INDIGENT DEFENSE IN UTAH JUSTICE COURTS: RIGHTS & RESPONSIBILITIES

Utah League of Cities and Towns Annual Convention
-September 2017-
Utah Indigent Defense Commission

Senator Todd Weiler

Republican, District 23, Davis & Salt Lake Counties, Senator since 2012

Law and business degrees from BYU. Former City Council Member.

Sponsor: SB155(16) & SB134(17) – created & expanded IDC scope

IDC Commissioner since 2016 -- recommended by Legislature
Utah Indigent Defense Commission

Ryan Loose

South Jordan City Attorney since 2015
12 years of experience in city government
Law and public administration degrees from BYU
IDC Commissioner since 7/2016 – one of two recommended by ULCT
Director, Joanna Landau

Hired by IDC October, 2016

Law Degree from the University of Utah

Former judicial law clerk and appellate attorney for Salt Lake Legal Defender

Assists the IDC in performing statutory duties, manages staff
Why should I care about the Utah Indigent Defense Commission?
You should care about Utah’s Indigent Defense Commission because . . .

- Knowledge is power – avoid being sued!
You should care about Utah’s Indigent Defense Commission because . . .

• Knowledge is power – avoid being sued!
• No time like the present – don’t be late!
You should care about Utah’s Indigent Defense Commission because . . .

- Knowledge is power – avoid being sued!
- No time like the present – don’t be late!
- We’re from the government and we’re here to help – we have state money!
Knowledge is power.
Why do we have the Utah Indigent Defense Commission?

Created in 2016, 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.”

What are those obligations?
The Right to Counsel in Criminal Cases is Constitutional

United States Constitution
Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defense.

Utah Constitution
Article I, § 12

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel.
The US Supreme Court says . . .

- **1963**
  - *Gideon v. Wainwright*
  - States must ensure people accused of serious crimes (felonies), have defense counsel regardless of wealth.

- **1972**
  - *Argersinger v. Hamlin*
  - The right to counsel applies when the underlying offense carries a possibility of incarceration. Applies to felonies and misdemeanors.

- **2002**
  - *Alabama v. Shelton*
  - Right to counsel triggered at ORIGINAL hearing.
  - If underlying offense is a Class C Misd. or higher in Utah, but a suspended sentence applied, cannot later incarcerate for probation violation if not informed of right to counsel at original proceedings.
We didn’t go to law school for a reason, just tell us what this means for Utah cities and towns.
Utah Law Says: Everyone has the right to the EFFECTIVE assistance of counsel.
Local governments must provide the EFFECTIVE assistance of counsel.

| Local governments must provide for indigent defense services. | Every **county, city, & town** shall provide for the legal defense of an indigent defendant in criminal cases in the courts of the state. Utah Code § 77-32-301(1) |
Local governments must provide the EFFECTIVE assistance of counsel.

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<th>Effective Representation Required</th>
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<td>When indigent defense service providers are court appointed, they “shall provide the legal defense services necessary for effective representation.” Utah Code § 77-32-302(1)</td>
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What is the “effective assistance of counsel”?
The US and Utah Supreme Courts say it is the right to the “EFFECTIVE assistance of counsel”

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<th>Case</th>
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| **Strickland v. Washington**  | *Strickland Test Asks:* were lawyer’s actions objectively reasonable? If not, did they prejudice the outcome? If yes, court reverses criminal conviction.  
*Examples:* Counsel failed to investigate or call expert, did not know the law, no advice on immigration consequences, etc. |
| (1984)                        |                                                                           |                                                                          |
| **U.S. v. Cronic**            | *Cronic Test Asks:* were systemic factors present/absent such that attorney could not be effective, and there was no possibility of a fair trial? If yes, court will presume prejudice and reverse.  
*Examples:* Court never appointed counsel, counsel not at critical proceedings, counsel had insufficient time/experience or resources to be effective, or had conflicts of interest. |
Governments are responsible for ensuring the “EFFECTIVE assistance of counsel.”

**Tucker v. Idaho**

- Idaho Supreme Court -- sovereign immunity **DOES NOT** shield a state from liability for unconstitutional indigent defense. (Cronic)

- “The right to counsel is ‘made obligatory upon the States by the Fourteenth Amendment.’ *Gideon*, 372 U.S. at 342

- The State, therefore, has **ultimate responsibility** to ensure that the public defense system passes constitutional muster.

- While the provision of public defense has been delegated to Idaho’s forty-four counties . . . ‘the ultimate responsibility for fulfilling the . . . constitutional duty cannot be delegated.’”

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**Docket No. 3922**

**TRACY TUCKER, JASON SHARP, NAOMI MCRUEL, JONNIE PAYNE, on behalf of themselves and all others similarly situated,**

**Plantiffs-Appellants,**

v.

**STATE OF IDAHO, C.L. “RUTCH” OTTER, in his official capacity as Governor of Idaho, JON LINDSAY COPEL ANDREW KELLY, BARBRA G. MOLLAHAKI, JEREMY T. THOMAS, WILLIAM R. WELCH, WILBERT M. BRAUDE, CHRISTY PERRY, in their official capacities as members of the Idaho State Public Defense Commission,**

**Defendants-Appellees.**


District court order dismissing class action complaint, affirmed in part, reversed in part, remanded, reinstated, and reentered.


BURDICK, Chief Justice.

Tracy Tucker, Jason Sharp, Naomi Mcruel, and Jonnie Payne, on behalf of themselves and all others similarly situated, bring this appeal from the Ada County District Court order granting the State of Idaho’s motion to dismiss their class action complaint. (Docket No. 3922).

The complaint alleged that the public defense system in Ada County violated the due process rights and equal protection rights of indigent criminal defendants. The complaint sought declaratory and injunctive relief.

The State moved to dismiss the complaint, arguing that the public defense system was adequately funded, that the law on the constitutionality of public defense systems was unclear, and that the complaint failed to state a claim for relief.

The district court granted the State’s motion to dismiss, finding that the complaint failed to state a claim for relief.

The appellants appeal from the district court’s order.

**Argument**

The appellants argue that the district court erred in granting the State’s motion to dismiss. They contend that the complaint sufficiently alleged that the public defense system violated their constitutional rights.

The State argues that the complaint failed to state a claim for relief because the public defense system was adequately funded and the law on the constitutionality of public defense systems was unclear.

The court of appeals will review the district court’s order granting the State’s motion to dismiss, finding that the complaint failed to state a claim for relief.

**Conclusion**

The court of appeals will affirm the district court’s order granting the State’s motion to dismiss, finding that the complaint failed to state a claim for relief.

**Tucker v. Idaho**

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**Other ACLU Litigation in NY, PA, and UT…**
Utah courts reverse criminal convictions when public defenders are ineffective.

Utah v. Hales, 2007 UT 14

Utah v. Martinez-Castellanos, 2017 UT App 13

Lopez v. Ogden City, 2017 UT App 122
Utah courts reverse criminal convictions when public defenders are ineffective.

Utah v. Hales, 2007 UT 14

Utah v. Martinez-Castellanos, 2017 UT App 13

Lopez v. Ogden City, 2017 UT App 122
Eek!

Ryan, please tell us what this means for our cities!
No time like the present.

If your city prosecutes cases, do not neglect indigent defense.
Utah’s Cities and Towns

- 158 cities and towns prosecuted at least one Class C Misdemeanor FY16.
- 118 Justice Courts
- 59,931 criminal cases filed by cities and towns in FY16
- Cities paid indigent defense providers more than $3 million in FY16.
- Many cities are contracting with the same indigent defense providers.
- Many cities and towns have NO written contracts for indigent defense.
• Contracts help with accountability, good government practices, risk management
• Ensure attorneys are qualified, experienced, and/or supervised.
• Defense attorneys must be free from government interference.
  • No repercussions (from judge or city) for taking appropriate cases to trial
• Contracts should not create financial disincentives.
  • Earning enough not to have to take on too many cases
  • Don’t have to hire counsel for conflicts out of an already limited budget.
  • Resources to independently investigate prosecution’s case.
• Contracts should make defense attorneys accountable for their representation.
  • Responsive to clients, investigating cases a.s.a.p., reporting to city about representation: cases, outcomes, investigations, subcontractors.
Questions to ask about your city or town’s public defenders.

- Who is handling your indigent defense representation?
  - How many other cities or counties do your attorneys contract with?
  - Are they subcontracting services to other attorneys? Who are those attorneys?

- Does your city have a written contract for indigent defense services?

- Does your contract ensure:
  - Your public defender is meeting with clients early?
  - There is a mechanism for screening for conflicts?
  - Your public defender is adequately investigating cases?
  - Do you have a separate written contract(s) for conflict counsel?
  - Do you set aside funds for experts and investigative costs?
  - Does your contractor report on what they’re doing?
  - Track appointed cases in your justice courts!
Senator Weiler,
where is the state in all of this?
My city doesn’t want to be sued!
We’re from the government and we’re here to help – we have state money!
The IDC was created after years of studying Utah’s indigent defense systems.

- 2008 Judicial Council Appellate Study Committee
- 2008 ACLU Investigation
- 2016 S.B. 155 Passed
- 2016 ACLU Sues State
- 1994 UT Supreme Court Appellate Task Force Report
- 2011 Judicial Council Appellate Study Committee Report
- 2011 ACLU “Failing Gideon” Report
- 2015 Judicial Council Trial Court Study Committee & Sixth Amendment Center Study Reports
- 2016 S.B. 134 Passed
- 2017 Juvenile Indigent Representation Committee (JIRC)
The Utah Indigent Defense Commission was created to help local governments with their indigent defense responsibilities in justice, district, juvenile, and appellate courts.
Some of the IDC’s Statutory Duties:

• “Identify and collect data necessary to provide reports regarding the provision of indigent defense services by each indigent defense system.”

• “Encourage and aid in the regionalization of indigent defense systems in the state.”

• “Establish procedures to allow indigent defense systems to apply for state funding and award grants from state appropriations.”
Grants that:

• Develop/supplement managed indigent defense programs to ensure quality representation, such as managed assigned counsel programs and public defender offices;

• Coordinate between counties/cities for regional indigent defense services;

• Applications with a financial match above system’s indigent defense spending;

• Programs serving rural areas and smaller systems; and

• Programs measuring the quality of representation.
Regionalizing indigent defense services by contracting w/ independent (501(c)3) UT County Public Defender Office to oversee attorneys providing effective representation in Juab County Courts. 

Grant Achieved: Reporting, regionalization, effective representation

Juab Indigent Defense Budget (2017): $140,200
IDC Grant (2017): $182,000 supplemental

- Increased number, quality, training, experience, specialization, & accountability of attorneys in Juab County Courts ($152,000)
- Increased Resources: Investigators, experts, appeals ($30,000)
- Results: system-wide reform
IDC Grant to Salt Lake County

**Grant Achieved:** Constitutionally effective representation to the people arrested related to Operation Rio Grande

**SLCO Indigent Defense Budget (2017):** $18 million...

**IDC Grant (2017):** ~$370,000 over 2 years

- **Increased** number of attorneys and therefore their caseloads in cases connected with ORG.
Any Questions?

Contact the IDC Staff:
Director, Joanna Landau

Jlandau@utah.gov
Direct: 801-209-5440
https://justice.utah.gov/indigent-defense.html