



THE ROLE OF A MANAGING DEFENDER IN UTAH'S INDIGENT DEFENSE SYSTEMS

April 2021

THE UTAH INDIGENT DEFENSE COMMISSION

The Utah Indigent Defense Commission was created by legislation in 2016 to help the state ensure its indigent defense services are consistent with the requirements of the United States and Utah Constitutions, and with Utah law.

The membership of the Commission includes key leaders in state and local government, private defenders, and indigent defense providers.

The Commission works with the state, local governments, indigent defense providers (public defenders), and others to provide guidance on standards for constitutional representation, gather data and information about indigent defense service provision, award grants to improve indigent defense services, and support the regionalization of indigent defense services throughout the state.

INTRODUCTION

This document is understood by the the Utah Indigent Defense Commission to be a guideline intended to help Utah's indigent defense systems¹ and attorneys working in those systems meet state and federal requirements for indigent defense services through increased organization in a single managing defender. Its aim is to help enhance systems and ensure long term accountability for the quality of local services to clients while ensuring that managing defenders are able to provide constitutional safeguards in Utah's systems.

A **Managing Defender** is a specific indigent defense provider with the role of coordinating attorneys, staff, and resources related to providing indigent defense services in a system or across multiple indigent defense systems. This person is the central point of contact for information about the system's indigent defense services and represents the system in various contexts. This attorney should have administrative experience along with significant experience defending adults, minors, and or parents against charges in court and should be selected by a merit-based process

A managing defender oversees a system or systems, where contract attorneys are court-appointed to represent individuals in criminal and juvenile court cases. The goal of instituting a Managing Defender (MD) is to have a person to increase the organization of a system and to advocate for more accountability for the local indigent

¹ "Indigent Defense System(s)" or "system(s)" refers to the local government entity that is responsible for providing indigent defense services in its respective state, county, or city courts; and the term includes counties, cities, towns, and any "interlocal entity . . . responsible for providing indigent defense services according to the terms of an agreement between a county, city, or town." Indigent Defense Act, § 78B-22-102(7).

defense services for long-term and consistent constitutional compliance. With more organization in a system, the managing defender can identify improvements and developments and ensure long-term benefits to systems.

The position of a managing defender is not new for Utah. Davis County has long had an MD as an employee, and since 2017 the IDC has funded several such positions. Yet the IDC recognizes that systems around the state are in different stages of development, and not all MDs will be able to execute all the activities on the list below, immediately. The position of a MD and the model for services in systems will inevitably evolve over time as more effective structures and procedures emerge. Building assigned counsel programs with strong structures and quality-control measures will enable consistent and meaningful representation to all clients and the longevity of a system's improvements.

The IDC believes the long-term benefits of this increased structure for indigent defense services will be seen by local systems and the state over time.

The IDC has set forth goals to guide the work of a managing defender in bringing organization and improvements to a system. The list is not comprehensive but should generally guide the work a managing defender does to ensure the system's criminal defense, delinquency defense, and parental defense services are effective and efficient.² The activities are meant to encourage all defense attorneys in a system to perform to a high standard of representation and to promote professionalism in the representation of individuals in court. These activities should be considered as a continuum that managing defenders may aim to implement over time in their system(s).

² "Indigent defense services" means both the representation of an indigent individual by a public defender and the provision of defense resources for that individual. Utah Code § 78B-22-102(7). The Utah Indigent Defense Commission is mandated to "adopt minimum guidelines for an indigent defense system to ensure the effective representation of indigent individuals consistent with the requirements of the United States Constitution, the Utah Constitution, and the Utah Code." Indigent Defense Act, Utah Code § 78B-22-404(1)(a).

RELEVANT RESPONSIBILITIES OF A MANAGING DEFENDER

- **A Managing Defender (MD) should work to create a meaningful organizational structure for local indigent defense services to ensure independence, accountability, and the effectiveness of public defense in a system for adults, parents, and minors facing district and juvenile court.**

Among the most central and important responsibilities of a MD is to advocate for support, independence, organization, and improvements to indigent defense services to allow public defenders to effectively represent every client for which they are court-appointed. The MD should advocate for and communicate with defenders and clients in the system to ensure consistency in local services. The 2020 audit of Utah's Justice Reinvestment Initiative recommended that local governments create local criminal justice coordinating councils. See https://olag.utah.gov/olag-doc/2020-08_RPT.pdf The managing defender should provide the voice of public defenders in these coordinating councils.

- **A Managing Defender should be the primary point of contact between local public defenders and other individuals working in the local courts and justice system.**

The MD should act as the spokesperson for the public defenders in a system and should be the primary point of contact with other individuals in the local justice system. Although those individuals may vary depending on the system, the MD should be a liaison or the primary point of contact to:

- ❑ **Local Governments:** Each local government in Utah is responsible for providing indigent defense services. The MD in a system or systems should meet regularly with local government officials to communicate benefits and challenges around services, and to advocate for the needs of public defenders. The MD may assist with soliciting defenders and staff, creating contracts, and accounting for funding, and should be prepared to make budget proposals to the system. The MD should ensure the process for defense funding and access to defense resources is independent from direct involvement of the prosecution, to system-compliance with state and local requirements for indigent defense.
- ❑ **Local Courts:** The MD should communicate with and advocate for public defenders with the local judiciary in relevant courts. This may include attending court meetings, centralizing appointment procedures or simply monitoring cases, advising on court-scheduling, ensuring the presence of counsel at all stages of

court proceedings, and keeping court personnel apprised of issues related to public defenders and clients.

- ❑ **Prosecutors and law enforcement:** The MD should regularly communicate with the prosecution around procedures affecting public defenders and their clients.
- ❑ **Behavioral and Mental Health Providers Liaison:** Where available, the MD should create connections and streamline processes between public defenders, clients, and local behavioral and mental health providers.
- ❑ **Pretrial Services:** Where these services are available, the MD should be in regular communication with pretrial services about effective but not excessive supervision while on pretrial release. The MD should ensure public defenders in the system understand pretrial options, and are prepared to advocate about the most effective and reasonably available and affordable pretrial services that will ensure release, public safety, and court appearances.
- ❑ **Jails.** If there is a local jail in the system, the Managing Defender should work with the jail commander and other staff to coordinate timely and protected client visits. Ideally the MD will create opportunities for pre-court visits and notifications to ensure effective representation at first appearances.
- ❑ **The IDC.** If the system works with IDC funding, the Managing Defender should work with the IDC to develop and implement grant funded items that address the system's needs. The MD should ensure reports to the IDC are accurate and demonstrate compliance with state and local requirements for indigent defense through quarterly financial reports, system needs evaluations, and attorney caseload surveys. MDs will be invaluable in guiding the IDC's legislative and policy work. Managing defenders can advise the IDC on legislative and policy issues, bringing much needed state-wide knowledge and experience to the discussions.

● **A Managing Defender should develop tools to ensure accountability for public defense to clients and funding entities.**

- ❑ **Hiring Staff.** Where funding is available for hiring additional staff in a system, the process should be merit-based and overseen by the MD. The MD should ensure applicant experience matches the requirements of the position and shall ensure all staff comply with attorney-client privilege and other requirements.

- ❑ **Adequate compensation.** The MD should implement procedures to ensure defenders are compensated adequately for the work they provide a system. This may include tracking caseloads and contract amounts in and across systems, to ensure parity and adequacy of indigent defense funding.
- ❑ **Defense Resources.** The MD should work with the system to develop a procedure to create independent and accountable procedures to review, track, and approve defense resources requests for investigators, experts, social workers, exams, testing, etc, by defenders in a system. The MD shall ensure that defenders have access to resources to assist in addressing complex or systemic issues that arise in challenging cases.
- ❑ **Adequate Meeting Space.** The MD should work with the system and/or the local courts to ensure there is adequate confidential meeting space to meet with clients in jails and courthouses, as well as attorney office space. The MD should ensure that defenders in a system have their own adequate space for client meetings.
- ❑ **Continuing Legal Education Requirements.** The MD should ensure defenders are aware of and attending CLEs relevant to their area of practice (criminal, juvenile delinquency, and/or parental defense representation).
- ❑ **Malpractice Insurance.** The MD should work with defenders to ensure adequate malpractice insurance is provided to ensure clients have coverage in the event of a viable claim against defenders in district and juvenile court.
- ❑ **Develop model forms and motions.** The development of a central forms and motions bank can help attorneys save time by not having to “reinvent the wheel,” and can assist new attorneys in the system.
- ❑ **Mentor public defenders.** An MD should provide advice and support to other attorneys in the system to help them develop high professional standards and provide quality representation to all clients. The MD should create regular communication channels for feedback and information sharing among defenders.
- ❑ **Second Chair.** An MD may act as or secure a second chair to another defender on difficult cases, or may suggest pairing more than one attorney on cases to increase capacity.

- ❑ **Receive and address client complaints.** The managing defender should develop a centralized procedure for receiving and addressing complaints about the systems' services.
- ❑ **Ensure timely appointment procedures.** The MD should implement procedures to ensure the early appointment of counsel and communication to counsel about appointments. Attorneys in the system should work with the courts to ensure counsel is present and informed at first court appearances, detention hearings, and shelter hearings.
- ❑ **Consistent Representation.** The MD should ensure all clients receive representation throughout the matter for which they are court-appointed, preferably by the same attorney through the case.
- ❑ **Centralize appointment procedures.** To control and balance workloads across public defenders in the system, the MD should eventually have a role in assigning appointed cases to attorneys based on capacity, workload, experience, and training to ensure an even and fair rotation of case assignments.
- ❑ **Implement Case Weighting.** The managing defender should create a process for understanding and weighting the workloads of each defender to ensure their ability to provide effective indigent defense services and not be so burdened by workload that they cannot provide zealous representation.
- ❑ **Monitor Conflict Checks.** Ensure conflict checks are being done by all attorneys, and identify the processes used by each attorney in the system. Memory and other unwritten tracking of clients and cases does not satisfy the responsibility to monitor for material conflicts.
- ❑ **Monitor Recoupment Requests.** The MD should ensure that any attempt to recover or recoup public defender fees from clients, should strictly adhere to the statutory limitations and processes, to avoid undermining the right to counsel or unduly imposing unaffordable fees on an indigent individual.
- ❑ **Implement Performance Reviews.** Design performance reviews for staff and attorneys with a significant caseload in the System. Create a performance review process through an open and fair process that is independent of the prosecution and judiciary. Ensure contract renewals incorporate performance reviews.

- ❑ **Quality Client-centered Representation.** The MD should ensure all assigned counsel in a system provide client-centered representation, which at a minimum shall include:
 - a . Contacting clients as soon as possible upon appointment or arrest.
 - b . Promptly meeting with clients in detention, in custody or out of custody, prior to court appearances.
 - c . Responding in a timely manner to client inquiries.
 - d . Ensuring client privacy and confidential communications are protected.
 - e . Communicating relevant information about a case to a client.
 - f . Advocating for and pursuing alternatives to incarceration where appropriate.
 - g . Collaborating with clients to achieve the client's objectives and the best result for that client.
 - h . Utilizing defense resources to investigate and zealously defend cases.
 - i . Determining and explaining the collateral consequences of any course of action to clients.
 - j . Taking all necessary steps to protect and preserve clients' post-conviction, post-disposition, and appellate rights.
 - k . Following the IDC's Core Principles for adult and juvenile court defenders. See idc.utah.gov.

Please reach out to the IDC at IDC@utah.gov with any questions about this document.