



# Growing *Gideon*: Improving Indigent Defense in Juab County

A REPORT BY THE UTAH INDIGENT DEFENSE COMMISSION

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# EXECUTIVE SUMMARY

The focus of this report is the structural improvements made to indigent defense services in Juab County as a result of the partnership between state and local stakeholders. These stakeholders include the Utah Indigent Defense Commission (IDC), Juab County Commission and Attorney's Office, and the Utah County Public Defender's Office (UTCPD), and local attorneys. The Utah Legislature created the IDC in 2016 to provide meaningful state oversight and ensure Utah's indigent defense services are constitutionally effective. The IDC collaborates with the state, local governments, indigent defense providers, and other stakeholders to:

- provide guidance and standards for systems to ensure and oversee local defense services;
- gather and report information about local indigent defense services;
- award state funding to local governments to improve local indigent defense services; and
- encourage and aid in the regionalization of indigent defense services throughout the state.

For calendar year 2017, Juab County was the first recipient of an IDC grant award of \$111,800. Actual IDC spending totaled \$95,924, allowing the IDC to more accurately budget for a three-year grant renewal with Juab County in 2018. Additionally, identifying this amount helped to set the precedent for the startup and recurring costs of indigent defense improvements for future grant models throughout the state.

The data in this report make use of those efforts to measure improvements in a local indigent defense system as a result of state funding from the IDC. The data are compiled from many sources, including narratives submitted by Juab County, as a requirement of the IDC grant award. Additional data come from the Administrative Office of the Courts (AOC) on appointed case and case-specific information, and Sorenson Impact Center Data Science Team for providing quantitative metrics related to indigent defense statewide.

This report concludes that indigent defense in Juab County has seen the following improvements corresponding with the IDC's core principles:

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

- An 86% increase to the indigent defense budget with resources from Juab County and the IDC.
- An allocation of \$67,000 specifically for defense resources (e.g. transcripts, appeals, etc.).
- Oversight and monitoring provided by UTCPCD, including tracking cases and expenditures.

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

- A 12% increase in appointment at initial appearance in Nephi District Court.

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

- Early appointment of counsel resulting in a 5 - 10% increase in bail modifications.
- Continuous representation leading to more defense attorney appearances in court.
- An 8% increase in days spent on indigent defense cases by defense attorneys.

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

- Independent administration of the indigent defense budget, outside of the prosecution or judiciary, resulting in critical use of the budget for appeals, investigators, and conflict counsel without compromising attorney strategy or client privilege.

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

- Specialized attorneys appearing in District Court, Juvenile Court, and Drug Court.

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

- An increase in the appellate budget and a 150% increase in the number of appeals filed over the previous year.

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

- Splitting cases among defense attorneys (66.7% / 20% / 13.3% in District Court and Lead / Conflict in Juvenile Court) to increase specialization and reduce conflicts of interest.

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

### **8A/ Qualifications and Training**

- Contracting with qualified attorneys who are “vigorously defending cases.”

### **8B/ Appropriate Caseloads**

- Tracking appointed cases by UTCPCD and splitting cases among defense attorneys to prevent feeling “swamped” with cases.

### **8C/ Access to Defense Resources**

- Coordination between UTCPCD and defense attorneys to improve utilization of defense resources and case outcomes.

### **8D/ Proper Compensation**

- Appropriate compensation to avoid flat fee contracts and financial disincentives in accessing defense resources and declaring conflicts of interest.

A more in-depth look at these core principles and the associated improvements are set out in the following report.

Local stakeholders recognize the progress of indigent defense in Juab County, noting the presence of several defense attorneys in the courtroom “is a drastic improvement over the county’s previous arrangement,” according to the Juab County Attorney’s office.<sup>1</sup> Court calendars move along more quickly, time spent in court is efficient, and defendants are not rushed or pressured into making critical decisions. Overall, the Juab County Attorney’s office is extremely pleased with the local indigent defense improvement, stating “attorneys continue to vigorously defend cases which gives all parties (prosecutors, law enforcement, defendants, courts, etc.) more confidence in the criminal justice system.”<sup>2</sup> Improvements to indigent defense have been so far-reaching that Juab County and the IDC have renewed their partnership for an additional three years (2018 – 2020) and expanded the grant award to include a social worker and administrative assistant, as well as funding for attorney travel and training.

The progress in Juab County has also spread to other areas of the state. Since the first IDC grant to Juab County in 2017, Nephi City has come onboard to utilize IDC grant money in improving indigent defense services in its Justice Court. In addition, the IDC grant model first implemented in Juab County has led to grant awards in multiple counties within that same region of the state, including Utah County, Sanpete County, and Millard County. This multi-county system is one of Utah’s first regionalized indigent defense models under the leadership and independent oversight of UTCPCD.

1. Juab County Attorney’s Office. (2017). *Progress Report 2<sup>nd</sup> Quarter 2017 (Apr-Jun)*. Section 1.

2. Juab County Attorney’s Office. (2017). *Progress Report 2<sup>nd</sup> Quarter 2017 (Apr-Jun)*. Section 2.

# INTRODUCTION

The Sixth Amendment to the United States Constitution states “in all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defense.”<sup>3</sup> Further, the United States Supreme Court has made it clear, through cases such as *Gideon v. Wainwright*, that states must ensure the right to counsel to those who cannot afford it and are faced with the possibility of incarceration.<sup>4</sup> The State of Utah has delegated its constitutional responsibility to provide effective representation of counsel to indigent defendants primarily to counties and municipalities.<sup>5</sup>

Through the Utah Indigent Defense Commission (IDC), the State provides guidance and awards state funding to local governments to help local governments meet state and federal requirements for the effective assistance of counsel. Per Utah statute, these funds may be used to: assist local governments in providing indigent defense services that meet the IDC’s core principles, the establishment and maintenance of data collection systems, and for training and continuing legal education for indigent defense service providers (i.e. defense attorneys).<sup>6</sup>

Adopted by the IDC in August 2017, the Core Principles for Indigent Defense Systems are intended to guide indigent defense representation in Utah. 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:

1. To provide guidance to government officials, policymakers, and other entities who are charged with providing, overseeing, assessing, and/or funding indigent defense systems;
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.

It is through these core principles that the IDC has evaluated the first year of structural indigent defense improvements in Juab County. By way of a state and local partnership, the first IDC grant award was given to Juab County in 2017 resulting in significant structural changes to indigent defense. A snapshot of these changes and corresponding improvements are highlighted in this inaugural report.

3. U.S. Const. amend. VI.

4. *Gideon v. Wainwright*, 372 U. S. 335 (1963)

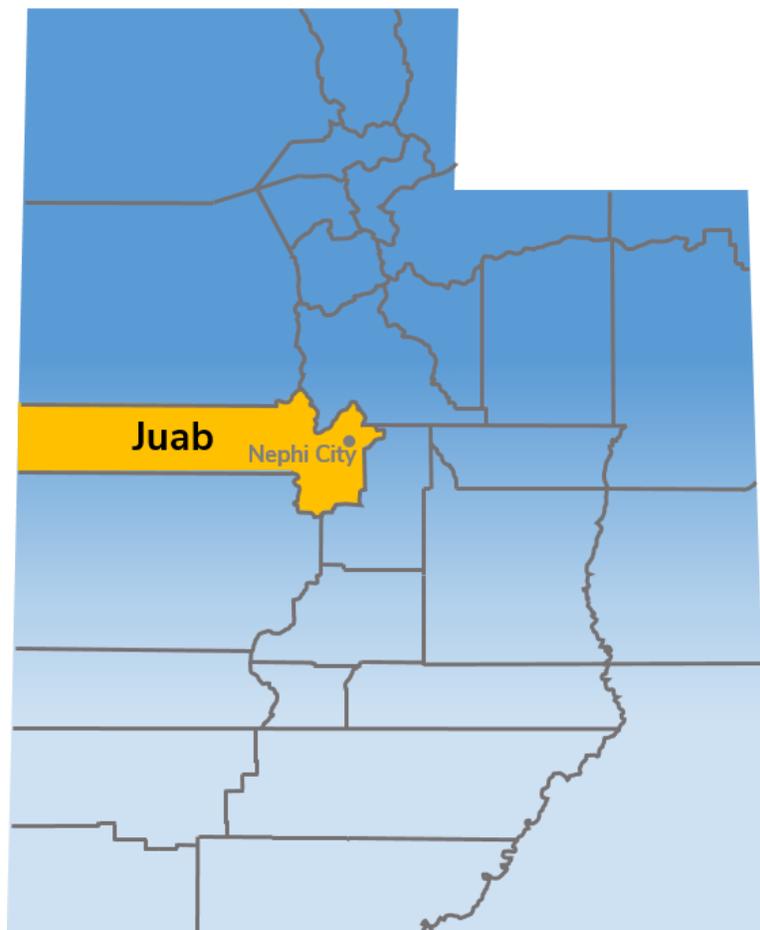
5. Study Committee on the Representation of Indigent Criminal Defendants in Trial Courts. (2015). *Representation of Indigent Criminal Defendants in Trial Courts Report*. Salt Lake City, Utah: Utah Judicial Council.

6. Utah Code §77-32-804(3)(a-c).

# BACKGROUND

Juab County is a rural county located in west-central Utah, covering 3,412 square miles and extending westward from the mountains of the Uinta National Forest to the border of Nevada.<sup>7</sup> One of Utah's earliest created counties, it sits along the north-south I-15 corridor adjacent to Tooele County to the North, Utah County to the Northeast, Sanpete County to the Southeast, and Millard County to the South.<sup>8</sup> Of its 11,250 county residents, approximately 5,952 (53%) reside in the county seat of Nephi City.<sup>9</sup>

**Figure 1. Juab County, Utah**



7 - 8. Wilson, P.D., McNulty, J., & Hampshire, D. (1999). *A History of Juab County*. Salt Lake City, Utah: Utah State Historical Society.

9. U.S. Census Bureau, Population Division. (2017). *Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2017*.

The Juab County judicial system belongs to the Fourth District Court of Utah. The Juab County judicial system is made up of Nephi District Court, Juab County Justice Court, Juab County Drug Court, and Nephi Juvenile Court. In recent years, monumental changes have impacted how this judicial system functions. In 2015, the State of Utah implemented the Justice Reinvestment Initiative (JRI) to reduce incarceration and recidivism rates across the state.<sup>10</sup> In 2016, Judge Anthony L. Howell was appointed to the Fourth District Court by Governor Gary R. Herbert. In 2017 Ryan Peters was sworn in, replacing Jared Eldridge as the Juab County Attorney. In addition to these changes, Juab County chose to partner with the Utah Indigent Defense Commission (IDC) to address indigent defense within the county.

Prior to contacting the IDC, Juab County had been contracting with a single defense attorney to handle the majority of cases in all practice areas, and another defense attorney to handle conflict cases. This arrangement resulted in inefficiencies within the courtroom and impeded the quality of indigent defense in the county. In December of 2016, the newly created IDC was approached by the county attorney for assistance in improving the quality of indigent defense in Juab County. As a result, Juab County became the first recipient of an IDC grant beginning on January 1, 2017.

To assist with this grant the IDC employed the help of the Utah County Public Defender's Office (UTCPD) to oversee the defense attorneys and defense resources, creating the necessary independence and oversight that was previously lacking. Increasing the number of defense attorneys available to represent indigent clients and providing a greater amount of defense resources have resulted in drastic improvements, including manageable court calendars and improved communication between defense attorneys and clients. Additionally, the IDC's statutory mandate expanded to better align with and address local practices through the inclusion of indigent defense providers in juvenile court.

10. Utah Department of Corrections. (n.d.). *About Utah's Justice Reinvestment Initiative*. Retrieved from [https://corrections.utah.gov/index.php?option=com\\_content&view=article&id=1097&Itemid=341](https://corrections.utah.gov/index.php?option=com_content&view=article&id=1097&Itemid=341).

# MEASURING INDIGENT DEFENSE

In 2017, the Utah Indigent Defense Commission (IDC) formally adopted core principles to assist indigent defense systems in providing effective representation. Indigent defense systems are responsible for providing legal defense to those who are unable to afford an attorney, in accordance with the Sixth Amendment of the United States Constitution. Therefore, these principles offer guidance to local governments furnishing indigent defense services throughout the state. It is through these principles that we evaluate the grant period (January 1, 2017 – December 31, 2017) in Juab County.

The measures in this report illustrate how these core principles can be implemented and provide structure when measuring system improvement. These are not comprehensive measures, but only a small number of indicators demonstrating improvements in Juab County based on currently available data. As it is too early in the grant process to evaluate outcomes produced by structural improvements to indigent defense, the indicators of improvement in this report serve as proxy measures for potential future outcomes.

The data are compiled from many sources including grant reports submitted by Juab County, appointed case information from AOC, and quantitative metrics from Sorenson Impact Center Data Science Team. While the majority of data are qualitative in nature, they support the examination of improvements resulting from a bolstered indigent defense system.<sup>11</sup> While such outcomes may be dependent upon external factors such as the judicial system itself, it does not diminish the impact of qualitative data for assessing indigent defense reform.<sup>12</sup> Furthermore the use of qualitative data to evaluate the impact of such system overhaul, given the short timeframe and limited geographic scope, accounts for the aspects that cannot be easily quantified.<sup>13</sup> As for quantitative data, it has been developed through observed patterns in qualitative data or collaboration with the Sorenson Impact Center Data Science Team.

As with any data set, multiple limitations restrict the evaluation of systemic changes and resulting improvements. First, the evaluation has only been done for a one-year period leading to a mere snapshot of improvements rather than sustainable trends over time. This limits the ability to rely on correlations in quantitative data and restricts patterns in the qualitative data to one year. Second, the narrative data were a result of compliance with IDC grant conditions requiring a quarterly update on the state of indigent defense in Juab County by grant stakeholders, including the Juab County Attorney's office. Third, given the one-year time period being examined, court cases utilized for analysis were at various stages of completion and many had not been resolved upon publication of this report. Finally, due to the complexity of the criminal justice system and limited amount of available data, direct causation cannot be inferred.

11 – 13. Lee, C.G., Ostrom, B J., & Kleiman, M. (2015). "The Measure of Good Lawyering: Evaluating Holistic Defense in Practice." *Albany Law Review*, 78.3, 1215 – 1238.

# Principle 1

## ORGANIZATIONAL CAPACITY OF DEFENSE SYSTEMS IS SUFFICIENT TO ENSURE COMPLIANCE WITH CORE PRINCIPLES

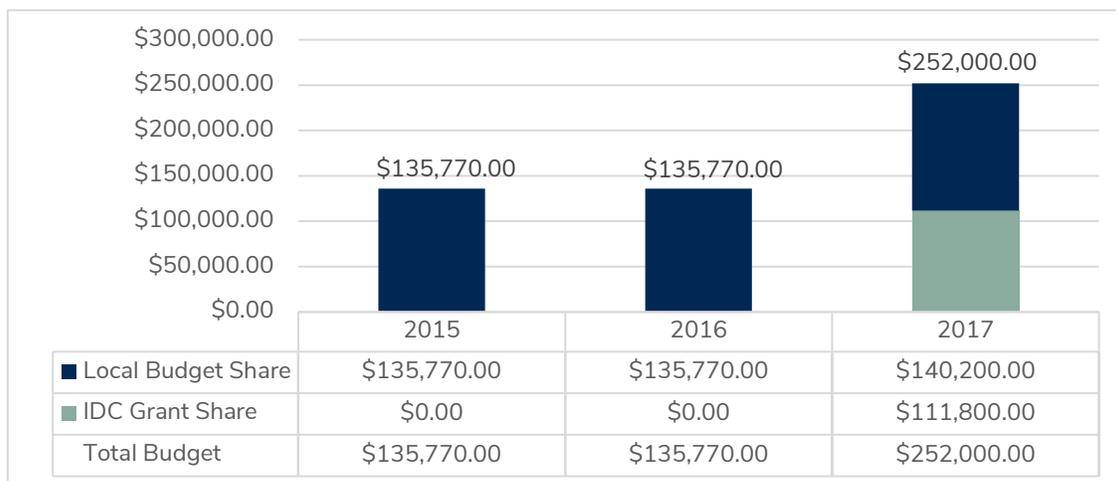
The ability to meet the principles articulated below requires a threshold resource capacity – for example, adequate budget, administrative resources, and sufficient oversight capacity to monitor compliance with these systemic principles.

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.

### Budget Increase

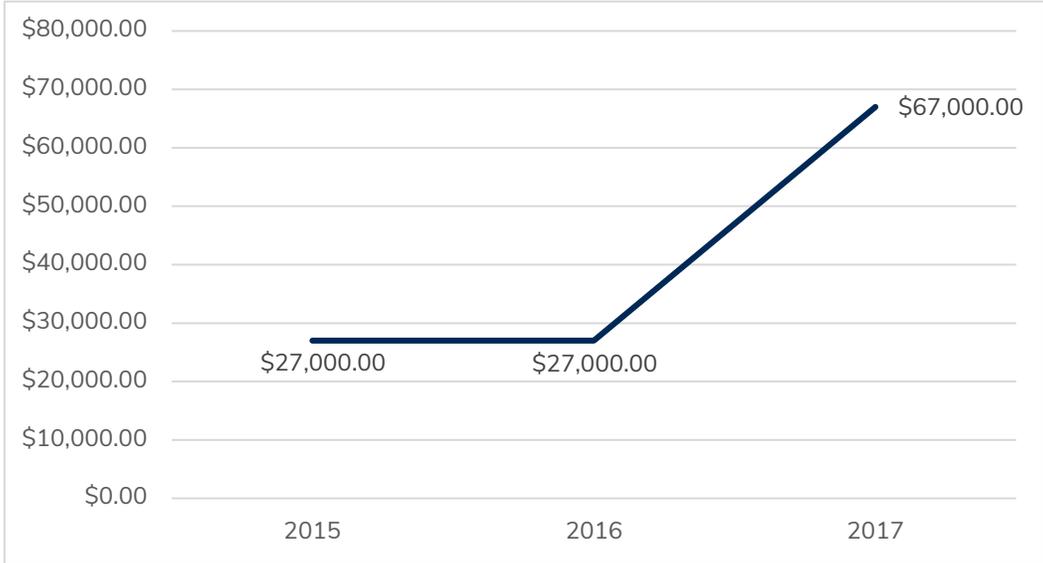
In 2017, the total budget for indigent defense in Juab County increased by approximately 86% (\$116,230) due to the joint efforts of the county and IDC to fund adequate indigent defense services. This budget increase was the result of the extensive need for comprehensive indigent defense services within the county and associated additional costs. These additional costs included an increase in number of defense attorneys, increased compensation for those attorneys, and an increase in available defense resources such as funds for experts, investigators, and appeals.

**Figure 2. Budget Increase for Indigent Defense in Juab County**



In addition to increasing the overall budget for indigent defense, money was allocated specifically for defense resources and other expenses (e.g. transcripts, appeals, translators, etc.). The total budget for defense resources increased by approximately 148% (\$40,000), again due to the joint efforts of the county and IDC. Not only did this ensure adequate resources available for effective representation, but defense attorneys do not pay for such expenses out of their base compensation.

**Figure 3. Budget Increase for Defense Resources in Juab County**



**Monitoring and Oversight**

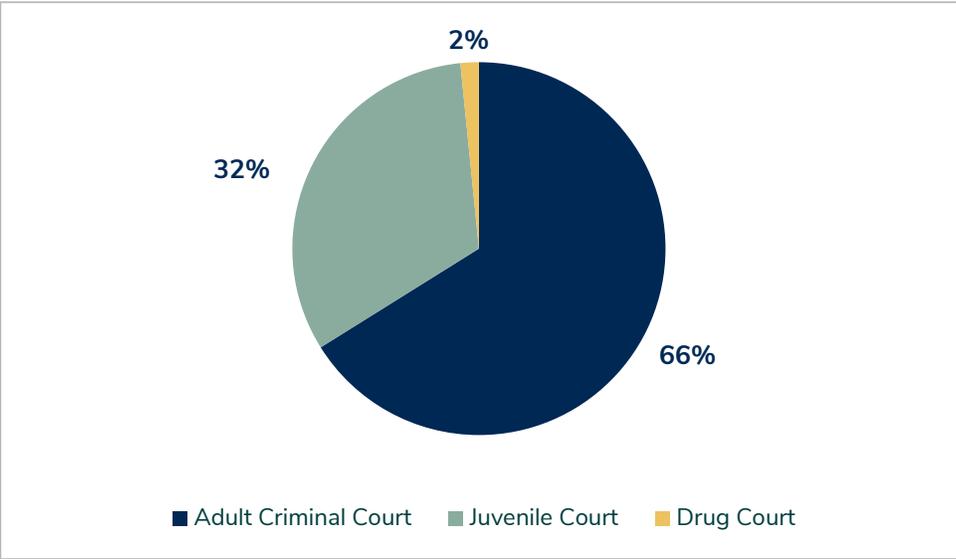
In compliance with the grant, Juab County participated in quarterly reporting to the IDC throughout 2017. UTC PD took on the responsibility of tracking appointed cases so that defense attorneys’ scope of work and caseloads are monitored while maintaining independence from judiciary and prosecutorial entities. A legal assistant at UTC PD assisted in coordinating operations in Juab County by tracking appointed cases and attorney case assignments.

**Figure 4. System Monitoring in Juab County**

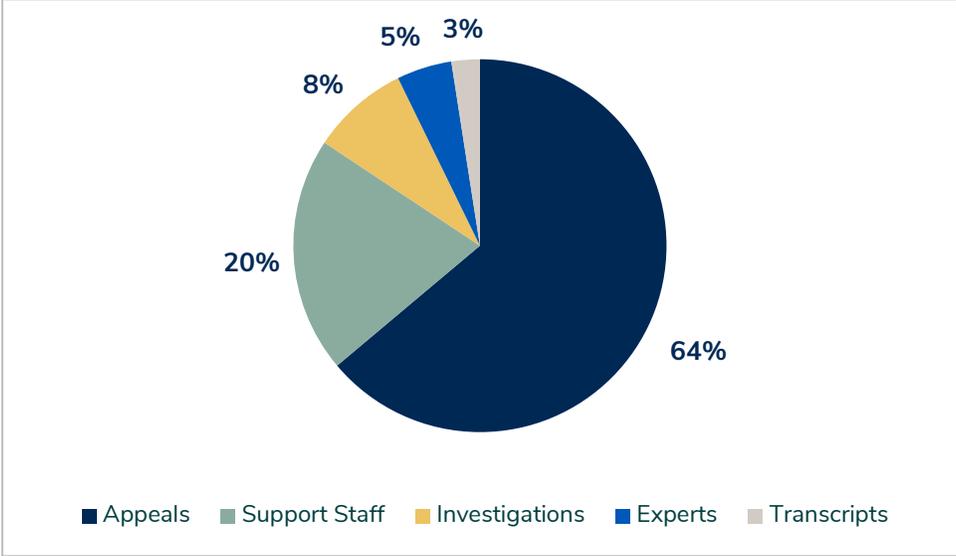
	2016	2017
System Oversight	NO	YES
System Caseload Reporting	NO	YES
System Financial Reporting	NO	YES

Monitoring the use of grant money and indigent defense expenditures was also required, contributing to a better understanding of indigent defense costs in the State of Utah.

**Figure 5. Allocation of Expenditures for Defense Attorneys in Juab County, January – November 2017**



**Figure 6. Allocation of Expenditures for Defense Resources in Juab County, January – November 2017**



# Principle 2

## SYSTEM PROVIDES COUNSEL TO ALL ELIGIBLE DEFENDANTS, MINORS, AND RESPONDENTS WHO DO NOT KNOWINGLY AND INTELLIGENTLY 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.

### Appointment at Initial Appearance

Upon increasing the number of attorneys in Juab County, there has been a simultaneous increase in the number of cases in which counsel was appointed at a defendant's initial appearance. This correlation can be attributed to extensive outreach to the judiciary and cooperation in ensuring appropriate eligibility determination to establish whether or not an individual may qualify as indigent under Utah law.

**Figure 7. Case Comparison for Appointment at Initial Appearance in Juab County – Nephi District Court<sup>14</sup>**

	2014 - 2016	2017	% Change
Appointment at Initial Appearance	108 Cases	121 Cases	+12%

14. Case comparison restricted to the following: prosecuted by Juab County, appointed by the court, district court case, appointed counsel flag in data, and no appearances by private counsel. Does not represent total appointed cases. Not all cases are closed and/or completed. Excluded cases include denial of appointment or appointment at a different stage of the case

# 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. Indigent parties in delinquency and child welfare proceedings shall be represented at all stages of the juvenile court proceedings.

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.

### Early Appointment

Early appointment of counsel allows for effective representation to begin as soon as a defendant makes contact with the judicial system, allowing for indigent defense providers to commence client advocacy immediately. One of the earliest points of advocacy is at bail hearings in which the type and amount of bail can be the difference between extensive jail time and returning to the community.

Prior to 2017, there were multiple instances in which defendants had to ask for their own bail to be reduced or were unable to be released from jail because appropriate motions for bail reduction were not filed. Since the IDC grant has taken effect, there has been an increase in the number of cases in which a bail status was changed from cash only to cash or bond. There has also been an overall decrease in the total bail amount for all cases with a granted bail reduction. These efforts create more attainable bail amounts so defendants may spend less time in jail and return to work and family prior to the next stage of their case.

**Figure 8. Case Comparison for Bail Modifications in Juab County – Nephi District Court<sup>15</sup>**

	2014 - 2016	2017	% Change
Bail Status Change - Cash Only to Cash/Bond	20 Cases	21 Cases	+5%
Decrease in Total Bail Amount	-59%	-65%	+10%

15. Case comparison restricted to the following: prosecuted by Juab County, appointed by the court, district court case, appointed counsel flag in data, and no appearances by private counsel. Does not represent total appointed cases. Not all cases are closed and/or completed. Only includes cases for which a bail reduction was granted at the request of counsel. Does not include any cases that were initially 'no bail' and then had a bail amount set.

## Continuous Representation

In an ideal indigent defense system, counsel should be able to provide representation at all critical stages of a case and continue that representation until the end. This includes being present at arraignments, plea bargaining, preliminary hearings, trial, and sentencing.

Since the IDC grant began, there have been numerous changes to the continuity of representation throughout the entirety of a case. There has been a decrease in the number of instances in which a prosecutor appears at a court appearance but no defense attorney appears, indicating that defense attorneys are appearing in court more often to represent their clients. This corresponds to an approximate 26% increase in the number of cases in which defense counsel appeared at arraignment, sentencing, or both.<sup>16</sup> Defense counsel is also spending more consecutive days on a case, with an 8% increase in the longest period of the same attorney appearing on a case. Finally, the Juab County Attorney's office has noticed that:

**Plea bargain offers are being communicated to clients enough in advance that defendants can consider and evaluate the offers with less pressure. In the past, these offers were routinely conveyed to the defendants in the courtroom just before their case was called and the defendant felt great pressure to either accept or reject the offer.<sup>17</sup>**

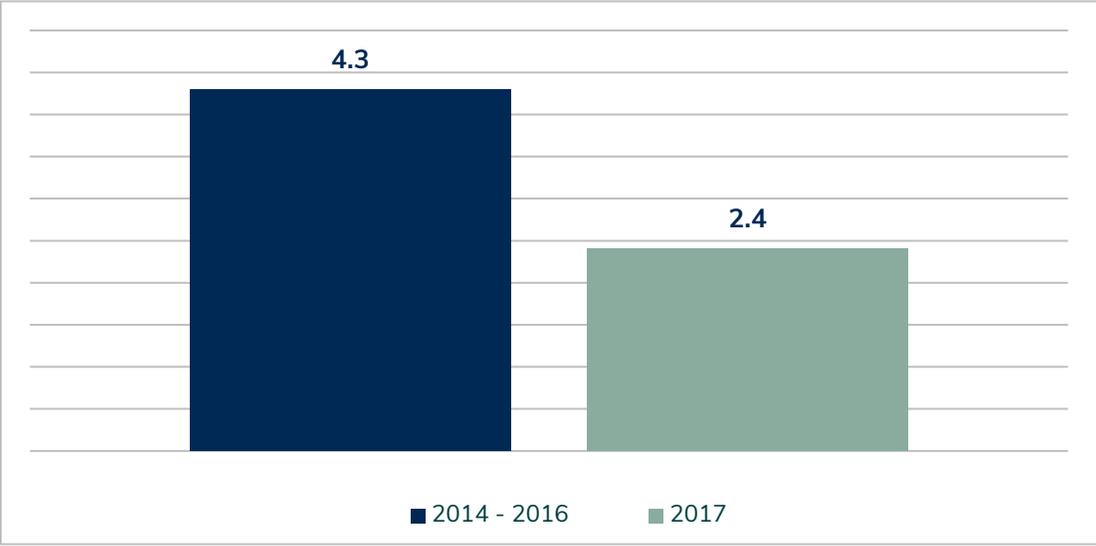
Having defense attorneys continuously available at critical stages of court proceedings is closely associated with early appointment. Specifically, it allows defendants the opportunity to assess plea bargain offers (and the associated consequences) extensively in order to make informed decisions prior to pleading.

Continuous representation has also extended to Order to Show Cause (OSC) and post-sentencing review hearings. With the implementation of the IDC grant, indigent defendants now maintain representation by defense attorneys rather than appearing pro se or having to invoke their sixth amendment right to counsel for a second time.

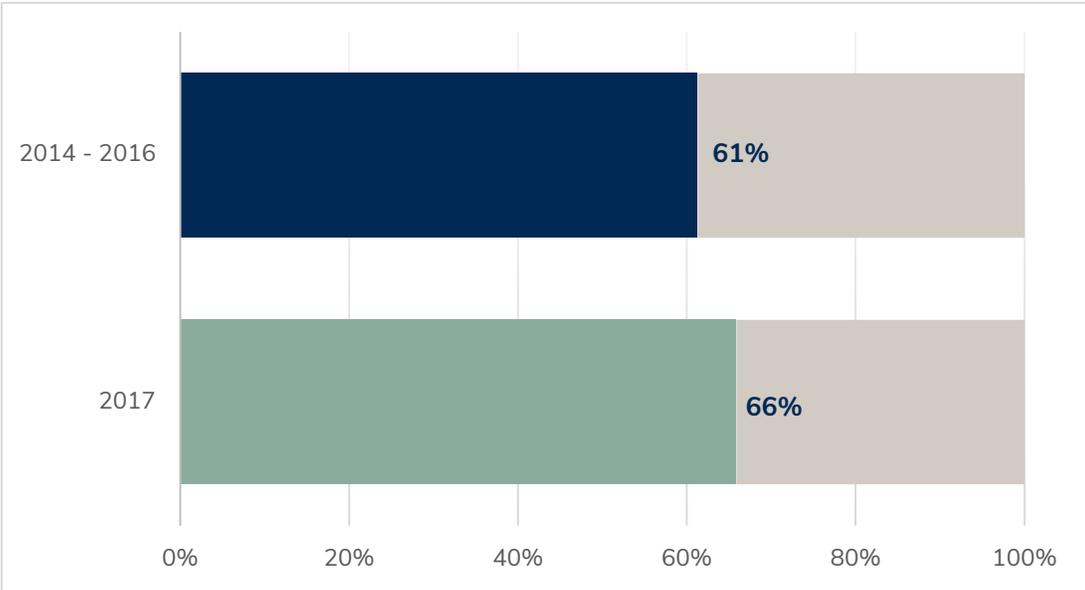
16. Case comparison restricted to the following: prosecuted by Juab County, appointed by the court, district court case, appointed counsel flag in data, and no appearances by private counsel. Does not represent total appointed cases. Not all cases are closed and/or completed. This count may include attorney appearances at only arraignment, only sentencing, or both. Almost every case had attorney appearances at both stages, if applicable.

17. Juab County Attorney's Office. (2017). Progress Report 1<sup>st</sup> Quarter 2017 (Jan-Mar). Section 6.

**Figure 9. Average Number of Appearances in which a Prosecutor is Present but a Defense Attorney is Not Present in Juab County – Nephi District Court<sup>18</sup>**



**Figure 10. Percentage of Total Case Duration in which the Same Defense Attorney Spends Consecutive Days on a Case in Juab County – Nephi District Court<sup>19</sup>**



18. Data courtesy of Sorenson Impact Center Data Science Team. "Defense missing – full case" metric.

19. Data courtesy of Sorenson Impact Center Data Science Team. "Total case duration – full case" and "longest same duration – full case" metrics.

# Principle 4

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## SYSTEM PROVIDES REPRESENTATION THAT IS INDEPENDENT AND 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 judgment, and without fear of termination, reduction in compensation, reduction in staff, or reduction in defense resources. The selection, funding, and payment of defense counsel should be independent of the judiciary and independent of any prosecution entity.*

### Independence

In 2017, UTCPCD agreed to oversee the defense attorneys and defense resources in Juab County, creating the necessary independence and oversight that was previously lacking. This oversight includes tracking attorney appointments and caseloads, while maintaining independence through managing the budgets for attorney compensation and defense resources. Through this independence, indigent defense providers are no longer beholden to the county commissioners or county attorney when requesting funds for resources and can instead focus on how to best serve the needs of indigent defendants. Examples of the decisions UTCPCD had the freedom to make within the first three months of the IDC grant include:

- **Authorizing the use of the appellate budget for appeals on at least two cases;**
- **Authorizing the use of defense resource funds to hire an investigator to interview witnesses for an upcoming trial; and**
- **Hiring an additional conflict defense attorney on a case with four co-defendants.<sup>20</sup>**

Defense attorneys have further confirmed the importance of this independence by noting how easy it is to coordinate with UTCPCD to get the funds for necessary defense resources. Without having to worry about funds, they can instead focus their attention on zealously providing a robust defense for their clients.

20. Juab County Attorney's Office. (2017). *Progress Report 1<sup>st</sup> Quarter 2017 (Jan-Mar)*. Section 2.

# Principle 5

## SYSTEM RECOGNIZES DISTINCT AREAS OF SPECIALIZATION WITHIN INDIGENT DEFENSE

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.

### Specialization

In 2017, the number of specialized defense attorneys in distinct practice areas increased to account for the various needs in the adult criminal, juvenile delinquency, and parental welfare cases. Prior to this, there was only one defense attorney handling the bulk of these cases in all of the courts and a second defense attorney available for dealing with conflict cases.

**Figure 11. Defense Attorney Specialization in Juab County**

	2016	2017
Specialization By Practice Area	NO	YES
Adult Criminal	1 Primary Attorney + 1 Conflict Attorney	5 Attorneys
Juvenile Delinquency		2 Attorneys
Parental Defense		
TOTAL	2 Attorneys	7 Attorneys

Specialization ensures defendants have defense attorneys with knowledge specific to their area of law, enhancing the quality of defense through specialized legal training and experience.

One area in which a dedicated, specialized defense attorney has made a difference is in Juab County Drug Court. Drug court case referrals have increased by approximately 56%, providing those dealing with drug-related crimes the opportunity to stay out of jail while still being supervised by the court. Having a dedicated drug court attorney provides these defendants with a knowledgeable advocate to assist them throughout the extensive drug court process.

**Figure 12. Case Comparison for Drug Court Referrals in Juab County – Nephi District Court<sup>21</sup>**

	2014 - 2016	2017	% Change
Referrals to Drug Court	9 Cases	14 Cases	+56%

21. Case comparison restricted to the following: prosecuted by Juab County, appointed by the court, district court case, appointed counsel flag in data, and no appearances by private counsel. Does not represent total appointed cases. Not all cases are closed and/or completed. This count includes those defendants who were referred to drug courts outside of Juab County. Depending on a defendant’s background and/or case(s), it may be more beneficial for them to participate in drug court outside of Juab County.

# 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.*

### Resources for Appellate Services

The right to appeal a criminal conviction is a hallmark protection of a fair criminal justice system. A convicted criminal defendant is assured that claims will be considered by an appellate court, while judges, prosecutors, and defense attorneys know the appellate court may help prevent erroneous outcomes – from wrongful convictions to legal and factual errors. Appellate decisions also help guide attorney and police practices at trial. An indigent defense system with zealous appellate representation helps to better protect due process and ensure fairness.

When the money for defense resources increased, funding of appellate services was included in the expansion of indigent defense services in Juab County. Approximately \$18,000 and \$6,000 were set aside specifically for District Court and Juvenile Court appeals, respectively. By the end of March 2017 (only three months into the grant) authorization had been given to use the appellate budget for an appeal on at least two cases.<sup>22</sup> At the end of November 2017, there were five appeals utilizing the defense resources budget in Juab County (a 150% increase over the previous year).

**Figure 13. Appellate Services in Juab County**

	2015	2016	2017
Number of Appeals	1	2	5
Appellate Spending	\$4,000	\$8,000	\$14,720

22. Juab County Attorney's Office. (2017). Progress Report 1<sup>st</sup> Quarter 2017 (Jan-Mar). Section 2a.

# Principle 7

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## 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. Systems shall also provide employment and contracting arrangements that separately account for conflict caseloads. Those arrangements shall be made in a manner that do not create for defense counsel, a financial disincentive to declare a conflict.*

### Availability of Conflict Counsel

A conflict of interest arises when there is a significant risk of an attorney's action on behalf of one client limiting the effectiveness of that attorney in representing another client in a different case<sup>1</sup>. Previously, Juab County had been contracting with one defense attorney to handle the majority of cases in all practice areas and another defense attorney to handle conflict cases. This arrangement led to inefficiencies in the courtroom including untimely declaration of conflicts and representation of co-defendants by the same defense attorney at trial. Upon receiving the IDC grant, Juab County agreed to split cases among defense attorneys.

The caseload was distributed among three defense attorneys in adult criminal court so no single attorney was being overwhelmed by handling the majority of cases on a calendar. This also reduced the possibility of conflicts. In addition, there were two conflict attorneys available on an as-needed basis. Even according to the Juab County Attorney's office, this arrangement is beneficial:

**When there are multiple co-defendants on a case, it is not a problem to appoint different attorneys so there is no danger of a conflict of interest. In one case, we had four co-defendants and UTCPD was able to contract with a fourth attorney... in order to avoid a conflict. This is something that would have taken a couple of weeks for the county to bid out and accomplish under our old arrangement.<sup>23</sup>**

Having several defense attorneys available to appear on existing cases and assist on conflict cases is more efficient than the previous arrangement of one attorney managing the majority of cases with occasional assistance on conflict cases.

Additionally, attorneys are able to declare conflicts without having to worry about a financial disincentive.

Juvenile court has also benefitted from having two specialized attorneys: one serves as the lead juvenile court attorney; the other serves as the conflict juvenile court attorney. This arrangement especially helps with parental defense cases which tend to have a larger number of conflicts due to the number of parties involved.

**Figure 14. Case Split and Contract Amounts in Juab County, 2016 – 2017**

2016		
Defense Attorney	Case Split	Contract Amount
M. Harmon	Primary – District Court, Justice Court, Juvenile Court	\$85,200
T. Bennett	Conflict – District Court, Justice Court, Juvenile Court	\$18,000
2017		
Defense Attorney	Case Split	Contract Amount*
S. Frazier	66.7% - District Court + Justice Court + Drug Court	\$81,375
T. Bennett	20% - District Court	\$24,200
JC Wright	13.3% - District Court	\$16,225
V. Grover	Conflict – District Court	As billed
G. Stewart	Conflict – District Court	As billed
L. Gallacher	Lead – Juvenile Court	\$40,000
C. Proulx	Conflict – Juvenile Court	\$20,000
*In addition to the individual contract amounts, an hourly fee of \$75 in cases that require more time than expected.		

# Principle 8

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## 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, and 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.*

Good public defense begins with good public defenders – meaning those maintaining active bar licenses, in good standing with the Utah State Bar, and with a wealth of experience and qualifications. With the increase in budget provided by the IDC grant, Juab County was able to contract with defense attorneys who meet and exceed these criteria. The Juab County Attorney's office has continually emphasized how these attorneys are "vigorously defending cases."<sup>24</sup> Also, the increase in good public defenders "has resulted in an effort by local law enforcement to improve the quality of investigation, reports and general police work."<sup>25</sup> Thanks to their tireless efforts, skill, and resource utilization, defense attorneys in Juab County have provided such robust defense that local law enforcement have been prompted to improve their practices. Not only do effective public defenders preserve the constitutional rights of defendants, but they can also positively influence other areas of the criminal justice system.

### **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.*

24. Juab County Attorney's Office. (2017). Progress Report 2<sup>nd</sup> Quarter 2017 (Apr-Jun). Section 2.

25. Juab County Attorney's Office. (2017). Progress Report 1<sup>st</sup> Quarter 2017 (Jan-Mar). Section 3.

Expanding the local budget for defense attorneys through an IDC grant has led to a case split among attorneys, resulting in a less overwhelming caseload for each attorney. One defense attorney even confirmed that he has not felt “swamped” with cases as a result of this caseload distribution.<sup>26</sup> Finally, the IDC grant required tracking the number of appointed cases for each defense attorney – something that had not been done in Juab County previously.

### **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.*

*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.*

Appropriate access to defense resources offers public defenders the opportunity to provide effective representation through the utilization of resources like investigators, experts, forensic services, etc. When Juab County partnered with the IDC, the handling of defense resources was removed from the oversight of the county attorney and transferred to UTCPCD. This transfer removed prosecutorial interference and provided defense attorneys a clear, independent pathway to access defense resources. Overall, it has been reported that it is easy to coordinate with UTCPCD for defense resources and defense attorneys are relieved to not have to worry about where money for resources is coming from.<sup>27</sup> An example of these resources being put to use is when:

**Contract attorneys used the investigative budget to hire an investigator to further investigate an aspect of a stolen car case that law enforcement had failed to follow up adequately. The result of the investigation revealed new information that convinced the prosecution to file a motion to dismiss.<sup>28</sup>**

Access to defense resources makes a difference when it comes to a well-rounded defense in the courtroom and, by taking steps to provide adequate access, the IDC grant has improved indigent defense in Juab County.

26 – 27. S. Frazier, interview, June 22, 2018.

28. Juab County Attorney's Office. (2017). Progress Report 1<sup>st</sup> Quarter 2017 (Jan-Mar). Sections 2b and 4.

**Figure 15. Budget for Defense Resources in Juab County**



**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.*

Compensation for defense attorneys in Juab County has increased per attorney, while the role and scope of work has been reduced. Splitting the caseload went hand-in-hand with compensating attorneys appropriately and avoiding flat fee contracts. Enhancements to this arrangement also included separating attorney pay from the budget for defense resources and avoiding financial disincentives when it came to declaring conflicts.

# The Future of Juab County

## 2018 – 2020 INDIGENT DEFENSE SYSTEM CHANGES

Upon renewal on January 1, 2018, the IDC and Juab County have committed to partnering on indigent defense improvements through December 31, 2020. Changes with this new, three-year grant include:

- A total grant award of \$915,938.50 for the three-year period, which includes separate funds for annual travel expenses and attorney training.

**Figure 16. Budget Overview for Juab County**

	2018	2019	2020
<b>Total Budget</b>	<b>\$413,373.33</b>	<b>\$455,441.44</b>	<b>\$467,723.73</b>
Local Budget Share	\$140,200	\$140,200	\$140,200
IDC Grant Budget Share	\$273,173.33	\$315,241.44	\$327,523.73
Defense Resources Budget*	\$65,000	\$65,000	\$65,000
Travel Budget	\$4,520	\$4,520	\$4,520
Attorney Training Budget	\$2,100	\$2,100	\$2,100
*Includes budget for appellate cases.			

- A full-time social worker to provide assistance to the legal defense team in Abuse, Neglect, and Dependency Proceedings – a first in Utah! Having a social worker is integral to the defense team and has been shown to produce better outcomes in states such as Washington and Oregon.
- A full-time administrative assistant at UTCPCD to increase the capacity in tracking of appointed cases and attorney case assignments. Both are crucial to ensuring appropriate reporting and grant accountability.

- A change in attorney compensation to include an annual cost-of-living adjustment (COLA) to accommodate inflation and changes in the labor market.

**Figure 17. Case Split and Contract Amounts in Juab County, 2018 – 2020**

		2018	2019	2020
Defense Attorney	Case Split	Contract Amount*		
S. Frazier	66.7% - District Court + Justice Court + Drug Court	\$83,979	\$86,666	\$89,440
T. Bennett	20% - District Court	\$25,181	\$25,987	\$26,818
JC Wright	13.3% - District Court	\$16,744	\$17,280	\$17,833
V. Grover	Conflict – District Court	As billed	As billed	As billed
G. Stewart	Conflict – District Court	As billed	As billed	As billed
L. Gallacher	Lead – Juvenile Court	\$41,280	\$42,600	\$43,964
C. Proulx	Conflict – Juvenile Court	\$20,640	\$21,300	\$21,982

\*In addition to the individual contract amounts, an hourly fee of \$75 in cases that require more time than expected.

All of the changes outlined above continue to expand upon the core principles and uphold the integrity of indigent defense within Juab County.

As the IDC is charged with collecting data and information about the provision of indigent defense services in the state, ongoing data collection remains an integral part of the grant in order to maintain transparency and fiscal responsibility. This continuation of data also allows for a follow-up evaluation of grant effectiveness and system improvements.

# CONCLUSION

The IDC works with Juab County to improve local indigent defense services, expand the reach of the core principles, and continue the integral relationship between the state and local governments.

With the implementation of the IDC grant in Juab County in 2017, various improvements in indigent defense occurred:

- 86% increase to the indigent defense budget.
- \$67,000 allocation specifically for defense resources.
- Independent oversight and monitoring, including tracking appointed cases.
- 12% increase in appointment at initial appearance.
- 5 -10% increase in bail modifications.
- 8% increase in days spent on indigent defense cases by attorneys.
- Independent administration of the indigent defense budget, outside of the prosecution or judiciary.
- Specialized attorneys appearing in District, Juvenile, and Drug Courts.
- 150% increase in the number of appeals filed.
- Reduced conflicts of interest as a result of splitting cases among attorneys.
- Contracting with qualified attorneys who are “vigorously defending cases.”
- Appropriate compensation to avoid financial disincentives in representation.

While still a system in progress, the Juab County Attorney’s office adds that there “has been a significant and dramatic improvement in the quality of representation indigent defendants are receiving.”<sup>29</sup> It has also been said that:

**Attorneys take time to consult with defendants and come to court prepared to move the case forward. This efficiency has also benefitted victims who are seeing cases resolve more efficiently which allows victims to have closure and minimize disruptions in their lives.**<sup>30</sup>

Through a strong partnership, application of core principles, and commitment to quality public defense, Juab County has seen massive benefits to its indigent defense system.

As the IDC and Juab County continue their partnership in improving indigent defense within the county, the next steps involve executing the most recent, three-year grant. Changes incorporated into this grant include:

- An increased budget to include separate funds for attorney travel and training.
- A full-time social worker to assist defense attorneys in Abuse, Neglect, and Dependency cases.
- A full-time administrative assistant to track appointed cases and attorney case assignments.
- A cost-of-living adjustment (COLA) to annual defense attorney compensation to accommodate economic fluctuations.

Additionally, ongoing data collection and system evaluation will continue to expand in order to assess grant effectiveness and indigent defense improvements.

Thank you to the Juab County Commission and Attorney's Office, the Utah Administrative Office of the Courts (AOC), Utah County Public Defender's Office (UTCPD), and all of the attorneys and staff that assist with this grant.



# Utah Indigent Defense Commission