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ACLU OF UTAH ISSUES REPORT DETAILING CHRONIC UNDERFUNDING, OTHER SYSTEMIC FAILURES IN PUBLIC DEFENDER SERVICES

SALT LAKE CITY—The State of Utah fails to protect the constitutional rights of people accused of crimes who cannot afford their own lawyers, according to a report issued today by the ACLU of Utah. The 95-page report, “Failing *Gideon*: Utah’s Flawed County-By-County Public Defender System,” a comprehensive report documenting the state’s and counties’ chronic failures to fund or oversee trial-level public defender services in Utah.

“In what is essentially an unfunded mandate, the State of Utah has delegated to its various counties and cities the full financial and administrative cost of providing constitutionally adequate public defender services to impoverished Utahns who are accused of crime,” said ACLU of Utah Executive Director Karen McCreary. “The result is a patchwork of underfunded, under-resourced, and under-managed county systems that systematically deprive accused defendants of their right to an attorney.”

The United States Supreme Court recognized the constitutional right to counsel in *Gideon v. Wainwright* (1963). In *Gideon*, the Court held that, whenever a person is accused of a state crime for which jail time might be imposed and that person cannot afford an attorney, the state is obligated to appoint and pay for an attorney who can provide an “effective” and “adequate” defense against the charges.

It is estimated that 4 out of every 5 people accused of crimes are eligible for court-appointed public defenders.

In addition to analyzing public and other records obtained from each of Utah’s 29 counties, the ACLU of Utah and students from the University of Utah, S.J. Quinney College of Law Civil Rights Clinic (under the leadership of Associate Professor of Law Emily Chiang) conducted interviews and observed court proceedings across the state. As the report details:

- Public defense budgets are often only 25-35% of the amounts budgeted for County Attorney’s Offices (i.e., the prosecution). In some counties, contract terms may result in public defenders receiving only \$400 (or less) per felony.
- Counties’ contract-based public defender systems result in indigent Utah residents being represented by public defenders who are not subject to any training requirements, who practice with little to no support staff, and who have insufficient access to experts and investigators.
- Counties typically have no substantive criteria or guidelines for being awarded the public defender contract. We found that the contracts usually are awarded to

the lowest bidder, regardless of experience, and often are awarded based on the direct recommendation of the County Attorney, creating a clear conflict of interest.

- Counties generally make no effort to track public defender caseloads or screen for conflicts. In some counties, public defender caseloads are so high that they may have only 10 hours (or less) to spend on each felony case. In one county, considering a public defender's total reported caseload (public and private), that number may be closer to only 7 hours per case.

Although public defender systems from around the state were examined, the report focuses only on a representative sample of nine counties: Box Elder, Daggett, Duchesne, Iron, Kane, San Juan, Sevier, Uintah, and Weber.

Ms. McCreary observed, "We believe this report will help to educate our public officials, members of the legal community, and the public about the failings of our current system so as to inspire the commitment to bring about the necessary reforms to make Utah's public defense system constitutionally sound."

The ACLU of Utah's full report, "Failing *Gideon*: Utah's Flawed County-By-County Public Defender System," is available online at: www.acluutah.org/FailingGideon.html

For more about the ACLU of Utah's indigent defense project, go to www.acluutah.org/indigentdefense.html

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