

UTAH INDIGENT DEFENSE COMMISSION 2017 ANNUAL REPORT

Indigent Defense Commission Staff

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The Utah Indigent Defense Commission (IDC) was created in 2016 to help the State ensure its local indigent defense services meet the requirements of the United States and Utah Constitutions, and Utah law.

Message from the IDC Chair Michael Zimmerman

Entering my second year as Chair of the Utah Indigent Defense Commission, I am grateful for this opportunity to help report on the 2017 work and accomplishments of the Utah Indigent Defense Commission.

2017 marked the first year in Utah's history that a state Commission oversaw the spending of state money to subsidize local indigent defense services. This was a big step forward in creating a true state and local partnership to ensure constitutional indigent defense services throughout the state.

The IDC awarded one 2017 calendar year grant, but in 2018, six local governments received IDC grant awards (four counties and two cities). The dedication of the Commissioners, and tireless work of our IDC Staff in educating and assisting local governments with applications, brought us well-crafted grant applications and local entities who were eager to work with the IDC to enhance their local indigent defense services.

The Legislature's support has been critical to enable the IDC to fulfill its mission to help local governments. We extend particular thanks to Senator Weiler, the sponsor of the IDC legislation and a dedicated advocate for our work. Appropriations are the backbone of our work for the State. The Judiciary and Executive branch have also been essential partners in supporting our work.

This report gives an overview of the IDC's work in its first full year with staff. It highlights the local governments that are successfully improving their Constitutional services for indigent people, by working with the IDC. We look forward to continued opportunities for improvement. Thank you.

2017 – 2018 IDC Membership and Nominating Entity

Chair Michael Zimmerman, Zimmerman Booher, Utah Judicial Council

Utah State Senator Todd Weiler, District 23 Legislature

Kim Cordova, Executive Director, Utah Commission on Criminal and Juvenile Justice

Richard Schwermer, State Court Administrator, Administrative Office of the Courts

David Shawcroft, Utah County Attorney's Office, Civil Division, Utah Assoc. of Counties

Claudia Jarrett, Sanpete County Commissioner, Utah Assoc. of Counties

Nicole Cottle, West Valley City Assistant City Manager, Utah League of Cities and Towns

Ryan Loose, South Jordan City Attorney, Utah League of Cities and Towns

Sam Alba, Snow Christensen & Martineau, Utah Minority Bar Association

Margaret Lindsay, Utah County Public Defender, Utah Parental Defense Alliance

Pam Vickrey, Utah Juvenile Defenders, Utah Association of Criminal Defense Lawyers (UACDL)

Wally Bugden, Bugden & Isaacson, UACDL

Mary Corporon, Christensen & Jensen, UACDL

Richard Mauro, Salt Lake Legal Defender Association, UACDL

**– 2017 LEGISLATURE –
NEW STATUTORY DUTIES, IDC
COMMISSIONERS & IDC STAFF**

In the 2017 Legislative Session, SB134 expanded the IDC’s mandate from adult criminal defense to include overseeing the constitutionality of court-appointed counsel for juveniles in delinquency actions and parents in child welfare cases. Two new IDC commissioners and staff joined the IDC to expand its indigent defense expertise in these areas of the law.

New IDC Commissioners

Pamela Vickrey joins the IDC as the Executive Director of the Utah Juvenile Defender Attorneys in Salt Lake City, an independent office dedicated to vigorously representing youth in delinquency cases. Her national service to youth and juvenile justice is unparalleled, and Ms. Vickrey is a nationally-certified trainer for juvenile defense attorneys. In Utah, she has been critical to many legislative reforms to help youth across the state.

Margaret Lindsay brings to the IDC, her experience as an Assistant Director in the Utah County Public Defender Association where she oversees the Juvenile Court and Appellate Divisions. Ms. Lindsay has represented children in delinquency actions and parents in parental rights termination cases for many years, and she serves on many boards and legal committees.

New Staff

Assistant Director Jojo Liu joined the IDC staff in June 2017. Previously a visiting professor at the University of Utah College of Law, Ms. Liu spent a decade, before moving to Utah, as the Clinical Director at the Center for Juvenile Law and Policy at Loyola Law School. There she defended children, while working to improve the quality of defense representation in the nation’s largest juvenile justice system.

Grants Program Specialist Darien Hickey joined the IDC staff in October 2017, to develop and oversee the IDC’s grant program with local governments. She holds a Master’s Degree in Sociology, and previously worked to ensure Utah’s compliance with the Federal Juvenile Justice Delinquency Prevention Act through Utah’s Commission on Criminal and Juvenile Justice. Before moving to Utah, she helped to implement Louisiana’s statewide justice reform initiative.

2018 MEETING SCHEDULE

Meetings. The IDC met monthly in 2017, but will meet less frequently as a full Commission in 2018 to allow for more subcommittee and staff work between meetings.

*All 2018 meetings are at **2:00 pm** at the IDC Office
370 E South Temple, Suite 500.*

January 11, 2018

February 22, 2018

May 10, 2018
(grant review meeting)

July 18, 2018

November 8, 2018
(grant review meeting)

December 6, 2018

The IDC has accomplished a tremendous amount in its first full year of work.

Staff. The IDC Director was hired in October 2016, and now oversees three fulltime staff and interns.

Grants. The IDC developed a grant application to allow local governments to apply for IDC grants (from Legislative appropriations) to improve local indigent defense services. The application also helps the IDC to collect data about local services, and determine how best to use state money to improve local indigent defense services.

IDC Core Principles for Indigent Defense Systems.

The IDC is charged with developing principles to help guide the delivery of constitutionally effective indigent defense services in the state. There is no one way to provide constitutionally effective defense representation, but these principles establish the minimum standards required for local governments to ensure a constitutional indigent defense system. To receive IDC grants, local governments must commit to complying with these principles.

The IDC grant application and Core Principles are at:

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

Utah Code § 77-32-301(1), requires Utah’s local governments to provide all Constitutional indigent defense services.

Therefore, any County or City that prosecutes cases, must also provide constitutionally effective indigent defense services.

All 29 Counties and around 158 cities fall under this mandate and are all therefore eligible for IDC grants.

6th Amendment Education. The IDC makes recommendations to leadership in state government, and in local governments, about ways to improve the constitutionality of local indigent defense services in the state.

IDC staff travelled throughout the state in 2017, to promote the IDC’s work and communicate with local governments about the importance of ensuring constitutionally effective defense representation in their courts. Many hardworking local government leaders expressed gratitude for these presentations explaining the complexities of their indigent defense responsibilities.

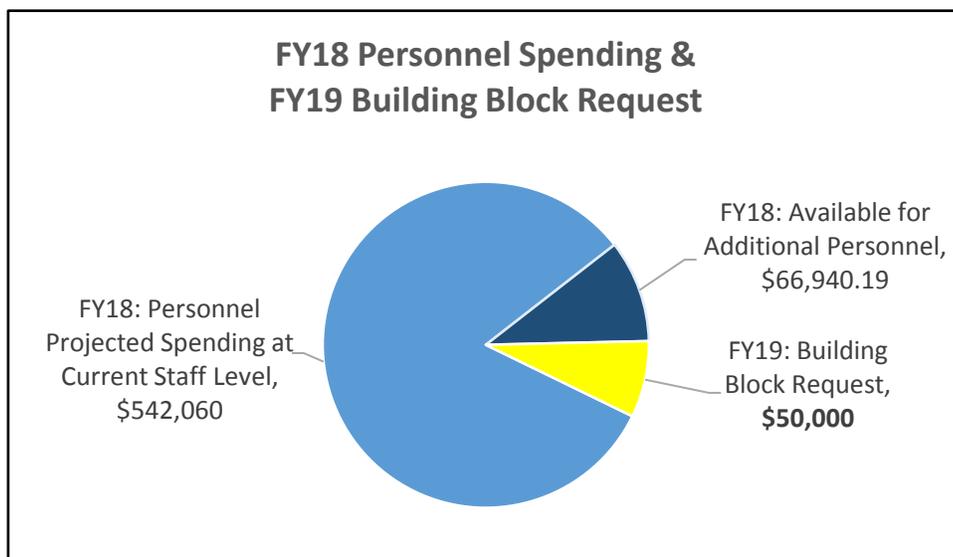
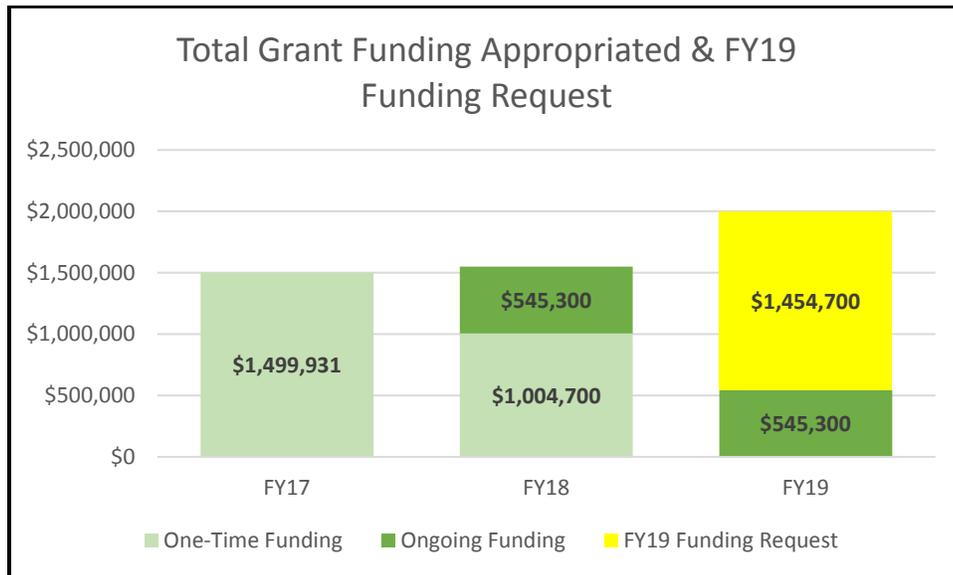
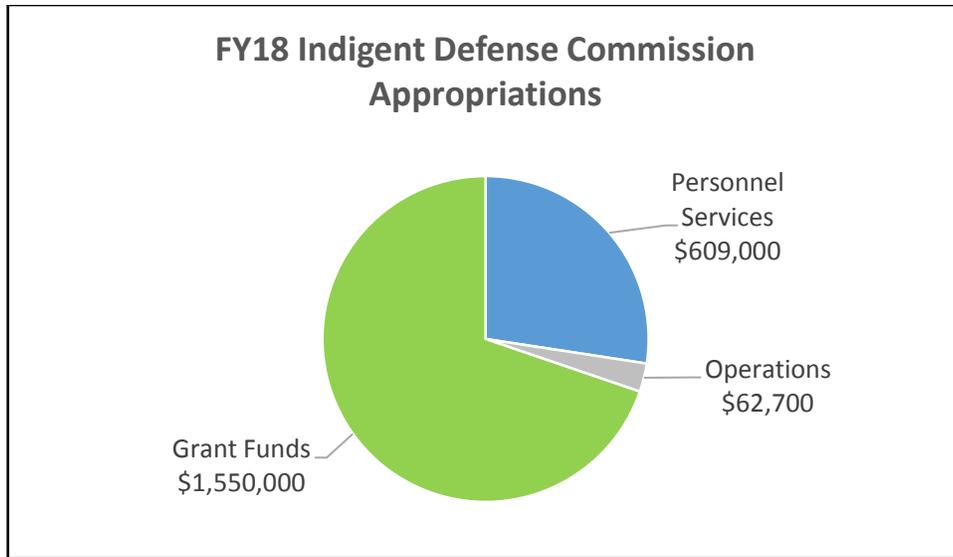
The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.

- Gideon v. Wainwright

1963 United States Supreme Court case determining the 6th Amendment Right to Counsel was fundamental and applied to the states.

2017 Presentations

- *Local governments.* IDC staff presented to County Commission, and City and County Council meetings throughout the state.
- *UAC & ULCT Presentations.* Staff presented to annual meetings and a UAC Management Conference.
- *Judiciary.* Reports were made to the Judicial Council, the Board of Justice Court Judges, and the Utah Supreme Court.
- *Legislative.* IDC staff reported to the Legislature in the 2017 General Session and interim meetings, to discuss IDC work, preliminary data, and the importance of ongoing funding for IDC grants.
- *Executive.* The IDC is an independent agency in the Commission on Criminal and Juvenile Justice, and regularly communicates with Executive Branch leadership about its work and the state’s responsibilities for ensuring constitutional indigent defense.
- *Utah State Bar Commission and other attorney conferences.* Support from the private bar is critical to the work of public defenders, but the private bar often has no experience with public defense work.



IDC GRANT AWARDS/SPENDING

Using legislative appropriations, the IDC awarded several grants in 2017 and early 2018. The grants are used to reimburse local governments for improved indigent defense services on top of their historic local indigent defense spending. IDC grants may not supplant local spending.

GRANT RECIPIENT	GRANT AMOUNT	TERM YEARS
JUAB COUNTY (2017)	\$95,924	1
JUAB COUNTY (2018)	\$946,105	3
UTAH COUNTY	\$1,398,144	2
NEPHI CITY	\$59,700	3
SALT LAKE COUNTY	\$368,530	2
UINTAH COUNTY	\$149,000	1
OGDEN CITY	\$28,824	3
TOTAL	\$3,046,227	

Juab County Pilot Project Grant. The 2017 Juab County grant achieved dramatic improvements to local indigent defense services.

Using \$95,923.82 of IDC grant money (slightly less than originally budgeted), on top of Juab’s local budget of \$115,200, the County replaced its sole contractor with seven attorneys: allowing for conflicts of interest to be properly identified, specialized attorneys to appear on criminal and juvenile appointed cases, and investigators and experts to fully test the prosecution’s evidence. Additionally, with balanced caseloads, these attorneys were able to appear early in their cases, fully investigate the evidence, and ensure busy criminal court calendars ran more efficiently while still improving client services in the county.

Juab 2018-2020 Grant. Building on the success of the 2017 grant, the 2018 IDC grant to Juab County, adds more defense resources: to ensure attorneys

stay abreast of developments in criminal and juvenile law through continuing legal education classes, travel reimbursements, administrative assistance, and for the first time ever in Utah, a social worker employed to help defense attorneys representing indigent parents in state-initiated termination cases, ensure parents attend all necessary meetings and hearings, and increase the likelihood of reunification or move children more efficiently toward other permanency options. **Juab is receiving up to \$946,105 over 3 years for these services.**

The Utah Supreme Court will reverse a criminal convictions where trial counsel fails to adequately investigate the evidence.

We have repeatedly held that one of criminal defense counsel's most fundamental obligations is to investigate the underlying facts of a case. This duty is not optional; it is indispensable," and "failing to investigate because counsel does not think it will help does not constitute a strategic decision, but rather an abdication of advocacy.

State v. Lenkart, 2011 UT 27,

The Court reversed convictions for rape, sodomy, and sexual abuse where trial counsel failed to investigate and present important exculpatory physical evidence at trial.

Utah County. This County is critical to the IDC’s mandate to centralize indigent defense services.

The Utah County Public Defender Office is a longstanding public defender office, with whom the IDC is working to supervise attorneys representing clients through IDC grants in Juab County and Nephi City. The Utah County Public Defender has not had a sufficient budget increase to keep up with increased cases and workloads. **With the County’s cooperation, Utah County is receiving up to \$1,398,144 over 2 years for additional attorneys and increased defense resources.**

Ogden City. Ogden City is the first municipality to receive IDC grant funding for its innovative program to ensure its contract-defense attorneys in its justice court have early access to discovery. This allows attorneys to better determine the sufficiency of the evidence, the reasonableness of any plea agreements, and otherwise provide more effective, early representation; another bellwether of constitutional indigent defense. ***Ogden was awarded \$28,824 over 3 years.***

Ensuring appropriate attorney workloads, is a hallmark of constitutional indigent defense.

[The American Bar Association's Ten Principles of a Public Defense Delivery System](#), require that:

Defense counsel's workload is controlled to permit the rendering of quality representation.

When an attorney is appointed on too many cases, she has insufficient time for each client, cannot investigate evidence or her clients' circumstances, cannot seek pretrial release, cannot explore legal issues, and cannot prepare for hearings or trial, which are all critical to constitutional representation.

Unnecessary incarcerations result when defense attorneys cannot take these steps.

Uintah County. Uintah County made significant improvements to its indigent defense services in 2016, which increased local spending. Facing decreasing County revenues in 2017, the County sought a grant from the IDC to maintain the already improved services. The IDC worked with County officials and defense attorneys to determine the best use of IDC funds to maintain and further improve local services. ***Uintah County is receiving \$149,000 for 2018, to increase attorneys, provide training, and access more defense resources.***

Nephi City. The attorneys appearing on Juab County's appointed cases, are now additionally working in Nephi City to represent its indigent clients charged in justice court. IDC money is being used for defense resources in the City, allowing for investigations and research in appointed cases. ***Nephi City is receiving \$59,700 over 3 years for more attorneys, training, and defense resources.***

SLCO & Operation Rio Grande. The IDC awarded Salt Lake County a grant to allow the Salt Lake Legal Defender Association (LDA) to hire two attorneys for the increased workload from the Operation Rio Grande arrests. The increase in cases was causing LDA attorneys to struggle to provide constitutional defense services. The additional attorneys helped alleviate these caseloads. ***SLCO is receiving \$368,530 over 2 years for 2 new full time attorneys to help alleviate appointed caseloads resulting from Operation Rio Grande.***

With these grants, the IDC's FY2016 and FY2017 appropriations are nearly all obligated, making additional ongoing legislative appropriations essential.

IDC staff continues to educate and encourage local governments to make improvements to local defense services throughout the state.