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ACLU of Utah Responds to Sixth Amendment Center Report Documenting Utah's Unconstitutional Public Defense System

SALT LAKE CITY— Today, the Utah Judicial Council Study Committee released the long-awaited and comprehensive report, *The Right to Counsel in Utah: An Assessment of Trial-Level Indigent Defense Services*, by the Sixth Amendment Center. The report highlights widespread deficiencies in Utah's system to provide legal counsel for people who can't afford a private attorney.

The report's primary findings are that in Utah's misdemeanor courts, defendants are often *actually* denied counsel when they are entitled to it, and in Utah's felony courts, systemic deficiencies often lead to *constructive* denial of counsel. The report confirms and provides additional documentation of the problems that the ACLU of Utah identified in its 2011 report, *Failing Gideon: Utah's Flawed County-by-County Public Defender System*.

"It's unacceptable that, over 50 years after the Supreme Court's decision in *Gideon v. Wainwright*, so many Utahns' right to legal counsel is consistently denied in courts throughout our state," remarked Karen McCreary, ACLU of Utah Executive Director. "This crisis has devastating effects for people accused of crimes and undermines the integrity of our criminal justice system. This latest report is troubling, but it is not surprising; it confirms what we've already learned over the past several years about the serious inadequacies of Utah's system."

The ACLU of Utah applauds the thoroughness of the Sixth Amendment Center's research and reporting, and welcomes this additional accounting of Utah's urgent indigent defense problems.

In reporting the results of the Sixth Amendment Center's investigations in Utah, the Study Committee conceded that there is a pressing need for state oversight, ongoing funding and substantial training throughout the system.

While the Sixth Amendment Center's report captures the magnitude of Utah's indigent defense problems, however, its recommendations fall short of the immediate, detailed, and concrete solutions we need to fix those problems. First, the report suggests a statewide commission to formulate, implement and oversee policies for indigent defense. Second, it recommends ending flat fee contracting.

"There is no doubt that a truly independent state-level commission must be part of the solution, and we certainly support an end to flat-fee contracting. But these actions alone will not provide local relief and ensure immediate, ongoing protection of all Utahns' Sixth Amendment rights," commented Marina Lowe, ACLU of Utah Legislative & Policy Counsel. "We hoped to see in-depth and prescriptive measures that counties could undertake, right now to better deliver justice for their community members. These recommendations do not get us there, especially without substantial state funding."

In reflecting on the human impact of the ongoing indigent defense crisis, the Sixth Amendment Center Report only scratches the surface. While the report notes that even misdemeanor convictions can lead to the "loss of professional license, exclusion from public housing, inability to secure student loans, or even deportation (*preface, p. x*)" this list of collateral consequences doesn't fully capture the costs to indigent defendants and their families.

"We have heard from people throughout the state whose lives have been destroyed by fines and sentences, by plea deals they agreed to without fully understanding what rights they were giving up and how their lives would be affected going forward," asserts Anna Brower, ACLU of Utah Strategic Communications Manager. "The right to counsel is pointless unless you have a *zealous advocate* in your corner. If your son, or your sister, or your spouse is facing charges, you want the best defense possible for them, even if you aren't wealthy. In Utah, our system puts up real barriers to that kind of zealous defense."

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