



CORE PRINCIPLES FOR  
INDIGENT DEFENSE SYSTEMS

## USER STATEMENT

This document, adopted by the Utah Indigent Defense Commission in August 2017, sets forth core principles for the provision of indigent defense representation in the State of Utah.<sup>i</sup> These principles are intended to encompass the provision of indigent defense services in three defined areas of practice—criminal defense, delinquency defense, and parental defense.

The purpose of these principles is twofold:

1. To provide guidance to government officials, policymakers, and other entities charged with providing, overseeing, assessing, and/or funding indigent defense systems<sup>ii</sup>;
2. To provide a yardstick for measuring the extent to which an indigent defense system ensures that individual attorneys within that system have the knowledge, ability, resources, and independence necessary to provide effective representation; and
3. To encourage appointed counsel to perform to a high standard of representation and promote professionalism in the representation of indigent individuals in Utah.

## 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 United States and Utah Constitutions.

The membership of the Commission includes key leaders in state and local government, criminal defense, indigent defense services, and the courts.

The Commission works with the state, local governments, indigent defense providers, and other stakeholders to: provide guidance on standards for constitutional representation, gather data and information about local indigent defense services, award grants to improve local indigent defense services, and encourage and aid in the regionalization of indigent defense services throughout the state.

## **PRINCIPLE 1/ ORGANIZATIONAL CAPACITY OF DEFENSE SYSTEM IS SUFFICIENT TO ENSURE COMPLIANCE WITH CORE PRINCIPLES**

The ability to meet the principles articulated below requires a threshold resource capacity- for example, adequate budget, administrative resources, and sufficient oversight capacity to monitor compliance with these systemic principles.

To the extent an indigent defense system lacks such resources, efforts shall be made to expand the system's organizational capacity—for example, through the pursuit of interlocal, resource-sharing agreements and through the pursuit of any available grants and/or other funding sources.<sup>iii</sup>

## **PRINCIPLE 2/ SYSTEM PROVIDES COUNSEL TO ALL ELIGIBLE DEFENDANTS, MINORS, AND RESPONDANTS WHO DO NOT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVE COUNSEL**

The U.S. Constitution and Utah Constitution both guarantee the right to counsel to all accused persons facing any possibility of incarceration or detention, regardless of financial status. Utah statute guarantees the right to counsel to indigent parents or legal guardians subject to child welfare proceedings and/or a petition to terminate their parental rights, regardless of financial status.

Accordingly, indigent defense systems shall cooperate with the courts to ensure that the financial eligibility determination and appointment process is free from unnecessary barriers and free from any explicit or implicit pressure to waive counsel.

## **PRINCIPLE 3/ SYSTEM PROVIDES PROPER SCOPE OF REPRESENTATION**

Effective representation commences in a timely manner, extends for the proper period of representation, and proceeds with reasonable continuity.

Accordingly, indigent defense systems shall ensure that the right to counsel extends to accused persons in criminal matters at all critical stages.<sup>iv</sup> Indigent parties in delinquency and child welfare proceedings shall be represented at all stages of the juvenile court proceedings.<sup>v</sup>

Indigent defense systems shall ensure that, as soon as feasible, clients are screened for eligibility and defense counsel are assigned and notified of appointment. The same attorney shall continuously represent the client, where feasible, until completion of the case.

#### **PRINCIPLE 4/ SYSTEM PROVIDES REPRESENTATION THAT IS INDEPENDENT & FREE FROM INTERFERENCE**

Indigent defense counsel's primary and most fundamental responsibility is to promote and protect the interests of the client. Defense counsel, therefore, shall be free to defend the client zealously, based on counsel's own judgement, and without fear of termination, reduction in compensation, reduction in staff, or reduction in defense resources.<sup>vi</sup> The selection, funding, and payment of defense counsel should be independent of the judiciary and independent of any prosecution entity.

#### **PRINCIPLE 5/ SYSTEM RECOGNIZES DISTINCT AREAS OF SPECIALIZATION WITHIN INDIGENT DEEFENSE**

Indigent defense encompasses distinct areas of practice- criminal defense, delinquency defense, parental defense, and appellate advocacy. Each is its own area of specialization, requiring a set of skills and knowledge distinct from what is required to practice in any other area.

Indigent defense systems, therefore, shall provide employment and contracting arrangements that separately account for criminal defense, delinquency defense, parental defense and appellate advocacy.<sup>vii</sup>

#### **PRINCIPLE 6/ SYSTEM ENSURES THE RIGHT TO APPEAL**

Indigent defense systems shall provide counsel for any first appeal of right.

Indigent defense systems, shall separately account for the provision of appellate services to ensure the right to appeal.<sup>viii</sup>

#### **PRINCIPLE 7/ SYSTEM PROVIDES REPRESENTATION THAT IS FREE FROM CONFLICTS OF INTEREST**

Effective representation is representation that is free from conflicts of interest.

Indigent defense systems shall ensure that defense counsel manage conflicts of interest issues in accordance with the Utah Rules of Professional Conduct.<sup>ix</sup> Systems shall also provide employment and contracting arrangements that separately account for conflict caseloads.<sup>x</sup> Those arrangements shall be made in a manner that do not create for defense counsel, a financial disincentive to declare a conflict.<sup>xi</sup>

## **PRINCIPLE 8/ SYSTEM PROVIDES EFFECTIVE REPRESENTATION**

Effective representation depends upon the efforts of qualified counsel who receive ongoing training, have appropriate caseloads, have access to defense resources, and receive proper compensation.

- **8A/ QUALIFICATIONS AND TRAINING**

Indigent defense systems shall ensure that defense counsel's ability, training, & experience match the complexity of the case.

Systems shall require attendance at and provide resources for continuing legal education in the area(s) of indigent defense practice undertaken by defense counsel.<sup>xii</sup>

- **8B/ APPROPRIATE CASELOADS**

Indigent defense systems shall limit total workload (which includes any private caseload and any indigent caseload undertaken with other jurisdictions) to allow for effective representation of each client.

Total caseload shall be set at a level that allows defense counsel to undertake the scope of work required to test the state's evidence in a meaningful manner in each case.<sup>xiii</sup>

- **8C/ ACCESS TO DEFENSE RESOURCES**

Indigent defense systems shall equip defense counsel with the tools necessary to provide effective representation, including adequate access to ancillary defense resources; i.e., defense function resources other than defense counsel, which, depending on the case, can include investigators, experts, social workers, interpreters, and/or forensic services.<sup>xiv</sup>

Systems shall provide access to ancillary resources in a manner that does not create for defense counsel, a financial disincentive to utilize ancillary resources on behalf of the client—for example, flat rate contracts where defense counsel pays for ancillary services out of their own flat rate compensation.<sup>xv</sup>

- **8D/ PROPER COMPENSATION**

Indigent defense systems shall adopt appropriate rates and methodologies of compensation that take into account the time, amount of work, and complexity of work required to provide effective representation.

Rates of compensation shall be in an amount sufficient to attract qualified applicants and sufficient to incentivize effective representation.

Indigent defense systems shall avoid employment or contracting arrangements that create disincentives for effective representation—for example, flat fee contracts that provide no limits on the number of cases defense counsel will be assigned during the contract period.<sup>xvi</sup>

## Notes

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<sup>i</sup> The 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.” Utah Code §77-32-804(1)(a).

<sup>ii</sup> “Indigent Defense System” or “System” means “indigent defense services provided by local units of government, including a county municipality; or a regional legal defense organization.” Utah Code §77-32-801.5(4)(a-b).

<sup>iii</sup> Utah Code §77-32-804(1)(b) (“The commission shall (...) encourage and aid indigent defense systems in the state in the regionalization of indigent defense services to provide for effective and efficient representation to all indigent individuals.”)

<sup>iv</sup> Utah Code §77-32-804(1)(a)(ii)(C) (“an indigent defense system shall ensure (...) the ability to provide representation to accused persons in criminal cases at all critical stages...”)

<sup>v</sup> Utah Code §77-32-804(1)(a)(ii)(C) (“an indigent defense system shall ensure (...) the ability to provide representation(...) at all stages to indigent parties in juvenile delinquency and child welfare proceedings.”)

<sup>vi</sup> Utah Code §77-32-804(1)(a)(ii)(A) (“Indigent defense service providers shall have the ability to exercise independent judgment without fear of retaliation and is free to represent and indigent individual based on the indigent service provider’s own independent judgment.”)

<sup>vii</sup> Utah Code §77-32-804(1)(a)(i)(B) (“an indigent defense system shall ensure [...] there is a separate contract for each type of indigent defense service and conflict cases”).

<sup>viii</sup> Utah Code §77-32-804(1)(a)(i)(B) (“an indigent defense system shall ensure [...] there is a separate contract for each type of indigent defense service and conflict cases”).

<sup>ix</sup> Utah Code §77-32-804(1)(a)(ii)(H): (“an indigent defense system shall ensure an indigent defense service provider has the ability to meet the obligations of the Utah Rules of Professional Conduct, including expectations on client communications and managing conflicts of interest.)

<sup>x</sup> Utah Code §77-32-804(1)(a)(i)(B) (“an indigent defense system shall ensure [...] there is a separate contract for each type of indigent defense service and conflict cases”).

<sup>xi</sup> Utah Code §77-32-804(1)(a)(ii)(E) (“an indigent defense system shall ensure an indigent defense service provider has adequate compensation without financial disincentives”).

<sup>xii</sup> Utah Code §77-32-804(1)(a)(ii)(F-G)(requiring “appropriate experience or training in the area for which the indigent defense service provider is representing indigent individuals” and “compensation for legal training and education in the areas of the law relevant to the types of cases for which the indigent defense service provider is representing indigent individuals.”)

<sup>xiii</sup> Utah Code §77-32-804(1)(a)(ii)(D) (“Service provider has (...) a workload that allows for sufficient time to meet with clients, investigate cases, file appropriate documents with the courts, and otherwise provide effective assistance of counsel to each client.”)

<sup>xiv</sup> Utah Code §77-32-804(1)(a)(ii)(B) (“Service provider has (...) adequate access to defense resources.”)

<sup>xv</sup> Utah Code §77-32-804(1)(a)(ii)(E) (“an indigent defense system shall ensure an indigent defense service provider has adequate compensation without financial disincentives”).

<sup>xvi</sup> Utah Code §77-32-804(1)(a)(ii)(E) (“an indigent defense system shall ensure an indigent defense service provider has adequate compensation without financial disincentives”).