

Utah improves criminal defense for poor defendants but still lags by various measures

By [MARK SHENEFELT Standard-Examiner](#)

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A view of the Utah State Capitol from the north side near the rear entrance of the Senate Building.

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Gov. Gary Herbert has proposed \$5 million more per year for the constitutionally guaranteed defense of poor criminal suspects, but Utah still would trail neighboring states by most related measures.

Joanna Landau, executive director of the Utah Indigent Defense Commission, praised the governor's budget recommendation as a "measured" improvement in the state's 3-year-old effort to address the public defender situation.

“We worked hard with the governor to get that number,” Landau said Tuesday. “We’re not asking for the stars. We’re asking for a stepping stone.” States around the country are plowing funds into their indigent programs, often to meet court judgments from lawsuits filed by civil libertarians.

INDIGENT DEFENSE SYSTEM SPENDING COMPARISON

FY18	Per Capita	Total Spending (Millions)	Utah at Same Rate (Millions)
Utah - Local	\$12.42	\$34.67	\$38.51 (Current Total)
Utah - State		\$3.85	
STATE & COUNTY SYSTEMS			
Nevada (Local 93% / State 7%)	\$41.34	\$123.93	\$128.22
Idaho (Local 82% / State 18%)	\$24.30	\$41.72	\$75.37
Washington (Local 96% / State 4%)	\$22.36	\$160.29	\$69.34
STATEWIDE SYSTEMS			
Oregon	\$36.80	\$152.47	\$114.46
Montana	\$32.33	\$33.96	\$100.27
Colorado	\$28.00	\$156.98	\$86.84
Missouri	\$7.46	\$45.61	\$22.63

Utah was savaged in a 2015 report by the Sixth Amendment Center. The group’s study criticized Utah as one of just two states that still left the provision of indigent defense entirely up to local governments.

In response, the Legislature in 2016 created the commission and a system to work toward improving indigent defense throughout the state.

The commission's ongoing funding of \$1.3 million annually has been targeted to local grants addressing glaring situations in a few smaller counties and cities.

Since its creation, the commission has spread \$5.2 million in 12 of 29 counties and four of Utah's 150 cities.

The governor's proposal for the fiscal 2020 budget would raise the agency's annual grant pool to \$6.3 million.

Combined with the \$36 million that counties and cities spend annually, that equals \$14.10 per person in the state. Colorado, which has funded indigent defense from the state level since 1970, spends \$25 per capita.

"Per capita, it's an indicator, it's not *the* indicator," Landau said. "That's what it costs Colorado for a comprehensive statewide indigent defense system. That may not be Utah's goal."

She said preservation of local control is important to state leaders, so a state-mandated overall system might not be what Utah ends up with.

"The \$5 million will help us determine what that long-term partnership looks like," Landau said. "We have some state funding and some state guidance, but we're not at the final answer."

While the state now provides 12 percent of public defense spending in Utah, "our percentage of state funding relative to local funding is still lower than pretty much anyone I know about," Landau said.

At least Utah has separated itself from its prior dubious status with Pennsylvania as the only two states not funding any indigent defense. Pennsylvania faces a lawsuit charging it is derelict in providing defense, she said.

Idaho's system is similar to Utah's, with a local grants system. But Idaho's grants are tied to state-dictated mandatory standards.

Idaho plans to add \$10 million more next year, but it still is set to go to trial to defend itself against a suit, according to Landau.

She added that Michigan and New York, under similar legal pressure, are pushing \$100 million or more apiece in additional funds into their indigent programs.

Utah faced a similar suit filed just after Utah created the indigent commission. The American Civil Liberties Union of Utah, representing five criminal defendants around the state, charged its clients suffered from limited, unconstitutionally insufficient representation from overworked public defenders.

"We cannot have a criminal justice system with any integrity if Utahns are not ensured vigorous legal representation when facing the power of the state," the ACLU said in a statement upon filing of the suit. "But the majority of Utahns — more than 80 percent — who find themselves facing jail time do not have the disposable income to hire a private attorney. That is why we need, and should have, a robust public defense system statewide."

But U.S. District Judge David Nuffer threw out the suit in a memorandum decision March 23, 2018.

The judge said the ACLU failed to include “necessary factual allegations demonstrating that these generalized grievances have occurred, are occurring, or will occur.”

Nuffer added, “A lack of statewide empirical data may be a valid reason for plaintiffs’ generalized and conclusory allegations regarding the state’s indigent defense system as a whole, but it is not a valid excuse for their failure to allege specific facts concerning their own public defenders and their own criminal cases.”

He concluded, “The alleged lack of contact and communication between plaintiffs and their public defenders is disheartening. But further factual context to these allegations is necessary.”

Landau said the commission intends to delve into potential problem areas as it continues to look at county and city defense systems.

Questions include, do public defenders have excessive case loads? Are they able to fight effectively for the granting of bail when their clients are not a flight risk?

“You can’t know these things if you just meet someone for seven minutes and plead them out,” Landau said.

Also, are defenders given resources to undertake independent investigations, and do they shy away from controversy because prosecutors or judges control their funding?

“When (public defender) contracts are run through the prosecutor’s office you run the risk” of undue control, even if the prosecutor does not do so, Landau said.

“There’s still an appearance of a lack of independence.”

Weber County had such a system and has undergone controversy over county funding for murder defendants.

Salt Lake and Utah counties have independent defender associations not controlled by judges or prosecutors “and can actually do vigorous defense for each client,” Landau said.

So, funding is not the only answer, because structure is important, she said.

“Spending is the easy way, but you could go through all the money in the world and not have an organized way that makes sense,” she said.

You can reach reporter Mark Shenefelt at mshenefelt@standard.net or 801 625-4224. Follow him on Twitter at @mshenefelt.