

JUDICIAL COUNCIL MEETING

AGENDA June 22, 2020

Meeting held through Webex

Chief Justice Matthew B. Durrant Presiding

1. 9:00 a.m. Welcome & Approval of Minutes..... Chief Justice Matthew B. Durrant
(Tab 1 - Action)
2. 9:05 a.m. Chair's Report. Chief Justice Matthew B. Durrant
(Information)
3. 9:10 a.m. Administrator's Report and COVID-19 Update..... Judge Mary T. Noonan
(Information)
4. 9:20 a.m. Reports: Management Committee Chief Justice Matthew B. Durrant
Budget & Fiscal Management Committee..... Judge Mark May
Liaison Committee..... Judge Kara Pettit
Policy & Planning Committee Judge Derek Pullan
Bar Commission..... Rob Rice, esq.
(Tab 2 - Information)
5. 9:45 a.m. Judicial Conduct Commission Report Alex Petersen
(Tab 3- Information)
6. 10:00 a.m. ODR ExpansionJustice Deno Himonas
(Action) Larissa Lee
Judge Brendan McCullagh
Kim Zimmerman
7. 10:20 a.m. Indigent Defense Commission Report Joanna Landau
(Tab 4 - Information)
- 10:30 a.m. Break
8. 10:40 a.m. JPEC Rule Amendments and Report Dr. Jennifer Yim
(Tab 5 - Discussion) Commissioner Gil Miller
9. 11:10 a.m. Xchange Fees Rule AmendmentsKarl Sweeney
(Tab 6 - Action)

- | | | | |
|-----|------------|---|----------------------------------|
| 10. | 11:25 a.m. | Budget Cuts..... | Judge Mary T. Noonan |
| | | (Tab 7- Action) | Karl Sweeney |
| 11. | 11:35 a.m. | CJA Rules 1-201, 6-102, and 7-101 for Expedited Approval..... | |
| | | (Tab 8 - Action) | Michael Drechsel |
| 12. | 11:45 a.m. | Racial & Ethnic Task Force Recommendations | Judge Derek Pullan |
| | | (Tab 9 - Action) | Brent Johnson |
| | | | Clayson Quigley |
| | 12:05 p.m. | Lunch Break | |
| 13. | 12:15 p.m. | Judicial Council History Project | Judge Derek Pullan |
| | | (Tab 10 - Discussion) | Cathy Dupont |
| 14. | 12:25 p.m. | Board of District Court Judges Report & Rules | Judge Christine Johnson |
| | | (Information) | Shane Bahr |
| 15. | 12:35 p.m. | Old Business/New Business | |
| | | PEW Commission/Utah State Courts Grant Agreement | |
| | | | Justice Deno Himonas |
| | | NCSC System Review Phase 2..... | Judge Noonan and Cathy Dupont |
| | | Mental Health Initiative | Judge Kara Pettit |
| | | Federal CARES Act Eviction Moratorium | Larissa Lee |
| | | (Tab 11 - Discussion) | Chief Justice Matthew B. Durrant |
| 16. | 1:10 p.m. | Statement from the Judiciary..... | Chief Justice Matthew B. Durrant |
| | | (Tab 12 - Action) | |
| 17. | 1:30 p.m. | Executive Session Adjourn | |
| 18. | 1:15 p.m. | Adjourn | |

Consent Calendar

The consent calendar items in this section are approved without discussion if no objection has been raised with the Administrative Office of the Courts or with a Judicial Council member by the scheduled Judicial Council meeting or with the Chair of the Judicial Council during the scheduled Judicial Council meeting.

1. Committee Appointments
(Tab 13)

Forms Committee – Brent Johnson
Language Access Committee – Kara Mann

2. Probation Policies 1.2, 1.3, and 1.8
(Tab 14)

Neira Siaperas

3. CJA Rules for Public Comment
(Tab 15)

Keisa Williams

Tab 1

Agenda

JUDICIAL COUNCIL MEETING**Minutes****May 18, 2020****Meeting conducted through Webex****9:00 a.m. – 1:00 p.m.*****Chief Justice Matthew B. Durrant, Presiding*****Members:**

Chief Justice Matthew B. Durrant, Chair
 Hon. Kate Appleby, Vice Chair
 Hon. Brian Cannell
 Hon. Augustus Chin
 Hon. Ryan Evershed
 Hon. Paul Farr
 Justice Deno Himonas
 Hon. Mark May
 Hon. Kara Pettit
 Hon. Derek Pullan
 Hon. Brook Sessions
 Hon. Todd Shaughnessy
 Rob Rice, esq.

Excused:

Hon. John Walton
 Michael Drechsel
 Neira Siaperas

AOC Staff:

Hon. Mary T. Noonan
 Cathy Dupont
 Heidi Anderson
 Shane Bahr
 Todd Eaton
 Alisha Johnson
 Brent Johnson
 Tom Langhorne
 Larissa Lee
 Meredith Mannebach
 Bart Olsen
 Jim Peters
 Nathanael Player
 Stacey Snyder
 Karl Sweeney
 Chris Talbot
 Jessica Van Buren
 Keisa Williams
 Jeni Wood

Guests:

Hon. Dennis Fuchs, Senior Judge
 Hon. David Hamilton, Second District Court
 Hon. David Mortensen, Court of Appeals
 Clifford Ross, District Attorney
 Hon. F. Richards Smith, Fourth Juvenile Court
 Hon. Robert Yeates, Chair GAL Oversight Committee

1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. Due to the recent coronavirus pandemic, the Council held their meeting entirely through Webex.

Motion: Judge Kate Appleby moved to approve the April 27, 2020 Council minutes, as amended to correct Mr. Rice's comment about the remote trial he attended, which was in Utah, not Georgia. Judge Pettit requested that the minutes reflect that she voted against the ODR Grant, and that the IT Departments time for the ODR Grant is 100 hours, rather than minimal. Judge Ryan Evershed seconded the motion, and it passed unanimously.

2. CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant felt the Bar's first virtual swearing-in ceremony went well and that Judge Robert Shelby, United States District Court, provided a positive speech.

3. ADMINISTRATOR'S REPORT: (Judge Mary T. Noonan)

Judge Mary T. Noonan noted the IT Department is working through the logistics of joining JPEC into proceedings on Webex and is coordination with judges and staff to assist with JPEC observations of hearings. Dr. Jennifer Yim will discuss with the Council next month the virtual observation of proceedings. The Education Department and IT are providing Webex training for court personnel.

The courts were working on updating all weighted caseloads and creating a probation officer weighted caseload. Utah remains the only court system that the National Center for State Courts (Center) is aware of that internally maintains its own weighted caseloads. The Center has a department dedicated to weighted caseload studies. The Management Committee approved putting all work on caseloads on hold pending additional information from the Center, or other vendors, to assist entirely or in part with the Utah Court's weighted caseload studies. Judge Noonan will provide estimated costs when available.

The 2%, 5%, and 10% budget reduction scenarios, approved by the Budget & Finance Committee were sent to Gary Syphus, Legislative Fiscal Analyst. Judge Noonan expects a legislative response around mid-June.

4. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Ad Hoc Budget & Finance Committee Report:

Judge Mark May noted the work of the committee will be discussed later in the meeting.

Liaison Committee Report:

Judge Kara Pettit reported that Senator Jani Iwamoto contacted Michael Drechsel to request feedback on a proposed statute of limitations bill. The committee took no position on the bill.

Policy and Planning Committee Report:

Judge Derek Pullan reported that rule 4-202.02 Records Classification will be discussed later in the meeting. The committee is working on court visitor rules; a policy issue of the forms that accommodate subpoenas; and expungement orders.

Bar Commission Report:

Rob Rice said all CLE activities and pro bono clinics are conducted online. The Bar is examining their current and future budget due to the economy. The Bar's Summer Convention is cancelled.

5. FY 20 CARRYFORWARD AND ONGOING TURNOVER SAVINGS REQUESTS: (Judge Mark May and Karl Sweeney)

Chief Justice Durrant welcomed Karl Sweeney, Court Finance Director. Judge May explained the requests as shown in the below diagram.

FY 2021 Carryforward and Ongoing Turnover Savings Requests					
Total Available Funds				\$ 3,015,400	\$ 2,670,900
			Requested		Approved by Legislature
#	Budget Obligations	One Time	Ongoing	One Time	Ongoing
	HB002 Salary Increases (main line item only)		\$ 972,000		\$ 972,000
	HB002 Commissioner Recruitment and Retention		\$ 92,500		\$ 92,500
	HB002 Child Welfare Mediator		\$ 54,900		\$ 54,900
	HB002 Information Technology Enhancements	\$ 450,000	\$ 932,000	\$ 450,000	\$ 932,000
	HB206 Bail and Pretrial Release Amendments (in HB003)	\$ 63,000	\$ (13,000)	\$ 63,000	\$ (13,000)
	HB288 Prosecutor Data Collection Amendments (in HB003)	\$ 2,400	\$ 33,000	\$ 2,400	\$ 33,000
	Fiscal Notes - Various			\$ -	\$ (500)
	Subtotal			\$ 515,400	\$ 2,070,900
			Approved by Jud. Council		
Ongoing Turnover Savings - Total Available as of 5/1/2020 - \$600,000			\$ 600,000		
#	Previous Council Priorities Unfunded by Legislature - Ongoing				
1	Self Help Center-Bring 5 employees to full time**- recommend funding through Ongoing Turnover Savings	n/a	\$ 109,800		E
Recommended Essential Spend					
Council Deferrals from August 2019 - Ongoing					
Public Outreach / Education Coordinator Will be Presented as a 2022 request		n/a	\$ -		
Two 3rd District Problem Solving Drug Court Clerks Request Withdrawn by Requester		n/a	\$ -		
Ongoing Turnover Savings - FY 2021 Requests					
2021 Total Compensation Proposal (will be presented in June Judicial Council Meeting)		n/a	n/a		
Subtotal Recommended Essential		\$ -	\$ 109,800		
Balance Remaining from Ongoing Turnover Savings		\$ -	\$ 490,200	\$ -	\$ -
Carryforward spending requests - Total Available \$2,500,000		\$ 2,500,000			
2	PSA Calculation Cost for Incuding NOIC "Hits" (Legal)	\$ 198,014			E
3	ICI Operations Funding (Dues/Training and travel/Extradition) (Neira Siaperas) (\$24,000 approved last year - 1x)	\$ 20,000			E
4	Divorce Ed for Children Video - Teen Website (carry forward of remaining grant balance) (Public Information)	\$ 18,000			E
5	Utah Code & Rules for Judges (Law Library) (\$54,069 approved last year - 1x) RULE CHANGE	\$ -			E
6	Secondary language stipend (HR) (\$65,000 approved last year - 1x)	\$ 65,000			E
7	Matheson Courthouse carpet repairs (select replacement with carpet tiles) (Facilities)	\$ 20,000			E
8	Time-limited Law Clerks (2 FTEs) (Shane Bahr) (\$190,650 approved last year - 1x)	\$ 191,200			E
Subtotal Recommended Essential		\$ 512,214			
9	IT Unfunded Mandates (Researching funding through CCJJ)	\$ 337,500			
10	Education Leadership and Court Skills Academy (Education)	\$ 25,500			
11	Castledale Enhancements (7th District)	\$ 28,000			
12	Moab Courthouse Improvements (7th District)	\$ 12,000			
13	Supplemental Judicial operations budget (Finance Director) (\$70,000 approved last year - 1x)	\$ 70,800			
14	Employee incentive awards (Awards and taxes) (HR) (\$260,000 approved last year - 1x)	\$ 260,000			
15	Employee educational assistance (HR) (\$42,000 approved last year - 1x)	\$ 75,000			
Subtotal Other Requests		\$ 808,800			
Total Requested from \$2.5M One-time Carryforward		\$ 1,321,014	\$ -	\$ -	\$ -
Balance Remaining		\$ 1,178,986		\$ 2,500,000	\$ 600,000
LEGEND					
** Numbers are updated to current expected costs.					
Items italicized in blue represent items prioritized or deferred by the Council in August 2019 or unfunded by the legislature in FY 2020					
Items in red represent funding identified by the Legislature for a specific purpose					
E = Recommended by Budget and Finance Committee as Essential Spending					

The Self-Help Center can be fully funded moving from one-time funding to ongoing funding. Judge Pullan was concerned about the 2019 70% missed call rate. Nathanael Player

said the data is not available for the current fiscal year but pointed out that they are not sure if these are first or subsequent calls. Mr. Player noted tracking calls provides data showing the demand of those in need. The number of litigants served since the Self-Help Center has been working fulltime has increased.

The IT mandates request (\$330,000) comes from legislation that passed but was not fully funded. During this time of budget restraints, Judge May was concerned about diverting resources from critical court priorities for unfunded mandates. They are researching the possibility of a grant.

Chief Justice Durrant thanked Judge May and Mr. Sweeney.

Motion: Judge May moved to approve requests as follows: **Ongoing request** - Self-Help Center \$109,800 and **Carryforward requests** – PSA Calculation Cost for Including NCIC “Hits” funding \$198,014; ICJ Operations Funding Dues/Training and Travel/Extradition \$20,000; Divorce Education for Children Video Teen Website (carry forward of remaining grant balance) \$18,000; Utah Code & Rules for judges \$54,069 (approved last year 1x); Secondary language stipend \$65,000; Matheson Courthouse carpet repairs \$20,000; Time-limited Law Clerks (2 FTEs) \$191,200 for a total of essential items \$512,214, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

6. **FY 20 YEAR END ADDITIONAL BUDGET REQUESTS: (Judge Mark May and Karl Sweeney)**

Chief Justice Durrant welcomed Karl Sweeney. Mr. Sweeney said these items could be purchased by the end of the fiscal year. Judge Noonan noted the equipment could be returned at a nominal expense if not used.

Forecasted Available One-time Funds			
#	Description	Funding Type	Amount
1	Turnover Savings as of pay period ending 4/17/2020	Turnover Savings	3,350,843
2	Turnover Savings Estimate for the rest of fiscal year (\$115K x 5 payrolls)	Turnover Savings	575,000
3	From TCE / AOC budgets	Internal Savings	546,100
4	Probate Notice Amendments (HB 343, 2020 GS)	Legislative Action	20,500
5	Reserve Balance (from August Judicial Council meeting)	Reserve	150,000
6	Reduction in FY 2020 funds due to FY 2020 legislative session	Legislative Action	(165,000)
7	Estimated Maximum use of Carryforward into FY 2021	Carryforward	(1,500,000)
Total Forecasted Available One-time Funds			\$ 2,977,443
Judicial Council Prioritized / Adopted			\$ (1,471,450)
Actual Return to State Finance Including other Savings			\$ 1,505,993

g Plan		13-Mar	Final Judicial Council
#	One-time Spending Plan	FY20 Requests	Judicial Council Approvals
		Amount	Amount
	One-time Budget Requests/Current Status in Bold		Non-essential (NE)
1	Courtroom A/V Upgrades (IT) - work in process partially expended	350,000	350,000 E
2	Upgrade For the Record (FTR) Digital Recording Software (IT) - Already expended	257,600	257,600 E
17	Remote Accessories - Already expended	83,000	83,000 E
3	Learning Management System (Education) PO signed.	164,100	164,100 E
4	Self-Assessment Materials (Education) - Withdrawn (W/D) by Requester	2,000	N/A NE
5	Training Equipment (Education) (laptops & equipment to create virtual training)	4,600	4,600 E
6	Alternative Dispute Resolution Training (ADR Committee) - CLASS CANCELLED	13,200	13,200 NE
7	Online Dispute Resolution Facilitation Training Manual (ADR) (See Footnote)	5,000	5,000 E
8	Jury Chairs for Brigham City (1st District) (See Footnote)	15,000	15,000 E
9	Jury Tables / Chairs for West Jordan (3rd District) (Order can be Cancelled w/o penalty)	66,700	- NE
10	Carpet Replacement - Ogden Courthouse (2nd District) (Past cancellation date)	19,650	19,650 E
11	Public Viewing Agenda Monitor (Court of Appeals) (Order can be Cancelled w/o penalty)	4,000	- NE
12	Matheson Café Room and Conference Room A/B/C Furniture (Facilities) (Partial Cancel)	130,500	43,500 E/NE
13	Workforce Performance Bonuses (State Court Administrator) - W/D by Requester	500,000	N/A NE
14	Nat'l Assoc. Drug Court Prof. Annual Conference (Veteran's Court Team) - Converted to virtual conference @\$500 per attendee	3,960	- NE
16	Inventory of PCs (4/7/2020 deadline) (IT) - Already expended	250,000	250,000 E
18	Replenish IT Equipment Monies Used for COVID19 Purposes	279,000	279,000 E
19	NEW. IT Court Room Video Equipment for Jury Trials	250,000	E
20	NEW. IT Docking Stations for New Laptops and Other Misc IT Purchases	115,000	- E
Total One-time Spending Requests (before Contingent Requests)		2,513,310	1,869,310
Potential Return to State Finance			1,471,450
			1,505,993
Contingent Requests			
13a	Employer Paid Benefits for Workforce Bonuses (6/26/2020 deadline) (SCA) Withdraw	160,200	
15	Matheson Carpet Replacement (4/15/2020 deadline) (Facilities) - Move to \$2.5M Cfwd	400,000	
Total with Contingent Requests			\$ 3,073,510

Chief Justice Durrant thanked Judge May and Mr. Sweeney.

Motion: Judge May moved to approve the IT courtroom video equipment \$250,000 and the IT docking stations \$115,000, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

7. FACILITY PLANNING COMMITTEE REPORT AND REAUTHORIZATION: (Judge David Mortensen and Chris Talbot)

Chief Justice Durrant welcomed Judge David Mortensen and Chris Talbot. In accordance with Code of Judicial Administration Rule 1-205(1)(D), the Facility Planning Committee is requesting a performance review and recommendation of continuance from the Management Committee to the Judicial Council for an additional six-year term.

Notable accomplishments over the past four years

- 2020 Update of the Utah Judicial Facility Design Standards
- 2020 27 prioritized capital improvement projects requested at \$5.4M
- 2020 State Funding request presentation to IGG sub-committee for a new Manti Courthouse – not funded for \$20M. Will present request again in 2021.
- 2019 Opening of new Provo Fourth Judicial District Courthouse
- 2019 State Funding request presentation to State Building Board for a new Manti Courthouse – Ranked 3rd out of 11 projects
- 2019 10 prioritized capital improvement projects completed at \$5.6M
- 2019 State Funding request presentation to IGG sub-committee for a new Manti

Courthouse – not funded for \$19M
 2018 State Funding request presentation to State Building Board for a new Manti
 Courthouse – Ranked 9th out of 12 projects
 2018 Opening of new Carbon County Seventh District Courthouse
 2018 16 prioritized capital improvement projects completed at \$5.1M
 2016 Update of the Utah Judicial Facility Design Standards
 2016 Opening of Ogden Second District Juvenile Courthouse

Chief Justice Durrant thanked Judge Mortensen and Mr. Talbot.

Motion: Judge Todd Shaughnessy moved to approve the reauthorization of the Facility Planning Committee for a six-year term, as presented. Judge Ryan Evershed seconded the motion, and it passed unanimously.

8. GUARDIAN AD LITEM (GAL) OVERSIGHT COMMITTEE REPORT: (Judge Robert Yeates and Stacey Snyder)

Chief Justice Durrant welcomed Judge Robert Yeates and Stacey Snyder. In FY14, the GAL and CASA developed and began annually reporting on performance measures to the Executive Offices and Criminal Justice Subcommittee.

In FY19, the Private GAL program has 69 private attorneys who have accepted over 338 cases, including over 34 pro bono cases. The Best Practice Guidelines were expanded significantly, in the form of a Private Guardian ad Litem Manual. The GAL updates their website regularly with available Private GAL attorneys as well as the collection of pleadings. The GAL Office provides a monthly newsletter. The GAL and CASA have provided CLEs to their attorneys.

During FY19, 803 CASA volunteer advocates served 1,554 children and donated 33,007 service hours. CASA volunteers are assigned to an individual case and gather information for the GAL attorneys by visiting consistently with child clients, attending child and family team meetings and court hearings, and tracking the child's progress in school. CASA volunteers are carefully screened and are provided with 32 hours of pre-service training and 12 hours of annual in-service training. Utah's Friends of CASA is a 501(c)(3) nonprofit organization that supports the CASA program by providing supplemental funding for volunteer recruitment, training and retention.

Chief Justice Durrant thanked Judge Yeates and Ms. Snyder.

9. APPROVAL OF 2021 JUDICIAL COUNCIL SCHEDULE: (Judge Mary T. Noonan)

Judge Noonan briefly addressed the 2021 Judicial Council schedule.

Motion: Judge Appleby moved to approve the 2021 Judicial Council Schedule, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

10. BOARD OF JUVENILE COURT JUDGES REPORT: (Judge F. Richards Smith)

Chief Justice Durrant welcomed Judge F. Richards Smith. Judge Smith said the Juvenile Court held a statewide virtual bench meeting. Some juvenile court judges are participating in the Juvenile Trial Workgroup and Risk Response Workgroup. A draft best practices jury trial guideline is expected within a week or two. The juvenile bench has been very responsive to current situations.

Chief Justice Durrant thanked Judge Smith.

11. PROBLEM-SOLVING COURT CERTIFICATIONS: (Judge Dennis Fuchs)

Chief Justice Durrant welcomed Judge Dennis Fuchs. Judge Fuchs sought recertification of the following problem-solving courts. Judge Fuchs is now participating in virtual visits to observe staffing and hearings.

Criteria met

First District Adult Drug Court, Brigham City, Judge Maynard
 Third District Adult Drug Court, West Jordan, Judge Hogan
 Second District Adult Mental Health Court, Ogden, Judge Hyde
 Third District Adult Mental Health Court, Salt Lake City, Judge Brereton
 Third District Adult Mental Health Court, Salt Lake City, Judge Trease
 Fourth District, Adult Mental Health Court, Provo, Judge Brady
 Fourth District, Juvenile Drug Court, Provo, Judge Smith
 Second District, Family Dependency Drug Court, Farmington, Judge Neil

Criteria not met, waiver attached

Second District Juvenile Drug Court, Ogden, Judge Noland
 Third District Adult Drug Court, Salt Lake City, Judge Skanchy

Judge Shaughnessy noted all Third District drug courts have the same issues as Judge Skanchy and recommended having all Salt Lake County drug courts reviewed by the Council at the same time.

Chief Justice Durrant thanked Judge Fuchs.

Motion: Judge Pullan moved to conditionally certify the Second District Juvenile Drug Court, Ogden, Judge Noland for 90 days to become in compliance with presumptive criteria with the exception of criteria # 15. Judge Shaughnessy seconded the motion, and it passed unanimously.

Motion: Judge Appleby moved to approve the First District Adult Drug Court, Brigham City, Judge Maynard; Third District Adult Drug Court, West Jordan, Judge Hogan; Second District Adult Mental Health Court, Ogden, Judge Hyde; Third District Adult Mental Health Court, Salt Lake City, Judge Brereton; Third District Adult Mental Health Court, Salt Lake City, Judge Trease; Fourth District, Adult Mental Health Court, Provo, Judge Brady; Fourth District, Juvenile Drug Court, Provo, Judge Smith; Second District, and the Family Dependency Drug Court, Farmington, Judge Neil, as amended to table the Third District Adult Drug Court, Judge Skanchy. Judge Shaughnessy seconded the motion, and it passed unanimously.

12. PRIVACY OF PROBLEM-SOLVING COURTS CERTIFICATION CHECKLISTS: (Judge Dennis Fuchs and Brent Johnson)

Judge Dennis Fuchs discussed past practice for access to the problem-solving court certification checklist. Judge Fuchs said he is seeking direction from the Judicial Council regarding whether the checklists should be maintained as public documents. Brent Johnson said in reviewing the documents it did not appear there was information that needed to be defined as private, however if the Council determined that the checklists should be private, a rule change would be needed. In the past, checklists were not released to the public so courts could not be compared to each other. The Council did not believe these should be private. Mr. Johnson will speak with Judge Fuchs on the length of time to maintain these records.

Chief Justice Durrant thanked Judge Fuchs.

13. UNIFORM FINE SCHEDULE AND PREAMBLE: (Judge David Hamilton and Shane Bahr)

Chief Justice Durrant welcomed Judge David Hamilton and Shane Bahr. The Management Committee approved amendments to the Uniform Fine Schedule and the Preamble prior to the Council meeting in order to meet the effective date of HB 206. The amendments remove the word “bail” from the schedule and the committee names, which are now “Uniform Fine Schedule” and “Uniform Fine Committee.”

Chief Justice Durrant thanked Judge Hamilton and Mr. Bahr.

14. CJA RULES 1-205, 4-302, 4-701, 4-704, 6-301, APPENDIX B AND APPENDIX F: (Keisa Williams)

Chief Justice Durrant welcomed Keisa Williams. Prior to the Council meeting, the Management Committee approved amendments to CJA Rules 1-205, 4-302, 4-701, 4-704, 6-301, and Appendixes B and F, in accordance with H.B. 206, because the HB 206 effective date preceded this Council meeting. The remaining rules affected by HB 206 (CJA Rules 3-407, 4-609, and 10-1-404) will be addressed through Policy & Planning.

Chief Justice Durrant thanked Ms. Williams.

15. CJA RULE 4-202.02: (Keisa Williams)

Utah Legal Services Housing Task Force (ULS) asked the courts to amend Rule 4-202.02. The purpose behind the proposal is to prevent the unlawful denial of housing to vulnerable populations, especially in the current climate where housing is so desperately needed and in high demand. While Policy and Planning is sensitive to the issue, the committee identified several concerns:

- Sealing the record creates the false impression that the tenant was compliant with the lease. After the landlord filed suit, the tenant may have conceded that they couldn't pay and left the property. The landlord may not have pursued the action further because their goal had been achieved.
- One unintended consequence might be that a landlord who otherwise would have been willing to let the case sit without action when the tenant agreed to move out, will now be

incentivized to move the case to judgement. Tenants already struggling with economic stability will now be shouldered with a judgement of unpaid rent, treble damages, and all that comes with it.

- While the court is authorized under the statute to create its own records access rules, the Legislature may see this as policy-making (similar to expungements).

The Policy and Planning Committee is seeking feedback and guidance from the Judicial Council about the underlying policy question and how best to proceed with the proposed amendments to CJA 4-202.02. Justice Himonas, Judge Appleby, and Judge Pettit opposed the Court addressing an important policy issue by Court rule when the issue should be pursued through legislation.

Chief Justice Durrant thanked Ms. Williams.

16. COVID-19 UPDATE: (Judge Mary T. Noonan)

The Jury Trial Workgroups are working on a proposal for how to hold jury trials during the pandemic. The Risk Response Workgroup is meeting this week to develop standards for all courts as they re-open buildings to the public.

Chief Justice Durrant thanked Judge Noonan.

17. OLD BUSINESS/NEW BUSINESS

Judge Paul said the Justice Court Reform Task Force met and agreed to include a representative from the Statewide Association of Prosecutors and from the Statewide Defense Attorneys Association. The Council would like to include an attorney knowledgeable about debt collection cases as well. With these three additions, the Task Force would be 15 members. Judge Appleby felt Fran Wickstrom might be a good choice.

Judge Pullan reported that due to budget constraints he and Cathy Dupont are reevaluating the Judicial Council history project and will report back in June.

Judge Shaughnessy said a legislator asked if the courts maintained data on how many weddings judges perform. Judge Noonan will ask Clayson Quigley if the courts maintain that information and/or if any marriages were performed virtually.

18. EXECUTIVE SESSION

Motion: Judge Appleby moved to go into an executive session to discuss the budget. Judge May seconded the motion, and it passed unanimously.

19. CONSENT CALENDAR ITEMS

a) Committee Appointments. Appointment of David McKay and the reappointments of Judge David Mortensen, Judge James Brady, and Judge Jeffrey Nolan to the Facility Planning Committee and the appointment of Melinda Bowen, reappointment of Judge Elizabeth Hruby-Mills, and the permanent positions of AOC General Counsel (or representative) and the Utah State Law Librarian (or representative) to the Judicial Outreach Committee. Approved without comment.

b) Forms Committee Forms. Motion and declaration for order to show cause; Order to show cause; Order to show cause - Fifth District; Order on order to show cause; Request for contempt hearing. Approved without comment.

c) Rules 3-101, 3-104, 3-111, 6-506, 3-403, 9-101, 9-109, and 4-106 for Public Comment. Approved without comment.

20. ADJOURN

The meeting adjourned.

Tab 2

Agenda

**JUDICIAL COUNCIL'S
MANAGEMENT COMMITTEE**

**Minutes
June 9, 2020
Meeting held through Webex
12:00 p.m. – 2:00 p.m.**

Chief Justice Matthew B. Durrant, Presiding

Committee Members:

Chief Justice Matthew B. Durrant, Chair
Hon. Kate Appleby, Vice Chair
Hon. Paul Farr
Hon. Mark May
Hon. Todd Shaughnessy

Excused:**Guests:**

Hon. Steven Beck, Third District Juvenile Court
Hon. Susan Eisenman, Third District Juvenile Court
Justice Deno Himonas, Supreme Court
Hon. Christine Johnson, Fourth District Court
Hon. Clemens Landau, Salt Lake City Justice Court
Hon. Brendan McCullagh, West Valley Justice Court

AOC Staff:

Hon. Mary T. Noonan
Cathy Dupont
Michael Drechsel
Heidi Anderson
Brody Arishita
Shane Bahr
Geoff Fattah
Brent Johnson
Larissa Lee
Kara Mann
Meredith Mannebach
Chris Palmer
Jim Peters
Nini Rich
Neira Siaperas
Karl Sweeney
Jeni Wood

1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. After reviewing the minutes, the following motion was made:

Motion: Judge Kate Appleby moved to approve the June 3, 2020 Management Committee meeting minutes, as presented. Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

2. ADMINISTRATOR'S REPORT: (Judge Mary T. Noonan)

Judge Mary T. Noonan noted Judge Edwin Peterson, Eighth District Court and Judge James Taylor, Fourth District Court announced their retirement. Chris Palmer provided a COVID-19 update and informed the committee that the courts are receiving pandemic-related supplies, such as masks. The electrostatic cleaning devices have been ordered.

3. COMMITTEE APPOINTMENTS: (Brent Johnson and Kara Mann)
Forms Committee

Brent Johnson addressed the reappointment of Kara Mann to a second term. The committee recommended Ms. Mann's reappointment.

Motion: Judge Appleby moved to approve the reappointment of Kara Mann to the Forms Committee, as presented, and to include this on the Judicial Council consent calendar. Judge Farr seconded the motion, and it passed unanimously.

Language Access Committee

Kara Mann said the committee has a district court judge and an interpreter coordinator vacancy. The committee recommended Judge Michael Westfall, as approved by the Board of District Court Judges, and Evangelina Burrows.

Motion: Judge Appleby moved to approve the appointment of Judge Michael Westfall and Evangelina Burrows to the Language Access Committee, as presented, and to include this on the Judicial Council consent calendar. Judge Mark May seconded the motion, and it passed unanimously.

4. ODR EXPANSION: (Justice Deno Himonas, Judge Brendan McCullagh, Heidi Anderson, and Brody Arishita)

The Board of Justice Court Judges voted to expand the ODR program from four justice court locations to justice courts statewide. Transitioning the ODR program statewide would be over the course of one to two years. Brody Arishita described how the ODR program works through a series of slides. Fifty percent of cases through the program never have hearings.

Judge Appleby thanked the team for their work on an impressive program that will allow a more efficient method for judges. Chief Justice Durrant was thrilled with the program and those involved in creating and maintaining it.

Motion: Judge Appleby moved to include the ODR expansion on the Judicial Council agenda, as presented. Judge Farr seconded the motion, and it passed unanimously.

5. JUVENILE COURT TRIAL WORKGROUP PROPOSAL: (Judge Steven Beck and Neira Siaperas)

The juvenile court made changes after the discussion at the last Management Committee meeting and based on the Risk Response Plan recommendations. The juvenile court presented the Virtual and In-Person Trials Best Practices Documents.

Motion: Judge Shaughnessy moved to approve the Virtual and In-Person Trials Best Practices Documents, as presented. Judge Appleby seconded the motion, and it passed unanimously.

6. DISTRICT COURT TRIAL WORKGROUP PROPOSAL: (Judge Christine Johnson and Shane Bahr)

The district court edited their proposal to include recommendations from the Management Committee. The district and justice courts determined they could combine their

plans as procedures for trials are very similar. The Board presented the Criminal and Civil Trial Pandemic Recommendations for District and Justice Court.

The following rules were presented to the committee for modifications in accordance with the recommendations: Rules 17.5 and 18 of the Rules of Criminal Procedure and Rule 47 of the Rules of Civil Procedure. Judge Shaughnessy noted these rules should be addressed with the Supreme Court. Chief Justice Durrant recommended Larissa Lee address the proposed amendments to the rules committees and the Supreme Court.

Motion: Judge Shaughnessy moved to approve the Criminal and Civil Trial Pandemic Recommendations for District and Justice Court, as amended to include a list of courts that conduct jury trials. Judge Farr seconded the motion, and it passed unanimously.

7. JUSTICE COURT TRIAL WORKGROUP PROPOSAL: (Judge Clemens Landau and Jim Peters)

In consideration of several issues, the Board of Justice Court Judges determined it would be best to merge the justice court trial guidelines with the district court trial guidelines.

8. RISK RESPONSE WORKGROUP PROPOSAL: (Brent Johnson)

Brent Johnson presented an amended State of Utah Judiciary Risk Phase Response Plan, Risk Planning Considerations Checklist for the (name) Court, Appendix E Pro Se Litigants Access to Technology, and Screening Questions. The Health Department agreed to review these documents and provide feedback on Thursday at a meeting with the courts. The committee will decide on these documents after receiving the feedback from the Health Department.

The committee requested Mr. Johnson review the current Administrative Order to determine what changes might be needed to comply with the plans.

9. BUDGET CUTS: (Judge Mary T. Noonan and Karl Sweeney)

The total potential sources of funds for budget cuts for FY21 with a 2% cut would be \$2,728,172, with a 5% cut would be \$6,820,430, and with a 10% cut would be \$13,640,860. Judge Noonan reviewed the budget cut scenarios.

Judiciary Overall 2021 General Fund Budget (excludes Guardian ad Litem)	
BAAA – Administration	\$116,986,600
BBAA – Grand Jury	\$800
BCAA – Contracts and Leases	\$2,628,300
BDAA – Juror, Witness, Interpreter	\$2,628,300
Total	\$136,408,600

Recommended for Budget Cuts - Options		Submitted to EOCJ	Approved by EOCJ
Item		Amount	Amount
2% Budget Cut (operational efficiencies)			
1	Administrative (mileage, travel, catered meals, UTA passes, current expenses, etc)	653,514	653,514
2	Personnel - Vacant Positions no intent to fill	255,900	255,900
3	Xchange Fee Increase (\$10 increase on \$30 monthly fee)	300,000	316,000
4	Court Security - Return General Fund	507,400	507,400
5	Reduce "And Justice For All" pass-through (2% of \$795k)	16,000	-
6	Facilities	351,673	351,673
7	Personnel - Incentivized Retirements Ongoing Turnover Savings	245,300	245,300
8	FY 2020 Ongoing Turnover Savings	300,000	300,000
9	Juror, Witness, Interpreter (historical savings to budget)	100,000	100,000
Subtotal - Should meet 2% cut threshold of \$2,728,172		2,729,787	2,729,787
5% Budget Cut -			
10	Balance of FY 2020 Ongoing Turnover Savings	220,000	220,000
11	Personnel - Average Annual 1x Turnover Savings	4,000,000	4,000,000
12	Personnel - FY 2021 Ongoing Turnover Savings (excluding Incentivized Retirements)	230,148	230,148
Subtotal		4,450,148	4,450,148
Cumulative Total - Should meet 5% cut threshold of \$6,820,430		7,179,935	7,179,935
10% Budget Cut-			
13	Consolidate Court Locations (requires statutory change)	63,000	63,000
14	Personnel - Judicial Officer Turnover Savings	150,000	150,000
15	Programs (3rd Party Services to Adults and Juveniles)	1,053,000	1,053,000
16	Additional Programs	723,321	723,321
17	Personnel - Hiring Freeze for FY 2021 (excl Judges & Incentivized Retirements)	1,369,852	1,369,852
18	Personnel - Furloughs (96 hours per FTE (excl. Judges))	2,919,976	2,919,976
19	Personnel - Layoffs	181,776	181,776
Subtotal		6,460,925	6,460,925
Cumulative Total - Should meet 10% cut threshold of \$13,640,860		13,640,860	13,640,860

Karl Sweeney anticipates the courts may receive funding from the CARES Act. Mr. Sweeney said since the \$900,000 and \$450,000 IT requests will impact the courts, if they are rejected, an alternate plan would be to use carryforward of one-time money.

Motion: Judge Farr moved to approve adding this to the Council agenda. Judge Appleby seconded the motion, and it passed unanimously.

10. PROBATION POLICIES 1.2, 1.3, AND 1.8: (Neira Siaperas)

Neira Siaperas presented the Board of Juvenile Court Judges' proposed amendments to three probation policies.

Section 1.2 Historical Perspective – This policy was last approved in 2000. The policy consists of an essay authored by Judge Arthur G. Christean titled The Noble Quest: The Story of

the Juvenile Court in Utah, which no longer includes content applicable to the intended purpose of the Probation Policy Manual. Therefore, it is requested that this policy be removed and the article therein be archived.

Section 1.3 Administration – This policy was initially approved on March 1, 2001. The Board recommends deletion of this policy as the policy manual is available digitally to all probation staff, making the need for printed copies obsolete. In addition, the expectation outlined in this section that probation staff comply with probation policy is a duplication of HR Policy 610 Discipline.

Section 1.8 Probation Policy Submission and Review – This policy was initially approved on May 1, 2002. Updates to this policy are necessary to align with the current probation policy approval process.

Motion: Judge May moved to approve revisions to probation policy 1.2, as presented. Judge Farr seconded the motion, and it passed unanimously.

Motion: Judge Shaughnessy moved to approve the deletion of probation policy 1.3, as presented. Judge Farr seconded the motion, and it passed unanimously.

Motion: Judge Farr moved to approve revisions to probation policy 1.8, as presented. Judge May seconded the motion, and it passed unanimously.

11. JUDICIAL COUNCIL’S JULY MEETING DATE: (Judge Mary T. Noonan)

Judge Noonan explained that the July Judicial Council meeting was originally scheduled for July 16 to be held in Park City in conjunction with the State Bar Summer Convention. The Convention has since been cancelled. Judge Noonan questioned whether the committee would prefer to keep the July 16 date or move the date to the normally scheduled fourth Monday of the month (July 27). The committee decided to leave the meeting for July 16.

12. APPROVAL OF JUDICIAL COUNCIL AGENDA: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant reviewed the June 22 Judicial Council agenda. Policy & Planning Committee will have rules for final action and for public comment. The Task Force is misspelled, and needs to be confirmed it is an action item, and item #10 can be moved to July.

Motion: Judge Appleby moved to approve the June 22, 2020 Judicial Council agenda, as amended. Judge Farr seconded the motion, and it passed unanimously.

13. OLD BUSINESS/NEW BUSINESS: (All)

Judge May addressed the juvenile court issuing a statement reaffirming the courts commitment to fairness. Judge Shaughnessy was concerned about the Council making any statements that might undermine or call into question the courts goal of maintaining objectivity and neutrality. Judge Shaughnessy recommended that actions may speak louder than a statement and we should address the recommendations of the Racial & Ethnic Task Force. Judge Appleby and Judge Farr shared Judge Shaughnessy’s view. The Management Committee and Judicial

Council decisions about whether to issue a statement are independent of any statements that might be issued by the Supreme Court. Chief Justice Durrant said the courts must be careful as to not take sides on issues but can reiterate the courts obligation to decide cases without racial bias. Justice Himonas will prepare and circulate a draft statement for the Supreme Court's consideration.

Judge Farr reached out to the NAACP to provide input to the Justice Court Reform Task Force.

14. EXECUTIVE SESSION

An executive session was not held.

15. ADJOURN

The meeting adjourned.

Agenda

**JUDICIAL COUNCIL'S
BUDGET & FISCAL MANAGEMENT COMMITTEE**

**Minutes
June 11, 2020
Meeting held through Webex
12:00 p.m. – 2:00 p.m.**

Members Present:

Hon. Mark May, Chair
Hon. Augustus Chin
Hon. Kara Pettit

Excused:**Guests:**

Hon. Shauna Graves-Robertson, Salt Lake Co. Justice Court
Hon. Elizabeth Hruby-Mills, Third District Court
Hon. David Mortensen, Court of Appeals
Hon. Richard Mrazik, Third District Court
Wendell Roberts, TCE Sixth District
Larry Webster, TCE Second District

AOC Staff Present:

Hon. Mary T. Noonan
Cathy Dupont
Michael Drechsel
Brody Arishita
Shane Bahr
Geoff Fattah
Alisha Johnson
Larissa Lee
Bart Olsen
Jim Peters
Clayson Quigley
Neira Siaperas
Nancy Sylvester
Karl Sweeney

1. WELCOME AND APPROVAL OF MINUTES: (Judge Mark May)

Judge Mark May welcomed everyone to the meeting. Judge May addressed the minutes from the May 5 and May 11 meetings.

Motion: Judge Chin moved to approve the May 5, 2020 and May 11, 2020 minutes, as presented. The motion was seconded the motion, and it passed unanimously.

2. PERIOD 11 YTD FINANCIALS: (Alisha Johnson)

Alisha Johnson asked the Committee if they have any questions about the financial materials included in the meeting packet. This month they updated the financial documents and one- time yearend spending forecast. Mr. Sweeney noted that he is hoping that the carry forward money will not be taken away.

- *Forecast of FY 2020 Funds Available to Return to State Finance*
- *Forecast of FY 2020 Ongoing Turnover Savings: Alternative Uses of “Excess” Ongoing Turnover Savings above that committed to in 2,5,10% Budget Reduction (\$520K).*

Mr. Sweeney and Ms. Johnson reviewed potential uses of the unused portions of the \$2.5M carryforward which included potentially funding the IT \$900K legislative priority (for one year) and the \$450K of West Jordan AV repairs if funding for these two items was repealed in the upcoming special session. They informed the Committee that the final and definite budget answers will be answered next week after the Legislature meets. The Committee wants to schedule a one-hour meeting after the Legislature makes their final budget decisions. The meeting is scheduled for June 19th at 2:00 p.m.

3. TOTAL COMPENSATION STRATEGY: (Bart Olsen)

On November 25, 2019 the Judicial Council approved FY20 market comparability increases recommended by this committee. The committee's top priority for the coming year is to examine the process for market comparability increases and identify recommendations to improve the overall compensation strategy.

Mr. Olsen discussed the total compensation strategy with the Committee. The current process for market comparability increases was developed to meet the requirements outlined in the Judicial Council Code. Particularly relevant pieces of the Code provide helpful context to contemplate future strategy by stating that human resource procedures shall be based upon “adequate compensation based upon studies conducted every three years” and “employee retention on the basis of adequate performance ...” [Rule 3-402(3)(B)(ii), (iii)]. For the future, we will move away from employee retention as the goal of the compensation strategy and move toward a compensation strategy that meets the Court’s rapidly changing needs and effectively attracts and retains the people best suited to further its mission. If sufficient carryforward funds exist for FY21, Mr. Olsen recommend the committee reserve a percentage of those funds for personnel and then the committee may ask HR to recommend principled, performance-focused methodologies to distribute those funds consistent with recommendations already given herein, for the committee to consider for approval.

Forecasted Available One-time Funds			
#	Description	Funding Type	Amount
1	Turnover Savings as of pay period ending 5/15/2020	Turnover Savings	3,593,376
2	Turnover Savings Estimate for the rest of fiscal year (\$133K x 3 payrolls)	Turnover Savings	399,000
3	From TCE / AOC budgets	Internal Savings	546,100
4	Probate Notice Amendments (HB 343, 2020 GS)	Legislative Action	20,500
5	Reserve Balance (from August Judicial Council meeting)	Reserve	150,000
6	Reduction in FY 2020 funds due to FY 2020 legislative session	Legislative Action	(165,000)
7	Approved Carryforward use as of May 18, 2020	Carryforward	(512,000)
8*	Potential other Uses of Carryforward Funds	Carryforward	(1,350,000)
9	Balance of Carryforward Availability	Carryforward	(638,000)
Total Forecasted Available One-time Funds			\$ 2,043,976
Judicial Council Prioritized / Adopted			\$ (1,836,450)
Actual Return to State Finance Including other Savings			\$ 207,526

ing Plan		13-Mar	Final Judicial Council	
#	One-time Spending Plan	FY20 Requests	Judicial Council Approvals	Approvals for Essential Items (E)
One-time Budget Requests/Current Status in Bold		Amount	Amount	Non-essential (NE)
1	Courtroom A/V Upgrades (IT) - work in process partially expended	350,000	350,000	350,000 E
2	Upgrade For the Record (FTR) Digital Recording Software (IT) - Already expended	257,600	257,600	257,600 E
17	Remote Accessories - Already expended	83,000	83,000	83,000 E
3	Learning Management System (Education) PO signed.	164,100	164,100	164,100 E
4	Self-Assessment Materials (Education) - Withdrawn (W/D) by Requester	2,000	2,000	N/A NE
5	Training Equipment (Education) (laptops & equipment to create virtual training)	4,600	4,600	4,600 E
6	Alternative Dispute Resolution Training (ADR Committee) - CLASS CANCELLED	13,200	13,200	N/A NE
7	Online Dispute Resolution Facilitation Training Manual (ADR) (See Footnote)	5,000	5,000	5,000 E
8	Jury Chairs for Brigham City (1st District) (See Footnote)	15,000	15,000	15,000 E
9	Jury Tables / Chairs for West Jordan (3rd District) (Order can be Cancelled w/o penalty)	66,700	66,700	- NE
10	Carpet Replacement - Ogden Courthouse (2nd District) (Past cancellation date)	19,650	19,650	19,650 E
11	Public Viewing Agenda Monitor (Court of Appeals) (Order can be Cancelled w/o penalty)	4,000	4,000	- NE
12	Matheson Café Room and Conference Room A/B/C Furniture (Facilities) (Partial Cancel)	130,500	130,500	43,500 E/NE
13	Workforce Performance Bonuses (State Court Administrator) - W/D by Requester	500,000	500,000	N/A NE
	Nat'l Assoc. Drug Court Prof. Annual Conference (Veteran's Court Team) - Converted to			
14	virtual conference @\$500 per attendee	3,960	3,960	- NE
16	Inventory of PCs (4/7/2020 deadline) (IT) - Already expended	250,000	250,000	250,000 E
18	Replenish IT Equipment Monies Used for COVID19 Purposes	279,000		279,000 E
19	IT Court Room Video Equipment for Jury Trials	250,000		250,000 E
20	IT Docking Stations for New Laptops and Other Misc IT Purchases	115,000	-	115,000 E
Total One-time Spending Requests (before Contingent Requests)		2,513,310	1,869,310	1,836,450
Potential Return to State Finance				207,526
Contingent Requests				
13a	Employer Paid Benefits for Workforce Bonuses (6/26/2020 deadline) (SCA) Withdraw	160,200		N/A
15	Matheson Carpet Replacement (4/15/2020 deadline) (Facilities) - Move to \$2.5M Cfwd	400,000		N/A
Total with Contingent Requests		\$3,073,510		

#		Funding Type	Amount
1	Actual Ongoing Turnover Savings (as of PPE 5/15/2020)	Internal Savings	706,213
2	Forecast of Ongoing Turnover Savings for remaining 3 pay periods	Internal Savings	-
Less		Subtotal	706,213
3	Turnover Savings Pledged to fund Self-Help Center		(110,000)
4	Estimated Impact of Career Ladder Spend Over Budget of \$400K		(40,000)
5	Ongoing Turnover Savings Pledged to reduce FY 2021 Budget Cuts		(520,000)
6			
Forecast of Turnover Savings for FY 2020 at 6/30/2020			\$ 36,213

Motion: Judge Pettit moved to recommend sending the Total Compensation Strategy to the Judicial Council for consideration. Judge Chin seconded the motion and it passed unanimously.

4. PROPOSED XCHANGE FEE INCREASES FOR FY 2021: (Clayson Quigley)

The courts submission to the EOCJ Legislative Subcommittee of 2%, 5%, and 10% budget cuts proposal included a \$316,000 increase in Xchange fees.

Xchange fees have never been increased. However, new fees have been created and added to the various fees paid by users. The rule that governs these fees is Judicial Council Code of Judicial Administration 4-202.08.

For billing purposes there are three types of Xchange users: billable, non-billable, and media.

- Billable users (2069) are regular users subject to all of the fees described above. Most billable users are commercial entities that use the information for their business needs.
- Non-billable (1656) users are exempt from all fees. These are state and local government employees.
- Media users (51) are exempt from the monthly subscription fee but pay for over-cap searches and documents. Media accounts were exempted from the monthly subscription to help increase transparency and provide important information for general consumption for the benefit of the public.

The intent of the increase is to pass along to all of our users the increased costs of developing, operating and securing the Court's IT systems. It also seeks to increase fees on those who are the heaviest users of the system. All Xchange revenues are used to fund Courts IT and Court Services groups. Proposed increases are:

- Increase monthly subscription costs from \$30 to \$40.
- Increase the fee per search from \$0.10 to \$0.15
- Increase the number of free searches from 200 to 500.

Impact: Increase of approximately \$500,000 annually.

The bulk of the Xchange revenue comes from monthly subscriptions and over-cap search fees (about 50% and 38% respectively, with document download fees comprising the other 12%.) Increasing the monthly subscription fee is equitable, however an increase to the over-cap search fee would address those who put the greatest burden on our systems. Post implementation, revenue split would be 49% subscription fees, 42% search fees, and 9% document fees. The Committee discussed the idea of creating a waiver option that could be applied to Xchange customers with financial needs and asked Clayson to consider adding this to the proposal.

Motion: A motion was made to approve sending the Proposed XChange Fee Increase Request for FY 2021 to the Judicial Council, as presented. The motion was seconded and it passed unanimously.

5. JUDICIAL PRIORITIES – FY 2022 LEGISLATURE REQUESTS:

5.1 Community Education & Outreach Coordinator Position: (Geoff Fattah, Nancy Sylvester, Judge Elizabeth Hruby-Mills, Judge Richard Mrazik, and Judge Shauna Robertson-Graves)

Requested Amount: \$100,000

FY22 Ongoing

General Fund

Summary: Based on past recommendation by the courts' Racial and Ethnic Fairness study to invest more time and resources toward actively reaching out to marginalized communities, based on a national call by NCSC and the SCOTUS Chief Justice to provide more public education about the role and functions of the Judicial Branch, and based on the identified urgent need to reach self-represented litigants during a time of social and economic uncertainty, the Committee on Judicial Outreach and the Committee on Resources for Self-Represented

Parties recommends the creation of a Public Outreach and Education Coordinator position under the Public Information Office. The courts can no longer rely upon limited resources and the good will of judges and staff to volunteer time to spearhead outreach to various communities in need. A more formal and coordinated effort is needed to forge important partnerships and educate community leaders, and social workers.

Alternative Funding: The request is for an ongoing FTE position. This request was prioritized by the Council during the FY21 budget cycle, but was set aside from Legislative funding to be funded with cost savings funds, which turned out not to be possible. Seeking funding through grants for this FTE position would not be advisable, as the nature of this position requires a long-term commitment in order to work.

Motion: A motion was made to approve and recommend the Community Education & Outreach Coordinator, as presented to the Judicial Council at the August meeting. The motion was seconded and it passed unanimously.

5.2 Automate Record Index Creation: (Larissa Lee, Judge David Mortensen, and Brody Arishita)

Requested Amount: \$210,000

FY22 Onetime funds

General Fund

Summary: District and Juvenile Judicial Assistants collectively spend thousands of hours each year in putting together an index of each document in a given case that will go up on appeal. These employees manually take each document out of CORIS or CARE, combine them into one document, and stamp each page with a number. This is typically done online with saving each document in an employee's desktop and then manually combining and paginating the documents, but may also involve printing every page of the record, which at times numbers in the thousands, and manually paginating each page.

After further discussion with the Committee, Judge Mortensen and Larissa Lee, and Brody Arishita agreed to include more detail to the proposal and present it on July 10 to the Budget and Finance Committee.

Alternative Funding: None

- 6. OLD BUSINESS/NEW BUSINESS: (All)**
There was no additional business discussed.

- 7. ADJOURN**
The meeting adjourned at 1:21 p.m.

Agenda

UTAH JUDICIAL COUNCIL POLICY AND PLANNING COMMITTEE MEETING MINUTES

WebEx Video Conferencing
June 5, 2020 – 12. p.m. – 2 p.m.

DRAFT

MEMBERS:

PRESENT

EXCUSED

Judge Derek Pullan, <i>Chair</i>	•	
Judge Brian Cannell	•	
Judge Augustus Chin	•	
Judge Ryan Evershed	•	
Judge John Walton		•
Mr. Rob Rice	•	

GUESTS:

Brent Johnson
Nancy Sylvester
Paul Barron
Geoff Fattah
Nathanael Player
Judge Dennis Fuchs
Bart Olsen
Michelle Wilkes

STAFF:

Keisa Williams
Minhvan Brimhall (recording secretary)

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Pullan welcomed the committee to the meeting. The committee considered the minutes from the May 11, 2020 meeting. Judge Cannell noted that, on page 3, he opposed the language change in the proposed amendments to rule 4-202.02 (Records classification) but voted to take the rule to the Judicial Council for discussion.

With no other change to the minutes, Judge Chin moved to approve the draft minutes subject to amendment. Judge Cannell seconded the motion. The committee voted and the motion unanimously passed.

(2) 4-202.02. Records classification:

Nathaneal Player reviewed his proposal to make a slight amendment to Code of Judicial Administration Rule 4-202.02. In most cases a minor's name is private in court records, however, the Court's practice is (and has been) to include a minor's name on public stalking injunctions. Subsection (4)(O) of 4-202.02 provides a list of district and justice court proceedings in which a minor's name is public, but it omits stalking injunctions. I believe that is an oversight and it should be changed to comport with Court practice. The omission was brought to our attention when a court patron contacted the Self-Help Center and was very upset that her child's name was listed on a stalking injunction.

Judge Pullan: Are minor's names public on protective orders?

Mr. Player: Yes. Minor's names are public on protective orders and those proceedings are listed in (4)(O) as an exception.

Judge Evershed moved to approve the change as proposed and send it to the Judicial Council for approval for public comment. Mr. Rice seconded. The motion passed unanimously.

(3) 6-507. Court Visitor:

Nancy Sylvester provided an overview of the rule amendments based on the Committee's feedback at its May 1st meeting:

1. Used the term, "Request to submit for decision" for consistency in tracking;
2. Separately outlined the process for making court findings upon requests for waivers of a respondent's presence versus all other reports in paragraph (8);
3. Ensured that the rule does not conflict with Rule 3-101 in paragraph (8);
4. Added "interested person" to paragraph (2); and
5. Clarified service of a court visitor report language in paragraph (6).

A request to waive the respondent's presence falls outside of Rule 3-101, but all other reports are subject to the timeline in Rule 3-101 (60 days). Section (2) now refers to Utah Code §75-1-201 defining appointment and the role of court visitors. Section (6) clarifies that court visitor reports must be filed and served on all parties and interested persons who requested appointment of the court visitor, with the exception of appointments made under paragraph (2)(e). Those appointments are exempt from service because it's often difficult to find those parties. In paragraph (3)(b)(ii), "...if the guardianship or conservatorship appointment is made" was added to clarify that it pertains to the appointment of a guardian/conservator.

Judge Pullan: Paragraph (8)(a) requires the court to make findings two (2) days in advance of the hearing. Is there a requirement that the court visitor program file a report a week before the hearing? Ms. Sylvester: The court visitor program's practice is to provide reports to the court about a week before the hearing. Usually the due date is in the court's order.

Judge Cannell: Will they file a proposed order as well? Ms. Sylvester: Yes.

Judge Pullan: I would prefer to include a requirement in the rule that the report be filed 5-7 days in advance of the hearing. Seven (7) days would make it consistent with the rules of civil procedure. That would provide judges with enough time to make findings at least 2 days in advance of the hearing. Is there a reason it has been done in advance of the hearing? The findings could be read at the hearing and if the request to waive appearance is denied a new hearing can be scheduled to ensure the respondent is present.

Ms. Sylvester: It's often difficult to get respondents to the courthouse, especially those who are disabled. If the court hasn't made a decision prior to the hearing respondents may appear unnecessarily, or visitors/parties may be held in contempt for not bringing the respondent to court. This has been an issue for court visitors. It's helpful to have clear instructions from the court. In the 3rd district, these hearings are scheduled a month out to provide the court visitor and the court with sufficient time to file the report and issue findings before the hearing.

Mr. Rice: Is the deadline programmed into CORIS so that judges receive an automatic reminder? Paul Barron: No, something would have to be built. We could allow the court visitor program to e-file reports and prioritize them so that they would be brought to the attention of the JAs.

Michelle Wilkes: Once the court visitor program receives a request, it takes 3-5 days to find a volunteer. The volunteer takes about 2-3 weeks to conduct interviews and gather information. The reports are filed 5 days before the hearing. I don't have an issue with including the 5-day requirement in the rule. In my experience some attorneys become upset or are inconvenienced when a hearing is continued.

Judge Cannell: A request to submit and proposed order should also be filed within 5 days. That would trigger a notice to the JA and judge that the report is in the record and ready to be reviewed.

Mr. Rice moved to approve the proposed rule as amended and send it to the Judicial Council for approval for public comment. Judge Cannell seconded. The motion passed unanimously.

(4) Juvenile Drug Court Certification Checklist:

Judge Fuchs: I propose that the Juvenile Drug Court Certification Checklist be amended, moving standard #25, "the Juvenile Drug Court has more than 15 but less than 125 active participants," from the Presumed Category to the Best Practices Category. Drug court participation numbers have dropped significantly with new juvenile justice reform. There's no longer any real incentive for juveniles to participate. I propose changing the participation numbers to a minimum of 8-10.

Judge Pullan: Are the drug courts able to function in a meaningful way if they don't have a minimal level of participation with 15 participants? We need to consider, as a matter of policy, whether we want to continue juvenile drug courts. Do the low numbers impact the success of juveniles who are participating? Do all of our juvenile drug courts have 15 right now? Do you know how many have less than 8?

Judge Fuchs: Best practices show that juvenile drug courts are most effective with 15 or more participants. That doesn't mean that they aren't effective with less, just that they are *most* effective with fifteen (15). Without at least 8-10, we may be wasting the judges' and treatment providers' time. Those juveniles could be treated in a different way without a separate court calendar. My inclination is to let drug courts operate when there are at least 8-10 participants. It's questionable when we drop below eight (8). There are only 5-6 juvenile drug courts in the state. Only one has less than 8 participants. Most others have somewhere between 8 and 10.

Judge Pullan: I believe this is a policy question for the Judicial Council. What do we know about the effect on treatment of having 15 participants? Is 15 a magic number? If we cut that in half, are we compromising outcomes, causing harm, or making no difference?

Judge Fuchs: I will make contact with the National Association of Drug Court Professionals (NADPC) about research regarding the effect on drug courts with fewer than 15 participants.

Judge Evershed: I will reach out to the juvenile court bench and juvenile court board of judges for input. They are meeting a week from today.

Mr. Rice moved to send the issue to the Judicial Council for a discussion regarding the policy question of whether juvenile drug courts should wind down. Judge Evershed seconded. The motion passed unanimously.

(5) Rule amendments re HB206:

3-407. Accounting

4-609. Procedure for obtaining fingerprints...

10-1-404. Attendance and assistance of prosecutors in criminal proceedings

Ms. Williams: The proposed amendments are related to HB206 and the new definition of bail. Additional minor amendments, unrelated to HB206, were made to 3-407 at the request of the Finance Department.

Mr. Rice moved to approve the proposed rules as amended and send it to the Judicial Council for approval for public comment. Judge Evershed seconded. The motion passed unanimously.

(6) 4-401.01. Electronic media coverage of court proceedings

4-401.02. Possession and use of portable electronic devices

Mr. Johnson reviewed the proposed amendments. Rule 4-401.01 addresses electronic media coverage of court proceedings. The proposed change is intended to make it clear that the rule applies to viewing proceedings by remote transmission. In other words, the media still needs permission if they want to record or take photos of the remote proceedings they are viewing. And the proposal would eliminate the requirement of pool coverage in remote proceedings when there are multiple media requests. Anyone who asks could attend.

Rule 4-401.02 addresses use of electronic devices by others viewing court proceedings. The proposal would prohibit individuals from recording or photographing proceedings, just as they are prohibited from doing so in a courtroom. When a person is granted access to a proceeding they would be required to accept the terms of the rule, including acknowledging they could be held in contempt for violating the rule. This would obviously be very difficult to enforce but it is hoped the warning would stop most people. The IT Department set up the remote system so that all individuals and the media are required to click on a box saying they will abide by the rule. An open question is whether recording should be prohibited in remote proceedings?

Geoff Fattah: We brought this issue up with the media subcommittee of the Standing Committee on Judicial Outreach. The subcommittee includes media representatives from all of the media outlets and TV stations, in addition to judicial representatives from all levels of the court. The subcommittee discussed the upcoming use of WebEx events and how to make access a little easier for the public. The proposal was for IT to set up an automatic request process. Two issues surfaced:

- 1) The rule does not address live streaming. If it is the will of this body and the Management Committee and Judicial Council to continue to prohibit live streaming then the person will need to acknowledge that they will not live stream the proceeding. Even if live streaming is prohibited, it's possible they will find a way to circumvent the registration process and live stream the proceeding without us knowing about it.
- 2) The media is concerned that if we don't enforce the prohibition against live streaming and we allow other members of the public to share access or live stream, the media will be held to a more stringent standard than other members of the public.

Judge Pullan: The acknowledgement should require individuals to obey a court order and not just the rule. The order should state that the proceedings are not to be recorded without express permission of the court. In order to gain access to the hearing the person would have to check a box stating that they have read the order and agree to abide by it. When it comes to contempt proceedings and imposing sanctions, the court would need to find by clear and convincing evidence that the person was aware of the order, they understood the order, and they willfully failed to comply.

Mr. Johnson: That is worth exploring. I will talk to Heidi Anderson.

Mr. Fattah: There may also be a training component for the JAs. It is my understanding that when JAs set up the WebEx event they are in charge of adding the registration page for each calendar. We would need boiler plate language for them to copy and paste over.

Judge Pullan: Is it possible for the language to automatically show up when an event is scheduled?

Mr. Johnson: It may be possible for IT to program the system to allow people to go to a calendar and click on a link that takes them to the registration page where they would be required to submit certain information. Once submitted, they would receive an email with a link to the Webex hearing. The acknowledgement page would automatically pop up when they click on that link. They couldn't move to the next step or get into the hearing until they click on a button acknowledging their understanding and willingness to comply with the order.

Mr. Barron: That should be possible. It would require programming.

Judge Pullan: What pops up needs to be an order. It could be signed by the presiding judge of each district.

Mr. Fattah: I tested the system to see if I could circumvent the registration process. I registered for a WebEx hearing and sent the link to my nephew to see if he could access it. The system recognized that it was a different person and it took him to the registration page.

Mr. Rice: Is there a risk that the public will hijack or disrupt a hearing? Do we need to include that in the presiding judge's order? Mr. Fattah: Yes, that's always a risk and it wouldn't hurt to include it in the order. My understanding is that WebEx is more secure than other platforms. Judge Chin: I can limit individuals from entering the hearing

and prevent them from vocalizing. If they are a panel member, they are allowed to speak. There are stop gaps in to prevent the public from interfering in that way. Judge Pullan: I believe it is a crime to disrupt a government proceeding. If so, that might be something to include in the order.

Mr. Johnson: I can work on language for the order. The proposed change in 4-404.01 would be helpful to have in place now. We may not need (3)(C) in 4-401.02 if we have the order.

Mr. Barron: It isn't difficult for individuals to use portable devices. I would suggest removing the word "portable" from lines 58 and 60. Judge Pullan recommended adding language to lines 64 and 66 stating that access to proceedings is contingent on the person agreeing to comply with administrative and standing orders.

Mr. Johnson will work on a draft standing order and bring it back to Policy and Planning for review. Judge Pullan suggested that the order be standardized and used statewide. Mr. Johnson will take another look at the rules to clean up the language if needed.

Mr. Rice moved to approve the proposed rules as amended by the Committee and send them to the Judicial Council for approval for public comment. Judge Chin seconded. The motion passed unanimously.

(7) HR Policy Revisions. Phase 1 - Employment:

- **HR01 – Definitions**
- **HR02 – Administration**
- **HR03 – Classification**
- **HR04 – Filing Positions**
- **HR05 – Career Service Status & Probation**

Mr. Olsen: I propose that Policy and Planning postpone reviewing and approving sections 1-5 until the entire manual revision has been completed by the Human Resources Committee. I believe waiting will result in an improved review process, a better quality end product, timelier product delivery, and will be less of a heavy lift for Policy and Planning. Currently our HR policies reside on the intranet. A number of policies haven't been touched for years. This is not to discount the policies that are in place. They are extremely valuable and have guided the judiciary for years. There are a lot of excellent answers in there. However, it is difficult for employees to find the answers.

A search feature doesn't yield all of the results because of different formats in the policy; some are HDML coded into the intranet site while others are embedded PDF documents. Another challenge is that many of the widely shared practices are inconsistent with policy and some policies are inconsistent with employment law. Example: Our policy states that employee performance plans and evaluations will be conducted, but we have moved away from that practice. Another issue is that some policies are dated and dictate inefficient business practices.

The HR Committee is considering several factors while conducting the review. The Executive Branch HR rules guide many of the same systems used in the Judiciary. They don't govern the systems, but provide guidance about how they are governed. The Judiciary uses the same health insurance, retirement vendors, and HR and payroll systems. The Executive Branch HR policies undergo an annual refinement process through Risk Management, the Attorney General's office, and other agencies that provide continuous feedback and a thorough vetting process each year. The Committee is also working to ensure that any current judicial policies that work well and help the court accomplish its mission aren't excluded. Other factors include ensuring different sections in the policy are harmonious, the policy is accessible and clear, the policy provides transparent guidance for employees and management alike, and the content is searchable. The HR Committee is dedicated to ensuring the review process is transparent across the board. The Committee is looking at three sources; current internal HR policies, current DRHM rules, and proposed draft policies.

Policy and Planning didn't review sections 1-5. Mr. Olsen will bring the entire manual, sections 1-17, back to Policy and Planning once approved by the HR Committee.

(8) 1-201. Rules for Conduct of Council Meetings

6-102. Election of District Court Judges to the Judicial Council

7-101. Juvenile Court Board, Executive Committee and Council Representatives

Mr. Drechsel: SB167 expanded membership of the Judicial Council from 14 to 16, with the addition of a district court member and a juvenile court member. Rule 6-102 is the district court rule. The Council determined that the district court seats would be filled by one member from 2nd district, two from 3rd, one from 4th, one from 1st or 5th, and one from 6th, 7th or 8th. Judges Shaughnessy and Pettit represent 3rd, Judge Pullan represents 4th, Judge Cannell represents 1st, and Judge Walton represents 5th. There is no representative from 2nd district or 6th/7th/8th districts.

Right now, two members are serving from 1st (Judge Cannell) and 5th districts (Judge Walton). Moving forward, these two districts will share a single seat. That could be resolved by electing a new member from either 2nd or 6th/7th/8th districts in September when Judge Walton rotates off. The remaining district would fill the newly created seat. Both changes could wait until the annual conference, but there is still a decision to be made about the rotation schedule in regard to terms.

The amendments to Rule 1-201 allow the Board of District Court Judges to fill vacancies until the next regular election. An important goal would be to create a rotation schedule with two judges rotating on and off the Council each year. At least until 2021, that will be a little tricky with the board electing someone for a period of time and the full bench holding elections at the annual conference and then re-electing that person.

Juvenile court is a little easier. Judge Evershed is from the 8th district and Judge May is from 3rd district. The way the juvenile court board is proposing to structure their rule is for the third member to be at-large. That member can be pulled in from any of the districts. Judge May rotates off in 2021 and Judge Evershed rotates off in 2022. The at-large member would be elected this year at the annual conference for 2020-2023. In 7-101, subsection (6)(B) is being removed to account for the increase from one to two members. Subsection (6)(D) is being removed because that language is covered in Rule 1-201.

An open question is whether you want the Board of District Court Judges to appoint the member from 2nd or 6th/7th/8th for 15 months until you get to the 2021 annual meeting, or do you want the full bench to conduct elections for both positions at this year's annual meeting to cover the 2020 and 2021 cycle.

Judge Pullan asked Mr. Drechsel to draft a memo and rule revisions addressing the issues discussed by the Committee for presentation to the Judicial Council in June.

Judge Cannell moved to have Mr. Drechsel revise the rules to address the issues discussed by the Committee and present the rules along with a memo describing the options to the Judicial Council with a recommendation for expedited approval. Mr. Rice seconded. The motion passed unanimously.

(9) OLD BUSINESS/NEW BUSINESS:

None

(10) ADJOURN:

With no further items for discussion, Judge Cannell moved to adjourn the meeting. Mr. Rice seconded the motion. The committee unanimously approved the motion. The meeting adjourned at 1:48 pm. The next meeting will be on August 7, 2020 at 12:00 pm via WebEx Video Conferencing.

Tab 3



Alex G. Peterson
Executive Director

State of Utah

JUDICIAL CONDUCT COMMISSION

1385 S. State St., Suite #143
Salt Lake City, Utah 84115
Telephone: (801) 468-0021

TO Judicial Council

FROM Alex G. Peterson, Executive Director

DATE June 12th, 2020

RE Biannual JCC Update

MESSAGE

1. JCC Membership Update
 - a. New Members: Michelle Ballantyne (Mr. Jardine departed).
 - b. Missing Members: None.
 - c. Current Members (11): Rep. Craig Hall, Chair; Ms. Cheylynn Hayman, Ms. Michelle Ballantyne, Judge David Mortensen, Judge Todd Shaughnessy, Rep. Elizabeth Weight, Senator Lyle Hillyard, Senator Jani Iwamoto, Mr. Neal Cox, Mr. Mark Raymond, Ms. Georgia Thompson.
 - d. Next SCt appointments are for June 2020 (both Judges - renewals)
2. JCC Caseload Update
 - a. 64 cases in FY19 compared to 58 cases in FY18. We are currently at 48 cases in FY20. (Trending downward).
 - b. To date in FY20, we have had 1 public disposition (Judge Dow) and 1 DWW disposition for 1) Indecorous treatment of subordinates and 2) Abuse of prestige of judicial office.
 - c. No JCC cases are pending before Utah Supreme Court.
3. Misc. Activities of JCC (over the last six months)
 - a. Requests for information (AOC = 4, JPEC = 13, CCJJ = 7, AJDC/CJE = 17).
 - b. Prepared reduced budget proposal.
 - c. Updated / published 5 year review of JCC Admin Rules (R595).
 - d. Met with SCt to discuss CJC Rule 4.1 and 3.7.
 - e. COVID-19 response and impact.
 - f. JCC Video conferencing meetings.

Tab 4

UTAH INDIGENT DEFENSE COMMISSION

Annual Report
2019



***Protecting constitutionally guaranteed liberties
through ongoing support for effective indigent
defense services throughout the state.***

Commission Members (2018-2019)

Sam Alba, IDC Chair
Federal Magistrate Judge (Ret.)
Stakeholder, Snow Christensen &
Martineau

Michael Zimmerman, Past Chair
Utah Supreme Court Chief Justice (Ret.)
Founding Member, Zimmerman Booher

Senator Todd Weiler
Senate District 23

Representative Joel Ferry
House District 1

Kim Cordova
Executive Director, CCJJ

Mary T. Noonan
State Court Administrator

Pamela Vickrey
Executive Director
Utah Juvenile Defender Attorneys

Richard Mauro
Executive Director
Salt Lake Legal Defender Assoc.

Ryan Loose
City Attorney, South Jordan

***Nicole Cottle**
City Manager, West Valley City

Shawn Milne
Tooele County Commissioner

***Aimee Winder Newton**
Salt Lake County Councilmember

Margaret Lindsay
Supervising Attorney
Utah County Public Defender

Wally Bugden
Private Defense Attorney

Mary Corporon
Private Defense Attorney

* Stepped down as IDC Commissioner in October 2019. At the time of publication, no replacement for the position of a representative from a 1st/2nd class county or the city representative has been named.

LETTER FROM THE IDC CHAIRS



Michael Zimmerman has served as the Chair of the Indigent Defense Commission from its creation in 2016 to October 2019, when his term as chair expired.

Mr. Zimmerman is a former Chief Justice of the Utah Supreme Court and a founding attorney at the appellate firm of Zimmerman Booher. He has served on the Utah Courts' study committees and task forces on indigent defense, most recently the Judicial Council Study Committee on the Representation of Indigent Criminal Defendants in Trial Courts, which led to the IDC's creation.

In October 2019, IDC elected Sam Alba as the new IDC chair for 2019-2020.

Mr. Alba is a former federal magistrate judge, federal public defender, and federal prosecutor. He is currently a Shareholder at Snow Christensen & Martineau in Salt Lake City.

As two original IDC members, we are pleased to see Utah's commitment to its responsibility for indigent defense grow significantly since the IDC's creation in 2016.

IDC membership is diverse and committed to its mission to help the state and local governments improve criminal justice outcomes in Utah through investments in indigent defense.

In three short years, the IDC has expanded to work with 70% of Utah's 29 counties. And it is developing other ways to aid the state, including partnering with the RAND Corporation to create Utah-specific metrics for appropriate public defender workloads.

Aided by IDC grant funding, counties have made significant progress. One example is Utah County - an enduring supporter of independent public defense through its Public Defender Association, which now serves as a regional hub for services in multiple counties, and as the center of Utah's first effort to organize appellate indigent defense to provide an appropriate counterweight to the state-funded prosecution of appeals.

The Legislature's continued support will ensure the IDC's ability to maintain and expand its critical role in the state.

-Sam Alba & Michael Zimmerman

Indigent Defense: Return on Investment

STATE-LEVEL FISCAL AND ADMINISTRATIVE OVERSIGHT

The provision of indigent defense is a state obligation. Utah fulfills that obligation through delegation to local government and ensuring fiscal and administrative oversight over that delegation.

The IDC's grant program is the state's primary means of ensuring adequate oversight.

Effective indigent defense services are constitutionally mandated and ensure the proper functioning of the criminal justice system, the juvenile justice system, and the child welfare system.

PROPER FUNCTIONING OF JUSTICE SYSTEMS

EFFICIENCIES AND COST SAVINGS

Effective indigent defense services help ensure that public funds are not wasted on unnecessary pretrial incarceration, unnecessary removal of children from their homes, or wrongful conviction.

Funding Landscape

Utah signaled a long-term commitment to increased constitutional oversight for indigent defense services with the creation of the IDC.

The executive and legislative branches have worked to increase funding for the IDC's grant program. Funding has increased each year since the IDC's creation in 2016, reaching a high of \$4.3 million for grants to supplement local government spending in 2019. Utah's counties and cities spend \$35 million on indigent defense services annually, and the legislature's commitment is moving Utah towards a more balanced partnership and a Utah Solution to indigent defense.

2019 IDC FUNDING

Governor's
Recommended Budget:

\$5,000,000

EOCJ's
Recommended Budget:

\$5,000,000

Final IDC Budget:

\$5,141,800

INCLUDES OPERATIONS \$, ISF \$, GRANT \$, AND MORE.
IDC STAFF OPERATIONS BUDGET IS ~ \$840,000.

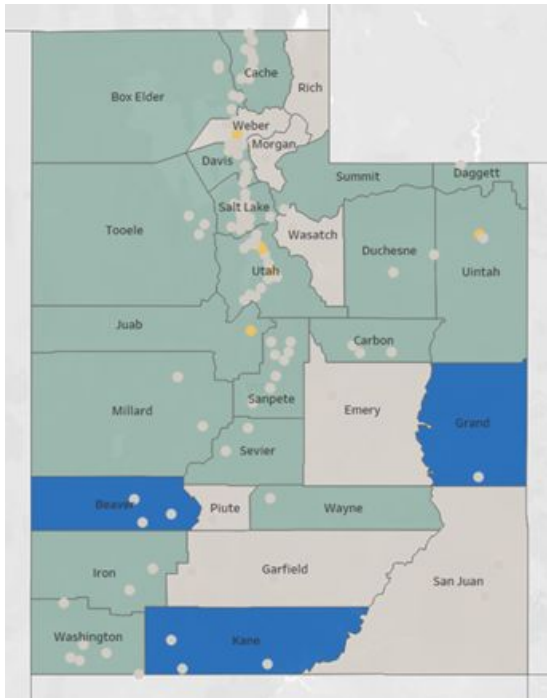
Total IDC Grant Budget:

\$4,300,000

The Legislature also demonstrated its commitment to indigent defense in policy initiatives, passing Senate Bill 32 by an overwhelming majority, thus ensuring youth do not face formal court proceedings without counsel by their side.

With ongoing funding for IDC's grant program and other initiatives, IDC will be able to achieve its statutory, statewide mandate. The IDC is committed to working with state and local partners to continue improving indigent defense services and ensuring no one is denied their constitutional rights in Utah's courts.

IDC Grant Program



- County receiving IDC grant funds
- County participating only in appellate pilot program

- The IDC awards grants to promote compliance with the IDC Core Principles.
- For FY20, the IDC has grant programming in **twenty-one counties** and **six cities**.
- In April 2019, the IDC received over **\$12 million in grant funding requests** from local governments.
- The IDC **awarded approximately \$3.6 million in grants**, with about \$700,000 available for additional programming to benefit local defense systems, including the appellate pilot and legal training programs.



CONTINUOUS IMPROVEMENT HIGHLIGHTS

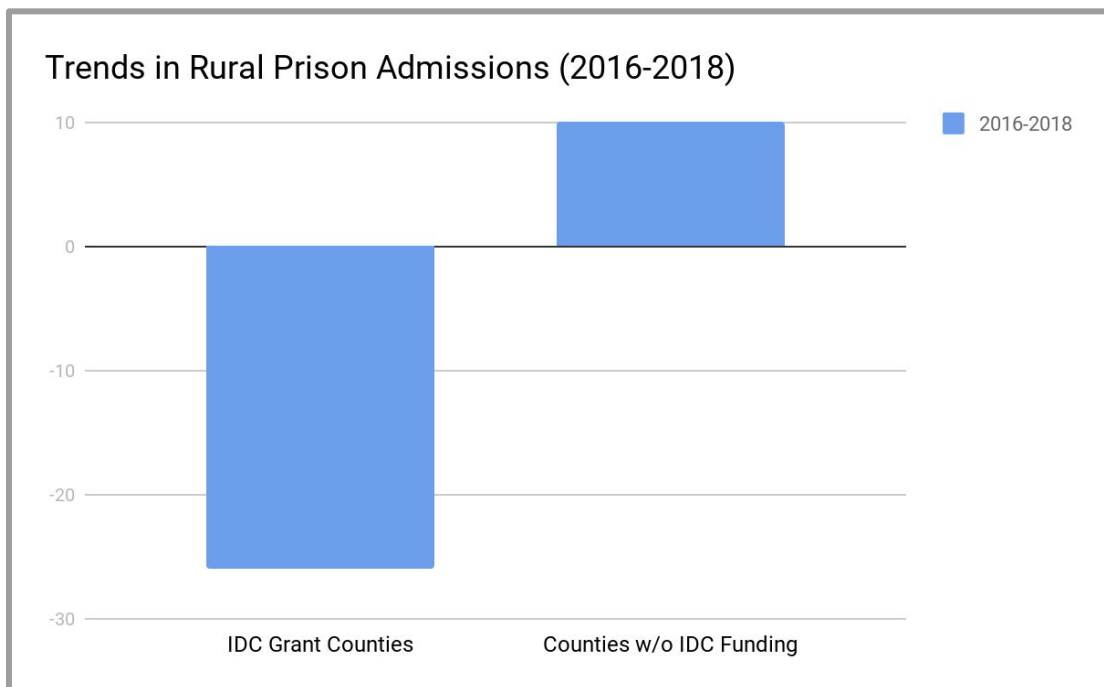
- Aligned grant reporting with IDC Core Principles to track performance and compliance.
- Trained project directors one-on-one, covering the grant award, core principles, available resources, and data reporting.
- Streamlined all grants to a one-year cycle (state fiscal year).
- Implemented tools that help simplify financial reporting for grantees.

GRANT IMPACT: Rural Incarceration Rates

Effective indigent defense services support the proper functioning of the criminal justice system and help ensure that public funds are not wasted, for example, on unnecessary incarceration.

A CCJJ analysis of prison admission rates from 2016-2018 provides a striking example of the potential impact of IDC's grant program.

The analysis found that rural counties awarded IDC grants experienced, on average, a **26% decline in prison admissions between 2016 and 2018, compared to a 10% increase for non-IDC grant recipients.**



GRANT IMPACT: 8th District Regional

This example of an IDC grant was funded with
\$510,107 of IDC Funding + \$643,850 Uintah County
+ \$6k Daggett County Funding.

System Challenges Prior to IDC Funding:

NO INDEPENDENCE



COUNTY ATTORNEY'S OFFICE PROVIDED PARTIAL
OVERSIGHT OF INDIGENT DEFENSE CONTRACTS

HIGH CASELOADS



PRIMARY DEFENSE ATTORNEYS AVERAGED
415+ APPOINTED CASES

SYSTEM INEFFICIENCIES



DEFENSE ATTORNEYS WERE ACCEPTING
APPOINTED CASES IN 11 DIFFERENT COURTS

IDC GRANT HELPS TO PROVIDE:

INDEPENDENT OVERSIGHT



A MANAGING PUBLIC DEFENDER PROVIDES
SUPERVISION OF INDIGENT DEFENSE SERVICES

REGIONALIZATION



INCREASE LOCAL CAPACITY FOR INDIGENT DEFENSE
SERVICES THROUGHOUT THE 8TH JUDICIAL DISTRICT

RIGHT TO APPEAL



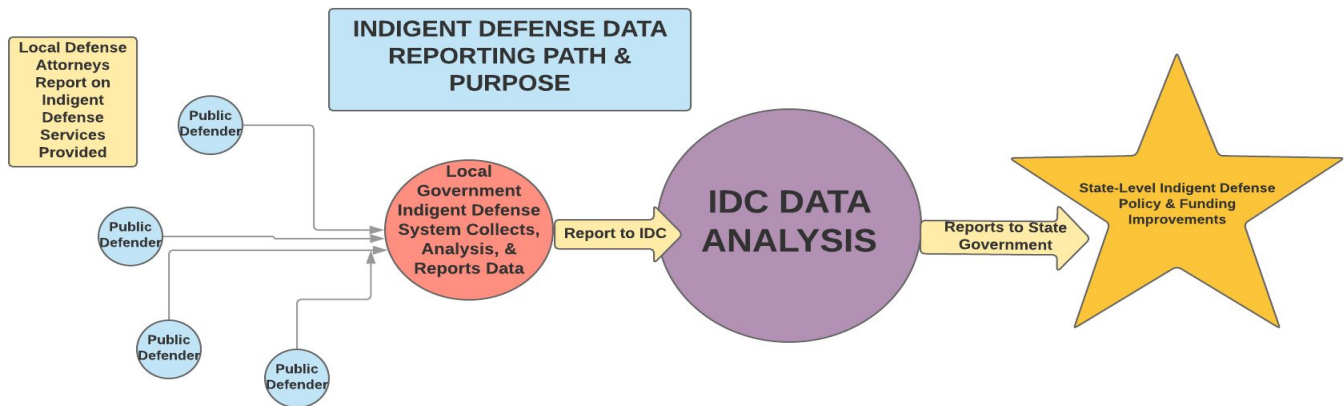
INCREASED FUNDING FOR INDIGENT
APPELLATE REPRESENTATION

DATA COLLECTION



HIRING SUPPORT STAFF IMPROVES GRANT REPORTING

IDC Grant Data



WHY DO LOCAL GOVERNMENTS NEED TO COLLECT & REPORT DATA?

- Ensure public funds are utilized effectively/efficiently.
- Show they adequately provide constitutionally required services and identify areas for improvement.
- Access state and federal supplemental indigent defense funding.
- Be able to plan, budget, and forecast criminal justice expenses.
- Help convey information about local services.

WHY DO INDIGENT DEFENSE ATTORNEYS NEED TO COLLECT & REPORT DATA?

- Support budget/resource requests.
- Show effective defense promotes better outcomes & cost savings.
- Comply with the requirements of contract requirements.
- Properly identify conflicts of interests and track caseloads.

IDC Grant Data



The IDC collects data from local indigent defense systems that receive IDC funding to help demonstrate to systems and the state **1) grant effectiveness**; and **2) improved outcomes in indigent defense services** statewide as a result of IDC funding.

This reporting on financial and caseload data helps the IDC monitor and report on the impact of state funding, as well as identify progress and persistent gaps in indigent defense services.

In July 2019, the IDC implemented **new data reporting requirements** to:

1. Establish **baseline information** about Utah's indigent defense services;
2. Assist systems in meeting the Core Principles for Indigent Defense Systems; and
3. **Demonstrate compliance** with those principles to the Utah Legislature to support IDC's requests for renewed funding.

Because knowing the full picture of indigent defense services assists in communicating the needs of systems to the legislature, the IDC collects data for all courts within a grantee's jurisdiction (District, County Justice, Juvenile Delinquency, Child Welfare, City Justice, and Appellate). Additionally, the IDC requests attorney-specific data to assess caseloads and compensation.

The IDC continues to grow its capacity for data collection in order to connect its grant funding to larger system and social outcomes.

Senate Bill 32 (2019)

Indigent Defense Act Amendments



Senate Bill 32

Indigent Defense Act

Amendments

THIS BILL RECODIFIES THE INDIGENT DEFENSE ACT, INCLUDING: ADDRESSING RIGHT TO COUNSEL; DETERMINING INDIGENCY; ORDERING INDIGENT DEFENSE SERVICES; ESTABLISHING STANDARDS FOR INDIGENT DEFENSE SYSTEMS; ADDRESSING COMPENSATION AND REIMBURSEMENT FOR INDIGENT DEFENSE SERVICES; PROVIDING FOR DEFENSE OF INDIGENT INMATES, INCLUDING PROVIDING FOR THE INDIGENT INMATE TRUST FUND; ADDRESSING THE INDIGENT AGGRAVATED MURDER DEFENSE TRUST FUND AND THE ROLES OF COUNTIES AND THE STATE; AND REPEALING LANGUAGE OUTDATED BECAUSE OF CHANGES MADE IN THE BILL.

The IDC is statutorily tasked with submitting recommendations for improving indigent defense services to legislative, executive, and judicial leadership.

In 2018, an empirical study based on hundreds of court observations across Utah reported that youth appeared without the assistance of counsel in approximately 30% of observed juvenile court proceedings.

The IDC convened juvenile justice stakeholders to address representation issues in delinquency proceedings. The resulting consensus policy position led to SB32, which requires automatic appointment of counsel for all youth in delinquency court proceedings and requires appointed counsel to be present at all stages of the proceedings.

The Legislature overwhelmingly passed Senate Bill 32 to ensure no minors face formal court proceedings without counsel.

Indigent Appellate Representation

The right to appellate defense representation at government cost extends to all indigent individuals facing a loss of liberty or the termination of parental rights.

Effective and organized appellate defense representation is critical to a constitutional criminal justice system.

Utah has historically lacked an organized appellate defense system to provide these benefits or to provide an appropriate counterbalance to state-level appellate services provided for the prosecution, leaving serious service gaps in Utah's criminal justice system.



UTAH'S 3RD-6TH CLASS COUNTIES

- In 2018, the Utah Supreme Court responded to systemic problems in indigent appellate defense. The Supreme Court created an **appellate roster**, which includes only attorneys with specific appellate advocacy skills and experience and is the sole source from which district and juvenile courts can appoint attorneys on appeal.
- In 2019, the IDC began a **pilot program to help counties of the 3rd-6th class** provide appellate defense. Nearly all of Utah's smaller counties are working with this IDC program to improve appeals, with the exception of Carbon, Emery, Garfield, Morgan, Rich, and San Juan counties.
 - Challenges remain, as there is limited oversight of appellate attorneys, no direct funding from the state to attorneys, and communication with trial attorneys before an appeal is filed needs improvement. This program is, however, a promising example of a partnership between state and local governments to improve indigent defense services.

Leveraging Federal Funds

IN 2019, THE IDC LEVERAGED **\$1.3 MILLION** IN FEDERAL FUNDS TO DRIVE INDIGENT DEFENSE IMPROVEMENTS

Bureau of Justice Assistance JAG BYRNE Grants:

The IDC has been allocated three JAG grants totalling **\$958,201** to:

- Provide case management software to local indigent defense providers.
- Fund a caseload/workload study of indigent defense systems in Utah.
- Evaluate the impact of social workers supporting public defenders.
- Fund two social workers: one at Utah Juvenile Defender Attorneys and one with Salt Lake Legal Defender Association.

Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention Grant:

In September the IDC received a **\$319,000** competitive grant from OJJDP to:

- Provide specialized juvenile delinquency indigent defense training.
- Host eleven quarterly, tuition free and geographically accessible trainings.
- Develop practice tools for juvenile defenders to use.

Dept. of Health and Human Services Title IV-E Funds:

The IDC is working with the Utah Division of Child and Family Services (DCFS) to draw Federal Title IV-E funds to:

- Provide funding for parental representation improvements.
- Funds will be a **12%-14% match** of state/local parental representation spending.



U.S. Department of
Health and Human
Services



Attorney Training Program

In 2019, the IDC launched a training program to help ensure all indigent defense attorneys have access to continuing legal education (CLE) relevant to their areas of practice. The FY20 budget is \$20,000.



The Legal Training Program:

- Addresses **regional gaps in training opportunities** for attorneys to keep current with legal developments and best practices.
- Supports **specialization** among defense attorneys in areas of adult criminal, juvenile delinquency, and parental defense.
- **Collaborates with existing training providers** (e.g. Utah State Bar, Utah Association of Criminal Defense Lawyers, Parental Defense Alliance of Utah, and Utah Juvenile Defender Attorneys) to **expand existing capacity** to reach the roughly 400 attorneys in Utah who are appointed on indigent defense cases.
- Provides **scholarships** that enable attorneys to attend regional and national trainings on topics not currently offered in Utah— e.g., the National Association of Public Defense Executive Leadership Institute for defenders in management roles.
- Educates IDC grant recipients and attorneys about available funding, the Defender Data case management system, and grant reporting requirements to **facilitate access to IDC grant funding and ensure compliance with grant program requirements**.



IDC.UTAH.GOV

Joanna Landau, Director

Jlandau@utah.gov



Utah Indigent Defense Commission

Did you know?

The Utah Territory had the country's first right-to-counsel laws, which are now found in the Utah Code and Constitution.

Who is "indigent?"

- Minors.
 - Adults who cannot afford to hire an attorney
- Statutory definition: earning <150% federal poverty limit (\$9/hr / \$18,735/yr for an individual).

~120,000

Utah cases should have appointed attorneys

Who has a right to counsel in Utah?

- Minors in court proceedings.
- Indigent adults charged with committing crimes.
- People facing parental termination actions.

~430

Utah Attorneys take appointed cases

>80%

of Utah's adult criminal defendants are indigent

According to the Constitution/Bill of Rights:

It is the states' responsibility to provide defense counsel to indigent individuals. Utah delegates that responsibility to its counties and cities. The Legislature created the IDC to provide guidance and accountability over those local services.

In 2019, Utah's 29 counties spent

\$35 million

on indigent defense services

SLCO spent \$21.5m

In FY20, the Legislature Appropriated

\$4.3 million

(one-time) to IDC for grants to local gov'ts
\$13.5m ongoing was requested to IDC

23 / 29 Counties &
6 / 247 Cities
Work w/ the IDC in FY20.

What does the IDC do?

000059

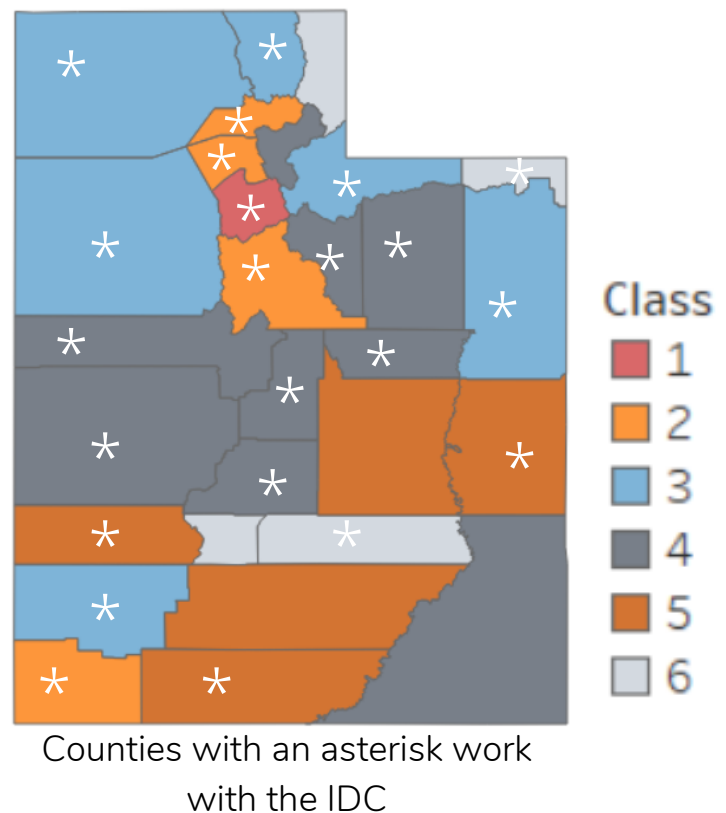
The Utah Indigent Defense Commission protects constitutional liberties through ongoing support for effective indigent defense services.

We do this by:

Establishes guidelines & standards for indigent defense systems	Collects & reports on data/information about local indigent defense
Awards grants to improve local compliance with standards/monitors compliance	Provides public defender trainings throughout the state
Leverages federal dollars to support state improvements	Facilitates regional collaborations with local governments working together on indigent defense services.

Is a resource to the 29 counties & 247 cities,
and 400+ public defenders in Utah.

Local government
participation in
improvements is
growing



**PRIORITY 2 -- \$6,000,000 ONGOING FY21 APPROPRIATION (TOTAL). [\$5,155,500 in HB 6]
FUNDING SOURCE: GENERAL FUND**

WHAT IS THE INDIGENT DEFENSE COMMISSION?



- Utah law and the 6th & 14th Amendments in the Bill of Rights make the provision of indigent defense services a state responsibility.
- Utah fulfills its obligation by delegating to local governments (cities & counties) the responsibility to provide indigent defense services.
- Created in 2016, the IDC ensures the state's accountability by working with local governments to improve their services.
- Effective indigent defense services are constitutionally mandated and ensure the health of Utah's criminal and juvenile justice system.

HOW THE IDC USES APPROPRIATIONS:

To supplement the nearly \$40 million in local spending, and help the IDC:

- **Develop & maintain structural improvements** Through grants to support/evaluate indigent defense improvements, to help ensure Utah's criminal and juvenile justice system is constitutional.
- **Data** Development & collection of information about local services to monitor improvements.
- **Legal Training** to ensure public defenders have appropriate expertise to defend cases.

IN PARTNERSHIP WITH THE IDC, LOCAL GOVERNMENTS HAVE SIGNIFICANTLY IMPROVED LOCAL INDIGENT DEFENSE SERVICES.

- **Uintah County's** new county public defender also manages indigent defense for **Daggett & Duchesne**, ensuring better resources for their clients, the courts, and the counties.
- **Iron County** hired a managing public defender to improve the local delivery of services, access to resources, and accountability to individuals and the county.
- **Sevier County's** new managing public defender oversees services for **Sevier** and **Wayne** counties, and has increased the number and quality of public defenders in this rural area.
- **Utah, Millard, Juab, and Sanpete Counties** collaborate to create a regional defense system that enhances resources and provides improved services in several rural courts.
- **Salt Lake & Utah Counties'** established public defender offices have reduced caseloads and appear early in cases, to provide better services and ensure the consistent presence of counsel.
- Some Utah's cities have worked with the IDC to regionalize their defense services with counties.

When public defenders are supported and resourced, they help ensure public funds are not spent on unnecessary and costly pretrial incarceration, the removal of children from families, and wrongful convictions.

Counties remain major participants in the funding and provision of Utah's indigent defense services.

IDC Grant Project Snapshot

Budgeted Amounts for: July 1, 2019 - June 30, 2020

000061

County Public Defender Systems:

The IDC awarded \$5,280,172 in state grants to 23 counties for indigent defense services. The 29 Counties spend \$35,135,265.

Beaver	Box Elder	Cache
IDC Grant: Appeals/County Spending: ~\$86,200	IDC Grant: \$125,400 County Spending ~\$206k	IDC Grant: \$156k County Spending: ~\$525k
Improvements: <ul style="list-style-type: none"> Qualified appellate program 	Improvements: <ul style="list-style-type: none"> Qualified appellate program Increased district defender to fulltime & added 1 pd Increased pay for juvenile defender Defense resources funding (investigators, testing, etc) 	Improvements: <ul style="list-style-type: none"> Qualified appellate program Added 2 public defenders Added support staff position
Carbon	Daggett	Davis
IDC Grant: \$120,600 County Spending~\$285k	IDC Grant: (w/ Uintah grant) County \$6k	IDC Grant: \$105,461 County Spending ~\$2.2 m
Improvements: <ul style="list-style-type: none"> Added 3 public defenders & Defense resources 	Improvements: <ul style="list-style-type: none"> Qualified appellate program Regionalization with Uintah/Duchesne 	Improvements: <ul style="list-style-type: none"> Added parental defense social worker
Duchesne	Grand	Iron
IDC Grant: \$226,400 County Spending ~\$285k	IDC Grant: Appeals County Spending ~\$272k	IDC Grant: \$90,000 County Spending ~\$359k
Improvements: <ul style="list-style-type: none"> Qualified appellate program Regionalization with Uintah/Daggett Help for data reporting Added hourly conflict funding & 2 defenders Increased pay for juvenile defender & defense resources 	Improvements: <ul style="list-style-type: none"> Qualified appellate program 	Improvements: <ul style="list-style-type: none"> Qualified appellate program Added managing defender
Juab	Kane	Millard
IDC Grant: \$321,383 County Spending ~\$140k	IDC Grant: Appeals County Spending ~\$105k	IDC Grant: \$105k County Spending: ~\$155k
Improvements: <ul style="list-style-type: none"> Regionalization with Utah County Managing legal assistant & Defense resources 	Improvements: <ul style="list-style-type: none"> Qualified appellate program 	Improvements: <ul style="list-style-type: none"> Qualified appellate program Regionalization with Utah County Added 3 public defenders
Salt Lake	Sanpete	Sevier
IDC Grant: \$459,292 County Spending ~\$21.5m	IDC Grant: \$166,300 County Spending ~\$115k	IDC Grant: \$285,000 County Spending: ~\$110k
Improvements: <ul style="list-style-type: none"> Added 4 public defenders 1 parental defense social worker <p>+ \$199,207 in Federal JAG funds:</p> <ul style="list-style-type: none"> 1 criminal defense & 1 delinquency social worker 	Improvements: <ul style="list-style-type: none"> Qualified appellate program Regionalized with Utah County Added 4 public defenders Defense resources funding 	Improvements: <ul style="list-style-type: none"> Qualified appellate program Regionalization with Wayne Managing defender and support staff position Added 2 public defenders & Defense resources
Summit	Tooele	Uintah
IDC Grant: \$85,000 County Spending ~\$300k	IDC Grant: \$197,672 County Spending ~\$336k	IDC Grant: \$510,107 County Spending ~\$644k
Improvements: <ul style="list-style-type: none"> Partially funded justice court defender Added juvenile delinquency defender Defense resources funding 	Improvements: <ul style="list-style-type: none"> Qualified appellate program Added managing defender Added two public defenders 	Improvements: <ul style="list-style-type: none"> Qualified appellate program Regionalization with Duchesne/Daggett Added managing defender & support staff Added 2 public defenders & conflict counsel Defense resource funding
Utah	Wasatch	Washington
IDC Grant: \$1,801,201 County Spending ~\$5m	IDC Grant: N/A County Spending ~\$290k	IDC Grant: \$194,356 County Spending ~\$806k
Improvements: <ul style="list-style-type: none"> Regionalization with Juab/Millard/Sanpete 12 public defenders, 3 law clerks, 2 staff 2 parental defense social workers Increased pay for parental conflict cases Defense resources funding 	Improvements: <ul style="list-style-type: none"> Qualified appellate program 	Improvements: <ul style="list-style-type: none"> Increased pay for existing defenders Added district defender Defense resources funding
Wayne	Weber	Qualified Appellate Program Details
IDC Grant: \$61k County Spending ~\$29.5 k	IDC Grant: \$270,000 County Spending ~\$1.3m	IDC Up to \$300,000 County Spending ~\$70k
Improvements: <ul style="list-style-type: none"> Qualified appellate program Regionalization with Sevier's managing defender +1 district defender & staff & Defense resources 	Improvements: <ul style="list-style-type: none"> Added two district RICO/Gang case defenders 	Improvement: <ul style="list-style-type: none"> 17 3rd-6th class counties enrolled Provides qualified appellate attorneys Counties invest \$5,000

City Public Defender Systems:

In FY20 the IDC is providing \$110,556 in grant funds to 6 cities for indigent defense services. These cities will invest \$372,090 on indigent defense services.

Lindon	Nephi	Ogden
IDC Grant: \$22,000	IDC Grant: \$19,900	IDC Grant: \$4,546
Grant Funded Improvements: <ul style="list-style-type: none"> Regionalization with Pleasant Grove Funding for hourly defender pay/data Admin hours for data reporting 	Grant Funded Improvements: <ul style="list-style-type: none"> Regionalization with Utah County Increased pay & Defense resources funding 	Grant Funded Improvements: <ul style="list-style-type: none"> Online access to discovery information Defense resources funding
Pleasant Grove	Springville	Vernal
IDC Grant: \$22,000	IDC Grant: \$32,000	IDC Grant: \$10,110
Grant Funded Improvements: <ul style="list-style-type: none"> Regionalization with Lindon City Funding for hourly defender pay/data Admin hours for data reporting 	Grant Funded Improvements: <ul style="list-style-type: none"> Admin hours for data reporting Funds for defender compensation & conflict counsel Defense resources funding 	Grant Funded Improvements: <ul style="list-style-type: none"> Regionalization with Uintah/Duchesne Funds to increase defender compensation Defense resources funding

Effective 5/14/2019

Chapter 22 Indigent Defense Act

Part 1 General Provisions

78B-22-101 Title.

This chapter is known as the "Indigent Defense Act."

Renumbered and Amended by Chapter 326, 2019 General Session

78B-22-102 Definitions.

As used in this chapter:

- (1) "Account" means the Indigent Defense Resources Restricted Account created in Section 78B-22-405.
- (2) "Board" means the Indigent Defense Funds Board created in Section 78B-22-501.
- (3) "Commission" means the Utah Indigent Defense Commission created in Section 78B-22-401.
- (4) "Director" means the director of the Office of Indigent Defense Services, created in Section 78B-22-451, who is appointed in accordance with Section 78B-22-453.
- (5)
 - (a) "Indigent defense resources" means the resources necessary to provide an effective defense for an indigent individual, including the costs for a competent investigator, expert witness, scientific or medical testing, transcripts, and printing briefs.
 - (b) "Indigent defense resources" does not include an indigent defense service provider.
- (6) "Indigent defense service provider" means an attorney or entity appointed to represent an indigent individual pursuant to:
 - (a) a contract with an indigent defense system to provide indigent defense services; or
 - (b) an order issued by the court under Subsection 78B-22-203(2)(a).
- (7) "Indigent defense services" means:
 - (a) the representation of an indigent individual by an indigent defense service provider; and
 - (b) the provision of indigent defense resources for an indigent individual.
- (8) "Indigent defense system" means:
 - (a) a city or town that is responsible for providing indigent defense services;
 - (b) a county that is responsible for providing indigent defense services in the district court, juvenile court, and the county's justice courts; or
 - (c) an interlocal entity, created pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, that is responsible for providing indigent defense services according to the terms of an agreement between a county, city, or town.
- (9) "Indigent individual" means:
 - (a) a minor who is:
 - (i) arrested and admitted into detention for an offense under Section 78A-6-103;
 - (ii) charged by petition or information in the juvenile or district court; or
 - (iii) described in this Subsection (9)(a), who is appealing an adjudication or other final court action; and
 - (b) an individual listed in Subsection 78B-22-201(1) who is found indigent pursuant to Section 78B-22-202.

- (10) "Minor" means the same as that term is defined in Section 78A-6-105.
- (11) "Office" means the Office of Indigent Defense Services created in Section 78B-22-451.
- (12) "Participating county" means a county that complies with this chapter for participation in the Indigent Aggravated Murder Defense Trust Fund as provided in Sections 78B-22-702 and 78B-22-703.

Amended by Chapter 371, 2020 General Session

Amended by Chapter 392, 2020 General Session

Amended by Chapter 395, 2020 General Session

Part 2

Appointment of Counsel

78B-22-201 Right to counsel.

- (1) A court shall advise the following of the individual's right to counsel when the individual first appears before the court:
- (a) an adult charged with a criminal offense the penalty for which includes the possibility of incarceration regardless of whether actually imposed;
 - (b) a parent or legal guardian facing an action initiated by the state under:
 - (i) Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;
 - (ii) Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act; or
 - (iii) Title 78A, Chapter 6, Part 10, Adult Offenses;
 - (c) a parent or legal guardian facing an action initiated by any party under:
 - (i) Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act; or
 - (ii) Section 78B-6-112; or
 - (d) an individual described in this Subsection (1), who is appealing a conviction or other final court action.
- (2) If an individual described in Subsection (1) does not knowingly and voluntarily waive the right to counsel, the court shall determine whether the individual is indigent under Section 78B-22-202.

Amended by Chapter 371, 2020 General Session

Amended by Chapter 392, 2020 General Session

Amended by Chapter 395, 2020 General Session

78B-22-202 Determining indigency.

- (1) A court shall find an individual indigent if the individual:
- (a) has an income level at or below 150% of the United States poverty level as defined by the most recent poverty income guidelines published by the United States Department of Health and Human Services; or
 - (b) has insufficient income or other means to pay for legal counsel and the necessary expenses of representation without depriving the individual or the individual's family of food, shelter, clothing, or other necessities, considering:
 - (i) the individual's ownership of, or any interest in, personal or real property;
 - (ii) the amount of debt owed by the individual or that might reasonably be incurred by the individual because of illness or other needs within the individual's family;
 - (iii) the number, ages, and relationships of any dependents;

- (iv) the probable expense and burden of defending the case;
 - (v) the reasonableness of fees and expenses charged by an attorney and the scope of representation undertaken when represented by privately retained defense counsel; and
 - (vi) any other factor the court considers relevant.
- (2) Notwithstanding Subsection (1), a court may not find an individual indigent if the individual transferred or otherwise disposed of assets since the commission of the offense with the intent of becoming eligible to receive indigent defense services.
- (3) The court may make a finding of indigency at any time.

Enacted by Chapter 326, 2019 General Session

78B-22-203 Order for indigent defense services.

- (1)
- (a) A court shall appoint an indigent defense service provider who has a contract with an indigent defense system to provide indigent defense services for an individual over whom the court has jurisdiction if:
 - (i) the individual is an indigent individual as defined in Section 78B-22-102; and
 - (ii) the individual does not have private counsel.
 - (b) An indigent defense service provider appointed by the court under Subsection (1)(a) shall provide indigent defense services for the indigent individual in all court proceedings in the matter for which the indigent defense service provider is appointed.
- (2)
- (a) Notwithstanding Subsection (1), the court may order that indigent defense services be provided by an indigent defense service provider who does not have a contract with an indigent defense system only if the court finds by clear and convincing evidence that:
 - (i) all of the contracted indigent defense service providers:
 - (A) have a conflict of interest; or
 - (B) do not have sufficient expertise to provide indigent defense services for the indigent individual; or
 - (ii) the indigent defense system does not have a contract with an indigent defense service provider for indigent defense services.
 - (b) A court may not order indigent defense services under Subsection (2)(a) unless the court conducts a hearing with proper notice to the indigent defense system by sending notice of the hearing to the county clerk or municipal recorder.
- (3)
- (a) A court may order reasonable indigent defense resources for an individual who has retained private counsel only if the court finds by clear and convincing evidence that:
 - (i) the individual is an indigent individual;
 - (ii) the individual would be prejudiced by the substitution of a contracted indigent defense service provider and the prejudice cannot be remedied;
 - (iii) at the time that private counsel was retained, the individual:
 - (A) entered into a written contract with private counsel; and
 - (B) had the ability to pay for indigent defense resources, but no longer has the ability to pay for the indigent defense resources in addition to the cost of private counsel;
 - (iv) there has been an unforeseen change in circumstances that requires indigent defense resources beyond the individual's ability to pay; and
 - (v) any representation under this Subsection (3)(a) is made in good faith and is not calculated to allow the individual or retained private counsel to avoid the requirements of this section.

- (b) A court may not order indigent defense resources under Subsection (3)(a) until the court conducts a hearing with proper notice to the indigent defense system by sending notice of the hearing to the county clerk or municipal recorder.
- (c) At the hearing, the court shall conduct an in camera review of:
 - (i) the private counsel contract;
 - (ii) the costs or anticipated costs of the indigent defense resources; and
 - (iii) other relevant records.
- (4) Except as provided in this section, a court may not order indigent defense services.

Enacted by Chapter 326, 2019 General Session

78B-22-204 Waiver by a minor.

A minor may not waive the right to counsel before:

- (1) the minor has consulted with counsel; and
- (2) the court is satisfied that in light of the minor's unique circumstances and attributes:
 - (a) the minor's waiver is knowing and voluntary; and
 - (b) the minor understands the consequences of the waiver.

Enacted by Chapter 326, 2019 General Session

Part 3

Indigent Defense Systems and Services

78B-22-301 Standards for indigent defense systems -- Written report.

- (1) An indigent defense system shall provide indigent defense services for an indigent individual in accordance with the core principles adopted by the commission under Section 78B-22-404.
- (2)
 - (a) On or before March 30 of each year, all indigent defense systems shall submit a written report to the commission that describes each indigent defense system's compliance with the commission's core principles.
 - (b) If an indigent defense system fails to submit a timely report under Subsection (2)(a), the indigent defense system is disqualified from receiving a grant from the commission for the following calendar year.

Amended by Chapter 371, 2020 General Session

Amended by Chapter 392, 2020 General Session

78B-22-302 Compensation for indigent defense services.

An indigent defense system shall fund indigent defense services ordered by a court in accordance with Section 78B-22-203.

Enacted by Chapter 326, 2019 General Session

78B-22-303 Pro bono provision of indigent defense services -- Liability limits.

A defense attorney is immune from suit if the defense attorney provides indigent defense services to an indigent individual:

- (1) at no cost; and
- (2) without gross negligence or willful misconduct.

Enacted by Chapter 326, 2019 General Session

78B-22-304 Reimbursement for indigent defense services.

A court may order a parent or legal guardian of a minor who is appointed indigent defense services under this chapter to reimburse the cost of the minor's indigent defense services, as determined by the court, unless the court finds the parent or legal guardian indigent under Section 78B-22-202.

Enacted by Chapter 326, 2019 General Session

Part 4

Utah Indigent Defense Commission

78B-22-401 Utah Indigent Defense Commission -- Creation -- Purpose.

- (1) There is created the Utah Indigent Defense Commission within the State Commission on Criminal and Juvenile Justice.
- (2) The purpose of the commission is to assist:
 - (a) 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; and
 - (b) the Office of Indigent Defense Services, created in Section 78A-22-451, with carrying out the statutory duties assigned to the commission and the Office of Indigent Defense Services.

Amended by Chapter 371, 2020 General Session

Amended by Chapter 392, 2020 General Session

Amended by Chapter 395, 2020 General Session

Superseded 1/1/2021

78B-22-402 Commission members -- Member qualifications -- Terms -- Vacancy.

- (1)
 - (a) The commission is composed of 15 members.
 - (b) The governor, with the advice and consent of the Senate, shall appoint the following 11 members:
 - (i) two practicing criminal defense attorneys recommended by the Utah Association of Criminal Defense Lawyers;
 - (ii) one attorney practicing in juvenile delinquency defense recommended by the Utah Association of Criminal Defense Lawyers;
 - (iii) one attorney practicing in the area of parental defense, recommended by an entity funded under the Child Welfare Parental Defense Program created in Section 78B-22-802;
 - (iv) one attorney representing minority interests recommended by the Utah Minority Bar Association;
 - (v) one member recommended by the Utah Association of Counties from a county of the first or second class;

- (vi) one member recommended by the Utah Association of Counties from a county of the third through sixth class;
- (vii) a director of a county public defender organization recommended by the Utah Association of Criminal Defense Lawyers;
- (viii) two members recommended by the Utah League of Cities and Towns from its membership; and
- (ix) one retired judge recommended by the Judicial Council.
- (c) The speaker of the House of Representatives and the president of the Senate shall appoint two members of the Utah Legislature, one from the House of Representatives and one from the Senate.
- (d) The Judicial Council shall appoint a member from the Administrative Office of the Courts.
- (e) The executive director of the State Commission on Criminal and Juvenile Justice or the executive director's designee is a member of the commission.
- (2) A member appointed by the governor shall serve a four-year term, except as provided in Subsection (3).
- (3) The governor shall stagger the initial terms of appointees so that approximately half of the members appointed by the governor are appointed every two years.
- (4) A member appointed to the commission shall have significant experience in indigent criminal defense , parental defense, or juvenile defense in delinquency proceedings or have otherwise demonstrated a strong commitment to providing effective representation in indigent defense services.
- (5) An individual who is currently employed solely as a criminal prosecuting attorney may not serve as a member of the commission .
- (6) A commission member shall hold office until the member's successor is appointed.
- (7) The commission may remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.
- (8) If a vacancy occurs in the membership for any reason, a replacement shall be appointed for the remaining unexpired term in the same manner as the original appointment.
- (9)
 - (a) The commission shall elect annually a chair from the commission's membership to serve a one-year term.
 - (b) A commission member may not serve as chair of the commission for more than three consecutive terms.
- (10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance in accordance with Sections 63A-3-106 and 63A-3-107.
- (11)
 - (a) A majority of the members of the commission constitutes a quorum.
 - (b) If a quorum is present, the action of a majority of the voting members present constitutes the action of the commission.

Amended by Chapter 352, 2020 General Session
Amended by Chapter 371, 2020 General Session
Amended by Chapter 392, 2020 General Session
Amended by Chapter 395, 2020 General Session

Effective 1/1/2021**78B-22-402 Commission members -- Member qualifications -- Terms -- Vacancy.**

- (1)
- (a) The commission is composed of 15 members.
 - (b) The governor, with the advice and consent of the Senate, and in accordance with Title 63G, Chapter 24, Part 2, Vacancies, shall appoint the following 11 members:
 - (i) two practicing criminal defense attorneys recommended by the Utah Association of Criminal Defense Lawyers;
 - (ii) one attorney practicing in juvenile delinquency defense recommended by the Utah Association of Criminal Defense Lawyers;
 - (iii) one attorney practicing in the area of parental defense, recommended by an entity funded under the Child Welfare Parental Defense Program created in Section 78B-22-802;
 - (iv) one attorney representing minority interests recommended by the Utah Minority Bar Association;
 - (v) one member recommended by the Utah Association of Counties from a county of the first or second class;
 - (vi) one member recommended by the Utah Association of Counties from a county of the third through sixth class;
 - (vii) a director of a county public defender organization recommended by the Utah Association of Criminal Defense Lawyers;
 - (viii) two members recommended by the Utah League of Cities and Towns from its membership; and
 - (ix) one retired judge recommended by the Judicial Council;
 - (c) The speaker of the House of Representatives and the president of the Senate shall appoint two members of the Utah Legislature, one from the House of Representatives and one from the Senate.
 - (d) The Judicial Council shall appoint a member from the Administrative Office of the Courts.
 - (e) The executive director of the State Commission on Criminal and Juvenile Justice or the executive director's designee is a member of the commission.
- (2) A member appointed by the governor shall serve a four-year term, except as provided in Subsection (3).
- (3) The governor shall stagger the initial terms of appointees so that approximately half of the members appointed by the governor are appointed every two years.
- (4) A member appointed to the commission shall have significant experience in indigent criminal defense , parental defense, or juvenile defense in delinquency proceedings or have otherwise demonstrated a strong commitment to providing effective representation in indigent defense services.
- (5) An individual who is currently employed solely as a criminal prosecuting attorney may not serve as a member of the commission .
- (6) A commission member shall hold office until the member's successor is appointed.
- (7) The commission may remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.
- (8) If a vacancy occurs in the membership for any reason, a replacement shall be appointed for the remaining unexpired term in the same manner as the original appointment.
- (9)
- (a) The commission shall elect annually a chair from the commission's membership to serve a one-year term.

- (b) A commission member may not serve as chair of the commission for more than three consecutive terms.
- (10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance in accordance with Sections 63A-3-106 and 63A-3-107.
- (11)
 - (a) A majority of the members of the commission constitutes a quorum.
 - (b) If a quorum is present, the action of a majority of the voting members present constitutes the action of the commission.
 - (c) A member shall comply with the conflict of interest provisions described in Title 63G, Chapter 24, Part 3, Conflicts of Interest.

Amended by Chapter 352, 2020 General Session

Amended by Chapter 371, 2020 General Session

Amended by Chapter 373, 2020 General Session

Amended by Chapter 392, 2020 General Session

Amended by Chapter 395, 2020 General Session

Amended by Chapter 395, 2020 General Session, (Coordination Clause)

78B-22-404 Powers and duties of the commission.

- (1) The commission shall:
 - (a) adopt core principles for an indigent defense system to ensure the effective representation of indigent individuals consistent with the requirements of the United States Constitution, the Utah Constitution, and the Utah Code, which principles at a minimum shall address the following:
 - (i) an indigent defense system shall ensure that in providing indigent defense services:
 - (A) an indigent individual receives conflict-free indigent defense services; and
 - (B) there is a separate contract for each type of indigent defense service; and
 - (ii) an indigent defense system shall ensure an indigent defense service provider has:
 - (A) the ability to exercise independent judgment without fear of retaliation and is free to represent an indigent individual based on the indigent defense service provider's own independent judgment;
 - (B) adequate access to indigent defense resources;
 - (C) the ability to provide representation to accused individuals in criminal cases at the critical stages of proceedings, and at all stages to indigent individuals in juvenile delinquency and child welfare proceedings;
 - (D) a workload that allows for sufficient time to meet with clients, investigate cases, file appropriate documents with the courts, and otherwise provide effective assistance of counsel to each client;
 - (E) adequate compensation without financial disincentives;
 - (F) appropriate experience or training in the area for which the indigent defense service provider is representing indigent individuals;
 - (G) compensation for legal training and education in the areas of the law relevant to the types of cases for which the indigent defense service provider is representing indigent individuals; and

- (H) the ability to meet the obligations of the Utah Rules of Professional Conduct, including expectations on client communications and managing conflicts of interest;
 - (b) encourage and aid indigent defense systems in the state in the regionalization of indigent defense services to provide for effective and efficient representation to the indigent individuals;
 - (c) emphasize the importance of ensuring constitutionally effective indigent defense services;
 - (d) encourage members of the judiciary to provide input regarding the delivery of indigent defense services; and
 - (e) oversee individuals and entities involved in providing indigent defense services.
- (2) The commission may:
- (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the commission's duties under this part;
 - (b) assign duties related to indigent defense services to the office to assist the commission with the commission's statutory duties;
 - (c) request supplemental appropriations from the Legislature to address a deficit in the Indigent Inmate Trust Fund created in Section 78B-22-455; and
 - (d) request supplemental appropriations from the Legislature to address a deficit in the Child Welfare Parental Defense Fund created in Section 78B-22-804.

Amended by Chapter 371, 2020 General Session

Amended by Chapter 392, 2020 General Session

Amended by Chapter 395, 2020 General Session

78B-22-405 Indigent Defense Resources Restricted Account -- Administration.

- (1)
- (a) There is created within the General Fund a restricted account known as the "Indigent Defense Resources Restricted Account."
 - (b) Appropriations from the account are nonlapsing.
- (2) The account consists of:
- (a) money appropriated by the Legislature based upon recommendations from the commission consistent with principles of shared state and local funding;
 - (b) any other money received by the commission from any source to carry out the purposes of this part; and
 - (c) any interest and earnings from the investment of account money.
- (3) The commission shall administer the account and, subject to appropriation, disburse money from the account for the following purposes:
- (a) to establish and maintain a statewide indigent defense data collection system;
 - (b) to establish and administer a grant program to provide grants of state money and other money to indigent defense systems as set forth in Section 78B-22-406;
 - (c) to provide training and continuing legal education for indigent defense service providers; and
 - (d) for administrative costs.

Amended by Chapter 392, 2020 General Session

78B-22-406 Indigent defense services grant program.

- (1) The commission may award grants:
- (a) to supplement local spending by an indigent defense system for indigent defense services; and

- (b) for contracts to provide indigent defense services for appeals from juvenile court proceedings in a county of the third, fourth, fifth, or sixth class.
- (2) The commission may use grant money:
 - (a) to assist an indigent defense system to provide indigent defense services that meet the commission's core principles for the effective representation of indigent individuals;
 - (b) to establish and maintain local indigent defense data collection systems;
 - (c) to provide indigent defense services in addition to indigent defense services that are currently being provided by an indigent defense system;
 - (d) to provide training and continuing legal education for indigent defense service providers;
 - (e) to assist indigent defense systems with appeals from juvenile court proceedings;
 - (f) to pay for indigent defense resources and costs and expenses for parental defense attorneys as described in Subsection 78B-22-804(2); and
 - (g) to reimburse an indigent defense system for the cost of providing indigent defense services in an action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination of Parental Rights, if the indigent defense system has complied with the commission's policies and procedures for reimbursement.
- (3) To receive a grant from the commission, an indigent defense system shall demonstrate to the commission's satisfaction that:
 - (a) the indigent defense system has incurred or reasonably anticipates incurring expenses for indigent defense services that are in addition to the indigent defense system's average annual spending on indigent defense services in the three fiscal years immediately preceding the grant application; and
 - (b) a grant from the commission is necessary for the indigent defense system to meet the commission's core principles for the effective representation of indigent individuals.
- (4) The commission may revoke a grant if an indigent defense system fails to meet requirements of the grant or any of the commission's core principles for the effective representation of indigent individuals.

Amended by Chapter 371, 2020 General Session

Amended by Chapter 392, 2020 General Session

Amended by Chapter 395, 2020 General Session

78B-22-407 Cooperation and participation with the commission.

Indigent defense systems and indigent defense service providers shall cooperate and participate with the commission in the collection of data, investigation, audit, and review of indigent defense services.

Renumbered and Amended by Chapter 326, 2019 General Session

Part 4a Office of Indigent Defense Services

78B-22-451 Office of Indigent Defense Services -- Creation.

There is created the Office of Indigent Defense Services within the State Commission on Criminal and Juvenile Justice.

Enacted by Chapter 371, 2020 General Session

Enacted by Chapter 392, 2020 General Session

Amended by Chapter 392, 2020 General Session, (Coordination Clause)

Amended by Chapter 395, 2020 General Session, (Coordination Clause)

Enacted by Chapter 395, 2020 General Session

78B-22-452 Duties of the office.

(1) The office shall:

- (a) establish an annual budget for the office for the Indigent Defense Resources Restricted Account created in Section 78B-22-405;
 - (b) assist the commission in performing the commission's statutory duties described in this chapter;
 - (c) identify and collect data that is necessary for the commission to:
 - (i) aid, oversee, and review compliance by indigent defense systems with the commission's core principles for the effective representation of indigent individuals; and
 - (ii) provide reports regarding the operation of the commission and the provision of indigent defense services by indigent defense systems in the state;
 - (d) assist indigent defense systems by reviewing contracts and other agreements, to ensure compliance with the commission's core principles for effective representation of indigent individuals;
 - (e) establish procedures for the receipt and acceptance of complaints regarding the provision of indigent defense services in the state;
 - (f) establish procedures to award grants to indigent defense systems under Section 78B-22-406 that are consistent with the commission's core principles;
 - (g) create and enter into contracts consistent with Section 78B-22-454 to provide indigent defense services for an indigent defense inmate who:
 - (i) is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth class as defined in Section 17-50-501;
 - (ii) is charged with having committed a crime within that state prison; and
 - (iii) has been appointed counsel in accordance with Section 78B-22-203;
 - (h) assist the commission in developing and reviewing advisory caseload guidelines and procedures;
 - (i) investigate, audit, and review the provision of indigent defense services to ensure compliance with the commission's core principles for the effective representation of indigent individuals;
 - (j) administer the Child Welfare Parental Defense Program in accordance with Part 8, Child Welfare Parental Defense Program;
 - (k) annually report to the governor, Legislature, Judiciary Interim Committee, and Judicial Council, regarding:
 - (i) the operations of the commission;
 - (ii) the operations of the indigent defense systems in the state; and
 - (iii) compliance with the commission's core principles by indigent defense systems receiving grants from the commission;
 - (l) submit recommendations to the commission for improving indigent defense services in the state;
 - (m) publish an annual report on the commission's website; and
 - (n) perform all other duties assigned by the commission related to indigent defense services.
- (2) The office may enter into contracts and accept, allocate, and administer funds and grants from any public or private person to accomplish the duties of the office.

- (3) Any contract entered into under this part shall require that indigent defense services are provided in a manner consistent with the commission's core principles implemented under Section 78B-22-404.

Enacted by Chapter 371, 2020 General Session

Enacted by Chapter 392, 2020 General Session

Amended by Chapter 392, 2020 General Session, (Coordination Clause)

Amended by Chapter 395, 2020 General Session, (Coordination Clause)

Enacted by Chapter 395, 2020 General Session

78B-22-453 Director -- Qualifications -- Staff.

- (1) The executive director of the State Commission on Criminal and Juvenile Justice shall appoint a director to carry out the duties of the office described in Section 78B-22-452.
- (2) The director shall be an active member of the Utah State Bar with an appropriate background and experience to serve as the full-time director.
- (3) The director shall hire staff as necessary to carry out the duties of the office as described in Section 78B-22-452, including:
 - (a) one individual who is an active member of the Utah State Bar to serve as a full-time assistant director; and
 - (b) one individual with data collection and analysis skills.
- (4) When appointing the director of the office under Subsection (1), the executive director of the State Commission on Criminal and Juvenile Justice shall give preference to an individual with experience in adult criminal defense, child welfare parental defense, or juvenile delinquency defense.
- (5) When hiring the assistant director, the director shall give preference to an individual with experience in adult criminal defense, child welfare parental defense, or juvenile delinquency defense.

Renumbered and Amended by Chapter 371, 2020 General Session

Renumbered and Amended by Chapter 392, 2020 General Session

Amended by Chapter 392, 2020 General Session, (Coordination Clause)

Amended by Chapter 395, 2020 General Session, (Coordination Clause)

Renumbered and Amended by Chapter 395, 2020 General Session

78B-22-454 Defense of indigent inmates.

- (1) The office shall pay for indigent defense services for indigent inmates from the Indigent Inmate Trust Fund created in Section 78B-22-455.
- (2) A contract under this part shall ensure that indigent defense services are provided in a manner consistent with the core principles described in Section 78B-22-404.
- (3) The county attorney or district attorney of a county of the third, fourth, fifth, or sixth class shall function as the prosecuting entity.
- (4)
 - (a) A county of the third, fourth, fifth, or sixth class where a state prison is located may impose an additional property tax levy by ordinance at .0001 per dollar of taxable value in the county.
 - (b) If the county governing body imposes the additional property tax levy by ordinance, the revenue shall be deposited into the Indigent Inmate Trust Fund as provided in Section 78B-22-455 to fund the purposes of this part.

- (c) Upon notification that the fund has reached the amount specified in Subsection 78B-22-455(6), a county shall deposit revenue derived from the property tax levy after the county receives the notice into a county account used exclusively to provide indigent defense services.
- (d) A county that chooses not to impose the additional levy by ordinance may not receive any benefit from the Indigent Inmate Trust Fund.

Amended by Chapter 371, 2020 General Session

Renumbered and Amended by Chapter 392, 2020 General Session

78B-22-455 Indigent Inmate Trust Fund.

- (1) There is created a private-purpose trust fund known as the "Indigent Inmate Trust Fund" to be disbursed by the office in accordance with contracts entered into under Subsection 78B-22-452(1)(g).
- (2) Money deposited into this trust fund shall only be used:
 - (a) to pay indigent defense services for an indigent inmate who:
 - (i) is incarcerated in a state prison located in a county of the third, fourth, fifth, or sixth class as defined in Section 17-50-501;
 - (ii) is charged with having committed a crime within that state prison; and
 - (iii) has been appointed counsel in accordance with Section 78B-22-203; and
 - (b) to cover costs of administering the Indigent Inmate Trust Fund.
- (3) The trust fund consists of:
 - (a) proceeds received from counties that impose the additional tax levy by ordinance under Subsection 78B-22-454(5), which shall be the total county obligation for payment of costs listed in Subsection (2) for defense services for indigent inmates;
 - (b) appropriations made to the fund by the Legislature; and
 - (c) interest and earnings from the investment of fund money.
- (4) Fund money shall be invested by the state treasurer with the earnings and interest accruing to the fund.
- (5)
 - (a) In any calendar year in which the fund has insufficient funding, or is projected to have insufficient funding, the commission shall request a supplemental appropriation from the Legislature in the following general session to provide sufficient funding.
 - (b) The state shall pay any or all of the reasonable and necessary money to provide sufficient funding into the Indigent Inmate Trust Fund.
- (6) The fund is capped at \$1,000,000.
- (7) The office shall notify the contributing counties when the fund approaches \$1,000,000 and provide each county with the amount of the balance in the fund.
- (8) Upon notification by the office that the fund is near the limit imposed in Subsection (6), the counties may contribute enough money to enable the fund to reach \$1,000,000 and discontinue contributions until notified by the office that the balance has fallen below \$1,000,000, at which time counties that meet the requirements of Section 78B-22-454 shall resume contributions.

Renumbered and Amended by Chapter 392, 2020 General Session

Part 5

Indigent Defense Funds Board

78B-22-501 Indigent Defense Funds Board -- Members -- Administrative support.

- (1) As used in this part, "fund" means the Indigent Aggravated Murder Defense Trust Fund created in Section 78B-22-701.
- (2) There is created the Indigent Defense Funds Board within the Division of Finance.
- (3) The board is composed of the following nine members:
 - (a) two members who are current commissioners or county executives of participating counties appointed by the board of directors of the Utah Association of Counties;
 - (b) one member at large appointed by the board of directors of the Utah Association of Counties;
 - (c) two members who are current county attorneys of participating counties appointed by the Utah Prosecution Council;
 - (d) the director of the Division of Finance or the director's designee;
 - (e) one member appointed by the Administrative Office of the Courts; and
 - (f) two members who are private attorneys engaged in or familiar with the criminal defense practice appointed by the members of the board listed in Subsections (3)(a) through (e).
- (4) Members appointed under Subsection (3)(a), (b), (c), or (f) shall serve four-year terms.
- (5) A vacancy is created if a member appointed under:
 - (a) Subsection (3)(a) no longer serves as a county commissioner or county executive; or
 - (b) Subsection (3)(c) no longer serves as a county attorney.
- (6) If a vacancy occurs in the membership for any reason, a replacement shall be appointed for the remaining unexpired term in the same manner as the original appointment.
- (7) The Division of Finance may provide administrative support and may seek payment for the costs or the board may contract for administrative support to be paid from the fund.
- (8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (9) The fund shall pay per diem and expenses for board members.
- (10) Five members shall constitute a quorum and, if a quorum is present, the action of a majority of the members present shall constitute the action of the board.

Amended by Chapter 392, 2020 General Session

78B-22-502 Duties of board.

- (1) The board shall:
 - (a) establish rules and procedures for the application by a county for disbursements, and the screening and approval of the applications for money from the fund;
 - (b) receive, screen, and approve, or disapprove the application of a county for disbursements from the fund;
 - (c) calculate the amount of the annual contribution to be made to the fund by each participating county;
 - (d) prescribe forms for the application for money from the fund;
 - (e) oversee and approve the disbursement of money from the fund as described in Section 78B-22-701;

- (f) establish the board's own rules of procedure, elect the board's own officers, and appoint committees of the board's members and other people as may be reasonable and necessary; and
 - (g) negotiate, enter into, and administer contracts with legal counsel, qualified under and meeting the standards consistent with this chapter, to provide indigent defense services to an indigent individual prosecuted in a participating county for an offense involving aggravated murder.
- (2) The board may provide to the court a list of attorneys qualified under Utah Rules of Criminal Procedure, Rule 8, with which the board has a preliminary contract to provide indigent defense services for an assigned rate.

Amended by Chapter 392, 2020 General Session

Part 7

Indigent Aggravated Murder Defense Trust Fund

78B-22-701 Establishment of Indigent Aggravated Murder Defense Trust Fund -- Use of fund -- Compensation for indigent legal defense from fund.

- (1) For purposes of this part, "fund" means the Indigent Aggravated Murder Defense Trust Fund.
- (2)
- (a) There is established a private-purpose trust fund known as the "Indigent Aggravated Murder Defense Trust Fund."
 - (b) The Division of Finance shall disburse money from the fund at the direction of the board and subject to this chapter.
- (3) The fund consists of:
- (a) money received from participating counties as provided in Sections 78B-22-702 and 78B-22-703;
 - (b) appropriations made to the fund by the Legislature as provided in Section 78B-22-703; and
 - (c) interest and earnings from the investment of fund money.
- (4) The state treasurer shall invest fund money with the earnings and interest accruing to the fund.
- (5) The fund shall be used to assist participating counties with financial resources, as provided in Subsection (6), to fulfill their constitutional and statutory mandates for the provision of an adequate defense for indigent individuals prosecuted for the violation of state laws in cases involving aggravated murder.
- (6) Money allocated to or deposited in this fund shall be used only:
- (a) to reimburse participating counties for expenditures made for an attorney appointed to represent an indigent individual, other than a state inmate in a state prison, prosecuted for aggravated murder in a participating county; and
 - (b) for administrative costs pursuant to Section 78B-22-501.

Renumbered and Amended by Chapter 326, 2019 General Session

78B-22-702 County participation.

- (1)
- (a) A county may participate in the fund subject to the provisions of this chapter. A county that does not participate, or is not current in the county's assessments, is ineligible to receive money from the fund.

- (b) The board may revoke a county's participation in the fund if the county fails to pay the county's assessments when due.
- (2) To participate in the fund, the legislative body of a county shall:
 - (a) adopt a resolution approving participation in the fund and committing that county to fulfill the assessment requirements as set forth in Subsection (3) and Section 78B-22-703; and
 - (b) submit a certified copy of that resolution together with an application to the board.
- (3) By January 15 of each year, a participating county shall contribute to the fund an amount computed in accordance with Section 78B-22-703.
- (4) A participating county may withdraw from participation in the fund upon:
 - (a) adoption by the county's legislative body of a resolution to withdraw; and
 - (b) notice to the board by January 1 of the year before withdrawal.
- (5) A county withdrawing from participation in the fund, or whose participation in the fund has been revoked for failure to pay the county's assessments when due, shall forfeit the right to:
 - (a) any previously paid assessment;
 - (b) relief from the county's obligation to pay its assessment during the period of its participation in the fund; and
 - (c) any benefit from the fund, including reimbursement of costs that accrued after the last day of the period for which the county has paid its assessment.

Renumbered and Amended by Chapter 326, 2019 General Session

78B-22-703 County and state obligations.

- (1)
 - (a) Except as provided in Subsection (1)(b), a participating county shall pay into the fund annually an amount calculated by multiplying the average of the percent of its population to the total population of all participating counties and of the percent its taxable value of the locally and centrally assessed property located within that county to the total taxable value of the locally and centrally assessed property to all participating counties by the total fund assessment for that year to be paid by all participating counties as is determined by the board to be sufficient such that it is unlikely that a deficit will occur in the fund in any calendar year.
 - (b) The fund minimum shall be equal to or greater than 50 cents per person of all counties participating.
 - (c) The amount paid by a participating county pursuant to this Subsection (1) shall be the total county obligation for payment of costs pursuant to Section 78B-22-701.
- (2)
 - (a) A county that elects to initiate participation in the fund, or reestablish participation in the fund after participation was terminated, is required to make an equity payment in addition to the assessment required by Subsection (1).
 - (b) The equity payment shall be determined by the board and represent what the county's equity in the fund would be if the county had made assessments into the fund for each of the previous two years.
- (3) If the fund balance after contribution by the state and participating counties is insufficient to replenish the fund annually to at least \$250,000, the board by a majority vote may terminate the fund.
- (4) If the fund is terminated, the remaining money shall continue to be administered and disbursed in accordance with the provision of this chapter until exhausted, at which time the fund shall cease to exist.
- (5)

- (a) If the fund runs a deficit during any calendar year, the state is responsible for the deficit.
- (b) In the calendar year following a deficit year, the board shall increase the assessment required by Subsection (1) by an amount at least equal to the deficit of the previous year, which combined amount becomes the base assessment until another deficit year occurs.
- (6) In a calendar year in which the fund runs a deficit, or is projected to run a deficit, the board shall request a supplemental appropriation to pay for the deficit from the Legislature in the following general session. The state shall pay any or all of the reasonable and necessary money for the deficit into the fund.

Renumbered and Amended by Chapter 326, 2019 General Session

78B-22-704 Application and qualification for fund money.

- (1) A participating county may apply to the board for benefits from the fund if that county has incurred, or reasonably anticipates incurring, expenses in the defense of an indigent individual for an offense involving aggravated murder.
- (2) An application may not be made nor benefits provided from the fund for a case filed before September 1, 1998.
- (3) If the application of a participating county is approved by the board, the board shall negotiate, enter into, and administer a contract with counsel for the indigent individual and costs incurred for the defense of that indigent individual, including fees for counsel and reimbursement for indigent defense services incurred by an indigent defense service provider.
- (4) A nonparticipating county is responsible for paying for indigent defense services in the nonparticipating county and is not eligible for any legislative relief.

Renumbered and Amended by Chapter 326, 2019 General Session

Part 8

Child Welfare Parental Defense Program

78B-22-801 Definitions.

As used in this part:

- (1) "Child welfare case" means a proceeding under Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of Parental Rights Act.
- (2) "Contracted parental defense attorney" means an attorney who represents an indigent individual who is a parent in a child welfare case under a contract with the office or a contributing county.
- (3) "Contributing county" means a county that complies with this part for participation in the Child Welfare Parental Defense Fund described in Section 78B-22-804.
- (4) "Fund" means the Child Welfare Parental Defense Fund created in Section 78B-22-804.
- (5) "Program" means the Child Welfare Parental Defense Program created in Section 78B-22-802.

Enacted by Chapter 395, 2020 General Session

78B-22-802 Child Welfare Parental Defense Program -- Creation -- Duties -- Annual report -- Budget.

- (1) There is created within the office the Child Welfare Parental Defense Program.

- (2)
- (a) The office shall:
 - (i) administer and enforce the program in accordance with this part;
 - (ii) manage the operation and budget of the program;
 - (iii) develop and provide educational and training programs for contracted parental defense attorneys; and
 - (iv) provide information and advice to assist a contracted parental defense attorney to comply with the attorney's professional, contractual, and ethical duties.
 - (b) In administering the program, the office shall contract with:
 - (i) a person who is qualified to perform the program duties under this section; and
 - (ii) an attorney, as an independent contractor, in accordance with Section 78B-22-803.
- (3)
- (a) The director shall prepare a budget of:
 - (i) the administrative expenses for the program; and
 - (ii) the amount estimated to fund needed contracts and other costs.
 - (b) On or before October 1 of each year, the director shall report to the governor and the Child Welfare Legislative Oversight Panel regarding the preceding fiscal year on the operations, activities, and goals of the program.

Renumbered and Amended by Chapter 395, 2020 General Session

78B-22-803 Child welfare parental defense contracts.

- (1)
- (a) The office may enter into a contract with an attorney to provide indigent defense services for a parent who is the subject of a petition alleging abuse, neglect, or dependency, and requires indigent defense services under Section 78A-6-1111.
 - (b) The office shall make payment for the representation, costs, and expenses of a contracted parental defense attorney from the Child Welfare Parental Defense Fund in accordance with Section 78B-22-804.
- (2)
- (a) Except as provided in Subsection (2)(b), a contracted parental defense attorney shall:
 - (i) complete a basic training course provided by the office;
 - (ii) provide parental defense services consistent with the commission's core principles described in Section 78B-22-404;
 - (iii) have experience in child welfare cases; and
 - (iv) participate each calendar year in continuing legal education courses providing no fewer than eight hours of instruction in child welfare law.
 - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may, by rule, exempt from the requirements of Subsection (2)(a) an attorney who has equivalent training or adequate experience.

Amended by Chapter 395, 2020 General Session, (Coordination Clause)

Renumbered and Amended by Chapter 395, 2020 General Session

78B-22-804 Child Welfare Parental Defense Fund -- Contracts for coverage by the Child Welfare Parental Defense Fund.

- (1) There is created an expendable special revenue fund known as the "Child Welfare Parental Defense Fund."

- (2) Subject to availability, the office may make distributions from the fund for the following purposes:
- (a) to pay for indigent defense resources for contracted parental defense attorneys;
 - (b) for administrative costs of the program; and
 - (c) for reasonable expenses directly related to the functioning of the program, including training and travel expenses.
- (3) The fund consists of:
- (a) appropriations made to the fund by the Legislature;
 - (b) interest and earnings from the investment of fund money;
 - (c) proceeds deposited by contributing counties under this section; and
 - (d) private contributions to the fund.
- (4) The state treasurer shall invest the money in the fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act.
- (5)
- (a) If the office anticipates a deficit in the fund during a fiscal year:
 - (i) the commission may request an appropriation from the Legislature; and
 - (ii) the Legislature may fund the anticipated deficit through appropriation.
 - (b) If the anticipated deficit is not funded by the Legislature, the office may request an interim assessment to participating counties as described in Subsection (6) to fund the anticipated deficit.
- (6)
- (a) A county legislative body and the office may annually enter into a contract for the office to provide parental defense attorney services in the contributing county out of the fund.
 - (b) The contract described under Subsection (6)(a) shall:
 - (i) require the contributing county to pay into the fund an amount defined by a formula established by the commission by rule under Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (ii) provide for revocation of the agreement for failure to pay an assessment on the due date established by the commission by rule under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (7)
- (a) After the first year of operation of the fund, any contributing county that elects to initiate participation in the fund, or reestablish participation in the fund after participation was terminated, is required to make an equity payment, in addition to the assessment provided in Subsection (5).
 - (b) The commission shall determine the amount of the equity payment described in Subsection (7)(a) by rule established by the commission under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (8) A contributing county that elects to withdraw from participation in the fund, or whose participation in the fund is revoked due to failure to pay the contributing county's assessment, as described in Subsection (6), when due, shall forfeit any right to any previously paid assessment by the contributing county or coverage from the fund.

Renumbered and Amended by Chapter 395, 2020 General Session

Part 9

Indigent Appellate Defense Division

78B-22-901 Definitions.

- (1)
 - (a) "Appellate defense services" means the representation of an indigent individual facing an appeal under Section 77-18a-1.
 - (b) "Appellate defense services" does not include the representation of an indigent individual facing an appeal in a case where the indigent individual was prosecuted for aggravated murder.
- (2) "Division" means the Indigent Appellate Defense Division created in Section 78B-22-902.

Enacted by Chapter 371, 2020 General Session

78B-22-902 Indigent Appellate Defense Division.

There is created the Indigent Appellate Defense Division within the Office of Indigent Defense Services.

Enacted by Chapter 371, 2020 General Session

78B-22-903 Powers and duties of the division.

- (1) The division shall:
 - (a) provide appellate defense services in counties of the third, fourth, fifth, and sixth class; and
 - (b) provide appellate defense services in accordance with the core principles adopted by the commission under Section 78A-22-404 and any other state and federal standards for appellate defense services.
- (2) Upon consultation with the director and the commission, the division shall:
 - (a) adopt a budget for the division;
 - (b) adopt and publish on the commission's website:
 - (i) appellate performance standards;
 - (ii) case weighting standards; and
 - (iii) any other relevant measures or information to assist with appellate defense services; and
 - (c) if requested by the commission, provide a report to the commission on:
 - (i) the provision of appellate defense services by the division;
 - (ii) the caseloads of appellate attorneys; and
 - (iii) any other information relevant to appellate defense services in the state.
- (3) If the division provides appellate defense services to an indigent individual in an indigent defense system, the division shall provide notice to the district court and the indigent defense system that the division intends to be appointed as counsel for the indigent individual.
- (4) The office shall assist with providing training and continual legal education on appellate defense to indigent defense service providers in counties of the third, fourth, fifth, and sixth class.

Enacted by Chapter 371, 2020 General Session

78B-22-904 Chief appellate officer -- Qualifications -- Staff.

- (1)
 - (a) After consulting with the commission, the director shall appoint a chief appellate officer.

- (b) When appointing the chief appellate officer, the director shall give preference to an individual with experience in adult criminal appellate defense representation.
- (2) The chief appellate officer shall be an active member of the Utah State Bar with an appropriate background and experience to serve as the chief appellate officer.
- (3) The chief appellate officer shall carry out the duties of the division described in Section 78B-22-903.
- (4) The chief appellate officer shall:
 - (a) provide appellate defense services in a county of the third, fourth, fifth, or sixth class;
 - (b) hire staff as necessary to carry out the duties of the division described in Section 78A-22-803; and
 - (c) perform all other duties that are necessary for the division to carry out the division's statutory duties.

Enacted by Chapter 371, 2020 General Session

Tab 5

R597. Judicial Performance Evaluation Commission, Administration.**R597-3. Judicial Performance Evaluations.****R597-3-3. Courtroom Observation.**

(1) Courtroom observations shall be conducted according to the evaluation cycles described in R597-3-1(1) and R597-3-1(2).

(2) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.

(3) For the purpose of courtroom observation, commission staff shall:

(a) notify each judge at the beginning of each survey cycle of the courtroom observation process and of the observation instrument to be used by the courtroom observers; ~~and~~

(b) track and report the method by which each observation was conducted, as outlined in Subsection R597-3-3(8); and

~~(b)~~ (c) select courtroom observers based on written applications and an interview process.

(4) Only the summary of the individual courtroom observation reports shall be included in the retention report published for each judge.

(5) Individuals with a broad and varied range of life experiences shall be sought to volunteer as courtroom observers, except that the following individuals may be excluded from eligibility:

(a) individuals who currently have, or have previously had, professional or personal involvement with the court system, or the judge;

(b) individuals with a fiduciary relationship with the judge;

(c) individuals within a third degree of relationship with a state or justice court judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(d) individuals lacking computer access or basic computer literacy skills;

(e) individuals currently involved in litigation in state or justice courts; or

(f) individuals whose background or experience suggests they may have a bias that would prevent them from objectively serving in the courtroom observation program.

(6) Courtroom observers shall:

(a) serve at the will of the commission staff;

(b) refrain from disclosing the content of their courtroom evaluations in any form or to any person except as designated by the commission;

(c) satisfactorily complete a courtroom observation training program developed by the commission before engaging in courtroom observation;

(d) ~~conduct in-person~~ conduct in-person courtroom observations of in-court proceedings for each judge they are assigned to observe, for a minimum of two hours ~~while court is in session~~; and

(e) upon completion of the observation of a judge, complete the observation instrument, which will be electronically transferred to commission staff.

(7) Courtroom observations may be completed in one sitting or over several courtroom ~~visits~~ calendars.

(8) Courtroom observations may be conducted using the following methods, as necessary to complete the required number of observations for a judge:

(a) in-person;

(b) by video, including web conferencing, live-streamed video, and pre-recorded video;

- (c) by audio recordings; or
- (d) a combination of the methods.

(89) The commission shall develop a courtroom observation training program that shall include:

- (a) orientation and overview of commission processes and the courtroom observation program;
- (b) classroom training addressing each level of court;
- (c) in-court group observations, with subsequent classroom discussions, for each level of court;
- (d) training on proper use of the observation instrument;
- (e) training on electronic access methods to conduct observations;
- (f) training on observation dynamics based on type of method;
- (g) training on confidentiality and non-disclosure issues; and
- (h) such other periodic trainings as are necessary for effective observations.

~~(9)~~ During each midterm and retention evaluation cycle, a minimum of four different courtroom observers shall observe each judge subject to that evaluation cycle.

~~(10)~~ Courtroom observers may observe a judge sitting in more than one geographic location or a justice court judge serving in more than one jurisdiction, in any location or combination of locations in which the judge holds court.

~~(11)~~ Courtroom observers, though volunteers, may be eligible to receive compensation in exchange for successful completion of a specified amount of additional courtroom observation work.

~~(12)~~ Courtroom observers shall evaluate the judicial behavior observed in court as it relates to procedural fairness by responding in narrative form to principles and behavioral standards which shall include:

- (a) neutrality, including but not limited to the judge:
 - (i) displaying fairness and impartiality toward all court participants;
 - (ii) acting as a fair and principled decision maker who applies rules consistently across court participants and cases;
 - (iii) explaining transparently and openly how rules are applied and how decisions are reached; and
 - (iv) listening carefully and impartially;
- (b) respect, including but not limited to the judge:
 - (i) demonstrating courtesy toward attorneys, court staff, and others in the court;
 - (ii) treating all people with dignity;
 - (iii) helping interested parties understand decisions and what the parties must do as a result;
 - (iv) maintaining decorum in the courtroom;
 - (v) demonstrating adequate preparation to hear scheduled cases;
 - (vi) acting in the interests of the parties, not out of demonstrated personal prejudices;
 - (vii) managing caseload efficiently and demonstrating awareness of the effect of delay on court participants; and
 - (viii) demonstrating interest in the needs, problems, and concerns of court participants;
- (c) voice, including but not limited to the judge:
 - (i) giving parties the opportunity, where appropriate, to give voice to their perspectives or situations and demonstrating that they have been heard;

- (ii) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents; and
- (iii) attending, where appropriate, to the participants' comprehension of the proceedings;
- (d) any other questions necessary to help the commission assess the overall performance of the judge with respect to procedural fairness.

...

R597-3-6. Judicial Retirements and Resignations.

(1) For purposes of judicial performance evaluation, the commission shall evaluate each judge ~~until~~ unless the judge:

(a) provides written notice of resignation or retirement to the ~~Governor~~ appointing authority;

(b) is removed from office;

(c) becomes subject to mandatory judicial retirement due to age;

(d) otherwise vacates the judicial office; or

(e) fails to properly file for retention.

(2) For the purposes of judicial performance evaluation, the commission shall end its evaluation of the judge when notified, as in Subsection R597-3-6(1), the judge's last day in office will be:

(a) on or before December 31 of the year of the judge's retention election, if the judge's evaluation is a retention evaluation, or

(b) on or before April 1 of the year following the judge's midterm survey, if the judge's evaluation is a midterm evaluation.

(23) The retention evaluation for a judge who provides written notice of resignation or retirement following completion of the retention evaluation but before distribution of the retention evaluation, shall be sent to the Judicial Council.

(4) If, pursuant to Subsections R597-3-6(1)(a) and R597-3-6(2), the commission ends the evaluation of a judge, and the judge does not leave office as indicated, the commission may choose to publish only the data collected prior to ending the evaluation, or to complete the evaluation, and

(a) if the judge is subject to a retention evaluation, the commission may elect not to issue a retention recommendation, if it also notes the reason for the election in the judge's report, as in Subsection 78A-12-206(4)(e)); or

(b) if the judge is subject to a midterm evaluation, the commission may send the report to the judge without qualifying it as a partial midterm, as in Subsection 78A-12-203(7)(d).

...

R597-3-9. Judicial Discipline.

(1) For the purposes of judicial performance evaluation and pursuant to section 78A-12-205, the commission shall consider any public sanction of a judge issued by the Supreme Court during the judge's current term, including any public sanctions:

(a) issued during the judge's midterm and retention evaluation cycles; and

(b) issued after the end of the judge's retention evaluation cycle until the commission votes whether to recommend the judge for retention.

(2) If the Utah Supreme Court issues a public sanction of a judge after the reconsideration period is no longer available, as set forth in Subsection 78A-12-203(6), but before Election Day, the commission may elect to reconsider the commission's recommendation, using the reconsideration process outlined in Subsection 78A-12-203(6), even if the results of the reconsideration cannot be printed in the Voter Information Pamphlet, so long as the reconsideration is communicated through some public means.

(3) If the Utah Supreme Court issues a public sanction of a judge after the retention election of the judge, but before the end of the judge's term of office, and if the judge is retained by voters, the commission shall consider the public sanction as part of the judge's next judicial performance evaluation.

KEY: judicial performance evaluations, judges, evaluation cycles, surveys

Date of Enactment or Last Substantive Amendment: 2019

Authorizing, and Implemented or Interpreted Law: 78A-12

Effective Date 23 September 2019

R597. Judicial Performance Evaluation Commission, Administration.

R597-4. Justice Courts.

...

R597-4-2. Mid-level Evaluation of Justice Court Judges.

(1) Mid-level evaluations shall include an intercept survey, as specified in Subsection 78A-12-207(3), which may include follow-up interviews by phone, as necessary;

(2) A mid-level evaluation may include courtroom observation, conducted using the methods in Subsection R597-3-2(8), in order to allow for sufficient data collection to conduct an evaluation.

(3) When a mid-level evaluation includes data collection methods beyond an intercept survey, as allowed in Subsection R597-4-2(2), commission staff shall track and report the additional methods used.

KEY: justice court evaluations, justice court multiple jurisdictions, justice court classifications, justice court multiple election years

Date of Enactment or Last Substantive Amendment: 2019

Authorizing, and Implemented or Interpreted Law: 78A-12-201 through 78A-12-206

R597. Judicial Performance Evaluation Commission, Administration.

R597-5. Electronic Meetings.

R597-5-1. Authority and Purpose.

(1) This rule is authorized by Section 52-4-207(2)(a) which requires any public body that convenes or conducts an electronic meeting to adopt a rule governing the use of electronic meetings.

(2) The purpose of this rule is to establish procedures for the public bodies created in Title 63M, Chapter 7 and Title 77, Chapter 32 to hold open meetings by electronic means.

R597-5-2. Procedures.

(1) The following provisions govern any meeting at which one or more commissioners appear telephonically or electronically pursuant to Utah Code Section 52-4-207:

(a) If one or more members of the commission may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the commission not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to the Utah Public Notice Website or to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to the commissioners at least 24 hours before the meeting. In addition, the notice shall describe how a commissioner may participate in the meeting electronically or telephonically.

(d) When notice is given of the possibility of a commissioner appearing electronically or telephonically, any commissioner may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the commission. At the commencement of the meeting, or at such time as any commissioner initially appears electronically or telephonically, the chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the commission who are not at the physical location of the meeting shall be confirmed by the chair.

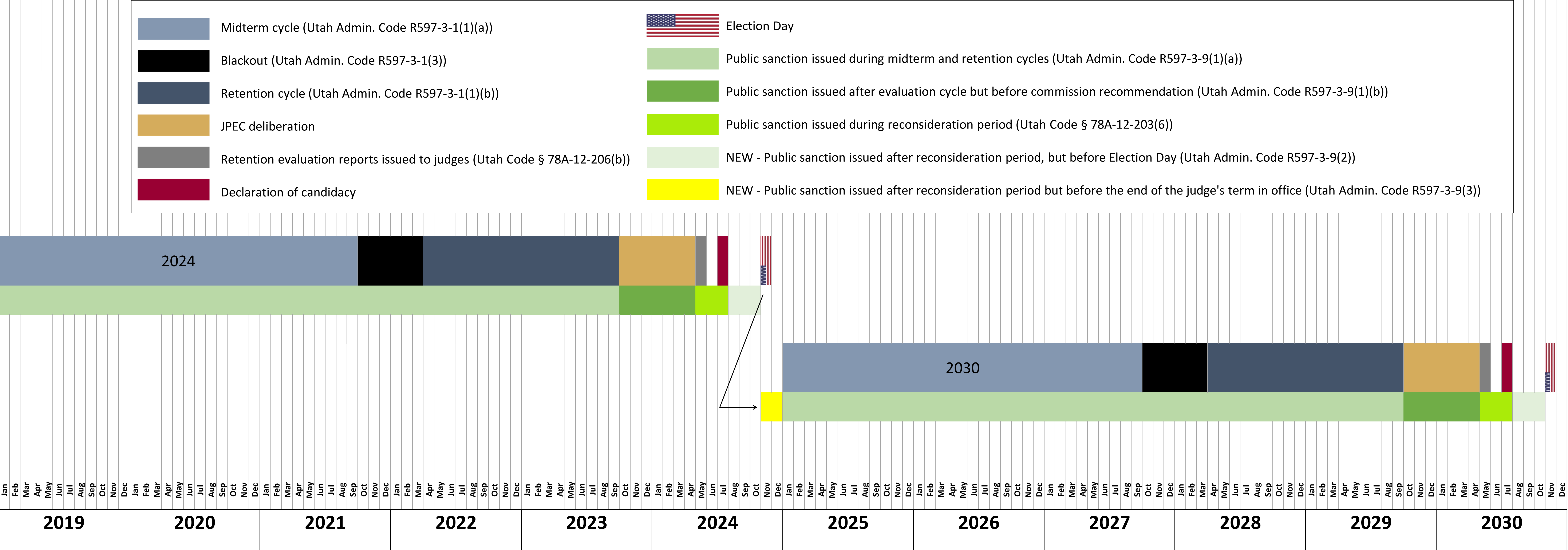
(e) The anchor location, unless otherwise designated in the notice, shall be at the Commission on Criminal and Juvenile Justice, located in the Utah State Capitol Complex, in suite 330 of the Senate Building, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

KEY: electronic meetings, procedures

Date of Enactment or Last Substantive Amendment: August 21, 2017

Authorizing, and Implemented or Interpreted Law: 52-4-207

JPEC Judicial Discipline Consideration Proposal



Tab 6

Agenda



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

June 15, 2020

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: The Judicial Council

FROM: Clayson Quigley, Court Services Director

RE: Xchange Fee Increase Proposal

In response to the Courts' submission to the EOCJ Legislative Subcommittee for the 2,5,10% Budget Cuts proposal which included a \$316,000 increase in Xchange fees for FY21 I have prepared the following proposal to increase Xchange fees. Below is a description of the current fees and a summary of how those fees came to be followed by the proposal.

Table 1

Description	Fee	Notes
Account Set Up Fee	\$25.00	One-time only fee upon creation or reactivation of an account.
Monthly Subscription	\$30.00	Includes 200 free searches cap
Case Search Fee	\$0.10/per search	
Document Download Fee	\$0.50/per document	

History:

Xchange fees have never been increased. However, new fees have been created and added to the various fees paid by users. The rule that governs these fees is Judicial Council Code of Judicial Administration 4-202.08 which covers many different areas and is not limited to Xchange. This rule was last revised in 2015. Xchange fees were not revised.

The subscription fee has been \$30 per month since Xchange started over 20 years ago

The Technology Committee capped searches at 200 per month and added the fee for searches in excess of the monthly allotment over 10 years ago. This fee was added to discourage data scraping and also to place a greater accountability on users who put more of a burden on the system.

**The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.**

The document fee was added over 10 years ago before documents were available online and prior to efilings. Initially users would call the court and ask for access to a document. The document was then scanned and made available remotely. Today public documents are available automatically and users continue to pay the \$0.50 download fee. This fee was set by the Technology Committee.

Annual Xchange Revenue			
2016	2017	2018	2019
\$1,428,000	\$1,317,000	\$1,406,000	\$1,472,000

Table 2

Users:

For billing purposes there are three types of Xchange users: billable, non-billable, and media.

- Billable users (2069) are regular users subject to all of the fees described above. Most billable users are commercial entities that use the information for their business needs.
- Non-billable (1656) users are exempt from all fees. These are state and local government employees.
- Media users (51) are exempt from the monthly subscription fee but pay for over-cap searches and documents. Media accounts were exempt from the monthly subscription to help increase transparency and provide important information for general consumption for the benefit of the public.

Proposed Fee Increase:

The intent of the increase is to pass along to all of our users the increased costs of developing, operating and securing the Court's IT systems. It also seeks to increase fees on those who are the heaviest users of the system. All Xchange revenues are used to fund Courts IT and Court Services groups:

Summary:

- *Increase monthly subscription costs from \$30 to \$40.*
- *Increase the fee per search from \$0.10 to \$0.15*
- *Increase the number of free searches from 200 to 500.*

Impact: Increase of approximately \$500,000 annually.

The bulk of the Xchange revenue comes from monthly subscriptions and over-cap search fees (about 50% and 38% respectively, with document download fees comprising the other 12%.) Increasing the monthly subscription fee is equitable, however an increase to the over-cap search fee would address those who put the greatest burden on our systems. Post implementation, revenue split would be 49% subscription fees, 42% search fees, and 9% document fees.

A way to make the increase more palatable would be to increase the free search cap to give a greater discount to our high-volume users and prevent light users from incurring over-cap fees.

Currently about 26% of billable and media users exceed the 200 search cap each month. If we were to increase our cap to 500 free searches each month only about 14% of billable and media users would see overage costs.

By increasing the search cap you also will reduce the impact of the increased search fee even on those who exceed the cap but are not high volume users. These users won't incur a per-search fee until more than double the previous cap.

With a cap of 500 free searches, users who have less than 1100 searches per month will pay less for those same searches at \$0.15 per search than they would at \$0.10 per search with a cap at 200.

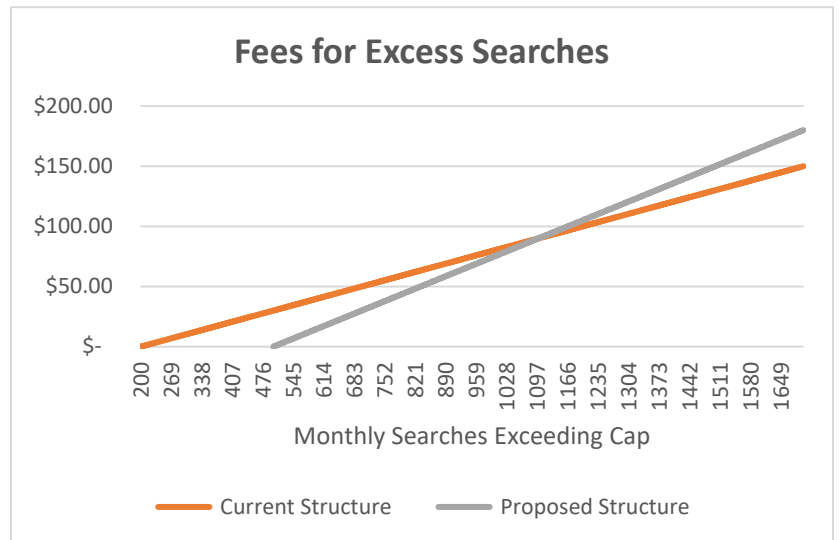


Figure 1

Impacted Users:

In 2019 there were 293 billable users who would have been subject to fees exceeding 500 searches per month. Only 150 of those users exceeded 1100 searches per month. These are our “power users” who will be most impacted by the increased fees. These users are also all exclusively commercial entities who profit from the information they access on Xchange.

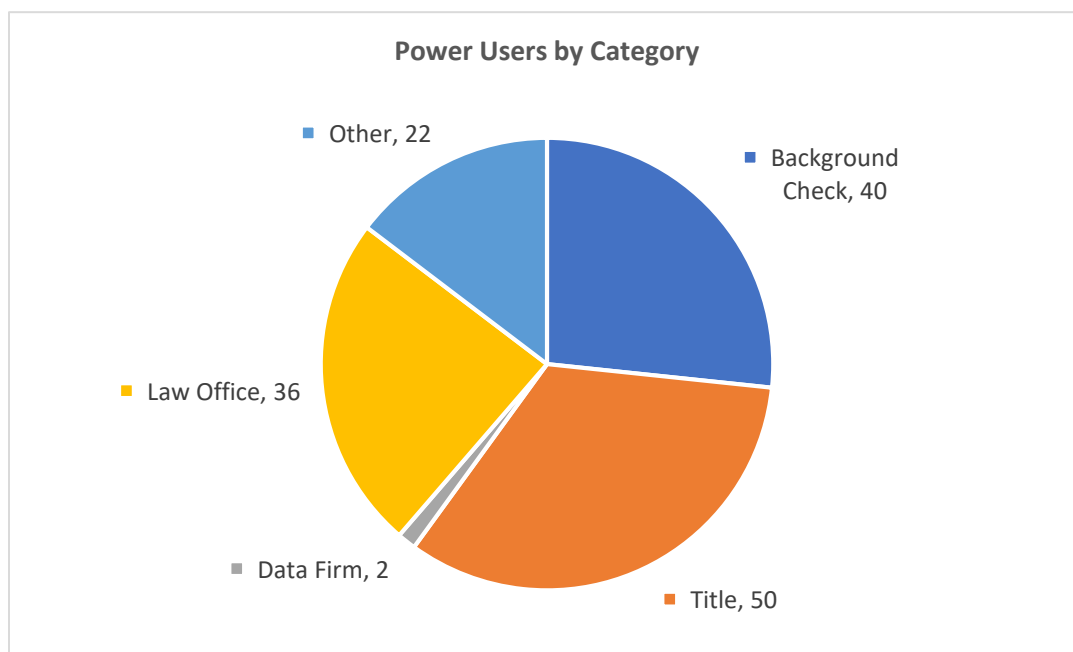


Figure 2

Background check companies and title companies comprise 55% of our “power users”, their searches account for 76% of the searches exceeding 1100 searches per month. There are two data firms whose searches account for 10% of searches exceeding 1100 searches per month in 2019.

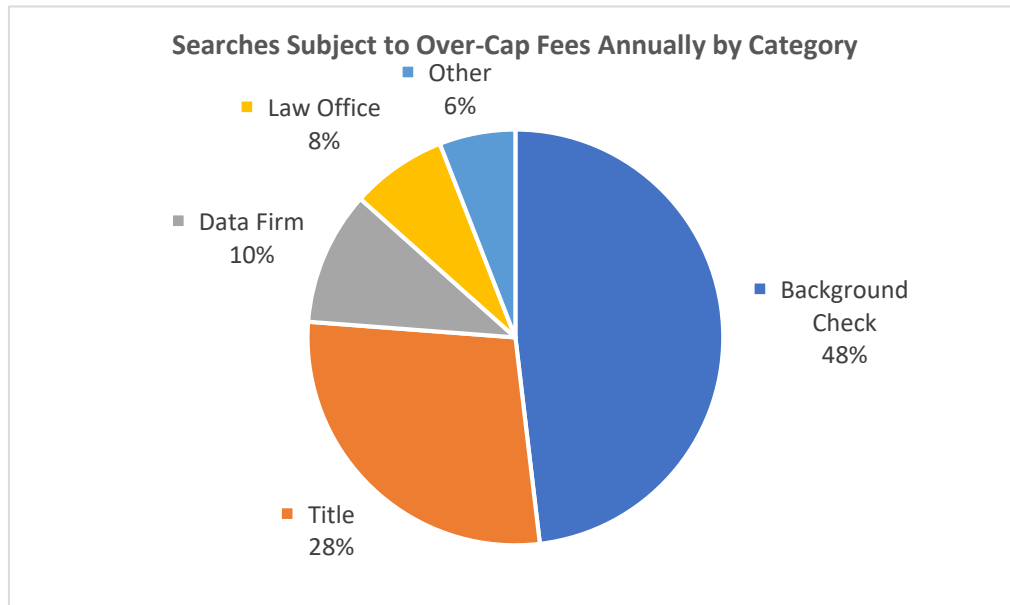


Figure 3

Media Accounts:

Media accounts have been offered at no monthly subscription but the users are subject to the excess search fee as well as the document download fee. Only about 30% of media users exceed the current cap but not at the same rate as billable users.

Under the new proposal only five accounts would have exceeded the equilibrium point of 1100 searches. Media accounts as a whole would see an average decrease of about \$6.00 per month in their over-cap search fees. Those exceeding 1100 searches a month would see an average increase of just under \$20 in their monthly over-cap search fees.

Conclusion:


The budget cuts we are facing this year threaten to eliminate nearly all of our discretionary IT spending. Since FY18 we have historically used about \$2.5 million per year of our \$4 million year end surplus and carryforward funds on IT spending. Most of this was from turnover savings which has now been eliminated.

The increase funds from Xchange can help preserve critical IT spending necessary to fulfill our court mission by continuing to make the courts accessible and maintaining our systems.

Tab 7

FINAL

[illegible]

 FY 2021 Carryforward and Ongoing Turnover Savings Requests					
Total Available Funds				\$ 2,510,500	\$ 666,213
			Requested	Approved by Legislature	
			One Time Ongoing	One Time Ongoing	
#	Budget Obligations				
	HB002 Salary Increases (main line item only)		\$ 972,000	\$ -	\$ -
	HB002 Commissioner Recruitment and Retention		\$ 92,500	\$ -	\$ -
	HB002 Child Welfare Mediator		\$ 54,900	\$ -	\$ -
	HB002 Information Technology Enhancements	\$ 450,000	\$ 932,000	\$ -	\$ -
	HB206 Bail and Pretrial Release Amendments (in HB003)	\$ 63,000	\$ (13,000)	\$ -	\$ -
	HB288 Prosecutor Data Collection Amendments (in HB003)	\$ 2,400	\$ 33,000	\$ -	\$ -
	HB 485 Amendments Related to Surcharge Fees (in HB003)	\$ 10,500		\$ 10,500	\$ -
	Subtotal			\$ 10,500	\$ -
				Approved by Jud. Council	
Ongoing Turnover Savings - Total Available as of 5/1/2020 - \$600,000			\$ 600,000		
#	Previous Council Priorities Unfunded by Legislature - Ongoing				
1	<i>Self Help Center-Bring 5 employees to full time** - recommend funding through Ongoing Turnover Savings</i>	n/a	\$ 109,800	\$ 109,800	E
	Recommended Essential Spend				
	Council Deferrals from August 2019 - Ongoing				
	<i>Public Outreach/Education Coordinator Will be Presented as a 2022 request</i>	n/a	\$ -		
	<i>Two 3rd-District Problem-Solving Drug Court Clerks Request Withdrawn by Requester</i>	n/a	\$ -		
	Ongoing Turnover Savings - FY 2021 Requests				
	2021 Total Compensation Proposal (will be presented in June Judicial Council Meeting)	n/a	n/a		
	2021 Budget Cut from SB 5001, 2020 5th Special Session		\$ 520,000	\$ 520,000	
	Subtotal Recommended Essential	\$ -	\$ 629,800		
Balance Remaining from Ongoing Turnover Savings			\$ -	\$ 490,200	\$ -
Carryforward spending requests - Total Available \$2,500,000			\$ 2,500,000		
2	PSA Calculation Cost for Incuding NCIC "Hits" (Legal)	\$ 198,014		\$ 198,014	E
3	ICJ Operations Funding (Dues/Training and travel/Extradition) (Neira Siaperas) (\$24,000 approved last year - 1x)	\$ 20,000		\$ 20,000	E
4	Divorce Ed for Children Video - Teen Website (carry forward of remaining grant balance) (Public Information)	\$ 18,000		\$ 18,000	E
5	Utah Code & Rules for judges (Law Library) (\$54,069 approved last year - 1x) RULE CHANGE	\$ -		\$ -	E
6	Secondary language stipend (HR) (\$65,000 approved last year - 1x)	\$ 65,000		\$ 65,000	E
7	Matheson Courthouse carpet repairs (select replacement with carpet tiles) (Facilities)	\$ 20,000		\$ 20,000	E
8	Time-limited Law Clerks (2 FTEs) (Shane Bahr) (\$190,650 approved last year - 1x)	\$ 191,200		\$ 191,200	E
	Subtotal Recommended Essential	\$ 512,214			
9	IT Unfunded Mandates (Researching funding through CCJJ)	\$ 288,900			E
ew 16	Public Outreach Coordinator	\$ 100,000			E
ew 17	Child Welfare Mediator PT	\$ 55,000			E
ew 18	IT Information Technology Infrastructure and Development	\$ 1,382,000			E
	Subtotal Recommended Essential	\$ 1,825,900			
	Grand Total Recommended Essential	\$ 2,338,114			
10	Education Leadership and Court Skills Academy (Education)	\$ 25,500		\$ -	
11	Castledale Enhancements (7th District)	\$ 28,000		\$ -	
12	Moab Courthouse Improvements (7th District)	\$ 12,000		\$ -	
13	Supplemental Judicial operations budget (Finance Director) (\$70,000 approved last year - 1x)	\$ 70,800		\$ -	
14	Employee incentive awards (Awards and taxes) (HR) (\$260,000 approved last year - 1x)	\$ 260,000		\$ -	
15	Employee educational assistance (HR) (\$42,000 approved last year - 1x)	\$ 75,000		\$ -	
	Subtotal Other Requests	\$ 471,300			
Total Essential Requested from \$2.5M One-time Carryforward			\$ 2,338,114	\$ -	\$ 512,214
Balance Remaining			\$ 161,886	\$ 1,987,786	\$ 36,413
LEGEND					
** Numbers are updated to current expected costs.					
Items italicized in blue represent items prioritized or deferred by the Council in August 2019 or unfunded by the legislature in FY 2020					
Items in red represent funding identified by the Legislature for a specific purpose					
E = Recommended by Budget and Finance Committee as Essential Spending					
Funding has been requested for Courts to obtain a CARES Act federal reimbursment. This could add up to an additional \$700,000 in available carryforward funding.					

9. FY 2020 Carryforward Spending Request – IT – Updated 6.18. 2020 Development Costs for Legislation passed in March 2020

The Judicial Branch receives budget funds annually through the Legislative appropriations process. Funds appropriated for FY 2020 are normally to be spent between July 1, 2019 and June 30, 2020; however the Legislature is expected to approve that the Judicial Branch carryforward approx. \$2.5M in unspent FY 2020 funds into FY 2021. This is a request to the Budget and Finance Committee and the Judicial Council to allocate the use of some of these anticipated unspent funds for one-time or ongoing projects that will be delivered in FY 2021.

Date: 4/22/20

Department or District: Information Technology

Requested by: Heidi Anderson

Request title: Fund Legislative Bills with Unfunded Mandates

Amount requested: One-time \$ 288,900 (Excludes HB 206 costs seeking CCJJ grant funding). The ongoing money is added to the request to fund FY 2021 needs only.

Ongoing \$ 0

Purpose of funding request: Legislative bills are not always passed with adequate funding to implement them. Further, the June Special Legislative Session has indicated plans to reverse all fiscal notes to the funding bills passed in March 2020. The following lists the costs IT believes it will incur to implement the March 2020 legislation taking into account the repeal of fiscal notes by the June Special Session.

Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.

HB 206 – Judges must take into consideration a person’s ability to pay when setting bail. IT to build a calculator that shows amount to set by asking monthly income, family size, and rent. These program changes will cost \$180,000. ***Michael Drechsel is working with CCJJ to obtain Federal CARES grant funding for these amounts. Michael is optimistic these funds will be approved. Timing of the receipt of the funds is uncertain. These \$180,000 in costs are excluded from the request.***

Other parts of HB 2016 will require funding in excess of the amounts given by the legislature in the amount of \$90,000 one-time funding. No opportunity for grant funding on this amount.

See attachment for description of each bill and the carryforward money requested.

Alternative funding sources, if any: Grant money only for HB 206.

If this request is not funded at this time, what are the consequences or is there an alternative strategy? These projects will not be completed.

9. FY 2020 Carryforward Spending Request – IT – Updated 6.18. 2020 Development Costs for Legislation passed in March 2020

IT Costs to Implement FY 2020 Legislation – FY 2021

Bill	Title	(A) Brief Description – Amounts originally funded by legislature; amounts reversed shown in yellow and added to columns B,C,D	(B) One Time – needed not funded by legislature	(C) On-Going needed (provided) not funded by legislature	(D) One-time with potential other sources – not funded by legislature
HB 206 S3	Pre-trial, ability to pay; bonds	Surety bond-email; ability to pay \$63,000 (1x) (\$13,000) (On-going)	\$27,000 \$63,000	(\$13,000)	\$180,000 (CCJJ)
HB 139	DUI Liability Amendments	\$1,400 (On-going)		\$1,400	
SB 173	Disorderly Conduct Amendments	\$41,300 (On-going)		\$41,300	
SB 32	Prisoner Offense Amendments	\$3,000 (On-going)		\$3,000	
HB 247	Unlawful Sexual Activity Amendments	\$8,300 (On-going)		\$8,300	
HB 243	Warning Label Adjustments	\$200 (On-going)		\$200	
HB 33	Abuse, Neglect and Dependency Proceedings	\$800 (On-going)		\$800	
HB 288 S1	CCJJ reporting	Twice yearly data reporting to CCJJ (defendant info); \$33,000 (1x) \$2,400 (ongoing)	\$33,000	\$2,400	\$0.00
HB 291 S1	Vacature/human trafficking	CARE expungement at an incident level	\$90,000	\$0.00	\$0.00
HB 343	Probate - notice to Office of Recovery Services (ORS)	We need to start requiring the decedent's DOB. \$20,500 (1x) \$1,500 (on-going)	\$20,500	\$1,500	\$0.00
HB 485 S1	Security Surcharge	Increase in amounts in tables; change to computation stored procedures	\$0.00	\$0.00	\$0.00

9. FY 2020 Carryforward Spending Request – IT – Updated 6.18. 2020 Development Costs for Legislation passed in March 2020

		\$10,500 (1x)			
SB 238	Mitigation of severity	Battered persons - severity decrease - possible new doc type; possible new screen in sentencing area like 402;	\$9,500	\$0.00	\$0.00
Totals			\$243,000	\$45,900	\$180,000

Unfunded Mandate Grand totals including EAC fiscal notes repealed from Columns B and C (funding ongoing as one-time for FY 2021) – excluding the amounts expected to be funded by CCJJ in column D, total \$288,900 (see blue-green shaded amounts).

16. FY 2020 Carryforward Spending Request – Public Outreach and Education Coordinator

The Judicial Branch receives budget funds annually through the Legislative appropriations process. Funds appropriated for FY 2020 are normally to be spent between July 1, 2019 and June 30, 2020; however **the Legislature is expected to approve that the Judicial Branch carryforward approx. \$2.5M in unspent FY 2020 funds into FY 2021. This is a request to the Budget and Finance Committee and the Judicial Council to allocate the use of some of these anticipated unspent funds for one-time or ongoing projects that will be delivered in FY 2021**

Date: 6/15/2020

Department or District: Public Information Office
Requested by: Geoff Fattah

Request title:

Amount requested: One-time \$ 100,000

Ongoing \$ to be submitted as FY 2022 Judicial Priority Request in Aug 2020

Purpose of funding request: The attached draft FY 2021/FY 2022 Judicial Priority Request was presented to the Budget and Fiscal Management Committee (“BFMC”) on June 11, 2020. The BFMC approved this request for presentation to the Judicial Council. Post this approval, the submitters responded to a Finance inquiry to consider requesting part of the \$2.5M carryforward money to hire a Public Outreach and Education Coordinator into a time-limited position during FY 2021 instead of waiting until FY 2022 to hire. The requesters fully supported accelerating this request using one-time money and begin as early in FY 2021 as possible the outreach to various communities in need.

Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.

See draft FY 2021/FY 2022 write up.

Alternative funding sources, if any:

See draft FY 2021/FY 2022 write up.

If this request is not funded at this time, what are the consequences or is there an alternative strategy?

See draft FY 2021/FY 2022 write up.



FY 2021 / FY 2022 BUSINESS CASE

Agency: Judicial Branch (Courts) - Public Information Office

Request Title: Public Outreach and Education Coordinator (Coordinator I)

Request Amount & Source: General Fund

FY 2021 One-time	FY 2022 One-time	FY 2022 Ongoing	Total Request
\$0	\$0	\$100,000.00 (Midpoint Salary w/ Benefits, plus travel and equipment)	\$100,000.00

Objective:

The Public Information Office is requesting 1 FTE to provide much-needed support for public outreach and education in all corners of Utah's communities. This need has been amplified due to the COVID-19 pandemic and its future impact in years to come.

Executive Summary:

Based on past recommendation by the courts' Racial and Ethnic Fairness study to invest more time and resources toward actively reaching out to marginalized communities, based on a national call by NCSC and the SCOTUS Chief Justice to provide more public education about the role and functions of the Judicial Branch, and based on the identified urgent need to reach self-represented litigants during a time of social and economic uncertainty, the **Committee on Judicial Outreach** and the **Committee on Resources for Self-Represented Parties** recommends the creation of a Public Outreach and Education Coordinator position under the Public Information Office. The courts can no longer rely upon limited resources and the good will of judges and staff to volunteer time to spearhead outreach to various communities in need. A more formal and coordinated effort is needed to forge important partnerships and educate community leaders, and social workers.

History and Background of Request:

Currently, the duties of community outreach and public education are handled by the Courts' Communication Director. Over time, the Committee on Judicial Outreach has concluded that breaking down barriers of distrust that exist in some communities requires much more time and resources than what one person can provide. Also, the Committee on Resources for Self-Represented Parties has identified the lack of adequate staff resources to reach self-represented parties who could greatly benefit from court services. Reports from the Self-Help Center and outside legal organizations show there is a disconnect between the services the courts provide for disadvantaged and underserved communities, and the people who need them.

The Utah Commission on Racial and Ethnic Fairness (1998-2004) [issued its first annual report and recommendations in January 2003](#). The goals of the commission were to: achieve equality and justice for all people, encourage implementation of equitable practices, and institutionalize accountability. Among

the Commission's recommendations (Pg.13), was the call for "building partnerships with Community Resources and Outreach through the State Office of Education, the Judicial Council's Public Outreach Committee, the Minority Bar Association, the Utah State Bar and communities of color..."

"The Judicial Council's Public Outreach Committee should take the lead in helping communities to understand the court process by considering implementation of the following: civics classes for minority communities, tours of the courts for schools and youth clubs, Meet the Judges nights, and having a Court - Community Outreach effort to link the courts and the public." (Pg. 36).

In an effort to accomplish this outreach directive, the Judicial Council adopted [Rule 3-114 of the Code of Judicial Conduct](#). The Standing Committee on Judicial Outreach has implemented school tours, public education resources for judges and teachers, and the Judge for a Day student/judge shadowing program. Statewide, many judges have volunteered to speak at their local schools. But, more needs to be done.

In an effort to reach out to marginalized communities, the Utah Courts hosted several judicial forums over the course of a three-year period (2013-2016) in Orem, Provo, West Valley, Salt Lake City and Ogden. Community attendance of these forums was sparse; prompting discussion by Judicial Outreach and Community Relations Subcommittee members about ways to increase participation. Community representatives in both bodies advised that there exists deep distrust and lack of education among many minority communities. The lack of public participation is an indicator that the Courts need to invest more time and resources toward building relationships with Utah communities, and community-based organizations. Several organizations who work within Utah Hispanic communities have told the Courts that more time needs to be spent forging relationships with groups who work within marginalized communities.

The Courts Self-Help Center has done its best to ensure some limited presence by the Courts at community events, but staff time and resources are very limited. What is needed is a coordinator who can work with already-established, community-based workers and organizations to provide education and training on where people in need can go for help with legal issues, and just as importantly, how the justice system works.

This type of community work is time-intensive. While our judges and staff members are dedicated to help in this regard through volunteering with outreach efforts, it will require more staff resources than is currently available.

Significant effort has been invested by the Courts to study, identify needs, and implement important services for self-represented and underserved parties. However, recent studies continue to show that many people have trouble finding and accessing those services ([Key Findings - "The Justice Gap, Addressing the Unmet Legal Needs of Lower-Income Utahns," Utah Foundation, April 2020](#)). The Courts must take a more active role in narrowing the access to justice gap. While providing one FTE position will not completely eliminate this gap, it will be a much-awaited, good-faith investment by the Courts. During and after the COVID-19 pandemic many Utah residents will turn to the courts for help in domestic, landlord/tenant, small claims, and employment matters. Given the radical changes to court services, the public will need help understanding how to get help in the months, and possibly years, to come.

A secondary benefit to the Public Outreach and Education Coordinator position is it will allow the Courts Communication Director to focus on the growing issue of public misinformation about the courts.

[A recent study points to Russian efforts to undermine the American public's trust in its governmental institutions.](#) While it may sound surreal, there is evidence that Russia's efforts are being directed toward courts across the country. We have seen at least two incidents in which news and social media reports on two Utah judges were amplified with the intent to sow distrust in Utah's courts. One involved the sentencing by a female judge for a Somali refugee who admitted to raping two white women at knife point. We saw evidence that the story was being circulated using "bot" accounts to push it in front of users who espouse hatred toward immigrants and minorities. We've also seen a similar pattern involving another female judge, where local criticism and disinformation regarding her sentences were amplified in a similar way. The National Center for State Courts is currently working with the authors of this study to create a resource manual to help courts combat misinformation campaigns. One conclusion is that public education is a good inoculation to disinformation. NCSC and the report's authors recommend that courts invest more resources in educating the public about the role and purpose of the courts. This should include working more closely with schools at all levels to make sure they have materials and information about the courts, as well as working with community-based organizations to help train community-based caseworkers on the functions and services the courts provide.

There will also be secondary benefits to expanding staff within the Public Information Office. With the expansion of staff resources, the Courts Communication Director proposes to review the way the Courts handle judicial criticism and attacks upon the judiciary, and to explore the formation of a fast-response team comprised of the Courts, Utah Bar, JPEC, JJCC and legal higher education. It is also proposed to create a judicial speakers bureau comprised of retired judges who would volunteer to serve as subject-matter experts to the public and media. Additional education opportunities could be created through social media and marketing.

Detailed Request of Need:

a) Summarize the current budget for this system or program.

The Public Information Office budget (Unit 2440) does not have funds to support adding 1 FTE.

b) What problem would be solved with additional funding? (Show historical data to support and quantify problem statement.)

While community outreach and education needs have been identified, the Communication Director has limited time to dedicate to effective outreach. Unlike some other government organizations (Health Department, Public Safety, Human Services) the Judicial Branch relies on one FTE for media relations/public outreach/publications/social media/marketing. The Communication Director currently spends an estimated 80% of his time involved in managing media, including helping with information/data requests, explaining processes, training media, and aiding judges statewide with high-profile cases. On average, the Communication Director handles 62 media inquiries a month, and an average of 24 Camera Pool requests a month. In addition, the director is also in charge of publications, such as the Annual Report, and internal communication, such as the court newsletter. The director also monitors the Courts' social media accounts (Twitter, Facebook, YouTube) at all times. Creating a Public Outreach and Education Coordinator position would provide more resources needed to accomplish the outreach and education needs previously identified. The alternative would be to allow unfamiliarity and distrust to build within communities.

While it is recognized that Utah will face some serious budget cuts to government entities, both committees would argue that this outreach support will be needed now more than ever.

c) What has already been done to solve this problem with existing resources and what were the results?

We have attempted to conduct outreach efforts with current resources, but with little success. Public events are not well attended and community representatives indicate the Courts need to invest more time establishing relationships with those within marginalized communities who could help us educate. A new FTE position would allow the Public Information Office to provide community-based training, be more of a resource to school teachers at all levels, and train court staff on outreach to have more of a presence at community events statewide. To date, limited administrative support has been offered to assist with outreach. While the gesture of support is appreciated, the situation will not improve until the Courts dedicate an FTE to public outreach and education.

Cost Detail:

a) How will new funding be utilized?

There exist several comparable positions in other court systems. We've identified several program coordinator positions in Colorado, Los Angeles, San Mateo, and Florida. Similar positions require a Bachelor's degree and usually several years of experience in education or community relations. Positions range from \$55,000 - \$100,000 annually with benefits. The Courts' salary range for a Program Coordinator I position is \$43,055 - \$64,729. Beyond position funding, additional funding may be needed for materials and travel. Midpoint with salary including benefits is about \$94,000. Beyond position funding, an additional \$6,000 in funds may be needed for equipment, materials, and travel.

b) What are the anticipated results or outcomes of the new funding and how will the results be tracked?

Creating this position will have an effect in two main areas:

- A full-time coordinator will open a new field of outreach that will inform and improve on court services, and help increase public trust and confidence in the courts. The Public Outreach and Education Coordinator will create outreach programs to provide training to community case workers, establish working relationships within marginalized communities, and create events tailored to feedback and needs of those communities. The coordinator will also act as an education resource for schools at all levels. The coordinator will work with educators to create a formalized educational experience about the Judiciary by providing mock trial materials, worksheets about the courts, coordinate judicial speakers and tours well-timed with a school's curriculum.
- Having this additional staff resource will allow the Communication Director to expand much-needed additional resources within the Public Information Office. The Communication Director will work to establish a speaker's bureau of selected retired judges who can help educate the public on issues of interest to the Courts. The traditional model of having the Bar come to the defense of the judiciary will be added to a more rapid response cadre of retired judges who can speak from experience and respond to rapidly evolving controversies. Following the recommendation of the Cyber-Attack report, the Communication Director will also coordinate a rapid-response cyber team to proactively respond to misinformation campaigns. Members of this team will include representatives from CCJJ, DHS (for juvenile matters), Utah Bar, JPEC, and legal experts from the two law schools. Efforts will include countering misinformation spread on social media as well as coordinated efforts to have problematic posts taken down by Social

Media providers. NACM is also proposing that it will establish relationships with representatives of all major social media companies on behalf of courts across the country.

Results will be reported to the Judicial Council annually through the Judicial Outreach Committee. This annual report will include statistics on outreach as well as a detailed rundown of relationships built with partner organizations, trainings, and outreach materials created.

c) What are potential negative effects if the funding is not received?

Not having a public outreach and education position puts the Courts at a disadvantage when it comes to shaping the public's perception of the Utah court system. There has already been identified the need to penetrate marginalized communities and educate them on services the courts can provide and demystify assumptions people have about the courts; either based on cultural differences, fear, or both. Members of our own advisory committees will speak to the need to forge relationships with community groups on a personal level, and that this effort takes time and dedication.

Alternatives:

The request is for an ongoing FTE position. This request was prioritized by the Council during the FY21 budget cycle, but was set aside from Legislative funding to be funded with cost savings funds, which turned out not to be possible. Seeking funding through grants for this FTE position would not be advisable, as the nature of this position requires a long-time commitment in order to work.

17. FY 2020 Carryforward Spending Request – PT Child Welfare Mediator

The Judicial Branch receives budget funds annually through the Legislative appropriations process. Funds appropriated for FY 2020 are normally to be spent between July 1, 2019 and June 30, 2020; however **the Legislature is expected to approve that the Judicial Branch carryforward approx. \$2.5M in unspent FY 2020 funds into FY 2021. This is a request to the Budget and Finance Committee and the Judicial Council to allocate the use of some of these anticipated unspent funds for one-time or ongoing projects that will be delivered in FY 2021.**

This Request seeks FY 2020 carryforward funding to replace Judicial Priorities that were approved by the Legislature but are expected to be repealed in the June Special Session. This FY 2020 Carryforward spending request will provide one-time funding to accomplish the same request as contained in the Business Case except for FY 2021 only.

Date: 6/15/2020

Department or District: Mediation

Requested by: Nini Rich

Request title: Child Welfare Mediator

Amount requested: One-time \$ 55,000

Ongoing \$ N/A

Purpose of funding request: See attached FY 2020/FY 2021 Business Case. This funding request provides the funding necessary for FY 2021 to accomplish the same request as in the Business Case, except for FY 2021 only.

Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.

See FY 2020/FY 2021 Business Case.

Alternative funding sources, if any:

See FY 2020/FY 2021 Business Case.

If this request is not funded at this time, what are the consequences or is there an alternative strategy?

See FY 2020/FY 2021 Business Case.



FY 2020 / FY 2021 BUSINESS CASE

Agency: Judicial Branch (Courts)
Request Title: Priority 4: Child Welfare Mediator

Request Amount & Source: General Fund

FY 2020 One-time	FY 2021 One-time	FY 2021 Ongoing	Total Request
\$0	\$55,000	\$55,000	\$55,000

THIS IS THE ORIGINAL SUBMISSION BUSINESS CASE AND IS PROVIDED TO GIVE BACKGROUND INFORMATION ON THE USE OF THE FUNDS. NO MODIFICATIONS HAVE BEEN MADE TO IT EXCEPT THE SWITCH TO ONE-TIME FUNDING SHOWN ABOVE.

Objective:

To improve access to justice in Utah by providing ongoing funding to replace one-time funding for a half time child welfare mediator in the Child Welfare Mediation Program serving Juvenile Court Dependency cases.

Executive Summary

Child Welfare Mediation is a collaborative decision making process that has been shown to lead to better outcomes for children and families. Meeting the needs of children and families is an important part of the Utah judiciary's mission to provide an open, fair, efficient, and independent system for the advancement of justice under the law. The purpose of this request is to provide ongoing funding for a half-time Child Welfare Mediator that is currently funded with one-time money. The increase in mediation referrals from Juvenile Court Judges (over 12% since FY2014) has resulted in crowded mediation calendars and increasing difficulty for judges to get cases mediated within tight statutory timelines. The majority of cases must be scheduled within a timeframe of 2 weeks or less from the date of the judge's order.

The one-time funding of an additional half-time mediator in FY19 greatly reduced the mediation calendar congestion as well as scheduling complaints from the court and counsel. It has also addressed the problem of leaving some families without access to the benefits of participating in a collaborative decision making process that has been shown to lead to better outcomes for children and families.

History and Background of Request:

Child Welfare Mediation Program referrals have grown steadily since its inception in 1997. Since 2001, the program has received more than 19,000 mediation referrals from Juvenile Court judges statewide in cases alleging child abuse and neglect. The steady increase in referrals is tied to the empirical success of the program as measured by resolution rates and increased collaboration among parties rather than the number of Child Welfare cases before the court.

Child Welfare mediators are assigned approximately 1,400 mediations each year. The mediations can be referred at any stage of a dependency case from removal of the children to termination of parental rights but over 70% are referred pre-adjudication, in the earliest stage of the case. The five full-time mediators are assigned an average of 255 mediation sessions per year and the half-time mediator covers approximately 125 mediations. The mediation team has a consistent full-resolution rate of over 90% with an additional 3-4% partially resolved. The program's effectiveness in resolving

cases has resulted in a decrease in the number of trials as well as an increase in the cooperation among parents, DCFS, counsel, and the Courts, resulting in better outcomes for families.

Detailed Request of Need:

a) Summarize the current budget for this system or program.

The total cost for salary and benefits for this half-time position is \$54,947 and has been funded one-time for the past year.

b) What problem would be solved with additional funding? (Show historical data to support and quantify problem statement.)

The ongoing funding of the half-time mediator will continue to solve the problem of mediator availability to complete mediation sessions within timeframes that enable judges to meet statutory timelines

Fiscal Period	Number of Mediation Referrals	Average Annual Referral
2014-2016	3880	1293
2017-2019	4247	1416

c) What has already been done to solve this problem with existing resources and what were the results?

We work individually with each district to solve scheduling and mediator availability issues. We have found that having “live” scheduling assistance from 8 a.m. - 5:30 p.m. helps a great deal. However, twenty years of program history has demonstrated that it takes at least one mediator for every 250-255 referrals to ensure that a mediator is available when a judge orders mediation. An additional half-time position has been funded with one-time money in FY19 and FY20. The results have been a reduction in scheduling complaints, an increase in referrals and fewer days where mediator availability is decreased due to annual or sick leave.

Cost Detail:

a) How will new funding be utilized?

The new funding will be used to fund a half-time Child Welfare mediator on an on-going basis.

b) What are the anticipated results or outcomes of the new funding and how will the results be tracked?

We have already seen that the addition of a half-time mediator has increased mediator availability and reduced scheduling complaints from judges and counsel. We have also been able to accommodate an increase in mediation referrals to the program. We track the number of referrals each year as well as the resolution rates to be sure we are maintaining consistent quality of service. In addition, we attend collaborative stakeholder meetings and Agency meetings regularly in each district to ensure we are aware of any concerns or complaints from stakeholders.

c) What are potential negative effects if the funding is not received?

The feedback we receive from Judges, Assistant Attorneys General, Parental Defenders, Guardians ad litem and DCFS consistently indicates that mediation reduces the number of trials

and allows parents to participate in a collaborative decision making process that improves working relationships, increases compliance with service plans and results in better outcomes for children and families. If we do not have enough mediators to cover requests, some families will not have the opportunity participate in mediation which has a range of consequences related to their success in rectifying the circumstances that brought them under the jurisdiction of the court.

Alternative Funding Opportunities:

None known at this time

18. FY 2020 Carryforward Spending Request – IT Infrastructure and Development

The Judicial Branch receives budget funds annually through the Legislative appropriations process. Funds appropriated for FY 2020 are normally to be spent between July 1, 2019 and June 30, 2020; however **the Legislature is expected to approve that the Judicial Branch carryforward approx. \$2.5M in unspent FY 2020 funds into FY 2021. This is a request to the Budget and Finance Committee and the Judicial Council to allocate the use of some of these anticipated unspent funds for one-time or ongoing projects that will be delivered in FY 2021.**

This Request seeks FY 2020 carryforward funding to replace Judicial Priorities that were approved by the Legislature but are expected to be repealed in the June Special Session. This FY 2020 Carryforward spending request will provide one-time funding to accomplish the same request as contained in the Business Case except for FY 2021 only.

Date: 6/15/2020

Department or District: IT

Requested by: Heidi Anderson

Request title: IT Infrastructure and Development

Amount requested: One-time \$ 1,382,000

Ongoing \$ N/A

Purpose of funding request: See attached FY 2020/FY 2021 Business Case. This funding request provides the funding necessary for FY 2021 to accomplish the same request as in the Business Case, except for FY 2021 only.

Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.

See FY 2020/FY 2021 Business Case.

Alternative funding sources, if any:

See FY 2020/FY 2021 Business Case.

If this request is not funded at this time, what are the consequences or is there an alternative strategy?

See FY 2020/FY 2021 Business Case.



FY 2020 / FY 2021 Business case

Agency: Judicial Branch (Court)

Request Title: Priority 1: Information Technology Infrastructure and Development

Request Amount & Source: General Fund

FY 2020 One-time	FY 2021 One-time	FY 2021 Ongoing	Total Request
\$0	\$450,000	\$932,000	\$1,382,000
	\$1,382,000		

THIS IS THE ORIGINAL SUBMISSION BUSINESS CASE AND IS PROVIDED TO GIVE BACKGROUND INFORMATION ON THE USE OF THE FUNDS. NO MODIFICATIONS HAVE BEEN MADE TO IT EXCEPT THE SWITCH TO ONE-TIME FUNDING SHOWN ABOVE.

OBJECTIVE:

To improve access to justice in Utah by improving the Courts' information technology infrastructure and development through upgrading outdated hardware/software and adding additional development staff.

EXECUTIVE SUMMARY

The mission of the Utah State Courts is to provide an open, fair, efficient, and independent system for the advancement of justice under the law. The courts' information technology organization has been recognized nationally and internationally as one which effectively meets and often exceeds this mandate.

The Utah State Courts lead in efforts to advance access to justice through a variety of initiatives. These initiatives include e-filing in the district and juvenile courts, the Online Court Assistance Program (OCAP), the Self Help Center, and Online Dispute Resolution (ODR). The courts' effort to advance access to justice makes the Utah State Courts accessible to more Utahans and provides efficient means to resolve legal disputes.

The number of core technology applications needed to support the courts has more than doubled (6 to 13) in the last 10 years, and as we have moved further down the path of e-Court, automated processing, court efficiency projects, and paperless services, the staffing for the IT organization has remained virtually unchanged.

In order to maintain critical systems and to avoid losing momentum in providing increased access to justice, the courts must –

- increase staff resources by 6 to support the courts' IT infrastructure and development
- upgrade unsupportable/end of life Microsoft software
- upgrade the failing audio/video capabilities in the West Jordan courtrooms
- increase staff resources by 2 to support the Online Court Assistance Program

HISTORY AND BACKGROUND OF REQUEST:

The following explains the request for \$650,000 on-going money for 6 IT staff to support IT infrastructure and development.

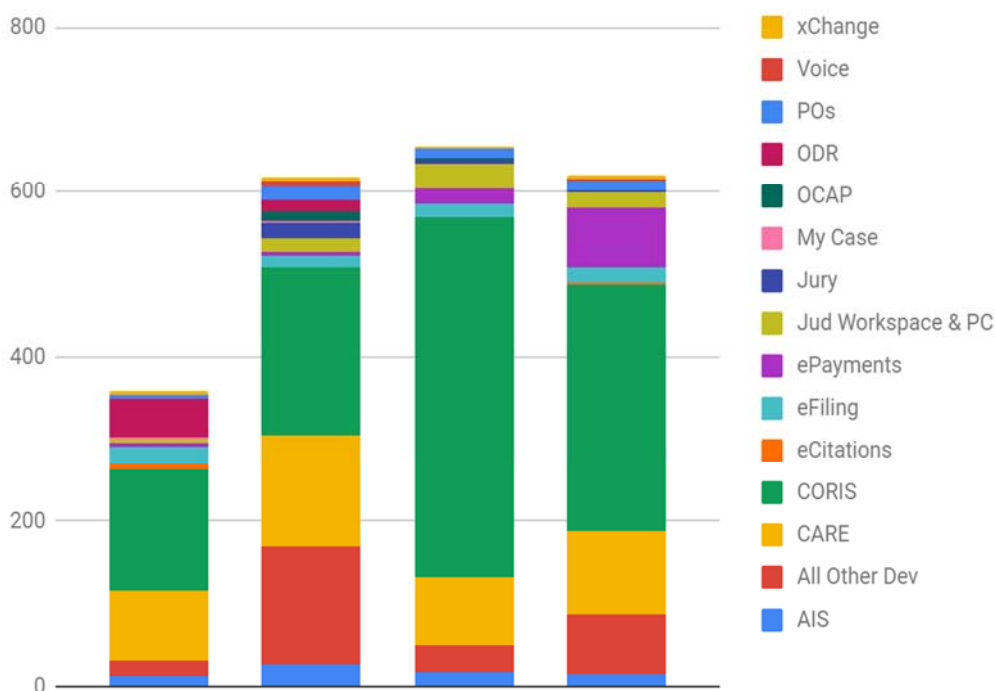
The Courts are committed to technological solutions which increase efficiencies and improve service. New applications and/or new functionality developed and supported by the Administrative Office of the Courts' (AOC) IT department to support the judiciary, state agency interfaces and the public in the last 10 years included the following:

<ul style="list-style-type: none"> • Web Payments - 2009 • eFiling upgrades, support for multiple service providers, expansion of civil cases - 2009 • OCAP additional case types • CARE Provider Payments - 2009 • Point of Sale Payments into District & Juvenile Court - 2010 • Justice Court statewide converted to CORIS database- 2011 • Xchange web application - 2011 • Judicial Workspace - 2012 • DocList & DocNotes - 2012 • eWarrants integration with Department of Public Safety (DPS) - 2012 • Jail Release Agreement - 2012 • Protective Orders (PO) system & DPS interface- 2012 • Voice (Guardian Ad Litem application)- 2012 • Transcripts - 2012 • Agency Interfaces (30+ Web Services) - 2012 • Template Manager/Template Resolver - 2013 • MyCase for Juvenile Court – 2013 	<ul style="list-style-type: none"> • Digital Signatures – 2013 • Juvenile Warrants (Removal, ICWA, Runaway) - 2013, 2019 • eFiling required in civil, probate & domestic cases - 2013 • eNotifications - 2013 • DCFS Interface - 2013 • Management Portal - 2014 • CARE AG Portal - 2014 • Deny/Dismiss POs- 2014 • AIS Workspace (Appellate Courts) - 2015 • eFiling criminal cases: required for all filings - 2015 • Digital signing of orders and rulings - 2016 • eFiling in Justice Courts - 2016 • Hearing Notifications (Autodialer) - 2018 • Jury system rewrite and juror payment processing interface to FINET 2018 • Probable Cause/PSA - 2018 • Online Dispute Resolution (ODR) – 2018 • MyCase Phase 1 - 2018 • Problem Solving Courts - 2019 • Pre-Sentence Investigation request- 2019 • Online Court Assistance Program upgrades and interface supports-2019
--	---

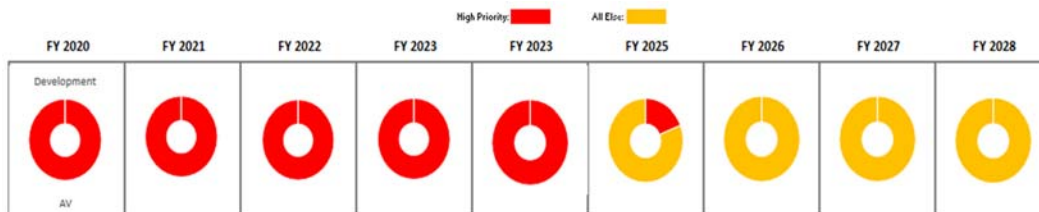
Continued on next page.

The following bar chart describes the new and/or changes in application functionality fulfilled by quarter.

Dev Effort by Quarter FY2019 (All Effort)



The following chart lists the new or enhanced application project requests. Based on current development staffing and prioritizing critical projects first, the chart shows how long it would take to complete the projects. The red represents critical projects needed by the judiciary and the yellow are the remaining projects.



The following is an explanation for the request of \$72,000 on-going money for the upgrade/subscription service of Microsoft Software.

The courts have relied on Microsoft Office products because it is the standard for documents in the legal field. To support the work of the courts we need Microsoft software. There are currently 1540 devices across the state that have MS Office 2010 installed. This version of

Microsoft office will no longer be supported as of October of 2020, and will no longer be patched for security. This will put the courts at higher risk of cybersecurity attacks.

This \$72,000 request is to begin to move licensing to MS Office 365 subscription services during the 2021 Fiscal Year.

The following is an explanation for the request of \$450,000 one-time for the upgrade and replacement of failing Audio/Video equipment in the West Jordan Courtrooms.

The West Jordan courthouse was built in 2005. At that time, courtrooms were constructed with both audio and video recording systems. (Audio-only is the current standard for new courtrooms.)

West Jordan is one of the busiest courthouses in the state, serving patrons in the Third Judicial District. There are five district court courtrooms and five juvenile court courtrooms in the building. Last year 13,223 cases were filed in West Jordan and 28,047 hearings/trials were held in the courthouse. The record of courtroom proceedings is maintained solely through electronic means. Without functioning systems, we cannot produce a court record.

The audio video equipment in the courthouse is failing. The equipment is outdated and when it fails, we are unable to purchase replacement parts from traditional websites or vendors. We have resorted to purchasing items off of e-Bay and repurposing old equipment, when available. These temporary measures are neither reliable nor efficient. In FY 2019, our IT support team was dispatched to West Jordan thirty-five times. (See chart.) In addition to the cost accrued to IT for travel to the facility and to make repairs, there are costs borne by court patrons, including litigants, police officers, lawyers and others because proceedings must be delayed if the audio video system is not functioning

List of instances in which A/V Team responded to audio/visual related issues in the West Jordan courtrooms:

A/V Service Calls in Last Year (FY2019)*	Hours	Trips	Equipment	Acquired From
3rd District - Tracy Walker - Additional Amplification Device Request	1	1	-	-
Salt Lake Valley Youth Detention Center -They want to stop using their older Polycom to WJ Network Config	4	3	-	-
**South Salt Lake Youth Detention Center - -	3	2	-	-
Video Conferencing Freshservice Ticket 2358 West Jordan juvenile	3	2	-	-

West Jordan #32 - Courtroom AMX Panel Dead	4	2	AMX Touch Panel	eBay
West Jordan Courtroom 23 - Unable to call out on the AMX panel	3	2	NI-3000	eBay
West Jordan Courtroom 36 Audio Issue - sound is to low even after they turned it up (to the recording)	3	2	-	-
West Jordan Camera in courtroom WJ32 is making a clicking noise	2	1	New Camera	eBay
West Jordan courtroom WJCrtD37 wireless mic stopped working	2	2	AT Mic Receiver	Amazon
West Jordan Judge Kendall's court and mic's at counsel table	1	1	-	-
WJ 23 Clerk mic in courtroom 23 has really low volume	3	1	-	-
WJ Courtroom 31 AMX Box will not turn on - Choppy Audio overhead and on the Recording	5	2	DSP XAP	Old Silver Courtroom
WJ D36 Courtroom Wireless Mic	2	2	AT Mic Receiver	Old Provo Court
WJ Sequestered Witness System - NI3000	3	2	NI-3000	Locally Used Resource
Re: 3rd District - Hearing Devices	1	-	Sennheiser A200	Amazon
The AMX screen in Judge Renteria's courtroom is dim we can hardly see it {[CASE#290554]}	2	1	-	-
West Jordan - Problem with WJ Media cart monitor #2 **SET 9/18/18**	2	1	Power Cable	AV Stock
West Jordan 27 - AUDIO WJJCRT27 microphone static & randomly turns off/on	2	1	Shure Mic	Repaired In-house
West Jordan Courtroom #33 - microphone dead. {[CASE#288706]}	2	-	Shure Mic	Amazon
West Jordan Crt 21 - Phone Quiet to the Record	3	1	-	-
West Jordan Crt 23 - audio issue	3	1	-	-
WJ 21 - Unable to hear audio in headphones in WJCRTJ21	1	1	-	-
WJ 26 (or 27) - The AMX screen in Judge Renteria's courtroom is dim we can hardly see it {[CASE#290554]}	3	2	AMX Touch Panel	eBay
WJ 36 - No amplification in courtroom WJ36 {[CASE#289484]}	2	1	-	-
WJCRT33 ticking sound from camera above bench	1	1	New Camera	eBay

Tickets able to be resolved by the helpdesk staff

AMX Reset	1
AMX Reset	1
Low Disk Space - FTR PC	0.5
FTR PC Replace	4
FTR PC Replace	4
AMX Reset	1
Mimo not working	1
FTR PC won't boot	1
AMX Reset	1
Clerk PC to FTR PC link not working	1
Audio not working through headphones	1
Low Disk Space - FTR PC	0.5

The following is an explanation for the request of \$210,000 on-going funds to support the 2 staff for the Online Court Assistance Program (OCAP).

OCAP is a program that helps generate approved court forms for litigants, most of whom are self-represented. OCAP interviews a litigant on-line with a series of questions and populates court approved forms with the answers. For self-represented litigants, the OCAP system is often the only available means to file or respond in a court case.

OCAP is used most frequently in divorce and eviction cases. In fiscal year 2018, 5,284 divorce cases were filed using OCAP. This represents 42% of all filings and 65% of all filings submitted by self-represented litigants. It is essential that OCAP is maintained and improved in order to meet growing demand.

The original list of OCAP interviews has grown significantly. OCAP currently has 50 different interviews, each correlated to specific court forms. Both the interview screens and the forms require constant maintenance. OCAP is in demand. We have received requests to add additional case interviews. Additionally the OCAP team is working to build an interface for licensed paralegal practitioners (LPP). The additional staff would help to update and maintain these interviews and the documents generated from these interviews.

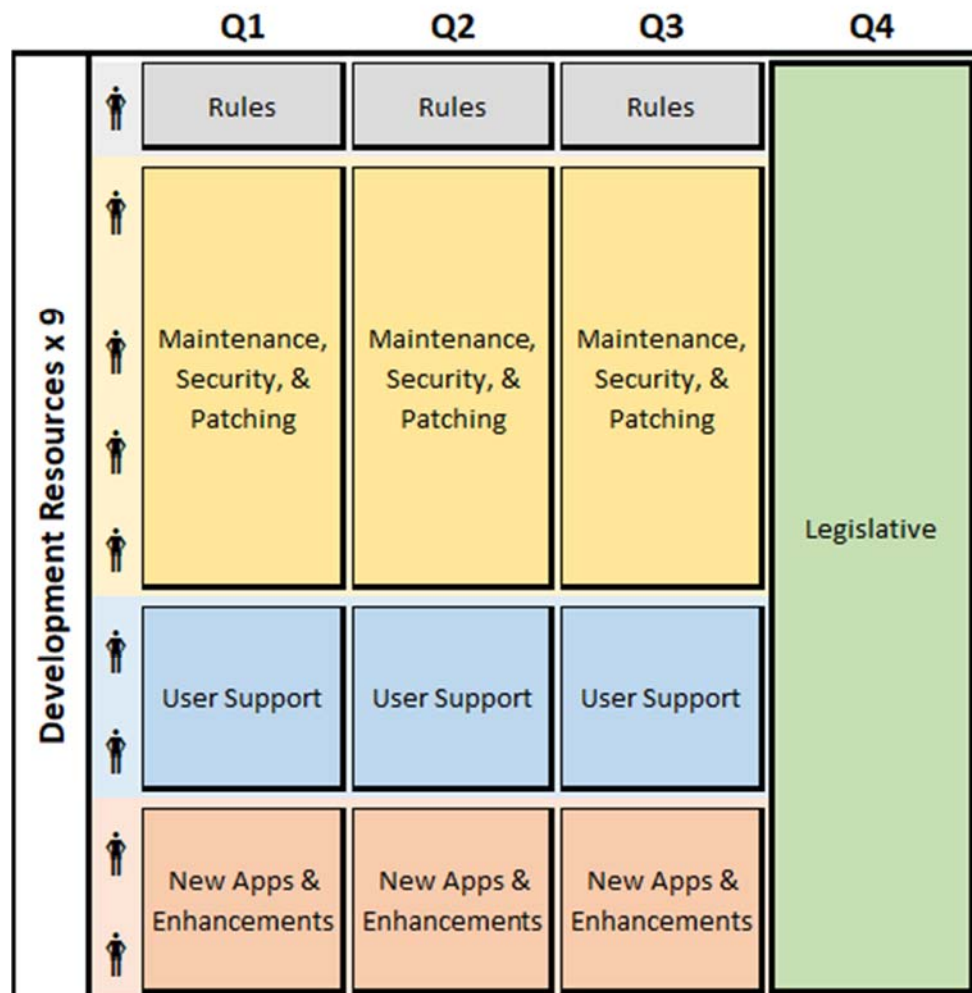
OCAP users are frequently unable to access the system. OCAP was developed by a group outside of IT and has not been subject to standard monitoring, security protocols, and development processes. Because of this, it has resulted in severe stability issues and security concerns. Additional staff will be dedicated to securing, stabilizing and growing OCAP.

DETAILED REQUEST OF NEED:**DETAILED REQUEST for \$650,000 on-going money for 6 staff to support IT infrastructure and development:**

- a) Summarize the current budget for this system or program
The current budget is \$4.3M
- b) What problem would be solved with additional funding? (Show historical data to support and quantify problem statement.)

Our current staffing does not allow the courts to meet changing technology needs and demands. The additional 6 staff will allow us to increase our capacity in critical development, maintenance and security.

The following diagram shows the yearly allocation of development resources to support courts IT systems.



- c) What has already been done to solve this problem with existing resources and what were the results?

We triage work. We are creative and develop temporary solutions where possible. We evaluate efficiencies. Even combined, these efforts are insufficient solutions. Between April and August 2019, the IT department has received an additional 1.6 years' worth of development requests. Based on our current staffing levels, it would take 10-years to meet the demands. We are at maximum capacity at current staffing and we cannot keep up with current needs or improvements.

DETAILED REQUEST FOR \$72,000 on-going money for the upgrade/subscription service to Microsoft Software:

- a) Summarize the current budget for this system or program.
The courts do not have on-going support for purchasing Microsoft Office products. As funding becomes available, the individual court districts independently purchase licenses for each user's machines.
- b) What problem would be solved with additional funding? (Show historical data to support and quantify problem statement.)
The courts have relied on Microsoft Office products because it is the standard for documents in the legal field. To support the public we need to be able to continue to use Microsoft software.
- c) What has already been done to solve this problem with existing resources and what were the results?
The Courts have reduced the number of Microsoft users to those who need Microsoft as a critical function of their job.

DETAILED REQUEST FOR \$450,000 one-time for the upgrade and replacement of failing Audio/Video equipment in the West Jordan courtrooms:

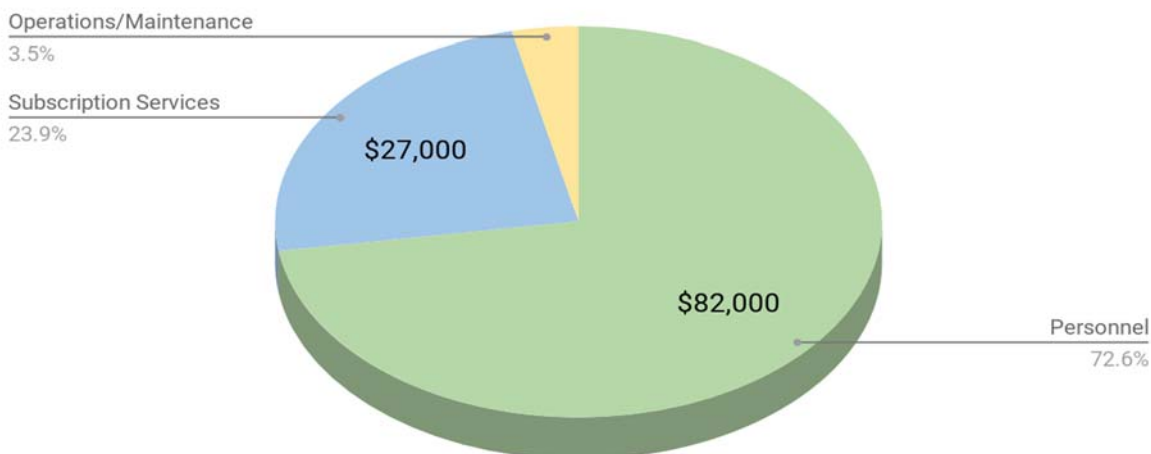
- a) Summarize the current budget for this system or program.
There is no current funding to replace failing equipment in these courtrooms.
- b) What problem would be solved with additional funding? (Show historical data to support and quantify problem statement.)
The courtrooms will be brought up to supportable technology. We will eliminate the risk of shutting down court services if the equipment fails and is unrecoverable.
- c) What has already been done to solve this problem with existing resources and what were the results?
We currently buy replacement parts on eBay which is the only place to find the parts. We also use rebuilt old technology and repurposed equipment out of old courtrooms to keep the equipment functioning.

DETAILED REQUEST FOR \$210,000 for on-going funds for 2 staff to support the Online Court Assistance Program (OCAP):

- a) Summarize the current budget for this system or program.
The current funding for the OCAP system is a restricted account created by the legislature when OCAP was originally formed. The restricted account allows the

courts to spend on OCAP only what is allocated to the account through the document preparation fees from the previous year. Since the funding source is based on filings, the annual amount varies from year to year. In FY2018, the OCAP budget was \$113,000. Personnel costs, including wages and contracts for personnel and consultants, comprised most of the budget using \$82,000. An additional \$27,000 was used to pay for the subscription service HotDocs, which generates the documents based on the OCAP interviews. The remaining \$4,000 was spent on operational costs including maintenance for hardware and software.

OCAP Spending FY2018



- b) What problem would be solved with additional funding? (Show historical data to support and quantify problem statement.)

OCAP users are frequently unable to access the system. OCAP was developed by a group outside of IT and has not been subject to standard monitoring, security protocols, and development processes. Because of this, it has resulted in severe stability issues and security concerns.

With increased resources for IT, OCAP will be supported by standard development processes, security protocols, monitoring and tools, and can update and maintain patron interviews and documents generated from these interviews. The integrity of the OCAP system goes to the very heart of the courts' mission to ensure access to justice for individuals who are self-represented.

- c) What has already been done to solve this problem with existing resources and what were the results?

The courts installed a new OCAP server in September 2018 to address problems with the difficulty patrons were having access the system. This did not resolve the problem.

COST DETAIL:

COST DETAIL FOR \$650,000 on-going for 6 IT staff to support IT infrastructure and development.

- a) How will new funding be utilized?

The funding will be used to bring on additional staff in the application development area. This along with removing some of the less critical requests will allow us to be more effective in delivering new functionality to support the courts and the public.

- b) What are the anticipated results or outcomes of the new funding and how will the results be tracked?

We anticipate a 60% increase in application development hours.

- c) What are potential negative effects if the funding is not received?

The important advancements which the courts have launched in recent years to improve access to justice including e-filing, OCAP, and ODR require an investment in IT resources. Without this investment the critical functions of the courts will be compromised.

COST DETAIL OF request of \$72,000 on-going money for the upgrade/subscription service of Microsoft Software:

- a) How will new funding be utilized?

The funding will be used to ensure the users will be on a current and supported version of Microsoft Office.

- b) What are the anticipated results or outcomes of the new funding and how will the results be tracked?

The courts will have a version of Microsoft that is supported and is not subject to security breaches. The results will be tracked by the number of the license upgrades performed on each device.

- c) What are potential negative effects if the funding is not received?

If the MS Office 2010 software is left on the devices the courts will be at unacceptable risk of cyber-security attacks.

If the software is removed from the devices without a replacement, judges, legal staff, and others will not have access to critical tools to do their jobs.

COST DETAIL FOR the request of \$450,000 one-time for the upgrade and replacement of failing Audio/Video equipment in the West Jordan courtrooms:

- a) How will new funding be utilized?

The funding will be used to replace all equipment to bring it up to a supportable standard.

- b) What are the anticipated results or outcomes of the new funding and how will the results be tracked?

The courtrooms will have functional devices for creating a court record and conducting the business of the courts. The results will be tracked by the number of systems installed and the decrease in the number of complaints to the IT department.

- c) What are potential negative effects if the funding is not received?

The courtroom A/V will not function and can no longer be repaired.

COST DETAIL FOR request of \$210,000 for the on-going funds to support 2 staff for the Online Court Assistance Program (OCAP):

- a) How will new funding be utilized?

The new funding will be used to hire 2 employees to develop and support OCAP.

- b) What are the anticipated results or outcomes of the new funding and how will the results be tracked?

The additional employees will establish criteria to measure all aspects of OCAP performance and security, create and maintain interviews, respond to system inquiries, and support the OCAP program.

- c) What are potential negative effects if the funding is not received?

The system will continue to have stability issues. In the last year, the system has required several reboots a day in an attempt to keep it available. Although those reboots help, the Self Help Center is still receiving feedback from patrons that it is unavailable almost daily. The system has not had a full security review and if not funded it will remain vulnerable to hackers.

- d) How will new funding be utilized?

The funding will be used to for additional staff in the application development area, the OCAP program, and Court Services.

ALTERNATIVES:

ALTERNATIVES TO THE \$650,000 on-going money for 6 staff to support IT infrastructure and development:

Are there Alternative Funding Opportunities for the Business Case?

The technology needs and demands of the Courts have far outpaced our ability to find alternative funding. Today the Courts have turned to technology to effect efficiencies and service. Ongoing investment in technology is both anticipated and required to realize the benefits from this approach.

ALTERNATIVES TO THE request of \$72,000 on-going money for the upgrade/subscription service of Microsoft Software:

Are there Alternative Funding Opportunities for the Business Case?

See above

ALTERNATIVES TO THE request of \$450,000 one-time for the upgrade and replacement of failing Audio/Video equipment in the West Jordan courtrooms:

Are there Alternative Funding Opportunities for the Business Case?

See above

ALTERNATIVES TO THE request of \$210,000 for the on-going funds to support the 2 new resources for the Online Court Assistance Program (OCAP):

Are there Alternative Funding Opportunities for the Business Case?

See above

Tab 8

Agenda



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Hon. Mary T. Noonan
State Court Administrator

Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Judicial Council
FROM: Michael C. Drechsel, Assistant State Court Administrator
DATE: Monday, June 8, 2020
RE: Composition and Size of Judicial Council – Rule Changes

At the Judicial Council's request, the Legislature passed SB0167¹ during the legislative session. This bill went into effect May 12, 2020. It expanded the membership of the Judicial Council, adding a new district court judge member (for a total of six district court judges) and a new juvenile court judge member (for a total of three juvenile court judges). SB0167 therefore expands the total membership of the Council from 14 to 16 members.

There are three rules in the Code of Judicial Administration that need attention to properly effectuate the legislative change and to harmonize the rules for internal consistency:

- 1-201 (Council membership and elections generally);
- 6-102 (district court); and
- 7-101(6) (juvenile court).

Policy and Planning has considered these rule changes and recommends to the Council that the rules be adopted under the expedited rulemaking procedures of Rule 2-205. Expedited rulemaking is advisable because: the changes to Council size are already in Utah Code; some of the rule changes are necessary to implement the statute; the matter has already been given considerable attention by the Council prior to the legislative session, including hearing from the various benches; the issues are squarely internal administrative decisions that should not need public comment; and the Boards of judges were involved in the drafting process.

¹ <https://le.utah.gov/~2020/bills/static/SB0167.html>

RULE 1-201 (GENERAL COUNCIL MEMBERSHIP AND ELECTIONS)

This rule is the general Council membership and election rule. In addition to the membership and election provisions, it includes provisions for the respective Boards to appoint a judge to serve in the event that a member of the Council “is unable to complete a term of office.”² It also creates term limits that include “the remainder of a predecessor’s term.”³ This language does not accommodate the situation that the Council currently faces: the filling of two vacant positions where there is no predecessor who was unable to complete the term of office; and, for district court, structuring the rotation of the six seats. Therefore, it is proposed that the rule be modified to permit the Boards to fill “a vacancy” (which would include the newly created seats) until the seat can be filled at the next annual judicial conference. A modest clarification to the language on term limits would remove the reference to a “predecessor’s term,” and replace it with “any unexpired portion of a term.”

Rules 6-102 and 7-101 (see below) each contain language that is partially duplicative of the processes outlined in Rule 1-201. Consolidating the election and vacancy-filling procedures in a single generally applicable rule avoids any issue of language conflict between rules and is simpler to maintain moving forward.

RULE 6-102 (DISTRICT COURT)

SB0167 provides for an additional Council member from the district court. After a significant amount of review over the course of several months, the Council ultimately approved the following allocation of seats for district court judges:⁴

- First or Fifth District = one seat (representing 10 judges)
- Second District = one seat (representing 14 judges)
- Third District = two seats (representing 31 judges)
- Fourth District = one seat (representing 13 judges)
- Sixth, Seventh, or Eighth District = one seat (representing 8 judges)

Current Council membership poses three issues for implementation of SB0167:

- 1) there are currently two members serving from First and Fifth District: Judge Cannell and Judge Walton, respectively . . . moving forward, these two districts will share a single seat;
- 2) neither Second District nor Sixth/Seventh/Eighth District currently have a representative on the Council. This second issue can be partly resolved by allocating SB0167’s new district court seat to either Second or Sixth/Seventh/Eighth District. The remaining district would need to have one of the two seats presently occupied by both First and Fifth District reallocated; and
- 3) the current election cycle rotation has two seats being filled in 2020 (Third and Fifth), one in 2021 (First), and two in 2020 (Third and Fourth).

² UT R J ADMIN Rule 1-201(3)(A)

³ UT R J ADMIN Rule 1-201(3)(C)

⁴ This occurred at the October 28, 2019 Council meeting.

MEMBER	DISTRICT	TERM END
Judge Pettit	Third	2020
Judge Walton	Fifth	2020
Judge Cannell	First	2021
Judge Shaughnessy	Third	2022
Judge Pullan	Fourth	2022
New Position (SB0167)	Second OR Sixth/Seventh/ Eighth	???

One possible solution to these issues is illustrated in the following table:

YEAR	DISTRICTS	
2020	Third	Sixth/Seventh/Eighth
2021	First/Fifth	Second
2022	Third	Fourth

This arrangement distributes the election of members from urban and rural districts, provides for two seats to be subject to election each year, and creates the least disruption for the majority of current district court Council members.⁵

Filling the Second District Seat

The Board of District Court Judges could immediately⁶ appoint a person to begin serving from the Second District (the new SB0167 district court seat), which appointment would then be subject to election at the 2020 annual judicial conference for a one-year partial term. The same seat would also then be subject to election at the 2021 annual judicial conference to officially get that seat into the right spot on the three-year rotation.

Filling the Sixth/Seventh/Eighth District Seat

In order to fill the Sixth/Seventh/Eighth District seat, the district court bench as a whole will need to coordinate with Judge Cannell and Judge Walton at the annual judicial conference to resolve their membership. Once the conflict of having both Judge Cannell and Judge Walton on the Council is resolved, the vacant seat from either First or Fifth District can be allocated to the Sixth/Seventh/Eighth district at the 2020 annual judicial conference.

Finally, the recommended draft eliminates language that is duplicative of Rule 1-201, and instead provides a reference to Rule 1-201.

⁵ The recommended draft of Rule 6-102 outlines this election rotation for the various districts.

⁶ “Immediately” meaning once these rule changes are adopted by the Council.

RULE 7-101(6) (JUVENILE COURT)

SB0167 provides for an additional Council member from the juvenile court. The Council did not specify how this extra seat would be allocated, but instead deferred to the Board of Juvenile Court Judges to make that determination. After consideration, the Board proposed to Policy and Planning that the three Council seats be:

- Second, Third, or Fourth District = one seat;
- First, Fifth, Sixth, Seventh, or Eighth District = one seat; and
- At-large = one seat (with no two representatives serving from the same district).

This is reflected in the recommended draft of Rule 7-101(6). The recommendation of the Board of Juvenile Court Judges places the membership of the Council on a three-year rotation:

YEAR	DISTRICTS
2020	At-Large
2021	Second, Third, or Fourth District (Judge May)
2022	First, Fifth, Sixth, Seventh, or Eighth District (Judge Evershed)

The recommended draft eliminates language that is duplicative of Rule 1-201, adds a reference to Rule 1-201, and makes other minor conforming changes. The Board of Juvenile Court Judges could appoint a judge to serve in the at-large position until the election at the annual judicial conference.

Rule 1-201. Membership - Election.**Intent:**

To establish the manner of election of Council members as authorized by statute.

To establish the procedure for filling a vacancy on the Council as authorized by statute.

Applicability:

This rule shall apply to all elected members of the Council. This rule shall not apply to the Chief Justice of the Supreme Court.

This rule shall apply to the Boards of Judges and the Board of Commissioners of the Utah State Bar.

As used in this rule, unless the context indicates otherwise, "Board" includes the Boards of Judges and the Board of Commissioners of the Utah State Bar.

Statement of the Rule:

(1) The composition of the Council, the term of office of elected Council members, and the electorate of elected Council members shall be as prescribed by law. The term of office of all elected Council members shall begin with the Council meeting immediately following the annual judicial conference.

(2) Election of ~~Council judicial~~ members ~~of the Council from courts of record~~ shall take place ~~at during~~ the annual judicial conference ~~at the business meeting of each respective court~~. ~~Election of Council members from courts not of record shall take place at the annual spring training conference of the justice court judges.~~ Election of the representative of the Utah State Bar shall take place at a regularly scheduled meeting of the Board of Commissioners.

(3)(A) If a vacancy exists for a judicial member of the Council who represents a trial court ~~is unable to complete a term of office~~, the Board for the court represented by that ~~member~~ seat shall appoint a judge to serve on the Council until the next judicial conference ~~or the next spring training conference as the case may be~~. At such conference, the judges shall elect a member to the Council to serve for the unexpired portion of the original term. If a judicial member of the Council who represents an appellate court is unable to complete a term of office, the members of that court shall appoint a judge to serve on the Council until the expiration of the vacated term.

(3)(B) If the representative of the Utah State Bar is unable to complete a term of office, the Board of Commissioners shall elect a member or ex officio member of the Board of Commissioners to serve for the unexpired portion of the original term.

(3)(C) No person shall serve on the Judicial Council for more than two consecutive three-year terms and-plus the remainder of a predecessor's any unexpired portion of a term.

(4) The Boards shall develop procedures for the nomination and election of Council members and shall certify to the Council the names of the members elected. The Boards shall give due regard to geographic representation, security of the election, timely publication of Council vacancies or expired terms, and ease of administration.

(5) When a judicial member of the Council is unable to attend a Council meeting, that member may designate a judge from the same level of court to attend the Council meeting and observe the proceedings. When the representative of the Utah State Bar is unable to attend a Council meeting, that member may designate a member or ex officio member of the Board of Commissioners to attend the Council meeting and observe the proceedings. The designee shall be provided with a copy of the Council agenda and other meeting materials, and may attend the open and closed sessions of the meeting. The designee may participate in the general discussion of agenda items but may not make motions or vote on Council issues.

(6) Council members or their designated substitutes may be reimbursed for actual and necessary expenses incurred in the execution of their duties as Council members.

(7) Council members shall not be eligible to serve as voting members of a Board of Judges of a trial court or to serve as members of the standing committees of the Council. The representative of the Utah State Bar may vote at meetings of the Board of Commissioners if permitted to vote under rules governing the conduct of the Board of Commissioners.

Effective May/November 1, 20__

Rule 6-102. Election of District Court judges to the Judicial Council.**Intent:**

To establish a procedure for the election of District Court judges to the Judicial Council as provided in this Code.

Applicability:

This rule shall apply to the election process of the District Court judges to the Judicial Council.

Statement of the Rule:

(1) The District Court has ~~five~~six representatives on the Council. These representatives shall serve staggered three-year terms with ~~one or~~ two District Court judges being elected to the Council each year. ~~The election of a District Court judge to the Council shall occur at the annual business meeting of the State District Court Judges.~~

(2) District court positions on the Judicial Council shall be as follows:

(2)(A) one from the ~~First or~~ Second Judicial District;

(2)(B) two from the Third Judicial District;

(2)(C) one from the Fourth Judicial District; ~~and~~

(2)(D) one from the ~~First or Fifth District; and, Sixth, Seventh, or Eighth Judicial District.~~

~~(2)(E) one from the Sixth, Seventh, or Eighth Judicial District.~~

~~(3)~~ The election rotation shall be as follows:

~~(3)(A) year one: Third Judicial District and Sixth, Seventh, or Eighth Judicial District;~~

~~(3)(B) year two: Second Judicial District and First or Fifth Judicial District; and~~

~~(3)(C) year three: Third Judicial District and Fourth Judicial District.~~

~~(3)(4)~~ Timing of elections, and the process for filling vacancies, shall be conducted pursuant to Rule 1-201. Nominations must come from a sitting District Court judge in the district or districts where the vacancy exists. Voting shall be by all District Court judges present at the annual business meeting. Those present at the business meeting will constitute a quorum.

Rule 7-101. Juvenile Court Board, Executive Committee and Council Representatives.**Intent:**

- To establish a Board of Juvenile Court Judges.
- To establish an Executive Committee of the Board.
- To establish the authority and duties of the Board and the Executive Committee.
- To establish the election procedure for Board members, Chair elect of the Board and the Judicial Council representatives.

Applicability:

- This rule shall apply to the Board of Juvenile Court Judges.

Statement of the Rule:

- (1) Juvenile court board.
 - (1)(A) Establishment. There is hereby established a Board of Juvenile Court Judges.
 - (1)(B) Membership. The Board shall be composed of seven juvenile court judges elected at the Annual Judicial Conference Juvenile Court business meeting by sitting Juvenile Court Judges.
 - (1)(C) Representation. Representation from each judicial district shall be as follows:
 - (1)(C)(i) Five Board members from the Second, Third and Fourth Judicial Districts with at least one representative from each District; and
 - (1)(C)(ii) Two Board members from the First, Fifth, Sixth, Seventh or Eighth Districts.
 - (1)(D) Election. The juvenile court judges present at the annual business meeting shall constitute a quorum. Nominations for board positions may be made by sitting Juvenile Court Judges only. Nominations must come from the Judicial District or Districts in which the vacancy exists. All sitting judges shall be entitled to vote for all members of the Board.
 - (1)(E) Terms. The terms of the initial Board members shall be determined by lot, with four members selected to serve three year terms and three members selected to serve two year terms. Successors shall be elected for three year terms.
 - (1)(F) Vacancies. If a vacancy occurs for any reason on the Board between Annual Judicial Conferences, the Board shall elect a replacement for the unexpired term

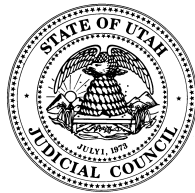
- 31 of the vacancy. In filling the vacancy, the Board shall adhere to and perpetuate
32 the District representation in effect at the time of the vacancy.
- 33 (2) Chair and vice chair.
- 34 (2)(A) Establishment. There shall be a Chair and Vice Chair of the Board.
- 35 (2)(B) Chair's term. The Chair shall serve a one year term beginning immediately after
36 the Annual Judicial Conference in the year following election as Vice Chair.
- 37 (2)(C) Responsibilities. The Chair shall preside over all meetings of the Board and the
38 Juvenile Court Judges Meeting at the Annual Judicial Conference, and perform
39 other duties as set forth in the Juvenile Court Act, this Code and as directed by
40 the Board.
- 41 (2)(D) Vacancy in office of chair. In the event that the Chair resigns or leaves the Board
42 for any reason, the Vice Chair shall become Chair, serving both the unexpired
43 term of the Chair and the full term as Chair.
- 44 (2)(E) Election. The Vice Chair shall be elected by the Board members at the
45 commencement of the first or second year of the Vice Chair's three year term on
46 the Board. The Vice Chair shall serve as Chair in the absence of the Chair or at
47 the request of the Chair.
- 48 (2)(F) Vice chair's term. The Vice Chair shall become Chair of the Board for a one year
49 term immediately following the Annual Judicial Conference next succeeding his
50 election as Vice Chair.
- 51 (2)(G) Vacancy in office of vice chair. In the event that the Vice Chair resigns or leaves
52 the Board for any reason, a new Vice Chair shall be elected by the Board from
53 among its members to serve the unexpired term of the Vice Chair and to succeed
54 as Chair as otherwise provided in this rule.
- 55 (3) Meetings of the board.
- 56 (3)(A) The Board shall meet a minimum of once every two months to transact any and
57 all business that is within its jurisdiction. This meeting shall be presided over by
58 the Chair of the Board or the Vice Chair in the absence of the Chair or at the
59 request of the Chair.
- 60 (3)(B) The Board shall rule by majority vote. All Board members have the right to vote.
61 Four members of the Board constitute a quorum.
- 62 (3)(C) The Board meetings shall be conducted in accordance with Roberts' Rules of
63 Order and this Code.

- (3)(D) When a Board member is unable to attend a Board meeting, that member may designate a juvenile court judge to attend the meeting on behalf of the absent member. The substitute and the absent member must be from the same district group identified by paragraph (1)(C) above. The substitute judge shall be provided with a copy of the agenda and other meeting materials, may attend the open and closed sessions of the meeting, and may participate in the discussion of agenda items. The substitute judge may make motions and vote.
- (4) Executive committee.
- (4)(A) Membership. There is hereby established an Executive Committee of the Board. The committee shall be comprised of three members: the Chair of the Board, the Vice Chair and one member of the Board selected by the Board members to serve at large.
- (4)(B) Duties and responsibilities of the executive committee. The duties and responsibilities of the Executive Committee are as follows:
- (4)(B)(i) Assist the Board in establishing a planning capability in assessing and projecting needs, resources, and policies.
- (4)(B)(ii) Act as liaison with other agencies and parties who seek contact with the Board.
- (4)(B)(iii) Screen and reduce the number of matters presented to the full Board for its consideration to ensure that all matters referred to it require full Board consideration.
- (4)(B)(iv) Review initiatives, proposals and questions that will be submitted to the full Board to ensure that information is complete and in proper form to facilitate expeditious handling by the Board.
- (4)(B)(v) Assist the Administrative Office in staff work as assigned by the Board where judicial guidance may be required in carrying out Board policy.
- (4)(B)(vi) Consult with the Administrative Office on matters requiring immediate attention or on matters needing judicial consideration but not requiring full Board consideration.
- (4)(B)(vii) Accomplish all other assignments as may be directed by the Board.
- (5) Procedures of the board.
- (5)(A) The Chair of the Board shall serve as Chair of the Executive Committee. When the Chair of the Board is not available, the Chair elect shall act in the Chair's behalf.

- (5)(B) All action taken by the Executive Committee shall be reported to the full Board in the form of minutes and reports and may be subject to ratification by the full Board.
- (5)(C) A time and date certain shall be established for Executive Committee meetings. The juvenile court administrator or designee shall serve as secretariat to the Committee.
- (6) Judicial council representatives.
- (6)(A) The Juvenile Court shall have ~~two~~three representatives on the Council, with no two representatives serving from the same judicial district:-
- (6)(A)(i) one from the Second, Third, or Fourth Judicial District;
- (6)(A)(ii) one from the First, Fifth, Sixth, Seventh, or Eighth Judicial District; and
- (6)(A)(iii) one serving at-large.
- (6)(B) ~~The Juvenile Court judges shall elect representatives to the Council at the Annual Judicial Conference Juvenile Court business meeting in September in those years when the term of office for a Council representative expires. Timing of elections, and the process for filling vacancies, shall be conducted pursuant to Rule 1-201. Nominations can be made by any sitting judge for any Council representative. Voting shall be by all Juvenile Court judges present at the annual business meeting. Those present at the business meeting will constitute a quorum.~~
- (6)(C) Council representatives shall serve staggered three-year terms, with one Juvenile Court judge elected to the Council each year beginning October 1 of the year in which elected.
- ~~(6)(D) A vacancy in the Council position resulting from resignation, retirement or other reasons shall be filled by election at the next Board of Judges meeting. The term shall begin immediately and terminate at the next annual Judicial Conference when the judges elect a new representative for the unexpired term.~~

Effective May/November 1, 20__

Tab 9



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

June 15, 2020

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Judicial Council

FROM: Clayson Quigley, Court Services Director

RE: Race and Ethnicity Data Collected by Utah Courts

As a whole, race and ethnicity data is not recorded in our case management systems at a regular or reliable rate. Some courts and court levels record this information while others do not. Because of the unreliability of this data and the sensitivity around these elements, Court Services often declines to prepare any reports that include race and ethnicity data points.

Juvenile Courts

The Juvenile Court is by far the most reliable and consistent collector of race and ethnicity data. There are several federal grants and state programs which require regular reporting of these data elements. Since 2014, the **Juvenile Court has on average collected race data for about 98% of petitions filed with the court.** Likewise, they have collected ethnicity data on 96% of petitions.

Justice Courts

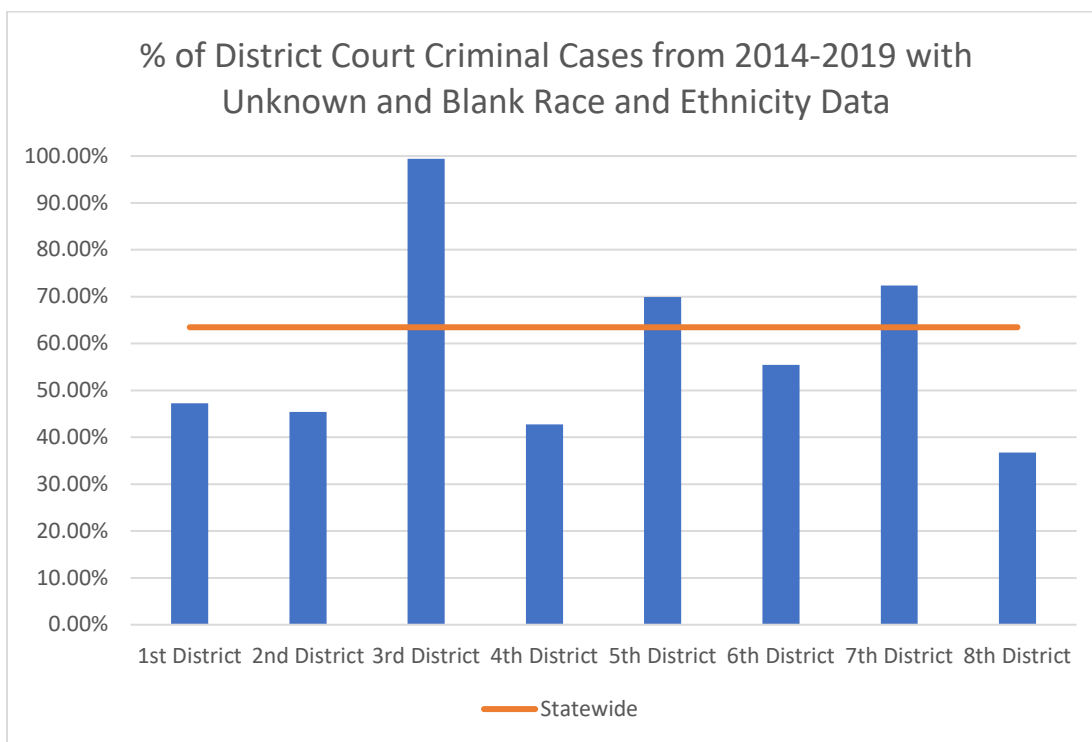
Justice courts as a whole collect race and ethnicity data on 76% of criminal cases. On the 24% of cases where the information is unknown or blank, the justice courts are more likely to report "unknown." If self-reported, unknown may indicate that the individual did not want to report their race or ethnicity. In cases where the race or ethnicity is observed, unknown would indicate that the observer was unable to identify the individual's race or ethnicity.

District Courts

The District Court does not collect race and ethnicity data in the case management system in a consistent or reliable manner. **Over the last 6 years, nearly 64% of criminal cases and 99% of civil cases had no race or ethnicity data** or the information was unknown. Unlike the Justice Court, District Court is more likely to leave the race and ethnicity blank than indicate that it is unknown.

The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.

There are districts that record race and ethnicity data more consistently than others. The Eighth District collects this information at a more consistent rate than any other district. Since 2014, on average the Eighth District collected race and ethnicity data on 77% of cases, however close to 10% of cases recorded “unknown”. However, the Third District only has race and ethnicity data for **less than 1% of cases** filed between 2014 and 2019. The overall statewide number is greatly affected by this due to the volume of cases in the Third District.



Best Practices for Data Collection and Reporting

Data Collection –

In demographics, race and ethnicity are usually defined by one’s **self-identification with one or more social groups**. Demographers rely on self-identification in order to reduce bias in data collection efforts.

The Juvenile Court practices self-identification for collecting race and ethnicity data, the information may be entered into CARE by court staff or an attorney but is usually done by asking the individual to self-identify their race and ethnicity. In cases where the information is not provided by the parties, court staff may ask for the information. If the individual does not wish to disclose their race or ethnicity it is recorded as unknown/cannot determine.

In District and Justice Court there is no requirement or policy to guide the collection of the data. Practice from court to court may vary. The information may be entered from information provided in a filing or pulled from a report from law enforcement. The data may even be collected at a hearing. Because there is no policy or training regarding self-identification the data that is available will be subject to criticism in any report including such information.

Reporting –

There are many different ways to report race and ethnicity data. Recently, the National Center for State Courts (NCSC) released guidelines and information regarding standards for data reporting. These standards, referred to as the National Open Court Data Standards (NODS), were developed by NCSC in conjunction with the Conference of State Court Administrators (COSCA) to provide guidance to states for consistent reporting methods for many data elements concerning court cases. In these standards **race data is reflected by 6 categories**; (1) American Indian or Alaska Native, (2) Asian, (3) Black or African American, (4) Native Hawaiian or Other Pacific Islander, (5) White, and (6) Other. With regards to ethnicity, NODS includes 2 categories; (1) Hispanic and (2) Non-Hispanic. **These categories are almost identical to those used by the U.S. Census.** Ethnicity is reported as a subset of race. NODS suggest that these are the minimum categories that should be reported. Jurisdictions may gather more categories for their purposes, however for national reporting, NODS offer guidance on mapping additional race and ethnicity categories to these main categories. It is not uncommon for areas with larger or more diverse populations to have more ethnicity categories.

The Juvenile Court currently gathers race and ethnicity data in the same manner outlined by NODS. The Justice and District Courts, however, use CORIS which has 11 race categories and no ethnicity categories. The race categories in CORIS are: (1) Alaskan Native, (2) American Indian, (3) Asian, (4) Black, (5) Hispanic, (6) Latino, (7) Middle Eastern, (8) Pacific Islander, (9) White, (10) Unknown, and (11) Other.

CORIS and CARE only allow one category to be selected per individual. It is worth noting that in other demographic studies, such as the U.S. Census, respondents are able to select multiple race categories.

Summary

The **Utah Courts would not be able to engage in a statewide (court level wide) study involving race and ethnicity data.** We may be able to do limited research by only looking at information from select sites and/or court levels. However, these limitations would make it impossible to extrapolate meaningful analysis to a statewide level.

If the Council wishes to engage in such studies in the future, there should be **further discussion about improvements to our data systems** to record the information in a manner that is consistent with national practice and standards. Additionally, the Council should create **policy concerning the collection methods, safeguarding, and use of race and ethnicity data.**



National Consortium on Racial & Ethnic Fairness in the Courts

SECRETARIAT: NATIONAL CENTER FOR STATE COURTS, 300 NEWPORT AVENUE, WILLIAMSBURG, VA 23185
WWW.NATIONAL-CONSORTIUM.ORG

PRESIDENT/MODERATOR

Hon. Susan F. Maven
New Jersey Superior Court
1201 Bacharach Boulevard
Atlantic City, NJ 08401
(609) 402-0100 Ext.47670,
susan.maven@njcourts.gov

SECRETARY/TREASURER

H. Clifton Grandy, Esq.
Senior Court Manager, District of Columbia Courts

BOARD OF DIRECTORS

Hon. Scott M. Bernstein
Eleventh Judicial Circuit - Florida
Hon. Anna Blackburne-Rigsby
Chief Judge, District of Columbia Court of Appeals
Hon. Richard Blake
Chief Tribal Judge – Hoopa Valley Tribe - California

Hon. Tanya M. Bransford
Fourth Judicial District – Minnesota

Erica S. Chung
Equity, Diversity and Inclusion Mgr. - Washington

Gregory P. Conyers
Director of Diversity, State Bar of Michigan

Hon. Cynthia D. Davis, (Ret.)
Former Ex. Dir., Mississippi Judicial College

Hon. Kenneth V. Desmond, Jr.
Justice, Massachusetts Appeals Court

Hon. Donovan J. Foughty
Northeast Judicial District – North Dakota

Hon. Veronica Allicea-Galván
King County Superior Court - Washington

Hon. Deadra L. Jefferson
Circuit Court of South Carolina

Hon. Verna G. Leath
New Jersey Superior Court

Lisette McCormick, Esq.
Pennsylvania Interbranch Commission for Gender,
Racial and Ethnic Fairness

Prof. Aura Newlin
Northwest College - Wyoming

Hon. Richard Rivera
Albany Family Court – New York

Kimberley Taylor Riley, Esq.
Missouri Office of State Courts Administrator

James E. Williams, Jr., Esq.
Chair, NC Commission on Racial and Ethnic
Disparities

EMERITUS

Hon. Robert Benham – Georgia (Ret.)
Hon. Edward C. Clifton – Rhode Island (Ret.)
Karl A. Doss, Esq. - Virginia
Hon. Frederick P. Horn – California (Ret.)
Hon. Clarence J. Jones – Connecticut (Ret.)
L. Dew Kaneshiro, Esq. – Hawaii
Hon. Marilyn Kelly – Michigan (Ret.)
Hon. yvonne lewis - New York (Ret.)
Yolande P. Marlow, Ph.D. – New Jersey
Hon. Veronica Simmons McBeth – California
Hon. Ronald T.Y. Moon - Hawaii (Ret.)
Elizabeth Neeley, Ph.D. - Nebraska
Hon. Eduardo Padró - New York (Ret.)
Hon. Patricio M. Serna - New Mexico (Ret.)
Hon. Max N. Tobias, Jr. – Louisiana (Ret.)

ADVISORY BOARD

Aime Alonzo-Serrano – New Jersey
Hon. Margaret Chutich – Minnesota
Hon. Shauna Graves-Robertson – Utah
Hon. Emanuella Groves – Ohio
Shirley Ann Higuchi, Esq. – Washington, DC
Caryn L. Hines, Esq. – Maryland
Tonya K. Kohn, Esq. – South Carolina
Hon. Melissa Long – Rhode Island

June 5, 2020

The Directors and Advisors of the National Consortium on Racial and Ethnic Fairness in the Courts (“National Consortium”) mourn the recent death of George Floyd in Minneapolis, Minnesota. Our condolences extend to the Floyd family as well as to other families who have lost relatives at the hands of law enforcement officers. The continuing lawful protests around the country represent the public’s frustration with the cycle of excessive force used by law enforcement officers against Black people and other people of color and the perceived inadequacy of the justice system to impose sanctions, convictions and civil remedies severe enough to deter this conduct. The National Consortium respects the rights of people to assemble to express their disapproval but denounces the use of violence, acts of vandalism and destruction of property that threatens the community and the rule of law.

The goal of the National Consortium is for every state, tribal nation and territory to maintain a judicial system that is accessible, free from bias, and fair for all, without regard to race, ethnicity, gender, sexual orientation or other demographic identifiers. To accomplish this goal, the National Consortium encourages the highest court of each state to establish committees or related entities to assist its courts in ensuring that all court users-including defendants, victims, civil litigants, witnesses and the public– are treated equitably and with dignity and respect. These committees, who comprise the National Consortium membership, exist in approximately half of the states. We encourage the committees to open a dialogue to address the concerns of their residents and court system stakeholders. The National Consortium stands ready to support and assist courts in the United States, its territories and in tribal nations to address concerns with public trust and confidence within their communities.

Hon. Susan F. Maven, Board President
H. Clifton Grandy, Esq., Secretary/Treasurer

Mission Statement

The National Consortium is committed to encouraging the highest courts of each state to create commissions to examine the treatment accorded minorities in their courts; sharing the collective knowledge of task forces and commissions with courts, law enforcement, and the community; and providing technical assistance and expertise to commissions, task forces, and other interested organizations and individuals on the subject of racial and ethnic fairness.

Tab 10



UTAH STATE COURTS

Judicial Council History Project Plan **(June 15, 2020 Update)**

Benchmark Tasks	Actions	Est. Time to Accomplish	Est. Cost/Resources
Establish project coordinator and advisor	<p>Consult with the Judicial Council about creating a project coordinator, such as a Judicial Council History Steering Committee or a contracted person, to better define the scope of the project, identify resources needed, and help guide the project. Identify staff for the committee.</p> <p>Consult with the Education Dept. regarding how to approach and manage the project.</p> <p>Scope and purpose of the history should be better defined. Is it to educate new council members? Is it outreach to the public? Is it an origin story or a complete history?</p> <p>Outreach for grant and resource opportunities NCSC, SJI, U of U and BYU</p>	<p>Completed</p> <p>Creation of Council Subcommittee: Judge Pullan, Chair, Judge Sessions, Cathy Dupont and Geoff Fattah</p> <p>Due to COVID delays: Fall 2020</p> <p>Subcommittee recommends focus be on new Judicial Council members</p> <p>Start fall 2020 and ongoing as project advances</p>	<p>A comprehensive history may require substantial resources</p> <p>Committee staff and others with connections to organizations and institutions</p>



UTAH STATE COURTS

Benchmark Tasks	Actions	Est. Time to Accomplish	Est. Cost/Resources
Creating Searchable Database of Primary Source Documents	Identify estimated 61,200 pages of Judicial Council documents that need to be indexed, scanned, and converted to a keyword searchable database. If the scope of the project is to include all history and not just the inception of the Council, this task will be very large.	Completed May 2020 Review for Executive Session minutes completed and those minutes removed.	Law Library Staff
	Meet with law library to plan and formulate timeline, and budget and resources needed to complete task	Completed	Geoffrey Fattah/Jessica Van Buren
	Identify records in State archives and the legislative branch to supplement Court records	TBD Search of State Archives may need to wait until late fall, social distancing and budget considerations.	People and money to search the database (in person?) scan and index
	Consult with IT and Court Services for discussion of resources needed to create a searchable database	Completed for court documents. (search engine limited by current website capabilities)	Heidi Anderson, Clayson Quigley, Jessica Van Buren and Steering Committee
	Prepare budget requests for indexing and the database. Meet with Finance to identify carryforward funding or new request from 2022 budget	Budget Cuts for new website with enhanced indexing and searching on hold	Budget and FTEs



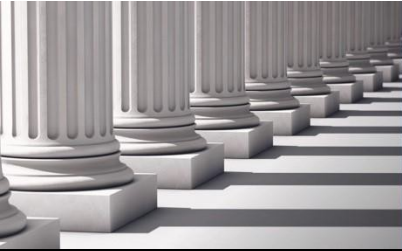
UTAH STATE COURTS

Benchmark Tasks	Actions	Est. Time to Accomplish	Est. Cost/Resources
<p>Conduct on-camera interviews of key individuals:</p> <ul style="list-style-type: none"> • Chief Justice Michael Zimmerman • Chief Justice Christine Durham • Judge Gregory Orme, Utah Court of Appeals • Tim Shea, former Appellate Courts Administrator • Dan Becker, State Court Administrator • Gordon Hall • Isaiah Zimmerman, consultant • Roger Tew, Constitutional Revision Commission, Legislative Research • Others 	<p>Justice Howe not available.</p> <p>Due to budget issues, videographer is delayed.</p> <p>Completed: Letters sent to each key individual requesting that they answer a few questions in writing. The answers will be used to develop videographer questions.</p> <p>Once the videographer is selected, contact each person to schedule interviews and forward questions to interviewee. Determine need to interview additional people.</p> <p>Edit videos</p>	<p>Receive answers to letters by end of July 2020</p> <p>TBD</p> <p>Unknown at this time</p>	<p>Identifying Subjects: Geoffrey Fattah/Tim Shea</p> <p>Formulating Questions: Geoffrey Fattah with input from the Council, Tim Shea, and Steering Committee</p> <p>Scheduling and conducting interviews: Geoffrey Fattah</p> <p>Videographer for filming - RFP requires selection committee and Dustin Treanor and legal for contract. cost unknown (est at least \$10,000)</p>



UTAH STATE COURTS

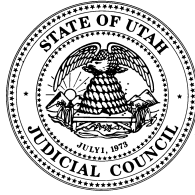
Benchmark Tasks	Actions	Est. Time to Accomplish	Est. Cost/Resources
Create a book of the history of the Council	<p>Work group or project coordinator needs to decide the scope of the history: inception story or history of council from inception to current and the audience for the book. Is the audience the public or Judicial Council?</p> <p>The Steering Committee needs to determine when to look for an author. Do we wait until the materials are indexed and in a searchable database?</p> <p>Prepare a request for information to help the Council determine what type of author we want (historian, law professor, grad student) and to get an idea of the costs for creating a history book.</p> <p>Determine timing of Budget request for the cost of hiring an author. Enter into the budget process to obtain funding.</p>	<p>Fall 2021 or 2022 (depending on budget recovery)</p> <p>TBD</p> <p>TBD</p> <p>TBD</p>	<p>Steering committee or project coordinator.</p> <p>Seek opinions from the Education Department, Law Library and Steering Committee.</p> <p>Project lead or steering committee to prepare RFI, committee to review RFI and make recommendations to the Council</p> <p>Project manager and Steering Committee, available funding</p>



UTAH STATE COURTS

	Once funding is obtained, start the RFP process for selecting the author.	TBD and subject to budget	The project coordinator, an RFP committee and legal
	Writing of book, editing of book	TBD	Project coordinator and Steering Committee to supervise the author and help with content and edits
	Publishing of book - Separate RFP process needed to publish	TBD	Project coordinator, RFP Committee and legal

###



June 15, 2020

TBD

[address]

Re: Judicial Council History Project

Dear TBD,

It has been over thirty years since Utah adopted Article VIII of the Utah Constitution and the Judicial Council form of governance. This was a landmark event in the history of the State of Utah. Preserving that history is important to future generations who will lead the Utah Judiciary and the Judicial Council.

It has been over twenty years since the Judicial Council published the history of Article VIII and the council form of government. The Judicial Council has authorized a project to put our historical documents in digital format, to update prior historical work, and to prepare a Council history that is more accessible. I have been appointed to chair this effort with the able assistance of Cathy Dupont, Deputy State Court Administrator.

As a first step, we want to pose some general questions to people like you who were instrumental in the adoption of Article VIII and the early years of its implementation. Later, we hope to retain a videographer and conduct a more thorough, in-person interview.

Could you take some time to answer the following general questions?

1. What concerns and policies drove the drafting and adoption of Article VIII and the Judicial Council form of governance?
2. Some were opposed to a unified court system and a judicial council form of governance. What were the concerns of opponents and how did you and others work to gain support?
3. What important things do you remember about the early years of implementation and the Judicial Council's work? Were there any important lessons learned about how the Council would best function?
4. Who else would you recommend that we speak to about these questions?

The Judicial Council deeply appreciates the time and effort it will take for you to help us. Thank you for your generosity. You may submit your answers in either of the following ways:

**The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.**

E-mail: jeniw@utcourts.gov

Mail: Judicial Council
c/o Jeni Wood
Administrative Office of the Courts
P.O. Box 140241
Salt Lake City, Utah 84114-0241

Please contact me or Cathy Dupont if you have any questions or any suggestions about the project.

Sincerely,

Judge Derek P. Pullan
Fourth District Court
dpullan@utcourts.gov

Cathy Dupont
Deputy State Court Administrator
cathyd@utcourts.gov

Tab 11

Mary Campbell McQueen
President

Dan Hall
Vice President
Court Consulting Services Division
Denver Office

Agenda

January 30th, 2020

Jonathan Mattiello
Executive Director
State Justice Institute
11951 Freedom Drive, Suite 1020
Reston, Virginia 20190

Dear Jonathan:

The National Center for State Courts is pleased to submit this application on behalf of the Utah Courts to conduct a three- to six-month project to review Utah's ODR tool and explore options for documenting and licensing it to make it available at no cost to other courts. This project falls within the State Justice Institute's Priority Investment Areas – Self-Represented Litigation. The proposed budget is \$185,000.

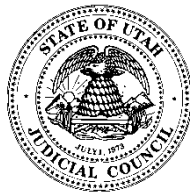
We are grateful to the State Justice Institute for reviewing the grant proposal and are happy to provide any additional information if needed. If you have any questions, please contact me at 303.293.3063 or via email, lkaversma@ncsc.org.

Sincerely,



Laura Klaversma

Enclosures



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Hon. Mary T. Noonan
Interim State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

UTAH STATE COURT

ONLINE DISPUTE RESOLUTION (ODR) ASSESSMENT

STATE JUSTICE INSTITUTE

STRATEGIC INITIATIVE GRANT

JANUARY 2020

SUBMITTED BY

**UTAH STATE COURTS
ADMINISTRATIVE OFFICE OF THE COURTS
450 SOUTH STATE STREET
SALT LAKE CITY, UT 84114-0210**

TABLE OF CONTENTS

Statement of the Problem.....	1
Who is involved	1
Grant Structure.....	2
Utah ODR	2
Work to be Performed.....	2
Budget	6

Statement of the Problem

Online Dispute Resolution (ODR) is helping US courts of all sizes make justice processes more accessible, reducing the timeline for case resolution, decreasing some forms of implicit bias, and saving clerk and judicial time on some case types, freeing up judicial resources to focus on more complex matters. “Off-the-shelf” ODR products either have up-front costs or per-case ongoing fees that some courts cannot afford or that would ultimately be passed along to the user, creating a greater burden on parties. Acquiring and adapting code developed by another court can make it possible for some courts to implement an ODR solution with features and capabilities beyond their budget.

Federal source code policy encourages agencies to achieve “greater efficiency, transparency, and innovation through reusable and open source software.”¹ This policy, applicable to federal agencies, lays out a vision that can benefit state and local agencies, as well. In the spirit of efficiency and collaboration, Utah Courts would like to make an in-house developed ODR product available for other courts to use and modify. Before doing so, the code should be reviewed for quality and issues of governance and licensing must be addressed.

Who is involved

This work would be undertaken by partnership between the National Center for State Courts (NCSC) and the Utah Courts. NCSC has a demonstrated history of technical expertise in the courts and is a trusted advisor to court systems throughout the US including Utah. Utah Courts continue to demonstrate visionary leadership in applying technology to court processes and are a nationally recognized leader in the court community.

Utah Administrative Office of the Courts

Justice Deno Himonas, Utah Supreme Court
 Judge Brendan McCullagh, West Valley Justice Court
 Brody Arishita, IT Department
 Heidi Anderson, IT Department
 Kimberlee Zimmerman, West Valley Justice Court

National Center for State Courts

Barb Holmes and Paul Embley

¹ Federal Source Code Policy, Memorandum for the Heads of Departments and Agencies, M-16-21.
<https://sourcecode.cio.gov/>

Grant Structure

SJI will make the grant directly to Utah Courts. Utah will subcontract with NCSC as described below. Utah will seek matching funds grant from Pew Foundation to assist with the total cost outlined below.

Utah ODR

The Utah State Courts (Utah) have developed an Online Dispute Resolution (ODR) tool for small claims cases in Utah. Unlike other ODR tools, this tool was developed in-house by IT staff at the Utah courts. This approach allows Utah to scale their implementation to other jurisdictions and case types without additional development costs. Utah can also modify and improve the tool at their discretion and not be limited by vendor development timelines and priorities.

The Utah ODR tool is notably user-friendly and designed particularly to support the needs of self-representative litigants. It is currently undergoing user experience testing from the University of Arizona supported by The Pew Charitable Trusts which will only further improve the tool. Starting in late 2020, Utah would like to be able to share their ODR tool with other states. Before they do so, there are some key steps to be completed to make the tool ready for sharing. These key steps are highlighted below.

Work to be Performed

Before the Utah ODR tool can be shared with other jurisdictions, these key tasks must be addressed:

- Code review
- Documentation enhancement
- Intellectual property and governance
- RFI development to identify other states with interest in implementing Utah's code

Code Review

There are two types of code review to be performed:

- Assessment of the code for ease of adoption by other jurisdictions
- Cyber security assessment

Adoption Assessment

To ensure the Utah ODR tool is ready for adoption by another court system, the 300,000 lines of code that make up the tool should be reviewed by software developers with an understanding of courts. This review would analyze the ease of implementation for another jurisdiction and would provide recommendations to the Utah courts about possible changes that should be made to the

code to facilitate implementation. Utah courts could then choose which recommendations to implement.

Who - This work would be undertaken by partnership between the National Center for State Courts (NCSC) and the Utah Courts. NCSC has a demonstrated history of technical expertise in the courts and is a trusted advisor to court systems throughout the US including Utah.

Time - This work could take up to approximately three months to complete with two months for NCSC to analyze and create recommendations and one month for Utah to implement.

Cost -This work should be priced in hours from NCSC and Utah. estimated for no more than \$25,000.

Deliverables

1. NCSC technical staff will review the Utah code and assess ease of adoption for future jurisdictions
2. After completing review, NCSC will submit a draft report to Utah; report will include recommendations for improvements to improve possible adoption by future states.
3. NCSC staff will be available to advise Utah on implementing recommendations in draft report
4. Utah will choose which recommendations from NCSC to implement and will use staff to implement.

Security Assessment

The code should also be assessed by an organization with specific cybersecurity expertise. This security assessment would include a line-by-line code review as well as data privacy assessments and would include recommendations for remediating any findings from the review. Following the review, Utah courts could choose which recommendations to implement. This review is critical to demonstrate to the people of Utah and possible interested jurisdictions that they are working with a tool that is handling their personal data to the best industry standards.

Who – Utah will manage an RFP process to select a cybersecurity vendor. Once a vendor is selected and the code reviewed, Utah will implement recommendations for improvements from vendor.

Time - This work would take approximately three months to complete after contract signing with two months for analysis and recommendations from the security firm and one month for Utah to implement.

Cost - This work would include a contract to a security assessment firm (approximately \$50,000-\$60,000) and Utah staff time to implement recommendations based on hours.

Deliverables

1. Utah will contract with a vendor to provide a cyber security assessment and privacy review for the ODR tool.
 - a. Assessment will include but is not limited to code review (approximately 300,000 lines), up-to-date patch review, password and encryption review, and other assessments deemed necessary by the vendor and Utah.
 - b. Vendor will provide a report of recommendations for Utah to implement ordered by severity of findings.
2. Utah will use staff time to implement recommendations from the assessment

Documentation Enhancements

Documentation of the Utah ODR tool is critical to facilitate on-boarding any other states. Not only do the technical pieces of the project need to be documented for developers but guides for users and court staff must also be developed. All documentation will require a plain-language technical writing expert who can distill complex procedural steps and technical information into easy-to-understand, actionable information. Documentation is not just limited to written documentation but may include flow charts and videos especially for user facing documentation.

Who - This work would be performed by Utah in partnership with NCSC and possibly an outside technical writer. Utah would be responsible for managing the documentation process and revising any documents received from the technical writer and/or NCSC.

Time - This work could take up to six months to complete. Guides to be written include technical guides for developers and future implementers, court staff guides, and possibly additional user guides which may come in the form of more videos or other media if necessary.

Cost - This work should be priced in hours by Utah and NCSC. Estimated for not more than \$40,000

Deliverables

1. Utah and NCSC will work together to highlight possible areas of enhancement for documentation
2. Utah works with partners to assign work
3. Utah contracts with NCSC for specific pieces of documentation
4. Utah contracts with outside vendors if needed

Intellectual Property

To protect the investment in IP made by the Utah courts, outside counsel with IP expertise should be retained to assist the court in developing appropriate licensing and governance structures to protect the IP of the ODR tool. Utah does not want to simply open source this tool as it would allow vendors to take their code base and profit from their work. Instead, Utah would like to establish a license that allows for governments to be able to implement the code base while controlling use by for-profits entities.

To determine the scope of the governance, Utah will convene a one-day meeting with relevant stakeholders from Utah and NCSC as well as possible outside organizations to assist Utah in determining what governance and licensing structure should be implemented. Attorneys who will write the license and governance should attend this meeting as well.

Who - This work should be performed by IP lawyers versed in government technology. The lawyers should work with Utah to ensure the goals of the court are met by the licensing and governance that will be setup. Lessons should also be drawn from similar government licensing structures like those utilized by 18F, GSA, and others.

Time - This work could take three to six months to complete and should be managed by the Utah courts to ensure their needs are fulfilled.

Cost - Priced by contract to law firm and hours for Utah staff. Estimated for not more than \$50,000. Travel budget for non-Utah based people/organizations will be covered in grant agreement.

Deliverables

1. Utah will host a convening in Salt Lake City in partnership with NCSC.
2. Utah will use this convening to determine the tool's license and governance structure.
3. Attorneys contracted to Utah will deliver a license and a governance structure meeting Utah's goals.

RFI Development

While the Utah ODR tool is being enhanced prior to deployment in future states, a request for information should go out to all courts interested in adopting the Utah ODR tool. This RFI should be designed to assess the technical capacity of the requesting jurisdictions to make sure that not only are they interested in adopting the tool, but also that they have the technical capabilities to adopt and implement it successfully.

Who - This work should be performed collaboratively between Utah and NCSC. NCSC will facilitate distribution of the RFI to courts they think would be interested in applying. Utah and NCSC could then review RFI responses and identify states likely to adopt the tool going forward. This would help prioritize the technical assistance that could be provided by the partner organizations to the new jurisdiction.

Time - This work should take approximately three months to complete with one month to create the RFI, one month to release the RFI, and one month to review and prioritize responses to the RFI.

Cost – Estimated for not more than \$10,000.

Deliverables

Utah and NCSC will work together to develop an RFI.

NCSC will release RFI to networks of courts of their choosing who may be a good fit to respond to the RFI.

Utah and NCSC will review responses to RFI to assist in determining organizations who might be ready to adopt Utah ODR and who may or may not require additional technical assistance from NCSC.

Budget

The total cost of the project will be a firm fixed price of \$185,000. The Utah State Court is requesting up to \$185,000 in SJI funds. A line item budget (Form C) and budget narrative are attached, as well as a letter from the NCSC affirming its participation.

We are grateful to the State Justice Institute for reviewing this Grant Proposal and are happy to provide any additional information if needed. If you have any questions about our proposal, please contact Heidi Anderson, Chief Information Officer, Utah State Courts, at 801-578-3872.

Thank you for the opportunity to request this grant.

Sincerely,



Heidi Anderson
Chief Information Officer, Utah State Courts

Form A 12/11

STATE JUSTICE INSTITUTE

Certificate of State ApprovalThe Utah Administrative Office of the Courts

Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled ONLINE DISPUTE RESOLUTION (ODR) ASSESSMENTprepared by Heidi Anderson

Name of Applicant

approves its submission to the State Justice Institute, and

☒

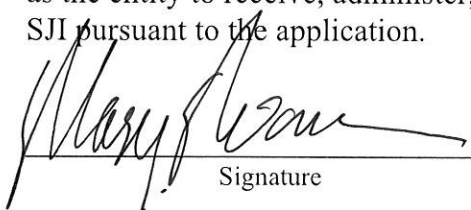
agrees to receive and administer and be accountable for all funds awarded by SJI pursuant to the application;

☐herby requests consideration of a reduction in cash match as requested by the applicant (**NOTE: only applicable to Project Grant applications**);☐

designates _____

Name of Trial or Appellate Court or Agency

as the entity to receive, administer, and be accountable for all funds awarded by SJI pursuant to the application.



Signature
January 30, 2020

Date

Judge Mary T. Noonan

Name

Utah State Court Administrator

Title

STATE JUSTICE INSTITUTE

PROJECT BUDGET

(TABULAR FORMAT)

Applicant: Utah State Courts

Project Title: Online Dispute Resolution Assessment

For Project Activity from 04/30/2020 **to** 10/30/2021

Total Amount Requested for Project from SJI \$ 185,000.00

ITEM	SJI FUNDS	STATE FUNDS	FEDERAL FUNDS	APPLICANT FUNDS	OTHER FUNDS	IN-KIND SUPPORT	TOTAL
Personnel							0.00
Fringe Benefits							0.00
Consultant / Contractual	170,000.00						170,000.00
Travel	15,000.00						15,000.00
Equipment							0.00
Supplies							0.00
Telephone							0.00
Postage							0.00
Printing / Photocopying							0.00
Audit							0.00
Other (specify)							0.00
Subtotal, Direct Costs	185,000.00	0.00	0.00	0.00	0.00	0.00	185,000.00
Indirect Costs							0.00
Grand Total	185,000.00	0.00	0.00	0.00	0.00	0.00	185,000.00

Remarks:

BUDGET NARRATIVE

Utah State Courts

Online Dispute Resolution (ODR) Assessment

OVERALL BUDGET

The total cost of the project is a firm fixed price of \$185,000. The Utah State Court is requesting up to \$185,000 in SJJ funds. Utah will seek matching funds from the Pew Foundation to assist with this total cost.

The budget is based on the following:

Total Budget:	\$185,000
SJJ Request:	\$185,000

Consulting Personnel Costs:	\$170,000
Travel:	\$15,000

Code Review	\$25,000
Security Review	\$60,000
Enhance Documentation	\$40,000
Intellectual Property	\$50,000
RFI Development	\$10,000

Travel:

Site Visits Estimated up to 15 total trips, with an average of 3 days/2 nights.

*Note: Travel expenses include airfare, hotel, per diem, and ground transportation and are based on the National Center for State Courts policy that utilizes federal policies as guidelines. The travel days include travel time.

THE PEW CHARITABLE TRUSTS
Grant Agreement

This Grant Agreement, Contract ID 34167, (this Agreement) is between **The Pew Charitable Trusts**, a Pennsylvania nonprofit corporation, recognized as exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986 (Code), with its principal place of business at 2005 Market Street, Suite 2800, Philadelphia, PA 19103 (Pew), and **Utah State Courts**, a Utah government agency, with its principal place of business at PO Box 140210, Salt Lake City, UT 84114 (Grantee). Pew and Grantee are sometimes referred to individually as a Party and together as the Parties.

Terms and Conditions

1. **Amount.** The amount of the grant is \$110,000 (Grant).
2. **Purpose.** The purpose of this Agreement is: Grantee, in pursuit of its own public interest objectives, which are consistent with those of Pew, intends to design and deploy its online dispute resolution (ODR) tool that allows residents to navigate the small claims process efficiently. This work will allow for the tool to receive an outside cyber security assessment as well as bring intellectual property experts together to determine an appropriate licensing model to allow the ODR tool to be shared with others, as described in Exhibit A (Purpose).
3. **Term.** The effective date of this Agreement is the date last signed below (Effective Date), and this Agreement shall terminate on 12 months after the Effective Date (Termination Date), unless terminated earlier in accordance with the terms of this Agreement.
4. **Pew Contacts.**
 - a. The Primary Grants Officer for this Agreement is: Lester Bird, Associate Manager, (202) 540-6549, lbird@pewtrusts.org.
 - b. Required reports for this Agreement shall be submitted via the Pew Grantee Portal. Questions regarding narrative or financial reporting and payments may be directed to: Elizabeth Spackman, Associate, (215) 575-4786, espackman@pewtrusts.org.
5. **Budget.** The approved budget for this Agreement (Budget) is attached and incorporated herein as Exhibit B.
6. **Expense Reallocation.** Reallocation of expenses among project budget categories must be approved by Pew if the reallocation exceeds the greater of five (5) percent of the total Grant awarded or \$5,000.

Contract ID: 34167

7. Use and Return of Grant Funds.

- a. Grantee agrees that the Grant will be used exclusively for the Purpose, in accordance with the Budget. Grant funds not used for the Purpose must be returned to Pew.
- b. Grant funds not used by the Termination Date must be returned to Pew unless an extension is approved at Grantee's request and in Pew's sole discretion.
- c. No portion of the Grant may be used for indirect expenses.

8. [Intentionally Omitted]

- 9. No Campaign Intervention or Lobbying.** No Grant funds may be used (i) to participate or intervene in (including the publishing or distribution of statements) any political campaign on behalf of (or in opposition to) any candidate for public office or (ii) to carry on any lobbying activities within the meaning of Section 501(c)(3) of the Code and the regulations thereunder and/or as defined under the federal Lobbying Disclosure Act (LDA). Grantee represents that it is not established, financed, maintained, or controlled by a "covered official" under the LDA.

10. Payments.

- a. Payment Schedule. The payment schedule for this grant is set forth below:

Amount	Scheduled Payment Date
\$30,000	Four (4) months after Effective Date
\$55,000	Eight (8) months after Effective Date
\$25,000	Termination Date

- b. Payment Conditions.

- i. The initial disbursement of Grant funds is conditioned upon the execution of this Agreement.
- ii. Subsequent disbursements of Grant funds, if any, conditioned upon the timely and satisfactory submission of interim reports described in Section 11.
- iii. In addition to any conditions specified above, all disbursements of Grant funds are contingent upon Pew's determination, in its sole discretion, that satisfactory performance of the Purpose has occurred and is likely to continue to occur.

Contract ID: 34167

11. Reports.

- a. Reporting Schedule. The reporting schedule for this Agreement is set forth below.

Narrative Report	Financial Report
Four (4) months after Effective Date (Report Date 1)	Report Date 1
Eight (8) months after Effective Date (Report Date 2)	Report Date 2
Termination Date (Report Date 3)	Report Date 3

- b. Submission of Reports. The narrative and financial reporting requirements associated with this Agreement are available on the Pew Grantee Portal which can be accessed at <https://pewtrusts.force.com>. All narrative and financial reports must be submitted via the Pew Grantee Portal unless otherwise specified in writing by Pew.

12. Milestones/Deliverables. The milestones or deliverables associated with this Agreement are specified below.

1. **Cyber Security Assessment**. The Grantee will have an assessment of its ODR tool's code performed by an organization with specific cybersecurity expertise. This security assessment will include a line-by-line code review as well as data privacy assessments and would include recommendations for remediating any findings from the review.
 - o Following the review, Grantee will choose which recommendations to implement.
 - o The assessment will include but is not limited to code review (approximately 300,000 lines), up-to-date patch review, password and encryption review, and other assessments deemed necessary. Grantee will receive a report of recommendations for implementation ordered by severity of findings. Grantee will use staff time to implement recommendations from the assessment.
2. **Intellectual Property**. Grantee will engage outside counsel to develop appropriate licensing and governance structures to protect the intellectual property of the ODR tool.
 - o To determine the scope of the governance, Grantee will convene a one-day meeting in Salt Lake City with the outside counsel, relevant stakeholders from Utah and National Center for State Courts

Contract ID: 34167

(NCSC) as well as possible outside organizations to assist Grantee in determining what governance and licensing structure should be implemented. Grantee will use this convening to determine the tool's license and governance structure. Attorneys contracted to Grantee will deliver a license and a governance structure meeting Grantee's goals.

13. **[Intentionally Omitted]**

14. **Evaluation.** At its own expense, Pew may monitor and conduct an evaluation of operations under this Agreement (Evaluation) to confirm that Grant funds are spent in accordance with this Agreement. Grantee agrees to cooperate in the Evaluation and provide such information to Pew or its representatives as necessary.

15. **Grantee's Records.** Grantee will keep systematic records of all expenditures relating to this Agreement. These records, including bills, invoices, canceled checks and receipts, will be retained by Grantee for five years after the Termination Date and will be available for Pew's inspection during that period. Pew may, at its own expense, examine or audit Grantee's records related to activities supported by this Agreement.

16. **[Intentionally Omitted]**

17. **Intellectual Property.** Work product consists of the deliverables and other materials, including drafts thereof, prepared by Grantee to carry out the project funded under this Agreement (Work Product). Grantee represents and warrants to Pew that the Work Product is the original Work Product of Grantee or of subcontractors or subgrantees, if any, and that it does not infringe any third party's intellectual property rights. Grantee hereby grants to Pew, and agrees to obtain from any subcontractors or subgrantees, a nonexclusive, irrevocable, perpetual, worldwide, royalty-free, transferable and sublicensable license for noncommercial purposes to use, display, perform, reproduce, publish, copy, archive, excerpt, distribute, create derivative works from and otherwise disseminate, in whole or in part, any or all of the Work Product. This Section shall survive the termination of this Agreement.

18. **[Intentionally Omitted]**

19. **[Intentionally Omitted]**

20. **Publicity; Acknowledgement.**

- a. No Use of Pew Name. Except as otherwise permitted herein or required by law or court order, Grantee agrees not to use the names, logos or any other marks owned by or associated with Pew, or any Pew department or project name, on or in any form of publicity (including in Grantee's publicly distributed client lists, on Grantee's websites, in Grantee's social media platforms including, but not limited

Contract ID: 34167

to, LinkedIn, Twitter or Facebook, or in any of Grantee's other promotional materials) without Pew's prior written consent in each instance which consent may be withheld by Pew in its sole and absolute discretion.

21. **Replacement of Personnel.** The replacement of Grantee's key project staff and/or personnel would be a material deviation from this Agreement and, thus, cause for termination. Accordingly, Grantee agrees to provide Pew with written notification two weeks before replacing any such staff and/or personnel, provided, however, that where immediate termination is clearly necessary to protect the interests of the project, Grantee need only provide Pew with such notice both as soon as possible and before selecting a replacement. Grantee's key project staff and/or personnel for this Agreement are Heidi Anderson, Brody Arishita, and Justice Constandinos Himonas.
22. **Subcontractors and Subgrantees.** Grantee agrees that, if it engages subcontractors or subgrantees (in either case, a Subcontractor) to help carry out the project funded by this Grant, it shall use its best efforts to ensure that such Subcontractors comply with applicable terms of this Agreement. At a minimum, Grantee shall notify Subcontractor in writing of the following requirements: (a) Subcontractor is prohibited from using names, logos, or other marks owned by or associated with Pew for any purpose without Pew's prior written consent; (b) if applicable, Subcontractor shall grant Pew a license to any Work Product it creates (as set forth in the "Intellectual Property" section of this Agreement); (c) Subcontractor shall comply with all applicable laws in the performance of the work related to this Agreement; (d) Subcontractor shall comply with the "No Campaign Intervention or Lobbying" section of this Agreement; and (e) Subcontractor shall not disclose or use information about Pew for purposes other than performing the work related to this Agreement.
23. **Grantee's Representations and Warranties.**
 - a. Status. Grantee represents and warrants that it either (i) has been determined by the Internal Revenue Service to be tax-exempt under section 501(a) of the Code, as an organization described in section 501(c)(3) of the Code that is not a private foundation or Type III supporting organization, or (ii) is an organization described under in section 170(c)(1) of the Code. Grantee will notify Pew immediately of any potential or actual change to this status.
 - b. Authority. Grantee represents and warrants that (i) it has the corporate, statutory or other power and authority to enter into this Agreement and to perform its obligations hereunder; (ii) the person who executes this Agreement on its behalf has the necessary authority to bind Grantee; and (iii) neither the execution and delivery of this Agreement, nor the performance of its obligations hereunder, will constitute a violation of, a default under, or conflict with any term of any governance documents or other agreements to which it is bound.

Contract ID: 34167

- c. Code of Ethics. Grantee represents and warrants that it has reviewed the Code of Ethics, a copy of which is attached to this Agreement as Exhibit C and made a part hereof (Code of Ethics) and agrees to comply (and if applicable, that its scholar or fellow shall comply) with the Code of Ethics throughout the term of this Agreement.

24. Compliance with Laws.

- a. Grantee agrees that it and any agents shall comply with all applicable federal, state, local, and international laws, regulations, and rules and, upon request, shall provide Pew with documentation of such compliance.

25. Indemnification. Grantee shall indemnify, defend and hold harmless Pew and its officers, directors, employees, agents, donors, affiliates, and contractors from and against any and all claims, liabilities, damages, losses, expenses, demands, suits, and judgments, including without limitation reasonable attorneys' fees and costs, arising from or relating to (a) Grantee's breach of this Agreement or (b) the intentional misconduct or negligent acts or omissions of Grantee, its employees, agents, or contractors, in connection with this Agreement. This provision shall survive the termination of this Agreement.

26. Termination and Postponement.

- a. Pew may terminate, postpone, or cancel payment of any or all Grant funds if Pew determines, in its sole discretion, that:
 - i. Grantee has failed to use the Grant funds for the Purpose of this Agreement or submit timely reports;
 - ii. Grantee's application or any required report is inaccurate in any material respect;
 - iii. Grantee has substantially failed to perform any of its duties required by this Agreement;
 - iv. Grantee has a substantial unexpended balance of Grant funds; or
 - v. Grantee (and/or the applicable scholar or fellow) has violated the Code of Ethics.
- b. Grantee agrees to give immediate written notice to Pew and, upon demand, repay all Grant funds that are within Grantee's control, and Pew may terminate this Agreement immediately, including canceling all unpaid amounts, if:
 - i. Grantee ceases to be exempt from federal income tax for any reason or Grantee's status as an organization described in sections 501(c)(3) or 170(c)(1) of the Code, as the case may be, materially changes;

Contract ID: 34167

- ii. Grantee has failed to timely comply with any of its applicable federal, state, local, or other registration or tax or information return requirements; or
- iii. Grantee becomes insolvent or is otherwise unable to meet its financial obligations as they become due, other than those financial obligations for which the Grant is made.

27. **Notices.** All notices under this Agreement shall be in writing and shall be delivered personally, or by confirmed electronic mail, a recognized overnight courier service, or United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other Party at its address set forth below or to such other address as such Party may designate by notice given pursuant to this Section:

If to Grantee: Justice Constandinos Himonas
Utah State Courts
PO Box 140210
Salt Lake City, UT 84114

If to Pew: Susan K. Urahn
Executive V.P. and Chief Program Officer
The Pew Charitable Trusts
901 E Street, NW
Washington, DC 20001

With a copy to: James G. McMillan
Senior V.P., General Counsel and Corporate Secretary
The Pew Charitable Trusts
901 E Street NW
Washington, DC 20004

28. **General Provisions.**

- a. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to any conflict of law principles. The state and federal courts in Philadelphia, Pennsylvania will have exclusive jurisdiction over any and all disputes arising out of, or in any way related to, this Agreement, and Grantee shall submit to the personal jurisdiction of those courts.
- b. Assignment. Pew may, upon giving notice to Grantee, assign all or any part of its right, title, and interest in this Agreement. Grantee may not assign this Agreement, in whole or in part, without Pew's prior written consent.

Contract ID: 34167

- c. No Third-Party Benefit. The provisions of this Agreement are for the sole benefit of the Parties hereto and confer no rights, benefits, or claims upon any other person or entity.
- d. Independent Parties. Grantee, its employees, agents, and representatives are independent parties and are not Pew employees or agents. This Agreement is not intended to and shall not create any partnership, joint venture or agency relationship between the Parties.
- e. Complete Agreement. This Agreement, including all exhibits and attachments (which are incorporated by reference herein), is the Parties' final and binding expression of their agreement and the complete and exclusive statement of its terms. To the extent that any provision of an attachment conflicts with the terms of this Agreement, the terms of this Agreement shall control. This Agreement cancels, supersedes, and revokes all prior negotiations, representations, and agreements between the Parties, whether oral or written, relating to this Agreement. No change to this Agreement will be effective unless signed by both Parties.
- f. Severability; No Waiver. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision. The waiver by either Party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.
- g. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument. Faxed and PDF counterpart signatures are sufficient to make this Agreement effective.

[Signatures on following page.]

Contract ID: 34167

The Parties have caused this Grant Agreement to be duly executed as of the Effective Date.

For: **The Pew Charitable Trusts**

By:

Date:

Name: Michael Caudell-Feagan

Title: Interim Executive Vice President and Chief Program Officer

For: **Utah State Courts**

By:

Date:

Name:

Title:

Contract ID: 34167

Exhibit A

GRANT PROPOSAL

Commented [AD1]: Utah- Please note that in my email I sent the proposal that we will insert for Exhibit A. Please confirm via email that this attachment is the accurate version to include.

DRAFT

Contract ID: 34167

Exhibit B

APPROVED BUDGET

Budget:

Subcontractor	\$110,000
Total	\$110,000

DRAFT

Contract ID: 34167

Exhibit C

Code of Ethics for Pew Grantees

The Pew Charitable Trusts (Pew) is committed to workplaces that demonstrate the highest level of integrity and professional standards, and promote a positive, equitable and creative environment, including freedom from harassment and discrimination. These commitments reflect our institutional values. We work to adhere to them internally through our policies, employment and management practices and externally through a variety of methods including our grants and contract agreements.

As we seek to ensure that these principles are present in the work that we fund, we have developed this Code of Ethics for our grantees. We ask that you join Pew in our commitment to assuring positive, inclusive and highly professional workplaces by adhering to the terms of this Code. Adherence to this Code of Ethics is mandatory for all grantees.

Pew grantees are expected to abide by the following specific values and standards, in addition to complying with all applicable workplace laws and regulations.

Personal, Professional, and Scientific Integrity: A working environment that values dignity, respect, fairness, and rigorous adherence to the highest professional standards.

Nondiscrimination and Inclusiveness: Prohibition of discrimination based on gender, race, religion, national origin, citizenship, age, sexual orientation, gender identity or expression, disability, protesting discrimination and any other characteristic protected by national, state or local law (collectively “Protected Characteristics”). It is expected that those accepting Pew funding will take meaningful steps to promote inclusiveness in their work.

Positive and Productive Work Environment: Ensuring that all employees are treated with respect, and that sexual or any other form of harassment is not tolerated. Harassment on the basis of Protected Characteristics is prohibited.

Legal Compliance: Demonstrate knowledge of and compliance with all applicable laws and regulations.

This Code of Ethics is, by necessity, general in outlining broad ethical principles. We will be guided by it as well as by other relevant standards for the charitable sector when responding to specific issues not explicitly mentioned above. Pew reserves the right to terminate their relationship with any grantee, to the extent permitted by law and consistent with contractual obligations, if at any time Pew makes a determination, in its sole discretion, that the grantee has engaged in behavior that contravenes this Code of Ethics.

DECLARATION CONCERNING CARES ACT

I, _____, hereby swear and affirm:

1. I am the Plaintiff, or the owner of record for the real property with an address of _____ ("the Property").
2. I have not obtained a forbearance under Section 4023 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act").
3. I am aware that properties participating in one or more of the following programs or with one of the following types of mortgages are "covered properties" under section 4024 of the CARES Act.

<i>Housing programs eligible for federal protection through the CARES Act</i>
Public Housing
Section 8 Housing Choice Vouchers
Section 8 Project-Based Rental Assistance
Section 202 Supportive Housing for the Elderly
Section 811 Supportive Housing for Persons with Disabilities
Low Income Housing Tax Credit (LIHTC)
Housing Opportunities for Persons With AIDS (HOPWA)
McKinney-Vento Homeless Assistance grants
Section 236 Preservation program
HOME investment partnerships
Section 516 Farm Labor Housing Grants
Section 542 Rural Development Vouchers
Section 521 Rural Rental Assistance
Section 533 Housing Preservation grants
Mortgages purchased or securitized by Fannie Mae (check: https://www.knowyouroptions.com/loanlookup)
Mortgages purchased or securitized by Freddie Mac (check: https://www3.freddie.mac.com/loanlookup/)
Mortgages insured by the Federal Housing Administration (FHA)
Mortgages guaranteed, directly provided by, or insured by the Department of Veterans Affairs (VA)
Mortgages guaranteed, directly provided by, or insured by the Department of Agriculture (USDA)
Mortgages guaranteed under HUD's Native American or Native Hawaiian Home Loan Guarantee programs

4. After performing an inquiry through my own files as well as contacting my mortgage company, I do not have any evidence that the property at issue is a "covered property" under Section 4024 of the CARES Act.

5. After performing a good faith investigation, I affirmatively state that the Property is not subject to the CARES Act.

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signature

Date

Signed at _____ (city, and state or country).



May 26, 2020

Utah Supreme Court
450 South State St.
P.O. Box 140210
Salt Lake City, UT 84114-0210

Dear Justices of the Utah Supreme Court,

We, the Ogden Civic Action Network Board of Directors, are writing to ask you to draft clear rules of court procedure for implementing the federal eviction moratorium under the CARES Act. The moratorium leaves unanswered some important questions about how to determine eligibility for protection.

The Ogden Civic Action Network (OgdenCAN) is a consortium of seven anchor institutions, eight partners, many allies and **15,037** residents that is determined to create comprehensive neighborhood revitalization in the East Central Neighborhood of Ogden, Utah. The **30%** poverty in this area must be addressed and we know that **70%** of residents do not make a sufficient income to live without assistance of some kind. We are focused on health, education and housing with the intent to remove barriers, create opportunities, and align the resources available. Our seven anchor institutions include: Intermountain Healthcare, Ogden City, Ogden Regional Medical Center, Ogden School District, Ogden-Weber Technical College, Weber-Morgan Health Department, and Weber State University.

There is a great need for timely action. With Utah's Emergency Operations Center currently activated to its highest level to prevent the spread of COVID-19, it is imperative for people to keep their housing, which is the driving force behind the eviction moratorium. Tenants were not represented in 95% of the 6,528 Utah eviction cases filed in fiscal year 2019. The program run by the Utah Bar to provide limited help to defendants in eviction cases at the Matheson courthouse is singular; no other part of the state has such a program. Additionally, Utah Legal Services, the only agency providing any help to tenants, specifically does not take any cases for nonpayment of rent. Without representation, tenants are unlikely to be able to assert their rights. Eviction cases also move through the court system rapidly. Because so few tenants are represented and because the cases move so quickly it is unlikely that any guidance will be developed through the appeals process in time to address the current public health crisis and its economic aftermath. We hope that the court will understand the importance of providing clear rules to ensure that Utah's legal system fairly administers justice.

For the federal moratorium, what will be required to show whether or not a landlord's property is a "covered property" under the CARES Act? Covered properties include a variety of residences that receive some kind of federal support. Receipt of federal subsidies or tax credits is public information, but whether or not the property has a federally backed mortgage loan is typically known only to the landlord. It is unclear how the court will determine if a property is covered in such cases. Will it be assumed that the tenant is covered until the landlord sufficiently demonstrates they are not? Or will the burden of proof be on the tenant to sufficiently demonstrate they qualify for protection?

Page 2

To address these questions and help ensure a fair administration of justice, we ask the court to adopt the following policy. For the federal moratorium we believe the burden of proof must fall on the landlord to show their property is not covered by the CARES Act. This is because the landlord is bringing the action against the tenant, and the landlord is the only one to whom this information is available. At a minimum this should follow the requirements already implemented by the Third District Court that the landlord must sign an affidavit attesting to the fact that 1) the plaintiff did not obtain a forbearance under section 4023 of the CARES Act and 2) the property at issue is not a “covered property” under section 4024 of the CARES Act. Additionally, this affidavit should provide a list of programs and mortgages covered under the CARES Act to ensure the landlord is aware of these coverages. An example affidavit is attached – See Attachment 1.

Because housing is such a fundamental need, especially in the wake of a public health crisis, we ask you to provide clarity in the legal system. With tenants receiving representation in only 5% of cases, and almost never receiving representation in a nonpayment of rent case, it is unlikely that a defendant will ever have the knowledge or skill to raise issues under the CARES Act on their own. Nevertheless, renters have a right to these protections, and it is important that this right be upheld. For this reason, we ask you to take immediate action on these requests.

As a matter of transparency, we also want to make you aware that we have sent a separate letter with the same requests to Brooke McKnight, Clerk of Court for the Second District to request these changes within our local jurisdiction. Thank you for your consideration.

Respectfully,



Brenda Marsteller Kowalewski
Chair – Ogden Civic Action Network

Cc: OgdenCAN Board of Directors

May 28th, 2020

The Honorable Matthew B. Durrant, Chief Justice
Utah Supreme Court
450 South State
P. O. Box 140210
Salt Lake City, UT 84114-0210

Re: Request for Guidance on Pleading Standards to be employed by the Courts during the current Federal Eviction Moratorium

Dear Chief Justice Durrant:

With the expiration of Governor Herbert’s moratorium on evictions as of May 15, 2020, many Utah homeowners and renters will soon face the prospect of losing their homes, even as they wait for unemployment benefits and other recently enacted financial assistance. However, the new federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136, (“CARES Act”) provides for a moratorium on a large number of evictions through much of the summer. It is the position of Utah Legal Services that Utah courts should implement clear guidelines to give full force and effect to these federal protections, as well as the protection of Due Process under the Fourteenth Amendment to the US Constitution. We write to urge you to promulgate guidance to the lower courts on these new federal anti-eviction procedures.

The CARES Act has imposed a 120-day moratorium (through July 25, 2020) on initiating eviction proceedings against residential tenants of federally-assisted housing for non-payment of rent.¹ The federal moratorium covers a wide variety of properties receiving federal assistance, such as public housing, privately owned HUD-assisted housing, Low Income Housing Tax Credit properties, programs covered by the Violence Against Women Act, and properties with Housing Choice Vouchers.² Though we do not have an exact estimate for Utah, the Urban Institute estimates that the federal moratorium covers nearly half of all multifamily rental units, and more than a quarter of *all* rental units, nationwide, and we believe that at least a portion of

¹ The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) of 2020, 116 Pub. L. No. 136, §4024, 134 Stat. 281 (2020). Similarly, when “a multifamily borrower with a Federally backed multifamily mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency” receives a forbearance, the multifamily borrower “may not, for the duration of the forbearance—

(1) evict or initiate the eviction of a tenant from a dwelling unit located in or on the applicable property solely for nonpayment of rent or other fees or charges; or
(2) charge any late fees, penalties, or other charges to a tenant described in paragraph (1) for late payment of rent.” §4023 (Subsequent citations will reference the statute by way of the H.R. section numbering).

² §4024(a)

Utah rentals are covered.³ In addition, it covers any property with a “federally-backed mortgage,” including mortgages insured by the FHA, VA, or USDA, or financed or securitized by Fannie Mae or Freddie Mac.⁴

Under the current pleading rules, Utah district courts will be unable to accurately determine whether the federal moratorium requires dismissal of eviction actions that are filed. Currently, only the plaintiff has access to the information and documentation necessary to prove that the property is or is not subject to the federal moratorium. Additionally, because mortgages are commonly bundled and resold without the property owner’s knowledge, many landlords themselves will not immediately know if a property has a federally-backed mortgage without undertaking some investigation, but they are at least more likely to have access to necessary documents as compared to the average tenant (and in particular the legally unsophisticated, low-income tenants represented by our office).

To remedy this situation, we respectfully request that the Court consider entering an administrative order clarifying the pleading requirements to be used by the lower courts to determine whether the federal moratorium applies in any eviction filed prior to July 25, 2020.⁵ In our view, the quickest and least-burdensome mechanism for ensuring that the lower courts correctly implement the requirements of the federal law is to require that plaintiffs attach the following documents to an eviction complaint filed during the period covered by federal law:

1. The completed attached sample Affidavit;
2. A screenshot of the result of a search performed on the Fannie Mae mortgage lookup tool (KnowYourOptions.com/loanlookup), example attached; and
3. A screenshot of the result of a search performed on the Freddie Mac mortgage lookup tool (FreddieMac.com/mymortgage), example attached.

For plaintiffs, retrieving and attaching this information would only require a minor amount of additional work. However, *without* this information, neither a judge nor a defendant would be able to determine whether the CARES Act moratorium applies.

Both during and since the expiration of Governor Herbert’s order, lower courts in Utah have developed various standards for determining whether and to what extent the federal moratorium requires them to dismiss eviction proceedings. To avoid the risk of errors and inconsistent results of continuing this approach, we urge the Court to issue an order clarifying the necessary documents to be filed to aid in determining whether the federal moratorium applies in a given case.

³ *The CARES Act Eviction Moratorium Covers All Federally Financed Rentals—That’s One in Four US Rental Units*, <https://www.urban.org/urban-wire/cares-act-eviction-moratorium-covers-all-federally-financed-rentals-thats-one-four-us-rental-units>

⁴ §4022 (a)(2)

⁵ Such an administrative order would follow earlier Administrative Orders for Court Operations During Pandemic, issued by the Utah Supreme Court and the Utah Judicial Council on March 13, March 21, April 23, May 1 and May 11.

For these reasons, on behalf of all of the housing attorneys at Utah Legal Services who provide legal advice and representation in eviction and foreclosure proceedings, and the low-income renters and homeowners who need such assistance, we respectfully request that the Court enter an order providing guidance on the pleading standards to be used by the lower courts in determining the applicability of the federal eviction moratorium consistent with the recommendations contained herein. Thank you for your attention to these concerns.

Very sincerely,

Martin Blaustein and the Housing Task Force
Utah Legal Services

/s/ Martin Blaustein
Martin Blaustein

[ATTORNEY'S/PRO SE PARTY'S INFORMATION]

[COURT INFORMATION]

[PLAINTIFF'S NAME], Plaintiff, v. [DEFENDANT'S NAME], Defendant.	AFFIDAVIT IN COMPLIANCE WITH THE CARES ACT Civil No. [CASE NUMBER] Judge [JUDGE'S NAME]
--	--

I, _____, Plaintiff, in order to support my assertion that this filing complies with the federal Coronavirus Aid, Relief and Economic Security Act enacted March 27, 2020 (CARES Act), do hereby swear or affirm under penalty of perjury that:

1. There is no mortgage on the property that has been granted deferral or forbearance since March 27, 2020, and there is no pending application for mortgage deferral or forbearance;
2. Neither I, nor the property, nor any tenant of the property participates in or receives subsidies or benefits under any of the following programs:

**Housing and Urban Development
(HUD)**

- Public Housing
- Section 8 Housing Choice Voucher Program or Project-Based Housing
- Section 202 Housing for the Elderly
- Section 811 Housing for Persons with Disabilities
- Section 236 Multifamily Housing
- Below Market Interest Rate (BMIR) Housing
- HOME
- HOPWA
- Continuum of Care or

other McKinney-Vento
Act Homelessness
Programs

Department of Agriculture

- Section 515 Rural Rental Housing
- Sections 514 and 516 Farm Labor Housing
- Section 533 Housing Preservation Grants
- Section 538 Multifamily Rental housing

Department of Treasury

- Low-Income Housing Tax Credit (LIHTC)

Rural Housing Voucher Program

- Section 542 of the

Housing Act of 1949

3. There is no unsatisfied mortgage on the property that is guaranteed or insured by the Federal Housing Administration, HUD, the Dept. of Veterans Affairs or the USDA;
4. I have, or my authorized agent has, searched for every unsatisfied mortgage on the property via the mortgage lookup tools of both Fannie Mae
(KnowYourOptions.com/loanlookup) and Freddie Mac
(FreddieMac.com/mymortgage) and have attached the results of those searches.

Dated this ____ day of _____, 2020

[PLAINTIFF'S NAME]

IN THE COUNTY OF [COUNTY], State of Utah, on this ____ day of _____, 2020, before me, the undersigned notary, personally appeared [PLAINTIFF'S NAME] who proved to me his/her identity through documentary evidence in the form of a _____ and who signed the preceding document in my presence and acknowledged and affirmed that the information contained in the document was true of his/her personal knowledge, and that he/she signed the document voluntarily for its stated purpose.

NOTARY PUBLIC

State of Utah

My commission expires _____

Example of Fannie Mae search results
(Personal information redacted in sample)

The screenshot displays the Fannie Mae website's 'Loan Lookup Results' page. The browser's address bar shows the URL 'https://www.fanniemae.com/loan-lookup-results'. The page features a dark blue header with the Fannie Mae logo and the text 'Know Your Options'. A navigation menu includes links for 'Rent', 'Buy', 'Sell', 'Refinance', 'Get Help', 'Resources', 'About Us', and 'News & Events'. A search bar is located in the top right corner. A prominent orange banner across the middle of the page reads: 'Facing financial impacts from COVID-19? We're here to help. See our available mortgage assistance and relief options >'. Below this, the main heading states 'Fannie Mae Loan Lookup Results: No Match Found'. A dark blue box contains the message: 'It appears that Fannie Mae does not own your loan, based on the information you entered. Try the next steps below for assistance.' At the bottom right, there are two links: 'Next Steps' and 'Search Again'.

https://www.fanniemae.com/loan-lookup-results

Fannie Mae Know Your Options

Rent Buy Sell Refinance Get Help Resources About Us News & Events

Facing financial impacts from COVID-19? We're here to help. See our available mortgage assistance and relief options >

Home > Loan Lookup Results

Fannie Mae Loan Lookup Results: No Match Found

It appears that Fannie Mae does not own your loan, based on the information you entered. Try the next steps below for assistance.

Next Steps

[Search Again](#)

Example of Freddie Mac search results
(Personal information redacted in sample)

https://www.freddiemac.com/...
Freddie Mac Home
Single Family
Multifamily
Capital Markets
Business, Buyers, & Owners
Search

PERSPECTIVES
RESEARCH
BLOG
MEDIA ROOM
ABOUT
OUR BUSINESSES

Freddie Mac
We make home possible.

No. Our records show that Freddie Mac is not the owner of your mortgage.

What to do next

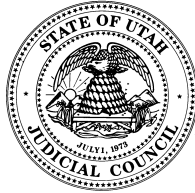
1. Try our [look-up tool](#) again. Abbreviations or typos can cause an incorrect result. Be sure that all information entered in the look up tool is typed completely and accurately and reflects the information from your original loan documents.
2. Contact Fannie Mae at [FannieMae.com](#), or 1-800-7Fannie to see if they own your loan.
3. Call your lender (also referred to as your mortgage servicer) for assistance with your mortgage. Their telephone number and mailing address should be listed on your monthly statement. Learn how to [prepare for 15s discussion](#).

Visit My Home by Freddie Mac [here](#) for information and guidance on options to stay in your home, options to leave your home, working with a housing counselor or your lender, avoiding fraud) and more.

Tab 12

The mission of the Utah Courts is to provide people an open, fair, efficient, and independent system for the advancement of justice under law. As judges we take a solemn oath to support, obey, and defend both the United States Constitution and the Utah Constitution and to discharge our duties as judges with fidelity. This oath requires that we be politically independent and neutral arbiters of cases that come before us. We reaffirm our commitment to the rule of law and to equal treatment and protection under that law for all.

We have endeavored as a judiciary to address inequities in our system and to provide greater access to our courts, especially for those who, whether due to race, socio-economic status, or some other factor, have been marginalized or have otherwise been unable to access the rule of law on equal footing with their fellow Americans. These reforms include, among other things, bail reform, criminal justice reform, and juvenile justice reform. We are committed to identifying and eradicating any vestiges of bias that remain in our judicial system. The Utah judiciary belongs to the people of Utah. We hope that, now, more than ever, we can receive increased public input regarding how we can continue to reform as we strive toward the more perfect Union our constitution promises. We have much to do, but this work is too important to be left undone.



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

June 15, 2020

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Members of the Judicial Council Management Committee

FROM: The Board of Juvenile Court Judges

DATE: June 15, 2020

RE: Issuance of a public statement

The Board of Juvenile Court Judges met on June 12, 2020 and considered whether the juvenile court bench should issue a public statement reaffirming our commitment to the open, fair, efficient, and independent access to justice under the law. Following an extensive discussion, the Board is requesting action by the Judicial Council on behalf of the judiciary.

With the support of five Board members and opposition by one Board member, the Board voted to request that the Judicial Council issue a public statement reaffirming the judiciary's commitment to our core mission and values.

Per Rule 1-102(2) of the Code of Judicial Administration, the Council or its designee is the sole authority for establishing and representing the official position of the judiciary on issues within the jurisdiction of the Council. The Council may delegate the authority to make an official public statement to a board, a Council's committee, or Court Administrator.

Thank you for your consideration of this request.
The Board of Juvenile Court Judges

**The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.**



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

June 19, 2020

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Judicial Council

FROM: Board of District Court Judges

RE: Issuance of a public statement by the judiciary

The Board of District Court Judges met on June 19, 2020 and reviewed the draft statement regarding racial and ethnic fairness that was prepared by members of the Utah Supreme Court. Members of the District Board spent significant time discussing the pros and cons of issuing such a statement. Upon motion to support the issuance of the statement by the judiciary, three members voted in favor of issuing a public statement and seven members voted against issuing a public statement.

Board members acknowledge the significance and importance of the issues at hand and agree that meaningful action speaks louder than words. The Board of District Court Judges recommends that the public statement not be issued by the Utah Judiciary.

Thank you for your consideration.

The Board of District Court Judges

The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

June 19, 2020

MEMORANDUM

TO: Judicial Council

FROM: Board of Justice Court Judges

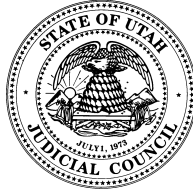
RE: Reaffirming the Core Values of Utah's Judiciary

In light of recent events, the Management Committee of the Judicial Council has been discussing a proposal to publicly reaffirm its core values. In connection with its meeting on June 17, 2020, the Management Committee asked for input from each of the boards. The Board of Justice Court Judges met today to weigh the costs and benefits of issuing such a statement. Following discussion, a majority of the Board of Justice Court Judges advises against the Judicial Council's issuing a public statement. It believes that the judiciary can best demonstrate its commitment to neutrality by staying "above the fray," particularly where that has always been its approach in the past. If the Judicial Council does decide to issue a statement, however, the Board would recommend that it use only the first paragraph of the statement drafted by the Supreme Court. The Board appreciates the opportunity to provide input on this important issue. Whatever the outcome, the Board will support the Council's decision.

**The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.**

Tab 13

Agenda



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

June 2, 2020

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Management Committee/Utah Judicial Council

FROM: Kara J. Mann

RE: Language Access Committee Appointments

Currently, there are two vacancies on the Language Access Committee. The first must be filled by a District Court Judge in accordance with CJA Rule 1-205(1)(B)(ix)(a), and the second vacancy must be filled by an Interpreter Coordinator in accordance with CJA Rule 1-205(1)(B)(ix)(f). Judge Su Chon and Interpreter Coordinator Mary Kaye Dixon were serving on the committee; however, both recently completed their second consecutive term.

At this time the Language Access Committee is comprised of the following members:

- Yadira Call, Certified Court Interpreter
- Amine El Fajri, Certified Court Interpreter
- Rory Jones, Chief Probation Officer, Seventh District
- Judge Michael Leavitt, Fifth District Juvenile Court
- Russ Pearson, TCE, Eighth District
- Lynn Wiseman, Clerk of Court, Second District
- Judge Kelly Schaeffer-Bullock, Highland Justice Court

For the District Judge position, I provided a memo announcing the vacancy to the Board of District Court Judges. Through this recruitment process, the Board recommends the following judge for consideration.

- Judge Michael Westfall, Fifth District Court

For the Interpreter Coordinator position, I emailed an announcement of the vacancy to the Interpreter Coordinator listserv, ensuring all Interpreter Coordinators for Utah State Courts

The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.

received the notice. Through this recruitment process, the Language Access Committee has the following two candidates to submit for consideration.

- Evangelina Burrows, Third District and Eight District Interpreter Coordinator
- Kathy Philips, Fourth District Court Interpreter Coordinator

Additionally, Ms. Philips also serves on Divorce Education for Children Subcommittee for the Standing Committee on Judicial Outreach, while Ms. Burrows does not serve on any other committee for the courts.



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

May 19, 2020

Hon. Mary T. Noonan
State Court Administrator
Cathy Dupont
Deputy Court Administrator

MEMORANDUM

TO: Management Committee and Judicial Council

FROM:  Brent M. Johnson

RE: Forms Committee Membership

The Forms Committee has a member whose term is expiring soon. The membership of the committee is set forth in rule 1-205(1)(B)(xiv) of the Utah Rules of Judicial Administration. The committee must include "one person skilled in linguistics or communications." That position is currently filled by Kara Mann, who is the Utah State Courts' interpreter coordinator and who has had many years of experience in creating forms both prior to and after arriving at the Administrative Office of the Courts. Ms. Mann would like to serve another term.

Ms. Mann has been a steady member who has contributed a significant amount of work to the forms process. Reappointing Ms. Mann for another term is supported and justified and the Forms Committee recommends that the Management Committee and the Judicial Council reappoint Ms. Mann.

The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.

Tab 14

Agenda



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

June 1, 2020

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Members of the Judicial Council Management Committee
FROM: Neira Siaperas, Utah Juvenile Court Administrator
DATE: June 01, 2020
RE: Proposed Probation Policies for Review and Approval

The Board of Juvenile Court Judges has proposed revisions of the following policies which are now advanced to the Management Committee for review and consideration. Additionally, I seek placement on the Judicial Council's consent agenda for June 22, 2020.

Section 1.2 Historical Perspective

This policy was initially approved on July 13, 2000. The policy consists of an essay authored by Judge Arthur G. Christean titled The Noble Quest: The Story of the Juvenile Court in Utah which provides a brief summary of the development of the juvenile court in Utah. While this article is informative and valuable as a historical record, it does not include content applicable to the intended purpose of the Probation Policy Manual to provide guidance for probation processes and practices. Therefore, it is requested that this policy be removed and the article therein be archived.

Section 1.3 Administration

This policy was initially approved on March 1, 2001 and it outlines the purpose of probation policy and expectations regarding the availability of a hard copy of the policy manual to all probation staff. The Board recommends deletion of this policy as the policy manual is available digitally to all probation staff, making the need for printed copies obsolete. In addition, the expectation outlined in this section that probation staff comply with probation policy is a duplication of HR Policy 610 Discipline.

Section 1.8 Probation Policy Submission and Review

This policy was initially approved on May 1, 2002. Updates to this policy are necessary to align with the current probation policy approval process. These updates include designation of the Juvenile Court Administrator, rather than the Chief Probation Officers, as the authority for designating a probation policy committee; the addition of a provision that any juvenile court employee may submit a policy request to the committee; the addition of a requirement for annual review of all probation policies following the legislative session; and an updated addendum of the probation policy approval process.

I will be available to respond to questions during your meeting on June 9, 2020.

Thank you.

A handwritten signature in black ink, appearing to read "Neira Siaperas", is written over a horizontal line.

**The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.**

Section 1.2 Historical Perspective

Table of Contents

The Noble Quest: The Story of the Juvenile Court in Utah

by Arthur G. Christean, Senior Judge

Utah occupies a unique place in the history of the juvenile court movement in the United States. It is at present the only state in the nation with a separate, freestanding statewide juvenile court whose judges specialize in juvenile court work and do not rotate to other benches. The history of how this came about makes for an interesting story. Very few attempts have been made to tell it in a complete way. Most have been part of a larger work and have been very summary in nature. The most extensive prior effort was that by the late Judge E. F. Ziegler. His historical review ended with the landmark Juvenile Court Act of 1965 and focused primarily on the development of the office of juvenile court judges, the duties of juvenile court probation officers and clerks, and legal procedures which served to guide the work of the court. Of course, much has happened since 1965.

Under the above title, a new history of the juvenile court has recently been completed, of which this is but a brief summary. This new work reviews the entire span of juvenile court development in Utah from the first legislative enactment relating specifically to juveniles in 1852 up to the present that is as of July 1999. It describes the extent to which have come to set juvenile courts in Utah apart from all other trial courts in the state. Over a period of nearly a century, and more if we look back into the 19th century as well, these ten features, which are found in greater or lesser degree in most juvenile court systems in the United States, have come to characterize Utah's approach to juvenile justice. They are:

1. Special laws and protections for children.
2. All criminal delinquency proceedings designated civil and not criminal in nature by statute.
3. A separate specialized court with permanently assigned judges who do not rotate to hear other types of cases.

4. Juvenile court judges selected by a separate and distinctive process with different standards for appointment and retention in judicial office.
5. Whether at the state or county level, a separate system of budgeting and administration.
6. Clerks and probation officers hired through a separate merit system of public employment as opposed to a political spoil system.
7. Separate places of confinement required for juveniles.
8. Consolidation of all laws governing juvenile proceedings, including delinquency and child protection, in the child welfare code, rather than the judicial code.
9. The confidentiality of all juvenile proceedings and records preserved by law.
10. The court to be guided by a special philosophy often contained in legislative "purpose" clauses.

These key features reflect the beliefs and policies which have shaped the Utah juvenile court movement since its inception. Indeed, in contrast to other historical summaries, this one seeks to capture the essential ideas, themes and policies reflected in these features and how they came into prominence or tended to retreat during each of these seven periods. Finally, it describes how, despite the fact that Utah embraced many of the national trends of the juvenile court movement during the past century; it adopted some distinctly different approaches which continue to influence the court to this day.

The seven periods mentioned above makes up separate chapters of some five to ten pages each in this new juvenile court history, and can only be briefly mentioned here. The first, covering the years from 1852 to 1905, and styled the ancestral period, describes Utah's approach to juvenile crime during the years thereafter. The next covers the years from 1905 to 1929 and is styled the missionary period because of the intense efforts that were made during these years both in Utah and nationally, to enact and implement legislation creating the juvenile court, an entirely new kind of tribunal, and to convert skeptics as to its legitimacy. The next period is from 1929 to 1941 and is styled the model code period because these were years of refinement and consolidation, marked by efforts to produce models of the best way to organize juvenile courts, drawing from the experience of leading states. The next period from 1941 to 1965 is styled the orthodoxy period because of the complete dominance of the child welfare approach to juvenile justice in Utah despite its constitutional infirmities. During these years the Utah juvenile court operated as part of the Welfare Department within an agency known as the Bureau of Services for Children which sought to consolidate the delivery of social services for children under one administrative head. The period from 1965 to 1980 is styled the reformation because, as a result of a 1963 Utah

Supreme Court decision, and the 1965 act which followed, the juvenile court gained its independence from the Welfare Department and inclusion within the judiciary under the nominal supervision of the Utah Supreme Court, in a sort of separate but equal arrangement with the district court, while seeking to maintain allegiance to the same rehabilitation philosophy as before. The next period, from 1980 to 1992, is styled a time of renewal and rapprochement as a result of the trends and changes during these years moving the juvenile court away from its traditional posture of separateness from adult courts toward greater accommodation with them, culminating in the state's adoption of a new judicial article in 1985. The final period briefly discusses some of the major trends from 1992 to date and how they may relate to the future of the Utah juvenile court.

As of this writing, the Office of Court Administrator is in the process of printing and distributing this historical review. It consists of some 47 pages of text and ten pages of endnotes.

History:

Approved July 13, 2000

Approved for archive by Chiefs group February 13, 2020

Approved for archive by JTCE group March 5, 2020

Approved for archive by The Board of Juvenile Court Judges May 13, 2020

Section 1.3 Administration

[Table of Contents](#)

[View Addendums for this Policy](#)

Policy:

This policy is to define the purpose and utilization of Juvenile Court policies and procedures.

Scope:

The policies contained in this manual are for all staff who are employed by and individuals who volunteer for the Utah State Juvenile Court.

Authority:

- [UCA 78A-6-203](#)

Procedure:

1. Administrative Office of the Juvenile Court publishes policies and procedures to provide guidelines for its personnel in performance of their duties.
2. These policies have been developed over the course of the operation of the Juvenile Court and may be referred to alternatively by such terms as policies, procedures, protocols, standards, and guidelines.
3. The policies have been developed and implemented to provide a ready source of information and a point of reference when there is a question about what the Juvenile Court desires from its employees under varying circumstances.
Employee performance plans shall reflect an expected outcome that employees follow policies and procedures.
4. These guidelines provide general direction but unless specifically indicated, these policies and procedures are not intended to reflect a rigid standard of practice as it is recognized that the guidelines may not be appropriate for every Court or District situation. When judgment and individual situations suggest

divergence from the policy, employees should consult their supervisor prior to any action.

5. The policies and procedures have been reviewed by the Chief Probation Officers, Trial Court Executives, and Administration. They have been approved by the Board of Juvenile Court Judges to ensure that, for the usual and customary practice, they are within acceptable parameters for work within a Juvenile Court.

Utilization:

1. Juvenile Court employees should have familiarity with the policies and procedures that apply to the circumstance/situation in which they customarily work. Every Juvenile Court employee should be familiar with where the policies are maintained.
2. Employees should not use these guidelines as a substitution for the judgment of a judicial officer as it is recognized that a guideline may not be uniformly appropriate or in the best interest of every situation. Therefore, the policies and procedures should be considered guidelines, which should be followed unless conditions/situations dictate otherwise or a judicial officer chooses an alternative course of action.
3. The Juvenile Court has formed a Probation Officer Manual Committee composed of line staff and management. The manual will be available on the Courts' Network in a Folio file so queries and searches can be done. It will also be placed on the Intranet where other Courts' Manuals are placed. Appointments for this committee are made by the Trial Court Executives of the Juvenile Court. All policies will have a date of implementation and/or a revision dates at the end of the written document. Every employee shall know how to access the manual.
4. Individual districts may develop their own procedural manual to reflect the operation of policies in their local District. District policies may be more restrictive, but cannot be less restrictive than the policies contained in this manual.
5. New employees will be made aware of the location of this manual, at the time of their hire. They are responsible for reviewing the manual and for asking

questions about its contents. A form will be provided to the employee in which the employee will acknowledge reviewing the manual.

6. The manual will be organized in such a way to start with a referral to the Juvenile Court and end with a minor leaving the jurisdiction of the Juvenile Court. Specific policies that address issues during the course of contact will be placed in the appropriate section. Policies will be numbered so as to facilitate a clear discussion when referencing a policy.

History:

Effective March 1, 2001

Approved for deletion by Chiefs group February 13, 2020

Approved for deletion by JTCE group March 5, 2020

Approved for deletion by The Board of Juvenile Court Judges May 13, 2020

1.8 Probation Policy Submission and Review

Policy:

This policy provides guidelines for submitting recommendations for new policies or revisions to current policies.

Scope:

This policy applies to all juvenile court personnel of the Utah State Juvenile Court.

Authority:

- [UCA 78A-6-203](#)

Procedure:

1. The Juvenile Court Administrator will designate a probation policy committee to review current policies and respond to requests made for the creation of new policies and/or changes to existing policies.
 - 1.1. Any court employee may submit a request to the probation policy committee. Requests shall be submitted on the approved [New Probation Policy/Policy Change Request Form](#) (Addendum 1.8.1).
 - 1.2. The probation policy committee will meet regularly to review current policies, respond to submitted requests and will review policies yearly after each legislative session.
2. The probation policy committee will prepare drafts of new policies and recommended changes to existing policies for review and approval. The probation policy committee may make minor grammatical, formatting and cosmetic changes to policy without the need for further approval.
3. The process for revising and creating new policies will be determined by the Juvenile Court Administrator and the Board of Juvenile Court Judges (Addendum 1.8.2).

Addendum 1.8.1 [New Probation Policy/Policy Change Request Form](#)

Addendum 1.8.2 Juvenile Probation Policy Approval Process

History:

Effective May 1, 2002

Reviewed and updated by Policy group June 27, 2019

Approved for release for comment by BJCJ September 11, 2019

Approved by Chiefs January 9, 2020

Approved by JTCE's March 5, 2020

Approved by Board of Juvenile Court Judges May 13, 2020

Policy Change Request Form

Date: _____

Name of Requestor: _____

Name of Policy to modify or add: _____

Section Number of Policy to modify or add: _____

Policy: ☐ Okay as currently written ☐ Modify/Add as follows:

Scope: ☐ Okay as currently written ☐ Modify/Add as follows:

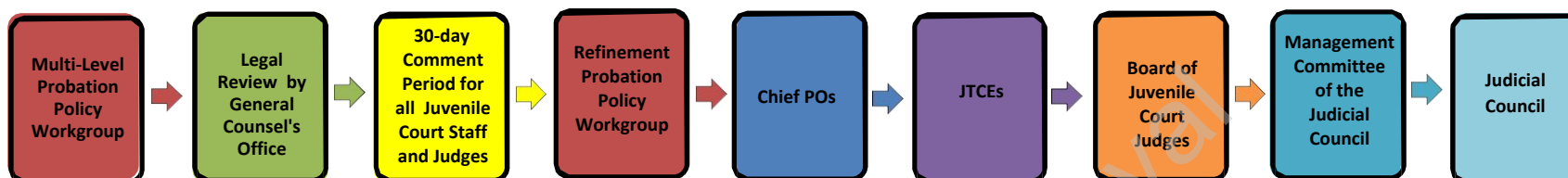
Authority:

☐ The references are current ☐ Modify/Add as follows:

Procedure: Please indicate below what modifications or additions you are requesting. You may attach a copy of the procedure with the changes noted. Please provide justification for your request.

JUVENILE PROBATION POLICY APPROVAL PROCESS

Effective January 2019



Ten-Member Multi-Level Probation Policy Committee

Under the direction of the Juvenile Court Administrator

- **Membership**

- Two AOC Representatives
 - Assistant Juvenile Court Administrator-Delinquency
 - AOC Program Coordinator (Support Staff)
- Eight Appointed Representatives
 - One Juvenile Trial Court Executive
 - One Chief Probation Officer
 - Six District Nominated Representatives of Juvenile Probation Supervisors and Juvenile Probation Officers

- **Responsibilities**

- Review and update probation policies annually
- Respond to requests for revision or new policy development
- Request assistance from specialists as necessary
- Serve two-year membership terms (may be extended)

Section 1.8 Probation Policy Submission and Review

Policy:

This policy provides guidelines for submitting recommendations for new policies or revisions to current policies. ~~creation and revision of probation department policies.~~

Scope:

This policy applies to all juvenile court personnel of the Utah State Juvenile Court.

Authority:

- [UCA 78A-6-203](#) ~~Administrative Office of the Courts~~

Procedure:

1. ~~The Juvenile Court Administrator will designate~~ **A probation policy** committee designated by the chief probation officers will to review **current policies** and respond to requests **made** for changes or **the creation of** new policies **and/or changes to existing policies**.
 - 1.1 ~~The committee will meet every other month or as needed.~~ **Any court employee may submit a request to the probation policy committee. Requests shall be submitted on the approved New Probation Policy/Policy Change Request Form (Addendum 1.8.1).**
 - 1.2 ~~Recommended policy changes or new policy requests should be directed to the probation manual committee. A request should be submitted in writing using the approved Policy Change Request Form 1.8.1.~~ **The probation policy committee will meet regularly to review current policies, respond to submitted requests and will review policies yearly after each legislative session.**
2. The **probation policy** committee will prepare a drafts of **new policies and** recommended changes **to existing policies for review and approval.** ~~for the chief probation officer group to review and approve. Any changes to policy that make significant modifications will go through the same review process as the original policy.~~ **The probation policy committee may make minor grammatical, formatting and cosmetic changes to policy without the need for further approval.**
 - 2.1 ~~The committee may make minor changes to policy that include spelling, grammar, and minor modifications without the need for further approval.~~
 - 2.2 ~~The committee will determine if the policy needs to go through the review process, or if the changes can simply be published.~~
3. ~~The chief probation officers will approve any changes to policies. The final draft will be submitted to the trial court executives by the probation manual committee chair or designee~~ **The process for revising and creating new policies will be determined by the Juvenile Court Administrator and the Board of Juvenile Court Judges (Addendum 1.8.2).**
4. ~~Policies approved by trial court executives will be submitted to the Board of Juvenile Court Judges for approval.~~

5. ~~The date of the approval to the policy will be noted on the last page. The chair of the probation manual committee is responsible to submit the approved policy to the IT department for placement onto the Intranet.~~
- 5.1 ~~Updated policies will be sent electronically to all trial court executives, chief probation officers, and the Administrative Office.~~
- 5.1 ~~It will be the responsibility of chief probation officers review any policy changes with their staff.~~

Addendum 1.8.1 Policy Change Request Form New Probation Policy/Policy Change Request Form

- [Policy Change Request Form](#)

Addendum 1.8.2 Juvenile Probation Policy Approval Process

History:

Effective May 1, 2002

Reviewed and updated by Policy group June 27, 2019

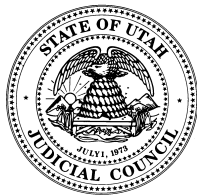
Approved for release for comment by BJCJ September 11, 2019

Approved by Chiefs January 9, 2020

Approved by JTCE's March 5, 2020

Approved by the Board of Juvenile Court Judges May 13, 2020

Tab 15



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

June 11, 2020

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Management Committee / Judicial Council

FROM: Keisa Williams

RE: Rules for Public Comment

The Policy and Planning Committee recommends the following rules to the Judicial Council for public comment.

CJA 4-202.02. Records Classification (AMEND)

The Self-Help Center is recommending that CJA 4-202.02 (4)(O) be amended to include stalking injunctions amongst the proceedings in which the name of a minor is public (line 168). This would bring the rule in line with existing court practice because minors' names are almost always listed on civil stalking injunction requests and orders, which are public documents.

The Self-Help Center will update the courts' self-help webpage on non-public information. While this implicates forms, it does not require any change to court forms.

CJA 6-507. Court Visitor (NEW)

This is a new rule outlining the appointment and role of court visitors and establishing a process for review of court visitor reports. The court visitor program has not been codified yet and the program doesn't have a mechanism for ensuring that judges see the visitors' reports and act on them when appropriate. This rule seeks to resolve those issues and provide specific guidance to court visitors and the program.

CJA 3-407. Accounting (AMEND)

CJA 4-609. Procedure for obtaining fingerprints and Offense Tracking Numbers on defendants who have not been booked in jail (AMEND)

CJA 10-1-404. Attendance and assistance of prosecutors in criminal proceedings (AMEND)

The proposed amendments to all three rules are related to HB206 and the new definition of bail. Some additional minor amendments, unrelated to HB206, were made to 3-407 at the request of the Finance Department.

The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.

CJA 4-401.01. Electronic media coverage of court proceedings (AMEND)**CJA 4-401.02. Possession and use of portable electronic devices (AMEND)**

Proposed amendments to Rule 4-401.01 are intended to make it clear that the rule applies to viewing proceedings by remote transmission. In other words, the media still needs permission if they want to record or take photos of the proceedings they are viewing. And the proposal would eliminate the requirement of pool coverage when there are multiple media requests. Any media who register could attend.

Proposed amendments to Rule 4-401.02 would prohibit individuals from recording or photographing remote proceedings, just as they are prohibited from doing so in a courtroom. When a person is granted access to a proceeding they would be required to comply with the rule and administrative and standing orders, including acknowledging they could be held in contempt for violations.

**The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.**

Rule 4-202.02. Records Classification.**Intent:**

To classify court records as public or non-public.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) **Presumption of Public Court Records.** Court records are public unless otherwise classified by this rule.

(2) **Public Court Records.** Public court records include but are not limited to:

- (2)(A) abstract of a citation that redacts all non-public information;
- (2)(B) aggregate records without non-public information and without personal identifying information;
- (2)(C) appellate filings, including briefs;
- (2)(D) arrest warrants, but a court may restrict access before service;
- (2)(E) audit reports;
- (2)(F) case files;
- (2)(G) committee reports after release by the Judicial Council or the court that requested the study;
- (2)(H) contracts entered into by the judicial branch and records of compliance with the terms of a contract;
- (2)(I) drafts that were never finalized but were relied upon in carrying out an action or policy;
- (2)(J) exhibits, but the judge may regulate or deny access to ensure the integrity of the exhibit, a fair trial or interests favoring closure;
- (2)(K) financial records;
- (2)(L) indexes approved by the Management Committee of the Judicial Council, including the following, in courts other than the juvenile court; an index may contain any other index information:
 - (2)(L)(i) amount in controversy;
 - (2)(L)(ii) attorney name;
 - (2)(L)(iii) licensed paralegal practitioner name;
 - (2)(L)(iv) case number;
 - (2)(L)(v) case status;
 - (2)(L)(vi) civil case type or criminal violation;
 - (2)(L)(vii) civil judgment or criminal disposition;

- 36 (2)(L)(viii) daily calendar;
- 37 (2)(L)(ix) file date;
- 38 (2)(L)(x) party name;
- 39 (2)(M) name, business address, business telephone number, and business email
- 40 address of an adult person or business entity other than a party or a victim
- 41 or witness of a crime;
- 42 (2)(N) name, address, telephone number, email address, date of birth, and last
- 43 four digits of the following: driver's license number; social security number;
- 44 or account number of a party;
- 45 (2)(O) name, business address, business telephone number, and business email
- 46 address of a lawyer or licensed paralegal practitioner appearing in a case;
- 47 (2)(P) name, business address, business telephone number, and business email
- 48 address of court personnel other than judges;
- 49 (2)(Q) name, business address, and business telephone number of judges;
- 50 (2)(R) name, gender, gross salary and benefits, job title and description, number
- 51 of hours worked per pay period, dates of employment, and relevant
- 52 qualifications of a current or former court personnel;
- 53 (2)(S) unless classified by the judge as private or safeguarded to protect the
- 54 personal safety of the juror or the juror's family, the name of a juror
- 55 empaneled to try a case, but only 10 days after the jury is discharged;
- 56 (2)(T) opinions, including concurring and dissenting opinions, and orders entered
- 57 in open hearings;
- 58 (2)(U) order or decision classifying a record as not public;
- 59 (2)(V) private record if the subject of the record has given written permission to
- 60 make the record public;
- 61 (2)(W) probation progress/violation reports;
- 62 (2)(X) publications of the administrative office of the courts;
- 63 (2)(Y) record in which the judicial branch determines or states an opinion on the
- 64 rights of the state, a political subdivision, the public, or a person;
- 65 (2)(Z) record of the receipt or expenditure of public funds;
- 66 (2)(AA) record or minutes of an open meeting or hearing and the transcript of them;
- 67 (2)(BB) record of formal discipline of current or former court personnel or of a
- 68 person regulated by the judicial branch if the disciplinary action has been
- 69 completed, and all time periods for administrative appeal have expired, and
- 70 the disciplinary action was sustained;
- 71 (2)(CC) record of a request for a record;
- 72 (2)(DD) reports used by the judiciary if all of the data in the report is public or the
- 73 Judicial Council designates the report as a public record;
- 74 (2)(EE) rules of the Supreme Court and Judicial Council;

- 75 (2)(FF) search warrants, the application and all affidavits or other recorded
76 testimony on which a warrant is based are public after they are unsealed
77 under Utah Rule of Criminal Procedure 40;
78 (2)(GG) statistical data derived from public and non-public records but that disclose
79 only public data; and
80 (2)(HH) notwithstanding subsections (6) and (7), if a petition, indictment, or
81 information is filed charging a person 14 years of age or older with a felony
82 or an offense that would be a felony if committed by an adult, the petition,
83 indictment or information, the adjudication order, the disposition order, and
84 the delinquency history summary of the person are public records. The
85 delinquency history summary shall contain the name of the person, a listing
86 of the offenses for which the person was adjudged to be within the
87 jurisdiction of the juvenile court, and the disposition of the court in each of
88 those offenses.

89 **(3) Sealed Court Records.** The following court records are sealed:

- 90 (3)(A) records in the following actions:
91 (3)(A)(i) Title 78B, Chapter 6, Part 1 – Utah Adoption Act six months
92 after the conclusion of proceedings, which are private until
93 sealed;
94 (3)(A)(ii) Title 78B, Chapter 15, Part 8 – Gestational Agreement, six
95 months after the conclusion of proceedings, which are
96 private until sealed;
97 (3)(A)(iii) Section 76-7-304.5 – Consent required for abortions
98 performed on minors; and
99 (3)(A)(iv) Section 78B-8-402 – Actions for disease testing;
100 (3)(B) expunged records;
101 (3)(C) orders authorizing installation of pen register or trap and trace device under
102 Utah Code Section 77-23a-15;
103 (3)(D) records showing the identity of a confidential informant;
104 (3)(E) records relating to the possession of a financial institution by the
105 commissioner of financial institutions under Utah Code Section 7-2-6;
106 (3)(F) wills deposited for safe keeping under Utah Code Section 75-2-901;
107 (3)(G) records designated as sealed by rule of the Supreme Court;
108 (3)(H) record of a Children's Justice Center investigative interview after the
109 conclusion of any legal proceedings; and
110 (3)(I) other records as ordered by the court under Rule 4-202.04.

112 **(4) Private Court Records.** The following court records are private:

- 113 (4)(A) records in the following actions:

- (4)(A)(i) Section 62A-15-631, Involuntary commitment under court order;
- (4)(A)(ii) Section 76-10-532, Removal from the National Instant Check System database;
- (4)(A)(iii) Title 78B, Chapter 6, Part 1, Utah Adoption Act, until the records are sealed;
- (4)(A)(iv) Title 78B, Chapter 15, Part 8, Gestational Agreement, until the records are sealed; and
- (4)(A)(v) cases initiated in the district court by filing an abstract of a juvenile court restitution judgment.
- (4)(B) records in the following actions, except that the case history, judgments, orders, decrees, letters of appointment, and the record of public hearings are public records:
- (4)(B)(i) Title 30, Husband and Wife, including qualified domestic relations orders, except that an action for consortium due to personal injury under Section 30-2-11 is public;
- (4)(B)(ii) Title 77, Chapter 3a, Stalking Injunctions;
- (4)(B)(iii) Title 75, Chapter 5, Protection of Persons Under Disability and their Property;
- (4)(B)(iv) Title 78B, Chapter 7, Protective Orders;
- (4)(B)(v) Title 78B, Chapter 12, Utah Child Support Act;
- (4)(B)(vi) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act;
- (4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support Act;
- (4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and
- (4)(B)(ix) an action to modify or enforce a judgment in any of the actions in this subparagraph (B);
- (4)(C) affidavit of indigency;
- (4)(D) an affidavit supporting a motion to waive fees;
- (4)(E) aggregate records other than public aggregate records under subsection (2);
- (4)(F) alternative dispute resolution records;
- (4)(G) applications for accommodation under the Americans with Disabilities Act;
- (4)(H) jail booking sheets;
- (4)(I) citation, but an abstract of a citation that redacts all non-public information is public;
- (4)(J) judgment information statement;
- (4)(K) judicial review of final agency action under Utah Code Section 62A-4a-1009;
- (4)(L) the following personal identifying information about a party: driver's license number, social security number, account description and number, password, identification number, maiden name and mother's maiden name, and similar personal identifying information;
- (4)(M) the following personal identifying information about a person other than a party or a victim or witness of a crime: residential address, personal email

address, personal telephone number; date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information;

(4)(N) medical, psychiatric, or psychological records;

(4)(O) name of a minor, except that the name of a minor party is public in the following district and justice court proceedings:

(4)(O)(i) name change of a minor;

(4)(O)(ii) guardianship or conservatorship for a minor;

(4)(O)(iii) felony, misdemeanor, or infraction;

(4)(O)(iv) protective orders and stalking injunctions; and

(4)(O)(v) custody orders and decrees;

(4)(P) nonresident violator notice of noncompliance;

(4)(Q) personnel file of a current or former court personnel or applicant for employment;

(4)(R) photograph, film, or video of a crime victim;

(4)(S) record of a court hearing closed to the public or of a child's testimony taken under URCrP 15.5:

(4)(S)(i) permanently if the hearing is not traditionally open to the public and public access does not play a significant positive role in the process; or

(4)(S)(ii) if the hearing is traditionally open to the public, until the judge determines it is possible to release the record without prejudice to the interests that justified the closure;

(4)(T) record submitted by a senior judge or court commissioner regarding performance evaluation and certification;

(4)(U) record submitted for in camera review until its public availability is determined;

(4)(V) reports of investigations by Child Protective Services;

(4)(W) victim impact statements;

(4)(X) name of a prospective juror summoned to attend court, unless classified by the judge as safeguarded to protect the personal safety of the prospective juror or the prospective juror's family;

(4)(Y) records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate Procedure, except briefs filed pursuant to court order;

(4)(Z) records in a proceeding under Rule 60 of the Utah Rules of Appellate Procedure; and

(4)(AA) other records as ordered by the court under Rule 4-202.04.

(5) Protected Court Records. The following court records are protected:

(5)(A) attorney's work product, including the mental impressions or legal theories of an attorney or other representative of the courts concerning litigation, privileged communication between the courts and an attorney representing, retained, or employed by the courts, and records prepared solely in

- 201 anticipation of litigation or a judicial, quasi-judicial, or administrative
202 proceeding;
- 203 (5)(B) records that are subject to the attorney client privilege;
- 204 (5)(C) bids or proposals until the deadline for submitting them has closed;
- 205 (5)(D) budget analyses, revenue estimates, and fiscal notes of proposed legislation
206 before issuance of the final recommendations in these areas;
- 207 (5)(E) budget recommendations, legislative proposals, and policy statements, that if
208 disclosed would reveal the court's contemplated policies or contemplated
209 courses of action;
- 210 (5)(F) court security plans;
- 211 (5)(G) investigation and analysis of loss covered by the risk management fund;
- 212 (5)(H) memorandum prepared by staff for a member of any body charged by law
213 with performing a judicial function and used in the decision-making process;
- 214 (5)(I) confidential business records under Utah Code Section 63G-2-309;
- 215 (5)(J) record created or maintained for civil, criminal, or administrative enforcement
216 purposes, audit or discipline purposes, or licensing, certification or
217 registration purposes, if the record reasonably could be expected to:
- 218 (5)(J)(i) interfere with an investigation;
- 219 (5)(J)(ii) interfere with a fair hearing or trial;
- 220 (5)(J)(iii) disclose the identity of a confidential source; or
- 221 (5)(J)(iv) concern the security of a court facility;
- 222 (5)(K) record identifying property under consideration for sale or acquisition by the
223 court or its appraised or estimated value unless the information has been
224 disclosed to someone not under a duty of confidentiality to the courts;
- 225 (5)(L) record that would reveal the contents of settlement negotiations other than the
226 final settlement agreement;
- 227 (5)(M) record the disclosure of which would impair governmental procurement or give
228 an unfair advantage to any person;
- 229 (5)(N) record the disclosure of which would interfere with supervision of an offender's
230 incarceration, probation, or parole;
- 231 (5)(O) record the disclosure of which would jeopardize life, safety, or property;
- 232 (5)(P) strategy about collective bargaining or pending litigation;
- 233 (5)(Q) test questions and answers;
- 234 (5)(R) trade secrets as defined in Utah Code Section 13-24-2;
- 235 (5)(S) record of a Children's Justice Center investigative interview before the
236 conclusion of any legal proceedings;
- 237 (5)(T) presentence investigation report;
- 238 (5)(U) except for those filed with the court, records maintained and prepared by
239 juvenile probation; and
- 240 (5)(V) other records as ordered by the court under Rule 4-202.04.
- 241
- 242 **(6) Juvenile Court Social Records.** The following are juvenile court social records:
- 243 (6)(A) correspondence relating to juvenile social records;

- (6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations, substance abuse evaluations, domestic violence evaluations;
- (6)(C) medical, psychological, psychiatric evaluations;
- (6)(D) pre-disposition and social summary reports;
- (6)(E) probation agency and institutional reports or evaluations;
- (6)(F) referral reports;
- (6)(G) report of preliminary inquiries; and
- (6)(H) treatment or service plans.

(7) Juvenile Court Legal Records. The following are juvenile court legal records:

- (7)(A) accounting records;
- (7)(B) discovery filed with the court;
- (7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes, findings, orders, decrees;
- (7)(D) name of a party or minor;
- (7)(E) record of a court hearing;
- (7)(F) referral and offense histories
- (7)(G) and any other juvenile court record regarding a minor that is not designated as a social record.

(8) Safeguarded Court Records. The following court records are safeguarded:

- (8)(A) upon request, location information, contact information, and identity information other than name of a petitioner and other persons to be protected in an action filed under Title 77, Chapter 3a, Stalking Injunctions or Title 78B, Chapter 7, Protective Orders;
- (8)(B) upon request, location information, contact information and identity information other than name of a party or the party's child after showing by affidavit that the health, safety, or liberty of the party or child would be jeopardized by disclosure in a proceeding under Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act or Title 78B, Chapter 14, Uniform Interstate Family Support Act or Title 78B, Chapter 15, Utah Uniform Parentage Act;
- (8)(C) location information, contact information, and identity information of prospective jurors on the master jury list or the qualified jury list;
- (8)(D) location information, contact information, and identity information other than name of a prospective juror summoned to attend court;
- (8)(E) the following information about a victim or witness of a crime:
 - (8)(E)(i) business and personal address, email address, telephone number, and similar information from which the person can be located or contacted;
 - (8)(E)(ii) date of birth, driver's license number, social security number, account description and number, password, identification number, maiden name, mother's maiden name, and similar personal identifying information.

288

289 *Effective November 1, 2019*

Rule 6-507. Court visitors.**Intent:**

To set forth the appointment and role of court visitors. To establish a process for the review of court visitor reports.

Applicability:

This rule applies to court visitor reports in guardianship and conservatorship cases.

Statement of the Rule:

(1) **Definition.** A visitor is, with respect to guardianship and conservatorship proceedings, a person who is trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

(2) **Appointment and role of court visitor.** Upon its own initiative or motion of a party or an "interested person," as that term is defined in Utah Code section 75-1-201, the court may appoint a court visitor in a guardianship or conservatorship proceeding to conduct an inquiry into the following:

(2)(A) whether to waive the respondent's presence at the hearing under Section [75-5-303\(5\)\(a\)](#);

(2)(B) to confirm a waiver of notice submitted by the respondent in a guardianship or conservatorship proceeding under Sections [75-5-309\(3\)](#) or [75-5-405\(1\)](#);

(2)(C) to investigate the respondent's circumstances and well-being, including when an attorney is not appointed under [75-5-303\(d\)](#);

(2)(D) to review annual reports from the guardian and conservator or gather additional financial information;

(2)(E) to locate guardians, conservators, and respondents;

(2)(F) to investigate the proposed guardian's future plans for the respondent's residence under Section [75-5-303\(4\)](#); or

(2)(G) to conduct any other investigation or observation as directed by the court.

(3) **Motion to excuse respondent or confirm waiver of hearing.** The petitioner, the respondent, or any interested person seeking to excuse the respondent or confirm a waiver of hearing, shall file an ex parte motion at least 21 days prior to the hearing.

(3)(A) Upon receipt of the motion, the court shall appoint a court visitor to conduct an investigation in accordance with paragraph (2) unless a court visitor is not required under Utah Code section [75-5-303](#).

(3)(B) Upon appointment to conduct an inquiry into whether to excuse the respondent from the hearing, the court visitor will:

(3)(B)(i) interview the petitioner, the proposed guardian, and the respondent;

(3)(B)(ii) visit the respondent's present dwelling or any dwelling in which the respondent will reside if the guardianship or conservatorship appointment is made;

(3)(B)(iii) interview any physician or other person who is known to have treated, advised, or assessed the respondent's relevant physical or mental condition;

(3)(B)(iv) confirm a waiver of notice if submitted by the respondent; and

(3)(B)(iv) conduct any other investigation the court directs.

(4) **Other inquiries.** If the court appoints a visitor under paragraphs (2)(B) through (2)(G), the court visitor will conduct the inquiry in accordance with the court's order or appointment.

(5) **Language access.** If the court visitor does not speak or understand the respondent's, proposed guardian's, proposed conservator's, or petitioner's primary language, the court visitor must use an interpretation service approved by the Administrative Office of the Courts to communicate with the respondent, proposed guardian, proposed conservator, or petitioner.

(6) **Court visitor report.**

(6)(A) **Service of the court visitor report.** Except for court visitor appointments made under paragraph (2)(E), in accordance with [Rule 5](#) of the Utah Rules of Civil Procedure, the court visitor program must file and serve a court visitor report upon all parties and upon any interested person who has requested the appointment of the court visitor.

(6)(B) **Request to Submit for Decision.** The court visitor program will file with each court visitor report a request to submit for decision.

(6)(C) **Report regarding waiver of respondent's presence.** In cases involving a motion to excuse the respondent from the hearing, the court visitor will file with the report a court-approved proposed order. The report, a request to submit for decision, and a proposed order will be filed five days before the hearing.

86 **(7) Termination of court visitor appointment.** The appointment of the court visitor
87 terminates and the court visitor is discharged from the court visitor's duties upon the date
88 identified in the order of appointment. The court may extend the appointment with or without
89 a request from a party.

90
91 **(8) Court findings.**

92
93 **(8)(A) Reports regarding waiver of respondent's presence.** When a court visitor has
94 filed a report regarding a request to waive the respondent's presence at the hearing, the
95 court will issue findings and an order as to the waiver at least two days prior to the
96 hearing upon which the request has been made.

97
98 **(8)(B) All other reports.** When a court visitor has filed a report involving matters other
99 than the waiver of the respondent's presence, the court will issue findings and an order
100 as to those matters in accordance with the timelines of Rule 3-101.

101
102 Effective May/November 1, 20

Rule 3-407. Accounting.**Intent:**

To establish uniform procedures for the processing, tracking, and reporting of accounts receivable and trust accounts.

Applicability:

This rule applies to the judiciary.

Statement of the Rule:**(1) Manual of procedures.**

(1)(A) Manual of Procedures. The administrative office shall develop a manual of procedures to govern accounts receivable, accounts payable, trust accounts, the audit thereof, and the audit of administrative procedures generally. The procedures shall be in conformity with generally accepted principles of budgeting and accounting and shall, at a minimum, conform to the requirements of this Code and state law. Unless otherwise directed by the Judicial Council, the manual of procedures and amendments to it shall be approved by the majority vote of the state court administrator, the court administrators for each court of record, and the finance manager.

(1)(B) Accounting Manual Review Committee. There is established an accounting manual review committee responsible for making and reviewing proposals for repealing accounting policies and procedures and proposals for promulgating new and amended accounting policies and procedures. The committee shall consist of the following minimum membership:

(1)(B)(i) the director of the finance department, who shall serve as chair and shall vote only in the event of a tie;

(1)(B)(ii) four support services coordinators who will serve a three year term, and may repeat;

(1)(B)(iii) two accountants or clerks with accounting responsibilities from each of the trial courts of record who will serve a three year term, and may repeat;

(1)(B)(iv) a trial court executive who will serve a three year term;

(1)(B)(v) a clerk of court who will serve a three year term;

(1)(B)(vi) a clerk with accounting responsibilities from an appellate court who will serve a three year term, and may repeat;

(1)(B)(vii) one court services field specialist, who has an indefinite term;

(1)(B)(viii) the audit director or designee, who shall not vote; and

(1)(B)(ix) the director of the state division of finance or designee, who shall not vote.

(1)(C) **Member Appointments.** Unless designated by office, members of the committee shall be appointed by the state court administrator, or designee. The department of finance shall provide necessary support to the committee.

(1)(D) **Court Executive Review.** New and amended policies and procedures recommended by the committee shall be reviewed by the court executives prior to being submitted to the Judicial Council or to the vote of the administrators and the finance manager. The Court Executives may endorse or amend the draft policies and procedures or return the draft policies and procedures to the committee for further consideration.

(2) Revenue accounts.

(2)(A) **Deposits; transfers; withdrawals.** All courts shall deposit with a depository determined qualified by the administrative office or make deposits directly with the Utah State Treasurer or the treasurer of the appropriate local government entity. The Supreme Court, Court of Appeals, State Law Library, administrative office, district court primary locations and juvenile courts shall deposit daily, whenever practicable, but not less than once every three days. The deposit shall consist of all court collections of state money. District court contract sites and justice courts having funds due to the state or any political subdivision of the state shall, on or before the 10th day of each month, deposit all funds receipted by them in the preceding month in a qualified depository with the appropriate public treasurer. The courts shall make no withdrawals from depository accounts.

(2)(B) **Periodic revenue report.** Under the supervision of the court executive, the clerk of the court shall prepare and submit a revenue report that identifies the amount and source of the funds received during the reporting period and the state or local government entity entitled to the funds. Juvenile courts and primary locations of the district courts shall submit the report weekly to the administrative office. District court contract sites shall submit the report at least monthly, together with a check for the state portion of revenue, to the administrative office. Justice courts shall submit the report monthly, together with a check for the state revenue collected, to the Utah State Treasurer.

(2)(C) **Monthly reconciliation of bank statement.** The administrative office shall reconcile the revenue account upon receipt of the weekly revenue report from the courts and the monthly bank statements.

(3) Trust accounts.

(3)(A) **Definition.** Trust accounts are accounts established by the courts for the benefit of third parties. Examples of funds which are held in trust accounts include restitution, ~~child support~~ attorney fees, and monetary bail amounts.

(3)(B) **Accounts required; duties of a fiduciary.** District court primary locations and juvenile courts shall maintain a trust account in which to deposit monies held in trust for the benefit of the trustor or some other beneficiary. Under supervision of the court executive, the clerk of the court shall be the custodian of the account and shall have the duties of a trustee as established by law. All other courts of record and not of record may maintain a trust account in accordance with the provisions of this rule.

(3)(C) **Monthly reconciliation of bank statement.** Each court shall reconcile its ledgers upon receipt of the monthly bank statement and submit the reconciliation to the administrative office.

(3)(D) **Accounting to trustor.** The courts shall establish a method of accounting that will trace the debits and credits attributable to each trustor.

(3)(E) **Monetary Bail forfeitures; other withdrawals.** Transfers from trust accounts to a revenue account may be made upon an order of forfeiture of monetary bail or other order of the court. Other withdrawals from trust accounts shall be made upon the order of the court after a finding of entitlement.

(3)(F) **Interest bearing.** All trust accounts shall be interest bearing. The disposition of interest shall be governed by Rule 4-301.

(4) Compliance. The administrative office and the courts shall comply with state law and the manual of procedures adopted by the administrative office.

Effective November 1, ~~2018~~2020

Rule 4-609. Procedure for obtaining fingerprints and Offense Tracking Numbers on defendants who have not been booked in jail.

Intent:

To establish a procedure for ensuring that fingerprints are obtained from, and an Offense Tracking Number is assigned to, defendants who have not been booked into jail prior to their first court appearance.

Applicability:

This rule shall apply to all prosecutors, law enforcement personnel, jail booking personnel, and trial courts.

This rule shall only apply to offenses which are not included on the Utah Bureau of Criminal Identification's Non-Serious Offense list.

Statement of the Rule:

(1) The prosecutor shall indicate, on the face of the Information that is filed with the court, whether the defendant is appearing pursuant to a summons or a warrant of arrest, by inserting "Summons" or "Warrant" beneath the case number in the caption.

(2) The prosecutor shall cause the criminal summons form to include the following information:

- (A) the specific name of the court;
- (B) the judge's name;
- (C) the charges against the defendant;
- (D) the date the summons is issued;
- (E) a directive to the defendant to appear at the jail or other designated place for booking and release prior to appearing at court;
- (F) the address of the jail or other designated place; and
- (G) a space for booking personnel to note the date and time of booking and the Offense Tracking Number (formerly known as the CDR Number).

(3) Booking personnel shall:

- (A) complete the booking process, including fingerprinting and issuing an Offense Tracking Number;
- (B) record the date and time of booking and the Offense Tracking Number on the summons form;
- (C) return the summons form to the defendant;
- (D) instruct the defendant to take the summons form with him/her to the court at the time designated on the summons;
- (E) release the defendant without bail on their own recognizance unless the defendant has outstanding warrants; and
- (F) send the Offense Tracking Number to the prosecutor.

44 (4) Upon receipt of the Offense Tracking Number from booking personnel, the prosecutor shall
45 forward the number immediately to the court.

46
47 (5) If the defendant appears at court and does not have the summons form with the date and
48 time of booking and the Offense Tracking Number, court personnel shall instruct the defendant
49 to go immediately, at the conclusion of the appearance, to the jail or other designated place for
50 booking and release.

51
52 *Effective May __, 2020*

Rule 10-1-404. Attendance and assistance of prosecutors in criminal proceedings.

Intent:

To establish the responsibility of the prosecutor's office to attend criminal proceedings and to assist the court in the management of criminal cases.

Applicability:

This rule shall apply to the Fourth District Court.

Statement of the Rule:

(1) The prosecutor's office shall assist the court with criminal cases by attending the following court proceedings:

- (A) felony first appearance hearings;
- (B) arraignments on informations;
- (C) sentencings.

(2) The prosecutor in attendance shall be prepared to provide the court with information relevant to setting monetary bail and sentencing, including criminal history, and the factual basis for the offense charged.

(3) Unless specifically requested by the court, the prosecutor is not required to attend arraignments or sentencings for misdemeanants prosecuted on citations.

Effective: May __, 2020

Rule 4-401.01 Electronic media coverage of court proceedings.**Intent:**

To establish uniform standards and procedures for electronic media coverage of court proceedings.

To permit electronic media coverage of proceedings while protecting the right of parties to a fair trial, personal privacy and safety, the decorum and dignity of proceedings, and the fair administration of justice.

Applicability:

This rule applies to the courts of record and not of record.

This rule governs electronic media coverage of proceedings that are open to the public, including proceedings conducted by remote transmission.

Statement of the Rule:**(1) Definitions.**

(1)(A) "Judge" as used in this rule means the judge, justice, or court commissioner who is presiding over the proceeding.

(1)(B) "Proceeding" as used in this rule means any trial, hearing, or other matter that is open to the public.

(1)(C) "Electronic media coverage" as used in this rule means recording or transmitting images or sound of a proceeding.

(1)(D) "News reporter" as used in this rule means a publisher, editor, reporter or other similar person who gathers, records, photographs, reports, or publishes information for the primary purpose of disseminating news to the public, and any newspaper, magazine, or other periodical publication, press association or wire service, radio station, television station, satellite broadcast, cable system or other organization with whom that person is connected.

(2) Presumption of electronic media coverage; restrictions on coverage.

(2)(A) There is a presumption that electronic media coverage by a news reporter shall be permitted in public proceedings where the predominant purpose of the electronic media coverage request is journalism or dissemination of news to the public. The judge may prohibit or restrict electronic media coverage in those cases only if the judge finds that the reasons for doing so are sufficiently compelling to outweigh the presumption.

(2)(B) When determining whether the presumption of electronic media coverage has been overcome and whether such coverage should be prohibited or restricted beyond the limitations in this rule, a judge shall consider some or all of the following factors:

(2)(B)(i) whether there is a reasonable likelihood that electronic media coverage will prejudice the right of the parties to a fair proceeding;

(2)(B)(ii) whether there is a reasonable likelihood that electronic media coverage will jeopardize the safety or well-being of any individual;

(2)(B)(iii) whether there is a reasonable likelihood that electronic media coverage will jeopardize the interests or well-being of a minor;

(2)(B)(iv) whether there is a reasonable likelihood that electronic media coverage will constitute an unwarranted invasion of personal privacy of any person;

(2)(B)(v) whether electronic media coverage will create adverse effects greater than those caused by media coverage without recording or transmitting images or sound;

(2)(B)(vi) the adequacy of the court's physical facilities for electronic media coverage;

(2)(B)(vii) the public interest in and newsworthiness of the proceeding;

(2)(B)(viii) potentially beneficial effects of allowing public observation of the proceeding through electronic media coverage; and

(2)(B)(ix) any other factor affecting the fair administration of justice.

(2)(C) If the judge prohibits or restricts electronic media coverage, the judge shall make particularized findings orally or in writing on the record. Any written order denying a request for electronic media coverage shall be made part of the case record.

(2)(D) Any reasons found sufficient to prohibit or restrict electronic media coverage shall relate to the specific circumstances of the proceeding rather than merely reflect generalized views or preferences.

(3) Duty of news reporters to obtain permission; termination or suspension of coverage.

(3)(A) Unless otherwise ordered by the court, news reporters shall file a written request for permission to provide electronic media coverage of a proceeding at least one business day before the proceeding. The request shall be filed on a form provided by the Administrative Office of the Courts. Upon a showing of good cause, the judge may grant a request on shorter notice.

(3)(B) A judge may terminate or suspend electronic media coverage at any time without prior notice if the judge finds that continued electronic media coverage is no longer appropriate based upon consideration of one or more of the factors in Paragraph (2)(B). If permission to provide electronic media coverage is terminated or suspended, the judge shall make the findings required in Paragraphs (2)(C) and (2)(D).

(4) Conduct in the courtroom; pool coverage.

(4)(A) ~~Electronic~~ If a proceeding is conducted in the courtroom, electronic media coverage is limited to one audio recorder and operator, one video camera and operator, and one still camera and operator, unless otherwise approved by the judge or designee. All requests to provide electronic media coverage shall be made to the court's public information office. The news reporter whose request is granted by the court will provide pool coverage.

(4)(B) It is the responsibility of news reporters to determine who will participate at any given time, how they will pool their coverage, and how they will share audio, video or photographic files produced by pool coverage. The pooling arrangement shall be reached before the proceedings without imposing on the judge or court staff. Neither the

judge nor court staff shall be called upon to resolve disputes concerning pool arrangements.

(4)(C) The approved news reporter shall be capable of sharing audio, video or photographic files with other news reporters in a generally accepted format. News reporters providing pool coverage shall promptly share their files with other news reporters. News reporters must be willing and able to share their files to be approved to provide coverage. (4)(D) News reporters shall designate a representative with whom the court may consult regarding pool coverage, and shall provide the court with the name and contact information for such representative.

(4)(E) Tripods may be used, but not flash or strobe lights. Normally available courtroom equipment shall be used unless the judge or a designee approves modifications, which shall be installed and maintained without court expense. Any modifications, including microphones and related wiring, shall be as unobtrusive as possible, shall be installed before the proceeding or during recess, and shall not interfere with the movement of those in the courtroom.

(4)(F) The judge may position news reporters, equipment, and operators in the courtroom. Proceedings shall not be disrupted. Equipment operators and news reporters in the courtroom shall:

(4)(~~GF~~)(i) not use equipment that produces loud or distracting sounds;

(4)(~~GF~~)(ii) not place equipment in nor remove equipment from the courtroom nor change location while court is in session;

(4)(~~GF~~)(iii) conceal any identifying business names, marks, call letters, logos or symbols;

(4)(~~GF~~)(iv) not make comments in the courtroom during the court proceedings;

(4)(~~GF~~)(v) not comment to or within the hearing of the jury or any member thereof at any time before the jury is dismissed;

(4)(~~GF~~)(vi) present a neat appearance and conduct themselves in a manner consistent with the dignity of the proceedings;

(4)(~~GF~~)(vii) not conduct interviews in the courtroom except as permitted by the judge; and

(4)(~~GF~~)(viii) comply with the orders and directives of the court.

(5) Violations. In addition to contempt and any other sanctions allowed by law, a judge may remove from or terminate electronic access to the proceeding anyone violating this rule or the court's orders and directives and terminate or suspend electronic media coverage.

(6) Limitations on electronic media coverage. Notwithstanding an authorization to conduct electronic media coverage of a proceeding, and unless expressly authorized by the judge, there shall be no:

(6)(A) electronic media coverage of a juror or prospective juror until the person is dismissed;

(6)(B) electronic media coverage of the face of a person known to be a minor;

(6)(C) electronic media coverage of an exhibit or a document that is not part of the official public record;

- (6)(D) electronic media coverage of proceedings in chambers;
(6)(E) audio recording or transmission of the content of bench conferences; or
(6)(F) audio recording or transmission of the content of confidential communications
between counsel and client, between clients, or between counsel.

(7) Except as provided by this rule, recording or transmitting images or sound of a proceeding without the express permission of the judge is prohibited. This rule shall not diminish the authority of the judge conferred by statute, rule, or common law to control the proceedings or areas immediately adjacent to the courtroom.

Effective May/November 1, __20

Rule 4-401.02. Possession and use of portable electronic devices.**Intent:**

To permit the use of portable electronic devices in courthouses and courtrooms, subject to local restrictions.

Applicability:

This rule applies to the courts of record and not of record.

Statement of the Rule:**(1) Definitions.**

(1)(A) "Judge" as used in this rule means the judge, justice, or court commissioner who is presiding over the proceeding.

(1)(B) "~~Portable e~~Electronic device" as used in this rule means any device that can record or transmit data, images or sounds, or access the internet, including a pager, laptop/notebook/personal computer, handheld PC, PDA, audio or video recorder, wireless device, cellular telephone, or electronic calendar.

(1)(C) "Court proceeding" means any trial, hearing or other matter, including proceedings conducted by remote transmission.

(2) Possession and use of portable electronic devices in a courthouse.

(2)(A) A person may possess and use a portable electronic device anywhere in a courthouse, except as limited by this rule or directive of the judge.

(2)(B) All portable electronic devices are subject to screening or inspection at the time of entry to the courthouse and at any time within the courthouse in accordance with Rule 3-414.

(2)(C) All portable electronic devices are subject to confiscation if there is reason to believe that a device is or will be used in violation of this rule. Violation of this rule or directive of the judge may be treated as contempt of court.

(2)(D) For the limited purpose of conducting a pilot project to evaluate the performance of justice court judges using courtroom observation, the Judicial Performance Evaluation Commission may record and transmit video and sound of court proceedings. These recordings and transmissions are not public, pursuant to Utah Code sections 63G-2-201(3) and 78A-12-206.

(3) Restrictions.

(3)(A) **Use of portable electronic devices in common areas.** The presiding judges may restrict the time, place, and manner of using a portable electronic device to maintain safety, decorum, and order of common areas of the courthouse, such as lobbies and corridors.

(3)(B) **Use of portable electronic devices in courtrooms.**

(3)(B)(i) A person may silently use a portable electronic device inside a courtroom.

- 44 (3)(B)(ii) A person may not use a portable electronic device to record or
45 transmit images or sound of court proceedings, except in accordance
46 with Rule 4-401.01 or subsection (2)(D) above.
- 47 (3)(B)(iii) A judge may further restrict use of portable electronic devices in his or
48 her courtroom. Judges are encouraged not to impose further
49 restrictions unless use of a portable electronic device might interfere
50 with the administration of justice, disrupt the proceedings, pose any
51 threat to safety or security, compromise the integrity of the
52 proceedings, or threaten the interests of a minor.
- 53 (3)(B)(iv) During trial and juror selection, prospective, seated, and alternate
54 jurors are prohibited from researching and discussing the case they
55 are or will be trying. Once selected, jurors shall not use a portable
56 electronic device while in the courtroom and shall not possess an
57 electronic device while deliberating.

58 **(3)(C) Use of portable electronic devices while viewing court proceedings**
59 **conducted by remote transmission.**

- 60 **(3)(C)(i) A person may not use a portable electronic device to record,**
61 **photograph, or transmit images or sound of court proceedings, except**
62 **in accordance with rule 4-401.01 or subsection (2)(D) above. Access**
63 **to court proceedings will be contingent on the person agreeing to**
64 **comply with the provisions in this rule and any administrative or**
65 **standing orders that supplement this rule.**
- 66 **(3)(C)(ii) A violation of an administrative or standing order may be treated as**
67 **contempt of court.**

68

69 **(4) Use of portable electronic devices in court chambers.** A person may not use a
70 portable electronic device in chambers without prior approval from the judge.

71

72 **(5) Instruction to witnesses.** It should be anticipated that observers in the courtroom will
73 use portable electronic devices to transmit news accounts and commentary during the
74 proceedings. Judges should instruct counsel to instruct witnesses who have been
75 excluded from the courtroom not to view accounts of other witnesses' testimony before
76 giving their own testimony.

77

78 *Effective May/November 1, 20__*