



GRANT AGREEMENT SIGNATURE PAGE

CONTACT INFO

System: Weber County Grant No. 25D23 Period: 7/1/24 -6/30/25
Check Mailing Address: 2380 Washington Blvd City: Ogden Zip: 84401
Project Dir.: James Retallick Email: jretallick@webercountyutah.gov Phone: (801) 721-0354
Managing Def: same Email: same Phone: (801) 721-0354

GRANT AWARD AND SYSTEM INDIGENT DEFENSE BUDGET SUMMARY

Table with 3 columns: Expenditure Line Item, Award Budget, System Budget. Rows include Personnel Salaries, Personnel Fringe Benefits, Contracted Services, Equipment, Supplies, Operating Expenses (ESO), Defense Resources, Other: Training, Indigent Capital Fund, SW Pilot, Mileage, Award and System Budget Totals, System Indigent Defense Budget Total.

SIGNATURES

Through the Indigent Defense Commission, the state of Utah offers this grant award and agrees to pay the total award amount contingent upon the recipient system meeting the requirements described in this agreement.

OIDs Exec. Dir. Name: Matthew Barraza Signature: [Handwritten Signature] Date: 06/19/2024

The project director's initials by each attachment certify that (s)he has read and understood the grant award requirements set forth in these documents, and that (s)he agrees to abide by them.

Table with 2 columns listing attachments: Attachment A: Budget Detail and Payment Structure, Attachment B: Terms, Assurances, and Conditions, Attachment C: Quarterly Reporting Schedule and Requirements, Attachment D: Core System Principles, Attachment E: Key System Positions, Attachment F: Social Worker Agreement (if applicable).

The system accepts the IDC grant award and agrees to meet the requirements and abide by the provisions described in this agreement.

Project Director Signature: Date:
Authorized System Representative Name: Title:
Authorized System Representative Signature: Date:
Managing Defender Signature: Date:



ATTACHMENT A: System Indigent Defense Budget Detail and Payment Structure

SYSTEM INDIGENT DEFENSE BUDGET DETAIL AND PAYMENT STRUCTURE

Unless otherwise approved by the OIDS Executive Director, system expenses must be paid prior to reimbursement and should be reported for the period in which the expense was incurred. For expenses incurred during a period but paid after the quarterly fiscal report has been submitted, a supplemental financial status report may be required. Reimbursement is contingent upon the system meeting minimum required spending amounts for each expense category as outlined in the Quarterly Payment Structure. Reimbursement dates are dependent upon grantee reporting and are subject to change. Contact the Grant Program Manager for assistance.

Fixed Quarterly Reimbursements

- The system must meet the minimum required system spending amount for the quarter before utilizing the grant reimbursed portion.
- Reimbursement requests should not exceed the quarterly grant amount budgeted for each line item. However, adjustments may be authorized by the OIDS Executive Director or Grant Program Manager as needed.
- Any costs exceeding the budgeted quarterly system spending and grant amount combined will be the system’s responsibility and may count toward the system spending requirement for the following quarter.

“As Billed” Reimbursements

- The system must meet the established system spending requirement for a line item before utilizing the grant reimbursed portion of that item.
- Any costs exceeding the annual system spending and grant amount combined will be the system’s responsibility and will count toward system spending.

WEBER INDIGENT DEFENSE BUDGET (July 1, 2024 - June 30, 2025)							
Expense Category	Expense Line Item	Total Cost	IDC Grant Award	System Spending	Expense Structure	Quarterly Grant Payment	Quarterly System Spending
Personnel	Managing Defender	\$202,294.00	\$0.00	\$202,294.00	Fixed	\$0.00	\$50,573.50
	Child Welfare Attorney	\$159,268.00	\$0.00	\$159,268.00	Fixed	\$0.00	\$39,817.00
	Office Specialist III	\$51,834.00	\$0.00	\$51,834.00	Fixed	\$0.00	\$12,958.50
	Office Assistant	\$44,221.00	\$0.00	\$44,221.00	Fixed	\$0.00	\$11,055.25
	Juvenile Court Attorney	\$144,144.00	\$0.00	\$144,144.00	Fixed	\$0.00	\$36,036.00
	Juvenile Court Attorney	\$156,936.00	\$0.00	\$156,936.00	Fixed	\$0.00	\$39,234.00
	Juvenile Court Attorney	\$120,973.00	\$0.00	\$120,973.00	Fixed	\$0.00	\$30,243.25
	Juvenile Court Attorney	\$117,666.00	\$117,666.00	\$0.00	Fixed	\$29,416.50	\$0.00
	District Court Attorney	\$139,027.00	\$0.00	\$139,027.00	Fixed	\$0.00	\$34,756.75
	District Court Attorney	\$156,250.00	\$0.00	\$156,250.00	Fixed	\$0.00	\$39,062.50
	IPR Social Worker	\$71,698.00	\$71,698.00	\$0.00	Fixed	\$17,924.50	\$0.00
	Social Worker	\$101,012.00	\$0.00	\$101,012.00	Fixed	\$0.00	\$25,253.00
	Social Worker	\$74,880.00	\$74,880.00	\$0.00	Fixed	\$18,720.00	\$0.00
	District Court Attorney	\$135,034.00	\$135,034.00	\$0.00	Fixed	\$33,758.50	\$0.00
	District Court Attorney	\$117,666.00	\$0.00	\$117,666.00	Fixed	\$0.00	\$29,416.50
	District Court Attorney	\$120,661.00	\$120,661.00	\$0.00	Fixed	\$30,165.25	\$0.00



ATTACHMENT A: System Indigent Defense Budget Detail and Payment Structure

WEBER INDIGENT DEFENSE BUDGET (July 1, 2024 - June 30, 2025)							
Expense Category	Expense Line Item	Total Cost	IDC Grant Award	System Spending	Expense Structure	Quarterly Grant Payment	Quarterly System Spending
Fringe	Managing Defender	\$61,659.00	\$0.00	\$61,659.00	Fixed	\$0.00	\$15,414.75
	Child Welfare Attorney	\$67,763.00	\$0.00	\$67,763.00	Fixed	\$0.00	\$16,940.75
	Office Specialist III	\$33,955.00	\$0.00	\$33,955.00	Fixed	\$0.00	\$8,488.75
	Office Assistant	\$12,899.00	\$0.00	\$12,899.00	Fixed	\$0.00	\$3,224.75
	Juvenile Court Attorney	\$47,368.00	\$0.00	\$47,368.00	Fixed	\$0.00	\$11,842.00
	Juvenile Court Attorney	\$70,813.00	\$0.00	\$70,813.00	Fixed	\$0.00	\$17,703.25
	Juvenile Court Attorney	\$59,533.00	\$0.00	\$59,533.00	Fixed	\$0.00	\$14,883.25
	Juvenile Court Attorney	\$43,603.00	\$43,603.00	\$0.00	Fixed	\$10,900.75	\$0.00
	District Court Attorney	\$67,800.00	\$0.00	\$67,800.00	Fixed	\$0.00	\$16,950.00
	District Court Attorney	\$69,452.00	\$0.00	\$69,452.00	Fixed	\$0.00	\$17,363.00
	IPR Social Worker	\$43,495.00	\$43,495.00	\$0.00	Fixed	\$10,873.75	\$0.00
	Social Worker	\$38,310.00	\$0.00	\$38,310.00	Fixed	\$0.00	\$9,577.50
	Social Worker	\$32,476.00	\$32,476.00	\$0.00	Fixed	\$8,119.00	\$0.00
	District Court Attorney	\$48,897.00	\$48,897.00	\$0.00	Fixed	\$12,224.25	\$0.00
	District Court Attorney	\$58,814.00	\$0.00	\$58,814.00	Fixed	\$0.00	\$14,703.50
	District Court Attorney	\$45,097.00	\$45,097.00	\$0.00	Fixed	\$11,274.25	\$0.00
Contracted	District Court Attorney Contracts 1/6	\$40,950.00	\$0.00	\$40,950.00	Fixed	\$0.00	\$10,237.50
	District Court Attorney Contracts 2/6	\$44,070.00	\$0.00	\$44,070.00	Fixed	\$0.00	\$11,017.50
	District Court Attorney Contracts 3/6	\$67,926.00	\$0.00	\$67,926.00	Fixed	\$0.00	\$16,981.50
	District Court Attorney Contracts 4/6	\$86,580.00	\$0.00	\$86,580.00	Fixed	\$0.00	\$21,645.00
	District Court Attorney Contracts 5/6	\$94,380.00	\$0.00	\$94,380.00	Fixed	\$0.00	\$23,595.00
	District Court Attorney Contracts 6/6	\$50,310.00	\$0.00	\$50,310.00	Fixed	\$0.00	\$12,577.50
	District Court Morgan, Justice Court Morgan**	\$36,000.00	\$0.00	\$36,000.00	Fixed	\$0.00	\$9,000.00
	District Court Contract	\$40,810.00	\$0.00	\$40,810.00	Fixed	\$0.00	\$10,202.50
	District Court (Also DUI and Drug Court)	\$91,260.00	\$59,778.00	\$31,482.00	Fixed	\$14,944.50	\$7,870.50
	Child Welfare/Delinquency Contract 1/3	\$99,960.00	\$0.00	\$99,960.00	Fixed	\$0.00	\$24,990.00
	Child Welfare/Delinquency Contract 2/3	\$155,811.00	\$0.00	\$155,811.00	Fixed	\$0.00	\$38,952.75
	Child Welfare/Delinquency Contract 3/3	\$94,380.00	\$0.00	\$94,380.00	Fixed	\$0.00	\$23,595.00
	Child Welfare	\$91,526.00	\$0.00	\$91,526.00	Fixed	\$0.00	\$22,881.50
	Appellate Contract	\$200,000.00	\$0.00	\$200,000.00	Variable	\$0.00	As Billed
	Investigator Contracts	\$45,000.00	\$0.00	\$45,000.00	Variable	\$0.00	As Billed
	Specialty Attorney Contract	\$70,000.00	\$70,000.00	\$0.00	Variable	As Billed	\$0.00
	Specialty Attorney Contract	\$70,000.00	\$70,000.00	\$0.00	Variable	As Billed	\$0.00
	Administrative Assistant	\$40,000.00	\$40,000.00	\$0.00	Variable	As Billed	\$0.00
	Civil Commitment Hearings Contract	\$4,875.00	\$4,875.00	\$0.00	Fixed	\$1,218.75	\$0.00
Conflict Attorney Contract	\$17,970.00	\$17,970.00	\$0.00	Variable	As Billed	\$0.00	
Equipment, Supplies, & Operating Expenses (E.S.O.)	Fixed E.S.O.	\$37,407.00	\$0.00	\$37,407.00	Fixed	\$0.00	\$9,351.75
	Other E.S.O.	\$100,000.00	\$0.00	\$100,000.00	Variable	\$0.00	As Billed
	Defense Resources & Reserves	\$90,000.00	\$0.00	\$90,000.00	Variable	\$0.00	
	Training & Related Travel	\$45,000.00	\$0.00	\$45,000.00	Variable	\$0.00	
	Indigent Defense Capital Fund	\$500,000.00	\$0.00	\$500,000.00	Variable	\$0.00	
Regional Social Worker Office Pilot	\$425,637.00	\$0.00	\$425,637.00	Variable	\$0.00		
Mileage	Mileage	\$0.00	\$0.00	\$0.00	None	\$0.00	\$0.00
Totals:		\$5,355,350.00	\$996,130.00	\$4,359,220.00			

*Grant funding for specialty attorney contracts is limited to \$125.00 per hour. Any overage per hour is the county's responsibility.

** Morgan County pays Weber Public Defender Group \$48,000 per year for representation. Funds that exceed the contract amount go to defense resources and reserves.



ATTACHMENT B: Standard Terms, Assurances, Certifications, and Conditions

STANDARD TERMS

Terms and definitions as used in this grant agreement.

Authorized System Representative	A public official authorized to sign financial agreements for and on behalf of a local government entity, e.g. city mayor, city manager, county mayor, county manager, county council chair, county commission chair.
Award Recipient or Grantee	An indigent defense system receiving IDC grant funds.
Commission or IDC	Utah Indigent Defense Commission
Indigent Defense Resources	Resources necessary to provide an effective defense for an indigent individual, including but not limited to the costs for an investigator, expert witness, scientific or medical testing, transcripts, and printing briefs.
Indigent Defense Service Provider	A court-appointed attorney or entity representing an indigent individual pursuant to (a) a contract with an indigent defense system to provide indigent defense services; or (b) an order issued by the court under Utah Code Subsection 78B-22-203(2)(a).
Indigent Defense Services	(a) The representation of an indigent individual by an indigent defense service provider; and (b) the provision of indigent defense resources for an indigent individual.
Indigent Defense System or System	(a) A city or town that is responsible for providing indigent defense, or (b) a county that is responsible for providing indigent defense services in the district court, juvenile court, and the county's justice courts; or (c) an interlocal entity, created pursuant to Utah Code 11-13, the Interlocal Cooperation Act, that is responsible for providing indigent defense services according to the terms of an agreement between a county, city, or town.
Managing Defender	An indigent defense service 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.
OIDS or Office	Office of Indigent Defense Services, responsible for the Commission's administration and operations.
Project Director	An individual responsible for the administration, management, and oversight of the grant award on behalf of the indigent defense system receiving IDC grant funding. The Project Director has the ultimate responsibility for compliance with the terms of the grant agreement, Utah law, quarterly reports, invoices, and payment information. A grantee system may delegate all or some of the Project Director's duties to a Managing Defender.
State Entity	IDC, OIDS, or another state of Utah government agency.
Sub-grantee	Any entity or individual who is paid with IDC grant funds by the award recipient indigent defense system, such as contractor(s) for services.
System Spending	The portion of the grant recipient system's indigent defense budget and costs that are not reimbursable by the grant award.



ASSURANCES

1. **IDC AUTHORITY AND DUTIES:** The system assures it recognizes the Utah Indigent Defense Commission's powers and duties as authorized in Utah Code 78B-22-404, effective May 4, 2022, "to oversee individuals and entities involved in providing indigent defense services...and to assist the state in meeting the state's obligations for the provision of indigent defense services, consistent with the United States Constitution, the Utah Constitution, and the Utah Code."
2. **SYSTEM FINANCIAL MANAGEMENT:** The system assures it possesses the responsibility, financial management, fiscal integrity, and financial capability necessary to administer IDC grant funds adequately and appropriately; that its financial management system can record and report on the receipt, obligation, and expenditure of grant funds; and that its financial management system is integrated with an adequate structure of internal controls to safeguard assets and cash management procedures. The system further assures that all IDC grant-related books, records, and accounts shall be maintained in accordance with all applicable regulations and standards and accurately reflect the true nature of the transactions they record in all material respects. The financial statements of the system shall conform in all material respects to generally accepted accounting principles and the system's accounting policies. While the Project Director has the ultimate responsibility for financial oversight and management of the IDC grant funding, some or all grant-related financial reporting and record keeping duties may be delegated to a sub-grantee, i.e. Managing Defender.
3. **SYSTEM INDIGENT DEFENSE BUDGET:** The system assures its system spending baseline indigent defense budget equals or exceeds the preceding three fiscal years' average annual system spending on indigent defense services; and that during the current fiscal year, the system reasonably anticipates maintaining indigent defense system spending, at the minimum, at the level set forth in the grant payment structure and grant award agreement.
4. **SUPPLANTING PROHIBITION:** The system assures IDC grant funds shall not supplant system spending on indigent defense services. This means that the system shall not deliberately reduce or reallocate to other purposes local indigent defense funds because of the existence of state funds. Rather, the IDC grant award must increase or supplement the total funding available for indigent defense services.
5. **SYSTEM RECORDS MANAGEMENT AND RETENTION:** The system assures is has a process to store and preserve relevant IDC grant-related programmatic documents and financial records according to the approved retention schedule (CCJ) Records Retention Series 28161, State Grant Program Files), and to allow the OIDS access to the system's programmatic documentation, financial records, written policies and procedures, audit compliance records, and internal controls for the purpose of ensuring grant funds are spent and disbursed efficiently as authorized by the Utah legislature and the Indigent Defense Commission.
6. **SYSTEM INDIGENT DEFENSE SERVICES MONITORING AND MANAGEMENT:** The system assures it is willing and able to monitor and manage attorney and system performance. Critical to this capacity is collecting, reviewing, and reporting quarterly to the OIDS reliable data and information about indigent defense services and the quality of representation the system is providing. While the Project Director has the ultimate responsibility for programmatic oversight, management, and reporting, some or all duties may be delegated to a sub-grantee, i.e. Managing Defender. To facilitate sufficient programmatic record keeping and reporting, the OIDS provides grantee systems or sub-grantees, when appropriate, with the DefenderData case management software and training for free.
7. **DEFENSE COUNSEL'S FREEDOM FROM CONFLICT:** The system assures that defense counsel, whether employed or contracted with by the system, are free to defend clients zealously, based on the counsels' own judgment, and without fear of termination, reduction in compensation, reduction in staff, or reduction in defense resources.
8. **DEFENSE FUNCTION'S INDEPENDENCE:** The system assures it is working diligently toward ensuring that the selection, funding, and payment of defense counsel and indigent defense services are independent of the judiciary and the prosecution.
9. **REPORTING REQUIREMENTS:** The system assures it will comply with the OIDS quarterly grant reporting schedule and requirements outlined in Attachment C. The system's officers, employees, and contractors must report honestly and accurately all business and legal transactions. Accurate record keeping and reporting are essential to the system's ability to meet legal and regulatory obligations, including specific obligations relating to the system's



ATTACHMENT B: Standard Terms, Assurances, Certifications, and Conditions

transactions with the Commission, OIDS, and other governmental entities. While the Project Director has the ultimate responsibility for compliance, some or all IDC grant-related programmatic and financial reporting and record keeping duties may be delegated to a sub-grantee, i.e. Managing Defender.

10. **COMPLIANCE WITH LAWS, RULES, POLICIES:** The system assures it will comply with its own written Accounting, Personnel, Purchasing, and Procurement rules and policies and procedures, excepting travel where the state of Utah per diem rates for reimbursements take precedence. If the system has not adopted such written policies and procedures, the state Accounting Policies and Procedures, state Purchasing Policies and Procedures, state Human Resources Rules, the Utah Administrative Code, and other applicable state policies and procedures are to be complied with in expending IDC grant funds.
11. **THIRD PARTY COOPERATION:** The system assures it will require all third-party contractors and sub-grantees to cooperate and participate with the OIDS in quarterly reporting, as well as in any investigations, audits, reviews, or monitoring activities of indigent defense services and IDC grant awards by OIDS or other governmental entities.
12. **THIRD-PARTY INDIGENT DEFENSE SERVICE CONTRACTS:** The system assures that it will have on file a current written contract for all indigent defense service providers engaged presently who are not directly employed by the system, and that it will provide copies of those contracts to OIDS. Furthermore, system assures it will keep OIDS abreast of any provider contract changes.
13. **SUB-GRANTEE ACCOUNTABILITY FOR COMPLIANCE:** The system assures sub-grantees shall be held accountable for complying with applicable Assurances, Certifications, and Conditions set forth in the system's grant agreement, through incorporating appropriate language into each agreement, contract, or other document under which IDC grant funds are to be expended by the sub-grantees. This is particularly vital should the system delegate some or all Project Director's duties and responsibilities to a sub-grantee, i.e. Managing Defender.
14. **MANDATORY CONTINUING LEGAL EDUCATION:** The system assures that its indigent defense service providers, whether employees or contractors, shall comply with the Utah State Bar mandatory continuing legal education requirements for maintaining licensure. OIDS strongly recommends that defenders attend a minimum of eight hours of specialized training in the area(s) of their practice annually. To facilitate specialization, OIDS provides free monthly CLEs to defenders in adult criminal defense, juvenile delinquency defense, and appellate advocacy.
15. **FUNDING FOR SYSTEM POSITIONS:** The system assures that IDC grant funds shall not be used to compensate its officers and employees unless they are employed at least part-time as indigent defense service providers or support staff in public defense.
16. **CASE MANAGEMENT SOFTWARE:** The system assures that its indigent defense providers, whether employees or contractors, will use case management software to manage their legal cases and clients, and to keep cases organized. To facilitate utilizing the DefenderData case management software, OIDS pays Justice Works directly for the cost of DefenderData licenses. Contingent upon funding availability, additional DefenderData licenses may be considered on an individual basis at the discretion of the OIDS Executive Director.

CERTIFICATIONS

1. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND INELIGIBILITY:** The system certifies that it is not presently nor has ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. Should the system be unable to certify the above statement in whole or in part, it shall submit a written explanation to the Commission. The system must notify OIDS in writing within thirty days if it is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by a governmental entity during the grant period covered in the grant agreement.



ATTACHMENT B: Standard Terms, Assurances, Certifications, and Conditions

2. **CERTIFICATION REGARDING DRUG-FREE WORKPLACE:** The system certifies that it will maintain a drug-free workplace, as required by the state of Utah rules and regulations regarding implementing the Drug-Free Workplace Act of 1988, 28 CFR Part 67, Subpart F, and the rules governing a drug-free workplace set forth in the Utah Administrative Rule 477-14-1 through 477-14-4.
3. **CERTIFICATION REGARDING COMPLIANCE WITH LAWS, RULES, AND REGULATIONS:** The system certifies that its officers, employees, and contractors should endeavor to deal honestly, ethically, and fairly with clients and other parties involved in the provision of indigent defense services, and that they shall comply with applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including professional licensure and certification requirements, while the IDC grant agreement is effective.

CONDITIONS

I. GENERAL

- I.1. **FUNDING PRIORITIES:** IDC grant funding was awarded based on the following Priority Tier Levels: Tier 1 - Funding to renew existing indigent defense positions. Tier 2 - Funding for new managing defender or grant-focused administrative assistant positions that oversee at least three indigent defense service providers. Tier 3 - Funding for attorney capacity increases recommended based on the latest System Needs Evaluation results, and budget and spending trends. Tier 4 - Funding for other capacity increases recommended by OIDS or requested by the system and agreed upon through a collaborative process. Tier 5 - Funding for other requests.
- I.2. **AWARD AVAILABILITY AND OBLIGATION OF FUNDS:** The grant award is available during the grant period, which typically runs from the start of the state fiscal year on July 1st until the end of the state fiscal year on June 30th of the following calendar year. Grant funds may not be obligated prior to the effective date or after the termination date of the grant period. Obligations that are outstanding as of the termination date shall be liquidated within 30 days. Such obligations must be related to goods or services provided and utilized within the grant period.
- I.3. **NON-APPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** The IDC grant agreement may be terminated or the available grant funds may be reduced at the sole discretion of the Indigent Defense Commission if (i) a change in federal or state legislation or applicable laws materially affects the ability of either party to perform under the terms of the agreement; or (ii) a change in available funds affects the Commission's ability to pay under the agreement. In the event of termination or award modification, the Commission will provide a written notice to the system 30 days in advance of the specified termination or modification effective date.
- I.4. **INDEMNITY:** Both parties to the IDC grant agreement are governmental entities as defined in the Utah Governmental Immunity Act (Utah Code Ann. 63G-7-101 et. seq.). Nothing in this agreement shall be construed as a waiver by either or both parties of any rights, limits, protections, or defenses provided by the Act. Nor shall this agreement be construed, with respect to third parties, as a waiver of any governmental immunity to which a party to this agreement is otherwise entitled. Subject to and consistent with the act, each party will be responsible for its own actions or negligence and will defend against any claims or lawsuit brought against it. There are no indemnity obligations between the parties.
- I.5. **REGIONALIZATION:** Systems that regionalize indigent defense services across two or more counties and/or cities must enter into a Memorandum of Understanding or similar written agreement. The MOU must be consistent with the intent and purpose of the IDC grant award and its terms and conditions, including the IDC Core System Principles, and with Utah law to ensure effective provision of indigent defense services in the pertinent systems, whether they are involved directly and indirectly in grant awards. A copy of the signed MOU must be submitted to OIDS.



ATTACHMENT B: Standard Terms, Assurances, Certifications, and Conditions

II. USE OF THE AWARD

II.1. USE OF THE AWARD: IDC grant funds are to be expended only for the purposes and activities authorized by the Indigent Defense Commission in the budget detail set forth in Attachment A of the grant agreement. Upon a written request by the system, the Commission or OIDS Executive Director may authorize budget modifications to increase, decrease, or move grant funds from one budget category to another during the grant period as deemed appropriate.

II.2. APPROVED AWARD BUDGET CATEGORIES AND ACTIVITIES:

- a. Personnel Salaries: Wages or salaries paid to full-time and part-time personnel and officers employed by the system.
- b. Personnel Fringe Benefits: Non-wage allowances and services provided by the system to its full-time and part-time employees and officers in addition to their normal wages or salaries.
- c. Contracted Services: Costs of any person or entity obligated to provide indigent defense services, administrative services, or defense resource services to the system under a contract or agreement. Contractors are not considered to be employees or officers of the system. By definition, IDC grant-funded contractors are the grantee system's sub-grantees.
- d. Equipment, Supplies, Operating Expenses: Costs of these items may be approved on a case-by-case basis at the discretion of the Indigent Defense Commission or OIDS Executive Director.
- d. Defense Resources: Costs of indigent defense resources, such as investigators, experts, second chairs, court transcripts, and printing. Conflict counsel is typically not included in this budget category. Defense resource providers may or may not be considered to be the grantee system's sub-grantees. Upon a written request from the system, other defense resource costs may be approved by the Indigent Defense Commission or OIDS Executive Director.
- e. Mileage: Transportation costs incurred by system employees and contractors for travel related directly to representing indigent clients, such as client visits and court appearances. See the Mileage Reimbursement condition for details.
- f. Other: Subject to the limitation and approval of the Indigent Defense Commission, other expenses related to providing indigent defense services may be allowable and reimbursable by the IDC.

II.3. NONALLOWED EXPENDITURES: Award funds may not be used a) to pay for services or items that are not part of the approved grant budget, or separately approved by the Commission or OIDS Executive Director; b) to purchase land; or c) to pay for construction projects.

III. PAYMENTS AND GRANT FUNDS

III.1. AWARD PAYMENTS: Based on the quarterly financial status report the system or sub-grantee submits in the state grant management system (GMS), OIDS will reimburse the system for approved indigent defense expenses in accordance with the award payment structure set forth in Attachment A of the IDC grant agreement. Payments can be adjusted to correct mistakes (e.g., overpayment, underpayment, or disallowed costs) that are found as a result of monitoring, review, inspection, or audit. Upon a written request in advance, the OIDS Executive Director may authorize exceptions to payment arrangements as deemed appropriate.

III.2. GRANT MODIFICATIONS: The system must obtain prior written approval from the Commission or OIDS Executive Director for grant award modifications. These include changes in (a) activities, designs, or objectives; (b) system Project Director or key professional personnel identified in the grant agreement; and (c) approved system indigent defense budget and budget categories.



ATTACHMENT B: Standard Terms, Assurances, Certifications, and Conditions

- III.3. **COSTS EXCEEDING SET LINE-ITEM GRANT BUDGET:** Should the costs for a grant-funded line item exceed the budgeted annual grant amount, the system shall be responsible for the excess spending, unless other arrangements are agreed in writing between the system and the Commission or OIDS Executive Director. Such arrangements may or may not require a grant modification.
- III.4. **UNUSED AWARD FUNDS:** Unless the IDC grant agreement is terminated prior to the expiration date, unexpended grant funds must be returned to OIDS within 30 days of the close of the state fiscal year when the grant period ends. Likewise, obligated but unused grant funds remain with the Indigent Defense Commission, and they shall not carry over to the next grant year.
- III.5. **NON-EXPENDABLE PERSONAL PROPERTY:** The system shall retain any nonexpendable personal property acquired with IDC grant funds for indigent defense purposes until the property is no longer needed or the purpose no longer exists, whether indigent defense services continue to be supported by state funds. When the time comes to dispose of the property, the system shall request disposition instructions from OIDS.

IV. CORRECTIVE ACTION AND TERMINATION OF THE GRANT AGREEMENT

- IV.1. **DEFAULT, CORRECTIVE ACTION, AND TERMINATION FOR CAUSE:** Should the Indigent Defense Commission, OIDS, or another state entity determine that the system has materially breached any term or condition of the agreement; and that the system has not responded within 10 days to a written request to remedy the issue(s) or has not complied with a corrective action plan within 10 days, and therefore the default remains, the Commission and OIDS reserve the right to take one or more of the following actions:
- a. Withhold reimbursements temporarily.
 - b. Disallow all or part of the cost of grant activities.
 - c. Demand full refund of any payment made to the system under the agreement for services that do not conform to the agreement.
 - d. Suspend all or part of award activities.
 - e. Terminate the grant award immediately, prior to the agreement's expiration date.
 - f. Withhold or deny future funding.
 - g. Pursue other remedies legally available.

Time allowed for remedy or corrective action will not diminish or eliminate the system's liability for damages.

Likewise, should the Commission or OIDS materially breach any term or condition of the IDC grant agreement and fail to respond within 10 days to the system's written notification to correct and cease the violation(s), the system may terminate the agreement for cause immediately, prior to the expiration date.

Upon termination of the agreement by either party, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services ordered prior to the date of termination.

- IV. 2. **TERMINATION FOR CONVENIENCE WITHOUT CAUSE:** The system or the Indigent Defense Commission may terminate the IDC grant agreement, in whole or in part, for convenience, without cause, at any time prior to the agreement expiration date by mutual agreement in writing. The party seeking termination must submit a written notice to the other party 30 days in advance of the specified expiration date.
- IV.3. **FORCE MAJEURE:** Neither party to the IDC grant agreement shall be held responsible for delay or default caused by fire, riot, acts of God, disease, state of emergency, executive order, war, or another event which is beyond the party's reasonable control. Either party may terminate the grant agreement after determining such delay will prevent successful performance of the agreement.



ATTACHMENT B: Standard Terms, Assurances, Certifications, and Conditions

IV.4. FINANCIAL OBLIGATIONS UPON TERMINATION: In the event the IDC grant agreement is terminated prior to the expiration date, whether for cause or for convenience, by either party, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services ordered prior to the date of termination. The system agrees that upon termination of the agreement, the system's sole remedy and monetary recovery from the Indigent Defense Commission or the state of Utah is limited to full payment for all services properly performed as authorized under the grant agreement up to the date of termination, as well as any reasonable monies owed as a result of the system having to terminate other contracts necessarily and appropriately entered into by the system pursuant to this agreement. Furthermore, the system must return any unexpended grant funds to the Commission within 30 days of the termination date.

V. EMPLOYMENT AND POSITIONS

V.1. EMPLOYMENT DISCRIMINATION PROHIBITION: The system agrees to abide by the following employment laws:

- Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin.
- Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex.
- 45 CFR 90, which prohibits discrimination on the basis of age.
- Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities.
- Utah Executive Order dated December 13, 2006, which prohibits unlawful harassment in the workplace.

The system further agrees to abide by any other laws, regulations, or orders that prohibit discrimination of any kind by the system's officers, employees, or third-party contractors.

V.2. GRANT-FUNDED POSITIONS: Prior to posting a grant-funded position, the system or sub-grantee agrees to provide OIDS with a copy of the job description or request for proposal (RFP) for review.

V.3. ADDITIONAL PAY OR BENEFITS: The system agrees that its IDC grant-funded indigent defense services providers, whether employees or contractors, will not accept additional payments or other benefits outside of the amounts budgeted in the IDC grant agreement for representing court-appointed clients.

VI. GRANT MONITORING AND SYSTEM AUDIT

VI.1. MONITORING, INSPECTION, AND AUDIT: The Indigent Defense Commission, OIDS, or another state entity duly authorized to monitor, inspect, or audit state funds shall have access to the system's and its sub-grantees' programmatic documentation, financial records, written policies and procedures, audit compliance records, and internal controls for the purpose of ensuring grant funds are spent and disbursed efficiently as authorized by the Utah legislature and the Indigent Defense Commission.

VI.2. AUDIT REPORTS: Should the system or sub-grantee(s) be a subject of a local, state, or federal audit, the system agrees to provide OIDS with a copy of the audit report.

VII. RECORDS RETENTION AND GRAMA

VII.1. RECORDS RETENTION: In accordance with the Commission on Criminal and Juvenile Justice (CCJJ) Records Retention Series 28161, State Grant Program Files, the system shall retain IDC grant award programmatic and financial records seven years after final action. Such records may include but not be limited to grant proposals and applications; contracts and agreements; reports; invoices and receipts; proofs of payment; correspondence and memoranda; and other records relating to receipt, review, award, evaluation, status, and monitoring of grants; and allocation of funds and system indigent defense services budgets and spending.



ATTACHMENT B: Standard Terms, Assurances, Certifications, and Conditions

VII.2. GRAMA: Records relating to the receipt and disposition of IDC grant awards that are prepared, owned, or retained by the system, Indigent Defense Commission, or OIDS are subject to the state of Utah Government Records Access and Management Act (GRAMA). Such records may include but not be limited to grant proposals and applications; contracts and agreements; reports; invoices and receipts; proofs of payment; correspondence and memoranda; and other records relating to receipt, review, award, evaluation, status, and monitoring of grants; and allocation of funds and system indigent defense services budgets and spending. Therefore, unless restricted access to certain records is allowed by law, the public may request access to them. Neither the system nor state entities are obligated to report GRAMA requests.

VIII. THIRD PARTY AGREEMENTS, OTHER DOCUMENTS, AND COPYRIGHT

VIII.1. THIRD PARTY AND SUB-GRANTEE CONTRACTS AND AGREEMENTS: The system may not enter into a contract or agreement with a third party or sub-grantee for the purpose of executing grant-related activities or providing indigent defense services unless such a contract or agreement is incorporated into the grant agreement or approved in advance by the Commission. Any such arrangement shall ensure that the system will retain ultimate control and responsibility for the IDC grant award, and that the system shall be bound by these grant conditions and any other requirements applicable to the award. Furthermore, the system shall provide OIDS with current copies of its indigent defense related third-party and sub-grantee contracts and agreements.

VIII.2. DESCRIPTION OF STATE FUNDING IN PUBLIC DOCUMENTS: Statements, press releases, requests for proposal, bid solicitations, and other documents describing IDC-grant-funded positions or programs publicized by the system must clearly state (a) the percentage of the total cost of the position or program that will be financed with the IDC grant award, and (b) the dollar amount of the grant funds for the position or program.

VIII.3. COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS: As permitted by law, the system may copyright original intellectual property created in the course of IDC grant-funded activities, including computer programs (the term "computer programs" includes executable computer programs and supporting data in any form), writings, sound recordings, pictorial reproductions, drawings, or other graphical representations, and other works of similar nature. However, the Commission and OIDS reserve the right to reproduce, publish, and use in whole or in part such intellectual property and materials royalty-free and to authorize others to do so.

IX. ADDITIONAL FUNDING POOLS

Outside of the regular grants, the Utah Indigent Defense Commission has additional funding pools that can be utilized by systems in the 3rd – 6th class counties for travel and defense resources reimbursements. Reimbursements are contingent upon the availability of funding, and requests are approved on a case-by-case basis at the discretion of the OIDS Executive Director.

Costs that are reimbursed from these funding pools should NOT be included in the regular quarterly grant financial reports or reimbursement worksheets uploaded to the GMS to avoid duplication of payments.

IX.1. MILEAGE REIMBURSEMENT: A system in the 3rd – 6th class counties may request reimbursement from OIDS for an employee's or contractor's round trip(s) of 50 or more miles that are directly related to representing indigent clients when the following conditions are met:

- a. A system must have a current, signed IDC grant agreement, although it is not required that the system is a grant recipient. In addition, based on its fiscal year, the system must deplete its annual mileage budget (if any) before applying for reimbursement by OIDS.
- b. The state of Utah higher mileage reimbursement rate in effect at the time of travel will be used to calculate the OIDS reimbursement amount. The system is responsible for mileage costs that either exceed the state rate or are ineligible for OIDS reimbursement.



ATTACHMENT B: Standard Terms, Assurances, Certifications, and Conditions

- c. The traveler must track actual miles traveled from the traveler's home or regular place of business to the destination using the IDC Mileage Tracking Form. A Google map or a similar document of the route, showing the distance in miles, must be included as supporting documentation. The traveler must submit the Mileage Tracking form and supporting documentation to the system with the monthly or quarterly invoice.
- d. System can request mileage reimbursement by sending a completed IDC Defense Resources and Mileage Reimbursement Request Form, route map(s), copies of invoices for the mileage, and proofs of payment to IDC@utah.gov within 20 days of the end of the month or quarter in which the travel occurred.
- e. OIDS mileage reimbursement is contingent upon availability of funds. Reimbursement is not available for travel that takes place before the grant agreement effective date or after the grant agreement expiration date.
- f. Forms are found on the IDC Project Director Resources page at <https://idc.utah.gov/grants/grant-management-system>
- g. Exceptions to these conditions and requirements may be approved on a case-by-case basis by the OIDS Executive Director or the Indigent Defense Commission as deemed appropriate.

IX.2. LODGING REIMBURSEMENT: A system in the 3rd - 6th class counties may request reimbursement from OIDS for its employees' or contractors' lodging expenses (i.e. hotel room and applicable taxes and fees) in destinations that are 50 or more miles from the traveler's home or regular office bases during overnight trips that are related directly to representing indigent clients when the following conditions are met:

- a. A system must have a current, signed IDC grant agreement, although it is not required that the system is a grant recipient.
- b. The traveler must request the system's Managing Defender's approval for lodging in writing prior to travel and provide a brief description of why an overnight hotel stay is in the best interest of the system. For example, if an attorney is required to work at the travel destination after normal working hours or early the next day, or when weather or other safety issues exist, lodging may be appropriate.
- c. The system's Managing Defender may use discretion to authorize reimbursement for lodging if it is determined that lodging is reasonable and in the best interest of the system. The Managing Defender must approve the lodging request in writing prior to travel.
- d. The state of Utah lodging per diem rates in effect at the time of travel will be used to calculate the OIDS reimbursement amount. The system is responsible for lodging costs that either exceed the state per diem rates or are ineligible for OIDS reimbursement.
- e. The traveler must submit itemized invoices for lodging costs to the system with the regular monthly or quarterly invoices.
- f. System can request lodging costs reimbursement by sending a completed IDC Defense Resources and Mileage Reimbursement Request Form, along with a copy of the written approval, copy of the itemized hotel invoice, and proof of payment to IDC@utah.gov within 20 days of the end of the month or quarter in which the travel occurred.
- g. IDC lodging reimbursement is contingent upon the availability of funds. Reimbursement is not available for travel that takes place before the grant agreement's effective date or after the grant agreement's expiration date.
- h. Forms are found on the IDC Project Director Resources page at <https://idc.utah.gov/grants/grant-management-system>
- i. Exceptions to these conditions and requirements may be approved on a case-by-case basis by the OIDS Executive Director or the Indigent Defense Commission as deemed appropriate.



ATTACHMENT B: Standard Terms, Assurances, Certifications, and Conditions

IX.3. DEFENSE RESOURCES REIMBURSEMENT: OIDS may reimburse the actual costs paid by a system in a county of the 3rd through 6th class for the following defense resources: investigators, experts, evaluations, translation services, transcripts, and second chair. Other legal expenses may be approved as eligible defense resources at the discretion of the OIDS Executive Director. The following conditions apply:

- a. A system must have a current, signed IDC grant agreement, although it is not required that the system is a grant recipient. In addition, based on its fiscal year, the system must deplete its annual defense resources budget before applying for reimbursement from OIDS.
- b. The system can make a request by sending a completed IDC Defense Resources and Mileage Reimbursement Request Form, copy of the invoice for the expense and proof of payment to IDC@utah.gov within 20 days of the end of the month or quarter in which the resource was utilized.
- c. A single defense resource expense of \$500 or more requires written pre-authorization from the OIDS Executive Director and the system, using the IDC Defense Resource Overage Pre-Authorization form.
- d. Reimbursements are contingent upon the availability of funding. Reimbursements are not available for resources utilized or purchased before the grant agreement's start date or after the grant agreement's expiration date.
- e. Forms are found on the IDC Project Director Resources page at <https://idc.utah.gov/grants/grant-management-system>
- f. Exceptions to these conditions and requirements may be approved on a case-by-case basis by the OIDS Executive Director or the Indigent Defense Commission as deemed appropriate.



ATTACHMENT C: Quarterly Reporting Schedule and Requirements

QUARTERLY REPORTING SCHEDULE AND REQUIREMENTS

Continuing funding and IDC quarterly grant reimbursements are contingent upon the system submitting complete reporting as outlined below. Instructions and links to the reporting documents will be emailed to project directors and managing defenders about three weeks before the reporting is due each quarter.

First Quarter - Due October 20th

- System Progress Narrative
- Quarterly Financial Report - Reimbursement Request (GMS)
- System Indigent Defense Service Provider Contracts Update

Second Quarter - Due January 20th

- System Needs Evaluation (This serves both as required reporting for the current grant and as part of next year's grant application)
- Attorney Caseload Surveys (This serves both as required reporting for the current grant and as part of next year's grant application)
- Quarterly Financial Report - Reimbursement Request (GMS)

Third Quarter - Due April 20th

- System Progress Narrative
- Quarterly Financial Report - Reimbursement Request (GMS)
- System Indigent Defense Service Provider Contracts Update

Fourth Quarter - Due July 15th (End of the state government fiscal year)

- System Needs Evaluation
- Attorney Caseload Surveys
- Quarterly Financial Report - Reimbursement Request (GMS)



ATTACHMENT E: Summary of Key Indigent Defense Positions

The system's ability to meet the Core System Principles set forth in Attachment D requires a threshold structural and resource capacity—for example, adequate administrative resources and the ability to monitor attorney and system performance. Vital to this capacity is also the collection of reliable data about the services and quality of representation the system is providing (see Attachment C). The following key positions are critical to the system's ability to administer the IDC grant and to carry out obligations for providing effective indigent defense services under the grant agreement.

Project Director

The system must have a Project Director in place for the duration of the IDC grant award. The Project Director is responsible for the administration, management, and oversight of the grant award on behalf of the system. The system may delegate all or some of the Project Director's duties to a Managing Defender, who may be either an employee or sub-grantee of the system.

Managing Defender

The system receiving funding for a managing defender position must ensure that the following are included in the job duties of that position:

- Monitor contract attorneys to ensure they carry out their obligations in accordance with the contract provisions.
- Provide requested data and reports to the OIDS in a timely manner, including the bi-annual System Needs Evaluation, Attorney Caseload Survey, and financial reporting.
- Supervise and collaborate with grant-focused administrative assistant(s) to ensure that they are completing their duties, including applying case-weighting to achieve balance among attorney workloads.
- Educate contract attorneys on the principles of client-centered representation (*Managing Defender Manual*, p. 7) and encourage them to incorporate them into their practice.
- Mentor less experienced attorneys, including acting as a 2nd chair at trial when needed.

Additional information on the duties and responsibilities of a Managing Defender is available in the *Managing Defender Manual*.

Administrative Assistant

The system receiving funding for a grant-focused administrative assistant position must ensure that the following are included in the job duties of the position:

- Coordinate and collaborate with the managing defender to work toward system improvement.
- Assist in financial oversight including monitoring monthly and annual spending to ensure compliance with system-side and grant budgets.
- Maintain statistics and compile reports, including caseload information for the managing public defender.
 - Help the managing defender and contracted attorneys utilize DefenderData or another case management software consistently.
 - Ensure data accuracy by opening and closing each case in the case management system or ensure that attorneys are doing so.
 - Using a case tracker or other case weighting system to help the managing defender achieve balanced workloads among attorneys.
- Assist with IDC grant applications, IDC reporting, and compliance with other grant requirements.



ATTACHMENT F: Social Worker Agreement

An indigent defense services system that receives funding for a social worker may directly employ or enter into a contract with a social worker to participate in an interdisciplinary legal team. Whether the system employs or contracts with a social worker, the system will ensure that the worker complies with the following requirements and conditions, and with social worker practice standards established by the Indigent Defense Commission (IDC).

1. The system may employ or contract with a social worker whose qualifications meet the requirements stated in section 78B-22-805 (1).
2. If the system hires a social worker, the managing defender will ensure that the social worker complies with all requirements of the program as established by the IDC and agreed to by the system.
3. If the system contracts with a social worker, the managing defender will ensure that the contract requires the social worker to comply with the requirements of the program as established by the IDC and agreed to by the system.
4. Whether the system employs or contracts with a social worker, the managing defender will establish an office policy for assigning and overseeing cases.
5. If the system assigns an attorney to work with a social worker as part of an interdisciplinary legal team, the managing defender will ensure that the attorney understands the practice standards applicable to the members of the interdisciplinary legal team and that they will meet the IDC's requirements for collecting and reporting data.
6. The social worker will collect and report data requested by the Office of Indigent Defense Services (OIDS) or the IDC. The managing defender will ensure that data is collected and reported to the OIDS as a part of the system's quarterly reporting. The OIDS will provide a report template to the managing defender, the social worker, and each attorney who is part of an interdisciplinary legal team to facilitate data reporting.
7. The managing defender and the social worker will participate in monthly meetings with OIDS staff to review case status, activity, and caseloads for the social worker.



ATTACHMENT D: Core System Principles for Indigent Defense Services

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.¹ 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. Utah law delegates the provision of indigent defense services to its local governments.²

The purpose of these principles is threefold:

1. Provide guidance to government officials, policymakers, and entities charged with providing, overseeing, assessing, and/or funding indigent defense systems.
2. 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.
3. Encourage appointed counsel to provide a high standard of representation and promote professionalism in the representation of indigent individuals in Utah.

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 United States and Utah Constitutions, and Utah law. Its membership includes key leaders in state and local government, criminal defense, and indigent defense services. 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 indigent defense service provision, award grants to improve indigent defense services, and support the regionalization of indigent defense services throughout the state.

¹The 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).

² “Indigent Defense System” or “system” 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).



ATTACHMENT D: Core System Principles for Indigent Defense Services

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

A system's ability to meet the principles articulated herein requires a threshold structural and resource capacity—for example, an adequate budget, administrative resources, and the ability to monitor attorney and system performance. Critical to this capacity is the collection and regular review of reliable data and information about the services and quality of representation the system is providing.³ If an indigent defense system lacks such capacity, efforts must be made to improve the system's organization—for example, through adopting a managed assigned counsel (MAC) system, public defender office, and/or through pursuing interlocal, resource-sharing agreements.

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

Rights. The U.S. Constitution, the Utah Constitution, and Utah law guarantee the right to counsel. That right extends under Utah law to all accused persons facing any possibility of incarceration or detention,⁴ and to parents/legal guardians subject to child welfare proceedings and/or petitions to terminate their parental rights,⁵ regardless of financial status.

Responsibilities. Systems must ensure individuals facing these proceedings, who are unable to afford counsel, are provided counsel at government expense.⁶ Systems must also ensure the presence of defense counsel at all court proceedings, to avoid creating practical barriers to appointment or any pressure to waive counsel.

Restrictions. If a system seeks to recover/recoup public defender fees, it must strictly adhere to the statutory limitations and processes, to avoid undermining the right to counsel.⁷ A system

³ Indigent Defense Act, §78B-22-404(1)(c). The commission shall, "identify and collect data from any source, which is necessary for the commission to: (i) aid, oversee, and review compliance by indigent defense systems with the commission's minimum guidelines for the effective representation of indigent individuals; and (ii) provide reports regarding the operation of the commission and the provision of indigent defense services by indigent defense systems in the state."

⁴ Indigent Defense Act, §§ 78B-22-102(8) (defining a minor who is "arrested and admitted into detention" or who is "charged by petition or information in the juvenile or district court" as indigent for the entitlement to court-appointed counsel), 78B-22-201 (explaining the other individuals who are entitled to the right to counsel)

⁵ Indigent Defense Act, § 78B-22-201(1)(b)(parent and legal guardians have the right to counsel in abuse, neglect, or dependency proceedings; termination of parental rights; adult offenses; or proceedings listed in § 78B-6-112).

⁶ Indigent Defense Act, §§ 78B-22-102(7) (requiring cities, towns, and counties to provide indigent defense services), and 78B-22-202(2), 78B-22-203(1) (requiring a court to determine indigency, and upon finding indigency, to appoint an indigent defense service provider under contract with a system to represent indigent individuals).

⁷ Recoupment of public defender fees is permissible with limitations. Such fees cannot be combined with a plea agreement and must only happen post-conviction after a court makes an independent "ability to pay" determination.



ATTACHMENT D: Core System Principles for Indigent Defense Services

may not, for example, assess fees without individualized assessments for each convicted individual, as statute requires the court to consider financial resources and the burden any fee will cause before imposing it. Systems reinvest any recouped funding in indigent defense services.

PRINCIPLE 3/ SYSTEM PROVIDES PROPER SCOPE OF REPRESENTATION

- ***Principle 3A/ Scope of Representation: Attorney Activity***

Effective representation requires attorney activity that meaningfully addresses the allegations facing each client. Accordingly, indigent defense systems shall ensure that attorneys are regularly engaged in a scope of practice wherein the attorney will:

- Develop a theory of the case that guides the case strategy.
- Pursue available evidence through discovery and investigation.
- Examine and review all available evidence.
- File appropriate motions.
- Advise the client on the strengths and weaknesses of the state's case and on all implications of a plea offer, including direct and collateral consequences of accepting the plea offer.
- Litigate or adjudicate the allegations, unless a plea offer is consistent with the client's expressed wishes and represents a benefit to the client.
- Use investigative and other defense resources, as appropriate.

- ***Principle 3B/ Scope of Representation: Stages of the Proceedings***

Early Appointment. Systems must ensure that as soon as feasible, defense counsel is assigned and notified of appointment, and indigent individuals are notified of the identity of assigned counsel and how to contact counsel.⁸

Continuity. Systems must ensure an indigent individual has access to counsel at all critical stages of criminal proceedings,⁹ and in delinquency and child welfare proceedings that

Utah Code §77-32a-108 ("The court may not include in the judgment a sentence that a defendant pay costs unless the defendant is or will be able to pay them. In determining the amount of costs, the court shall take into account the financial resources of the defendant, the nature of the burden that payment of costs will impose, and that restitution is the first priority."); *Fuller v. Oregon*, 417 U.S. 40, 45 (1974).

⁸ Utah R. Prof. Conduct. 1.4 (Communication).

⁹ A critical stage is "every stage of a criminal proceeding where substantial rights of a criminal accused may be affected." *Mempa v. Rhay*, 389 U.S. 128, 134 (1967). The right attaches when "formal judicial proceedings have begun." *Rothgery v. Gillespie County*, 554 U.S. 191, 212 (2008).



ATTACHMENT D: Core System Principles for Indigent Defense Services

indigent individuals have counsel to represent them at all stages of the juvenile court proceedings.¹⁰

Consistency. Systems must ensure representation commences in a timely manner, extends for the proper period of representation, and proceeds with reasonable continuity, unless the client's needs dictate otherwise—meaning the same attorney must continuously represent a client, where feasible, until a case concludes.¹¹

PRINCIPLE 4/ 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. A system must ensure defense counsel is free to defend clients zealously, based on counsel's own judgement, and without fear of termination, reduction in compensation, reduction in staff, or reduction in defense resources.¹² The selection, funding, and payment of defense counsel should be independent of the judiciary and the prosecution.¹³

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.¹⁴ Each is its own area of specialization, requiring skills and knowledge distinct from what is required to practice in any other area.

Indigent defense systems must separately account for criminal defense, delinquency defense, parental defense, and appellate advocacy in their employment and contracting arrangements.¹⁵

¹⁰ Minors are entitled to appointed counsel. Indigent Defense Act, §§ 78B-22-102(8)(a), 78B-22-203(1)(a). Once appointed, providers "shall provide indigent defense services for the indigent individual *in all court proceedings* in the matter for which the indigent defense service provider is appointed." §§ 78B-22-203(1)(a), 78B-22-202(1)(b).

¹¹ System should ensure defense counsel does not withdraw from representation inappropriately, as defense counsel is required at probation revocation hearings. *Mempha*, 389 U.S. at 137.

¹² Indigent Defense Act, § 78B-22-404(1)(a)(ii)(A) (systems must ensure providers have "the ability to exercise independent judgment without fear of retaliation and [are] free to represent an indigent individual based on the indigent defense service provider's own independent judgment").

¹³ The "independence of counsel" is "constitutionally protected." *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

¹⁴ Indigent Defense Act, § 78B-22-201(1) (outlining the right to counsel in these four practice areas).

¹⁵ Indigent Defense Act, § 78B-22-404(1)(a)(i)(B) (systems must ensure "a separate contract for each type of indigent defense service").



ATTACHMENT D: Core System Principles for Indigent Defense Services

PRINCIPLE 6/ SYSTEM ENSURES THE RIGHT TO APPEAL

Indigent defense systems must provide counsel for any first appeal of right,¹⁶ and must separately account for the provision of appellate services to ensure the right to appeal.

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

Effective representation is representation that is zealous, diligent, and free from conflicts of interest—as defined in the Utah Rules of Professional Conduct.¹⁷ Indigent defense systems shall ensure that defense counsel manages conflicts of interest issues as required by the Utah Rules of Professional Conduct.¹⁸

Systems shall provide appropriate employment and separate arrangements to account for conflict cases.¹⁹ Those arrangements shall not create for defense counsel a financial disincentive to declare a conflict.²⁰

PRINCIPLE 8/ SYSTEM PROVIDES EFFECTIVE REPRESENTATION

Effective representation depends upon the zealous advocacy of qualified counsel, who receives training, has appropriate caseloads, has access to defense resources, and is properly compensated.

- **Principle 8A/ Qualifications and Training**

Indigent defense systems must ensure defense counsel's ability, training, and experience

¹⁶ Indigent Defense Act, §§ 78B-22-201(1)(c), 78B-22-203(1)(a); *Douglas v. California*, 372 U.S. 353 (1963) (explaining that individuals who are “appealing a first appeal from a conviction or other final court action” have the right to counsel throughout the proceedings, and if such individuals are indigent, counsel will be appointed for them).

¹⁷ Indigent Defense Act, § 78B-22-404(1)(a)(i)(A) (systems must ensure indigent individuals receive zealous and conflict-free indigent defense services); Utah R. Prof. Conduct. 1.1 (Competence), 1.2 (Allocation of Authority Between Client and Lawyer), 1.3 (Diligence), 1.4 (Communication), 1.6 (Confidentiality of information), 1.7 & 1.8 (Conflicts of Interest), 1.9 (Duties to Former Clients), 1.10 (Imputation of Conflicts of Interest), 1.14 (Client with Diminished Capacity), 1.15 (Safekeeping property), 1.16 (Declining or terminating representation), 1.18 (Duties to Prospective Client), 6.2 (Accepting Appointments).

¹⁸ Indigent Defense Act, § 78B-22-404(1)(a)(ii)(H) (systems must ensure indigent service providers have “the ability to meet the obligations of the Utah Rules of Professional Conduct, including expectations on client communications and managing conflicts of interest”).

¹⁹ Indigent Defense Act, § 78B-22-404(1)(a)(i)(A) (systems must ensure an indigent individual receives conflict-free indigent defense services), Utah R. Prof. Conduct 1.7 through 1.10.

²⁰ Indigent Defense Act, § 78B-22-404(1)(a)(ii)(E) (systems must provide indigent defense providers with “adequate compensation without financial disincentives”).



ATTACHMENT D: Core System Principles for Indigent Defense Services

match the complexity of the case.²¹ Systems must require counsel to receive continuing legal education in the areas indigent defense representation in which they practice.²²

- **Principle 8B/ Appropriate Caseloads**

Indigent defense systems must control defense counsel's total workload (including private and indigent caseloads in other jurisdictions) to allow for effective representation of each client. Total caseload must 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 way in each case.²³

- **Principle 8C/ Access to Defense Resources**

Indigent defense systems must equip defense counsel with the tools necessary to provide effective representation, by providing access to defense resources, which may include "costs for a competent investigator, expert witness, scientific or medical testing, transcripts, and printing briefs,"²⁴ social workers, interpreters, and forensic services.

Systems must avoid conflicts or disincentives for defense counsel—for example, flat rate contracts where counsel pays for services from their compensation, or procedures requiring defense counsel to reveal a request for resources to prosecutors.

- **Principle 8D/ Proper Compensation**

Indigent defense systems must adopt appropriate rates and methodologies of compensation, sufficient to attract qualified applicants and to incentivize effective representation, which take into account the time, work, and complexity required to provide effective representation.

Indigent defense systems must avoid employment or contracting arrangements that create disincentives for effective representation—for example, flat fee contracts that provide no limit on the cases defense counsel will be assigned.²⁵ Systems must provide counsel with the ability to seek additional compensation for extraordinary cases, or additional attorneys when caseloads are too high.

²¹ Indigent Defense Act, § 78B-22-404(1)(a)(ii)(F) (systems must ensure providers have "appropriate experience or training in the area for which the indigent defense service provider is representing indigent individuals").

²² Indigent Defense Act § 78B-22-404(1)(a)(ii)(G) (systems must ensure compensate providers "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").

²³ Indigent Defense Act, § 78B-22-404(1)(a)(ii)(D) (systems must ensure all providers have "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").

²⁴ Indigent Defense Act, §§ 78B-22-102(4) & 78B-22-404(1)(a)(ii)(B).

²⁵ Indigent Defense Act, § 78B-22-404(1)(a)(ii)(E) (systems must provide indigent defense providers with "adequate compensation without financial disincentives").