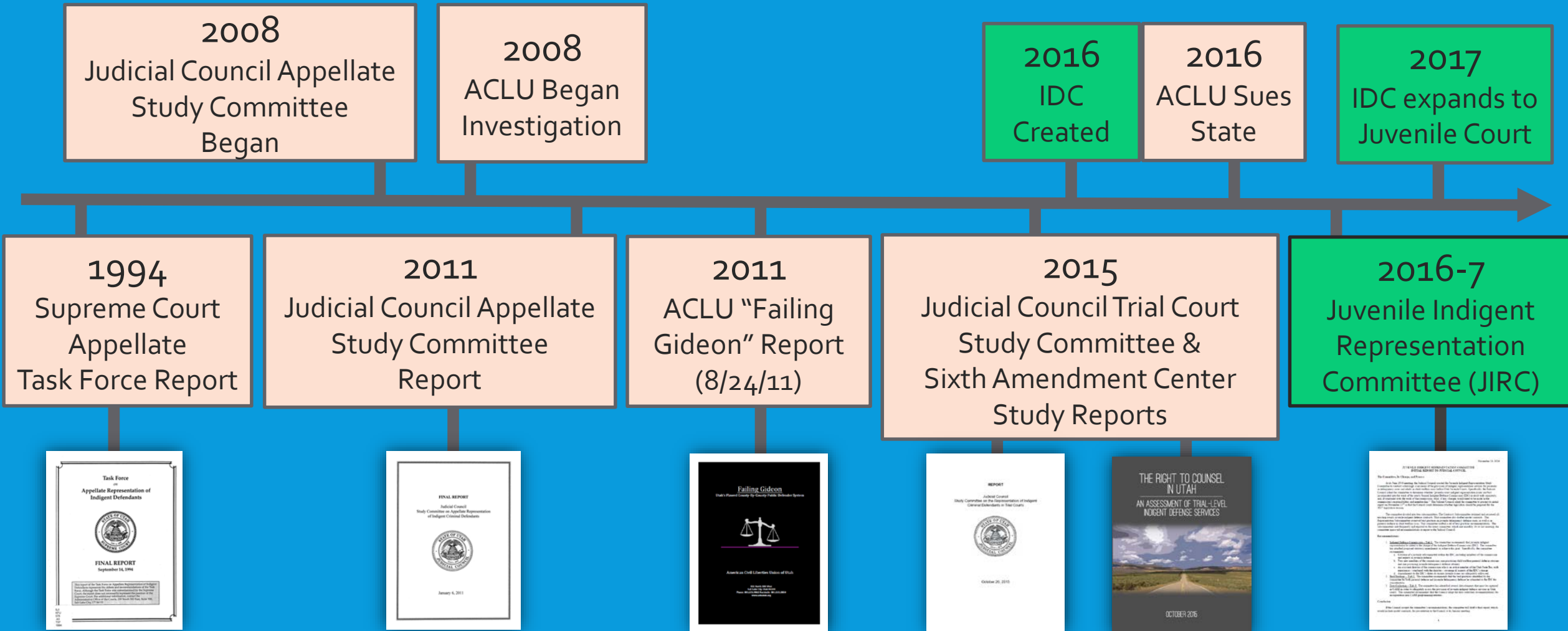


# THE UTAH INDIGENT DEFENSE COMMISSION'S PARENT REPRESENTATION MANDATE: CORE PRACTICE PRINCIPLES AND IMPLEMENTATION FUNDING



CIP SUMMIT  
August 21, 2018

# HISTORICAL CONTEXT



# IDC: WHAT WE DO



DATA

STANDARDS

GRANTS &  
TECHNICAL  
ASSISTANCE  
(~\$2mil/ year)

# CURRENT [AND ANTICIPATED] IDC GRANTS

The IDC has obligated over \$3 million in grants over 3 years to 6 counties and 2 cities

4 additional county grants are anticipated

- Juab County
- Utah County
- Ogden City
- Salt Lake County
- Uintah County
- Nephi City
- Carbon County
- Sanpete County
- [Millard County]
- [Tooele County]
- [Daggett County]
- [Duchesne County]

# IDC CORE PRINCIPLES

## UTAH INDIGENT DEFENSE COMMISSION

### CORE PRINCIPLES FOR INDIGENT DEFENSE SYSTEMS

This document sets forth core principles for the provision of indigent defense representation in the State of Utah.<sup>1</sup> These principles are intended to encompass the provision of indigent defense services in three defined areas of practice—criminal defense, delinquency defense, and parental defense.

The purpose of these principles is twofold:

1. To provide guidance to government officials, policymakers, and other entities who are charged with providing, overseeing, assessing, and/or funding indigent defense systems<sup>2</sup>; and
2. To provide a yardstick for measuring the extent to which an indigent defense system ensures that individual attorneys within that system have the knowledge, ability, resources, and independence necessary to provide effective representation.

#### PRINCIPLE 1/ ORGANIZATIONAL CAPACITY OF DEFENSE SYSTEM IS SUFFICIENT TO ENSURE COMPLIANCE WITH CORE PRINCIPLES

The ability to meet the principles articulated below requires a threshold resource capacity, including adequate budget, administrative resources, and oversight capacity.

To the extent an indigent defense system lacks such resources, efforts should be made to increase the system's organizational capacity—for example, through the pursuit of grants, public-private partnerships, and agreements and through the pursuit of any available grants and other funding sources.

#### PRINCIPLE 2/ SYSTEM PROVIDES REPRESENTATION THAT DOES NOT INTERFERE

Indigent defense counsel's primary and most fundamental duty is to represent the best interests of the client. Defense counsel, therefore, should exercise independent professional judgment, and without fear of termination, staff, or reduction in defense resources.<sup>3</sup> The selection of counsel should be independent of the judiciary and independent of the prosecution.

<sup>1</sup> The Indigent Defense Commission is mandated to "develop and oversee the provision of indigent defense systems with [in] the state of Utah."

<sup>2</sup> "Indigent Defense System" or "System" refers to the local government providing indigent defense services, and includes a county, city, town or a regional defense system.

<sup>3</sup> Utah Code §77-32-804(1)(a)(i) ("Indigent defense service provider shall exercise independent professional judgment, and without fear of termination, staff, or reduction in defense resources."); Utah Code §77-32-804(1)(a)(iv) ("[T]he service provider shall exercise independent professional judgment.")

<sup>4</sup> Utah Code §77-32-804(5) ("The delivery of indigent defense services shall be independent of the judiciary and independent of the prosecution.")

## UTAH INDIGENT DEFENSE COMMISSION

### CORE PRINCIPLES FOR APPOINTED ATTORNEYS REPRESENTING YOUTH IN DELINQUENCY PROCEEDINGS

#### 1/ ROLE OF THE ATTORNEY

The central role of the delinquency defense attorney is the protection of the client's procedural and substantive rights through ethical, competent, and effective representation.

Ethical, competent, and effective representation is independent, conflict-free, individualized, developmentally appropriate, and based on the client's expressed wishes.<sup>1</sup>

#### 2/ DUTIES TO CLIENT

Ethical representation by the delinquency defense attorney encompasses the same type of duties owed to adult clients, in addition to duties that arise from the youth status of the client.

The attorney's duties include:

- undivided loyalty, which includes identifying and addressing any conflicts of interest;
- confidentiality;
- regular, developmentally appropriate communication sufficient to:
  - the attorney's understanding of the client's expressed wishes;
  - the client's understanding of the allegations, consequences, and available evidence, likelihood that the allegations are true, and available dispositional options; and
  - the client's knowing and voluntary decision to accept the attorney's representation.

The attorney has an obligation to monitor the competency of the client in a delinquency case and to litigate issues of competency if necessary. The attorney's responsibility to gather, in each individual case, information commonly includes education history, mental health history, and family history.

The delinquency defense attorney acts as the client's advocate, not the client's "best interests" advocate. The attorney should maintain a case and file motions on behalf of the client and Lawyer" of the Utah Rules of Professional Conduct. The attorney should operate under the presumption that the representation of one or both clients.

Representation generally requires robust communication. The attorney should be mindful there exists no exception to the attorney-client communications in the presence of the court or judge.

ADOPTED : August, 2017

“CORE PRINCIPLES FOR INDIGENT DEFENSE SYSTEMS”

ADOPTED: February 2018

“CORE PRINCIPLES FOR APPOINTED ATTORNEYS REPRESENTING YOUTH IN DELINQUENCY PROCEEDINGS”

## UTAH INDIGENT DEFENSE COMMISSION

### CORE PRINCIPLES FOR APPOINTED ATTORNEYS REPRESENTING INDIGENT PARENTS OR LEGAL GUARDIANS IN CHILD WELFARE PROCEEDINGS

#### 1/ ROLE OF THE ATTORNEY

The attorney appointed to represent a parent or legal guardian in child welfare proceedings—hereinafter “the parent attorney” – works to protect a parent’s constitutional and legal rights in the care and custody of their children. The role extends beyond mere attendance at scheduled court hearings and includes out of court support to the client and developing a strength-based narrative of the client that guides every aspect of the case.

The parent attorney plays a critical role in the appropriate functioning of the child welfare system. Effective advocacy by the parent attorney improves system decision making, strengthens families, and results in better outcomes for subject children.<sup>1</sup>

#### 2/ DUTIES TO CLIENT

The duties owed by the parent attorney to their client include:

- confidentiality;
- undivided loyalty, which includes identifying and addressing any conflicts of interest, and handling the matter with a sense of urgency on behalf of the client;

• regular and meaningful communication with the client, including mediation, and direct communication with DCYF, and the client the critical role of the parent attorney in each case, the attorney should be mindful there exists no exception to the attorney-client communications in the presence of the court or judge.

ADOPTED: February 2018

“CORE PRINCIPLES FOR APPOINTED ATTORNEYS REPRESENTING INDIGENT PARENTS OR LEGAL GUARDIANS IN CHILD WELFARE PROCEEDINGS”

# IDC CORE PRINCIPLES FOR APPOINTED ATTORNEYS REPRESENTING PARENTS OR LEGAL GUARDIANS IN CHILD WELFARE PROCEEDINGS

## UTAH INDIGENT DEFENSE COMMISSION

### CORE PRINCIPLES FOR APPOINTED ATTORNEYS REPRESENTING INDIGENT PARENTS OR LEGAL GUARDIANS IN CHILD WELFARE PROCEEDINGS

#### 1/ ROLE OF THE ATTORNEY

The attorney appointed to represent a parent or legal guardian in child welfare proceedings—hereinafter “the parent attorney” – works to protect a parent’s constitutional and legal rights in the care and custody of their children. The role extends beyond mere attendance at scheduled court hearings and includes out of court support to the client and developing a strength-based narrative of the client that guides every aspect of the case.

The parent attorney plays a critical role in the appropriate functioning of the child welfare system. Effective advocacy by the parent attorney improves system decision making, strengthens families, and results in better outcomes for subject children.<sup>1</sup>

#### 2/ DUTIES TO CLIENT

The duties owed by the parent attorney to their client include:

- confidentiality;
- undivided loyalty, which includes identifying and addressing any conflicts of interest<sup>2</sup>;
- handling the matter with a sense of urgency while being sensitive to the individual needs of the client;
- regular and meaningful communication with the client, with the goal of engaging the client in the process, including mediation, and empowering the client to make informed decisions;
- frequent communication with DCFs, services providers, and other stakeholders;
- conveying to the client the critical importance of staying in contact with the parent attorney; and
- establishing, in each case, the best means of staying in contact with the client.

<sup>1</sup> E.g., Courtney, Mark E., and Jennifer L. Hook. 2012. "Evaluation of the impact of enhanced parental legal representation on the timing of permanency outcomes for children in foster care." *Children and Youth Services Review* 34(7): 1337-43 (finding that enhancements in parental representation in Washington State improved permanency outcomes for children). An executive summary of the study findings is available at: <https://olis.leg.state.or.us/liz/201311/Downloads/CommitteeMeetingDocument/31635>

<sup>2</sup> The attorney should maintain a case and file management system sufficient to enable conflict checks. The parent attorney should also avoid, whenever possible, representing two or more individuals involved in the same dependency or termination proceeding absent unusual circumstances.

## 1/ ROLE OF THE ATTORNEY

## 2/ DUTIES TO CLIENT

## 3/ TRAINING AND ONGOING EDUCATION

## 4/ AREAS OF KNOWLEDGE AND EXPERTISE

## 5/ SCOPE OF REPRESENTATION

## 6/ CHALLENGING REMOVAL, ALLEGATIONS, AND TERMINATION

## 7/ AFFIRMATIVE ADVOCACY FOR PLACEMENT, SERVICES, AND PARENT TIME

## 8/ WORKLOAD

## 9/ APPELLATE ISSUES

## 10/ SYSTEM ADVOCACY AND IMPROVEMENT

# IDC CORE PRINCIPLES FOR APPOINTED ATTORNEYS REPRESENTING PARENTS OR LEGAL GUARDIANS IN CHILD WELFARE PROCEEDINGS

## UTAH INDIGENT DEFENSE COMMISSION

### CORE PRINCIPLES FOR APPOINTED ATTORNEYS REPRESENTING INDIGENT PARENTS OR LEGAL GUARDIANS IN CHILD WELFARE PROCEEDINGS

#### 1/ ROLE OF THE ATTORNEY

The attorney appointed to represent a parent or legal guardian in child welfare proceedings—hereinafter “the parent attorney” – works to protect a parent’s constitutional and legal rights in the care and custody of their children. The role extends beyond mere attendance at scheduled court hearings and includes out of court support to the client and developing a strength-based narrative of the client that guides every aspect of the case.

The parent attorney plays a critical role in the appropriate functioning of the child welfare system. Effective advocacy by the parent attorney improves system decision making, strengthens families, and results in better outcomes for subject children.<sup>1</sup>

#### 2/ DUTIES TO CLIENT

The duties owed by the parent attorney to their client include:

- confidentiality;
- undivided loyalty, which includes identifying and addressing any conflicts of interest<sup>2</sup>;
- handling the matter with a sense of urgency while being sensitive to the individual needs of the client;
- regular and meaningful communication with the client, with the goal of engaging the client in the process, including mediation, and empowering the client to make informed decisions;
- frequent communication with DCFs, services providers, and other stakeholders;
- conveying to the client the critical importance of staying in contact with the parent attorney; and
- establishing, in each case, the best means of staying in contact with the client.

<sup>1</sup> E.g., Courtney, Mark E., and Jennifer L. Hook. 2012. "Evaluation of the impact of enhanced parental legal representation on the timing of permanency outcomes for children in foster care." *Children and Youth Services Review* 34(7): 1337-43 (finding that enhancements in parental representation in Washington State improved permanency outcomes for children). An executive summary of the study findings is available at: <https://olis.leg.state.or.us/liz/201311/Downloads/CommitteeMeetingDocument/31635>

<sup>2</sup> The attorney should maintain a case and file management system sufficient to enable conflict checks. The parent attorney should also avoid, whenever possible, representing two or more individuals involved in the same dependency or termination proceeding absent unusual circumstances.

## 1/ ROLE OF THE ATTORNEY

## 2/ DUTIES TO CLIENT

## 3/ TRAINING AND ONGOING EDUCATION

## 4/ AREAS OF KNOWLEDGE AND EXPERTISE

## 5/ SCOPE OF REPRESENTATION

## 6/ CHALLENGING REMOVAL, ALLEGATIONS, AND TERMINATION

## 7/ AFFIRMATIVE ADVOCACY FOR PLACEMENT, SERVICES, AND PARENT TIME

## 8/ WORKLOAD

## 9/ APPELLATE ISSUES

## 10/ SYSTEM ADVOCACY AND IMPROVEMENT

# REPRESENTATION OUT OF COURT

“The role extends beyond mere attendance at scheduled court hearings and includes out of court support to the client .”

(1/Role of the Attorney)

“The parent attorney should advocate for parents at mediation, Family Team Meetings, and other agency meetings that take place outside of court, whether directly or through the participation of a defense team social worker.”

(5/Scope of Representation)



“ATTORNEY SHOULD INTERVENE WITH THE CHILD WELFARE AGENCY, PROVIDER AGENCIES, MEDICAL PROVIDERS, AND SCHOOL TO ENSURE PARENTS’ RIGHTS ARE PROTECTED, INCLUDING ATTENDING MEDIATION, FAMILY TEAM MEETINGS, ETC.”  
(JIRC Final Recommendations)

**UTAH INDIGENT DEFENSE COMMISSION**  
**CORE PRINCIPLES FOR APPOINTED ATTORNEYS**  
**REPRESENTING INDIGENT PARENTS OR LEGAL GUARDIANS IN CHILD WELFARE PROCEEDINGS**

**1/ ROLE OF THE ATTORNEY**

The attorney appointed to represent a parent or legal guardian in child welfare proceedings— hereinafter “the parent attorney” – works to protect a parent’s constitutional and legal rights in the care and custody of their children. The role extends beyond mere attendance at scheduled court hearings and includes out of court support to the client and developing a strength-based narrative of the client that guides every aspect of the case.

The parent attorney plays a critical role in the appropriate functioning of the child welfare system. Effective advocacy by the parent attorney improves system decision making, strengthens families, and results in better outcomes for subject children.<sup>1</sup>

**2/ DUTIES TO CLIENT**

The duties owed by the parent attorney to their client include:

- confidentiality;
- undivided loyalty, which includes identifying and addressing any conflicts of interest<sup>2</sup>;
- handling the matter with a sense of urgency while being sensitive to the individual needs of the client;
- regular and meaningful communication with the client, with the goal of engaging the client in the process, including mediation, and empowering the client to make informed decisions;
- frequent communication with DCFS, services providers, and other stakeholders;
- conveying to the client the critical importance of staying in contact with the parent attorney; and
- establishing, in each case, the best means of staying in contact with the client.

<sup>1</sup> E.g., Courtney, Mark E., and Jennifer L. Hook. 2012. “Evaluation of the impact of enhanced parental legal representation on the timing of permanency outcomes for children in foster care.” *Children and Youth Services Review* 34(7): 1337-43 (finding that enhancements in parental representation in Washington State improved permanency outcomes for children). An executive summary of the study findings is available at: <https://olis.leg.state.or.us/liz/201311/Downloads/CommitteeMeetingDocument/31635>

<sup>2</sup> The attorney should maintain a case and file management system sufficient to enable conflict checks. The parent attorney should also avoid, whenever possible, representing two or more individuals involved in the same dependency or termination proceeding absent unusual circumstances.





## Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes for Children in Foster Care

by Mark E. Courtney, PhD., Jennifer L. Hook, PhD., and Matt Orme

Partners for Our Children at the University of Washington

## OUTCOMES

- **improved permanency outcomes for children**
  - **Higher and faster rates of family reunification**
  - **Faster rates of other types of permanency (adoption, guardianship, etc.)**
- **Improved court operations on child welfare cases**
  - **Fewer continuances**
  - **Faster case resolutions**



The North Carolina Court System  
**Office of Indigent Defense Services**

123 W Main Street, Suite 400, Durham, NC 27701  
 Telephone: (919) 354-7200, Fax: (919) 354-7201

Office of Parent Representation



State of Oregon  
**Office of Public Defense Services**

Washington State  
**Office of Public Defense**

**The Bronx Defenders** *Redefining public defense*  
 FOR TWENTY YEARS



OFFICE OF RESPONDENT PARENTS' COUNSEL

Office of the Respondent Parents' Counsel FY 2018-19 Budget Change Summary - by Fund Source					
	FTE	Total	GF	CF	RF
<b>Long Bill</b>					
S.B. 17-254, Office of the Respondent Parents' Counsel	10.0	\$16,230,423	\$16,169,328 10.0 FTE	\$30,000	\$31,095
<b>Total FY 2017-18 Appropriation</b>	<b>10.0</b>	<b>\$16,230,423</b>	<b>\$16,169,328</b>	<b>\$30,000</b>	<b>\$31,095</b>
<b>Prior Year Budget Change Annualizations</b>					
BA-2, Social Worker Pilot Program	0.0	(\$301,033)	(\$301,033)	\$0	\$0
<b>Total Prior Year Budget Change Annualizations</b>	<b>0.0</b>	<b>(\$301,033)</b>	<b>(\$301,033)</b>	<b>\$0</b>	<b>\$0</b>

# PARENT REPRESENTATION PILOT PROJECT

- Provide social work services as part of a multidisciplinary, legal defense team in 2-3 pilot counties
- Social worker will help lawyers triage their case load and determine the level of social work need presented by each client
- Social Worker will work collaboratively with the DCFS caseworker in assisting clients in accessing social services/ treatment and coming into compliance with DCFS services plans
- Social Worker will develop supportive relationships with clients and meaningfully counsel clients about alternative permanency outcomes for children if clients are unable or unwilling to meet the court requirements for reunification
- Social Worker will attend and advocate for parents in out-of-court, but legally significant events – for example, mediations and Family Team Meetings

# PARENT REPRESENTATION PILOT PROJECT

- 1) **Fund** ✓
  - Social work services
  - Assist parental defenders in 2 pilot counties
- 2) **Measure**
  - Rate and speed of family reunification
  - Rate and speed of exit from foster care
  - Average length of cases
  - # of court continuances
  - Qualitative feedback from child welfare stakeholders– parents, Judges, GAL, DCFS, etc.
- 3) **Assess**
  - Assess pilot project outcomes
  - Determine if scaling up is appropriate



Jojo Liu, Assistant Director  
jliu@utah.gov  
801. 903.3176 (mobile)

Sheryl St. Clair  
sherylstclair09@gmail.com  
801.865.8208 (mobile)