

**MISSISSIPPI
PUBLIC DEFENDERS
TASK FORCE**



REPORT TO THE MISSISSIPPI LEGISLATURE

DECEMBER 2, 2005

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in Non-Capital Felony Cases at Trial

**Letter
from the
Chairman of the
Mississippi Public Defenders Task Force**



SUPREME COURT OF MISSISSIPPI

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WILLIAM L. WALLER, JR.
PRESIDING JUSTICE

December 2, 2005

The Honorable Amy Tuck
Distinguished Members of the Senate
The Honorable Billy McCoy
Distinguished Members of the House
New Capitol
Jackson, Mississippi 39201

Mesdames and Messieurs:

The Mississippi Public Defender Task Force has diligently and thoughtfully considered the legislative mandate which included: (1) needs-study for indigent counsel; (2) types and costs of other states' public defender systems; and (3) the relationship between the circuit bench and the appointment of public defenders. Please accept this letter as the report of the Task Force to the 2006 Mississippi Legislature. We trust that it is responsive to your concerns.

PASSAGE OF SENATE BILL 2960

Legislation recommended by the Public Defender Task Force to create the Office of Indigent Appeals was signed by Governor Haley Barbour on March 21, 2005. Senate Bill 2960, sponsored by Senator Charlie Ross, received overwhelming approval by the House and Senate. A copy of the bill is attached.

In this bill, funding for the Office of Capital Defense Counsel and the Office of Capital Post-Conviction Counsel will change from general fund appropriations to special funds generated from increases in assessments on criminal fines. In addition, the Office of Indigent Appeals was created and funded through the same mechanism. The net effect of this change will free up about two million dollars presently appropriated from the general fund and provide a much improved public defender system.

The Honorable Amy Tuck, et al.
December 2, 2005
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The new office will represent indigent persons in the appeal of non-capital felony convictions. The office parallels the Criminal Division of the Attorney General's office, and will be similarly staffed. The Director will be appointed by the Governor, and employees of the office will be appointed by the director. The director will serve for four years, and the employees will serve at his or her will and pleasure. In the case of conflict or excessive workload, representation will be provided by attorneys selected and employed by the office on a contract basis.

The devastation caused by hurricane Katrina has delayed the appointment of the director. The appointment is anticipated to be made in the coming weeks.

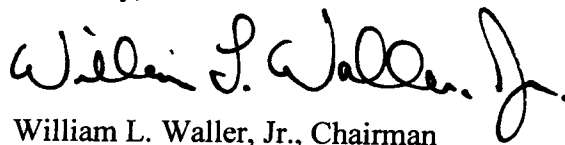
RECOMMENDATION

The Task Force offers no legislative proposal to the Mississippi Legislature for the forthcoming session. The next year will be devoted to: 1) the establishment and initial operation of the new Office of Indigent Appeals; and 2) evaluation of the new funding approach for the Office of Capital Defense Council and the Office of Capital Post-Conviction Relief Council.

CONCLUSION

On behalf of all members of the Task Force, we appreciate the opportunity to serve with the hope that our legal system will be improved.

Sincerely,



William L. Waller, Jr., Chairman
Mississippi Public Defender Task Force

cc: Governor Haley Barbour

WLW/mm

Enclosure

Statutory Creation

MISSISSIPPI PUBLIC DEFENDER TASK FORCE
Miss. Code Ann. § 25-32-71

There is created the Mississippi Public Defender Task Force which shall be composed of eleven (11) members as follows:

- The President of the Mississippi Public Defender Association, or his designee;
- The President of the Mississippi Prosecutors Association, or his designee;
- A representative of the Administrative Office of Courts;
- A representative of the Mississippi Supreme Court;
- A representative of the Conference of Circuit Judges;
- A representative of the Mississippi Attorney General's Office;
- A representative of the Mississippi Association of Supervisors;
- The Chairman of the Senate Judiciary Committee, or his designee;
- The Chairman of the Senate Appropriations Committee, or his designee;
- The Chairman of the House Judiciary En Banc Committee, or his designee;
- The Chairman of the House Appropriations Committee, or his designee.

The Task Force was charged to make a needs-study of the circuit court districts for state-funded indigent defense counsel, examine existing public defender systems, and provide this report to the Legislature by December 2, 2005. The Task Force also looked at the types of approaches taken by other states, and studied the relationship between the circuit bench and the appointment of public defenders.

Membership of the Task Force

Mississippi Public Defender Task Force Membership

Chairman

Presiding Justice William L. Waller, Jr.
Mississippi Supreme Court
P.O. Box 117
Jackson, MS 39205
Phone: (601) 359-2139
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Vice-Chairman

Judge William Chapman, III
Conference of Circuit Judges
P.O. Box 1626
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Senator Carl "Jack" Gordon, Jr.
Chairman Senate Appropriations Committee
P.O. Box 1018 (Capitol)
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Senator Charlie Ross
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Jackson, MS 39215
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Representative Edward Blackmon, Jr.
House Judiciary En Banc Committee
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Representative Johnny W. Stringer
Chairman House Appropriations Committee
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André deGruy

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T.H. "Butch" Scipper

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Updated 08/25/05

Attachment "A"

Public Defender Task Force Minutes

MISSISSIPPI PUBLIC DEFENDER TASK FORCE

MINUTES

AUGUST 26, 2005

MS BAR CENTER BOARD ROOM

10:00 A.M.

Members Present:

Presiding Justice William L. Waller, Jr., Supreme Court, Chairman
Judge William Chapman, III, Conference of Circuit Judges, Co-Chairman
T.H. "Butch" Scipper, MS Association of Supervisors
Kevin Lackey, Administrative Office of Courts
Senator Carl "Jack" Gordon, Jr., MS Senate Appropriations Committee
Rep. Johnny Stringer, MS House Appropriations Committee

Others Present:

Jack Pool, Central Legal, Supreme Court
Margarette Meeks, Administrative Office of Courts
Jimbo Richardson, for Rep. Edward Blackmon, MS House Judiciary En Banc Committee
Paul Hurst, Governor's Office
André deGruy, Office of Capital Defense Counsel
Louwlynn Vanzetta Williams, Office of Capital Post Conviction Counsel
Matt Steffey, Mississippi College School of Law
Joel Yelverton, MS Association of Supervisors

Members Absent:

Marvin "Sonny" White, MS Attorney General's Office
Rep. Edward Blackmon, Jr., MS House Judiciary En Banc Committee
Ellis "Bilbo" Mitchell, MS Prosecutors Association
Senator Charlie Ross, MS Senate Judiciary Committee
Tom Fortner, MS Public Defender Association

Call to Order

The meeting of the Mississippi Public Defender Task Force was called to order at 10:05 a.m. by Presiding Justice William L. Waller, Jr., Chairman. Judge William Chapman, Vice-Chairman, gave the opening prayer.

Opening Comments

Presiding Justice Waller provided a chronology of significant indigent defense activities in Mississippi. In 1999, the Court held in *Jackson v. State* that capital defendants would be entitled to representation in post-conviction relief cases. In 2001, the Office of Post-

Conviction Relief Counsel was created by legislation. Included in this legislation was the creation of the Office of Capital Defense Counsel, which was incorporated by the Attorney General's Office. In 2005, the Legislature created the Office of Indigent Appeals.

OLD BUSINESS
Minutes

Senator Carl Gordon moved that the minutes from the November 19, 2004 meeting be approved. Mr. Butch Scipper seconded the motion. The minutes were unanimously approved.

NEW BUSINESS
A. Reports

Presiding Justice Waller called on representatives from various offices to present reports.

1. Office of Capital Defense Counsel

Mr. André deGruy announced that he will replace Mr. Tom Fortner, Hinds County Public Defender, as the representative for the MS Public Defenders Association on this task force. Mr. deGruy presented a report on the activities of the Office of Capital Defense Counsel. A fourth attorney, Ms. Allison Steiner, was hired in August. The office is seeking to fill the investigation position with a forensic social worker. The office is collaborating with Jackson State University and the University of Southern Mississippi in utilizing student interns during the summer months. Mr. deGruy explained that his office needs to identify ways to increase funding for hiring private attorneys on a contractual basis to handle conflict cases. Approximately \$1 million is needed. Mr. deGruy's office will develop qualifications for the contractual attorneys. Mr. deGruy noted that training is a great concern. The federal government will provide some assistance by paying the costs for two county public defenders to attend the death penalty training in November.

Following Mr. deGruy's report, Presiding Justice Waller opened the floor for questions. Presiding Justice Waller asked about the amount of money generated from the special assessment on fines. Mr. deGruy indicated that he did not have the exact amount but explained that the assessment has generated sufficient funds. Presiding Justice Waller underscored that the purpose of the Office of Indigent Appeals was to prevent another situation like Quitman County. There was a brief discussion about the issue of conflict with attorneys representing multiple defendants.

2. Office of Post Capital Relief Counsel

Ms. Vanzetta Williams presented the report for the Office of Post Capital Relief Counsel on behalf of Mr. Robert Ryan, Director, who is attending a conference out-of-state. Ms.

Williams reported that the office represents 40 death row defendants. The office consists of three attorneys, one paralegal, one investigator, one contractual paralegal and one contractual fiscal agent. The enabling statute limits the number of staff members. Federal habeas petitions are handled by local counsel or nationally recognized attorneys. The office is in the process of filing six petitions. Ms. Williams noted that the office faces challenges with scheduling because court dockets are full. Because the office operates pursuant to Rule 22, it is difficult to function when the attorneys are unable to appear before a judge. As to training, the attorneys have attended training pursuant to Rule 22. The office has 11 potential *Atkins* cases.

Following Ms. Williams' report, Presiding Justice Waller opened the floor for questions and general discussion.

Presiding Justice Waller noted that the office should adhere to the time-lines pursuant to Rule 22. He indicated that other avenues are available for getting things done.

Mr. deGruy discussed the problem with accused individuals sitting in jail awaiting evaluation by Whitfield. The wait can be as long as one year because of funding problems at Whitfield. Mr. deGruy explained that the funding for state forensics burdens everyone because these individuals cannot be placed in the regular population.

Mr. Scipper inquired about the length of time for transmitting county funds to the State Treasurer under SB 2960. Mr. Jack Pool stated that there was probably a 90-day interval.

Ms. Williams explained that there is often a 3-month wait for transcripts. Her office has had to file PCR petitions without the transcript.

3. Office of Indigent Appeals

Mr. Paul Hurst, of the Governor's Office, gave a brief report on the Office of Indigent Appeals. There was an overwhelming response to the Executive Director position. A good applicant pool has been created from approximately 30 résumés. The timetable for filling the position is early September. Mr. deGruy has volunteered to assist with the organizational setup of the office.

4. Uniform Criminal Rules Study Committee

Professor Matt Steffey reported on the work of the Uniform Criminal Rule Study Committee. He began work with the committee as its official reporter in February of this year. The goal of the committee is to develop a comprehensive set of uniform rules of criminal procedure. Mr. Steffey briefly discussed the scope of the rules considered to date and his role as reporter. The anticipated time frame for completion of the proposed rules is two years.

5. Criminal Code Revision

Mr. Steffey reported on the work of the Criminal Code Revision Committee. The committee, which began meeting in 1997, has undertaken a monumental task. The goal is to develop a legislative proposal for revising the criminal code. The anticipated time frame for completion is a couple of years. This project will provide tremendous benefits to the profession.

B. Proposed Legislation for 2006

Presiding Justice Waller indicated that there were no plans to submit a legislative proposal for 2006. Since the Legislature passed legislation to create the Office of Indigent Appeals, the task force should allow the next year for the office to get established and become operational.

Presiding Justice Waller asked Ms. Williams to submit to the Court a critical needs proposal for the Office of Post Conviction Relief Counsel.

Rep. Johnny Stringer reported that the Department of Mental Health's budget was cut by \$11 million. The cuts have affected Mental Health's ability to provide expert evaluations.

Sen. Gordon believes the Office of Indigent Appeals will greatly improve the efficiency of indigent defense in Mississippi.

Mr. deGruy stated that there is a need for some administrative oversight for the three state offices and counties providing indigent defense. He suggested that the task force recommend the creation of a public defender commission. The director of the commission would provide assistance to judges and counties when they are ready for a public defender system. Mr. deGruy also proposed that a position be added to the Office of Indigent Appeals to address indigent juvenile appeals.

Sen. Gordon asked about the number of counties with full-time public defenders. The counties include Forrest, Hinds, Jackson, and Washington.

There was a brief discussion about the inclusion of public defenders in the state retirement system. Sen. Gordon stated that the statute could be amended to include public defenders.

Next Meeting

Presiding Justice Waller indicated that there was no need for an additional meeting this year since no funding request will be submitted to the Legislature.

Adjournment

There being no further business, the meeting of the MS Public Defender Task Force was adjourned at 11:15 a.m.

Respectfully submitted by:

Margarette Meeks
Project Manager, Administrative Office of Courts
Recorder, MS Public Defender Task Force

Hon. William L. Waller, Jr., Presiding Justice
Supreme Court of Mississippi
Chairman, MS Public Defender Task Force

Date Approved

* Note: Minutes are signed when approved at the next meeting.

Attachment "B"

Senate Bill 2960

MISSISSIPPI LEGISLATURE

2005 Regular Session

To: Judiciary, Division A; Appropriations

By: Senator(s) Ross, Dawkins, Harden, Jackson (11th), Williamson

Senate Bill 2960**(As Sent to Governor)**

AN ACT TO CREATE THE MISSISSIPPI OFFICE OF INDIGENT APPEALS; TO PROVIDE A DIRECTOR AND STAFF; TO PROVIDE COMPENSATION; TO PROVIDE THE DUTIES OF THE OFFICE; TO CREATE THE MISSISSIPPI OFFICE OF INDIGENT APPEALS OFFICE FUND AND PROVIDE FOR ITS ADMINISTRATION; TO AMEND SECTION 99-18-17, MISSISSIPPI CODE OF 1972, TO REVISE THE SPECIAL FUND KNOWN AS THE CAPITAL DEFENSE COUNSEL FUND; TO AMEND SECTION 99-39-117, MISSISSIPPI CODE OF 1972, TO REVISE THE SPECIAL FUND KNOWN AS THE CAPITAL POST-CONVICTION COUNSEL FUND; TO AMEND SECTION 93-21-117, MISSISSIPPI CODE OF 1972, TO REVISE THE SPECIAL FUND KNOWN AS THE VICTIMS OF DOMESTIC VIOLENCE FUND; TO AMEND SECTION 99-19-73, MISSISSIPPI CODE OF 1972, TO PROVIDE ASSESSMENTS FOR THE FUNDS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) There is created the Mississippi Office of Indigent Appeals. This office shall consist of six (6) attorneys, two (2) secretaries/paralegals and one (1) financial assistant. One (1) of the attorneys shall serve as director of the office. The director shall be appointed by the Governor and shall serve for a term of four (4) years. The remaining attorneys and other staff shall be appointed by the director and shall serve at the will and pleasure of the director. The director and all other attorneys in the office shall either be active members of The Mississippi Bar, or, if a member in good standing of the bar of another jurisdiction, must apply to and secure admission to The Mississippi Bar within twelve (12) months of the commencement of the person's employment by the office. The attorneys in the office shall practice law exclusively for the office and shall not engage in any other practice. The office shall not engage in any litigation other than that related to the office. The salary for the director shall be equivalent to the salary of district attorneys and the salary of the other attorneys in the office shall be equivalent to the salary of assistant district attorney.

(2) The office shall provide representation on appeal for indigent persons convicted of felonies but not under sentences of death. Representation shall be provided by staff attorneys, or, in the case of conflict or excessive workload, by attorneys selected, employed and compensated by the office on a contract basis. All fees charged by contract counsel and expenses incurred by attorneys in the office and contract counsel must be approved by the court. The office shall provide advice, education and support to attorneys representing persons under felony charges in the trial courts.

(3) There is created in the State Treasury a special fund to be known as the Indigent Appeals Fund. The purpose of the fund shall be to provide funding for the Mississippi Office of Indigent Appeals. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the

State Treasurer upon warrants issued by the Mississippi Office of Indigent Appeals. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

- (a) Monies appropriated by the Legislature for the purposes of funding the Office of Indigent Appeals;
- (b) The interest accruing to the fund;
- (c) Monies received under the provisions of Section 99-19-73;
- (d) Monies received from the federal government;
- (e) Donations; and
- (f) Monies received from such other sources as may be provided by law.

SECTION 2. Section 99-18-17, Mississippi Code of 1972, is amended as follows:

99-18-17. (1) If at any time during the representation of two (2) or more defendants, the director determines that the interests of those persons are so adverse or hostile they cannot all be represented by the director or his staff without conflict of interest, or if the director shall determine that the volume or number of representations shall so require, the director in his sole discretion, notwithstanding any statute or regulation to the contrary, shall be authorized to employ qualified private counsel. Fees and expenses approved by order of the court of original jurisdiction, including investigative and expert witness expenses of such private counsel, shall be paid by funds appropriated to the Capital Defense Counsel * * * Fund for this purpose * * *.

(2) There is created in the State Treasury a special fund to be known as the Capital Defense Counsel Fund. The purpose of the fund shall be to provide funding for the Office of Capital Defense Counsel. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Mississippi Office of Capital Defense Counsel. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

- (a) Monies appropriated by the Legislature for the purposes of funding the Office of Capital Defense Counsel;
- (b) The interest accruing to the fund;
- (c) Monies received under the provisions of Section 99-19-73;
- (d) Monies received from the federal government;
- (e) Donations; and
- (f) Monies received from such other sources as may be provided by law.

SECTION 3. Section 99-39-117, Mississippi Code of 1972, is amended as follows:

99-39-117. (1) If at any time during the representation of two (2) or more defendants, the director determines that the interest of those persons are so adverse or hostile that they cannot all be represented

by the director or his staff without conflict of interest, or if the director shall determine that the volume or number of representations shall so require, the director, in his sole discretion, notwithstanding any statute or regulation to the contrary, shall be authorized to employ qualified private counsel. Fees and expenses, approved by order of the appropriate court, including investigative and expert witness expenses of such private counsel shall be paid from funds appropriated to the * * *Capital Post-Conviction Counsel Fund for this purpose * * *.

(2) There is created in the State Treasury a special fund to be known as the Capital Post-Conviction Counsel Fund. The purpose of the fund shall be to provide funding for the Office of Capital Post-Conviction Counsel. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Mississippi Office of Capital Post-Conviction Counsel. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of funding the Office of Capital Post-Conviction Counsel;

(b) The interest accruing to the fund;

(c) Monies received under the provisions of Section 99-19-73;

(d) Monies received from the federal government;

(e) Donations; and

(f) Monies received from such other sources as may be provided by law.

SECTION 4. Section 93-21-117, Mississippi Code of 1972, is amended as follows:

93-21-117. (1) There is hereby created in the State Treasury a special fund to be known as the "Victims of Domestic Violence Fund." The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature;

(b) The interest accruing to the fund;

(c) Monies received under the provisions of Section 99-19-73;

(d) Monies received from the federal government;

(e) Donations; and

(f) Monies received from such other sources as may be provided by law.

(2) The circuit clerks of the state shall deposit in the fund on a monthly basis the additional fee charged and collected for marriage licenses under the provisions of Section 25-7-13, Mississippi Code of 1972.

(3) * * * All other monies received from every source for the support of the program for victims of

domestic violence, established by Sections 93-21-101 through 93-21-113, shall be deposited in the "Victims of Domestic Violence Fund." The monies in the fund shall be used by the State Department of Health solely for funding and administering domestic violence shelters under the provisions of Sections 93-21-101 through 93-21-113, in such amounts as the Legislature may appropriate to the department for the program for victims of domestic violence established by Sections 93-21-101 through 93-21-113. Not more than ten percent (10%) of the monies in the "Victims of Domestic Violence Fund" shall be appropriated to the State Department of Health for the administration of domestic violence shelters.

SECTION 5. Section 99-19-73, Mississippi Code of 1972, is amended as follows:

99-19-73. (1) **Traffic violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any violation in Title 63, Mississippi Code of 1972, except offenses relating to the Mississippi Implied Consent Law (Section 63-11-1 et seq.) and offenses relating to vehicular parking or registration:

FUND	AMOUNT
State Court Education Fund.....	\$ 1.50
State Prosecutor Education Fund.....	1.00
Driver Training Penalty Assessment Fund.....	7.00
Law Enforcement Officers Training Fund.....	5.00
Spinal Cord and Head Injury Trust Fund	
(for all moving violations).....	4.00
Emergency Medical Services Operating Fund.....	10.00
Mississippi Leadership Council on Aging Fund.....	1.00
Law Enforcement Officers and Fire Fighters Death	
Benefits Trust Fund.....	.50
State Prosecutor Compensation Fund for the purpose	
of providing additional compensation for legal	
assistants to district attorneys.....	1.00
Crisis Intervention Mental Health Fund.....	10.00
Drug Court Fund.....	10.00
<u>Capital Defense Counsel Fund.....</u>	<u>1.89</u>

<u>Indigent Appeals Fund</u>	<u>2.29</u>
<u>Capital Post-Conviction Counsel Fund</u>	<u>2.33</u>
<u>Victims of Domestic Violence Fund</u>	<u>.49</u>
TOTAL STATE ASSESSMENT.....	\$ <u>58.00</u>

(2) **Implied Consent Law violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or any other penalty for any violation of the Mississippi Implied Consent Law (Section 63-11-1 et seq.):

FUND	AMOUNT
Crime Victims' Compensation Fund.....	\$ 10.00
State Court Education Fund.....	1.50
State Prosecutor Education Fund.....	1.00
Driver Training Penalty Assessment Fund.....	22.00
Law Enforcement Officers Training Fund.....	11.00
Emergency Medical Services Operating Fund.....	10.00
Mississippi Alcohol Safety Education Program Fund.	5.00
Federal-State Alcohol Program Fund.....	10.00
Mississippi Crime Laboratory	
Implied Consent Law Fund.....	25.00
Spinal Cord and Head Injury Trust Fund.....	25.00
Capital Defense Counsel * * * Fund.....	<u>1.89</u>
<u>Indigent Appeals Fund</u>	<u>2.29</u>
<u>Capital Post-Conviction Counsel Fund</u>	<u>2.33</u>
<u>Victims of Domestic Violence Fund</u>	<u>.49</u>
State General Fund.....	35.00

Law Enforcement Officers and Fire Fighters Death

Benefits Trust Fund.....	.50
State Prosecutor Compensation Fund for the purpose of providing additional compensation for legal assistants to district attorneys.....	
	1.00
Crisis Intervention Mental Health Fund.....	10.00
Drug Court Fund.....	10.00
TOTAL STATE ASSESSMENT.....	\$ <u>184.00</u>

(3) **Game and Fish Law violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any violation of the game and fish statutes or regulations of this state:

FUND	AMOUNT
State Court Education Fund.....	\$ 1.50
State Prosecutor Education Fund.....	1.00
Law Enforcement Officers Training Fund.....	5.00
Hunter Education and Training Program Fund.....	5.00
State General Fund.....	30.00
Law Enforcement Officers and Fire Fighters Death	
Benefits Trust Fund.....	.50
State Prosecutor Compensation Fund for the purpose of providing additional compensation for legal assistants to district attorneys.....	
	1.00
Crisis Intervention Mental Health Fund.....	10.00
Drug Court Fund.....	10.00
<u>Capital Defense Counsel Fund.....</u>	<u>1.89</u>
<u>Indigent Appeals Fund.....</u>	<u>2.29</u>

<u>Capital Post-Conviction Counsel Fund</u>	<u>2.33</u>
<u>Victims of Domestic Violence Fund</u>	<u>.49</u>
TOTAL STATE ASSESSMENT.....	\$ <u>71.00</u>

(4) **Litter Law violations.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any violation of Section 97-15-29 or 97-15-30:

FUND	AMOUNT
Statewide Litter Prevention Fund.....	\$ 25.00
State Prosecutor Compensation Fund for the purpose of providing additional compensation for legal assistants to district attorneys.....	1.00
Crisis Intervention Mental Health Fund.....	10.00
Drug Court Fund.....	10.00
<u>Capital Defense Counsel Fund</u>	<u>1.89</u>
<u>Indigent Appeals Fund</u>	<u>2.29</u>
<u>Capital Post-Conviction Counsel Fund</u>	<u>2.33</u>
<u>Victims of Domestic Violence Fund</u>	<u>.49</u>
TOTAL STATE ASSESSMENT.....	\$ <u>53.00</u>

(5) **Other misdemeanors.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any misdemeanor violation not specified in subsection (1), (2) or (3) of this section, except offenses relating to vehicular parking or registration:

FUND	AMOUNT
Crime Victims' Compensation Fund.....	\$ 10.00
State Court Education Fund.....	1.50
State Prosecutor Education Fund.....	1.00
Law Enforcement Officers Training Fund.....	5.00

Capital Defense Counsel * * * Fund.....	<u>1.89</u>
<u>Indigent Appeals Fund</u>	<u>2.29</u>
<u>Capital Post-Conviction Counsel Fund</u>	<u>2.33</u>
<u>Victims of Domestic Violence Fund</u>	<u>.49</u>
State General Fund.....	30.00
State Crime Stoppers Fund.....	1.50
Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund.....	.50
State Prosecutor Compensation Fund for the purpose of providing additional compensation for legal assistants to district attorneys.....	1.00
Crisis Intervention Mental Health Fund.....	10.00
Drug Court Fund.....	8.00
Judicial Performance Fund.....	2.00
TOTAL STATE ASSESSMENT.....	\$ <u>77.50</u>

(6) **Other felonies.** In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any felony violation not specified in subsection (1), (2) or (3) of this section:

FUND	AMOUNT
Crime Victims' Compensation Fund.....	\$ 10.00
State Court Education Fund.....	1.50
State Prosecutor Education Fund.....	1.00
Law Enforcement Officers Training Fund.....	5.00
Capital Defense Counsel * * * Fund.....	<u>1.89</u>
<u>Indigent Appeals Fund</u>	<u>2.29</u>

Capital Post-Conviction Counsel Fund.....	2.33
Victims of Domestic Violence Fund.....	.49
State General Fund.....	60.00
Criminal Justice Fund.....	50.00
Law Enforcement Officers and Fire Fighters Death	
Benefits Trust Fund.....	.50
State Prosecutor Compensation Fund for the purpose	
of providing additional compensation for legal	
assistants to district attorneys.....	1.00
Crisis Intervention Mental Health Fund.....	10.00
Drug Court Fund.....	10.00
TOTAL STATE ASSESSMENT.....	<u>\$156.00</u>

(7) If a fine or other penalty imposed is suspended, in whole or in part, such suspension shall not affect the state assessment under this section. No state assessment imposed under the provisions of this section may be suspended or reduced by the court.

(8) After a determination by the court of the amount due, it shall be the duty of the clerk of the court to promptly collect all state assessments imposed under the provisions of this section. The state assessments imposed under the provisions of this section may not be paid by personal check. It shall be the duty of the chancery clerk of each county to deposit all such state assessments collected in the circuit, county and justice courts in such county on a monthly basis with the State Treasurer pursuant to appropriate procedures established by the State Auditor. The chancery clerk shall make a monthly lump-sum deposit of the total state assessments collected in the circuit, county and justice courts in such county under this section, and shall report to the Department of Finance and Administration the total number of violations under each subsection for which state assessments were collected in the circuit, county and justice courts in such county during such month. It shall be the duty of the municipal clerk of each municipality to deposit all such state assessments collected in the municipal court in such municipality on a monthly basis with the State Treasurer pursuant to appropriate procedures established by the State Auditor. The municipal clerk shall make a monthly lump-sum deposit of the total state assessments collected in the municipal court in such municipality under this section, and shall report to the Department of Finance and Administration the total number of violations under each subsection for which state assessments were collected in the municipal court in such municipality during such month.

(9) It shall be the duty of the Department of Finance and Administration to deposit on a monthly basis all such state assessments into the proper special fund in the State Treasury. The monthly deposit shall be based upon the number of violations reported under each subsection and the pro rata amount of such assessment due to the appropriate special fund. The Department of Finance and Administration shall issue regulations providing for the proper allocation of these special funds.

(10) The State Auditor shall establish by regulation procedures for refunds of state assessments, including refunds associated with assessments imposed before July 1, 1990, and refunds after appeals in which the defendant's conviction is reversed. The Auditor shall provide in such regulations for certification of eligibility for refunds and may require the defendant seeking a refund to submit a verified copy of a court order or abstract by which such defendant is entitled to a refund. All refunds of state assessments shall be made in accordance with the procedures established by the Auditor.

SECTION 6. This act shall take effect and be in force from and after July 1, 2005.

Attachment "C"

Other States' Public Defender Systems

**THE
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**STATEWIDE INDIGENT DEFENSE
SYSTEMS: 2005**

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STATEWIDE INDIGENT DEFENSE SYSTEMS: 2004

In the decades since the opinion in *Gideon v. Wainwright* was issued, states have adopted varying approaches to fulfill the U.S. Supreme Court's mandate to provide counsel at government expense to indigent persons in criminal (and various other) proceedings. In some states, the responsibility for indigent defense services is entirely a state responsibility: both funding and oversight operate at a state level. In other states, indigent defense services remain primarily a county responsibility. In still other states, indigent defense is a shared responsibility between state and local governments.¹

Despite these variations, there is a clear trend among states to develop some sort of statewide oversight. In many states, both those with a statewide public defender program and those without, such oversight is provided exclusively through a state commission or oversight board. The oversight board is typically charged with setting policy for indigent defense services and advocating for state resources. In several states the commission provides some statewide oversight, but lacks full authority over indigent defense services. In other states, the oversight is provided exclusively by the chief public defender, and there is no commission.

The accompanying table, *Statewide Indigent Defense Systems: 2005*, sets out the statewide delivery systems, where they exist, used among the states and the District of Columbia. For the majority of states, the table describes the type of system used to oversee provision of all indigent defense services, including trial and appellate cases. However, for a few states, there are more specialized programs listed, such as statewide appellate or capital post-conviction defender programs.

For each program listed, the table indicates:

- whether it is a statewide public defender system. The table further indicates whether a public defender program handles all criminal cases at the trial level, or handles some other type of cases, such as selected cases at the trial level, direct appeals or capital post-conviction;
- whether it has an oversight commission;
- if a commission exists, the duties and responsibilities of the commission;
- if it is a state public defender program, the selection process, term, qualifications and duties of the chief public defender; and
- if it is a commission without a public defender program, the selection process, qualifications and duties of the executive director.

¹ In 17 states, counties are responsible for more than 50 percent of indigent defense services funding. In two of these states, Pennsylvania and Utah, indigent defense funding at the trial level is 100 percent a local responsibility.

For the purposes of the table, a statewide public defender system is defined as a program where the primary representation of indigent defendants is provided throughout the state by salaried, staff public defenders paid entirely with state funds. Nineteen states² have a state public defender system providing trial level representation statewide in felonies, misdemeanors and juvenile delinquency cases. With the exception of Arkansas, all of these state public defender programs also provide primary appellate services.

As previously mentioned, a number of the states with public defender programs also have oversight commissions, but that is not always the case. Similarly, there are five states that have oversight commissions with full authority over indigent defense services statewide, but there is not a full-service statewide public defender program that is responsible for all cases.³

Two states (Florida and Tennessee) are served by state-funded elected public defender offices. Due to the independence of elected officials, there is no state oversight for those programs, and we have not categorized them as statewide public defender systems. Ten states fall into the category of having an oversight commission for trial-level services that lacks full authority over indigent defense services.⁴ Finally, 15 states have trial-level indigent defense systems that resist easy categorization. In 11 of these 15 states, indigent defense funding is primarily a county responsibility.⁵

Nine of the states⁶ that have no statewide public defender system providing trial level representation do have statewide appellate defender offices funded by the state. Offices in California, Indiana, Mississippi and Tennessee are specialty programs handling select types of appeals (such as capital post-conviction proceedings).

² Alaska, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Iowa, Kentucky, Maryland, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, Rhode Island, Vermont, Wisconsin and Wyoming.

³ Massachusetts, North Carolina, Oregon, Virginia and West Virginia. All of these states make use of public defender programs but the programs either do not serve all areas of the state or are restricted to select cases, such as just felonies.

⁴ Georgia, Kansas, Indiana, Louisiana, Nebraska, Nevada, Ohio, Oklahoma, South Carolina and Texas.

⁵ Alabama, Arizona, California, Idaho, Illinois, Maine, Michigan, Mississippi, Montana, New York, North Dakota, Pennsylvania, South Dakota, Utah and Washington.

⁶ California, Idaho, Illinois, Indiana, Kansas, Michigan, Mississippi, Oklahoma and South Carolina.

STATEWIDE INDIGENT DEFENSE SYSTEMS: 2005

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
ALABAMA			None	Not applicable	None	Not applicable
ALASKA State Public Defender Agency (executive agency, Department of Administration, est. 1980), ALASKA STAT. §§ 18.85.010-.85.180.	√		None	Not applicable	Chief Public Defender appointed by Governor from nominations of judicial council. Confirmed by majority of legislature in joint sitting. Four-year term; renewal requires legislative confirmation. Member of bar. Governor can remove for good cause.	Appoint, supervise and control assistant public defenders and other employees. Submit annual report to legislature & Supreme Court on number and types of cases, dispositions and expenditures. Full-time, private practice prohibited.
ALASKA Office of Public Advocacy (executive agency, Department of Administration, est. 1984), ALASKA STAT. §§ 44.21.410-21.420.	√		None	Not applicable	Public Advocate appointed by Governor. Serves at will of Governor.	Provides Guardians Ad Litem for abused and neglected children and status offenders. Provides representation in conflict cases from the Alaska Public Defender Agency. Acts as Public Guardian and conservator for citizens with disabilities.
ARIZONA			None	Not applicable	None	Not applicable
ARKANSAS Arkansas Public Defender Commission (executive agency, est. 1997), ARK. CODE ANN. §§ 16-87-101 to -87-110.	√		Seven member Commission appointed by Governor. at least four licensed Arkansas attorneys experienced in criminal defense, at least one county judge. Governor designates one member as Chair. No more than two residents of same congressional district. No two members from same county. Serve five-year terms.	Establish policies and standards for Public Defender System. Approve budgets for trial public defender offices. Require annual reports from trial public defender offices. Appoint Executive Director. Evaluate performance of Executive Director, Capital, Conflicts & Appellate Office, trial public defenders and private assigned counsel. Maintain list of private attorneys willing and qualified to accept capital case appointments. Authorize contracts with trial public defenders.	Executive Director appointed by Commission. Must have experience in defense of capital cases. Serves at will of commission.	Maintain records of operation of public defender system. Prepare budget for commission. Implement attorney performance procedures pursuant to commission's standards. Maintain court opinions, statutes, etc. for use by trial public defenders and court-appointed counsel. Supervise capital conflict and appellate office. Maintain appellate brief bank. Convene training program related to public defender system. Prepare annual report.

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
CALIFORNIA California Habeas Corpus Resource Center (judicial branch, est. 1998), CAL. GOV'T CODE §§ 68660-68666.		✓	Five-member Board of Directors confirmed by the Senate. Each of the state's five Appellate Projects shall appoint one board member; all must be attorneys. No lawyer working as judge, prosecutor or in a law enforcement capacity is eligible. Four year terms.	Appoint Executive Director.	Executive Director appointed by Board of Directors. Must be member of California State Bar during the five years preceding appointment and possess substantial experience in the representation of accused or convicted persons in criminal or juvenile proceedings during that time. Serves at the will of the board.	Hire up to 30 attorneys to represent any indigent person convicted and sentenced to death in California in postconviction actions in state and federal courts. Work with the supreme court to recruit attorneys to accept death penalty habeas case appointments and to maintain a roster of attorneys so qualified. Employ investigators and experts to provide services to appointed attorneys in capital postconviction cases. Develop and maintain brief bank for use by appointed counsel. Review case billings and recommend compensation of members of the private bar to the court. Prepare annual report on the status of appointment of counsel for indigent prisoners in capital postconviction cases.
CALIFORNIA Office of the State Public Defender (judicial branch, est. 1976), CAL. GOV'T CODE §§ 15400-15404, 15420-15425.		✓	None	Not applicable	State Public Defender appointed by Governor subject to confirmation by the Senate. Must be member of California State Bar for the five years preceding appointment and must have substantial experience in the representation of accused or convicted persons in criminal or juvenile proceedings during that time. Appointed for term of four years.	Employ deputies and other employees, establish and operate offices as needed. May contract with county public defenders, private attorneys, and nonprofit corporations to furnish legal services to indigent defendants. May hire 15 additional staff attorneys and support staff. Since 1990, Office of the State Public Defender has been required by all three branches of government to focus exclusively on representation in death penalty direct appeal cases.
COLORADO Office of State Public Defender (judicial agency, est. 1969), COLO. REV. STAT. §§ 21-1-101- to -1-106.	✓		Five member Office of State Public Defender Commission appointed by Supreme Court. No more than three from same political party. Three attorneys, two non-attorneys. No judges, prosecutors, public defenders or law enforcement personnel.	Appoint State Public Defender and discharge for cause.	State Public Defender appointed by Commission. Five-year, renewable term. Member of bar five years prior to appointment. Full-time position.	Employ and set compensation for all employees (salaries approved by Supreme Court); establish regional offices as necessary; provide legal services to indigents accused of crimes that are "commensurate with those available to non-indigents" independently of any political consideration or private interests.

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
COLORADO Office of Alternate Defense Counsel (judicial agency, est. 1997), COLO. REV. STAT. §§ 21-2-101 to -2-106.			Nine member Office of Alternate Defense Counsel Commission appointed by Supreme Court. No more than five from same political party. Six member lawyers, each representing one of the six congressional districts, all of whom are Colorado licensed lawyers practicing criminal law. Three members citizens not licensed to practice law in Colorado. No member at any time a judge, prosecutor, public defender or employee of a law enforcement agency. Serve four-year terms.	Select an Alternate Defense Counsel, serve as an advisory board to the alternate defense counsel; advise alternate defense counsel on development and maintenance of competent and cost-effective representation. Shall meet at least annually.	Alternate Defense Counsel appointed by Commission to renewable five-year term. Must be licensed to practice law in Colorado for at least five years prior to appointment. May not hold private practice. Serves at will of the Commission.	Employ and set compensation for all employees. Provide legal representation to indigent persons and partially indigent persons in circumstances when the state public defender has a conflict of interest by contracting with licensed attorneys and investigators. Legal services provided to indigents shall be commensurate with those available to non-indigents and independent of any political considerations or private interests.
CONNECTICUT Public Defender Services Commission (autonomous body within judicial department for fiscal and budgetary purposes only, est. 1974), CONN. GEN. STAT. §§ 51-289 to 51-300.	√		Seven member Commission: two judges appointed by Chief Justice; one member appointed by each Speaker of House, President Pro Tem of Senate, minority leader of House, minority leader of Senate, Chairman appointed by Governor. Three-year term. No more than three, other than chairman, from same party. Two of four non-judicial members non-attorneys. No public defenders.	Adopt rules for Division of Public Defender. Establish a compensation plan comparable to state's attorneys. Establish employment standards. Appoint Chief Public Defender and Deputy Chief Public Defender. Remove Public Defender and Deputy Public Defender for cause following notice and hearing. Submit annual report to Chief Justice, Governor and Legislature by October 15. (See duties of public defender.)	Chief Public Defender appointed by Commission for a four-year term. Member of state bar for five years. Full-time position.	Direct and supervise work of all personnel. Submit annual report, including data and recommendations for changes in law, to Commission by September 15. (Note extensive list in Sec. 51-291.)
DELAWARE Office of the Public Defender (executive agency, est. 1953), DEL. CODE ANN. tit. 29, §§ 4601-4607.	√		None	Not applicable	Public Defender appointed by Governor. Six-year term. Qualified attorney licensed in Delaware.	Appoint assistant attorneys, clerks, investigators and other employees as necessary and set salaries. Determine indigency prior to arraignment. Prepare annual report.

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
DISTRICT of COLUMBIA D.C. Public Defender Service (independent agency, est. 1960), D.C. CODE ANN. §§ 1-2701 to 1-2708.			Eleven member Board of Trustees. Appointed by panel of two U.S. judges, two D.C. judges and Mayor of D.C. Three-year term; not more than two consecutive. No judges. Four of eleven members non-attorney residents of D.C.	Establish general policy but shall not direct conduct of particular cases. Submit fiscal year report to Congress, chief judges of U.S. Courts and D.C. Courts and D.C. Mayor. Arrange annual independent audit. Quarterly reports to court on matters relating to appointment system. Appoint Director and Deputy Director and set their salaries.	Director appointed by Trustees. Serve at pleasure of Trustees. Member of D.C. Bar. No private practice.	Employ and supervise personnel. Set compensation not to exceed salary paid to U.S. Attorneys and staff.
FLORIDA Florida Public Defender Association (FPDA), Est. 1972; Florida Public Defender Coordination Office (FPDCO), not statutorily established.			None per se, but the FPDA is governed by a Board of Directors comprised of the 20 elected public defenders in Florida, two representatives of the assistant public defender staff and one representative apiece from public defender investigative and administrative staff. The FPDCO works with the FPDA.	The FPDA engages in activities that promote and develop the public defender system in Florida. The FPDCO coordinates FPDA meetings; collects caseload and budget information from public defenders; analyzes public defender workload; prepares annual funding formulae which are based on caseload and attorney unit cost and used by the three branches of government and the circuit public defenders in the budget request process; monitors pertinent legislative developments; conducts training for public defender staff; and circulates pertinent case law to the elected public defenders.	Not applicable	Not applicable

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
GEORGIA Georgia Public Defender Standards Council (independent agency within judicial branch, est. 2003), GA. CODE ANN. §§ 17-12-1 to -12-128.		√	Eleven member council. Members appointed by the Governor, Lt. Governor, Speaker of the House, Chief Justice of the Supreme Court, and Chief Judge of the Court of Appeals. One member from each of the state's 10 judicial districts who serve four-year terms, plus a circuit public defender, selected by a majority of the circuit public defenders, who serves a two-year term.	Adopt standards on: staff size, qualifications and caseloads for circuit public defender offices; minimum experience, training, performance and compensation for appointed counsel; qualifications and performance of counsel in capital cases; determination of indigence; a uniform definition of a "case"; and use of contract systems. Appoint the Mental Health Advocate and Georgia Capital Defender.	Director appointed by Council. Must be member in good standing of the State Bar with at least three years experience in the practice of law.	Administer and coordinate the operations of the Council and supervise compliance with rules, policies, procedures, regulations, and standards adopted by the Council.
HAWAII Office of State Public Defender (executive agency, Department of Budget and Finance, est. 1970), HAW. REV. STAT. §§ 802-1 to 802-12.	√		Five member Defender Council (est. 1971). Appointed by Governor. Serve at Governor's pleasure. One member from each county.	Council is governing body of Office of State Public Defender. Shall appoint Public Defender. Approve employment decision of Public Defender. Council Chairman selected by members of the Defender Council.	State Public Defender appointed by Council. Four-year term. Qualified to practice law in Hawaii. Full-time position.	Employ assistant public defenders, investigators and other support personnel, subject to approval by the Council. Assistant public defenders may be part-time and engage in private practice other than criminal law.
IDAHO State Appellate Public Defender (within executive branch agency, the Department of Self-Governing Agencies, est. 1998), IDAHO CODE §§ 19-867 to 19-872.		√	None	Not applicable	State Appellate Defender appointed by the governor, with advice and consent of the senate, from a list of 2-4 persons recommended by a committee comprised of the president of the Idaho state bar association, chairmen of the senate judiciary and rules committee, and a citizen at large appointed by the governor. The chief justice of the Idaho supreme court, or her designee, is ex officio member of the committee. Public defender must be attorney licensed to practice in Idaho with at least five year experience practicing law. Four-year term; removed only for good cause.	Provide appellate and postconviction representation to indigent defendants convicted of felony offenses in those counties which participate in the capital crimes defense fund, prepare annual report. Employ deputy state appellate defenders and other employees. Adopt necessary policies or rules.

⁷ Public defender offices represent indigent defendants in Superior Court matters (felonies and juvenile delinquency cases) statewide.

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
ILLINOIS Office of State Appellate Defender (agency of the Judicial department, est. 1972), 725 ILL. COMP. STAT. 105/1 - 105/11.		✓	Nine member Board of Commissioners appointed by various courts and bars. Governor appoints Chair. Serves one six-year term.	Approve budget. Advise Appellate Public Defender on policy. Can recommend dismissal of the Appellate Public Defender.	State Appellate Defender appointed by Illinois Supreme Court. Four-year term. Qualified to practice law in Illinois.	Provide representation in criminal appeals. Establish offices around the state. Train and assist trial level defenders.
INDIANA Public Defender Commission (judicial agency, est. 1989), IND. CODE §§ 33-40-5 to -40-5-5.			Eleven member Public Defender Commission: three appointed by Governor; three appointed by Chief Justice; one appointed by Board of Indiana Criminal Justice Institute; two House members appointed by the Speaker of the House; two Senate members, appointed by Speaker Pro Tempore of the Senate. Four-year term. No law enforcement officers or court employees. Members designate one member Chair.	Set standards for indigent defense services in capital and non-capital cases. Adopt guidelines and fee schedule under which counties may be reimbursed. Make recommendations concerning the delivery of indigent defense services in Indiana. Prepare annual report on operation of public defense fund.	None	Not applicable
INDIANA Public Defender of Indiana (judicial agency, est. 1945), IND. CODE §§ 33-40-1 to -40-1-6.		✓	None	Not applicable	Public Defender appointed by Supreme Court. Four-year term. Resident. Practicing lawyer in Indiana for three years.	Represent all indigent defendants in post-conviction proceedings only.
IOWA Office of the State Public Defender (independent agency within executive branch, est. 1981), IOWA CODE §§ 13B.1-13B.11.		✓	Five member Indigent Defense Advisory Commission: no more than three licensed to practice law in Iowa. Three members appointed by Governor - one who is nominated by Iowa State Bar, and one who is nominated by state supreme court. Two members from the General Assembly, one from each chamber and no more than one from each political party. Each member serves a three-year term.	Advise the Governor, General Assembly and the state public defender regarding hourly rates and per case fee limitations for court-appointed counsel.	State Public Defender appointed by Governor. Four-year term. Licensed to practice law in Iowa.	Oversee all 18 public defender offices. Coordinate non-public defender indigent defense program. Contract with attorneys when public defender unable to take case.

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
KANSAS State Board of Indigents' Defense Services (executive branch agency, est. 1981). KAN. STAT. ANN. § 22-4501.		√ ⁸	Nine member Board: five lawyers, four non-lawyers. Appointed by Governor and confirmed by Senate. Two members from First Congressional District, one of whom is a registered Kansas lawyer, and at least one member from each other Congressional District. At least one (and up to five) registered Kansas lawyers from each county with over 100,000 population. No members may be judicial or law enforcement personnel. Three-year terms.	Appoint Director and public defenders. Maintain statistics on indigent defense representation. Conduct training programs. Establish public defender offices. Enter into contracts with attorneys to provide indigent defense representation and with cities or counties for misdemeanor representation. Provide technical assistance to public defenders and private attorneys.	Director appointed by Board. Must be licensed in Kansas and demonstrate commitment and ability in criminal law.	Serve as Chief Executive Officer of Board. Supervise operation, policies, procedures of Board. Prepare annual report.
KENTUCKY Department of Public Advocacy (independent state agency within executive branch, est. 1972). KY. REV. STAT. ANN. §§ 31.010-31.015.	√		Nine appointed members plus deans of Kentucky law schools. Two members appointed by Governor. One by speaker, one by president of the senate, two by Supreme Court; two criminal lawyers appointed by Governor from list of five submitted by Bar Association, one appointed by Governor from list submitted by Kentucky Protection and Advocacy Advisory Board. Four-year term. No prosecutors or law enforcement officials. Chair elected by Commission to one-year term. Also a 17-member citizen advisory board appointed by the Public Advocate.	Recommend to Governor three attorneys as nominees for Public Advocate. Assist Public Advocate in selecting staff. Provide general supervision of Public Advocate and review performance. Engage in public education and generate political support. Review and adopt annual budget. Not interfere with handling of cases.	Public Advocate appointed by Governor from nominees submitted by Commission. Member of Kentucky Bar with five years experience. Four-year term.	Appoint Deputy Public Defender. Appoint assistant public defenders and other personnel. Serve as ex officio, non-voting member of Commission. Appoint 17-member Advisory Board for Protection and Advocacy Division.

⁸ Public defender offices represent indigent defendants in felony cases statewide.

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
LOUISIANA Louisiana Indigent Defense Assistance Board (separate board within executive branch, est. 1997). L.A. REV. STAT. ANN. §§ 15:151- 15:151.4.			Nine member Board. The governor appoints three members and designates the chairman, the president of the Senate and the speaker of the House of Representatives each appoint three members. Members of the board serve staggered terms of four years. In addition there are three ex officio, nonvoting members of the board, one each appointed by the Louisiana Association of Criminal Defense Lawyers, the Louisiana Public Defender's Association and the Louisiana Trial Lawyers Association.	Sets terms of employment and compensation of Director. May provide supplemental funds and shall adopt rules for providing supplemental funds to judicial district indigent defender boards; may set the terms of employment and compensation of a director and staff; and enter into contracts for the purpose of maintaining and operating an office. In capital cases, board appoints counsel, adopts rules and retains counsel to represent capital defendants on direct appeal and for post-conviction relief. Administers the DNA Testing Post-Conviction Relief for Indigents fund. Prepares annual report for legislature.	Director selected by Board. Attorney with five years prior experience in criminal practice. Board sets term.	Assist Board in enforcing its standards and guidelines. Supervise attorneys in appellate Division and Capital Litigation programs. Manage monies in Expert Witness/Testing Fund and District Assistance Fund.
MAINE			None	Not applicable	None	Not applicable
MARYLAND Office of the Public Defender (executive agency, est. 1971). MD. ANN. CODE art. 27A, §§ 1-14.		✓	Three-member Board of Trustees; two must be active attorneys. Appointed by Governor. Three-year term. Chair designated annually by Trustees.	Study and observe operation of Public Defender office. Coordinate activities of district Advisory Boards. Appoint Public Defender. Advise Public Defender on all relevant matters.	Public Defender appointed by Board of Trustees. Term is at the pleasure of Trustees. Attorney admitted in Maryland plus five years in practice.	Appoint Deputy Public Defender with Board approval. Appoint First District Defender in each judicial district. Appoint assistant public defenders with advice of District Defenders. Appoint other employees. Maintain at least one office in each district. General responsibility for operation of all offices. Maintain records. Supervise district defenders' maintenance of local attorney panels.

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
MASSACHUSETTS Committee for Public Counsel Services (independent agency; judicial branch for budget purposes only, est. 1983), MASS GEN. LAWS ch. 211D, §§ 1-15.		√ ⁹	Fifteen member Committee. Appointed by Justices of Supreme Judicial Court. Three-year term. Chair elected by the Committee.	Establish standards for public counsel and private counsel divisions. Establish uniform standards of indigency. Establish guidelines for training and for qualification and removal of counsel in public and private divisions. Prepare annual report. Appoint chief counsel and two deputies. Extensive list of other duties and responsibilities enumerated by Statute.	Chief Counsel appointed by Committee. Attorney. Serves at pleasure of Committee.	Overall supervision of various divisions of committee. Perform duties as defined by the Committee. Authorize all payments certified by judges for private counsel.
MICHIGAN State Appellate Defender Office (agency of judicial branch, est. 1969), MICH. COMP. LAWS §§ 780.711-780.719.		√	Seven member Appellate Defender Commission appointed by Governor. Two recommended by Supreme Court, one recommended by Court of Appeals; one recommended by Michigan Judges Association; two recommended by State Bar; one non-attorney. Four-year term. No member a sitting judge, prosecutor or law enforcement officer.	Choose State Appellate Defender. Develop appellate defense program. Develop standards for program. Maintain list of attorneys willing and qualified for appointment in indigent appellate cases. Provide CLE training for attorneys on list.	State Appellate Defender chosen by Commission. Can only be removed for cause.	Provide appellate representation in not less than 25% of felony appeals statewide. Maintain a manageable caseload. Prepare and maintain brief bank available to court-appointed attorneys who provide appellate services to indigents.

⁹ Public defender offices represent indigent defendants in felony cases statewide.

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
MINNESOTA State Board of Public Defense (separate agency within judicial branch, est. 1986), MINN. STAT. § 611.215.	✓		Seven member Board. One district court judge appointed by Supreme Court. Four attorneys familiar with criminal law but not employed as prosecutors, appointed by Supreme Court. Two public members appointed by Governor. In addition, nine member ad hoc board established when appointing a district public defender. Must include two residents of the district, appointed by the chief judge of the district, to reflect characteristics of the population served by that district.	Elect chair and appoint State Public Defender. Chair may appoint Chief Administrator. Appoint a chief district public defender for each judicial district. Prepare annual report. Recommend budget for Board. Office of State Public Defender and public defense corps. Establish procedures for distribution of funds for public defense. Set standards for state and district public defenders and court-appointed system.	State Public Defender appointed by Board to four-year term. Must be full-time qualified attorney, licensed to practice in the state.	Provide trial, juvenile, appellate and post-conviction proceeding representation in all indigent cases. Assist in trial representation in conflict of interest cases when requested by a district public defender or appointed counsel. Conduct training programs.
MISSISSIPPI Office of Capital Defense Counsel (judicial branch agency, est. 2000), MISS CODE ANN. §§ 99-18-1 to -18-19.		✓			Director appointed by Governor with advice and consent of senate for term of four years. Must be active member of the Mississippi Bar. May be removed by the Governor.	Provide representation to persons under indictment for death eligible offenses. Establishes staff salaries and expenses of the office. General office administration. Must prepare monthly report for the Administrative Office of Courts on the activities, receipts and expenditures of the office and a docket of all indicted state death eligible cases.
MISSISSIPPI Office of Capital Post-Conviction Counsel (judicial branch agency, est. 2001), MISS. CODE ANN. §§ 99-39-101 to -39-119.		✓			Director appointed by Chief Justice of the state supreme court with approval of a majority of the justices voting. Four-year term. Active member of the Mississippi Bar or, if not, must apply within twelve months of hiring. May be removed by Chief Justice.	Provide representation to indigent parties sentenced to death in post-conviction proceedings. Appoints attorneys and support staff. Establishes staff salaries and expenses of the office. General office administration. Must keep a docket of all state death penalty cases and a roster of all death penalty cases originating in Mississippi courts and pending in state and federal courts. Copies must be submitted to state supreme court. Must provide monthly report to the Chief Justice on the activities, receipts and expenditures of the office.

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
MISSOURI Office of State Public Defender (independent department in judicial branch, est. 1982), MO. REV. STAT. §§ 600.010 - 600.166.	√		Seven member Public Defender Commission; four lawyers; no more than four from same party. Appointed by Governor with advice and consent of Senate. Six-year term. State Public Defender is ex officio member without vote. Chair elected by members.	Select director and deputies. Establish employment procedures. Review office performance and monitor director. Public education to ensure independence of system. Advise on budgetary matters. Contract with private attorneys. Approve fee schedule for assigned counsel.	Director appointed by Commission. Four-year term. Attorney with substantial criminal law experience, also experienced in personnel administration.	Administer and coordinate operation. Direct and supervise work of employees. Submit annual budget report to Commission. Supervise training. Contract out for legal services with approval of Commission.
MONTANA Public Defender Commission (est. 2005), MONT. CODE ANN.	√		Eleven members selected by the Governor; two attorneys selected by nominees offered by the supreme court; three attorneys from nominees submitted by the president of the State Bar of Montana including attorneys experienced in felony defense, juvenile delinquency and abuse and neglect cases; two non-attorneys or judges nominated by the president of the senate and the speaker of the house; one person from each of the following types of organizations: an organization that advocates on behalf of indigent persons, racial minorities, people with mental illness and developmental disabilities, and one that provides counseling for addictive behavior.	Replaces Appellate Public Defender Commission. Establish qualifications, duties and compensation of the chief public defender; appoint chief public assistant public defenders including establishing acceptable caseloads and workload monitoring protocols; review and approve the strategic plan and budget proposals submitted by the chief public defender; establish policies and procedures related to conflict of interests; establish policies and procedures to ensure that detailed expenditure and caseload data is collected and reported; submit a biennial report to the Governor, supreme court and Legislature.	State Public Defender appointed by, and serves at the pleasure of, the Commission.	Hire or contract for and supervise necessary personnel including a chief appellate defender and a chief contract manager to oversee and enforce the contracting program. Act as secretary to the commission and provide administrative staff support to the commission; develop and present for the commission's approval a regional strategic plan for the delivery of public defender services; establish policies for conflicts of interest; establish procedures regarding the use of information technology to monitor caseloads and expenditure data; establish procedures for managing caseloads and assigning cases; establish policies for assigning counsel in capital cases; establish and supervise training for both attorneys and non-attorneys; maintain a minimum client caseload; actively seek alternative revenue sources including government grants for the public defender office.
NEBRASKA Nebraska Commission on Public Advocacy (executive branch agency, est. 1995), NEB. REV. STAT. §§ 29-3923 to 29-3930.			Nine member Commission: six members for each judicial district; chair and two positions at large. Governor appoints from list prepared by State Bar. Non-salaried. Qualified attorneys with criminal defense experience or demonstrated commitment.	Provide legal services and resources to assist counties in providing effective assistance to indigent persons through its capital litigation, appellate and felony resource center divisions. Select a chief counsel.	Chief Counsel selected by Commission. Serves at will of Commission. Five years Nebraska practice. Criminal defense experience including capital case defense.	Overall supervision of appellate, capital and major case divisions and litigation support fund. Prepare budget and annual report. Establish and administer projects and programs for the operation of the commission. Oversee training programs.

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
NEVADA State Public Defender (agency within the State Department of Human Resources, executive branch, est. 1971), NEV. REV. STAT. 180.010 - 180.110.			None	Not applicable	Chief Public Defender serves for a four-year term. Selected by Governor. Must be a member of the Nevada Bar.	Establish statewide system for all counties with populations under 100,000 which do not create a county public defender office. Oversee activities of these programs. Prepare annual budget. Annual report to legislature.
NEW HAMPSHIRE Judicial Council (judicial branch agency, est. 1945), N.H. REV. STAT. ANN. §§ 494:1 - 494:7.			Twenty-four member Council: the five members of the judicial branch administrative council; the attorney general or designee; a clerk from each the superior, district and municipal courts; the president-elect of the NH Bar Association; chairperson of the senate judiciary committee or designee; chairperson of the house judiciary and family law committee or designee; eight members appointed by the governor and council; and five members appointed by the chief justice of the supreme court.	The Judicial Council's responsibilities related to indigent defense include processing payments for legal representation and guardian ad litem services provided to indigent individuals, contracting with local defender corporations and individual attorneys for provision of defense services and general supervision of indigent programs.	Executive Director of the Judicial Council serves at the pleasure of the Council. Has a three-member staff.	Executive Director's responsibilities are contained in a contract with the Judicial Council.
NEW HAMPSHIRE New Hampshire Public Defender (judicial branch, est. 1972), N.H. REV. STAT. ANN. §§ 604-B:1 - B:8.	√		Volunteer Board of Directors of a private non-profit corporation. The Judicial Council contracts with an organization or group of lawyers approved by the board of governors of the New Hampshire Bar Association to operate a public defender program.	Oversees program's operations.	Chief Public Defender appointed by Board of Directors.	Represents children in juvenile delinquency cases, adults in misdemeanor, felony, homicide and capital cases, and handles appeals.

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
NEW JERSEY Office of the Public Defender (executive agency, part of Division of the Public Advocate, est. 1967), N.J. STAT. ANN. §§ 2A:158A-1 to :158A-25.	√		None	Not applicable	Public Defender appointed by Governor with advice and consent of Senate. Five-year term. Attorney, experienced in practice in New Jersey.	Appoint deputy and assistant public defenders as well as support personnel. Establish State Public Defender system for all counties. Engage and compensate assigned counsel.
NEW MEXICO State Public Defender (executive department, est. 1973), N.M. STAT. ANN. §§ 31-15-1 to -15-12.	√		None	Not applicable	Chief Public Defender appointed by and serves at pleasure of Governor. Attorney active for five years prior to appointment and is experienced in defense or prosecution.	Manage all operations of department. Set fee schedule for assigned counsel. Establish local public defender districts. Appoint district public defenders who serve at his/her pleasure.
NEW YORK Capital Defender Office (independent agency in judicial branch, est. 1995), N.Y. Jud. Ct. Acts § 35b.			Three-member Board of Directors. Members may not be an attorney employed as a judge, prosecutor or in a law enforcement capacity. One member appointed by the chief judge of the court of appeals, one by the temporary president of the senate and one by the speaker of the assembly. Serve a three year term.	Reviews office policy, appoints Capital Defender.	Capital Defender selected by Board of Directors.	In consultation with Board of Directors, hire attorneys as deputy capital defenders, investigators and other staff. The Capital Defender Office provides both direct representation and consultation services; it also has responsibility for determining, in consultation with the administrative board of the judicial conference, attorney qualification standards.

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
NORTH CAROLINA Office of Indigent Defense Services (independent office in judicial department, est. 2000), N.C. GEN. STAT. §§ 7A-498 - 498.8.			Thirteen member Commission on Indigent Defense. Chief Justice appoints one active or former member of North Carolina judiciary; Governor appoints one non-attorney; General Assembly appoints one member recommended by President Pro Tempore of the Senate and one member recommended by the Speaker of the House of Representatives; the North Carolina Public Defenders Association, the North Carolina State Bar, the North Carolina Bar Association, the North Carolina Academy of Trial Lawyers, the North Carolina Association of Black Lawyers and the North Carolina Association of Women Lawyers each appoint one member. The Commission appoints three members, who must reside in different judicial districts from one another - one must be a non-attorney, one may be an active member of the North Carolina judiciary, one must be Native American.	Appoint the Director of the Office of Indigent Defense Services and elect Commission Chair. Develop standards and guidelines governing provision of indigent defense services. Determine methods of delivering indigent defense services (appointed counsel, contract counsel, part-time public defender, full-time public defender, appellate defender or some combination of these) throughout the state. Establish compensation rates for court-appointed counsel and schedules of allowable expenses, appointment and compensation for expert witnesses. Approve budget for Office of Indigent Defense Services.	Director of the Office of Indigent Defense Services appointed by Commission, chosen on the basis of training, experience, and other qualifications. The Commission must consult with the Chief Justice and Director of the Administrative Office of the Courts in selecting a Director, but has final authority in making the appointment.	Director of Office of Indigent Defense Services prepares and submits to the Commission a proposed budget for the Office and an annual report containing pertinent data on the operations, costs, and needs of the Office; assist the Commission in developing rules and standards for the delivery of services, administer and coordinate the operations of the Office and supervise compliance with standards adopted by the Commission; hire professional, technical, and support personnel as deemed necessary; conduct training programs for attorneys.

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
NORTH DAKOTA North Dakota Commission on Legal Counsel for Indigents (independent commission within the state government, est. 2005), N.D. CENT. CODE § 54-61 (2005)			Seven members. Two members appointed by the Governor, one of whom must be appointed from a county with a population of not more than ten thousand. Two members from the legislative assembly, one from each house, appointed by the chairman of the legislative council. Two members appointed by the chief justice of the supreme court, one of whom must be appointed from a county with a population of not more than ten thousand. One member appointed by the Board of Governors of the State Bar Association of North Dakota. New Commission established by Legislature in 2005 replaces former Commission established by juridical rule.	Develop standards; governing eligibility for indigent defense services; for maintaining and operating regional public defender offices if established; prescribing minimum experience, training and other qualifications for contract counsel and public defender caseloads; for the evaluation of contract counsel and public defenders; for dealing with conflicts of interest; for reimbursement of expenses incurred by contract counsel; and any other necessary standards. Establish and implement a process of contracting for legal counsel services. Establish public defender offices. Monitor and track caseloads of contract counsel and public defenders. Approve and submit a biennial budget request.	Commission Director appointed by Commission on the basis of training, experience and other qualifications deemed appropriate. Must be licensed attorney in North Dakota and eligible to practice law.	Assists Commission in developing standards for the delivery of adequate indigent defense services; administers and coordinates these services and supervises compliance with commission standards; recommend the establishment of public defender offices when appropriate; conduct regular training programs for contract counsel and public defenders; hire personnel, including attorneys to serve as public defenders; prepare and submit to the Commission a proposed biennial budget and an annual report of the operation, needs and costs of the indigent defense contract system and public defender offices.
OHIO Ohio Public Defender Commission (independent commission within the executive branch, est. 1984), OHIO REV. CODE ANN. §§ 120.01 - 120.05.			Nine member Commission. Chair appointed by Governor. Four whom are from each political party. Four members appointed by Supreme Court. Chair and at least four members are bar members. Four-year terms.	Provide, supervise and coordinate legal representation. Establish rules for Public Defender such as compensation, indigency standards and caseloads. Approve budgets. Appoint State Public Defender.	State Public Defender appointed by Commission. Attorney with minimum of four years experience. State bar member.	Appoint Assistant State Public Defender. Supervise maintenance of Commission standards. Keep records and financial information. Establish compensation procedures.
OKLAHOMA Oklahoma Indigent Defense System (executive branch agency, est. 1991), OKLA. STAT. tit. 22, §§ 1355-1369.		✓	Five member Board of Directors appointed by Governor subject to advice and consent of Senate for five-year terms. At least three lawyers. Governor designates Chair.	Make policies for indigent defense programs. Approve budget. Appoint advisory council of indigent defense attorneys. Establish policies on maximum caseloads. Appoint Executive Director.	Executive Director appointed by and serves at pleasure of Board. Licensed as Oklahoma attorney for four years. Experienced in criminal defense.	Develop state system, with exception of Oklahoma and Tulsa counties. Prepare system budget. Keep list of private attorneys for capital and non-capital case appointments. Advisor to indigent defenders. Act on system's behalf in legislative efforts. Conduct training.

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
OREGON Public Defense Services Commission (agency in judicial branch but outside the state court system, est. 2001). OR. REV. STAT. §§ 151.010 - 151.505.			Seven member Commission, appointed by order of the Chief Justice, who serves as non-voting, ex-officio member. Members must include at least: two non-lawyers; one criminal defense lawyer whose practice does not serve primarily indigent defendants; and one former Oregon state prosecutor. No current judge, prosecuting attorney, or law enforcement officer may serve. Four year terms. Chief Justice appoints chairperson and vice chairperson.	Effective October 1, 2001, Commission assumed responsibility for the Office of Public Defense Services (formerly the appellate State Public Defender). Effective July 1, 2003, the Commission assumed responsibility for the administration of the Indigent Defense Program, including all related administrative tasks formerly handled by the courts and the State Court Administrator's office, except for appointing counsel. Judges continue to make the appointments, subject to Commission rules. Other responsibilities include hiring Executive Director and adopting rules regarding: indigency determination; appointment of counsel; fair compensation of appointed counsel; resolution of appointed counsel compensation disputes; costs associated with representation of persons by appointed counsel; and performance standards.	Executive Director of OPDS selected by PDSC. Four-year term. Active member of Oregon State Bar, private practice prohibited.	Employ deputies and other staff, including expert investigators, witnesses and interpreters.
PENNSYLVANIA			None	Not applicable	None	Not applicable
RHODE ISLAND Office of the Public Defender (agency of executive branch, est. 1941). R.I. GEN. LAWS §§ 12-15-1 to -15-11.		√	None	Not applicable	Chief Public Defender appointed by Governor with advice and consent of Senate. Three-year term. Attorney with five years experience.	Appoint, supervise and direct assistants as necessary. Develop and oversee statewide system by regions.

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
SOUTH CAROLINA Office of Indigent Defense (independent agency within executive branch, est. 1993), S.C. CODE ANN. §§ 17-3-310 to -3-330.			Seven member Commission on Indigent Defense appointed by Governor on recommendation of South Carolina Public Defender Association. One from each congressional district. One from state at-large who serves as Chair. Four-year terms.	Appoint Executive Director of Office of Indigent Defense. Supervise operation of Office of Indigent Defense.	Executive Director appointed by Commission.	Administer Office of Indigent Defense. Distribute state funds to counties. Compile statistics on indigent defense statewide. Report to General Assembly on indigent defense. Maintain list of attorneys qualified to accept appointments in death penalty cases. Administer collection and distribution of public defender application fees and surcharge fines imposed on specified criminal offenses. Supervise staff and carry out requirements of Commission.
SOUTH CAROLINA Office of Appellate Defense (independent state agency within executive branch, est. 1978), S.C. CODE ANN. §§ 17-4-10 to -4-100.		√	Seven member Commission on Appellate Defense: Dean of the University of South Carolina Law School; President of the South Carolina Public Defenders Association; President of the South Carolina Bar Association; President of the South Carolina Trial Lawyers Association; Chairman of the South Carolina Judicial Council, Chairman of the Senate Judiciary Committee or his designee; and Chairman of the House of Representatives or his designee. Commission elects Chairman for one-year term.	Appoint Chief Attorney. May, subject to rules of Supreme Court, recommend or establish policies for the operation of the Office of the Appellate Defense. Approve annual budget. Establish indigency criteria.	Chief Attorney appointed by Commission to four-year term. Licensed to practice law in South Carolina.	Submit budget to Commission. Establish training for employees. Represent indigent defendants in appeal of a conviction in trial court or decision of any proceeding in civil commitment or other involuntary placement.
SOUTH DAKOTA			None	Not applicable	None	Not applicable

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
TENNESSEE District Public Defenders Conference (agency of the judicial branch, est. 1989), TENN. CODE ANN. §§ 8-14-301 to -14-501.			There is no statewide commission in Tennessee, however, the District Public Defenders Conference is a statewide system of elected public defenders. Public defenders in Tennessee are publicly elected.	All 31 judicial districts are served by public defenders and the Office of the Executive Director serves as the central administrative office for all but two of the district public defenders.	Executive Director is elected by the district public defenders for a four-year term and serves as a member of the Judicial Council and other judicial planning groups.	The executive director is responsible for budgeting, payroll, purchasing, personnel, and administration of all fiscal matters pertaining to the operation of district public defender offices. Other duties include coordinating defense efforts of the various district public defenders, development of training programs, and maintaining liaison with various state government agencies.
TENNESSEE Office of the Post-Conviction Defender and Post-Conviction Defender Commission (est. 1995), TENN. CODE ANN. §§ 40-30-201 to -30-210.		√	Nine members: two appointed by the Governor; two appointed by the lieutenant governor; two appointed by the speaker of the House of Representatives; three appointed by the Supreme Court of Tennessee. Serve four-year terms.	Appoint Post-Conviction Defender, prepare annual budget for the Office of Post-Conviction Defender.	Post-Conviction Defender appointed by Post-Conviction Defender Commission. Four-year term. Must be lawyer in good standing with Supreme Court of Tennessee and possess demonstrated experience in capital case litigation.	Provide legal representation to indigent persons convicted and sentenced to death; hire assistant post-conviction defenders, investigators and support staff; maintain clearinghouse of materials and brief bank for public defenders and private counsel who represent indigents charged or convicted of capital crimes; provide CLE training and consulting services to lawyers representing defendants in capital cases; recruit qualified members of the bar to provide representation in state death penalty proceedings.

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
TEXAS Task Force on Indigent Defense (standing committee of Texas Judicial Council, csJ, 2001), TEX. GOV'T CODE ANN. §§ 71.051 - 71.063.			<i>Eight ex officio members:</i> chief justice of the supreme court, presiding judge of the court of criminal appeals, member of the senate appointed by the lieutenant governor, member of the house of representatives appointed by the speaker of the house, a courts of appeal justice serving on the judicial council designated by the governor to sit on Task Force; a county court, statutory county court or probate court judge serving on the judicial council designated by the governor to sit on Task Force; chair of the Senate Criminal Justice Committee; and chair of the House Criminal Jurisprudence Committee. <i>Five appointive members:</i> Governor appoints, with advice and consent of senate: active district judge serving as presiding judge of an administrative judicial region; either a judge of a constitutional county court or a county commissioner, practicing criminal defense attorney; public defender, either a judge of a constitutional county court or county commissioner in county with >250,000 population.	Develop policies and standards for providing legal representation and other defense services to indigent defendants at trial, on appeal and in post-conviction proceedings. Develop a plan that establishes statewide requirements for counties relating to reporting indigent defense information. Use the information collected to monitor the effectiveness of the counties' indigent defense policies, standards and procedures. Submit annual report to governor, lieutenant governor, speaker of the house, and council regarding the quality of legal representation provided to indigent defendants; current indigent defense practices in Texas as compared to state and national standards; efforts made by the task force to improve indigent defense; and recommendations by the task force for improving indigent defense in the state. Distribute state funds for indigent defense to county governments.	Director of the Task Force on Indigent Defense is hired by the Commission. Under statutory authority the Task Force hires employees "who are assigned to assist the task force in performing its duties," as authorized by the Appropriations Act.	The Director is charged with implementing a statewide system of standards, financing and other resources for indigent defense. Responsibilities include overseeing the distribution of state funds provided to county governments; collecting, reviewing and maintaining all county expenditure data and plan information relating to county indigent defense services for each of Texas' 254 counties.
UTAH			None	Not applicable	None	Not applicable

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
VERMONT Office of the Defender General (agency of executive branch, est. 1972), VT. STAT. ANN. tit. 13, §§ 5251-5258.	✓		None	Not applicable	Defender General appointed by Governor with advice and consent of Senate. Four-year term.	Operates program through public defenders and deputy public defenders or by contracting out to private attorneys. May establish local offices headed by a public defender. Contract with member of bar to serve as assigned counsel coordinator.
VIRGINIA Virginia Indigent Defense Commission (agency of judicial branch, est. 2004), VA. CODE ANN. §§ 19.2-163.01 to -163.02.			Consists of 12 members, including the chairmen of the House and Senate Committees for Courts of Justice; the chairman of the Virginia State Crime Commission; the Executive Secretary of the Supreme Court or his designee; two attorneys officially designated by the Virginia State Bar; two persons appointed by the Governor, the Speaker of the House of Delegates, and the Senate Committee on Privileges and Elections. At least one of the appointments made by the Governor, the Speaker, and the Senate Committee on Privileges and Elections must be an attorney in private practice with a demonstrated interest in indigent defense issues. Persons who are appointed by virtue of their office shall hold terms coincident with their terms of office. All other appointments are for three years.	Publicize and enforce qualification standards for court-appointed attorneys; develop initial training courses and CLE courses for court-appointed counsel and public defenders; maintain a qualified list of court-appointed attorneys; establish standards of practice for court-appointed counsel to follow in representing clients and guidelines for the removal of an attorney from the official list; establish and maintain standards of conduct for indigent defense counsel; establish caseload limits for public defender offices; maintain all public defender and regional capital defender offices; hire, employ, and remove an executive director, counsel and other necessary employees for each public defender or capital defender office; authorize each public defender or capital defender to employ necessary assistants and support staff and to maintain an office; require and ensure that each public defender office collects and maintains caseload data.	Executive Director , selected by Commission, serves at pleasure of Commission.	Appoints chief public defenders and chief capital defenders in local offices, fixes the compensation of all personnel within the offices.

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
WASHINGTON Office of Public Defense (independent agency of the judicial branch, est. 1996), WASH. REV. CODE §§ 2.70.005 - 70.050.			Nine member Advisory Committee: three persons appointed by the chief justice; two non-attorneys appointed by the governor; two senators and two members of the house of representatives; one person appointed by the court of appeals executive committee; and one member appointed by the Washington State Bar Association.	Submit three names to the Supreme Court for Director of the Office of Public Defense.	Director serves at the pleasure of the supreme court, which selects from list of three names submitted by Advisory Committee. Director must have: practiced law in Washington for at least five years, represented criminal defendants, and proven managerial or supervisory experience.	Administers all criminal appellate indigent defense services; submits to state legislature a biennial budget for costs related to appellate indigent defense; recommends indigent standards; collects information and reports to the legislature on indigent cases; coordinates with the supreme court and judges of each division of the court of appeals to determine how attorney services should be provided. The Office of Public Defense does not provide direct representation.
WEST VIRGINIA Public Defender Services (agency of executive branch, est. 1989), W. VA. CODE §§ 29-21-3 to -21-6.			None	Not applicable	Executive Director is appointed by the Governor with the advice and consent of the Senate. Serves at will of Governor. Must be member of the bar of the supreme court of appeals.	Oversees agency responsible for the administration, coordination and evaluation of local indigent defense programs in each of West Virginia's 31 judicial circuits. Hires staff as necessary. May promulgate rules to effectuate the governing statute. Operates a criminal law research center, an accounting and auditing division to monitor local public defender corporations compliance with statute and an appellate advocacy division.
WISCONSIN Office of the State Public Defender (independent agency within executive branch, est. 1977), WIS. STAT. §§ 977.01 - 977.09.		√	Nine member Public Defender Board. Appointed by Governor, approved by Senate. At least five must be attorneys. Three-year terms. Chair is elected by Board.	Appoint state Public Defender and establish salary. Approve budget and submit to Governor. Promulgate standards of indigency. Promulgate rules for assignment of private counsel in regard to standards, payments and pro bono programs. Perform all other duties necessary and incidental. Contract with federal agencies and local public defender organizations for provision of services.	State Public Defender appointed by Board. Member of Wisconsin Bar. Five-year term.	Supervise operation of all state and regional public defender offices. Maintain data and submit biennial budget to Board. Delegate cases to any member of Wisconsin Bar. Negotiate contracts for representation as directed by Board. Appoint staff.

STATE Program (Where located in government)	Statewide Public Defender System?		Commission	Commission Duties and Responsibilities	Director or Chief Public Defender Selection Process, Terms and Qualifications	Director or Public Defender Duties and Responsibilities
	Trial	Other				
WYOMING State Public Defender (executive agency, est. 1977), WYO. STAT. ANN. §§ 7-6-101 to -6-114.	√		None	Not applicable	State Public Defender appointed by Governor. No term specified. Member of Wyoming Bar with experience in defense or prosecution.	Administer public defender program in districts and oversee operation of public defender system statewide. Assistant public defenders appointed by Governor and serve at pleasure of Public Defender. Public Defender may require them to be full-time. Public defender in each district appointed by Governor upon recommendations from district judge and county commissioners.

Attachment "D"

**Other States' Rates of Compensation for
Court-Appointed Counsel in
Non-Capital Felony Cases at Trial**

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**Rates of Compensation Paid to Court-Appointed Counsel in
Non-Capital Felony Cases at Trial: A State-by-State Overview**

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(Includes selected state updates current as of August 2005)

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Appendix

Selected Case Law Concerning Indigent Defendant Counsel Compensation

Table

Rates of Compensation for Court-Appointed Counsel in Non-Capital Felonies at Trial,
2002

Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview, 2003¹

Introduction

The Spangenberg Group last prepared a state-by-state table on compensation rates for assigned counsel handling non-capital felony trial cases in November of 1999. Prior to that, our most recent table on this topic was prepared in 1997. The tables, which are prepared on behalf of the American Bar Association's Bar Information Program, provide state-by-state information concerning the hourly rates paid to assigned counsel and the authority for the rates. We receive repeated requests for the tables from attorneys, policy-makers and others. Frequently interest in this report is generated by a state legislature's consideration of changes to its attorney compensation rates.

It is not the purpose of this report to produce any type of evaluative ranking of the compensation rates reported in this article. First, many states have so-called "reasonable compensation" systems, where the rates are set by the county or local judge and vary widely from county to county. Therefore no single rate can be defined for these states, making it impossible to place them in an ordinal ranking of rates paid to court-appointed counsel.

Second, even if it were possible to rank all fifty state's compensation rates, such a ranking would be of limited significance. This is so because, in addition to paying attorneys in private practice with an hourly rate, there are two other methods by which legal counsel is provided to defendants who cannot afford it. The three methods jurisdictions use to provide indigent defense are:

- The assigned counsel model: private attorneys are assigned to indigent criminal cases on either a systematic or ad hoc basis. Typically they are paid on an hourly basis or paid a flat fee per case.
- The contract model: a jurisdiction contracts with private attorneys, a group of attorneys, a bar association or a private, non-profit organization to provide representation in some or all of the indigent cases in the jurisdiction.² In some jurisdictions, such as Delaware and Connecticut, the public defender agency contracts with private attorneys to handle conflict of interest cases.
- The public defender model: a public or private non-profit organization with full or part-time staff attorneys and support personnel provides all or a percentage of the

¹ This document includes changes in compensation rates in the Alabama, District of Columbia, Hawaii, Maryland, Massachusetts, New Jersey, New York, North Dakota, Rhode Island, Virginia and Wyoming that were implemented since this document appeared in 2003. It does not reflect a comprehensive 50-state update.

² For more on this method of compensating indigent defense providers see, R. SPANGENBERG & A. SPENCE. FINDINGS CONCERNING THE CONTRACTING FOR THE DELIVERY OF INDIGENT DEFENSE SERVICES. American Bar Association, Bar Information Program (July 1995).

representation to indigent defendants in a jurisdiction. Employees of defender offices are paid a salary.

From these three models for the appointment of counsel, states and counties have developed indigent defense delivery systems, most of which employ some combination of the three. For example, even in states with a statewide public defender system, private attorneys are often appointed in conflict of interest cases and in some instances to alleviate burdensome caseloads. In other states where there is less uniformity, there may be contract counsel in one county, assigned counsel in a second county, and a public defender office in yet a third county. Maine is the only state in the country that relies exclusively on assigned counsel to represent indigent defendants at the trial level.

Most jurisdictions use a combination of the above three models, thus it is inappropriate to conclude that one jurisdiction "better funds" its indigent defense system simply because it pays assigned counsel a higher rate of compensation than other jurisdictions. To determine the relative adequacy of funding of any state's indigent defense systems, one must look at many factors, of which the comparable rates of compensation for court-appointed counsel is only one.

Besides the hourly rate, there are other important factors that significantly affect assigned counsel compensation. For example, many states have set statutory limits on the amount that may be paid per case. However, in all but two of these states – Mississippi and Virginia – judges are statutorily permitted to authorize payment that exceeds the caps in extraordinary cases requiring additional time. Non-waiveable fee caps have a potentially chilling effect on the adequacy of representation provided by appointed counsel in complicated cases.

Hourly assigned counsel compensation rates are often inadequate to pay attorney overhead costs. Litigation in Mississippi has resulted in court-appointed counsel being paid an hourly amount to cover overhead expenses.³ This overhead rate is paid on top of the hourly rate for compensation. In Mississippi, the hourly rate for overhead expenses is paid for every hour worked, with no cap, unlike the hourly rate paid to compensate the legal work put into a case.

There have been a number of changes made in the hourly rates paid to court-appointed counsel since 1999. For instance, the federal government has raised the rates of compensation for court-appointed counsel in federal court to \$90 an hour for work done both in and out of court. Hourly rates have been increased on a statewide basis in Ohio (from \$40 an hour out of court and \$50 an hour in court to \$50 an hour out of court and \$60 an hour in court) and South Dakota (from \$55 to \$67 an hour). The per case maximum in Virginia has been raised from \$845 to \$1,235 to defend charges punishable for more than 20 years and \$305 to \$445 to defend

³ From 1993 to February 2005 court-appointed counsel in Alabama were able to charge \$30 per hour in overhead for each hour billed as per a decision by the Alabama Criminal Appeals Court. In February 2005 the Attorney General of Alabama issued an opinion conflicting with the appeals court decision and the State Comptroller was advised that he should no longer continue to pay the \$30 overhead fee.

other felony charges. Virginia is one of the two states where the per case maximum can not be waived.

Three states (Arkansas, North Carolina and Texas) have implemented reforms that have resulted in a greater uniformity of the rates paid to court-appointed counsel since 1999. Since its inception the Arkansas Public Defender Commission paid court-appointed counsel at rates set by local judges. In 2001 the Arkansas State Legislature granted the Public Defender Commission the power to set statewide hourly rates. In August 2000 the North Carolina General Assembly created the Office of Indigent Defense Services to oversee the state's indigent defense system. Among its responsibilities is to set statewide rates of compensation for court-appointed counsel. In June of 2001 the Texas Fair Defense Act was enacted. Among the provisions of this bill is that counties must develop formal plans for their local indigent defense systems. This will result in a greater standardization of the rates paid within counties, and it will likely result in a net increase in the rates paid to court-appointed counsel.

Compensation rates provided in this report were collected in 2002. Updated information, current as of August 2005, appears for the District of Columbia, Maryland, Massachusetts, New Jersey, New York, North Dakota, Rhode Island, Virginia and Wyoming.

Different Approaches to Compensating Assigned Counsel

The following section discusses six approaches taken by the states to compensating conflict counsel and other non-public defender counsel assigned to non-capital felony cases. These approaches are characterized as:

- Reasonable compensation
- Statutory hourly rate
- Hourly rate per administrative or court rule
- Flat fee per case
- State commissions on indigent defense
- Combination approach.

Reasonable Compensation

In 12 states (Arizona, Florida, Idaho, Louisiana, Michigan, Mississippi, Montana, Nebraska, Pennsylvania, Texas, Utah and Washington) the state legislatures have determined that compensation for court-appointed attorneys is left up to the locality, the county, a local judge or a combination of the two. In some states, the rates paid and the use of a maximum vary considerably from county to county, and from judge to judge within a county. Because the range of practices concerning compensation of court-appointed counsel in so-called "reasonable compensation" states is so significant, we highlight below several examples from the various states.

Arizona

In Arizona, state statute and the Rules of Criminal Procedure govern compensation of appointed counsel, leaving it to the court to award the attorney a sum representing reasonable compensation for services performed. In the two largest counties –Maricopa (Phoenix) and Pima (Tucson)– the responsibility to establish rates of reasonable compensation for court-appointed counsel has been transferred from the courts to county agencies. The agencies administer contract programs for conflict of interest cases which the primary and secondary public defender agencies are unable to handle. These counties determine the necessary compensation through a contracting system rather than a fixed hourly rate.

Florida

Statutory ceilings on individual case payments are in effect statewide (\$2,500 for a non-capital, non-life felony and \$3,000 for a life felony), but the hourly rates of compensation for attorneys handling cases in which the public defender has a conflict of interest vary from county to county. In Dade County (Miami) court-appointed counsel rates are set out in an administrative order of the chief judge of the circuit. Attorneys are paid \$40 per hour for work performed out of court and \$50 per hour for in-court work, but only after they exceed the quantum of hours set out by the Circuit Court of the 11th Judicial Circuit. Each type of case has a different schedule. The schedule for first degree felonies is:

5 hours or less	\$250
above 5 hours - 10 hours	\$500
above 10 hours - 20 hours	\$750
above 20 hours - 30 hours	\$1,000
above 30 hours - 40 hours	\$1,250
above 40 hours - 50 hours	\$1,500.

In Fall of 1998, Florida voters supported Revision Seven, which will gradually shift the responsibility for funding conflict of interest cases from the counties to the state beginning in 2004. The state will assume the responsibility for setting compensation rates for conflict counsel.

Idaho

Although the statute concerning court-appointed counsel compensation states that the rates should be set by local judges, in some areas the county commissioners set the rates. While the hourly rate is not uniform throughout the state, we were informed that the majority of court-appointed counsel are paid \$50 per hour in non-capital felony cases.

Louisiana

In Louisiana, most of the district-based indigent defender boards utilize contract counsel to handle conflict of interest cases, but among the few that still use court-appointed counsel, the average rate paid is \$42 per hour, for work performed both in and out of court.

Michigan

There is wide variation in court-appointed counsel fee schedules among Michigan's judicial circuits. Further, while the majority of circuits pay hourly rates on a case-by-case basis, some circuits pay flat fees for plea and trial cases. In the 3rd Judicial Circuit (Wayne County), for example, attorneys handling criminal cases in the trial court are reimbursed according to a graduated, event-based schedule. Based on the event (motion, preliminary examination, etc.) and possible sentence, attorneys receive a particular fee. For instance, for a half day of trial an attorney receives between \$90-\$190 per half day, depending on the severity of the potential sentence. Other districts, such as the 21st (Isabella County), use contracts as the basis for compensation for counsel representing indigent defendants. Isabella County contracts with six attorneys for a total indigent defense cost of \$275,000 per year.

Mississippi

Compensation rates for court-appointed counsel in non-capital cases in Mississippi vary throughout the state. The state has capped court-appointed compensation at \$1,000 per case. Litigation in Mississippi challenging the constitutionality of the fee cap failed to increase or eliminate the per-case maximum, but succeeded in entitling court-appointed counsel to receive reimbursement for overhead costs. In addition to submitting vouchers for payment of attorneys' fees, counsel in Mississippi submit vouchers for reimbursement of overhead costs for every hour worked. *Wilson v. State*, 574 So.2d 1338 (Miss. S.Ct., 1990). The presumptive rate for such expenses is \$25 per hour.

Montana

In Montana it is up to local judges to decide what to pay court-appointed counsel, however, in the majority of counties, counsel are paid between \$40-\$60 per hour for work in and out of court. There is no firm case maximum in Montana, but some counties use \$5,000 as a ceiling.

Nebraska

The majority of counties in Nebraska pay court-appointed counsel \$60 per hour with no per-case maximum. Douglas County (Omaha) is a notable exception, paying attorneys \$65 per hour out of court and \$80 per hour in court, up to \$12,000 for felony cases. Douglas County's employment of a per-case maximum is not sanctioned by state statute or common law (see *In re: Rhem v. County of Richardson*, 410 N.W.2d 92 (Neb. 1987)). The presiding judge can determine if additional funds should be granted.

Pennsylvania

The rates paid to court-appointed counsel vary widely in Pennsylvania, ranging from \$40-\$75 an hour, with all decisions left to local judges. In Philadelphia, effective March 10, 1997, compensation for court-appointed counsel shifted from an hourly basis to a "Modified Guaranteed Fee System," where attorneys are paid on a per-diem basis. The fee is payable as follows:

- Court appointments in felony, non-homicide cases which require a one trial day that lasts more than three hours will be paid a \$750 fee. Of that \$750, \$600 is for preparation and \$150 is for the in-court time that lasts more than three hours.
- Court appointments in felony, non-homicide cases that last more than one day will be paid a \$650 fee for the first day of trial and an additional per diem of \$150 for each half day (three hours or less) and \$300 for each full day (three hours or more) of trial.
- Court appointments in homicide cases that require one trial day lasting more than three hours will be compensated \$1,700 as a preparation fee and \$200 for the in-court time that lasts more than three hours.
- Court appointments in homicide trial cases that last more than one day will be paid \$1,900 for the first day of trial (\$1,700 preparation fee and \$200 for more than three hours in-court time) and an additional per diem of \$200 for each half-day (three hours or less) and \$400 for each full day (three hours or more).

In cases of extreme complexity, counsel may petition the Administrative Judge of the Trial Division or his designee to apply for hourly compensation. Associate or backup counsel may be requested by counsel for homicide cases, but they will be compensated at a lesser rate of \$850 as a preparation fee with no per diem.

Texas

In 2001 the Texas Fair Defense Act was signed into law. Previous to this legislation there was no systemic way to track the assigned counsel compensation plan for Texas' 254 counties, as judges set compensation rates for their own courtrooms (there are more than 800 criminal courts in Texas). Each county is still given the responsibility of designing and funding its own indigent defense system. However, counties must now develop and publish plans for their indigent defense systems that meet certain standards laid out in the statute. One such requirement is that all criminal courts in a county adhere to a single county-wide compensation plan.

Washington

Court-appointed counsel compensation rates vary widely in Washington. At the low end of the scale, in King County (Seattle), conflict counsel are paid \$43.20 per hour for felony cases. Spokane County pays counsel \$40-\$50 per hour (depending on the charge) up to \$5,000 for a felony trial case. Less serious felonies are paid a flat \$250 per case.

Statutory Hourly Rate

Eight states (Alabama, Hawaii, Illinois, Nevada, New York, South Carolina, West Virginia and Wisconsin) reimburse court-appointed counsel according to state statute. Similarly the rates paid in the District of Columbia are set by statute. All of the pertinent statutory sections and the rates appear in the accompanying table. Some of the rates have not been changed for decades. For example, the hourly rates in Illinois (\$30 out of court, \$40 in court with a \$1,250 maximum) were set in 1975.

Until 2004, the hourly rates in New York were the same as they were since 1986: \$25 out of court and \$40 in court with a \$1,200 maximum. In 2000, the New York County Lawyers Association sued the City and State of New York, alleging that the statutory rate of compensation had resulted in the imminent danger of ineffective assistance of counsel for indigent defendants in criminal court in New York City. *New York County Lawyers' Association v. State of New York*, County of New York, Index no. 102987/00-LAS Part 38 (filed January 2000). On February 5, 2003, Manhattan Supreme Court Justice Lucindo Suarez issued an order finding that the State of New York's failure to increase the rates of compensation for court-appointed lawyers in New York City violates constitutional and statutory rights to meaningful and effective representation and obstructs the judiciary's ability to function. The order included a permanent injunction directing the State and City to compensate assigned counsel at \$90 per hour for both in-court and out-of-court work until the Legislature modifies the statutes or upon further order of the Court. Following issuance of this order, the New York State General Assembly approved a rate of \$75 an hour in felony cases for all work, in or out of court, with a maximum of \$4,400. The \$4,400 cap may be waived upon showing of extraordinary circumstances.

Hourly Rate Per Administrative or Court Rule

In 17 states, uniform, statewide hourly rates are established either by executive administrative rule (Rhode Island), the statewide Public Defender or indigent defense commission (Iowa, Kansas, Kentucky, Maryland, Massachusetts, Minnesota, Oregon and New Jersey) or court rule (Colorado, Maine, New Hampshire, Vermont, Virginia, South Dakota, Tennessee and Wyoming). The practices in several of these states warrant brief discussion.

Iowa

The 1999 Iowa General Assembly passed legislation changing the method of determining appointed counsel rates of compensation and fee limitations. In 1996, the state legislature authorized the State Public Defender to set the rates paid to all court-appointed counsel, including those who work under contract with the public defender. In addition, according to past practice, the Iowa Supreme Court was required to periodically promulgate guidelines that include a range of rates and per-case maximums to be paid court-appointed counsel. These

guidelines set the hourly fee range between \$40 and \$60 per hour with no per-case maximum. However, Senate Filing 415 Adopted in 1999 created a five-member Indigent Defense Advisory Commission to advise the Governor and General Assembly regarding hourly rates and per case fee limitations.⁴

Now The Iowa State Public Defender, rather than the Iowa Supreme Court, sets the fee limitations, but they are subject to review by the Commission. The bill also implemented a statutory hourly fee for cases handled by court-appointed counsel. As of July 1, 1999, attorneys representing indigent defendants in Iowa receive \$60 per hour for all work on Class "A" felonies; \$55 per hour for all work on Class "B" felonies; and \$50 per hour for all other cases. Since 1992 in Iowa, the state public defender has contracted with private attorneys to provide indigent defense services in some parts of the state. Contract attorneys are also paid according to the statutory hourly rates.

The new per case limits, which are subject to Administrative Rules Review Committee approval, are: \$15,000 for Class "A" felonies; \$3,000 for Class "B" felonies; \$1,200 for Class "C" felonies; and \$1,000 for Class "D" felonies.

Minnesota

In Minnesota, it is exceedingly rare to appoint counsel on an hourly basis. The State Board of Public Defense employs a mix of full-time and part-time public defenders. The part time public defenders have private offices and handle the conflict of interest cases of the full time public defenders.

Vermont

In Vermont, 13 V.S.A. §5205(a) and an Administrative Order of the Vermont Supreme Court govern compensation rates for court-appointed counsel. In 1992, by Supreme Court administrative order, the \$25 per hour rate was raised to \$50 per hour, effective FY 1993, with the following maximums: \$25,000 for felonies involving life imprisonment or the death penalty (Vermont currently does not have the death penalty), \$5,000 for a major felony, and \$2,000 for a minor felony. However, the legislature passed a legislative override in 1992 stating: "Notwithstanding 13 V.S.A. §5205(a) and Administrative Order of the Vermont Supreme Court as amended, the rate of compensation for the services of ad hoc counsel in public defender cases shall be \$40 per hour through June 30, 1997." The sunset date was extended in 1997 through June 30, 1998, and payment of \$40 per hour continued for a year after that date. However, as of July 1, 1999, Vermont began to adhere to the \$50 per hour rate.

⁴ Senate Filing 451 has since been codified in IOWA CODE §13B.2A(2001).

Virginia

In Virginia, the state supreme court has established rates of \$90 per hour for all work in or out of court, but state statute restricts per-case payments to no more than \$1,235 to defend charges punishable for more than 20 years and \$445 to defend other felony charges. Furthermore, the Virginia Legislature has not appropriated funds sufficient to pay court appointed counsel at this level. Thus the Virginia Courts have scaled down the per case maximum they will pay attorneys proportional to the funding the legislature has appropriated. As a result the per case maximums are, in practice, \$1,186 for felonies punishable by more than 20 years and \$428 for cases punishable by less than 20 years. Because of these low per-case caps, the relatively competitive hourly rates have little bearing.

Flat Fee Per Case

In Missouri, a standard flat rate of \$500 is paid for each non-capital felony not handled by a public defender. The rate is set by the state public defender, but it is extremely rare to appoint an attorney from outside of the public defender program to a conflict case. Out of 3,500 conflict of interest cases in 2001, only 500 went to private counsel. The vast majority of conflict of interest cases are handled by transferring the case from the branch office where the conflict was identified to another branch office.

State Commission on Indigent Defense

In six states (Arkansas, Georgia, Indiana, Ohio, North Carolina and North Dakota) the rates paid to court appointed counsel are set by statewide public defender commissions. In Indiana and Ohio, a statewide commission for indigent defense sets recommended rates of compensation, but these rates have no binding effect, as indigent defense is organized and delivered at the county level.

Arkansas

In the 2001 legislative session, the Arkansas legislature gave the Public Defender Commission the power to set the rates of compensation paid to court appointed counsel. Prior to this legislation, judges set the rates of compensation and ordered attorney vouchers to be paid by the Public Defender Commission.

Georgia

The Georgia Public Defender Standards Council (GPDSC) pays assigned counsel rates of \$45 per hour out of court and \$60 per hour in court in non-capital felony cases, with no per-case maximum. Assigned counsel handled cases that present conflicts for Circuit Public Defenders.

Indiana

In Indiana, the Indiana Public Defender Commission also receives a state appropriation for disbursement to counties which meet its standards and guidelines pertaining to the delivery of indigent defense services. The Commission requires counties to pay attorneys \$60 per hour for work in non-capital felony cases with no case maximum, and the Commission reimburses compliant counties for a portion of their annual expenditures on appointed counsel.

Ohio

Each county in Ohio is required to have a fee schedule for court-appointed counsel. In addition, the Ohio Public Defender Commission sets a non-binding, recommended maximum fee schedule for appointed counsel. The Commission's recommended rates are currently \$50 per hour out of court and \$60 per hour in court. Recommended per case maximums in non-capital felony cases are: aggravated murder without death penalty specifications - \$10,000 for two attorneys, \$8,000 for one attorney; murder - \$5,000; aggravated felony (first, second and third degree felonies) - \$3,000; other felonies - \$2,500. Some counties pay lower rates than suggested by the Commission, and a few pay higher rates. The Ohio Public Defender reimburses counties for up to 50% of the state or county rate (whichever is lower) paid to court-appointed counsel. Attorneys may petition the court for a waiver of the maximum if their county has an extraordinary fee clause in its fee schedule.

The Ohio Public Defender Commission's 2001 Annual Report lists the hourly rates paid in each county for felonies, misdemeanors, juvenile, appeals, death penalty and other cases. The average hourly rate for non-capital felonies paid among the counties in FY 2001 was \$49.

North Carolina

In August 2000, the North Carolina General Assembly passed the Indigent Defense Services Act of 2000, creating the Office of Indigent Defense Services and charging it with the responsibility of overseeing the provision of legal representation to indigent defendants and others entitled to counsel under North Carolina law. Included in its responsibilities is the power to set the rates of compensation paid to assigned counsel. In 2002 the rates for assigned counsel in felony cases at trial were \$60 an hour with no per-case maximum.

North Dakota

As of January 1, 2006 the Commission on Legal Counsel for Indigents, which was created in the 2005 legislative session, will assume responsibility for establishing a reasonable rate of compensation for appointed counsel that is uniform throughout the state. Until that time, attorneys will continue to be paid under contract two-year contracts with judges in the state's seven judicial districts. In recent years, contract rates throughout North Dakota paid between \$40 and \$85 per hour.

Combination System

In three states (Alaska, California, Oklahoma), there is a combination of more than one system used to compensate non-public defender attorneys and therefore no way to succinctly characterize the hourly compensation paid to court-appointed counsel.

Alaska

In Alaska, non-capital felony cases not handled by the statewide public defender are handled by one of three types of counsel: staff, contract and "volunteer." The Office of Public Advocacy (OPA) has staff lawyers who handle a limited number of conflict cases. The OPA contracts with other lawyers at rates ranging between \$65-\$100 per hour, depending on the experience of the lawyer and his or her location. Lawyers who volunteer to take appointed cases and are not under contract are paid \$50 per hour for out of court work and \$60 per hour for work in court. There are different maximums for various types of cases for volunteer lawyers; \$4,000 is the outside maximum, however, the maximum will be waived for cases with extraordinary circumstances.

California

In California, trial-level indigent defense representation is organized at the county level. The majority of counties have a public defender, and several counties have a second, and even third, public defender to handle conflict of interest cases. Some counties contract with lawyers who accept case assignments and receive flat fee-per-case payments, while others pay conflict counsel hourly rates.

The majority of indigent cases in San Francisco County is handled by the county public defender. Conflict cases are handled by court-appointed counsel who receive \$77 per hour for work on regular felonies and \$92 per hour for work on serious felonies. There are no per case maximums imposed. The judges in San Francisco approve the rates set by the San Francisco Bar Association, which administers the assigned counsel panel and takes a two percent administrative fee from each payment to panel lawyers. The court forwards the payment to the Bar.

San Mateo County relies exclusively on court-appointed counsel to provide indigent defense services. In 1968, San Mateo County contracted the San Mateo County Bar's Private Defender Program (PDP) to provide legal representation of indigent defendants entitled to public counsel. Attorneys are compensated through an event-based fee schedule that is designed to provide no economic incentive to plea out a case. When a case is assigned, the attorney is paid a case fee of \$375. A flat fee is paid for each pretrial hearing. For example, representation at a preliminary hearing earns \$310-\$350, and representation at a pretrial conference earns \$80. When a case goes to trial, attorneys are paid \$90 per hour for in-court work and \$225 for a half day of preparation. Additionally, \$160 is paid for motions filed and a hearing on a motion is

compensated at \$70 per hour. In certain circumstances attorneys may receive additional compensation of up to \$1,250 for cases that require exceptional time and effort.

Connecticut

In Connecticut, the state public defender contracts with attorneys to handle conflict of interest cases where no public defender is available. Attorneys agree to accept a flat rate for each non-capital felony. When there is no available contract attorney, outside counsel are appointed at a rate of \$45 for out of court work and \$65 for work in court; rates which are also paid to contract attorneys when a case goes to trial.

Oklahoma

In Oklahoma, a statewide program, the Oklahoma Indigent Defense System (OIDS), is responsible for all indigent defense representation in 75 of the state's 77 counties. Counsel in these counties who are appointed by the court to felony cases are entitled to be paid statutory rates of compensation (\$40 per hour out of court and \$60 per hour in court with a \$3,500 maximum). However, the majority of cases in these counties are handled by attorneys who work under annual contracts with OIDS, and receive significantly lower per-case payments than if they were working under the hourly amounts. Oklahoma and Tulsa counties, which both have county public defender offices, pay conflict counsel various rates.

The Federal Model: the Criminal Justice Act

The approach to appointing private counsel to represent indigent defendants charged with federal crimes is very similar to the "statutory hourly rate" approach used in a number of states. At the federal level, the Criminal Justice Act of 1964 (18 U.S.C. §3006A) authorizes payment for representation of indigent defendants accused of committing crimes. Under the Act, each United States District Court is required to develop a plan for furnishing counsel and investigative, expert and other services necessary for adequate representation in trial and appellate proceedings. The Criminal Justice Act (CJA) authorizes three methods for a court to provide counsel to indigent defendants: a Federal Public Defender Organization, a Community Defender Organization, and a panel of private attorneys.

Sixty-four of the 94 federal judicial districts operate a Federal Public Defender Organization. A Federal Public Defender Organization consists of one or more full-time, federal salaried attorneys who are prohibited from having private law practices. The head of a Federal Public Defender Organization, the federal public defender, is appointed by the respective court of appeals to a renewable four year term and is paid a salary fixed by the court of appeals at a rate not greater than that of the United States Attorney (prosecutor) for that district. A Federal Public Defender Organization operates under a budget approved by the Administrative Office of the United States Courts.

A Community Defender Organization (CDO) is a non-profit legal services organization incorporated under state laws and supervised by a board of directors. Fifteen CDOs currently serve 17 of the nation's judicial districts. CDOs may operate under grants approved by the Judicial Conference or they may opt to be reimbursed for their services on a case-by-case basis under the statutorily prescribed hourly rates which also apply to CJA panel attorneys.

CJA panel attorneys serve every district in the federal court system. In those districts where there is a Federal Public Defender Organization or a Community Defender Organization, panel attorneys are appointed to handle those cases in which the institutional defender has a conflict of interest -- approximately 25% of all cases. They handle all of the indigent defendant cases in those districts without a CDO or Federal Public Defender Organization.

Private attorneys are appointed on a case-by-case basis by a district court or court of appeals from a panel of lawyers approved by the court as qualified to handle federal criminal cases. Section 3006A(d) of title 18, United States Code, established hourly panel attorney payments of \$45 for out-of-court work and \$65 for in-court work, and authorizes the Judicial Conference to approve rates as high as \$90 an hour. In April of 2001, the Judicial Conference raised the payment rates to \$55 out-of-court and \$75 in-court. Since then the Judicial Conference has approved rates of \$90 in and out-of-court in all districts. This increase reflects the partial implementation by congress of the annual pay adjustments authorized by the criminal justice act of 1986.

Attorneys may receive up to \$5,200 for felony cases. This ceiling may be exceeded in complex or extended cases upon application to the court.

Panel attorneys are also entitled to reimbursement for out-of-pocket expenses, such as travel. In order to receive payment for their services, panel attorneys submit vouchers to the clerk of the appointing court, specifying the number of hours devoted to the case and any accompanying expenses.

Conclusion

Standard 5-2.4 of the American Bar Association Standards for Criminal Justice, Providing Defense Services, Third Edition states, "Assigned counsel should receive prompt compensation at a reasonable hourly rate and should be reimbursed for their reasonable out-of-pocket expenses. Assigned counsel should be compensated for all hours necessary to provide quality legal representation...." This standard provides a measure against which jurisdictions can evaluate their compensation rates for court-appointed counsel.

This narrative and accompanying table illustrate the different approaches throughout the states in compensating non-public defender counsel who represent indigent defendants in non-capital felony cases. As the table shows, many states have established hourly rates and a per-case maximum, but in only two of these states - Mississippi and Virginia - is there no possibility of

waiving the maximum upon a showing of extraordinary circumstances. There has been a significant amount of litigation concerning compensation for court-appointed counsel, and the Appendix to this narrative provides a partial listing of such litigation.

The use of an hourly rate for attorneys' fees plus a separate hourly rate to cover overhead is the system endorsed by the *1992 Interim Report of the Committee to Review the Criminal Justice Act of the Judicial Conference of the United States*. The nine-member Committee was appointed by Chief Justice William H. Rehnquist to conduct a comprehensive analysis of the CJA program and to recommend appropriate legislative, administrative and procedural changes to the United States Judicial Conference. The Committee's report recommended enactment of a statutory method that ensures CJA panel attorneys a fair hourly fee over and above their reasonable overhead. One approach the report supports is the use of a national presumptive overhead figure, such as \$25 an hour, which could be tailored on a regional basis using empirical data contributed by local bar associations, chambers of commerce and the CJA panel entity in a federal district. The overhead rate would be paid in addition to the compensation rate.

Finally, it is important to mention one concern with the court-appointed counsel compensation system, which is the potential for conflict of interest when judges approve the compensation and reimbursement claims of panel attorneys who appear before them. The *Interim Report of the Committee to Review the Criminal Justice Act* pointed out that when a judge approves a fee that is less than the amount sought, counsel may - rightly or wrongly - perceive the reduction as an "admonition, rebuke or retaliation for defense tactics." Judges, however, sometimes feel justified in cutting vouchers they feel are excessive for the type of case handled, relying on their own view of "what a case is worth." This practice, if done routinely, effectively reduces the authorized hourly rate or per-case maximum. The Committee addressed this issue by recommending utilization of a local administrator to review interim and final vouchers and to certify final payments. The Committee's report further recommended implementing a procedure to notify an attorney of the intent to reduce a payment to him or her and the reason for the reduction. In such a system, the attorney would have the opportunity to appeal a decision to reduce a voucher and judges would have the opportunity to comment on the administrator's initial determinations for payment.

Responding to the review committee's recommendations in the March 1993 *Report of the Judicial Conference of the United States on the Federal Defender Program*, the Judicial Conference rejected the proposal for local panel administrators but endorsed the recommendation that CJA panel attorneys receive compensation which covers reasonable overhead and a fair hourly fee.

Appendix
Selected Case Law Concerning Indigent Defendant Counsel Compensation

State Ex Rel Stephen v. Smith, 747 P.2d 816 (Kansas S.Ct., 1987)

State v. Lynch, 796 P.2d 1150 (Oklahoma S.Ct., 1990)

State v. Ryan, 444 N.W. 2d 656 (Nebraska, 1989)

State v. Smith, 681 P.2d 1374 (Arizona, 1984)

Wilson v. State, 574 So.2d 1338 (Miss. S.Ct., 1990)

May v. State, 672 S. 2d 1307 (Ala. App. 1993), cert. denied, May v. State, 672 S. 2d. 1310 (Ala. 1995)

In re: Rhem v. County of Richardson, 410 N.W.2d 92 (Neb. 1987)

Zarambia v. Superior Court, 912 P.2d 5 (Ariz. 1996)

White v. Board of County Commissioners, 537 So.2d 1376 (Fla. 1989)

New York County Lawyers' Association v. State of New York, Index no. 102987/00 (County of New York LAS Part 38, filed Jan 2000)

THE SPANGENBERG GROUP

Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, July 2002 (States with an asterisk (*) have been updated since 2002)

State ¹	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Alabama ^{2*}	\$40	\$60	Class A Felony: \$3,500 Class B Felony: \$2,500 Class C Felony: \$1,500	Yes		Code of Alabama § 15-12-21
Alaska	\$50	\$60	Felony disposed following a trial - \$4,000; Felony disposed of following a plea of guilty or nolo contendere, or by dismissal - \$2,000	Yes		2 AA.C.60 Alaska Administrative Code
Arizona	Varies		Varies	Yes	Varies	AZ Rev. Stat. Ann. § 13-4013(a) grants authority to local court
Arkansas	Non-capital homicide, A and Y felonies: between \$70-\$90, all other felonies: between \$60-\$80.		None			Arkansas Code Ann. § 16-87-2121 authorizes the Public Defender Commission to set the rates
California	Varies: In San Francisco: \$77 for felonies, \$92 for serious or life felonies, with no maximum		None		Varies	California Penal Code § 98.7.2

¹ This table includes changes in compensation rates in the District of Columbia, Hawaii, Maryland, Massachusetts, New Jersey, New York, North Dakota, Rhode Island, Virginia and Wyoming that were implemented since this chart appeared in 2002. It does not reflect a comprehensive 50-state update.

² Alabama statutory law sets compensation rates at \$40/hour for in court work and \$60/hour for out of court work. The language in the statute authorizing these rates states, "Counsel shall also be entitled to be reimbursed for any expenses reasonably incurred in such defense to be approved in advance by the trial court." In *James W. May v. State*, the Alabama Court of Criminal Appeals ordered the state to pay an additional amount for overhead as "expenses reasonably incurred." The presumptive hourly overhead was \$30 an hour, bringing the typical hourly compensation to \$70 an hour out of court and \$90 an hour in court. However, in February 2005, the State Attorney General issued an opinion conflicting with the *May* decision and the State Comptroller was advised that he should no longer continue to pay the \$30 overhead fee.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, July 2002 (States with an asterisk (*) have been updated since 2002)

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court		In Court			
Colorado	Type A Felonies: \$51 (violent crimes) Type B Felonies: \$47 ³ (non-violent felonies)		Felony 1 (trial): \$15,000 Felony 1 (no trial): \$7,500 Felony 2 (trial): \$7,500 Felony 2 (no trial): \$3,750 Felony 3 (trial): \$5,000 Felony 3 (no trial): \$2,500	Yes		Rates set by Chief Justice Directive 97-01, per Colo. Rev. Stat. § 21-2-105.
Connecticut	\$45	\$65	If a case is not at trial an attorney may bill for 6 hours in court and 6 hours out of court per day.			Appointed counsel rates are set by the State PD and approved by the PD Commission pursuant to § 51-293 C.G.S., established in accordance with C.G.S. sec. 51-291(12).
Delaware	\$50 ⁴		None			Del. Code Ann. 29 § 4605 grants authority to Supreme Court.
D.C. *	\$65		\$3,600 ⁵	Yes		D.C. Code Ann. § 11-2604(a)
Florida	Varies		Non-capital, non-life felonies: \$2,500 life felonies: \$3,000	Yes	Varies	Fla. Stat. § 27.42 grants authority to set hourly rates to local circuit Article V indigent services committees.

³ Travel time is paid at \$30 an hour with an additional \$0.28 paid per mile.

⁴ The majority of the public defender conflict of interest cases are handled by contract counsel. The \$50 hourly rate applies only to attorneys not on contract.

⁵ In addition to a per-case cap, no attorney may earn more than \$96,000 annually from court appointments in the District of Columbia.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, July 2002 (States with an asterisk (*) have been updated since 2002)

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Georgia	\$45	\$60	None			Georgia Code Ann. § 17-12-8(b)(9) grants authority to the Georgia Public Defender Standards Council.
Hawaii ^{6*}	\$40	\$60	\$3,000	Yes		H.R.S. § 802 5(b)
Idaho	Varies. Typical: \$50		None			Idaho Code § 19-860(b) grants authority to local judge.
Illinois	\$30	\$40	\$1,250	Yes		725 I.L.C.S. 5/113-3. ⁷
Indiana	\$60 ⁸		None			Ind. Code § 33-9-13-3 Establishes the Public Defender Commission. Rates are set by Indiana Public Defender Commission Standards for Indigent Defense Services in Non-Capital Cases.

⁶ Hawaii's rates will increase to \$90 per hour with no distinction between in and out-of-court time on July 1, 2006. The cap will increase to \$3,750.

⁷ Illinois' statutory rate applies to only those counties with a population over 2,000,000. Cook County is the only county with a population greater than 2,000,000. All other county compensation rates are set by the individual county.

⁸ Rate applies to those counties that meet Indiana Public Defender Commission Standards for Indigent Defense Services in Non-Capital Cases.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, July 2002 (States with an asterisk (*) have been updated since 2002)

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Iowa	Felony punishable by life w/out parole: \$60 Felony punishable by 25 years to life: \$55 Other: \$50		Felony punishable by life w/out parole: \$15,000 Felony punishable by 25 years to life: \$3,000 Felony punishable by 10 years: \$1,200 Felony punishable by 5 years: \$1,000	Yes		I.G.S. § 13B.2A grants authority to the Indigent Defense Advisory Commission to advise and make recommendations to the legislature and state PD for hourly rates and per case fee limits.
Kansas	\$50		\$5,000	Yes		K.S.A. 22-4501 et. seq. grants authority to Kansas Board of Indigents' Defense Services.
Kentucky	Non-violent felonies: \$40 Violent felonies subject to 85% parole eligibility: \$50		Non-Violent Felonies: \$1,800 Violent felonies subject to 85% parole eligibility: \$3,000	Yes		K.R.S. Ann. 31.017(4), court where attorney is appointed decides "reasonable rate."
Louisiana	Varies; \$42 is typical rate.		None			L.A. Code Crim. Proc. § 15-144 et. seq.
Maine	\$50		Class A: \$2,500 Class B/C against a person: \$1,875 Class B/C against property: \$1,250	Yes		Maine Revised Statutes Ann. Title 15 § 810 grants authority to Superior Court.
Maryland*	\$50		Misdemeanors: \$750 Juvenile: \$3,000 Felony: \$3,000 Mental Health: \$750	Yes		Ann. Code of Maryland Art. 27 § 6(d) grants Public Defender authority to promulgate administrative law.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, July 2002 (States with an asterisk (*) have been updated since 2002)

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Massachusetts*	No distinction between in and out of court rates. murder cases: \$100; superior court non-homicide felonies and youthful offender cases: \$60; all other felony cases in district court: \$50. ⁹		None			Mass. General Laws Ann. Ch. 211D § 11 grants authority to Committee for Public Counsel Services; must get legislative approval of rates.
Michigan	Varies widely		Varies			Michigan Compiled Laws Ann. § 775.16 grants authority to presiding judge.
Minnesota	\$50 ¹⁰		None			No official authority; PD establishes rates.
Mississippi	Varies		\$1,000 plus overhead expenses, which are presumptively set at \$25 an hour.	No		Miss. Code Ann. § 99-15-170 <i>Wilson v. State</i> , 574 So. 2d 1338 (1990).
Missouri	Rarely Used		None			Mo. Rev. Stat. § 600.017 grants authority to State Public Defender.
Montana	Varies. Typically \$40-\$60 for both in court and out of court work.		None			Montana Code Ann. § 46-8-201(1) grants authority to local judge.
Nebraska	Varies. Typical: \$60 \$60 Omaha: \$65 \$80		Typically there is no maximum, but Omaha uses \$12,000.	Yes		Nebraska Code 29-1804.12 grants authority to local judge.

⁹ The rates in Massachusetts were increased twice between 2004 and 2005. In August 2004 the state legislature increased the rates by \$7.50 per hour across the board, bringing the rates to \$37.50 per hour in district court cases and \$46.50 in superior court or non-homicide felony cases. The rates were raised again in July 2005 to the rates listed in this chart.

¹⁰ The majority of the public defender conflict of interest cases are handled by contract counsel. Hourly rate applies only to attorneys not on contract.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, July 2002 (States with an asterisk (*) have been updated since 2002)

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Nevada	\$100		\$12,000 facing life without the possibility of parole; \$2,500 if facing less than life without parole.	Yes		N.R.S. 7.125
New Hampshire	\$60		\$3,000	Yes		Part 2 Art. 73A of New Hampshire Constitution grants authority to the State Supreme Court.
New Jersey*	\$50	\$60	None			N.J.S.A. § 2A:158A-7 grants authority to the New Jersey Public Defender.
New Mexico	Rarely Used					New Mexico Statutes Ann. § 31-15-7(11) authorizes Chief Public Defender to formulate a fee schedule.
New York*	\$75		\$4,400	Yes		Article 18-B of the County Law § 722-b.
North Carolina	\$65		None			General Statutes of North Carolina § 7A-498.5 grants authority to the Office of Indigent Defense Services.
North Dakota*	Varies Typical: \$60-\$85		None			North Dakota Supreme Court's Advisory Commission on Indigent Defense. ¹¹

¹¹ S.B. 2027, enacted in April 2005, grants authority to the Commission on Legal Counsel for Indigents effective January 1, 2006.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, July 2002 (States with an asterisk (*) have been updated since 2002)

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Ohio	Varies. Public Defender Standards recommend: \$50 \$60		Public Defender Commission recommends: Aggravated Murder: \$8,000 (1 attorney), \$10,000 (2 attorneys); Murder and Felony w/ possibility of life sentence/repeat Violent Offender/Major Drug Offender: \$5,000; Felonies (degrees 1-3): \$3,000; Felonies (degrees 4&5): \$2,500.	Yes		Ohio Revised Code Ann. § 120.33 grants local board of county commissioners authority to set rate after soliciting local bar association for proposed rate schedule. ¹²
Oklahoma	\$40	\$60 ¹³	\$3,500	Yes		22 O.S. § 1355.8 G2 (OSCN 2001).
Oregon	\$40		None			O.R.S. § 151.216(f)(C) grants authority to the Public Defense Services Commission.
Pennsylvania	Varies from \$40-\$75 per hour. Philadelphia County pays on a per diem basis.		Varies		Varies	Pennsylvania Statutes Ann. Article 13A § 9960.7 grants authority to local judge.
Rhode Island*	No distinction between in and out-of-court rates. Murder cases: \$100; if potential sentence is greater than 10 years: \$90; if potential sentence is less than 10 years: \$60.		Murder cases: \$15,000; if potential sentence is more than 10 years: \$10,000; if potential sentence is less than 10 years: \$5,000.	Yes		General Laws of the State of RI sec. 8-15-2 vests authority w/ Chief Justice. Supreme Court Executive Order No. 95-01.

¹² Ohio Revised Code Annotated § 120.04(7) authorizes State Public Defender to set rate at which Ohio Public Defender Commission will reimburse counties.

¹³ In cases not under contract with Oklahoma Indigent Defense System and outside of Tulsa and Oklahoma counties. This applies to the per case maximum as well.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, July 2002 (States with an asterisk (*) have been updated since 2002)

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
South Carolina	\$40	\$60	\$3,500	Yes		Code of Law of S.C. Ann. § 17-3-50.
South Dakota	\$67		None			S.D.C.L. § 23A-40-8. ¹⁴
Tennessee	\$40	\$50	\$1,000	Up to \$3,000 ¹⁵		Supreme Court Rule 13
Texas	Varies from \$50-\$125 per hour.		Varies Widely			Texas Statutes Ann. Art. 26.05 grants authority to local judge. ¹⁶
Utah	Varies					Utah Code Ann. § 72-32-3(3) grants authority to district court.
Vermont	\$50		Felony involving life in prison; \$25,000 Major felony: \$5,000 Minor felony: \$2,000	Yes		13 V.S.A. § 5205(a) and administrative order of the Vermont Supreme Court.

¹⁴ The source of authority for this rate is a Supreme Court rule. The South Dakota Supreme Court rules are incorporated into the state code.

¹⁵ The \$3,000 maximum may be waived in a homicide case if the Chief Justice finds that extraordinary circumstances exist and the failure to waive the maximum would result in undue hardship.

¹⁶ The Texas Task Force on Indigent Defense, created in 2001, will establish standards for the operation of local indigent defense systems that counties will be required to follow. Among the standards is expected to be a minimum rate of compensation for court appointed counsel.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, July 2002 (States with an asterisk (*) have been updated since 2002)

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Virginia*	\$90	\$90	\$1,235 to defend charges punishable for more than 20 years; \$445 to defend other felony charges. ¹⁷	No		Virginia Supreme Court sets recommended hourly rate. Virginia General Assembly sets per-charge maximums. VA Code Ann. § 19.2-163.
Washington	Varies from \$40-\$80 Pierce County: \$40-\$50 Lincoln County: \$40 Stevens County: \$70		Varies, e.g., Pierce County: \$550-\$1,000 for cases that don't go to trial, \$1,500-\$5,000 for trials.	Varies	Varies	Revised Code of Washington Ann. § 36.26.090 grants authority to court.
West Virginia	\$45	\$65	\$3,000	Yes		West Virginia Code Ann. § 29-21-13a.
Wisconsin	\$40 plus \$25 per hour for travel	\$40	None			Wisconsin Statutes Ann. § 977.08(4m).
Wyoming*	Varies: \$40-\$45	Varies: up to \$60	None			Wyoming Rules of Criminal Procedure Rule 44(e).
U.S. Government	\$90	\$90	\$5,200	Yes		18 U.S.C. § 3006 A(d).

¹⁷ Though by statute the per case maximums are set at \$1,235 and \$445, the Virginia Legislature has not appropriated funds sufficient to pay court appointed counsel at this level. In 2005, after an additional \$2 million appropriation for court-appointed counsel fees, the per case maximums, in practice, were raised from \$1,096 for felonies punishable by more than 20 years to \$1,186 and from \$395 for felonies punishable by less than 20 years to \$428.