

# INDIGENT DEFENSE IN UTAH

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# Right To Counsel - Legal Sources

- In all criminal prosecutions the accused shall have “*the assistance of counsel for his defense.*” U.S. CONST. amend. VI
- *Powell v. Alabama*, 287 U.S. 45 (1932) (Scottsboro boys-ACLU case)
- *Gideon v. Wainwright*, 372 U.S. 335 (1963) (constitutional right to counsel)
- *Argersinger v. Hamlin*, 407 U.S. 25 (1972) & *Alabama v. Shelton*, 535 U.S. 654 (2002) (extended right to counsel to misdemeanor cases subject to jail time)
- “In criminal prosecutions the accused shall have the right to . . . *defend in person and by counsel.* . . .” Utah Const. art. I, § 12
- Utah Code § 77-32-301 “Minimum standards for defense of an indigent”

# Utah Code § 77-32-301:

## Minimum standards for defense of an indigent

Each county, city, and town shall provide for the defense of an indigent in criminal cases in the courts and various administrative bodies of the state in accordance with the following minimum standards:

- ❑ *provide counsel for each indigent* who faces the substantial probability of the deprivation of the indigent's liberty;
- ❑ afford *timely representation by competent legal counsel*;
- ❑ provide the *investigatory resources* necessary for a complete defense;
- ❑ assure *undivided loyalty* of defense counsel to the client;
- ❑ proceed with a *first appeal of right*; and
- ❑ prosecute other remedies before or after a conviction, considered by defense counsel to be in the interest of justice except for other and subsequent discretionary appeals or discretionary writ proceedings.

# ABA's Ten Principles of a Public Defense Delivery System

Fundamental standards that must be met if state is to deliver “effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney.”

- ❑ 1 - Independence
- ❑ 2 - Statewide Funding & Structure
- ❑ 3 - Prompt Appointment of Counsel
- ❑ 4 - Confidential Meeting Space
- ❑ 5 - Reasonable Workload
- ❑ 6 - Minimum Qualifications
- ❑ 7 - Continuous Representation
- ❑ 8 - Resource Parity
- ❑ 9 - Training
- ❑ 10 - Accountability

# Utah facts

- ❑ One of only 2 states that provides no state funding for indigent defense at trial or appellate level (Utah & Pennsylvania)
- ❑ All funding and administration of public defense is delegated to counties
- ❑ No state-wide regulation or oversight of county provision of indigent defense services bureaucracy
- ❑ Utah ranks 48<sup>th</sup> of the 50 states in per capita spending for indigent defendants, spending \$5.22 (national average is \$11.86)
- ❑ Majority of Utah counties use contract or assigned counsel to represent indigent defendants (only SL, Utah and Weber counties have public defender programs)
- ❑ Utah population is predominately white yet rates of incarceration for blacks and non-white Hispanics are higher than the national averages

# Reported Issues in Utah

- ❑ Contract amounts awarded in many counties do not cover sufficient funds to hire private investigators, experts.
- ❑ In many counties, indigent defense attorneys have to appeal to the county to have investigations, experts and other “extras” approved and paid.
- ❑ Contracts do not place limits on attorney caseloads; as a result caseloads are often so high that attorneys spend no more than 15 minutes with client prior to court proceeding. Some attorneys report that they spend significantly more time with paying clients.
- ❑ Contracts are often awarded on a flat fee basis to the lowest bidder without regard to other considerations.
- ❑ No training, oversight or supervision of attorneys in most counties.
- ❑ Lack of vertical representation .
- ❑ Creates incentive to plead cases instead of going to trial; some attorneys report that they “try not to go to trial.”

# Reported Issues in Utah

- ❑ Some counties in Utah report that indigent defense attorneys handle 250-300 felonies per year, almost twice the ABA recommended maximum of 150.
- ❑ Some attorneys report that their workload does not allow them to “provide the best defense possible, but instead they do what they can.”
- ❑ In order to handle high case loads, some indigent defense attorneys regularly waive preliminary hearings and do not file suppression or other motions as a matter of course.
- ❑ Many attorneys have large private caseload in addition to cases assigned by the county.
- ❑ Large discrepancy in pay for indigent defense attorneys from county to county throughout the state.

# Indigent defense: a nationwide problem with various strategies for change

## LITIGATION:

- Montana: *White v. Martz* (2002) - RESOLVED
- Michigan: *Duncan v. State* (2007) - ONGOING
- New York: *Hurrell-Harring, et al. v. State* (2007) - ONGOING
- Washington: *Best v. Grant County* - RESOLVED
- Pennsylvania: *Doyle v. Allegheny Co. Salary Board* (1996) - RESOLVED
- Arizona: *State of Arizona v. Lopez and others* (2007) - ONGOING

## COURT-ORDERED ACTION:

- Nevada: In January 2008, Nevada Supreme Court issued order mandating sweeping changes in indigent defense within state

## NATIONAL REPORT:

- National Right to Counsel Committee's report, Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel at [www.tcpjusticedenied.org](http://www.tcpjusticedenied.org)

