND REIMBURSEMENT FOR INDIGENT DEFENSE SERVICES; PROVIDING FOR DEFENSE OF INDIGENT INMATES, INCLUDING PROVIDING FOR THE INDIGENT INMATE TRUST FUND; ADDRESSING THE INDIGENT AGGRAVATED MURDER DEFENSE TRUST FUND AND THE ROLES OF COUNTIES AND THE STATE; AND REPEALING LANGUAGE OUTDATED BECAUSE OF CHANGES MADE IN THE BILL.

The IDC is statutorily tasked with submitting recommendations for improving indigent defense services to legislative, executive, and judicial leadership.

In 2018, an empirical study based on hundreds of court observations across Utah reported that youth appeared without the assistance of counsel in approximately 30% of observed juvenile court proceedings.

The IDC convened juvenile justice stakeholders to address representation issues in delinquency proceedings. The resulting consensus policy position led to SB32, which requires automatic appointment of counsel for all youth in delinquency court proceedings and requires appointed counsel to be present at all stages of the proceedings.

The Legislature overwhelmingly passed Senate Bill 32 to ensure no minors face formal court proceedings without counsel.

Indigent Appellate Representation



UTAH'S 3RD-6TH CLASS COUNTIES

The right to appellate defense representation at government cost extends to all indigent individuals facing a loss of liberty or the termination of parental rights.

Effective and organized appellate defense representation is critical to a constitutional criminal justice system.

Utah has historically lacked an organized appellate defense system to provide these benefits or to provide an appropriate counterbalance to state-level appellate services provided for the prosecution, leaving serious service gaps in Utah's criminal justice system.

- In 2018, the Utah Supreme Court responded to systemic problems in indigent appellate defense. The Supreme Court created an **appellate roster**, which includes only attorneys with specific appellate advocacy skills and experience and is the sole source from which district and juvenile courts can appoint attorneys on appeal.
- In 2019, the IDC began a **pilot program to help counties of the 3rd-6th class** provide appellate defense. Nearly all of Utah's smaller counties are working with this IDC program to improve appeals, with the exception of Carbon, Emery, Garfield, Morgan, Rich, and San Juan counties.
 - Challenges remain, as there is limited oversight of appellate attorneys, no direct funding from the state to attorneys, and communication with trial attorneys before an appeal is filed needs improvement. This program is, however, a promising example of a partnership between state and local governments to improve indigent defense services.

Leveraging Federal Funds

IN 2019, THE IDC LEVERAGED **\$1.3 MILLION** IN FEDERAL FUNDS TO DRIVE INDIGENT DEFENSE IMPROVEMENTS

Bureau of Justice Assistance JAG BYRNE Grants:

The IDC has been allocated three JAG grants totalling **\$958,201** to:

- Provide case management software to local indigent defense providers.
- Fund a caseload/workload study of indigent defense systems in Utah.
- Evaluate the impact of social workers supporting public defenders.
- Fund two social workers: one at Utah Juvenile Defender Attorneys and one with Salt Lake Legal Defender Association.

Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention Grant:

In September the IDC received a **\$319,000** competitive grant from OJJDP to:

- Provide specialized juvenile delinquency indigent defense training.
- Host eleven quarterly, tuition free and geographically accessible trainings.
- Develop practice tools for juvenile defenders to use.

Dept. of Health and Human Services Title IV-E Funds:

The IDC is working with the Utah Division of Child and Family Services (DCFS) to draw Federal Title IV-E funds to:

- Provide funding for parental representation improvements.
- Funds will be a **12%-14% match** of state/local parental representation spending.



U.S. Department of
Health and Human
Services



Attorney Training Program

In 2019, the IDC launched a training program to help ensure all indigent defense attorneys have access to continuing legal education (CLE) relevant to their areas of practice. The FY20 budget is \$20,000.



The Legal Training Program:

- Addresses **regional gaps in training opportunities** for attorneys to keep current with legal developments and best practices.
- Supports **specialization** among defense attorneys in areas of adult criminal, juvenile delinquency, and parental defense.
- **Collaborates with existing training providers** (e.g. Utah State Bar, Utah Association of Criminal Defense Lawyers, Parental Defense Alliance of Utah, and Utah Juvenile Defender Attorneys) to **expand existing capacity** to reach the roughly 400 attorneys in Utah who are appointed on indigent defense cases.
- Provides **scholarships** that enable attorneys to attend regional and national trainings on topics not currently offered in Utah— e.g., the National Association of Public Defense Executive Leadership Institute for defenders in management roles.
- Educates IDC grant recipients and attorneys about available funding, the Defender Data case management system, and grant reporting requirements to **facilitate access to IDC grant funding and ensure compliance with grant program requirements.**



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