



Tooele County
Grant Award Agreement

JULY 1, 2023 – JUNE 30, 2024

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Initials and signatures are required as noted below, indicating acceptance and understanding of all grant terms, conditions, requirements, and responsibilities.

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State of Utah Indigent Defense Commission GRANT AWARD AGREEMENT		1) Grantee Name & Address: Tooele County 74 S 100 E, Suite 26 Tooele, UT 84074	
2) Project Director:	Cory Caldwell	3) Phone:	435-830-7577
4) Email:	cory@caldwell.law		
5) IDC Grant Number:	24D20	6) Length of Grant:	12 Months
7) Grant Start Date:	7/1/2023	8) Grant End Date:	6/30/2024
9) Budget Summary		IDC Grant Award	System Spending
Personnel Expenses:		\$ 0.00	\$ 0.00
Personnel Fringe Benefits:		\$ 0.00	\$ 0.00
Contracted Services:		\$ 306,126.00	\$ 354,788.00
Equipment, Supplies, and Operating Expenses:		\$ 0.00	\$ 64,333.00
Travel/Mileage:		\$ 0.00	\$ 0.00
Subtotals:		\$ 306,126.00	\$ 419,121.00
Total Budget (Grant + System Spending):		\$ 725,247.00	
10) Certification	<p>Under the terms and conditions of this Agreement, which incorporates by reference attachments A through F, the Grantees agree to complete all objectives and requirements of the project as described herein. The State of Utah, through its Indigent Defense Commission, agrees to fund the project up to the Total Grant Award contingent upon the grantee meeting all requirements outlined in the agreement.</p>		
11) Name of Authorized System Representative*	James A. Welch		
12) Title of Authorized System Representative*	County Manager		
13) Signature of Authorized System Representative*	James A. Welch		
14) Signature of System Project Director*	Cory Caldwell		
15) Signature of OIDS Executive Director*			

* See Attachment A for definitions.

ATTACHMENT A: AGREEMENT DEFINITIONS AND TERMS

As used in this Agreement, the following terms shall have the meanings set forth below:

Authorized System Representative means the official of the system authorized to sign grant applications and agreements. These may include city mayor, city manager, county mayor, county manager, county council chair, or county commissioner of the fiduciary agency.

Commission or IDC means the Utah Indigent Defense Commission

Grantee means System receiving IDC grant funds.

OIDS Executive Director means the executive director of the Office of Indigent Defense Services.

Indigent Defense Resources means the 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 means an attorney or entity appointed to represent 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 means:

- (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 means:

- (a) a city or town that is responsible for providing indigent defense services;
- (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.

Office or OIDS means the Office of Indigent Defense Services.

Project Director means the individual, from the applicant indigent defense system, responsible for the day-to-day management and oversight of the grant program, and the person whom the OIDS will contact for information on compliance with the terms of the grant agreement and Utah Law, quarterly reports, invoices, and payment information.

State Entity means the IDC, OIDS, or another State of Utah government agency or state organization.

Sub-grantee means any entity or individual who is paid with IDC grant funds by the System, such as contractors for services.

System Spending means the portion of the system's indigent defense budget that is paid for by the system and is not reimbursable by the grant award.

ATTACHMENT B: ASSURANCES, CONDITIONS, CERTIFICATIONS, AND REQUIREMENTS

Utah Indigent Defense Commission

I. CERTIFIED ASSURANCES AND GRANT CONDITIONS

CERTIFIED ASSURANCES

1. The System assures that fund accounting, auditing, monitoring, and such evaluation procedures as may be necessary to keep such records as the Commission shall prescribe, shall be provided to assure fiscal control, proper management, independence of the public defender function, and efficient disbursement of funds.
2. The System assures that it has and will continue to maintain its baseline budget for indigent defense spending, as set forth in its application for Commission grant funding, and reflected in the grant payment structure and grant award agreement. In addition, the System assures that Commission funds shall be used to supplement and not supplant (replace) local spending on indigent defense services. If a system reduces its funding or otherwise is found to be in violation of this assurance, the System may be required to repay those funds that were used to supplant local spending, or may be denied all Commission grant funding.
3. The System assures that it shall maintain such data and information and submit quarterly reports, including progress reports, financial status reports, and other data requested by the Commission or Office, such as reports from Defender Data or other case management software approved by the IDC. These reports provide information and data related to narrative and numerical performance measures developed by the Commission, not limited to the number and types of all cases filed, number and types of cases where a court appoints an attorney to represent an indigent party, disposition of each court-appointed case, caseloads carried by indigent defense service providers in the System, etc.
4. The System assures that all reporting will be completed by the due dates outlined in the Required Quarterly Reporting schedule attached. Financial status reports must be uploaded into the State GMS database no later than twenty (20) days after the end of each quarter. Due to the end of the state fiscal year, the financial report that covers the quarter of April through June is due July 13. If a due date falls on a weekend the deadline will be the following Monday. The System will have up to ninety (90) days past the closing date of the grant award to submit a final supplemental financial status report for costs incurred during the grant period. However, the System should make every possible effort to include all final costs in the regularly scheduled financial status report due July 13. Links to complete the required Progress Narratives, System Needs Evaluations, and Provider Caseload Surveys will be sent by the IDC Grant Program Manager following the end of each quarter. Failure to submit complete reporting by established deadlines may result in the freezing of grant funds, and affect future funding eligibility and/or risk designation. The Office may also require the System to complete corrective action.
5. The System assures it will comply with State of Utah rules, policies, and rates, regarding personnel, purchasing supplies and equipment, contractual agreements, etc., unless its home

agency rates are more restrictive. If the System is working through a fiduciary agent, the policies of the fiduciary agent become the applicable policies with regard to expending grant funds. If the System does not currently have written policies or a fiduciary agent, the general policies adopted by the State of Utah - Department of Finance, Department of Human Resources, Division of Purchasing and General Services, etc. - must be complied with in expending grant funds.

6. The System assures it will require all indigent defense service providers to cooperate and participate with the IDC and Office in reporting, and any investigations, audits, and/or reviews of indigent defense services.
7. The System assures that it will have on file a valid written contract for all current indigent defense service providers not directly employed by the System.
8. The System assures it will allow the Commission and Office to maintain oversight to collect data, audit attorney performance, establish performance, caseload, and other standards, and to ensure the IDC Core Principles are being met.
9. The System assures, through appropriate language incorporated in each grant, sub-grant or other document under which funds are to be disbursed, the authorized official shall assure that the applicable certified assurances and grant conditions will be complied with by their own agency and any other agency or the System with whom they make subsequent contracts or agreements.

GRANT CONDITIONS

1. GRANT-FUNDED POSITIONS: The System agrees to provide a job description and/or request for proposals (RFP) to the IDC for review for any grant-funded position prior to posting.
2. COMPENSATION AND METHOD OF PAYMENT: The Office will reimburse or, in rare cases with advance approval, will disburse the grant share of approved program expenditures as outlined in the grantee's grant award agreement. Reimbursement will be made on a quarterly basis, once quarterly required invoices and reports are submitted and the amount of expenditures are approved, unless other payment arrangements have been agreed to in advance and in writing by the Office.
3. AUDIT REPORTS: The System agrees to make available to the Office and Commission a copy of any annual audits on the System or any sub-grantees.
4. UTILIZATION AND PAYMENT OF FUNDS:
 - a. Funds awarded are to be expended only for purposes and activities covered by the approved project activities and budget.
 - b. Project funds will be made available in accordance with provisions as prescribed by the Commission.
 - c. Grantee agrees to return to the Commission all unexpended funds provided hereunder to the Commission within 60 days of termination of the grant. Payments will be adjusted to correct previous overpayment or underpayment and disallowances resulting from monitoring, inspection, or audit.

- d. Approved project activities and budget categories may include:
- i. Personnel / FTE Expenses: All remuneration for services of system employees during the period of the award, including wages and salaries. Any personnel / FTEs are considered employed by and employees of the System.
 - ii. Fringe Benefits for Personnel / FTE: Allowances and services provided by employer(s) to their employee(s) as compensation in addition to regular salaries and wages. Commission reimbursement is limited to medical and dental insurance for system personnel / FTEs.
 - iii. Contract Services: Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill (i.e. contracted defense attorneys). Not considered officers or employees of the System.
 - iv. Reserve Funds: Money set aside to meet future or unexpected costs associated with defense resources.
 - v. Travel: The expenses for transportation incurred by personnel/FTEs and/or contractors who travel on official business. Such costs are charged on an actual mileage basis. See the Mileage Reimbursement condition for details.
 - vi. Other: Subject to the limitation and approval of the Commission, other expenses related to indigent defense may be allowable.
5. OBLIGATION OF GRANT FUNDS: Grant funds may not be obligated prior to the effective date or subsequent to the termination date of the grant period. Obligations outstanding as of the termination date shall be liquidated within ninety (90) days. Such obligations must be related to goods or services provided and utilized within the grant period.
6. EXPENSES NOT ALLOWABLE: Project funds may not be expended for: (a) items not part of the approved budget or separately approved by the Commission; (b) the purchase of land; or (c) construction projects. Expenditure of funds in excess of the amount budgeted per budget category will be permitted only with the OIDS Executive Director's prior written approval.
7. TERMINATION OF AID: If through any cause the System shall fail to substantially fulfill in a timely and proper manner all of its obligations, terms, covenants, conditions, attachments, addenda, or other stipulations of the grant agreement, as determined by the Commission, the Commission shall have the right to terminate the grant agreement or to suspend fund payments. The Commission shall give written notice to the System of such action, specifying the effective date thereof, at least thirty (30) days before the effective date of such action.
8. MONITORING, INSPECTION, AND AUDIT: The Commission, the State of Utah, or any of their duly authorized representatives shall have access for purpose of grant monitoring, audit, and examinations to any relevant books, documents, papers, and records of the System and any sub-grantees, and to relevant books and records of either.
9. PERSONAL PROPERTY: The System shall retain any nonexpendable personal property acquired with grant funds in the grant program as long as there is a need for the property to accomplish the

purpose of the grant program, whether or not, the program continues to be supported by Commission grant funds. When there is no longer a need for the property to accomplish the purpose of the program, the grantee shall request property disposition instructions from the Office or Commission.

10. MAINTENANCE OF RECORDS: For purposes of state and federal examinations and audits, all financial and statistical records, supporting documents, and all other records pertinent to grant awards or contracts shall be retained for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later.
11. WRITTEN APPROVAL OF CHANGES: The System must obtain prior written approval from the Commission or the OIDS Executive Director for program changes. These include (a) any change of substance in program activities, designs, or objectives; (b) changes in the System project director or key professional personnel identified in the approved application; (c) changes in the approved project budget; and (d) budget adjustments in any budget category.
12. THIRD PARTY PARTICIPATION: No contract or agreement may be entered into by the System for execution of project activities or provision of services that is not incorporated in the approved proposal, or approved in advance by the Commission. Any such arrangement shall provide that the System will retain ultimate control and responsibility for the grant project and that the System shall be bound by these grant conditions and any other requirements applicable to the System in the conduct of the project. The Commission shall be provided with a copy of all such contracts and agreements entered into by the System.
13. WRITTEN DESCRIPTIONS OF PROGRAMS: The System agrees that when issuing statements, press releases, requests for proposals, bid solicitation, and other documents describing projects or programs funded in whole or in part with State money, the System receiving State funds shall clearly state (a) the percentage of the total cost of the program or project that will be financed with State money, and (b) the dollar amount of State funds for the project or program.
14. PROJECT DIRECTOR: There shall at all times during the life of the grant agreement be an individual appointed by the System as "Project Director." This individual will be responsible for program planning, operation, reporting, and administration under the grant agreement.
15. RELEASE OF INFORMATION: All records, papers, and other documents kept by recipients of Commission funds, their grantees and sub-grantees, relating to the receipt and disposition of such funds, are required to be made available to the Office and the Commission, and are subject to any applicable state or federal laws governing the disclosure of such records.

The System agrees that this agreement, related purchase orders, related pricing documents, and invoices will be public documents, and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). The System gives the State Entity and the State of Utah express permission to make copies of this agreement, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by the System and expressly approved by the State of Utah Division of Purchasing and General Services, all of which must be in accordance with GRAMA, System also agrees that the System's application for the grant award will be a

public document, and copies may be given to the public as permitted under GRAMA. The State Entity and the State of Utah are not obligated to inform the System of any GRAMA requests for disclosure of this agreement, related purchase orders, related pricing documents, or invoices.

16. COPYRIGHTS AND RIGHTS IN DATA: Where activities supported by this grant produce original computer programs, writings, sound recordings, pictorial reproductions, drawing or other graphical representation and works of any similar nature (the term computer programs includes executable computer programs and supporting data in any form), the Commission has the right to use, duplicate and disclose, in whole, in part, or in any manner for any purpose whatsoever and have others do so. If the material is copyrightable, the System may copyright such, but the Commission reserves a royalty-free non-exclusive and irreversible license to reproduce, publish and use such materials in whole or in part and to authorize others to do so.
17. 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. The System must notify the Commission within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this agreement. Where the System is unable to certify to any of the statements in this certification, such prospective participant shall submit an explanation to the Commission.
18. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS: This certification is required by the State rules and regulations implementing the Drug-Free Workplace Act of 1988, 28 CFR Part 67, Subpart F, and in the Rules Governing a Drug-Free Workplace set forth in Utah Administrative Rule 477-14-1 through 477-14-4. The regulations, published in the January 31, 1989 *Federal Register*, and incorporated by reference in the Utah Administrative Rules, require certification by the System, prior to award, that they will maintain a drug-free workplace.
19. LAWS AND REGULATIONS: At all times during this agreement, the System and all Indigent Defense Service Providers will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
20. INDEMNITY: Both parties to this 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 these parties.
21. REMEDIES: Any of the following events will constitute cause for the State Entity to declare the System in default of this Agreement: (i) System's non-performance of its contractual requirements and obligations under this Agreement; or (ii) System's material breach of any term or condition of this Agreement. The State Entity may issue a written notice of default providing a

ten (10) day period in which the System will have an opportunity to cure. Time allowed for cure will not diminish or eliminate the System's liability for damages. If the default remains, after the System has been provided the opportunity to cure, the State Entity may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Agreement; (iii) impose liquidated damages, if liquidated damages are listed in this Agreement; (iv) debar/suspend the System from receiving future agreements from the State Entity or the State of Utah; or (v) demand a full refund of any payment that the State Entity has made to the System under this Agreement for services that do not conform to this Agreement.

22. FORCE MAJEURE: Neither party to this Agreement will be held responsible for delay or default caused by fire, riot, acts of God, disease, state of emergency, executive order, and/or war, which is beyond that party's reasonable control. The State Entity may terminate this Agreement after determining such delay will prevent successful performance of this Agreement.
23. EMPLOYMENT PRACTICES: The System agrees to abide by the following employment laws: (i) 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; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's 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 the discrimination of any kind by any of the System's employees.
24. NON-APPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW: Upon thirty (30) days written notice delivered to the System, this agreement may be terminated in whole or in part at the sole discretion of the State Entity, if the State Entity reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Agreement; or (ii) that a change in available funds affects the State Entity's ability to pay under this Agreement. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the president or the governor.

If a written notice is delivered under this section, the State Entity will reimburse the System for the Services properly ordered until the effective date of said notice. The State Entity will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

25. TERMINATION: Unless otherwise stated in this Agreement, this Agreement may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Agreement may be terminated for cause immediately and is subject to the remedies listed below. This agreement may also be terminated without cause (for convenience), in advance of the specified expiration date, by either party, upon thirty (30) days written termination notice being given to the other party. The State Entity and the

System may terminate this Agreement, in whole or in part, at any time, by mutual agreement in writing. On termination of this Agreement, 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 shall be compensated for services properly performed under this Agreement up to the effective date of the notice of termination. The System agrees that in the event of such termination for cause or without cause, the System's sole remedy and monetary recovery from the State Entity or the State of Utah is limited to full payment for all services properly performed as authorized under this 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.

26. CHARGING INDIGENT CLIENTS FOR SERVICES: An indigent defense services provider working on an IDC grant, shall not accept any additional payment or other benefits outside of the contract amount for any representation of court-appointed clients.
27. CONTINUING LEGAL EDUCATION: Indigent defense systems receiving IDC grant funding must provide records of the annual CLE attendance of each indigent defense service provider on contract upon request of the OIDS. In addition, each indigent defense service provider should attend a minimum of six (6) hours of CLE provided by the IDC per year.
28. FUNDING COUNTY POSITIONS: IDC funding cannot be used to supplement city/county employees unless they are employed as attorneys or support staff in the area of public defense.
29. PRIORITY LEVEL FUNDING: Funding was awarded based on the intent expressed in your grant applications to achieve the following IDC Priority Tier Levels:
 - ❖ Tier 1: Renewal of grant funding for existing indigent defense positions.
 - ❖ Tier 2: New managing defender or grant-focused administrative assistant positions that oversee at least three indigent defense service providers.
 - ❖ Tier 3: Attorney capacity increases recommended by the IDC through a collaborative process. Recommendations will be based on the January 2023 System Needs Evaluation results.
 - ❖ Tier 4: Other capacity increases recommended by the IDC through a collaborative process. Recommendations will be based on the January 2023 System Needs Evaluation results.
 - ❖ Tier 5: All other requests.
30. REGIONAL GRANT PROJECTS: Systems participating in grant projects to regionalize indigent defense services across multiple counties and/or cities, must enter into a Memorandum of Agreement or similar written agreement that is consistent with the IDC Core Principles, the intent and purpose of the grant award and its terms and conditions, and Utah law, to ensure effective indigent defense services are provided for all systems involved directly and indirectly in grant awards. A copy of the signed agreement must be submitted to the OIDS along with the first quarterly grant report due in October.
31. MANAGING DEFENDER DUTIES: Systems that receive funding for a managing defender position shall ensure that they perform the following duties during the grant period:

- a. Conduct annual reviews of supervised attorneys, including verification of good standing with the bar and compliance with CLE requirements.
 - b. Provide requested data to the OIDS in a timely manner, including the System Needs Evaluation, attorney caseload surveys, and financial reporting.
 - c. Supervise and collaborate with administrative assistant(s) to ensure that they are completing their duties, including applying case-weighting to achieve balance among attorney workloads.
 - d. Educate attorneys on principles of Client-Centered Representation, as defined in the Managing Defender Manual, and encourage them to incorporate them into their practice.
 - e. Mentor less experienced attorneys, including acting as a 2nd chair at trial when needed.
32. ADMINISTRATIVE ASSISTANT DUTIES: Systems that receive funding for a grant focused administrative assistant position will ensure that the following are included in the job duties of the position:
- a. Coordinate and collaborate with the managing defender to work toward system improvement.
 - b. Assist in financial oversight including monitoring monthly and annual spending to ensure compliance with system-side and grant budgets.
 - c. Maintain statistics and compile reports, including caseload information for the managing public defender.
 - i. Assist the managing public defender and contracted attorneys to utilize defenderData or other case management software consistently.
 - ii. Ensure data accuracy by opening and closing each case in the case management system or ensure that attorneys are doing so.
 - d. Assist with IDC grant applications, IDC reporting, and compliance with all IDC requirements outlined in this agreement.
33. MILEAGE REIMBURSEMENT: The IDC will reimburse grantee Systems for actual miles traveled by an indigent defense service provider for round trips of fifty (50) or more miles to provide indigent defense services in a county of the 3rd through 6th class. The following conditions apply:
- a. A System must exhaust any system funding budgeted for mileage, based on the system's fiscal year, before becoming eligible for reimbursement.
 - b. Reimbursement will be at the state travel rate in effect at the time of the travel.
 - c. Actual mileage traveled from the provider's regular place of business must be tracked using the IDC Mileage Tracking Form. A Google map or a similar document of the route must be included as supporting documentation with the mileage reimbursement.
 - d. The completed form must be provided to the System at the time of invoice and must be kept in the System's grant files in accordance with the Maintenance of Records condition.
 - e. Providers must invoice the System for actual miles traveled on a monthly or quarterly basis within ten (10) days of the end of the period.
 - f. A System can make a reimbursement request by sending a completed IDC Defense Resources and Mileage Reimbursement Request Form, route map(s), the original invoice for the expense, and proof of payment to IDC@utah.gov within twenty (20) days of the end of the month or quarter in which the travel occurred.

- g. Reimbursement is not available for any miles traveled before the grant start date or after the grant end date as specified in this agreement and is contingent upon IDC funding availability.
- h. Forms are found on the IDC Project Director Resources page at <https://idc.utah.gov/grants/grant-management-system>

34. DEFENSE RESOURCES REIMBURSEMENT: The IDC will reimburse the actual cost paid by a System in a county of the 3rd through 6th class, for the following defense resources: investigators, experts, evaluations, translation services, and transcripts. The following conditions apply:
- a. A System must exhaust any system funding budgeted for defense resources, based on the system's fiscal year, before becoming eligible for reimbursement.
 - b. A System can make a request by sending a completed IDC Defense Resources and Mileage Reimbursement Request Form, the original invoice for the expense, and proof of payment to IDC@utah.gov within twenty (20) days of the end of the month or quarter in which the resources were 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. Reimbursement is not available for resources utilized or purchased before the grant start date or after the grant end date specified in this agreement and is contingent upon IDC funding availability.
 - e. Forms are found on the IDC Project Director Resources page at <https://idc.utah.gov/grants/grant-management-system>

35. CASE MANAGEMENT SOFTWARE: Effective July 1, 2022, the IDC will begin paying Justice Works directly for the cost of existing defenderData licenses for Systems that signed up through the IDC in the past. The IDC will consider providing additional licenses on an individual basis, contingent upon funding availability.

GRANTEE ACCEPTANCE OF ALL GRANT ASSURANCES, CONDITIONS, TERMS, CERTIFICATIONS,
AND ANY OTHER GRANT REQUIREMENTS

The signatures below certify that you have reviewed and agree to comply with each of these IDC grant assurances, conditions, certifications, and the requirements in Attachment A through F of the IDC Grant Agreement and that all of the information provided is correct, that there has been appropriate coordination with affected agencies, and that the System will comply with the provisions of all state laws.

Cory Caldwell	Managing Defender	<i>Cory Caldwell</i>	7/13/23
System Project Director Name	Title	Signature	Date
<i>Jan A. Wiles</i>	<i>County Manager</i>	<i>Jan</i>	<i>7/11/2023</i>
Authorized System Representative Name	Title	Signature	Date

ATTACHMENT C: UTAH INDIGENT DEFENSE COMMISSION CORE PRINCIPLES



CORE PRINCIPLES FOR
UTAH INDIGENT DEFENSE SYSTEMS

Updated December 2019

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. To provide guidance to government officials, policymakers, and entities 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 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.

The membership of the Commission 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).

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 that a 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. Utah Code §77-

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 is meaningfully addressing 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; and
- 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

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).

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

⁹A 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).

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 clients. A system must ensure defense counsel is free to defend clients zealously, based on counsel's own judgment, 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")

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, access to defense resources, and proper compensation.

- *Principle 8A/ Qualifications and Training*

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

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")

- *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.

Cory Caldwell	Managing Defender	CC	7/13/23
System Project Director Name	Title	Initials	Date
<i>Jan A. Wilson</i>	<i>County Manager</i>	<i>JAW</i>	<i>7/11/2023</i>
Authorized System Representative Name	Title	Initials	Date

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”).

ATTACHMENT F: QUARTERLY PAYMENT STRUCTURE

TOOELE PAYMENT STRUCTURE (July 1, 2023 - June 30, 2024)									
Expense Line Item	Expense Structure	Jul-Sep Grant Award	Jul-Sep System Spending	Oct-Dec Grant Award	Oct-Dec System Spending	Jan-Mar Grant Award	Jan-Mar System Spending	Apr-Jun Grant Award	Apr-Jun System Spending
Managing Defender	Fixed	\$9,360.00	\$0.00	\$9,360.00	\$0.00	\$9,360.00	\$0.00	\$9,360.00	\$0.00
Administrative Assistant(s)	Fixed	\$7,800.00	\$0.00	\$7,800.00	\$0.00	\$7,800.00	\$0.00	\$7,800.00	\$0.00
Adult Criminal District Attorney Contract A & Drug Court	Fixed	\$0.00	\$14,787.00	\$0.00	\$14,787.00	\$0.00	\$14,787.00	\$0.00	\$14,787.00
Adult Criminal District Attorney Contract B	Fixed	\$0.00	\$13,140.00	\$0.00	\$13,140.00	\$0.00	\$13,140.00	\$0.00	\$13,140.00
Adult Criminal District Attorney Contract C	Fixed	\$0.00	\$13,140.00	\$0.00	\$13,140.00	\$0.00	\$13,140.00	\$0.00	\$13,140.00
Adult Criminal District Attorney Contract D	Fixed	\$13,140.00	\$0.00	\$13,140.00	\$0.00	\$13,140.00	\$0.00	\$13,140.00	\$0.00
Adult Criminal District Attorney Contract E	Fixed	\$13,209.00	\$0.00	\$13,209.00	\$0.00	\$13,209.00	\$0.00	\$13,209.00	\$0.00
Juvenile Delinquency Attorney Contract	Fixed	\$13,209.00	\$0.00	\$13,209.00	\$0.00	\$13,209.00	\$0.00	\$13,209.00	\$0.00
Parental Defense Attorney Contract A	Fixed	\$0.00	\$13,209.00	\$0.00	\$13,209.00	\$0.00	\$13,209.00	\$0.00	\$13,209.00
Parental Defense Attorney Contract B	Fixed	\$0.00	\$13,209.00	\$0.00	\$13,209.00	\$0.00	\$13,209.00	\$0.00	\$13,209.00
Parental Defense Attorney Contract C	Fixed	\$13,209.00	\$0.00	\$13,209.00	\$0.00	\$13,209.00	\$0.00	\$13,209.00	\$0.00
Adult Criminal Justice Attorney Contract A	Fixed	\$0.00	\$6,606.00	\$0.00	\$6,606.00	\$0.00	\$6,606.00	\$0.00	\$6,606.00
Adult Criminal Justice Attorney Contract B	Fixed	\$0.00	\$6,606.00	\$0.00	\$6,606.00	\$0.00	\$6,606.00	\$0.00	\$6,606.00
Parental Defense Conflicts Contract A & Adult District Conflicts	Variable	As Billed							
Parental Defense Conflicts Contract B	Variable	As Billed							
Part-Time Parental Defense Attorney	Fixed	\$6,604.50	\$0.00	\$6,604.50	\$0.00	\$6,604.50	\$0.00	\$6,604.50	\$0.00
Fixed E.S.O.	None								
Other E.S.O.	None								
Defense Resources & Reserves	Variable	As Billed							
Training & Related Travel	Variable	As Billed							
Indigent Defense Capital Fund	Variable	As Billed							
Mileage	None								

For line items budgeted quarterly:

- 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.
- 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.

For as billed categories:

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

Cory Caldwell

Managing Defender

CC

System Project Director Name

Title

Initials

Date

Ann A. Wil
Authorized System Representative Name

County Manager
Title

JAW
Initials

7/11/23
Date

Date



Tooele County Council Agenda Item Summary

Department Making Request:

Attorney / Public Defender

Meeting Date:

July 11, 2023

Mark Options That Apply: **Grant**
1 time **Contract**
1 yr. or less **Purchase**

Exp date: _____

 Grant
With County Match **Contract**
More than 1 yr. **Other** _____

Exp date: _____

Budget Impact: **In Budget**
 Over Budget**Amount of Contract, Service, Grant:** \$ 306,126**Item Title:** State of Utah Indigent Defense Commission Grant Award Agmt (2023-2024)*Please answer the who? what? when? why?*

The Indigent Defense Commission allocates funding from the legislature through grants to counties to assist them with providing indigent defense services. A new grant year begins July 1 (FY24), and the IDC has awarded the County the same amount as the year just ending (\$306,126). The grant will continue to fully fund six public defender contracts. The new grant does not financially obligate the County any more than it did for the previous year.

List who needs copies when approved: Cory Caldwell (cory@caldwell.law), Rebecca Poulsen