

"Utah ranks first in the nation when it comes to



literacy,

volunteerism,



Jell-O consumption,

and birth rates.



by Marina Lowe



Unfortunately, Utah's ranking dips dramatically when it comes to providing for indigent defense.

In this category, instead of leading the nation, Utah is bringing up the rear, ranked last or nearly last by national organizations such as the National Legal Aid and Defender Association (“NLADA”) when compared to other states. See NLADA, Gideon’s Unfulfilled Promise: The Right to Counsel in America (January 31, 2008) (draft report).

The state provides no funding for indigent defense; instead, Utah shifts the burden of complying with its constitutional obligations to its 29 counties. Each county is charged by statute to provide indigent defense as it sees fit. Accordingly, a patchwork of models exists across the state. The majority of counties rely on contracts with private attorneys to represent indigent defendants; not all of these private attorneys are able to devote all of their time to contracted indigent clients as assigned. Only a couple of the state’s most populous counties, Utah and Salt Lake, have formal public defender offices. Finally, some counties have no contract in place but instead rely on private attorneys who bill the county by the hour.

According to a report issued by the NLADA, Utah ranks last in the organization’s assessment of state compliance with the constitutional obligations enunciated in the Supreme Court’s decision *Gideon v. Wainwright*. See NLADA, Gideon’s Unfulfilled Promise at 7, 9. To reach this conclusion, the NLADA examined the degree to which states’ systems of indigent defense comport with

the American Bar Association’s 10 Principles of a Public Defense System and whether the state provides any funding for the provision of indigent defense. State funding is significant because it is generally more stable than county funding. Counties derive their funding for indigent defense from property taxes; thus those counties with depressed property values and higher crime rates have greater need for indigent defense but less ability to fund it.

Utah as measured on a statewide basis does not comply with the 10 Principles and is only one of two states (Pennsylvania is the other) that receives no state funding, placing it in last position among the fifty states and earning it a place in NLADA’s lowest category, “Gideon Ignored.” Additionally, Utah ranks 48th of the 50 states in per capita spending for indigent defendants, spending just \$5.22 per Utahn (the national average is \$11.86). See NLADA, *A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis*, June 2008, at 7.

Interestingly, while Utah does not provide any funding for the defense of the indigent, it does regularly allow for the appropriation of funds related to their prosecution. Created by statute, the Utah Prosecution Council (“UPC”) is tasked with “provid[ing] training and continuing legal education for state and local prosecutors; [] provid[ing] assistance to local prosecutors; and [] provid[ing] reimbursement for unusual expenses related to prosecution for violations of state laws.” See Utah Code Ann. 67-



"With its indigent defense delivery system placing it squarely in last place in the nation, Utah has nowhere to go but up!"

5a(1)(2001). The UPC's stated goal, according to its own website, is to ensure that "Prosecutors' offices [are] staffed with experienced and well-trained staff members who receive appropriate compensation." In order to achieve this goal, the legislature set the UPC's 2009 budget at \$589,600. Additionally, the UPC provides for and funds CLE for state prosecutors throughout the year.

Sadly, there is no comparable statewide, state-funded organization in Utah to assist public defenders in providing experienced and competent legal service and to ensure that they are appropriately compensated. Instead, public defenders in Utah are often left to grapple with county commissioners to obtain appropriate compensation, and are often unsuccessful. In many Utah counties, CLE is not included in public defender compensation and so must be paid for out of pocket. Without parity between prosecutors and defense attorneys, it is no surprise that Utah's public defense system falls short.

With its indigent defense delivery system placing it squarely in last place in the nation, Utah has nowhere to go but up! Litigation, legislative reform and judicial involvement are all mechanisms that may prove useful in achieving parity for public defenders. In 2002, the ACLU of Montana, acting on behalf of indigent criminal defendants from seven counties throughout that state, brought suit alleging widespread deficiencies in the public defender system. A settlement was reached in which the Montana Attorney General agreed to work with the ACLU to support change within the system. Accordingly, legislation was enacted in 2005, and among other things, allowed for additional funding for public defenders across the state.

Other techniques have proven successful in other states. For example, in 2007, a news story broke detailing the extent to which the Nevada system of public defense was deficient. In response, the Nevada Supreme Court formed an Indigent Defense Task Force, charged with investigating the public defender system in certain counties in the state. Based on the findings of this group, in 2008 the Nevada Supreme Court issued an order mandating sweeping changes and reform in indigent defense within state.

The time is ripe for Utah to improve its standing and to uphold its constitutional obligation to provide competent legal defense to indigent defendants. To that end, the ACLU of Utah has begun to investigate the extent of the problem in our state, and hopes to someday see the same kind of wide-scale reform that Montana enjoyed.

Marina Lowe is a staff attorney for the ACLU of Utah.