

**A RESOLUTION OF WEBER COUNTY ESTABLISHING
A PUBLIC DEFENDER BOARD**

WHEREAS, the Sixth Amendment to the United States Constitution guarantees that, “[i]n all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense;” and

WHEREAS, in *Gideon v. Wainwright*, 372 U.S. 335 (1963), and cases that followed, the United States Supreme Court made it clear that the Sixth Amendment requires states to provide counsel to those who cannot afford it in any case where the accused may be sentenced to incarceration; and

WHEREAS, the right to effective defense counsel is also guaranteed under the Utah Constitution which provides that “[i]n criminal prosecutions the accused shall have the right to appear and defend in person and by counsel;” and

WHEREAS, the Utah State Legislature has delegated the responsibility to provide an effective legal defense to counties and municipalities pursuant to the Indigent Defense Act, as set forth in Title 78B, Chapter 22 Utah Code Ann.; and

WHEREAS, Weber County has been fulfilling its obligation to provide legal counsel to indigent defendants through the use of independent contractors; and

WHEREAS, the Board of Weber County Commissioners considered the results of a study on its indigent defense system in a public work session meeting on August 30, 2021 and determined that it would better serve indigent defendants and the residents of Weber County to provide defense services through a county Public Defender Office; and

WHEREAS, in order to avoid an actual or perceived conflict of interest by having the Board of County Commissioners oversee the prosecution and the defense of criminal cases, the Board of County Commissioners has decided to create a Public Defense Board which will be responsible to hire, fire, and generally oversee the director of the Public Defender Office;

NOW THEREFORE, the Board of County Commissioners of Weber County resolves as follows:

**SECTION ONE
ESTABLISHMENT OF BOARD**

The Weber County Public Defense Board (“Board”) is hereby created for the purpose of hiring, firing, and generally overseeing the work of the public defender director.

SECTION TWO
BOARD MEMBERSHIP AND APPOINTMENT

- (1) The Board shall consist of three members who shall be appointed by the Board of Weber County Commissioners.
- (2) One board member shall be a Weber County Commissioner; however, the Commissioner assigned to the Board shall not also be assigned to the County Attorney's Office. The other two board members shall be members of the community who have a sound understanding of indigent defense. Such members may be retired criminal defense attorneys, retired judges, individuals recommended by the State Indigent Defense Commission, or other individuals with experience in indigent defense.
- (3) The initial term of the board members shall be assigned by the Board of County Commissioners and shall be staggered so that one term shall expire on December 31, 2022, one shall expire on December 31, 2023, and the other shall expire on December 31, 2024.
- (4) After the initial term of each board member, appointments shall be for three-year terms. Board members may serve multiple terms upon appointment by the Board of County Commissioners. Board members shall serve until their successor is duly appointed and qualifies.
- (5) Whenever a midterm vacancy occurs, the chairperson of the Board shall promptly give written notice to the Board of County Commissioners. Midterm appointments shall be for the remainder of the unexpired term.
- (6) The county attorney, deputy prosecuting attorneys, law enforcement officers, current criminal defense attorneys, and current members of the judiciary are ineligible to serve as members of the Board.
- (7) Board members shall serve without pay but may receive reimbursement for expenses as approved by the Weber County Clerk/Auditor's Office.
- (8) Two members of the Board shall constitute a quorum for the purpose of conducting the business of the Board. Decisions of the Board shall be approved by a majority of the members present.
- (9) The Board shall meet at least quarterly or upon call of its chairperson or any two members of the Board.
- (10) The Board shall elect its chairperson and secretary by a majority vote at the first meeting in each calendar year.

**SECTION THREE
POWERS AND DUTIES OF THE BOARD**

- (1) The Board shall hire and oversee a director to manage the Public Defender Office. Such person shall be an attorney admitted to the practice of law in the State of Utah and shall have at least two years of experience in criminal defense.
- (2) The Board may appoint an acting director to act during any vacancy or disability of the incumbent.
- (3) The Board shall conduct quarterly performance evaluations for the director to ensure the director is adequately performing his duties.
- (4) The Board shall recommend pay increases, disciplinary action, or termination of the director to the county depending upon the director's performance. The county will be responsible for setting the director's rate of pay and the amount of pay increases.
- (5) The director shall be an at-will employee of the county but may only be terminated by a vote of a majority of the board members. Other employees of the public defender office shall be county employees not subject to oversight by the Public Defense Board.
- (6) As an employee of the county, the director shall be subject to all countywide policies including finance and personnel policies.

**SECTION FOUR
DIRECTOR DUTIES**

In addition to other responsibilities as the Board may assign, the director shall have the following duties:

- (1) To act as the director of the Public Defender Office and to devote full-time employment to such position.
- (2) To establish within the Office such divisions of public defenders as are necessary and convenient.
- (3) To employ or contract with attorneys, investigators, paralegals, clerical employees, and expert witnesses as needed to provide an effective defense for indigent defendants and consistent with the budget approved by the Board of County Commissioners.
- (4) To keep and maintain records of all cases handled by the Office and report at least quarterly to the Board concerning the operation of the Office.
- (5) To ensure adequate, appropriate, and consistent assignment of cases to public defenders.

- (6) To ensure that the Office is providing an effective legal defense for indigent defendants in criminal, juvenile, probation violation, extradition, private termination, civil commitment and other matters as required by law.
- (7) To ensure that the Office has policies and procedures for the efficient operation of the Office.
- (8) To recommend an annual operating budget for the Office and thereafter to monitor expenditures of funds by the Office so as not to exceed the budget.
- (9) To receive and apply funds from grants, gifts, bequests, and payments from persons served to the purposes of the Office.
- (10) The public defender director shall establish a comprehensive plan for the provision of legal representation to indigent defendants in the county which includes:
 - a. Provision of legal representation to an indigent defendant at the earliest possible point in time.
 - b. The legal representation of an indigent defendant by the same attorney or attorneys through the pendency of a matter to the greatest extent possible.
 - c. Professional development, continuing legal education, and malpractice coverage for public defenders.
 - d. Formal or informal agreements with the county prosecutor and law enforcement agencies establishing simplified procedures for expediting discovery and other communications with respect to pending cases, consistent with applicable court rules.
 - e. Utilization of all available sources of governmental and nongovernmental funding.
 - f. Periodic reevaluation of the operation of the Office and the accomplishment of its purpose.

Be it resolved this _____ day of September, 2021.

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By _____
James "Jim" Harvey, Chair

Commissioner Froerer voted _____
Commissioner Harvey voted _____
Commissioner Jenkins voted _____

ATTEST:

Ricky Hatch, CPA
Weber County Clerk/Auditor