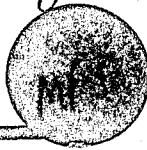


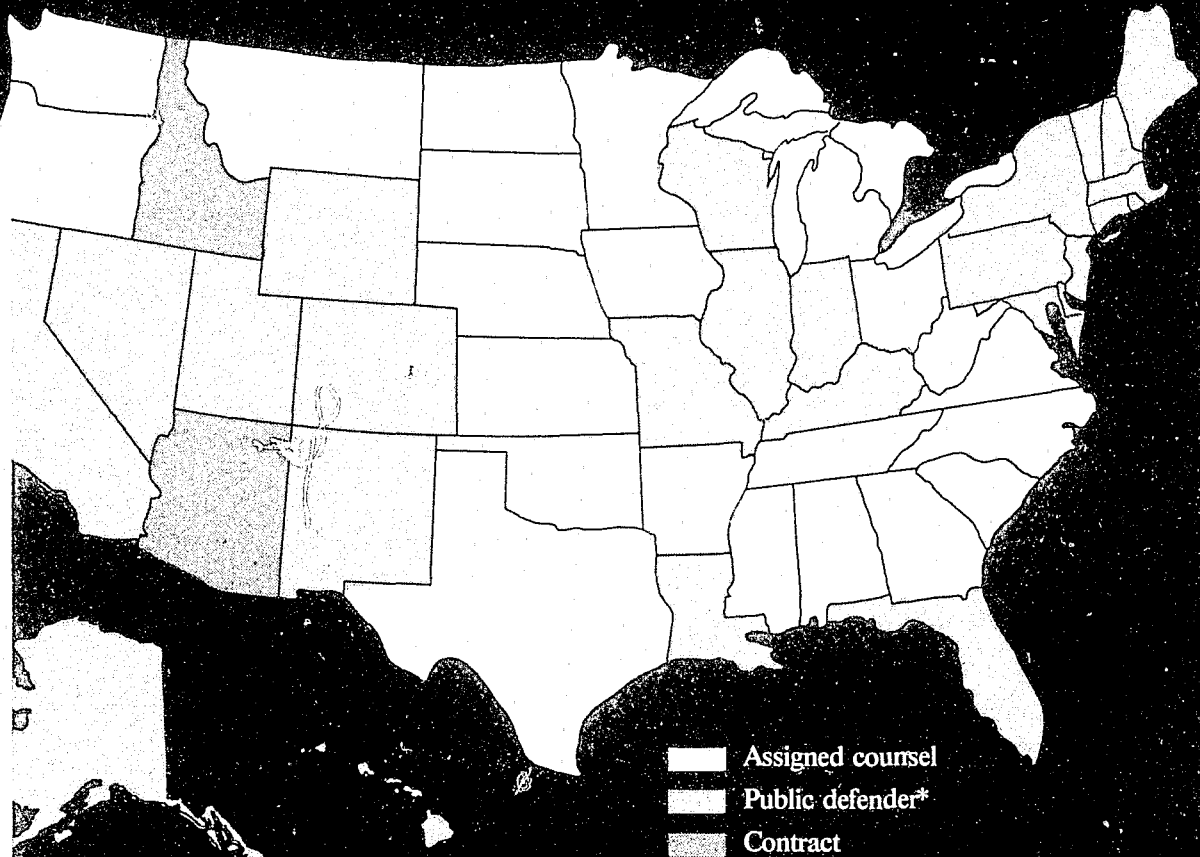
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# National Criminal Defense Systems Study

States by type of defense system  
in majority of counties, 1982



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\*Indiana and New Mexico had the same number of public defender and assigned counsel counties. Missouri and New Hampshire changed to public defenders around the time of the survey.

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(revised October 1986)

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# National Criminal Defense Systems Study

## Final Report

By  
Robert L. Spangenberg  
Beverly Lee  
Michael Battaglia  
Patricia Smith  
A. David Davis

Abt Associates Inc.  
Cambridge, MA

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**Joseph M. Bessette  
Deputy Director**

**Benjamin H. Renshaw  
Deputy Director**

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## Introduction

### Origin and purpose of the National Criminal Defense Systems Study

The quality of justice in the United States depends on the effective and efficient functioning of the entire criminal justice system. The components of the system—law enforcement, the courts, prosecution, corrections, and defense—are inter-related, and their smooth functioning is interdependent. Many believe the defense function is the most overlooked and underfunded of all the components of the criminal justice system. Nevertheless, the defense of accused criminals is constitutionally mandated and thus must be regarded as an essential aspect of criminal justice. Furthermore, the adversarial nature of the legal system requires a strong and independent defense bar without regard to the defendant's ability to pay for legal services. These services must be provided and are being provided, in one way or another, in every jurisdiction in the United States.

Unfortunately, how these services are being provided, by whom, and at what expense have remained largely unclear over the last two decades because of the large number of programs and the diversity of their approaches to providing indigent defense. This study provided national-level data on such basic information as system types, funding sources, costs, and caseloads. Such information is of use not only to indigent defense practitioners in fulfilling their responsibilities, but also to policymakers and planners who must initiate and adapt to change in all components of the criminal justice system.

### The legal mandate for indigent defense services

Perhaps the most significant factor affecting the development of quality defense services has been the expanding scope of the legal mandate for indigent defense in the last 20 years. The right of indigent criminal defendants to representation by counsel in Federal courts was firmly embedded in the sixth amendment of the United States Constitution and was first extended to proceedings in the State courts by the decision of the U.S. Supreme Court in **Powell v.**

**Alabama** 287 U.S. 45 (1932). In the **Powell** case, the sixth amendment right to counsel was made applicable to the States through the due process clause of the 14th amendment, though it was at that time still limited to capital cases. **Gideon v. Wainwright** 372 U.S. 335 (1963) was the landmark decision extending the right to counsel to all felony cases in State court proceedings. In **Argersinger v. Hamlin** 407 U.S. 25 (1972) the Court further extended the right to counsel to misdemeanor cases in which the defendant may receive a sentence of imprisonment.

The Court also has determined in a long series of decisions that the right to counsel is not limited to the criminal trial process. This right has been expanded to include critical stages prior to trial, such as arraignment, preliminary hearing, and the entry of a plea. After conviction, the right to counsel has been declared to extend to sentencing and appeal.

Juveniles also were accorded the right to counsel by the Court in **In re Gault**, 387 U.S. 1 (1967), when it held that 14th amendment due-process protections must be extended to all juveniles threatened with delinquency proceedings. Other decisions have resulted in providing juveniles with many of the rights accorded to adults accused of similar conduct.

While the **Gideon**, **Argersinger**, and **Gault** cases provide the broad constitutional mandate for counsel in criminal cases, they obviously do not totally define the overall scope and requirements of the sixth amendment. These challenges have been left to the States, and, in some measure, the State interpretation of constitutional decisions affects local programs and expenditures. For example, either by statute or State supreme court decision, some States require counsel in all misdemeanor cases, while others require counsel only if there is a reasonable likelihood that a jail sentence may be imposed. The relative cost implications for providing indigent representation in each of these two types of State requirements are obvious.

Furthermore, some States have gone considerably further than others in

mandating counsel where the U.S. Supreme Court has not yet acted or has not required counsel under the sixth amendment. Examples include requiring that counsel be provided in mental commitment cases, probation revocation hearings, status offenses, prison disciplinary proceedings, and certain other noncriminal matters.

These changes have radically altered the nature and scope of defense services. The ability of practitioners and policymakers to respond to these changes has been constrained by lack of information, in part, and by limited funding. Without basic data describing defense operations it has been difficult, if not impossible, to assess compliance with the above legal mandates, to plan responsibly for changes in programs, or to measure the impact of change on the criminal justice system as a whole.

### Previous survey research efforts

In the past 10 years several attempts have been made to remedy this lack of information. A review of past research and survey efforts, however, reveals that the national survey data collected was limited for one or more of the following reasons:

- Data reported predate major court decisions and recent trends
- The survey response rate was low, especially from assigned counsel and rural areas
- The sample was small, nonrepresentative, or otherwise inappropriate for national estimates of indigent defense services
- The scope of the survey was limited
- The results yielded no trend data because the different studies used different data bases.

The only previous attempt at conducting a comprehensive nationwide survey was made in 1972-73 by the National Legal Aid and Defender Association (NLADA). The survey findings were published in The Other Face of Justice,<sup>1</sup> which attempted to study such areas as

- Rate of indigency and methods of determining indigency

<sup>1</sup>L. Benner and B. Lynch-Neary, The Other Face of Justice: A Report of the National Defender Survey (Washington, D.C.: National Legal Aid and Defender Association, 1973).

## Introduction

- Relationship between bail and indigency
- Scope of representation and the impact of the Argersinger case
- Methods of providing counsel
- Availability of support services
- Time of first client contact and caseload, dispositions, and expenditures for indigent defense.

Questionnaires were mailed to all 3,110 counties in the country, and an additional 20 field surveys were conducted in 20 randomly chosen districts. The survey respondents in each county included

- Felony and misdemeanor judges
- Appellate and supreme court judges
- Chief prosecutor
- All defender agencies
- County or court clerk
- County auditor
- President of the county bar association
- Random sample of private attorneys in counties with assigned counsel programs.

While this was an ambitious effort, the survey was limited. First, the rate of response to the survey was only 25% overall, casting serious doubt on the validity of generalizations of the data. (The fact that the survey instrument was lengthy and complicated may have accounted, in part, for the poor response rate.) Second, the survey was conducted just after the Argersinger decision was handed down by the Supreme Court, too soon for it to have been able to reflect the bulk of system changes in response to that decision. Despite these problems the study was significant in highlighting for the first time the complexities and problems presented by a decentralized indigent defense system.

Several other surveys were conducted by NLADA in the 1970's. "The Indigent Defense Systems Analysis" (unpublished) attempted to gather data on case entry (specifically the availability of early representation and support services) and plea bargaining. Questionnaires were mailed to 300 defender agencies around the Nation, and field visits, including court docket studies, were conducted in eight jurisdictions. Surveys were

mailed to the chief defender and staff attorneys in every public defender agency in the United States. Although the survey did reveal some interesting facts about the process of plea bargaining, it was not intended to gather comprehensive data regarding indigent defense as a whole.

"The Defender Office Survey," which was conducted in 1978, sought to collect data on the geographical jurisdiction, scope of representation, procedure for appointment of cases, use of expert witnesses and consultant panels, and program needs of public defense systems. A 13-page instrument was mailed to every public defender office listed in the NLADA Directory. The information obtained proved to be useful in expanding knowledge about indigent defense types and systems but, again, was not intended to produce national estimates.

Other surveys were designed to gather information on limited areas of interest, such as NLADA's "Defender Management Information Systems Surveys I and II" (1979 and 1980) and the National Center for State Courts' (NCSC) "Assigned Counsel Fee Study" (1979). In addition, a few surveys have been conducted that collected some minor defense data along with information about various other components of the criminal justice system. Examples are the Bureau of the Census' Expenditure and Employment Series (annual since 1967) and the NCSC's Court Directory Update (1979-80). Again, these data were not intended to provide a comprehensive, nationwide picture of indigent defense programs.

### The need for nationwide criminal defense data

The information made available as a result of these surveys and other research efforts in the last 10 years suggests a general outline of the scope and nature of defense services nationwide. Based on this information certain assumptions began to be made by funding sources, indigent defense program practitioners, court

officials, and others. These assumptions include the following:

- There appears to be a trend toward State centralization and State funding
- Public defender programs are beginning to replace assigned counsel programs
- Creation of contract defense programs with members of the private bar are beginning to occur throughout the country
- With a few exceptions, indigent defense programs are severely underfunded and overwhelmed with cases
- With a few exceptions, members of the private bar appointed in criminal cases are substantially underpaid
- Early entry of defense counsel into the criminal case process exists in only a small number of jurisdictions
- Support services, such as investigative resources, expert witnesses, social services, and other necessary expenses, are generally not available for private appointed counsel.

In recent years, this type of impressionistic information has formed the foundation for many significant policy decisions made on all levels of State and local government. Some of the information may have been wrong; some of the decisions may have been mistakes. Without further research into program characteristics and system trends, it has been impossible to assess the correctness of either these assumptions or the policies which they supported.

In an attempt to address these information needs in the field, the Federal Government has provided some funds for indigent defense research during the past decade. Efforts by the Law Enforcement Assistance Administration (LEAA),<sup>2</sup> the National Institute of Justice (NIJ), and the Bureau of Justice Statistics (BJS) have contributed substantially to our knowledge of indigent defense. In addition, several private groups have demon-

<sup>2</sup>LEAA-funded projects included the National College for Criminal Defense, the Consortium of Appellate Defender Offices, the Consortium of Regional or Multi-County Defense Programs, Criminal Defense Technical Assistance Project, and statewide projects funded through discretionary grants.



strated a commitment to providing assistance to beleaguered defense attorneys, including most recently the ABA's Indigent Defense Information Program, sponsored and administered by the Standing Committee on Legal Aid and Indigent Defendants (SLAID). The program (1) increases understanding among leaders of the State and local bar associations about problems in funding for, and quality of, indigent defense services and (2) offers support for bar association leaders seeking to improve indigent defense services. These efforts to provide information and technical assistance to indigent defense attorneys have made important contributions to improving information on and providing actual services in indigent defense across the Nation.

In spite of the advances made, too little basic information is available even to develop a rudimentary analysis of nationwide trends in defense representation. Furthermore, the problems facing indigent defense attorneys—public defenders, assigned counsel, and contract attorneys alike—remain and even may be worsening. The expansion of legally required services, increasing caseloads, and limited, sometimes shrinking funds represent severe constraints on the ability of defense attorneys to provide adequate representation to their indigent clients. Without information on the operations of the multitude of indigent defense programs and on recent trends in costs and caseloads, it will be difficult, if not impossible, to satisfy current program development and planning needs. Policymakers and practitioners on all levels, from local to Federal, need this basic information to make rational, well-informed decisions about the future of indigent defense. Information requirements of several important groups are summarized (table 1).

#### Research goals

Recognizing the need for basic information about indigent defense services and the lack of reliable sources of such information, the Bureau of Justice Statistics (BJS) provided funds in November 1981 for Abt Associates and the National

**Table 1. Summary of information requirements**

Audience	Information requirements
Legislators and State policymakers (especially in States considering major changes in the structure, funding, or organization of defense services)	Need comparative cost, caseload, and organizational information from comparable States. Need to be updated on statutory and constitutional requirements for representation.
Administrators of statewide criminal defense programs	Need current information on structural issues (such as staffing ratios, location of offices, and relationship to judiciary) and procedural issues (such as caseload management, training, supervision, statewide resource sharing, and setting of standards).
Administrators of local criminal defense programs	Need current cost, caseload, and system type information to enable cross-jurisdictional comparison and long-range management planning in resolving defense resource allocation problems.
State and county bar associations	Need current information on fee schedules for appointed counsel, methods for certifying eligible private practitioners, and legal responsibility of the private bar to accept indigent caseloads.
National program planners (examples: Bureau of Justice Statistics, National Institute of Justice, etc.)	Need information on current national, State, and county defense expenditures. Need to assess current gaps in services and determine how Federal money can best be allocated—technical assistance, action grants, need areas.
Research community (examples: Bureau of Justice Statistics, National Institute of Justice, State Statistical Analysis Centers)	Need broad, reliable nationwide database that will facilitate future defense and criminal-justice-related research.

Legal Aid and Defender Association (NLADA) to conduct the National Criminal Defense Systems Study. The goal of the survey effort was to provide data that could begin to answer fundamental questions regarding the nature and scope of indigent defense service delivery. More specifically there were three basic objectives:

- To provide reliable descriptive data. Tasks included (1) collecting current data on the types of criminal defense systems available in each of the 50 States, (2) comparing the various systems in terms of cost and caseload, and (3) providing trend data (where available) for the last 2 to 3 years.
- To assess the level of response to defense service delivery requirements. Tasks included (1) establishing the apparent system response to the Argersinger and Gault cases and to more recent defense-related court decisions and (2) identifying system response to such critical factors pertaining to defense services as early representation, availability of support services and investigative resources, and horizontal/vertical representation.

- To facilitate future research. Tasks included (1) establishing a broad, reliable data base useful to criminal justice researchers and (2) developing a blueprint for a regular national census of defender organizations that will ultimately provide trend data for all counties in the United States.

The following section summarizes the survey methodology that was employed to collect and analyze the data necessary to accomplish these project objectives. The study methodology was designed to provide reliable, nationwide estimates of many facets of indigent criminal defense services. These data should be useful to practitioners and policymakers at all levels in program development and planning. Even more important, these data will serve as the baseline for further research to refine the understanding of the role of indigent defense in the criminal justice system and to increase the knowledge of long-term trends in the provision of defense services.

## Introduction

### Organization of this report

The report contains three chapters in addition to the introductory material. Chapter II, "Types and Characteristics of Indigent Defense Systems," contains information on the level of organization and structure of indigent defense services both nationally and on a State-by-State basis. In particular, types of systems for counties have been classified to provide estimates of the frequency with which public defender, assigned counsel, and contract systems are used. Descriptive information is presented on the features of each system. Highlights of differences by region or community size are discussed throughout.

Indigent defense expenditures and caseload are analyzed in Chapter III, again on both national and State-by-State levels. Total costs and amounts contributed by each source are discussed. Per capita analyses are provided for each State and for the four regions, as well as the cost per case and numbering of indigent cases per thousand population.

Finally, Chapter IV, "Variations in Case Processing and System Changes" in Indigent Defense Services covers features of case processing common to all systems, including: indigency screening, recoupment, early representation, and appointment of separate counsel for codefendants. Changes in structure and funding of services are summarized.

Appendix C containing State profiles has State-by-State data on

- court organization
- legislation pertaining to indigent defense
- expenditures broken out by source
- legislation and fee schedules for assigned counsel.

### Methodology

In designing the National Criminal Defense Systems Study, an attempt was made to assess realistically the trade-off between the cost of collecting data (especially in regions in which the data are not readily available) and the need for comprehensive information about indigent defense

programs around the country. To balance these concerns several different layers of data collection were incorporated into the methodology. This approach also balanced the desire to have a relatively standardized data collection plan with the need to be flexible and diligent in collecting data from the less accessible or more atypical programs. The major weaknesses of previous survey efforts were low response rates and no representative samples—problems that the present survey was specifically designed to avoid. The survey project was divided into five phases:

- sampling plan
- survey development
- respondent identification
- survey fielding and followup
- data compilation and analysis.

Each of these phases of the research is described briefly in the following sections. A more detailed discussion of the survey methodology is contained in the technical appendix to this report.

#### Sampling plan

To avoid the sampling problems experienced in earlier survey attempts a stratified sample was developed based on county population size as reported in the 1980 census.<sup>3</sup> Sampling with probability proportional to the size of the county population had two advantages: (1) Previous experience has shown that large population size is positively correlated with the need for defense services. Thus, because the sampling method increased the probability of larger counties being selected, the survey covered the counties of greatest interest and activity regarding indigent defense services. (2) All counties had a known, nonzero probability of being selected.

Recognizing that States and counties vary tremendously both in terms of system organization and the collecting and reporting of data, the sampling plan was designed to allow for calculation of precise national and regional estimates regarding

<sup>3</sup>The county was selected as the unit of analysis because many States organize and fund their indigent defense systems on a county basis.

indigent criminal defense services serving U.S. counties. A secondary objective was to develop State estimates with usable precision.

Stratification was used to ensure that the sample size of counties in each State was large enough to provide reliable statewide estimates. Also, approximately the same number of counties (16 to 18) were selected in each State to develop estimates at comparable levels of precision. The number of counties varied slightly from State to State to account for the finite population correction because sampling was done without replacement.<sup>4</sup> All counties within a State were sampled in 11 States (Alaska, Arizona, Connecticut, Delaware, Hawaii, Maine, Massachusetts, Nevada, New Hampshire, Rhode Island, and Vermont) and the District of Columbia, because each has fewer than 20 counties.

Because much of the indigent defense activity around a county takes place in counties of relatively greater population size, the inclusion of these counties in the sample was not left to chance. Rather, these counties were included in the sample with certainty. The remaining counties (not self-representing) were sampled with probability proportional to size to obtain the desired number of sample counties. The sample size in each State relative to the total number of counties is listed in table 2.

#### Survey development

It was determined initially that there would be three sets of questionnaires: (1) one for each of the primary program respondents; (2) one for each of the sample counties providing funds for indigent defense; and (3) one for the appropriate judge in the court of general trial juris-

<sup>4</sup>The unbiased variance estimation of the sample mean,  $\bar{Y}$ , is:

$$\text{Var}(\bar{Y}) = \frac{N-n}{N} \frac{S^2}{n},$$

where  $\frac{N-n}{N}$  is the finite population correction,  $N$  is the total number of counties in a State,  $n$  is the number of sample counties in a State, and  $S^2$  is the estimation of variance per unit.

diction in an effort to gather transactional data on felony cases. Fielding of multiple questionnaires was believed to be preferable to sending a single lengthy instrument to all types of respondents for two reasons: first, it reduced the burden on any single individual and second, it capitalized on the respondents' ability to answer questions with which they were familiar. It was also decided to field a single instrument to public defenders, assigned counsel, and contract programs with a "skip pattern" indicating which types of programs should answer which questions.

Following a lengthy instrument development process involving extensive review by NLADA and staff of the Bureau of Justice Statistics (BJS), draft questionnaires were submitted to the Office of Management and Budget (OMB) for clearance. At the same time, the three types of questionnaires were mailed to selected respondents for pretest. A major finding of the pretest was that respondents were almost always unable to supply accurate responses to the court system questionnaire because of lack of systematically organized information. As a result, it was decided not to field the court system instrument. The pretest also suggested other changes in the program and county questionnaires that necessitated a second submission to OMB. Copies of the final forms of these two questionnaires are included in this report (Appendix A).

#### Respondent identification

Once the sampling plan was completed, project staff began to compile a list of appropriate survey respondents for each of the questionnaires to be fielded.<sup>5</sup> For the present survey effort, a unique list of appropriate respondents for the two questionnaires had to be developed. Depending on the type of system (public defender, assigned counsel, contract, or a combination thereof), the level of organization (municipal, county, or State) and the source(s) of program funds (municipal,

**Table 2. Sample size**

State	Number of counties in State	Sample size	Number of counties selected with certainty	Number of counties selected randomly
Total	3,082	718	251	467
Alabama	67	16	2	14
Alaska	4	4	4	0
Arizona	14	14	14	0
Arkansas	75	17	1	16
California	58	16	5	11
Colorado	63	16	9	7
Connecticut	8	8	8	0
Delaware	3	3	3	0
District of Columbia	1	1	1	0
Florida	67	16	7	9
Georgia	159	18	3	15
Hawaii	4	4	4	0
Idaho	44	14	5	9
Illinois	102	17	3	14
Indiana	92	17	3	14
Iowa	99	17	2	15
Kansas	105	17	4	13
Kentucky	120	18	2	16
Louisiana	64	16	4	12
Maine	16	16	16	0
Maryland	23	9	4	5
Massachusetts	14	14	14	0
Michigan	83	17	5	12
Minnesota	87	17	5	12
Mississippi	82	17	2	15
Missouri	114	18	3	15
Montana	56	15	4	11
Nebraska	93	17	3	14
Nevada	17	17	17	0
New Hampshire	10	10	10	0
New Jersey	21	8	0	8
New Mexico	32	12	3	9
New York	62	16	8	8
North Carolina	100	18	1	17
North Dakota	53	15	4	11
Ohio	88	17	4	13
Oklahoma	77	17	3	14
Oregon	36	13	5	8
Pennsylvania	67	16	3	13
Rhode Island	5	5	5	0
South Carolina	46	15	4	11
South Dakota	66	16	3	13
Tennessee	95	17	4	13
Texas	254	19	4	15
Utah	29	12	5	7
Vermont	14	14	14	0
Virginia	104	17	1	16
Washington	39	14	6	8
West Virginia	55	15	1	14
Wisconsin	72	16	3	13
Wyoming	23	10	3	7

pal, county, and/or State) the list of respondents might include any number of the following individuals:

- State court administrator
- Executive director of the State bar
- State auditor
- County auditor

- Chief justice
- Local judges
- County commissioner
- State public defender
- Local public defenders
- Private assigned counsel
- Contract attorneys.

<sup>5</sup>See technical appendix for details on construction of sampling plan.

## Introduction

**Respondents for the program questionnaire.** Indigent defense programs were identified in each county. Initially, specific contact names were obtained from the following sources:

• Abt Associates' Criminal Defense Technical Assistance Project (CDTAP) files. These files consisted of: (1) a computerized library containing extensive information on the 42 States from which CDTAP received requests for technical assistance, as well as annual reports, caseload studies, and caseload records from all 50 States where available; (2) a current list of approximately 100 indigent defense consultants around the country with whom CDTAP had collaborated; and (3) data from a 50-State telephone survey conducted in 1981 for the American Bar Association, which gathered basic information on system type, cost, and caseload and developed numerous personal contacts nationwide.

• NLADA files. The files consisted of: (1) the "1981 Directory of Legal Aid and Defender Officers," including the names, addresses, and phone numbers of the more than 2,000 public defense lawyers who are members of NLADA and (2) contacts identified through the Defender Management Information Systems (DMIS) study through which NLADA assisted several jurisdictions in upgrading their Management Information Systems.

The development of the program respondent list proved to be a far more difficult task than anyone could have predicted. The printed sources listed above were extremely helpful in identifying the approximately 400 public defender programs located in the 718 sample counties, but were of little help in identifying the more than 300 remaining assigned counsel and contract programs. A variety of additional methods were used to identify appropriate respondents in these jurisdictions, including the following:

• Enlistment of a volunteer State coordinator in each of the 50 States  
• Numerous telephone calls and correspondence directed to judges, State and local bar officials, court clerks, and others

• Use of mailing lists supplied by the National Center for State Courts to identify presiding judges in courts of general trial jurisdiction around the country.<sup>6</sup>

**Respondents for the county questionnaire.** Because a number of States fund their indigent defense system in whole or in part through county funds, it was also necessary to develop a list of respondents for the county questionnaire in the sample counties where some county funds are provided. Fortunately, the development of the county respondent list was substantially aided by acquisition of a mailing list from the National Association of Counties (NACO) containing the names and addresses of county executives, chairmen of county boards, financial officers, treasurers, and other key officials in the sample counties. Based on these lists the most appropriate official in each county was chosen to receive the questionnaire.

### Fielding the survey and followup

**The initial mail survey.** Survey packages were mailed to 510 county respondents and 797 program respondents as follows:

- 436 public defender programs
- 206 ad hoc assigned counsel programs
- 29 coordinated assigned counsel programs
- 47 contracts with individual attorneys
- 26 contracts with law firms<sup>7</sup>
- 53 other or not determined.<sup>7</sup>

During the course of the mail survey, repeated calls were made and letters were sent to the 50 State coordinators.

<sup>6</sup>Among the more complex problems that were encountered in this task was the identification of respondents in many assigned counsel counties where separate lists of private bar members are developed for various court levels within the jurisdiction or by different judges in the same court. Ultimately, the challenge was to locate one individual judge or court clerk who would undertake the task of aggregating the data across several courts or within the same court.

<sup>7</sup>Postage-paid business reply envelopes were included in each package to facilitate return of the questionnaire. In addition, respondents were provided with a toll-free telephone number so that they could contact project staff if they had questions or problems regarding the survey.

In many cases the State coordinators made local in-State calls to urge program and county respondents to complete the questionnaires. In some cases, State coordinators filled out questionnaires by telephone, and, occasionally, in-person interviews. The success of this survey effort is due in no small part to the effort of the 50 volunteer State coordinators.

In several States, mostly those containing statewide public defender programs, county-level data were aggregated at the State level by the statewide organization. At their suggestion, all sample program questionnaires were directed to their attention, filled out in detail, and returned to the research staff.

**Telephone followup.** With the substantial assistance of the State coordinators, an extremely high response rate was achieved for both the county and the primary program questionnaires. Nonetheless, there remained a small number of county and program respondents who had not returned a questionnaire. Followup telephone interviews were conducted with these respondents to improve the response rate.<sup>8</sup> In some cases where the respondent had not received the survey questionnaire, an additional copy was sent. These followup techniques improved the response rate by encouraging cooperation, identifying additional respondents, and clarifying respondents' questions that were quite distinct from their willingness to participate in the survey effort.

Telephone interviews also were conducted in some cases where surveys had been returned, but internal editing procedures revealed inconsistencies in responses or missing cost and caseload information. In these instances the respondent was contacted by telephone to clarify the inconsistency or to collect the crucial data.

<sup>8</sup>The primary program questionnaire was reduced in scope to facilitate the collection of essential cost and caseload data. Appendix B contains the revised program questionnaire that was administered over the telephone.

**Survey of conflict/unavailability programs.** As the survey effort continued the staff began to note a rather dramatic development. Information flowed in from a number of States, indicating that a major change was occurring in counties with public defender programs. The development centered around a growing number of cases that were no longer being handled by public defenders, primarily because an increasingly strict definition of what constitutes a conflict of interest was being applied.

While historically the code of professional responsibility has prohibited one attorney from representing codefendants when a conflict of interest has been determined, most recently the U.S. Supreme Court and other appellate courts have been applying a more strict interpretation of what a conflict is.<sup>9</sup> Because all attorneys employed in a public defender's office are considered to be members of the same firm, if a conflict exists between codefendants the office cannot represent both defendants. Under these circumstances, the court must appoint a private member of the bar, thus essentially creating a second indigent defense program in the county.<sup>10</sup>

As court decisions have restricted the policy of codefendant representation, many public defenders have begun to make a conflict declaration in a larger number of cases and some declare conflict as a matter of policy in every codefendant case. This practice can have serious cost implications, because it is estimated that there are codefendants in approximately 25% of all adult felony cases.

A second development has also added to the problem. Traditionally, in public defender counties individual judges have been empowered with the authority to appoint the public defender in all cases except obvious conflicts. Such appointments often are made without regard to overall

funding levels and resource constraints. As appointments have increased, some public defenders have been unable to keep up with the caseload and have been looking for ways to deflect some of the cases. A few programs have been able to negotiate a fixed caseload level with their funding sources. Some have been relieved of assignment through informal agreements with local judges, and others have been successful in limiting caseload through litigation. This process is commonly referred to as a "declaration of unavailability." Whatever the method employed, the result in public defender jurisdictions is a substantial increase in the volume of cases handled by the second program (private bar) already charged with representing codefendants in conflict cases.

Although both of these problems began to surface 2 to 3 years ago, preliminary examination of the survey's program data revealed that the volume of cases no longer handled by public defenders has increased dramatically. Because this growth in the number of secondary programs would obviously have a significant impact on questions of caseload and cost, the identification of a new set of respondents was approved—those programs that handled conflict and/or unavailability cases in public defender counties. It was determined that, in about 60% of the public defender program counties, there was in fact a distinct and separate program. In the remaining 40% the cost of conflict and unavailability cases was built directly into the public defender's budget with the second program being administered by the public defender program. Thus it was decided to identify a program respondent for those 208 programs in the sample counties that were providing conflict/unavailability services separately from their public defender programs. Ultimately, a survey of all such conflict and unavailability programs was conducted by telephone. Again, the abbreviated questionnaire was administered to avoid burdening respondents.

**Response rates.** In all, responses were sought for 494 county ques-

tionnaires, including the District of Columbia. Of these, 490 (or 99%) were completed. Of the total sample of 777 program questionnaires distributed, 750 (or 97%) were completed. A breakdown of this figure by State shows that a 100% response rate was achieved in 33 States (table 3). In another 12 States there was only one incomplete primary questionnaire. Of the 208 conflict/unavailability programs for which questionnaires were distributed, 147 or 71% were completed. For 56 of the remaining 61 incomplete questionnaires, expenditure data was obtained from reliable secondary sources.

#### Data compilation and analysis

As questionnaires were received, a thorough review and edit check was completed by project staff involving:

- Comparison of cost data reported by respondents with program and county questionnaires to ensure that the figures were reasonable and consistent
- Comparison of the proportion of expenditures to population size both within and outside the sample
- Verification of data from available secondary sources and substitution of such data in that fraction of cases where there was a significant discrepancy
- Apportionment of multicounty figures to county level on the basis of census data.

Additional logic checks were performed manually and by computer to assure data consistency prior to analysis.

The basic approach of the analysis was to provide descriptive program statistics at national and regional levels and by population size of county. For certain key variables descriptive statistics also were developed for the States. The descriptive statistics focused on questions that applied to all programs, as well as on questions that applied only to public defender, assigned counsel, or contract programs. Caseload and expenditure data were first generated for each State. Estimates were then developed for the Nation as a whole, the four census regions, and the 50 largest counties in the United

<sup>9</sup>Holloway v. Arkansas, 435 U.S. 475 (1978).

<sup>10</sup>If the primary program is not a public defender program the problem does not exist, because the judge can simply appoint a different private attorney to represent the second defendant.

## Introduction

States. The technical appendix provides additional detail on the analysis of procedures employed.

### Limitations of the data

The availability of data on indigent criminal defense services varies greatly among jurisdictions. At one extreme are jurisdictions that collect little caseload data and unreliable cost data; this is in contrast to the most sophisticated jurisdictions, which have automated management information systems that collect extensive, reliable caseload, cost, and other management-related data. Unfortunately, the former case is the more prevalent. In all too many jurisdictions, the desired data are simply not routinely collected and centralized. The layered approach to data collection employed in this survey has resulted in collecting much information from areas of the country and types of programs that are typically difficult to access. However, the sometimes sketchy or "soft" nature of the only available data imposes some inherent restrictions on the survey results.

These limitations notwithstanding, this survey methodology has overcome many of the flaws in past data collection efforts and, in so doing, provides up-to-date, comprehensive, and reliable, nationwide data on indigent defense in the United States. The stratified sampling plan provides a representative sample of jurisdictions around the country. The list of respondents is by far the most complete ever developed for indigent defense programs. Furthermore, the two-stage data collection process incorporating both mail surveys and telephone follow-up provides for exceptionally high response rates, including 99% completed county questionnaires. The analysis of these data provides not only the most reliable description of present program operations and system trends available to date, but also a truly unique and sound foundation for future research.

**Table 3. Primary program sample and completed questionnaires**

State	Number of counties in sample	Number of programs in sample	Number of completed questionnaires	Percent of completed questionnaires
Total	718	777	750	97%
Alabama	16	18	18	100
Alaska	4	4	4	100
Arizona	14	14	14	100
Arkansas	17	17	15	88
California	16	16	16	100
Colorado	16	16	16	100
Connecticut	8	8	8	100
Delaware	3	3	3	100
District of Columbia	1	1	1	100
Florida	16	16	16	100
Georgia	18	19	18	95
Hawaii	4	4	4	100
Idaho	14	14	13	93
Illinois	17	18	18	100
Indiana	17	17	16	94
Iowa	17	17	16	94
Kansas	17	33	32	97
Kentucky	18	18	18	100
Louisiana	16	16	15	94
Maine	16	16	16	100
Maryland	9	9	9	100
Massachusetts	14	28	26	93
Michigan	17	20	20	100
Minnesota	17	17	14	82
Mississippi	17	18	18	100
Missouri	18	18	18	100
Montana	15	16	16	100
Nebraska	17	17	16	94
Nevada	17	17	17	100
New Hampshire	10	10	10	100
New Jersey	8	8	8	100
New Mexico	12	12	12	100
New York	16	21	20	95
North Carolina	18	18	18	100
North Dakota	15	15	15	100
Ohio	17	27	27	100
Oklahoma	17	18	17	94
Oregon	13	13	12	92
Pennsylvania	16	16	16	100
Rhode Island	5	5	5	100
South Carolina	15	16	15	94
South Dakota	16	16	14	88
Tennessee	17	17	14	82
Texas	19	19	17	89
Utah	12	12	12	100
Vermont	14	14	14	100
Virginia	17	17	17	100
Washington	14	17	15	88
West Virginia	15	15	15	100
Wisconsin	16	16	16	100
Wyoming	10	10	10	100

## Chapter II

# Types and characteristics of indigent defense systems

This chapter describes the overall level of organization and structure of indigent defense systems in the United States today. Key features are discussed of the three basic program types that provide indigent defense services: public defenders, assigned counsel, and contract systems. Pronounced differences in program features are highlighted when they vary significantly by either geographic region or community size.

### Organization and types of defense systems

Given the almost infinite variations in level of organization and structure of indigent defense systems, developing a fixed typology is a difficult task. The Nation's programs have been categorized according to two basic criteria:

1. Level of organization (State, county, judicial circuit, or district)
2. Type of system (public defender, assigned counsel, or contract).

### States' organizing systems

Most States organize indigent defense services on a county level. Based on data from this survey the level of organization of each State's indigent defense system was established (table 4).<sup>11</sup> Clearly, county-organized defender systems remain dominant today. In 25 States indigent defense services are organized on a county level exclusively; 13 States have services organized exclusively at the State level.

Of the 13 defense systems organized purely on a State level<sup>12</sup> all are structured as statewide public defenders.

These systems provide services through satellite offices established throughout the State. These programs are further characterized by a central administrative component, which is responsible for providing statewide indigent defense ser-

<sup>11</sup>Information on the legal authority for the establishment of indigent defense services in each State is contained in the appendix.

<sup>12</sup>Missouri also became a statewide system as of April 1, 1982. Three States are organized exclusively at the judicial district level; the remaining States are not organized exclusively on any of the three levels.

vices. Service is provided by salaried staff attorneys operating out of regional offices or through private assigned counsel or contract programs.

Defense systems organized on a judicial district or circuit level are usually multicounty, because judicial districts or circuits are usually composed of several counties. For example, in Florida public defenders are legislatively mandated in each of the State's 20 judicial circuits. However, the 20 defender offices serve 67 counties.

Finally, in six States indigent defense systems are organized on both a State and county level. For example, in Massachusetts a state-wide public defender organization is responsible for representing indigents in felony cases, while county bar associations provide representation in misdemeanors at the lower court level.

**Indigent defense services organized on a State level are most common in the Northeast and West.** There are some interesting regional variations in organizational structure when the level of organization of each State's indigent defense system is shown by region (table 5). It is clear that the Northeast and West lead the regions in State-organized indigent systems. By contrast, only the South and North Central regions organize indigent defense systems by circuit or judicial district.

### Assigned counsel systems still predominate in most counties.

Defense systems may be structured differently even if they share the same level of organization. The structure of indigent defense systems may take any of the following forms:

- Public defender program established as a public or private nonprofit organization staffed by full-time or part-time salaried attorneys
- Assigned counsel or ad hoc system where private counsel are appointed as needed from a list of available attorneys

<sup>13</sup>The appendix contains the statutory requirements for the establishment of indigent defense services in each State.

**Table 4. Level of organization of indigent defense services: State by State**

State	Level of organization		
	State	County	District or circuit
Alabama			x
Alaska	x		
Arizona			x
Arkansas			x
California			x
Colorado	x		
Connecticut	x		
Delaware	x		
Dist. of Columbia	x		
Florida			x
Georgia			x
Hawaii	x		
Idaho		x	
Illinois			x
Indiana			x
Iowa		x	
Kansas		x	x
Kentucky	x	x	
Louisiana			x
Maine		x	
Maryland	x		
Massachusetts	x	x	
Michigan		x	
Minnesota			x
Mississippi		x	
Missouri*		x	x
Montana		x	
Nebraska		x	
Nevada	x	x	
New Hampshire	x	x	
New Jersey	x		
New Mexico	x		
New York		x	
North Carolina		x	
North Dakota		x	
Ohio	x	x	
Oklahoma		x	
Oregon		x	
Pennsylvania		x	
Rhode Island	x		
South Carolina		x	
South Dakota		x	
Tennessee		x	
Texas		x	
Utah		x	
Vermont	x		
Virginia		x	
Washington		x	
West Virginia	x	x	
Wisconsin	x		
Wyoming	x		

\*Missouri has adopted a statewide public defender system since the time of this survey in April 1982.

- Contract system in which individual attorney(s), bar association(s), or private law firm(s) agree to provide services for a specified amount
- Hybrid or combination system, which may include any of the above in any number of configurations.

## Types and characteristics of indigent defense systems

In 1973 "The Other Face of Justice" reported that the primary method of providing representation in 71.6% of all counties was through an assigned counsel system. The report went on to identify 16 States that had subsequently "...relieved county govern-

mental units from their primary obligation of providing indigent defense services by organizing and funding defender services at the State level."

Survey results indicate little change since the 1973 report. The majority of counties (1,833 or 60%) continue to rely on an assigned counsel structure, and the States that had taken over indigent defense services from the counties at the time of the 1973 study continue to provide or

**Table 5. Level of organization of indigent defense services by region**

Region and State	State	County	Judicial district/circuit
<b>Northeast</b>	6	5	0
Connecticut	x		
Maine		x	
Massachusetts	x	x	
New Hampshire	x	x	
New Jersey	x		
New York		x	
Pennsylvania		x	
Rhode Island	x		
Vermont	x		
<b>North Central</b>	2	10	3
Illinois		x	
Indiana		x	
Iowa		x	
Kansas		x	x
Michigan		x	
Minnesota			x
Missouri		x	x
Nebraska		x	
North Dakota		x	
Ohio	x	x	
South Dakota		x	
Wisconsin	x		
<b>South</b>	5	12	4
Alabama		x	
Arkansas		x	x
Delaware	x		
District of Columbia	x		
Florida			x
Georgia		x	
Kentucky	x	x	
Louisiana			x
Maryland	x		
Mississippi		x	
North Carolina		x	x
Oklahoma		x	
South Carolina		x	
Tennessee		x	
Texas		x	
Virginia		x	
West Virginia	x	x	
<b>West</b>	6	8	0
Arizona		x	
California		x	
Colorado	x		
Hawaii	x		
Idaho		x	
Montana		x	
Nevada	x	x	
New Mexico	x		
Oregon		x	
Utah		x	
Washington		x	
Wyoming	x		

**Table 6. Type of defense system by State**

State	Total number of counties in the State	Public defender	Assigned counsel	Contract
<b>Total</b>	<b>3,082</b>	<b>1,048</b>	<b>1,833</b>	<b>201</b>
		(34%)	(60%)	(6%)
Alabama	67	6	61	0
Alaska	4	4	0	0
Arizona	14	2	5	7
Arkansas	75	18	57	0
California	58	49	0	9
Colorado	63	63	0	0
Connecticut	8	8	0	0
Delaware	3	3	0	0
District of Columbia	1	1	0	0
Florida	67	67	0	0
Georgia	159	19	127	13
Hawaii	4	4	0	0
Idaho	44	14	1	29
Illinois	102	74	28	0
Indiana	92	44	44	4
Iowa	99	15	84	0
Kansas	105	6	99	0
Kentucky	120	55	28	37
Louisiana	64	49	15	0
Maine	16	0	16	0
Maryland	23	23	0	0
Massachusetts	14	12	2	0
Michigan	83	5	41	37
Minnesota	87	42	45	0
Mississippi	82	20	62	0
Missouri	114	20	94	0
Montana	56	4	37	15
Nebraska	93	26	62	5
Nevada	17	15	0	2
New Hampshire	10	4	6	0
New Jersey	21	21	0	0
New Mexico	32	16	16	0
New York	62	55	7	0
North Carolina	100	14	86	0
North Dakota	53	0	50	3
Ohio	88	30	58	0
Oklahoma	77	2	66	9
Oregon	36	13	20	3
Pennsylvania	67	67	0	0
Rhode Island	5	5	0	0
South Carolina	46	39	7	0
South Dakota	66	2	64	0
Tennessee	95	4	83	8
Texas	254	2	252	0
Utah	29	17	0	12
Vermont	14	8	0	6
Virginia	104	5	99	0
Washington	39	6	31	2
West Virginia	55	0	55	0
Wisconsin	72	47	25	0
Wyoming	23	23	0	0

Note: Numbers of counties under each system type are weighted estimates based on survey responses.



fund representation through statewide public defenders. It should be noted, however, that while the majority of States use assigned counsel, very few use this system exclusively. Instead, the majority of States use a combination of systems (table 6).<sup>14</sup>

**One-third of all counties provide indigent defense services through public defender service.** Some 1,048 counties (34%) in the nation are served by public defenders (table 6). More detailed analysis discloses that 250 of those counties, or 25%, are served by a statewide public defender system. In addition, Florida, Illinois, and Pennsylvania mandate by legislation that there be public defender programs in another 180 counties in those three States.

**Results revealed a new type of system for providing indigent defense: The contract system.** Although the apparent frequency of assigned counsel and public defender systems remains relatively unchanged since the last national survey, a heretofore unreported program structure has emerged: The contract system. Apparently, in 1973 the contract system simply did not exist, but it has become increasingly popular in the last 2 to 3 years. At the time of our study in 1982, 201 counties (about 6% nationally) provided indigent representation through a contract system.

Details on the characteristics of contract systems are presented later in this chapter. However, because this is a relatively new phenomenon, some explanation here may be helpful. First, a contract does not refer to a legal document that binds an indigent defense program to its funding source. A public defender may have a contract with the local county, but that program would be categorized as public defender rather than contract. The distinguishing feature is whether the

lawyers are on salary with the local county. If they are on salary the program is categorized as public defender; if they are paid on some other fee basis the program is designated as a contract. Furthermore, there is a need to distinguish between assigned counsel and contract programs. If a group of private attorneys receives their appointments directly from a judge and then submits their vouchers to the funding source, they are classified as assigned counsel; otherwise, they are considered a contract program.

In preparing the survey instrument, four distinct groups of private lawyers were identified who might be participating in a contract system: individual practitioners, a law firm or group of attorneys who band together to secure a contract, a bar association, or a nonprofit organization. Contracts also may take many forms. Three have been identified. First, a group of lawyers may enter into a fixed-price contract where representation will be provided in a specified number of cases for a fixed amount per case. A so-called cost plus fixed-fee contract is one where representation is provided at an estimated cost per case until the contract is out of money. At that point it may be renegotiated, but private lawyers are under no obligation to continue to provide representation. The final type of contract is called "block grant." Under this type of contract, the private attorneys agree to provide representation in all types of cases in the county for a fixed amount. If the volume of crime increases substantially, there is no escape hatch, and the contract lawyers are obli-

**Table 7. Summary of total number of counties using each type of indigent defense system**

System type	Number of counties represented
Total	3,082
Assigned counsel	1,833
Public defender	1,048
Contract	201
	Percent of counties served
Total	100%
Assigned counsel	60
Public defender	34
Contract	6

gated to continue to provide representation until their contract period ends.

The number and percentage of counties in the United States having each of the three types of systems are given in table 7.

Regional variations in systems for providing indigent defense

**Assigned counsel systems are concentrated in the North Central and Southern regions, whereas public defenders predominate in the Northeast and West.** Significant differences occur in program type by region (table 8). Detailed regional breakdowns showing each State are shown in table 9. To some extent these differences may reflect the legislative mandate requiring public defender programs in some States. For example, five Northeastern States have statewide public defend-

**Table 8. Type of defense system by census region**

Region	Public defender	Assigned counsel	Contract	Total counties
Total	1,048 (34%)	1,833 (59%)	200 (6%)	3,082 100%
Northeast	180 (83%)	31 (14%)	6 (3%)	217 100%
North Central	311 (30%)	694 (66%)	49 (5%)	1,054 100%
South	327 (23%)	998 (72%)	67 (5%)	1,392 100%
West	230 (55%)	110 (26%)	78 (19%)	419 100%

<sup>14</sup>For simplification, this entire discussion of types of systems separates counties into one of the three categories of indigent defense (public defender, assigned counsel, or contract). The category refers only to the predominant system for a given county or State; in actuality, other indigent defense systems often supplement the predominant one.

## Types and characteristics of indigent defense systems

er systems, and Pennsylvania mandates a public defender program in each of its counties. Similarly, in the West statewide public defender programs serve more than 125 counties in the five States. In addition, California counties have consistently chosen public defender programs. In other States, however, legislation may prohibit establishing public defender offices in counties having less than a specified population or may require such offices in counties with populations above a given figure. Thus, it is not surprising that assigned counsel systems are more common in the South and North Central regions, which have few large metropolitan counties.

As discussed previously, only about 6% of all counties in the Nation have contract programs with attorneys to provide indigent defense services. Counties in three states (Idaho, Kentucky, and Michigan) account for more than one-half of those using contracts.

### Variations by county size in systems for providing indigent defense

**Small counties are more apt to use assigned counsel and contract systems.** Assigned counsel systems predominate in small counties with less than 50,000 residents, where there may not be a sufficient volume of cases to support the costs of a public defender program with a salaried staff of assistant public defender attorneys (table 10).

Furthermore, over two-thirds of all contract systems are found in counties with populations of less than 50,000. Contract systems, particularly those located in sparsely populated counties, may use a contract system to place an absolute budget limitation on indigent defense services. This is particularly important to a smaller county, because a single complex felony case in a given year may exceed the total budget allocated for that year.

In response to this survey, one county reported that expenditures for each of 3 years totaled \$557.95, \$3,509.26, and \$2,425.25 under an assigned counsel system. In the

**Table 9. Regional analysis of type(s) of defense system(s) used**

Region and State	Number of counties using:			Total
	Public defender	Assigned counsel	Contract	
<b>Total</b>	<b>1,048</b> (34%)	<b>1,833</b> (60%)	<b>201</b> (6%)	<b>3,082</b> (100%)
<b>Northeast</b>	<b>180</b> (83%)	<b>31</b> (14%)	<b>6</b> (3%)	<b>217</b> (100%)
Connecticut	8	0	0	8
Maine	0	16	0	16
Massachusetts	12	2	0	14
New Hampshire	4	6	0	10
New Jersey	21	0	0	21
New York	55	7	0	62
Pennsylvania	67	0	0	67
Rhode Island	5	0	0	5
Vermont	8	0	6	14
<b>South</b>	<b>327</b> (23%)	<b>498</b> (72%)	<b>67</b> (5%)	<b>1,392</b> (100%)
Alabama	6	61	0	67
Arkansas	18	57	0	75
Delaware	3	0	0	3
District of Columbia	1	0	0	1
Florida	67	0	0	67
Georgia	19	127	13	159
Kentucky	55	28	37	120
Louisiana	49	15	0	64
Maryland	23	0	0	23
Mississippi	20	62	0	82
North Carolina	14	86	0	100
Oklahoma	2	66	9	77
South Carolina	39	7	0	46
Tennessee	4	83	8	95
Texas	2	252	0	254
Virginia	5	99	0	104
West Virginia	0	55	0	55
<b>North Central</b>	<b>311</b> (30%)	<b>694</b> (66%)	<b>49</b> (5%)	<b>1,054</b> (100%)
Illinois	74	28	0	102
Indiana	44	44	4	92
Iowa	15	84	0	99
Kansas	6	99	0	105
Michigan	5	41	37	83
Minnesota	42	45	0	87
Missouri	20	94	0	114
Nebraska	26	62	5	93
North Dakota	0	50	3	53
Ohio	30	58	0	88
South Dakota	2	64	0	66
Wisconsin	47	25	0	72
<b>West</b>	<b>230</b> (55%)	<b>110</b> (26%)	<b>78</b> (19%)	<b>419</b> (100%)
Alaska	4	0	0	4
Arizona	2	5	7	14
California	49	0	9	58
Colorado	63	0	0	63
Hawaii	4	0	0	4
Idaho	14	1	29	44
Montana	4	37	15	56
Nevada	15	0	2	17
New Mexico	16	16	0	32
Oregon	13	20	3	36
Utah	17	0	12	29
Washington	6	31	2	39
Wyoming	23	0	0	23

Note: Since the time of this survey, systems for delivery of indigent defense services

have changed in some States. Refer to the discussion on changes in chapter IV.

following year a homicide was committed and three individuals were indicted for the crime. Because of a conflict of interest three separate defense counsel were appointed. The total cost of the trial exceeded \$100,000, and payment to defense counsel was almost \$50,000. The county subsequently was forced to borrow \$80,000 and to institute a new three-mill levy to cover the costs. As a result of this episode the county decided to adopt a contract system, issuing a block-grant contract to three private attorneys. For a fixed price of approximately \$15,000 the attorneys agreed to handle all cases involving indigent defendants for 1 year, regardless of the nature or seriousness of the crime. While this form of contract is becoming more common, critics raise the question of whether quality services can be provided should the volume reach a high level.

**Large counties tend to use public defender systems.** The majority of counties with more than 500,000 residents favor public defender systems, according to information provided by the 50 largest counties in the United States where one-third of the population resides (table 11). Only seven of the 50 largest counties do not have a public defender program: Harris (Texas), Dallas (Texas), Bexar (Texas), Oakland (Michigan), Macomb (Michigan), and Fairfax (Virginia). These counties use private bar assigned counsel systems exclusively. Marion County, Indiana, has a system where each judge contracts with an individual attorney to provide representation in his or her courtroom. To our knowledge, three of these seven counties have, at some point, considered a public defender system. Clearly, the vast majority of large metropolitan counties have chosen to constitute and maintain a public defender system for providing indigent defense.

Percent of population served by each type of indigent defense system

When considering types of systems only in terms of the number of counties using each one it is apparent that most counties rely on assigned

**Table 10. Type of indigent defense system by size of county population**

Range in population	Number of counties using:			Total number of counties
	Public defender	Assigned counsel	Contract	
1 to 49,999	117 (23%)	339 (68%)	42 (8%)	498 (100%)
50,000 to 99,999	39 (44%)	38 (43%)	12 (13%)	89 (100%)
100,000 to 249,999	38 (63%)	17 (28%)	5 (8%)	60 (100%)
250,000 to 499,999	20 (77%)	6 (23%)	0 (0%)	26 (100%)
500,000 to 999,999	15 (94%)	1 (6%)	0 (0%)	16 (100%)
1,000,000 or more	5 (71%)	1 (14%)	1 (14%)	7 (100%)

Note: This table was based on weighted measures of the sample size, totalling 696. Although the actual number of counties is 3,082, the weighted measures yield the same percentage figures as would a similar table based on actual number of counties. For purposes of this table, predominant service providers were identified, although counties use a combination of systems.

counsel systems to provide indigent defense. However, it is helpful to determine not only the percentage of counties using each type of indigent defense system but also the percentage of population served by each system (figure 1). Nationally, most of the population is served by public defenders.

For public defenders and assigned counsel systems the percentage of counties with each system does not correspond with the percentage of population served. That is, while the majority of counties in the nation use assigned counsel systems most of the population is served by public defenders. Clearly then, the counties served by assigned counsel are smaller in population than those counties served by public defenders. This is also consistent with the previous analysis of the indigent defense system used by the 50 largest counties, which revealed that large metropolitan areas favor public defenders.

By contrast, on a regional basis the percentage of counties and percentage of population served by each type of defense system are more consistent. Generally in a given region the system most frequently used is also the one serving the most people (table 12). Thus, for example, in the Northeast and West public defenders are used by the majority of counties and serve most of the people in those regions. On the other hand, in the South assigned

counsel serve the majority of counties as well as the majority of residents. Contracts are more common in the West than in any other area and serve 15% of that region's population. In the North Central region the majority of counties, which are small, use assigned counsel, but most of the residents are concentrated in the few counties using public defenders. Survey results concerning county systems may be summarized as follows:

- In a majority of the States indigent defense services are organized at the county level
- Assigned counsel systems predominate in 60% of the counties in the United States, with public defenders in 34% and contracts in 6%
- Most of the Nation's population is concentrated in the counties served by public defenders
- Assigned counsel are concentrated in the South and North Central regions and are favored by smaller counties of fewer than 50,000 population
- Public defenders are concentrated in the Northeast and West and are favored by large metropolitan counties
- Statewide public defenders also are concentrated in the Northeast and West
- Contract programs are few and are concentrated in only a few States (Idaho, Kentucky, and Michigan) and are also favored by small, sparsely populated counties.

## Types and characteristics of indigent defense systems

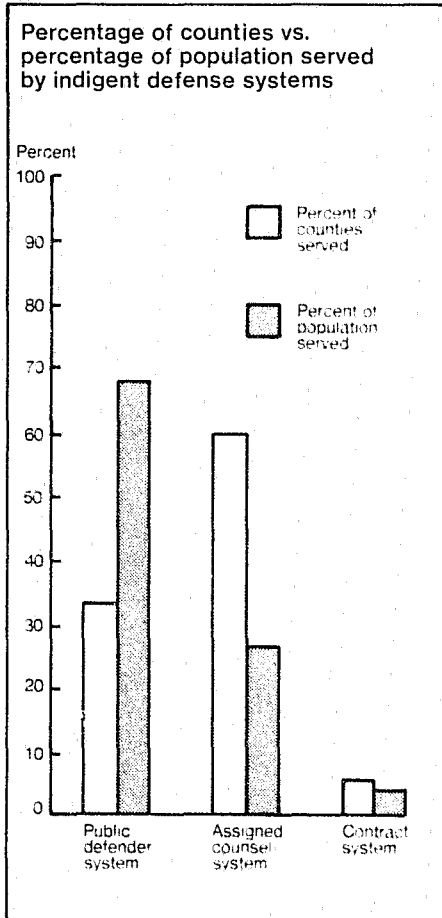


Figure 1

### Characteristics of public defender systems

Even among States that are served almost exclusively by public defender programs, there is a great deal of variation (table 13). Public defender systems differ according to whether they—

- are funded exclusively by the State or also receive county dollars
- are administered on a central or local basis
- establish offices with salaried staff in every county or substitute private bar services in sparsely populated areas.

In many States, public defenders are funded exclusively by State government. Funding for public defenders in Florida, Nevada, and Wyoming is supplemented by the counties. By contrast, in Illinois and Pennsylvania public defenders are exclusively funded by counties.

Table 11. Type of defense system for the largest 50 counties in the United States

County/State	Total population	Public defender	Assigned counsel	Contract
<b>Total</b>	<b>69,433,406</b>			
Percent of total population	(31.56%)			
Number of programs		43	9	3
Los Angeles, Calif.	7,477,657			
Cook, Ill.	5,253,190	x		
Harris, Texas	2,409,544		x	
Wayne, Mich. <sup>a</sup>	2,337,240	x	x	
Kings, N.Y.	2,230,936	x		
Orange, Calif.	1,931,570	x		
Queens, N.Y.	1,891,325	x		
San Diego, Calif. <sup>b</sup>	1,861,846	x		x
Philadelphia, Pa.	1,688,210	x		
Dade, Fla.	1,625,979	x		
Dallas, Texas	1,556,549		x	
Maricopa, Ariz.	1,508,030	x		
Cuyahoga, Ohio	1,498,295	x		
Baltimore, Md.	1,452,390	x		
Allegheny, Pa.	1,450,085	x		
St. Louis, Mo.	1,427,900	x		
New York, N.Y.	1,427,533	x		
Middlesex, Mass. <sup>c</sup>	1,367,034	x		x
Nassau, N.Y.	1,321,582	x		
Santa Clara, Calif.	1,295,071	x		
Suffolk, N.Y.	1,284,231	x		
King, Wash.	1,269,749	x		
Bronx, N.Y.	1,169,115	x		
Alameda, Calif.	1,105,379	x		
Erie, N.Y.	1,015,472	x	x	
Broward, Fla.	1,014,043	x		
Oakland, Mich.	1,011,793		x	
Bexar, Texas	988,800		x	
Milwaukee, Wis.	964,988	x		
Hennepin, Minn.	941,411	x		
San Bernadino, Calif.	893,157	x		
Hamilton, Ohio	873,136	x		
Franklin, Ohio	869,109	x		
Westchester, N.Y.	866,599	x		
Tarrant, Texas <sup>d</sup>	860,880	x	x	
Essex, N.J.	850,451	x		
Bergen, N.J.	845,385	x		
Hartford, Conn.	807,766	x		
Fairfield, Conn.	807,143	x		
Sacramento, Calif.	783,381	x		
Shelby, Tenn.	777,113	x		
Honolulu, Hawaii	767,874	x		
Marion, Ind.	765,233			x
Fairfax, Va.	729,023		x	
Pinnellas, Fla.	728,409	x		
Monroe, N.Y.	702,238	x		
Macomb, Mich.	694,600		x	
Jefferson, Ky.	684,793	x		
San Francisco, Calif.	678,974	x		
Jefferson, Ala.	671,197	x		

<sup>a</sup> Wayne County, Michigan, has a variety of indigent defender programs, including both public defender and assigned counsel.

<sup>b</sup> In San Diego County, California, at the time of the study, there was a private defender system handling about 25% of the cases with the balance in contracts to the private bar.

<sup>c</sup> In Middlesex County, Massachusetts, felony

representation in the Superior Court is handled by the State public defender, with district and juvenile cases contracted out to the county bar associations.

<sup>d</sup> In Tarrant County, Texas, there is a small public defender program and a large assigned counsel program.

Source: 1980 Census data from States and counties.

**Table 12. Percent of counties v. percent of population served by each type of indigent defense system by region**

Region	Public defenders		Assigned counsel		Contracts	
	Percent of counties	Percent of population	Percent of counties	Percent of population	Percent of counties	Percent of population
Northeast	83%	95%	14%	4%	3%	1%
North Central	30	64	66	32	5	4
South	23	45	72	52	5	3
West	55	82	26	3	19	15

Source: 1980 Census data.

**Table 13. Variation among States with predominant public defender systems**

State	Funding source		Administration		Service area	
	State	County	Centralized	Decentralized	Entire State	Select counties only
Alaska	x		x		x	
Colorado	x		x		x	
Connecticut	x		x		x	
Delaware	x		x		x	
Florida	x	x		x	x	
Hawaii	x		x		x	
Illinois			x	x		x
Maryland	x		x		x	
Massachusetts	x		x			x
Nevada	x	x*	x	x		x
New Hampshire	x		x		x	
New Jersey	x		x		x	
Pennsylvania		x		x	x	
Rhode Island	x		x		x	
Vermont	x		x		x	
Wisconsin	x		x		x	
Wyoming	x	x	x		x	

\*In Nevada a State public defender organization serves most of the counties. However, there are also a few indigent

public defender organizations serving a small number of counties.

**Table 14. Summary of public defender system characteristics**

Characteristics	Percent of public defender counties
Affiliation	
County government	38%
State executive agency	25
Judiciary	23
Independent nonprofit organization	8
Other	6
Chief public defenders	
Full-time	78
Part-time	22
Number of full-time staff attorneys	
0	24
1-6	59
7-20	10
21-50+	7
Support staffing	
Secretaries	86
Investigators	58
Administrative assistants	18
Law students	16
Paralegal employees	10
Social workers	9
Fiscal officer	6
Training director	3
Salary ranges	
Full-time chief public defenders	
\$6,000-66,000 (yearly)	
\$20,000-30,000 (modal)	

**Chief public defender salaries are low compared to chief prosecutors.** Chief prosecutors for the most part receive a higher salary than chief public defenders. In only 11% of the counties served by public defenders do chief public defenders earn more than \$50,000 per year. By contrast, chief prosecutors command this same higher salary in 42% of public defender counties. Higher salaried chief public defenders as well as chief prosecutors are more likely to be found in larger counties.

Arguments have prevailed over the years as to whether these salaries should be comparable. Public defender advocates insist on parity to be able to recruit and retain the most qualified attorneys. Prosecutors, on the other hand, state that their responsibility is substantially larger than that of chief public defenders, because the prosecutor is responsible for all categories of defendants and not just for indigents. In addition, many prosecutors have civil law requirements.

Administration of public defenders is centralized in many States. However, in Florida, Illinois, and Pennsylvania, public defenders are administered by independent agencies at the local level. Varying features of public defender systems are discussed in the following paragraphs (summary of features, table 14).

Public defender program affiliation

**Most public defender programs are part of the county government.** Nationally, public defender programs most often are part of the county government, as indicated by 38% of counties served by public defenders. However, public defenders also may be affiliated with other government agencies such as the judiciary (23%) or a State executive agency (25%). Statewide defender systems

established under legislation are typically a branch of the executive agency. About 8% of the counties served by a public defender reported that the program was an independent, nonprofit organization.

Public defender program staffing

**Chief public defenders are usually employed on a full-time basis.** In the majority of counties served by public defenders the chief public defender works on a full-time basis (78% of all counties). Generally, as county population increases, so does the likelihood that the chief will be full time. Among public defender counties with populations of more than 250,000, 93% have a full-time chief public defender, whereas the same is true for only 77% or fewer counties with less than 250,000 residents.

## Types and characteristics of indigent defense systems

Salaries of full-time chief public defenders start as low as \$6,000 per year, while survey results indicate that the lowest paid full-time prosecutor received a salary of \$18,500. The highest salary reported by chief public defenders in the survey was \$66,000, while a number of chief prosecutors were reported to have salaries above that figure. In 38% of the public defender counties, chief public defenders earn \$20,000 to \$30,000 per year. Regionally, it appears that chief defenders in Northeastern and Western counties, where statewide defender systems are concentrated, earn higher salaries than in other areas.

**Typically, public defender programs have small staffs.** The number of staff attorneys employed by public defender programs ranged from 0 to more than 50. In fact, only 16 public defenders who responded to the survey employ more than 50 full-time attorneys. In the sample of 321 public defender programs, 4,428 lawyers are employed on a full-time basis and 659 are part-time. As expected, the number of lawyers employed (on either a full-time or part-time basis) increases as county population increases. However, it appears that public defender offices typically have small staffs. Approximately 75% of all counties served by public defenders reported employing three or fewer full-time lawyers. Similarly, more than 75% of all public defender counties reported employing three or fewer part-time lawyers.

**The largest staffs are in the Northeast and West.** In comparison to other regions public defender counties in the Northeast and the West are most likely to have the highest number of full-time staff, consisting of 21 attorneys or more (figure 2). Among public defender counties, 10% in the Northeast and 12% in the West reported having a full-time staff of more than 20 lawyers, whereas only 2% in the North Central and 6% in the South had comparable full-time staff sizes. That the larger public defender staffs are located in the Northeast and West is consistent with the rankings for the 50 largest counties with public defender sys-

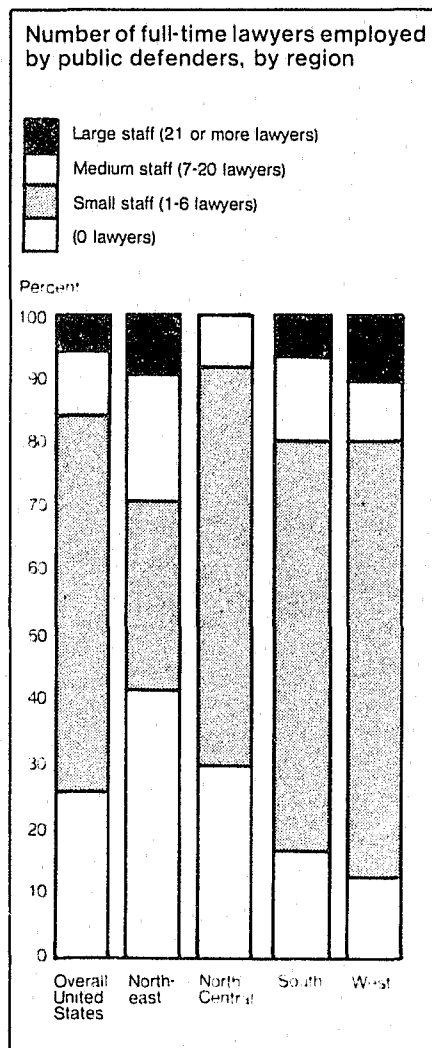


Figure 2

tems. Furthermore, statewide public defender systems are concentrated in these two regions.

### Public defender programs tend not to mix full-time and part-time staff.

A majority of counties with public defender systems seem to favor full-time lawyers. Over half the counties served by public defenders reported that none of their lawyers were working on a part-time basis. On the other hand, when public defenders do employ lawyers on a part-time basis they tend to have all part-time staff. Almost one-fourth of the public defender counties with part-time staff reported that all their lawyers were part-time. Most of the public defender programs in this category—having an exclusively

part-time staff—are likely to be found in small- to medium-size counties (populations of less than 250,000).

### Support staff

**Most public defenders employ investigators and secretaries.** On the other hand, the majority of public defender counties do not employ social workers, paralegal employees, law students, administrative assistants, indigency screeners, fiscal officers, or training directors. Again, as county population size increases the greater the likelihood of finding any of these categories of additional staff. Except for social workers and law students, public defender counties in the North Central regions were consistently more unlikely than those in other regions to hire additional type of support staff.

Predominant staffing patterns of public defender systems may be summarized as follows:

- Chief public defenders are usually employed on a full-time basis
- Most public defender offices have a small full-time staff of 1 to 6 attorneys
- Investigators and secretaries are typically the only support staff employed by a large number of public defender programs
- Regionally, the Northeast and West are more likely to have larger full-time staffs and higher salaried chief public defenders
- Northeast public defenders employ more part-time attorneys than other regions
- The likelihood of finding full-time, higher salaried chief public defenders, larger staffs, and all categories of support staff is greatest in the largest public defender counties
- Exclusively part-time staffs are more likely to be found in smaller counties.

### Characteristics of assigned counsel systems

Assigned counsel programs are the predominant system in almost two-thirds of all counties in the United States. However, they serve only about one-third of the Nation's population. Generally speaking, there are two types of assigned

counsel systems. Ad hoc assigned counsel systems are those in which individual private attorneys are appointed by individual judges and provide representation on a case-by-case basis. Coordinated assigned counsel systems are those that employ an administrator who oversees the system and attempts to develop a set of guidelines and procedures. However, only 25% of all respondents who labeled their programs as assigned counsel consider themselves to be coordinated assigned counsel programs.

The administration of assigned counsel programs varies. In the typical ad hoc assigned counsel system the only administrative effort is that provided by the appointing judge or perhaps his or her clerk. In other systems, the assigned counsel program may operate as a part of the local activities of a bar association. In a number of jurisdictions the public defender organization is charged with establishing and administering the assigned counsel program. In these cases it is important to separate the functions of the salaried public defender activity from the assigned counsel activity to assure that no problem develops over the question of a conflict of interest among two or more defendants.

Finally, it is important to define the distinctions between a coordinated assigned counsel system and a contract system. The distinction becomes the most difficult, for example, when the local bar association is charged with providing the private bar representation. The distinction made in this survey is simple. If the bar association enters into a contract with the funding source to provide the representation under a plan developed and administered by the association, it is a contract program (a summary of assigned-counsel program features, table 15).

#### Compiling assigned counsel lists

Most assigned counsel counties have lists of available attorneys. Clearly, not all members of the private bar are willing or qualified to represent indigent defendants. Thus, a list of

eligible and willing attorneys is essential to assigned counsel systems. In 88% of all counties served by assigned counsel such a list is maintained. In particular, all of the largest counties with populations above 500,000 maintain such a list.

**Attorneys are not usually categorized on assigned counsel lists.** Generally, lawyers are not categorized by specialization. Typically, where specialization exists it is based on the seriousness of the case. For example, in one large metropolitan county in the West, attorneys are categorized according to the following types of cases, listed in descending order of seriousness: death penalty, serious felony, felony, and misdemeanor or juvenile. Lawyers typically are eligible to handle more serious cases after representing defendants in a number of less serious cases. Although there has been a great deal of nationwide discussion concerning specialization (as well as accreditation), few qualifying procedures exist in most areas

of the country. Only 19% of assigned counsel counties indicated that attorneys were categorized by specialty, with counties most likely to do so being in the West (43%) and Northeast (29%), where statewide public defender systems are concentrated.

**Assigned counsel lists most often are based on attorneys who affirmatively volunteer.** Lawyers are included on assigned counsel lists in a variety of ways. Most commonly, those attorneys who affirmatively volunteer are included. Among assigned counsel counties 43% reported using this method to identify counsel willing to represent indigents. North Central counties are more likely to use this method (43%).

In about a third of assigned counsel counties lawyers who volunteer and are either determined to be qualified by administrative personnel or to continue their training are included on assigned counsel lists. Assigned counsel counties in the South are least likely to rely on these attorneys for indigent representations. Some counties rely on more than one of these methods for compiling assigned counsel lists.

As a rule, there are no formal procedures by which attorneys are removed from assigned counsel lists (85% of assigned counsel counties answered "no" to this question). In fact, none of the assigned counsel counties in the Northeast reported removal procedures. Among the 15% of assigned counsel counties that do have formal removal procedures, North Central and Southern counties most commonly have them. The relatively rare existence of removal procedures is consistent with data on field visits conducted on other contracts over the past 5 1/2 years. Traditionally many judges are reluctant to remove any lawyer from the list for virtually any kind of infraction. Other judges question whether they have the authority to do so. Private bar associations frequently share the same reluctance, and thus formal procedures of removal are rare.

Characteristics	Percent of assigned counsel counties
Administrative	
Ad hoc (appointments made by individual judges, clerks, public defenders, or others)	75
Coordinated	25
Lists of available attorneys	
• Compiled on basis of:*	
Lawyers who affirmatively volunteer	43
Inclusion of all lawyers	35
Volunteers who qualify	27
Volunteers who participate in continuing legal education	8
• Categorized according to attorneys' specialization in lists	19
• Established procedures for formal removal	15
Caseload	
Cases distributed among most of the attorneys on the list	44
Average of 1 to 10 cases per assigned counsel	75
*Total exceeds 100% because multiple methods are used.	

## Types and characteristics of indigent defense systems

**Judges typically make actual appointments of attorneys.** In over two-thirds of assigned counsel counties in the sample, judges are responsible for the actual appointment of private counsel. Other parties responsible for appointing private counsel include public defenders, clerks, or individuals responsible for administering and maintaining assigned counsel lists.

**One-fourth of assigned counsel programs are coordinated by an administrator.** The survey asked assigned counsel programs whether or not they had an administrator other than a judge or court clerk. Approximately 25% of these programs answered in the affirmative. This response is consistent with the fact that 25% of all assigned counsel programs identified themselves as coordinated assigned counsel programs. Programs reporting the existence of such an administrator were significantly higher in the Northeast (63%) than in any other region of the country.

### Distribution of caseload among assigned counsel

Given that a number of private attorneys will have either volunteered or been automatically included on lists to represent indigents, the way in which cases are distributed among all available assigned counsel in any particular county is of interest. The equitable distribution of cases is a major issue among assigned counsel programs. Understandably, if appointments are made consistently to only a handful of lawyers, questions of favoritism may be raised. Thus, most private attorneys providing indigent defense feel that the fairest way to make assignments is simply on an alphabetical rotation. On the whole it appears that in a plurality of the assigned counsel counties in the Nation (44%), cases are assigned to over three-quarters of the available lawyers. Regionally, however, there are some interesting differences. Assigned counsel counties in the West and North Central regions appear more likely than other areas to assign cases to fewer lawyers (table

Table 16. Distribution of cases among assigned counsel by region

Percent of counties in region	Percent of lawyers assigned cases			
	0-20%	21-50%	51-75%	More than 75%
All U.S. counties	13	26	17	44
Northeast	18	12	0	70
North Central	10	36	26	28
South	12	15	10	64
West	29	35	9	27

16). Similarly, cases are more likely to be assigned to fewer lawyers in larger counties.

Not surprisingly, because most assigned counsel programs spread the work among many of the lawyers, the average number of cases each attorney handled during our survey period was small. About three-quarters of all assigned counsel counties assigned an average of only 1 to 10 cases per attorney in 1982.

### Assigned counsel fees

**Most assigned counsel counties pay lawyers on a separate out-of-court/in-court hourly basis.** Members of the private bar are compensated for indigent defense work in a variety of ways. Almost 75% of all counties reported paying on a separate out-of-court and in-court hourly basis. Frequently the rate of hourly pay is less in misdemeanor and juvenile cases than it is in felony cases. A second method of payment for the private bar is a set fee for a particular type of appearance. Thus, for example, a court may pay \$50 for each arraignment, \$100 for the entry of a guilty plea, \$150 per day for trial, and \$250 per day for appeal. A third method is to establish a fixed fee for the type of case assigned. For example, one jurisdiction pays a flat fee of \$250 for a misdemeanor and \$750 for a felony, regardless of the seriousness of the case or the amount of time necessary to prepare the case adequately.

**Assigned counsel are compensated for indigent defense, even though payment is sometimes deferred.** Because of growing nationwide concerns from the private bar, one survey question was designed to determine whether private assigned

counsel were compensated for every case in which they receive an appointment. The vast majority of programs responded to this question in the affirmative. In 11 programs, assigned counsel were reported to be uncompensated in about one-half the cases, and 1 program indicated that compensation was not available in more than one-half the cases. In 39 counties the programs indicated that lawyers were not compensated at the time when public funds ran out. In most cases, however, these vouchers were paid sometime in the future, frequently through a supplemental appropriation.

### **Judicial discretion plays an important role in determining assigned counsel compensation.**

Rates for assigned counsel are established in a variety of ways (table 17). In a number of States legislation requires that private attorneys receive reasonable compensation for work in indigent cases. However, broad discretion may remain with the appointing judge to set the precise fee. In some jurisdictions, it was reported that judges in the same court set different fees for the same type of cases. In many States, fees are established by a combination of methods. For example, Tennessee's compensation schedule for assigned counsel is determined by statute, whereas its misdemeanor rates are subject to both judicial discretion and custom in the jurisdiction. Other means of setting assigned counsel fees (listed in descending order of frequency) include: statutes, statewide court rule, public defender, or custom in the jurisdiction.

A considerable range exists in assigned counsel hourly fees for felonies and misdemeanors (table 17). Hourly rates for out-of-court



work in both felony and misdemeanor cases range from \$10 to \$65 per hour, with \$20 to \$30 per hour being the most common fee. On the other hand, the maximum hourly rates differ for in-court misdemeanor and felony work. Maximum hourly fees for in-court misdemeanor work are \$50 per hour, whereas for felonies they are as high as \$65 per hour. The higher maximum for in-court felony work understandably reflects the more complicated and time-consuming nature of more serious cases. The most common fee for in-court felony and misdemeanor cases is the same: \$30 to \$50 per hour.

The examination of assigned counsel compensation must not only take hourly fees into account but also total maximum amounts stipulated for both felony and misdemeanor cases. If the maximum amount allowed is extremely low the range of hourly fees becomes less important. For example, hourly rates for in-court work in Arkansas are relatively high at \$50 per hour. However, by statute, the total compensation for assigned counsel cannot exceed \$350.

Survey responses indicated maximum fees were established by 40% of the counties for felony cases and by 50% of the counties for misdemeanor cases. The range in minimum fees for felonies and misdemeanors and the most common maximum fees are shown in table 17. Beginning as low as \$100, maximum assigned counsel fees in States such as Indiana can go as high as \$5,000 for cases involving capital offenses. Generally, the maximum for felonies falls between \$500 and \$1,000. For misdemeanors maximum fees are lower than for felonies, typically falling between \$200 and \$500.

The second most common type of fee schedule for assigned counsel is a flat fee per case. A flat fee per case is paid to assigned counsel in about 10% of all the counties for felony work and in about 12% of all counties for misdemeanors. Assigned counsel fee schedules for about 80% of the counties are either flat fees per case (10%) or separated out-of-court/in-court hourly rates (70%). The remaining assigned

**Table 17. Summary of features of assigned counsel compensation**

Compensation	Number of States*	
Methods of establishing fees:		
• Judicial discretion	34	
• Statute	27	
• Statewide court rule	11	
• Public defender	9	
• Custom in jurisdiction	23	
	Percentage of assigned council counties	
Type of fees schedules used		
• Separate out-of-court/in-court hourly rates	70%	
• Flat fee per case	11%	
• Type of appearance	7%	
• Other	9%	
Hourly fees for felonies	Range	Most common
In-court	\$12.50-\$65	\$30-\$40
Out-of-court	\$10-\$50	\$20-\$30
Hourly fees for misdemeanors		
In-court	\$12.50-\$50	\$30-\$40
Out-of-court	\$10-\$50	\$20-\$30
	Percentage of assigned council counties	
Stipulation of maximum amount		
Felonies		40%
Misdemeanors		50%
Maximum fees	Range	Most common
Felonies	\$200-\$2,500	\$500-\$1,000
	(not including capital cases)	
Misdemeanors	\$100-\$2,500	\$200-\$500

\*Because the survey question permitted multiple responses, the number of States exceeds 50.

counsel counties pay assigned counsel on one of the following bases: flat fee per appearance or type of appearance.

Assigned counsel exist in almost two-thirds of all counties in the United States and serve one-third of the Nation's population. The following is a summary of the features of assigned counsel systems:

- Lists of available attorneys are compiled in most counties
- Lists are typically based on attorneys who affirmatively volunteer, but the lists do not categorize lawyers by specialization
- Judges are usually responsible for making appointments and they exercise a fair amount of discretion in establishing compensation for assigned counsel
- Appointments appear to be distributed among most of the available lawyers, and each attorney handles a small number of cases (1 to 10) per year
- Most counties pay assigned counsel on a separate out-of-court/in-court hourly basis, with hourly fees ranging from \$10 to \$65 per hour.

#### Characteristics of contract systems

Throughout the country 201 counties (6%) are estimated to provide primary indigent defense services through contracts with individual private attorneys, local bar associations, nonprofit organizations, or law firms or groups of lawyers joined for purposes of securing a contract. In many cases the county may contract with a number of individual attorneys. During the survey year, San Diego, California—the county with the largest contract system in the country—contracted out more than 25,000 cases to 200 individual private attorneys, 10 law firms, and 1 private, nonprofit organization.

Almost one-fourth of those counties reporting a program of contract defense were counties with a primary public defender program and with the contract designed exclusively for conflict and unavailability cases. A trend in California toward this type of system is growing. Similarly, in Pennsylvania all counties must provide primary representation through a public defender program, but many of the counties contract out for conflict and unavailability cases.

## Types and characteristics of indigent defense systems

Competitive bids are solicited in one-half the counties providing representation through contracts (table 18). Counties in the West appear more likely than other regions to solicit these types of bids, whereas counties in the South are least likely to solicit competitive bids. In the vast majority of cases the competition is not over the question of costs. In virtually all cases of counties using contract systems either the total annual cost or a stated cost per case is given. Competition centers around qualifications of the bidders and the methods that they propose to provide quality representation. Frequently, even though the contract is put out for bid, only one law firm will file an application. Some respondents report this is because of the belief that the county has already made a choice before the bids are submitted.

In the remaining half of the counties, where competition does not occur in contracting, the county negotiates its contract with a single lawyer or law firm. Several cases reported in the survey involve a group of private attorneys approaching the county and offering to perform all of the work during the coming year for a fixed annual fee. Often, this fee is less than the county paid the previous year for a public defender system or assigned counsel system. Contract systems have been adopted far more frequently in counties with existing assigned counsel systems than in those with public defender systems.

### Agency responsible for awarding contracts for indigent defense services

County agencies are usually responsible for making contract awards. In those counties with contract programs the survey asked which governmental units, agencies, or individuals were primarily responsible for awarding such contracts. County agencies were responsible for the award in over one-half of the cases (56%). In about one-fourth of contract counties a judge makes award decisions, and in another one-fifth of counties the public defender awards contracts. Regions vary in which agency is given responsibility for awarding

**Table 18. Summary of contract system features**

System features	Percent of contract counties
Awarding agency	
County	56%
Judge	22
Public defender	19
Other	3
Type of bid	
Competitive	50
Sole source	50
Types of groups awarded contracts	
Individual practitioners	62
Law firms	30
Bar associations	3
Nonprofit organizations	2
Other	3
Type of contract awarded*	
Block grant	54
Fixed price	35
Cost plus fixed fee	11
Other	7

\*More than one type of contract was reported in some counties.

contracts. A significantly higher number of contract counties in the West (79%) reported that the county is responsible for awarding contracts. In slightly over one-half of Southern (52%) and Northeastern (56%) contract counties, public defenders make contract award decisions. Judges make contract award decisions in most North Central contract counties (70%). Finally, the State or some other agency awards contracts in only 3% of all contract counties.

### Types of groups awarded contracts to provide indigent representation

Contracts are most often awarded to individual practitioners. Most contracts are awarded to individual practitioners. Almost three-fourths of all contract counties award contracts to independent attorneys. Awards to individual practitioners are most common in Western contract counties (74%) and in small contract counties of less than 50,000 population (71%).

Law firms are awarded contracts in another one-third of all contract counties and are most common in the North Central region. Overall, only 3% of contract counties award con-

tracts to bar associations. Likewise, the few contracts that are awarded (by only 2% of all contract counties) to nonprofit organizations are awarded only by Northeastern, Western, and the larger contract counties. Such awards are made exclusively in Northeastern and Western contract counties. Moreover, a dramatically higher number of Northeast contract counties—almost one-half—report bar association awards. This is primarily because 11 of the 14 counties in Massachusetts provide lower court representation through contracts with local bar associations.

### Average number of cases awarded to contract attorneys

The average caseload of contract attorneys appears to be bimodal. The largest percentage of contract counties (38%) reported awarding an average of between 100 and 250 cases per attorney. However, almost one-fourth reported awarding an average of only 1 to 10 cases per contract attorney. Furthermore, there are marked regional trends. Northeastern and North Central contract counties appear to award small contracts of only 10 to 100 cases per attorney while their Southern and Western counterparts seem more likely to award large contracts of 100 to 250 cases per practitioner. These figures must be interpreted with caution, however, because contract counties are the rarest of all program types and very few respondents were able to furnish the information.

### Types of contracts awarded

Block grants are the most common type of contract award. Block grants, as indicated by slightly over one-half of contract counties, are the most common type of contracts awarded. Northeastern and smaller contract counties are most likely to award block grants and Southern contract counties least likely. Fixed-price contracts, reported by approximately one-third of all contract counties, are the second most common type of award and are used most heavily by Southern and larger (over 500,000 population) contract counties. The remaining

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contract counties issue cost plus fixed fee or some other type of contract.

Contract monitoring

Contracts for indigent defense services are monitored by an agency or individual other than the one which made the initial award in only about one-half of all contract counties (46%). Contract monitoring appears to be most likely in Northeastern and Southern contract counties. Contracts may be monitored for any of the following reasons:

- to ensure quality of representation
- to conduct budget review
- to approve vouchers
- to determine client satisfaction.

## Indigent defense expenditures and caseloads

Accurate expenditure and caseload information is essential for governments to provide "...sufficient funds for the assistance of counsel to persons accused of crimes and who are unable to afford legal representation" (*Argersinger v. Hamlin*, 407 U.S. 25 (1972)). In 1976 the Report of the National Study Commission on Defense Services stated, "Just one decade ago, only \$16.9 million was spent annually for the defense of poor persons accused of crime. A conservative estimate of the total amount being spent today (1976) on defense services to the poor is \$200 million."<sup>15</sup> The most recent estimates developed for the American Bar Association study, Criminal Defense Services for the Poor, placed 1980 expenditures for indigent defense in the United States at a total of \$435,869 million.<sup>16</sup> However, because rough estimates were used to derive a number of individual States' costs, this national figure was considered conservative.<sup>17</sup>

This chapter presents national and State-by-State estimates of the total amount of dollars spent in the State courts for indigent defense services in 1982, the year covered by this survey. Also examined are State, regional, and other variations in per capita funding for indigent defense services. Per capita costs can at times be misleading, however, because the need for indigent defense services is known to differ among communities of different size and in different parts of the country. Therefore, data also are presented on total caseload—number of indigent defendants reported to be

<sup>15</sup> National Legal Aid and Defender Association (NLADA), Guidelines for Legal Defense Systems in the United States, Report of the National Study Commission on Defense Services (Washington, D.C.: NLADA, 1976).

<sup>16</sup> Norman Lefstein, Criminal Defense Services for the Poor (Washington, D.C.: American Bar Association Standing Committee on Legal Aid and Indigent Defendants, 1982), p. 10.

<sup>17</sup> Estimates for 1980 based on limited data were used in many States. The data collection effort consisted of reviewing available reports and other data from the various States as well as limited telephone followup with knowledgeable people at the State level. The present survey was designed specifically to overcome the deficiencies of previous efforts in order to provide more accurate national estimates (see chapter I, section on methodology).

served in 1982—and on the number of indigent defendants served per 1,000 population. Finally, expenditure and caseload data are combined to provide national estimates of cost per case in the Nation as a whole, by region and State, and in the 50 largest counties.

### Expenditures for indigent defense

Expenditure information presented in this chapter was derived through a series of steps, beginning with collecting individual county costs. Information on county expenditures was collected from two sources in this survey. First, questionnaires were sent to all counties in the sample known to provide funds to indigent defense programs. Obviously, those counties in which indigent defense is funded exclusively by the State were excluded. As previously indicated, completed questionnaires were obtained in 490 of the 494 counties for a response rate of more than 99%. The second source of county expenditure data was sample programs cost information, listing sources of funding and the amount provided by each.

Expenditure information from the county and program questionnaires was then compared. If the two responses varied by 10% or more, follow-up calls were made to clarify the discrepancies. While large discrepancies were not frequent, when they did occur the financial data reported by the counties proved to be more reliable than similar data reported by the programs. Consequently, in these instances county-reported expenditures were given preference over program-reported county expenditures. Once county expenditures were complete for each of the sample counties in a State, they were given appropriate weights, and a State-by-State estimate was developed. In two States, Iowa and Oklahoma, secondary State-level data on county expenditures were provided to us, and in those two instances these data were substituted for the weighted State estimates.

Total expenditure for indigent defense, 1982

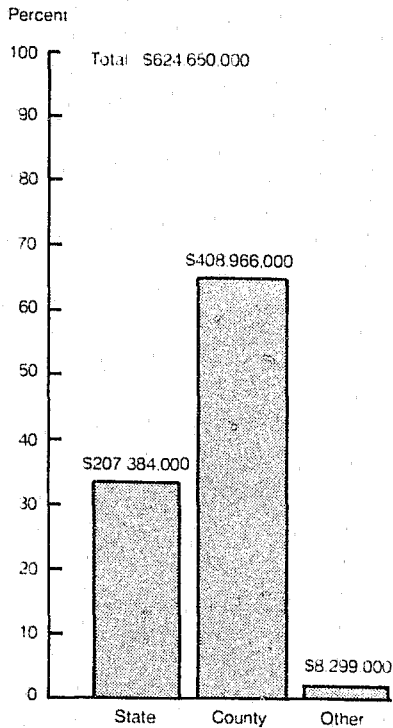


Figure 3

The second major source of indigent defense funds came from State government. For those 39 States in which State funds are provided, program-reported State expenditures were collected from all sample counties and then the appropriate weights applied to arrive at State-by-State estimates of State expenditures. During the course of the survey secondary State-level data also were collected on expenditures and costs from such sources as annual reports or budget requests. These data were made available by State public defenders, State court administrators, State auditors, and others. Reliable secondary data for actual State expenditures were made available in 27 States. In another seven States the only State expenditures were for separate, State-organized appellate defender programs, which reported their expenditures directly to us. Only in five States—Utah, Tennessee, California, New York, and Washington—could program-reported State expenditures

not be validated through a reliable secondary source. Thus, with the exception of those five States, State-level expenditures were verified by highly reliable secondary sources.

Indigent defense expenditures in 1982

**Almost \$625 million was spent on indigent defense in the United States in 1982.** This survey revealed 1982 national expenditures to be far greater than even the most generous adjustments of the 1980 estimate would have yielded. Total U.S. expenditures in 1982 for indigent defense services involving cases in the State courts were almost \$625 million.<sup>18</sup> County governments contributed the largest share: \$409 million (65%) (figure 3). State contributions made up one-third of total expenditures: \$207 million. The remaining 2% came from a combination of other sources: cities, towns, the Federal Government, costs imposed on entry fees in certain States, recoupment, court funds, and private foundation support.

Of the approximately 900 programs that responded to this survey only 6 reported receiving Federal funds in 1982, totaling only \$257,000. This is the lowest reported figure in a decade and reflects the demise of the Law Enforcement Assistance Administration (LEAA). While this figure is not a weighted national estimate it represents all the largest counties in the country that were the primary recipients of LEAA funds. In 1973, a high-water mark for LEAA funding of indigent defense services, expenditures amounted to almost \$10 million.

Table 19 shows each State's primary indigent defense funding sources.<sup>19</sup> In 18 States, 11 of which have state-wide public defender programs, funds

<sup>18</sup>This survey did not attempt to gather expenditure and caseload data for indigent defense services required through the Federal courts system.

<sup>19</sup>The seven States receiving State funds exclusively for State appellate defender programs are excluded from the State column. Also excluded are a few States where the county- or State-level funding is a minor fraction of the total expenditure in the State.

Table 19. States' indigent defense funding sources

State	Funding		
	State	County	Both
<b>Total</b>	<b>18</b>	<b>22</b>	<b>11</b>
Alabama	x		
Alaska	x		
Arizona		x	
Arkansas		x	
California		x	
Colorado	x		
Connecticut	x		
Delaware			x
Dist. of Columbia		x	
Florida			x
Georgia		x	
Hawaii	x		
Idaho		x	
Illinois		x	
Indiana		x	
Iowa		x	
Kansas			x
Kentucky			x
Louisiana		x	
Maine	x		
Maryland	x		
Massachusetts	x		
Michigan		x	
Minnesota		x	
Mississippi		x	
Missouri	x		
Montana		x	
Nebraska		x	
Nevada			x
New Hampshire	x		
New Jersey	x		
New Mexico	x		x
New York			
North Carolina	x		x
North Dakota			x
Ohio			
Oklahoma		x	
Oregon		x	
Pennsylvania		x	
Rhode Island	x		
South Carolina			x
South Dakota		x	
Tennessee			x
Texas		x	
Utah		x	
Vermont	x		
Virginia	x		
Washington		x	
West Virginia			
Wisconsin	x		
Wyoming			x

for indigent defense are provided exclusively through State appropriations. Another 22 States continue to fund their indigent defense system either exclusively or primarily through county funds.<sup>20</sup> In 13 of these 22 States the counties provide 100% of indigent defense expendi-

<sup>20</sup>For purposes of this survey, funds received by the District of Columbia from the Federal Government are treated as county funds.

## Indigent defense expenditures and caseloads

tures; in the remaining 8, State contributions are relatively small. In Illinois, Indiana, Iowa, Michigan, Minnesota, Oregon, and Washington, State funds are appropriated solely to support a separate State-level appellate defender program. In California almost 70% of the State's dollars are provided to the California State Appellate Defender Program. Finally, 11 States provide both State and county funds. The variation contained in these 11 States is of some interest.

- In Kansas and North Dakota the State provides all funds for felony representation and the counties provide all funds for misdemeanor and juvenile representation.
- In Ohio the State reimburses the local counties up to 50% of their annual expenditures, depending on the level of the State appropriation. Since this method of allocation began, the State contribution has fallen below 50% in only 1 year.
- In Wyoming, by statute, the State provides 85% of the annual cost and the counties 15%.
- In South Carolina the State allocates \$265.53 per 1,000 population, and the counties contribute whatever is negotiated with the local program.
- In Florida the State provides the largest share of expenditures, but under a Florida statute the counties are required to pay the cost of assigned counsel in conflict and unavailability cases and certain other expenses, including office space, utilities, telephone, and custodial services. In FY 1983, for the first time, the State began to share in the cost of private assigned counsel.
- In Kentucky, by statute, a public advocate system has been established. Under this system the public advocate reviews each plan for indigent defense services at the county level. If the plan meets the criteria established by the public advocate the State provides 50% of the funds. It was assumed in the legislation that the counties would contribute the other 50%. In practice, however, this is not happening. Of the 18 sample counties responding to this survey, 11 reported that the county made no contribution in FY 1982.

In most States the funding source, either the State or the county, provides an annual appropriation for the indigent defense program resulting from a budget submission, budget hearings, and funding negotiations. Thus, most programs are funded out of general county or general State revenues. A few other funding methods, however, should be mentioned.

- In Alabama a fair trial tax fund has been created to support indigent defense services. The revenue from this fund consists of a \$7 filing fee for all civil cases in Alabama Courts, a \$7 tax on all criminal convictions, and a \$10 fee for each civil case in which there is a jury demand. Originally, the civil filing fee was \$2. In the year following the increase to \$7 total revenues in Alabama for indigent defense services went up more than fourfold.
- Similarly, in Louisiana an indigent defender fund has been created in each judicial district. Costs are imposed by every court of original jurisdiction in the State at a rate between \$4.50 and \$10 per case, depending on the majority vote of the judges in that district.
- Until January 1, 1983, virtually all costs of indigent defense services in Oregon were the responsibility of the counties, except that the State provided \$20,000 for each circuit court judge in the jurisdiction. As of January 1, the State assumed all costs of representation.
- In New York the counties are required to fund the daily operation of their indigent defense programs. The State provides funds for special purposes in certain counties. For example, in FY 1982, 12 of New York's 62 counties received State funds for programs such as the Major Offense Program, State Felony Program, Special Narcotics Program, Emergency Felony Program, and the Major Violent Offense Program.

Very little change has occurred in the sources of funding of indigent defense services over the past 5 years. In only two States have major changes occurred in indigent defense funding. Oregon has shifted totally from county to State funding and North Dakota has shifted its felony costs from the counties to State government. That indigent defense

funding sources have remained stable also is reflected in the total relative contributions made by each source over the years. In 1980, 62% of indigent defense funds for the Nation were provided by counties, 38% by State government, and 1% by municipalities and LEAA.<sup>21</sup>

### Per capita costs

State, county, and other sources of expenditures have been totaled for each of the 50 States and the District of Columbia (table 20). Other cost information includes 1980 census data for each State, per capita cost, and the ranking of per capita cost by State (table 20). Per capita costs range from a low of \$0.71 in Arkansas to \$13 in the District of Columbia. The mean for the entire country is \$2.76 and the median across States is \$1.95.

### Regional per capita costs

**Highest per capita costs for indigent defense are in the West.** Examining per capita indigent defense expenditures on a regional basis reveals significant differences (table 21 and figure 4). The West far exceeds other regions in per capita costs for indigent defense services, with a per capita cost of \$5.38. However, much of the difference is caused by California's \$7.05 per capita ratio. Excluding California, the balance of the West region is reduced to \$3.36 per capita. While higher than the other three regions, this is significantly less than \$5.38.

The higher per capita cost in California can be accounted for in several ways. First, salaries in county governments in California are generally higher than virtually any other State in the country. This is reflected in the salaries of chief public defenders in California. Of the seven public defender programs in California reporting these data, the range in salaries for chief public defenders was \$50,000 to \$60,000. In these same programs, the starting

<sup>21</sup> Lefstein, *Criminal Defense Services for the Poor*, p. 10. Because the 1980 expenditure figures were based on limited data, the slight difference in percentage of contributions between the States, the counties, and other categories can be explained.

**Table 20. Total expenditures for indigent defense by source for the 50 States**

State	Primary	Appellate <sup>a</sup>	Total	County expenditures	Other funding <sup>b</sup>	Total expenditures	1980 population <sup>c</sup>	Per capita cost (\$)	Banking of per capita cost
Total	191,442,990	15,941,429	207,384,419	408,966,008	8,299,424	624,649,851	226,549,000	2.76	
Alabama	4,238,266	0	4,238,266	0	0	4,238,266	3,894,000	1.09	42
Alaska	3,525,100	0	3,525,100	0	0	3,525,100	402,000	8.77	2
Arizona	0	0	0	8,613,624	7,615	8,621,239	2,718,000	3.17	11
Arkansas	0	0	0	1,614,030	20,000	1,634,030	2,286,000	0.71	51
California	3,775,000	7,003,000	10,778,000	150,874,178	5,108,916	166,781,094	23,668,000	7.05	3
Colorado	8,468,313	0	8,468,313	0	0	8,468,313	2,890,000	2.93	14
Connecticut	4,524,870	0	4,524,870	0	0	4,524,870	3,108,000	1.46	35
Delaware	1,759,700	0	1,759,700	88,905	0	1,848,605	594,000	3.11	12
Dist. of Columbia	0	0	0	8,291,000	0	8,291,000	638,000	13.00	1
Florida	28,499,973	0	28,499,973	9,680,323	0	38,180,296	9,746,000	3.92	7
Georgia	0	0	0	5,672,712	0	5,672,712	5,463,000	1.04	44
Hawaii	3,500,000	0	3,500,000	0	0	3,500,000	965,000	3.63	9
Idaho	0	0	0	1,833,935	0	1,833,935	944,000	1.94	26
Illinois	0	3,000,000	3,000,000	22,057,917	152,395	25,210,312	11,427,000	2.21	23
Indiana	0	793,286	793,286	4,758,144	0	5,551,430	5,490,000	1.01	45
Iowa	0	267,208	267,208	6,119,848	0	6,387,056	2,914,000	2.19	24
Kansas	2,595,032	0	2,595,032	916,961	0	3,511,993	2,364,000	1.49	34
Kentucky	4,516,700	0	4,516,700	539,052	114,000	5,169,752	3,661,000	1.41	38
Louisiana	0	0	0	5,925,256	87,730	6,012,986	4,206,000	1.43	37
Maine	1,088,653	0	1,088,653	0	0	1,088,653	1,125,000	0.97	47
Maryland	10,270,310	0	10,270,310	0	0	10,270,310	4,217,000	2.44	20
Massachusetts	13,092,198	0	13,092,198	0	0	13,092,198	5,737,000	2.28	22
Michigan	0	1,873,100	1,873,100	21,378,331	150,000	23,401,431	9,262,000	2.53	19
Minnesota	0	851,358	851,358	9,463,006	102,360	10,416,724	4,076,000	2.56	18
Mississippi	0	0	0	2,134,112	0	2,134,112	2,521,000	0.85	49
Missouri	4,408,413	0	4,408,413	0	0	4,408,413	4,917,000	0.90	48
Montana	0	0	0	1,399,785	0	1,399,785	787,000	1.78	29
Nebraska	0	0	0	2,708,986	0	2,708,986	1,570,000	1.73	30
Nevada	189,927	0	189,927	3,578,686	60,876	3,829,489	800,000	4.79	5
New Hampshire	2,096,999	50,000	2,146,999	0	0	2,146,999	921,000	2.33	21
New Jersey	19,681,656	0	19,681,656	0	0	19,681,656	7,365,000	2.67	16
New Mexico	3,981,763	0	3,981,763	0	0	3,981,763	1,303,000	3.06	13
New York	17,595,074	0	17,595,074	58,834,447	0	76,429,521	17,558,000	4.35	6
North Carolina	10,643,213	325,000	10,968,213	0	35,825	11,004,038	5,882,000	1.87	27
North Dakota	571,000	0	571,000	376,633	0	947,633	653,000	1.45	36
Ohio	9,597,422	0	9,597,422	8,498,911	0	18,096,333	10,798,000	1.68	31
Oklahoma	0	240,000	240,000	2,652,820	99,133	2,991,953	3,025,000	0.99	46
Oregon	0	582,000	582,000	12,057,051	0	12,639,051	2,633,000	4.80	4
Pennsylvania	0	0	0	21,235,197	100,000	21,335,197	11,864,000	1.80	28
Rhode Island	1,299,684	0	1,299,684	0	0	1,299,684	947,000	1.37	39
South Carolina	1,251,767	456,477	1,708,244	1,690,109	0	3,398,353	3,122,000	1.09	43
South Dakota	0	0	0	1,352,047	0	1,352,047	691,000	1.96	25
Tennessee	2,054,782	0	2,054,782	1,529,560	148,538	3,732,880	4,591,000	0.81	50
Texas	0	0	0	19,286,780	0	19,286,780	14,229,000	1.36	40
Utah	32,500	0	32,500	1,605,667	161,900	1,800,067	1,461,000	1.23	41
Vermont	1,873,264	0	1,873,264	0	0	1,873,264	511,000	3.67	8
Virginia	8,751,353	0	8,751,353	0	24,958	8,776,311	5,347,000	1.64	32
Washington	227,625	500,000	727,625	12,022,991	1,925,178	14,675,794	4,132,000	3.55	10
West Virginia	2,951,655	0	2,951,655	0	0	2,951,655	1,950,000	1.51	33
Wisconsin	13,350,200	0	13,350,200	0	0	13,350,200	4,706,000	2.84	15
Wyoming	1,030,578	0	1,030,578	175,004	0	1,205,582	470,000	2.57	17

<sup>a</sup>Funds for appellate work are listed separately for those States which have independent appellate associations.

<sup>b</sup>For other States, funds for appellate work are included in primary funding.

<sup>c</sup>Other funding includes: Municipalities, Federal Government 1980 U.S. Census data.

## Indigent defense expenditures and caseloads

salary for an entry-level assistant public defender was \$20,000 to \$23,800 (see Chapter II discussion of chief public defender salaries).

A second reason for a higher per capita cost in California is that public defenders have been able to limit their caseload as a result of litigation conducted several years ago. The result is the appointment of the private bar not only in conflict cases but also in a significant number of additional cases for which the public defender reports he or she is not available. This affects per capita costs because the average cost per case for the private bar in California is almost universally higher than that of the public defender program.

### Per capita costs in largest counties

**The 50 largest counties account for almost one-half of the Nation's total expenditures for indigent defense.** Analysis of the 50 largest counties in the Nation, where 69 million people or approximately one-third (31%) of the population reside, reveals that these counties account for 43% of the Nation's total expenditure for indigent defense. National expenditures and per capita costs were contrasted with those of the 50 largest counties (figure 5). Almost \$269 million was spent on indigent defense services in 1982 by the 50 largest counties. An examination of the type of system and source of funds for these 50 counties is of interest. In 32 counties, public defender programs are the primary source of indigent defense services. In another 7 counties, public defender programs provide a substantial amount of service, along with assigned counsel programs. Six counties provide services exclusively through an assigned counsel system, with five of these located in Texas and Michigan. Two counties provide services through contracts with private attorneys.

The primary source of funding for the largest 50 counties is provided by the counties.<sup>22</sup> In 27 counties 100%

<sup>22</sup>In those cases where a city was coterminous with a county or where a city consisted of more than one county, municipal expenditures were

**Table 21. Regional expenditures and per capita costs**

Region and State	Total costs	Population	Per capita cost (\$)
<b>Northeast</b>	141,472,042	49,136,000	2.88
Connecticut	4,524,870	3,180,000	1.46
Maine	1,088,653	1,125,000	0.97
Massachusetts	13,092,198	5,737,000	2.28
New Hampshire	2,146,999	921,000	2.33
New Jersey	19,681,656	7,365,000	2.67
New York	76,429,521	17,558,000	4.35
Pennsylvania	21,335,197	11,864,000	1.80
Rhode Island	1,299,684	947,000	1.37
Vermont	1,873,264	511,000	3.67
<b>North Central</b>	115,342,558	58,868,000	1.96
Illinois	25,210,312	11,427,000	2.21
Indiana	5,551,430	5,490,000	1.01
Iowa	6,387,056	2,914,000	2.19
Kansas	3,511,993	2,364,000	1.49
Michigan	23,401,431	9,262,000	2.53
Minnesota	10,416,724	4,076,000	2.56
Missouri	4,408,413	4,917,000	0.90
Nebraska	2,708,986	1,570,000	1.73
North Dakota	947,633	653,000	1.45
Ohio	18,096,333	10,798,000	1.68
South Dakota	1,352,047	691,000	1.96
Wisconsin	13,350,200	4,706,000	2.84
<b>South</b>	135,594,039	75,372,000	1.80
Alabama	4,238,266	3,894,000	1.09
Arkansas	1,634,030	2,286,000	0.71
Delaware	1,848,605	594,000	3.11
District of Columbia	8,291,000	638,000	13.00
Florida	38,180,296	9,746,000	3.92
Georgia	5,672,712	5,463,000	1.04
Kentucky	5,169,752	3,661,000	1.41
Louisiana	6,012,986	4,206,000	1.43
Maryland	10,270,310	4,217,000	2.44
Mississippi	2,134,112	2,521,000	0.85
North Carolina	11,004,038	5,882,000	1.87
Oklahoma	2,991,953	3,025,000	0.99
South Carolina	3,398,353	3,122,000	1.09
Tennessee	3,732,880	4,591,000	0.81
Texas	19,286,780	14,229,000	1.36
Virginia	8,776,311	5,347,000	1.64
West Virginia	2,951,655	1,950,000	1.51
<b>West</b>	232,241,212	43,173,000	5.38
Alaska	3,525,100	402,000	8.77
Arizona	8,621,239	2,718,000	3.17
California	166,761,094	23,668,000	7.05
Colorado	8,468,313	2,890,000	2.93
Hawaii	3,500,000	965,000	3.63
Idaho	1,833,935	944,000	1.94
Montana	1,399,785	787,000	1.78
Nevada	3,829,489	800,000	4.79
New Mexico	3,981,763	1,303,000	3.06
Oregon	12,639,051	2,633,000	4.80
Utah	1,800,067	1,461,000	1.23
Washington	14,675,794	4,132,000	3.55
Wyoming	1,205,582	470,000	2.57

of the funding is provided by county government. In 11 counties the State provides 100% of the funding. In the remaining 12 counties, costs of indigent defense services are shared by the State and county.

treated as county expenditures to maintain consistency with the data obtained from other county questionnaires.

**Per capita spending in the 50 largest counties is higher than the Nation.** Per capita spending for the 50 largest counties is substantially higher than the national per capita cost (figure 5). Overall, the 50 largest counties exceed the national per capita spending by 40%—\$3.87 to \$2.76. Overall per capita costs for the nine assigned counsel counties is a low \$1.93, but this figure may reflect the fact that most of these



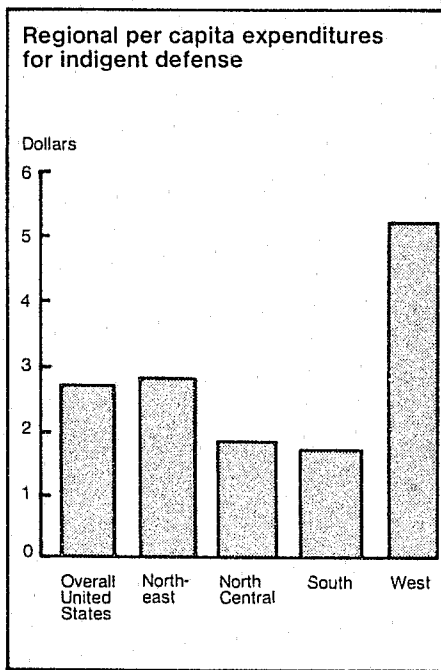


Figure 4

counties are located in Texas and Michigan rather than the particular type of system employed. In looking at the 50 largest counties by region, the cost pattern is similar to that of the Nation's regional per capita costs, with the West the highest and the South the lowest (figure 6).

**Adequacy of indigent defense funding**

Per capita indigent defense spending and justice spending are correlated. Each State was given two rankings: one for per capita indigent defense expenditures and another for per capita justice spending (table 22). State per capita spending for indigent defense and for all justice services, as expected, is highly correlated ( $r = .76$ ). Thus, States devoting substantial resources to indigent defense are also likely to provide substantial resources for justice spending overall. For example, Arkansas, which ranked lowest in per capita indigent defense spending, also ranked last in per capita justice spending. Similarly, Alaska ranked second in per capita justice spending and first in per capita indigent defense spending; California ranked third in indigent defense spending and fourth in total justice spending.

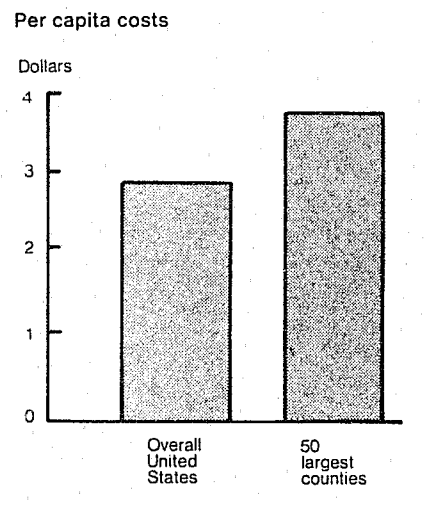
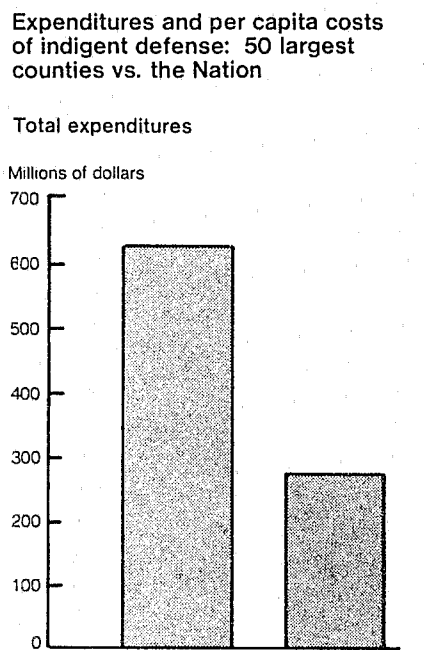


Figure 5

Resources allocated to indigent defense are low compared to other justice services. However, drawing conclusions about the adequacy of indigent defense spending based on the above comparison and on the fact that the Nation's total expenditures are higher than expected, may be misleading. Even in those States where both per capita indigent defense spending and justice spending are high, the resources allocated to indigent defense relative to other justice services are likely to be small.

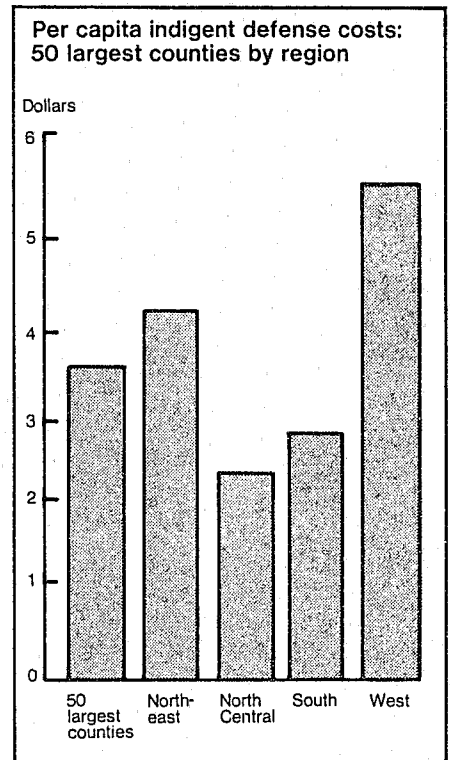


Figure 6

On a per capita basis indigent defense spending represents less than 3% of all justice spending. Per capita indigent defense in 1982 was \$2.76, whereas per capita justice spending for the same year probably exceeded \$101.<sup>23</sup> According to the Bureau of Justice Statistics' most up-to-date *Sourcebook*, public defense reportedly received only 1.5% of State and local criminal justice dollars, whereas prosecution services received 5.9%; the judiciary 13.1%; corrections 24.7%; and police 53.2%.

**Indigent defense caseload and cost per case**

More than 88% of the approximately 900 programs that responded to the survey provided the total caseload figure. In the early stages of the data collection effort it became obvious that reliable data could not be collected for each case type for

<sup>23</sup>That figure, which is the most recent per capita justice expenditure data reported by the Bureau of Justice Statistics, was based on 1979 information. Undoubtedly with inflation and other forces serving to raise costs, that figure would be far higher in 1982.

## Indigent defense expenditures and caseloads

all programs in the sample. Many programs reported that they simply do not disaggregate their caseload data by type of case. Others reported that while those data could be generated, supplying them would require locating each file in the office and then categorizing the case by examining the case file. Consequently, data were collected by case type wherever available, but efforts to collect reliable information on the total number of cases were also expanded. Of those programs that supplied caseload data, almost one-half (40%) reported that their numbers were documented by existing data. To achieve maximum uniformity across programs, wherever possible, case data reported under the column "other" on question #37 were eliminated. The types of cases reported in this category include special proceedings, bond hearings, clemency hearings, interviews and advice, and social service activity on behalf of indigent clients and their families. Analysis of all program questionnaires disclosed the fact that a negligible number of cases (less than seven-tenths of 1%) were recorded as "other."

As with expenditure data, during the course of the survey an attempt was made to secure reliable secondary caseload data at the State level in as many States as possible. Validated State-level caseload data were reported from 19 States and the District of Columbia. The secondary data were reported principally by State public defenders and State court administrators. In addition, the State of Kansas provided validated caseload data in all felony cases.

Caseload data were available in three other States from independent studies conducted in the year prior to our survey period. In each of these three cases the statewide caseload estimate was consistent with that reported in the three separate studies. As an overall result, for almost one-half the States caseloads are reported as validated by reliable secondary sources. Information for the remaining States depends on the total caseload reported by the sample programs; this was then weighted to provide State-by-State estimates.

**Table 22. Ranking of per capita indigent and Justice spending**

State	Ranking of per capita cost	Ranking of Justice spending per capita
Alabama	42	44
Alaska	2	1
Arizona	11	5
Arkansas	51	50
California	3	4
Colorado	14	16
Connecticut	35	21
Delaware	12	7
Dist. of Columbia	1	N/A
Florida	7	15
Georgia	44	32
Hawaii	9	14
Idaho	26	37
Illinois	23	12
Indiana	45	45
Iowa	24	38
Kansas	34	36
Kentucky	38	34
Louisiana	37	19
Maine	47	47
Maryland	20	8
Massachusetts	22	13
Michigan	19	9
Minnesota	18	25
Mississippi	49	49
Missouri	48	27
Montana	29	49
Nebraska	30	30
Nevada	5	3
New Hampshire	21	40
New Jersey	16	6
New Mexico	13	18
New York	6	2
North Carolina	27	28
North Dakota	36	46
Ohio	31	26
Oklahoma	46	42
Oregon	4	11
Pennsylvania	28	22
Rhode Island	39	17
South Carolina	43	41
South Dakota	25	43
Tennessee	50	35
Texas	40	39
Utah	41	29
Vermont	8	33
Virginia	32	23
Washington	10	20
West Virginia	33	48
Wisconsin	15	24
Wyoming	17	10

While the caseload data may not be as reliable as the expenditure data, this survey is the first attempt to provide such estimates on a State-by-State basis. This constitutes an important starting point in beginning to examine comparisons of costs per case across States, regions, and in large counties.

### Indigent defense caseload in 1982

Nationwide, indigent defense caseload in the State courts totaled an estimated 3.2 million in 1982 (summary of each State's 1982 caseload and average cost per case, table 23).<sup>24</sup> To obtain consistent information from the 900 program respondents, data were requested for 11 categories of cases, including—

- Felony
- Misdemeanor
- Capital or life imprisonment
- Juvenile (criminal)
- Juvenile (status offense)
- Family matters (such as support payments)
- Appeals
- Mental commitment
- Parole revocation
- Postconviction relief
- Other (specify).

The 1982 average cost per case in the country was \$195.97, with Hawaii showing the highest cost per case at \$567.35 and Oklahoma the lowest at \$84.74. In the majority of States, the average cost per case falls between \$100 and \$200 (table 24).

**Average cost per case is highest in the West.** An analysis of regional caseload and cost per case reveals the same patterns as the regional analysis of per capita costs (table 25). The average cost per case is highest in the West—\$243.31 and lowest in the South—\$151.93. In the West 10 of 13 States exceed the national average with only Arizona, Utah, and Washington falling below. In the South, 15 of 17 States fall below the national average with only the District of Columbia and West Virginia above.

<sup>24</sup>Note that this figure is the total number of cases weighted that were reported by programs in the sample. Some percentage of indigent cases are handled without fee by the private bar and would not be included in the estimates. Estimates also do not include cases in which judges desire to make appointments but cannot because no counsel is available. No estimate has been made of the volume of cases in either of these two categories, but it would be substantial. For a discussion of this problem, see *A Study of Defense Services for Indigent Criminal Defendants in South Carolina: Analysis and Recommendations* (Cambridge, Mass.: Abt Associates Inc., 1982).

Table 23. Total 1982 caseload for States and average cost per case

State	Total expenditure	Total caseload	Average cost per case (\$)	Ranking
Total	624,649,851	3,187,424	195.97	
Alabama	4,238,266	29,265	144.82	35
Alaska	3,525,100	10,438	337.72	4
Arizona	8,621,239	43,306	199.08	23
Arkansas	1,634,030	14,268	114.52	46
California	166,761,094	661,466	252.11	12
Colorado	8,468,313	39,207	215.99	18
Connecticut	4,524,870	42,903	105.47	50
Delaware	1,848,605	10,566	174.96	30
District of Columbia	8,291,000	19,087	434.38	2
Florida	38,180,296	225,910	169.01	31
Georgia	5,672,712	43,198	131.32	39
Hawaii	3,500,000	6,169	567.35	1
Idaho	1,833,935	15,184	120.78	44
Illinois	25,210,312	194,221	129.80	42
Indiana	5,551,430	42,430	130.84	41
Iowa	6,387,056	22,593	282.70	7
Kansas	3,511,993	19,433	180.72	27
Kentucky	5,169,752	30,827	167.70	32
Louisiana	6,012,986	54,134	111.08	49
Maine	1,088,653	9,756	111.59	47
Maryland	10,270,310	78,371	131.05	40
Massachusetts	13,092,198	73,909	177.14	29
Michigan	23,401,431	90,543	258.46	11
Minnesota	10,416,724	46,957	221.84	17
Mississippi	2,134,112	17,316	123.25	43
Missouri	4,408,413	31,885	138.26	38
Montana	1,399,785	5,253	266.47	9
Nebraska	2,708,986	23,190	116.82	45
Nevada	3,829,489	16,858	227.16	15
New Hampshire	2,146,999	6,737	318.69	6
New Jersey	19,681,656	54,395	361.83	3
New Mexico	3,981,763	16,817	236.77	13
New York	76,429,521	363,082	210.50	20
North Carolina	11,004,038	58,808	187.12	25
North Dakota	947,633	4,598	206.10	21
Ohio	18,096,333	94,325	191.85	24
Oklahoma	2,991,953	35,307	84.74	51
Oregon	12,639,051	44,767	282.33	8
Pennsylvania	21,335,197	140,960	151.36	34
Rhode Island	1,299,684	5,018	259.00	10
South Carolina	3,398,353	20,356	166.95	33
South Dakota	1,352,047	6,260	215.98	19
Tennessee	3,732,880	25,987	143.64	36
Texas	19,286,780	136,936	140.85	37
Utah	1,800,067	9,954	180.84	26
Vermont	1,873,264	9,120	205.40	22
Virginia	8,776,311	78,880	111.26	48
Washington	14,675,794	81,447	180.19	28
West Virginia	2,951,655	13,236	223.00	16
Wisconsin	13,350,200	58,162	229.53	14
Wyoming	1,205,582	3,629	332.21	5

An examination of the cost per case among the 50 largest counties (\$200.45) reveals only a small increase in cost from the national average of \$195.97. However, dividing the 50 largest counties into census regions provides some substantial differences in average cost per case. Unlike all regional analyses presented thus far, where the West emerges at the high end

Table 24. Summary of average cost per case for indigent defense

Average cost per case	Number of States	Percent of States
Less than \$100	1	2%
\$100-199	28	55
\$200-299	16	31
\$300-399	4	8
\$400-499	1	2
\$500-599	1	2

**Indigent defense expenditures and caseloads**

and the South on the low side, average cost per case is highest in larger counties in the Northeast (\$230.88) and lowest in North Central counties (150.97).

**Incidence of indigent cases**

To obtain some indication of the incidence of indigent cases the number of indigent cases reported per 1,000 population was computed for all 50 States and the District of Columbia, along with a State-by-State ranking (table 26). On a national basis, slightly more than 14 indigent cases are reported for every 1,000 residents. Incidence is highest in the District of Columbia, Alaska, California, Florida, Nevada, and New York. States with the lowest rank include Rhode Island, Arkansas, Hawaii, Missouri, and South Carolina.

The incidence of indigent defendants per 1,000 population is substantially higher among the 50 largest counties (19.79) than in the Nation as a whole. Incidence of indigent defendants per 1,000 population by census region shows considerable variation, from a high of 22.00 in the West to lows of 10.78 in the North Central region and 11.84 in the South (table 27). Intuition suggests that the incidence of indigent defendants per 1,000 population may be a function of two primary factors: the rate of crime and the incidence of poverty in the area under study. Furthermore, both high crime rates and high incidence of poverty would be anticipated in metropolitan areas, thereby helping to explain the high rates of indigent defendants in these areas.

**Table 25. Regional caseload and cost per case**

Region and State	Total costs	Caseload	Cost per case (\$)
<b>Northeast</b>	<b>141,472,042</b>	<b>705,880</b>	<b>200.42</b>
Connecticut	4,524,870	42,903	105.47
Maine	1,088,653	9,756	111.59
Massachusetts	13,092,198	73,909	177.14
New Hampshire	2,146,999	6,737	318.69
New Jersey	19,681,656	54,395	361.83
New York	76,429,521	363,082	210.50
Pennsylvania	21,335,197	140,960	151.36
Rhode Island	1,299,684	5,018	259.00
Vermont	1,873,264	9,120	205.40
<b>North Central</b>	<b>115,342,558</b>	<b>634,597</b>	<b>181.76</b>
Illinois	25,210,312	194,221	129.80
Indiana	5,551,430	42,430	130.84
Iowa	6,387,056	22,593	282.70
Kansas	3,511,993	19,433	180.72
Michigan	23,401,431	90,543	258.46
Minnesota	10,416,724	46,957	221.84
Missouri	4,408,413	31,885	138.26
Nebraska	2,708,986	23,190	116.82
North Dakota	947,633	4,598	206.10
Ohio	18,096,333	94,325	191.85
South Dakota	1,352,047	6,260	215.98
Wisconsin	13,350,200	58,162	229.53
<b>South</b>	<b>135,594,039</b>	<b>892,452</b>	<b>151.93</b>
Alabama	4,238,266	29,265	144.82
Arkansas	1,634,030	14,268	114.82
Delaware	1,848,605	10,566	174.96
District of Columbia	8,291,000	19,087	434.38
Florida	38,180,296	225,910	169.00
Georgia	5,672,712	43,198	131.32
Kentucky	5,169,752	30,827	167.70
Louisiana	6,012,986	54,134	111.08
Maryland	10,270,310	78,371	131.05
Mississippi	2,134,112	17,316	123.25
North Carolina	11,004,038	58,808	187.12
Oklahoma	2,991,953	35,307	84.74
South Carolina	3,398,353	20,356	166.95
Tennessee	3,732,880	25,987	143.64
Texas	19,286,780	136,936	140.85
Virginia	8,776,311	78,880	111.26
West Virginia	2,951,655	13,236	223.00
<b>West</b>	<b>232,241,212</b>	<b>954,495</b>	<b>243.31</b>
Alaska	3,525,100	10,438	337.72
Arizona	8,621,239	43,306	199.08
California	166,761,094	661,466	252.11
Colorado	8,468,313	39,207	215.99
Hawaii	3,500,000	6,169	567.35
Idaho	1,833,935	15,184	120.78
Montana	1,399,785	5,253	266.47
Nevada	3,829,489	16,858	227.16
New Mexico	3,981,763	16,817	236.77
Oregon	12,639,051	44,767	282.33
Utah	1,800,067	9,954	180.84
Washington	14,675,794	81,447	180.19
Wyoming	1,205,582	3,629	332.21

State	Indigent cases per 1,000 population	Rank
Alabama	7.52	38
Alaska	25.97	3
Arizona	15.93	14
Arkansas	6.24	49
California	27.95	2
Colorado	13.57	18
Connecticut	13.80	17
Delaware	17.79	10
Dist. of Columbia	29.92	1
Florida	23.18	4
Georgia	7.91	34
Hawaii	6.39	48
Idaho	16.08	13
Illinois	17.00	11
Indiana	7.73	36
Iowa	7.75	35
Kansas	8.22	33
Kentucky	8.42	32
Louisiana	12.87	19
Maine	8.67	31
Maryland	18.58	8
Massachusetts	12.88	21
Michigan	9.78	27
Minnesota	11.52	25
Mississippi	6.87	42
Missouri	6.48	47
Montana	6.67	45
Nebraska	14.77	15
Nevada	21.07	5
New Hampshire	7.31	40
New Jersey	7.39	39
New Mexico	12.91	20
New York	20.68	6
North Carolina	10.00	26
North Dakota	7.04	41
Ohio	8.74	30
Oklahoma	11.67	24
Oregon	17.00	12
Pennsylvania	11.88	23
Rhode Island	5.30	51
South Carolina	6.52	46
South Dakota	9.06	29
Tennessee	5.66	50
Texas	9.62	28
Utah	6.81	43
Vermont	17.85	9
Virginia	14.75	16
Washington	19.71	7
West Virginia	6.79	44
Wisconsin	12.36	22
Wyoming	7.72	37
Mean	14.07	

Region and State	Caseload	Population	Indigent cases per 1,000 population
Northeast	705,880	49,136,000	14.37
Connecticut	42,903	3,108,000	13.80
Maine	9,756	1,125,000	8.67
Massachusetts	73,909	5,737,000	12.88
New Hampshire	6,737	921,000	7.31
New Jersey	54,395	7,365,000	7.39
New York	363,082	17,558,000	20.68
Pennsylvania	140,960	11,864,000	11.88
Rhode Island	5,018	947,000	5.30
Vermont	9,120	511,000	17.85
North Central	634,597	58,868,000	10.78
Illinois	194,221	11,427,000	17.00
Indiana	42,430	5,490,000	7.73
Iowa	22,593	2,914,000	7.75
Kansas	19,433	2,364,000	8.22
Michigan	90,543	9,262,000	9.78
Minnesota	46,957	4,076,000	11.52
Missouri	31,885	4,917,000	6.48
Nebraska	23,190	1,570,000	14.77
North Dakota	4,598	653,000	7.04
Ohio	94,325	10,798,000	8.74
South Dakota	6,260	691,000	9.06
Wisconsin	58,162	4,706,000	12.36
South	892,452	75,372,000	11.84
Alabama	29,265	3,894,000	7.52
Arkansas	14,268	2,286,000	6.24
Delaware	10,566	594,000	17.79
District of Columbia	19,087	638,000	29.92
Florida	225,910	9,746,000	23.18
Georgia	43,198	5,463,000	7.91
Kentucky	30,827	3,661,000	8.42
Louisiana	54,134	4,206,000	12.87
Maryland	78,371	4,217,000	18.58
Mississippi	17,316	2,521,000	6.87
North Carolina	58,808	5,882,000	10.00
Oklahoma	35,307	3,025,000	11.67
South Carolina	20,356	3,122,000	6.52
Tennessee	25,987	4,591,000	5.66
Texas	136,936	14,229,000	9.62
Virginia	78,880	5,347,000	14.75
West Virginia	13,236	1,950,000	6.79
West	954,495	43,143,000	22.00
Alaska	10,438	402,000	25.97
Arizona	43,306	2,718,000	15.93
California	661,466	23,668,000	27.95
Colorado	39,207	2,890,000	13.57
Hawaii	6,169	965,000	6.39
Idaho	15,184	944,000	16.08
Montana	5,253	787,000	6.67
Nevada	16,858	800,000	21.07
New Mexico	16,817	1,303,000	12.91
Oregon	44,767	2,633,000	17.00
Utah	9,954	1,461,000	6.81
Washington	81,447	4,132,000	19.71
Wyoming	3,629	470,000	7.72

## Indigent defense expenditures and caseloads

To explore these hypotheses, the correlation between State rankings on indigent cases per 1,000 population was examined on three distinct measures: (1) crime rate, (2) percentage of State population below the poverty line (poverty index), and (3) percentage of State population in metropolitan areas (table 28). A strong positive correlation of 0.52 was found between State ranking for indigent cases per 1,000 population and the crime rate. Thus, indigent defendant cases per 1,000 is associated with the overall rate of crime in a jurisdiction.

A more modest, positive correlation of 0.32 was found between indigent cases per 1,000 population and percentage of population in metropolitan areas. However, when the crime rate is controlled this correlation is reduced to almost zero, indicating that crime rate and percentage of population in metropolitan areas are themselves correlated. Finally, a small negative correlation of -0.15 was found between indigent cases per 1,000 population and percentage of population below the poverty level, suggesting that poverty level alone does not contribute to the incidence of indigent defendants. Despite the intuitive sense that indigent cases per 1,000 population will be related to percentage of the population living both below the poverty level and in metropolitan areas, this presumed correlation was not substantiated by the data. When these factors are controlled for the crime rate only the crime rate proves to be strongly correlated with State rankings of indigent defendants.

### Analysis of indigency rates by case type

Ideally, indigency rates would be determined not on the basis of population, but by comparing each State's reported indigent caseload by case type to its total criminal caseload. During the course of the survey, each program was asked to estimate the ratio of cases in the county that involved indigent defendants to the total number of criminal cases filed within the categories of felony, misdemeanor, juvenile, mental commitment, and appeal.

Table 28. A comparison of States' rankings in factors related to indigent cases

State	Indigent cases per 1,000 population rank	Crime rate ranking	Percent of population below the poverty level ranking	Percent of population in metropolitan areas ranking
Alabama	38	40	3	29
Alaska	3	9	29	38
Arizona	14	2	18	19
Arkansas	49	44	2	41
California	2	3	27	1
Colorado	18	6	37	13
Connecticut	17	15	50	6
Delaware	10	8	25	22
District of Columbia	1	N/A	5	N/A
Florida	4	4	15	7
Georgia	34	23	9	30
Hawaii	48	5	40	17
Idaho	13	41	20	48
Illinois	11	25	28	12
Indiana	36	31	43	20
Iowa	35	36	38	40
Kansas	33	26	39	35
Kentucky	32	46	6	36
Louisiana	19	21	4	27
Maine	31	39	19	44
Maryland	8	12	41	5
Massachusetts	21	14	44	8
Michigan	27	13	33	9
Minnesota	25	35	45	26
Mississippi	42	48	1	45
Missouri	47	27	23	24
Montana	45	33	22	46
Nebraska	15	42	30	37
Nevada	5	1	47	10
New Hampshire	40	32	49	34
New Jersey	39	16	46	3
New Mexico	20	18	7	39
New York	6	11	16	4
North Carolina	26	38	13	33
North Dakota	41	49	21	43
Ohio	30	24	34	15
Oklahoma	24	30	17	32
Oregon	12	10	31	25
Pennsylvania	23	45	32	11
Rhode Island	51	19	35	2
South Carolina	46	28	10	31
South Dakota	29	47	8	49
Tennessee	50	43	11	28
Texas	28	17	14	16
Utah	43	20	36	18
Vermont	9	22	24	47
Virginia	16	37	26	21
Washington	7	7	42	14
West Virginia	44	50	12	42
Wisconsin	22	34	48	23
Wyoming	37	29	51	50

Unfortunately, a number of programs were unable to report because they do not collect data in this manner. Also the problem was compounded by the fact that jurisdictions define felony and misdemeanor in different ways. For example, assume that two States have a comparable total misdemeanor caseload, but State "A"

requires counsel in all cases in which the crime carries a jail sentence, while State "B" requires counsel only when a jail sentence is to be imposed. It is possible that State "A" could have an indigency rate of 50% or more and State "B" an indigency rate below 10%.

**Table 29. Comparison of generally accepted indigency rates and survey data**

Types of cases	Generally accepted indigency rates	Survey respondents' estimates of indigency rates
Felonies	48%	More than 40%
Misdemeanors	25	40% or less
Juvenile	80	More than 60%
Appeals	90	More than 70%

A further complicating problem involves the legal definition of felony and misdemeanor. Again, for example, one State could define a misdemeanor as any crime that carries a jail sentence of 2½ years or less, while another State could define a misdemeanor as a crime that carries a jail sentence of no more than 30 days. The indigency rate for both misdemeanors and felonies in these two States would vary substantially.

Despite these variations, there is some consistency between generally accepted rates for types of cases and the survey data. Based on on-site data collection and secondary analysis conducted over the past 5½ years, generally recognized indigency rates are as follows: felonies, 48%; misdemeanors, 25%; juvenile, 80%; and appeals, 90% (table 29).

The estimates of indigency rates provided by the survey respondents generally substantiate those rates. The majority of programs providing estimates of felony indigency rates reported that 40% or more felony cases involve indigent defendants in their jurisdictions. Similarly, most counties indicated that the vast majority of juvenile cases (more than 60%) and an even greater proportion of appeals (more than 70%) involve indigent defendants. On the other hand, programs were most likely to report that less than 40% of misdemeanors involve indigent defendants.

### Statewide technical assistance, training and other services

A brief discussion is important on the role of a group of organizations providing technical assistance, training, and back-up support for indigent defense programs in a number of States throughout the country. Because these programs do not provide direct trial assistance, their overall expenditures of slightly more than \$2 million were not included in the \$625 million previously reported. The vast majority of funds for these program operations come from State expenditures, although some programs charge dues or receive tuition and expense money from their training seminars. Examples of the important work performed by some of these programs include the following:

- In Florida, by State statute there is a statewide Public Defender Association. The association's operations include a State coordinating office located in the State capital whose major activities include coordination of activities of the 20 regional public defender programs, the development of training seminars, and a central liaison with the legislative, executive, and judicial branches.
- In Indiana the State Public Defender Council focuses on the training of all indigent defense programs in the State, both public defender and private bar. The council also publishes a newsletter and provides technical assistance to county programs.
- In New York, the State Public Defender Association is available to all county programs, publishes a bi-monthly newsletter, and conducts regional and statewide training programs.

In addition to these three States, similar programs are operating in California, Illinois, Iowa, North Carolina, Pennsylvania, Oregon, and South Carolina.

## Variations in case processing and systems changes

This chapter discusses some features of case processing common to all systems of indigent defense: how defendants are determined to be indigent, whether there are any provisions requiring indigents to contribute toward the cost of representation, how soon after arrest attorneys receive case assignments, and how separate counsel are appointed in felony cases involving more than one indigent defendant. Also discussed is the availability of legal training opportunities in indigent defense programs. Finally, changes occurring in the structure and funding of indigent defense programs throughout the country over the past 3 years are summarized.

### Formal criteria for indigency determination

A strategy repeatedly proposed for coping with increasing caseloads and costs of providing indigent defense services is to apply formal indigency criteria, ensuring that only those who are truly indigent receive services.

Most States reported having written criteria for indigency determination. Contrary to popular belief, our survey found that the majority of States reported having written criteria. Close to one-half of the survey respondents providing primary defense services (331 of 750) indicated that they had formal indigency criteria. Regionally, the availability of formal indigency criteria is most common in counties in the South and least common in counties in the West. In terms of population categories, availability of formal indigency criteria does not appear to differ across small and large counties.

The majority of States in which all counties report having formal indigency criteria (11 of 15) are those in which statewide public defender systems operate. In only three of the States with statewide public defenders were formal criteria unavailable in all counties: Connecticut, Rhode Island, and Wyoming. In Connecticut, only one-half of the counties reported having indigency criteria, and in Rhode Island and Wyoming no counties reported having formal criteria to determine indigency.

From prior work, it is known that work has recently been done both in Rhode Island and Wyoming in this regard. However, neither statewide program has yet developed published guidelines.

A great deal of variation exists among the criteria developed to date. While all States base their determination of defendants' indigency on income and/or liquid assets, they use different definitions for these terms. For example, some State programs consider gross income, while others take into account only net income. Some consider liquid assets to be only those cash assets, which if converted would not jeopardize the defendant's "ability to maintain his (or her) home or employment," while others include the defendant's home and automobile. Finally, varying cutoff points are used. Some States use the Bureau of Labor Statistics' definition of the poverty level; others factor in the estimated cost of representation; still others take into account presumptive evidence of ineligibility, for example, the defendant has posted bail, is not on public assistance, or owns more than one automobile. Regardless of the form indigency criteria take in any given State, legal analysts agree that the criteria must not jeopardize the constitutional rights afforded defendants under the sixth and fourteenth amendments.

Judges most often make the final indigency determination. The actual application of written indigency criteria is made most often by judges or clerks, although others—including public defenders and court personnel or probation officers—are sometimes responsible for making the final determination of indigency. In a few counties indigency screeners are employed to obtain information on defendants' financial status. Of the few counties that do employ indigency screeners, those that have public defender programs are most likely to do so. Furthermore, it is in the large Northeast public defender counties that indigency screeners are most likely to be employed.

### Recoupment

Coupled with indigency screening, recoupment is also seen as a means of reducing defender costs. Indigency screening is a mechanism for assessing a defendant's ability to pay attorneys' fees. Recoupment is the requirement that defendants repay some portion of the cost of defense services according to their abilities.

As predicted by the variation in indigency screening, definitions of recoupment and systems for collecting payments also differ. In some jurisdictions recoupment may mean only the repayment of attorneys' fees or it may incorporate some element of restitution. Recoupment systems may also assess costs in different ways; for example, as a judgment lien after conviction or as a condition of probation. Finally, the administration of recoupment systems can be accomplished through various arrangements in terms of which agency or individual is responsible for establishing recoupment provisions for individual defendants; how recoupment payments are solicited; and to which budget such payments are allocated.

A majority of counties reported having recoupment requirements. Among all counties 75% reported that they had a system requiring indigent defendants to make some contribution to attorneys' fees when either a plea of guilty is entered or a finding of guilty is made at trial. Recoupment appears to be used somewhat more frequently by counties in the West and in larger counties of more than 500,000 population. Among types of indigent defense systems recoupment appears to be most often used in statewide public defender systems. In 10 of the 14 statewide public defender systems all counties reported using recoupment.

Few counties collected payments from a substantial number of defendants. To assess whether counties actually received recoupment payments, respondents were asked to provide information on the percentage of cases in which some payment was made by indigent defendants when defense services



Percent of cases in which indigents made payments	Percent of counties
0%	25%
1-10	45
11-25	13
More than 25	17

were provided. While the vast majority of counties reported having recoupment requirements, it appears that payments are received in only a small fraction of cases (table 30). One-fourth of all counties that reported having a recoupment policy stated that no payments had been received from indigent defendants. Most counties received payments for only a small percentage of indigent cases: 1 to 10%.

#### Early representation

Traditionally, attorneys who provide indigent defense services are not appointed to represent the defendant until his or her formal arraignment. In some jurisdictions, this time period may exceed 30 days or more from the date of arrest. By this time, however, it may be too late to protect many of the defendant's constitutional rights. For example, the defendant may have already inadvertently incriminated him- or herself by providing statements in the absence of counsel. Moreover, witnesses for the defense may be lost between the time of arrest and appointment of counsel. Finally, the defendant may well be placed at a disadvantage in relation to the prosecutor in terms of the preparation of the case. Thus, early representation, defined by some as entry by counsel into a criminal case within 24 hours of arrest, is seen as an important advance in protecting the rights of indigent defendants.

Early representation is provided in one-third of all counties. To obtain some indication of the extent to which early representation is provided, survey respondents were asked how soon after arrest cases are typically assigned. The most common answer was, in fact, within 24 hours (table 31). One-third of all

Entry into case	Percent of counties
Within 1 day	33%
2 days	25
3 days	19
Within 1 week	11
3 weeks	9
After 3 weeks	3

counties reported receiving case assignments within 1 day after arrest. If the period of initial attorney contact is expanded to 48 hours, more than one-half the counties are included (57%).

Early representation is most likely to occur in a public defender system (table 32). Of counties with public defenders, 39% reported receiving case assignments within 24 hours. In particular, statewide public defenders seemed especially likely to provide early representation. Assigned counsel systems did not lag far behind, with one-third of those counties reporting assignment within the first 24 hours after arrest. Contract systems, however, were notably less likely to provide early representation. Only 12% of contract counties reported receiving cases within 24 hours.

#### Appointment of separate counsel in felony cases involving multiple defendants

While historically the code of professional ethics has prohibited one attorney from representing co-defendants when a conflict of interest has been determined, more recently the U.S. Supreme Court and other appellate courts have been applying a narrower interpretation of what a conflict is.<sup>25</sup> In effect, the restrictions placed on individual attorneys in representing codefendants have been extended to all attorneys employed by the same office. Because all attorneys employed in a public defender's office are considered to be members of the same

<sup>25</sup> On December 8, 1983, in the case of *People v. Mroczko*, Crim. 21159, the California Supreme Court announced that separate counsel must be appointed in each case involving multiple defendants unless an effective waiver is made.

Type of system	Percent of counties for each type of system reporting case assignments within 24 hours
Public defender	39%
Assigned counsel	33
Contract	12

Circumstances	Percent of counties
In every instance	34%
At attorney's request	50
At defendant's request	26
At court's discretion	38
Never	1

Note: Total exceeds 100% because separate counsel may be appointed under several circumstances.

firm, the office cannot represent both defendants if a conflict exists between codefendants. Under these circumstances the court must appoint a private member of the bar.

As court decisions have restricted the policy on representation of codefendants, public defenders have begun to make a declaration in a larger number of cases (see chapter I). In fact, analysis of this survey's expenditure information reveals that in 1982 well over \$81 million (12% of total expenditures for indigent defense) were devoted to cases involving conflicts and cases in which public defenders were unavailable to provide representation.<sup>26</sup>

This survey sought to determine, more specifically, the circumstances under which separate counsel are appointed for codefendants. Separate counsel are most likely to be appointed at the attorney's request (table 33). Furthermore, there are some important regional differences

<sup>26</sup> The \$81 million estimate is conservative because not all counties could provide a breakdown of expenditures for primary representation and private counsel appointed in conflict/unavailability cases. Furthermore, in some public defender counties the organization did not separately collect cost and caseload for public defender staff appointments and private bar conflict and unavailability appointments.

## Variations in case processing and systems changes

(table 34). Among those counties appointing separate counsel in every instance of codefendants, those in the Northeast and West are most likely to so. This can be accounted for by the concentration of statewide public defenders in those two regions. Similarly, the largest counties with more than 1 million in population are more likely to declare conflicts in every instance, whereas smaller counties are more likely to do so only upon request. In North Central counties, separate counsel for codefendants are most likely to be appointed when requested by attorneys or defendants. In the South, it is most often at the court's discretion that separate counsel are appointed.

### Legal training for attorneys providing indigent defense

A compelling need exists for training lawyers who provide indigent defense services, considering: (1) the starting salaries for assistant public defenders and the generally low rates of compensation for assigned counsel and (2) the absence, in most indigent defense systems, of adequate support services and supervisors to help manage substantial caseloads. Highly competitive salaries, which would attract experienced trial attorneys, could minimize the need for critical training. Similarly, comprehensive support services could also offset extensive training needs.

In most counties slightly more than one-half the programs (55%) report that legal training opportunities are not available to attorneys who represent indigent defendants. Regionally, however, training opportunities appear to be better for attorneys in the Northeast and West, where statewide public defenders are concentrated. In more than 63% of counties in those areas, training is reportedly available. Furthermore, as the size of the county increases, the more likely is training to be available. At least 90% of all counties whose population size exceeds 500,000 report legal training opportunities compared to only 40% for counties smaller than 50,000. Overall, training opportunities appear to be more frequent in public defender programs than in any other type of system (table 35).

**Table 34. Appointment of separate counsel for codefendants by region**

Region	Percent of counties appointing separate counsel in all cases of codefendants
All counties	34%
Northeast	75
North Central	33
South	18
West	46

**Table 35. Availability of legal training for indigent defense attorneys by program type**

Type of program	Percent of counties
Public defender	81%
Assigned counsel	21
Contract	37

### Changes in methods of providing indigent representation

To detect shifts and national trends in the systems of providing indigent defense, respondents were asked whether the method of providing representation to indigent defendants in their county had been revised, reformed, or reorganized within the past 3 years.

#### Extent of reported change

Almost one-fourth of all programs, both those providing primary representation to indigents as well as those handling conflict/unavailability cases, reported changes. Of the 750 primary programs responding, 183 or 24.4% answered this question in the affirmative. Of the 148 conflict/unavailability programs that responded to the survey, 41 or 27.7% also answered this question in the affirmative.

#### Several State-level changes occurred in the delivery of indigent defense services from 1980-83

Several States made a substantial statewide system change over the past 3 years. In two States, Missouri and New Hampshire, the change involved adopting statewide public defender systems. Two others, Kansas and West Virginia, developed central administrative organizations for their State indigent defense

systems to oversee local programs.

• **Missouri.** Prior to April 1, 1982, most counties in Missouri provided indigent representation through an assigned counsel system. On that date the Missouri State legislature created a State Public Defender Commission. The commission was charged with establishing the Office of State Public Defender to be an independent department to the judicial branch of government. The State public defender was then charged with creating and administering a statewide public defender system with the ability to contract with members of the private bar, where appropriate. Under the act, individual criminal court judges are no longer permitted to make appointments to the private bar. Where conflicts occur, they are either handled by a public defender in an adjoining region or contracts are awarded to members of the private bar.

• **New Hampshire.** The indigent defense system in New Hampshire dates back to the system used in the 1970's when required representation in New Hampshire was shared between local public defenders and the private bar. During the survey period of 1981-82, a statewide public defender was established to serve all of New Hampshire's 10 counties. Salaried staff attorneys now serve the more populous counties while private assigned counsel serve the small rural counties. In areas served by the private bar, the State public defender administers and monitors the program.

• **Kansas.** The State Board of Indigent Defense Services was created by the 1982 Kansas legislature replacing the Board of Supervisors of Panels to Aid Indigent Defendants. Under the new legislation public defender offices were opened in three judicial districts during 1982-83. In addition the new State board was given the responsibility of reviewing and processing all vouchers submitted by private attorneys for payment resulting from indigent defense appointments.

• **West Virginia.** Prior to July 1, 1981, each of West Virginia's 55 counties provided indigent representation exclusively through an ad hoc assigned counsel system. In some counties there were multiple

programs reflecting either separate lists for different levels of jurisdiction or different lists for individual judges in the same court. By statute on July 1, 1981, the West Virginia Legal Services Council was formed. Under the statute a statewide office was established with several important functions. One of the statewide office's first assignments was to develop a set of uniform guidelines and procedures for several new public defender programs to be established throughout the State. Its second mission was the development of statewide standards for the establishment, monitoring, and administration of all private bar payments for indigent defense representation. By the end of the survey period several public defender offices were preparing to open.

In one State, Massachusetts, use of the contract system increased.

• **Massachusetts.** For many years Massachusetts has had a statewide public defender system called the Massachusetts Defenders Committee. However, because of a lack of funding for the agency they have limited their work for the most part to felony representation in the Superior Court and to appeals. The balance of the misdemeanor and juvenile work has traditionally been provided by the private bar through ad hoc assignment or small county contract defender operations. During the survey period, the lower court work shifted in most counties to a contract with the local county bar association, which guaranteed all required representation for a fixed annual appropriation.

Changes in funding of indigent defense took place in three States—Alabama, Oregon, and North Dakota.

• **Alabama.** With the exception of approximately \$100,000 appropriated annually by the State legislature in Alabama, the entire indigent defense system is funded through a Fair Trial Tax Fund. The fund is created by the charge of a \$7 fee imposed on all civil cases in the circuit court in which a jury is requested. The major change that occurred in Alabama during the survey period was an increase in the tax from \$2 to \$7 in all civil cases. The result was an increase in revenue for the

fund from \$859,656 in 1980-81 to \$4,238,266 in 1981-82.

• **Oregon.** On January 1, 1983, the the State of Oregon shifted from a county-funded system to a State-funded system. Under the legislation, the State Court Administrator on behalf of the State has the authority to contract out for indigent defense services either to members of the private bar or to public defender programs.

• **North Dakota.** During the survey period the State took over from the counties the responsibility of providing funds for counsel in all district court felony proceedings. During the period of August 1980 through May 1981 the State Bar Association of North Dakota conducted a study entitled, "Legal Representation for Indigents Entitled to Court Appointed Counsel in North Dakota." One recommendation in the report was the creation of a commission to develop uniform standards and guidelines for indigent defense representation in North Dakota. Subsequently, the North Dakota Legal Counsel for Indigents Commission was established. To date, the commission has addressed a variety of issues including recoupment, contract defense services, and standards of indigency.

#### **Numerous changes took place among programs providing indigent defense services at the county level from 1980-1983**

Apart from statewide changes discussed in the preceding section, by far the most frequent response to this survey question was a description of a county change in program type. For example, 58 program respondents reported a change in their delivery system at the county level in the last 3 years.

Containing the costs of indigent defense is of primary concern in many jurisdictions. In fact, most counties that reported making changes did so in an attempt to reduce costs. Two contradictory views exist in the field on how to contain costs. One approach, which is based on the belief that public defender systems are the most expensive, is to shift to the use of

the private bar through either assigned counsel or contract programs. The other approach, based on the belief that public defender systems are less expensive, is just the opposite: to increase use of public defenders. The difficulties local officials face in identifying the most cost-effective system is illustrated by a small Midwestern county of about 80,000 population, which experimented with virtually all systems. They report that a public defender provided service from 1971 to 1980. This was replaced in 1980 by a contract system and followed in 1982 by an assigned counsel system. Today, indigent defense services are provided through a coordinated assigned counsel system administered by a court official.

As indicated below, more counties abandoned assigned counsel systems and adopted public defenders (30 counties) than those that discontinued public defender systems in favor of the private bar (8 counties):

- Assigned counsel to public defender—28 counties
- Contract system to public defender—2 counties
- Assigned counsel to contract system—18 counties
- Public defender to contract system—7 counties
- Public defender to assigned counsel—1 county
- Contract system to assigned counsel—2 counties.

Although program changes occurred in only a small number of counties, these changes occurred in 27 of the 37 nonstatewide public defender States.

Apart from system changes, programs reported a variety of other changes, such as increasing the size of public defender staff, increasing the fee schedule for the private bar, introducing various methods of limiting fees and expenses for assigned counsel, and imposing new limits on costs.

The final set of changes reported have to do with the overall enhancement of the quality of indigent defense systems in the county.

## Variations in case processing and systems changes

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• **Improving assigned counsel systems overall.** Several counties developed standards for appointment and removal of members of the private bar representing indigents; especially in death penalty cases. Another county developed standards regarding quality of representation provided by contractors.

• **Improving indigency screening and recoupment.** Several counties developed comprehensive guidelines on indigency determination to ensure fairness and uniformity, while another formed a committee to develop guidelines for recoupment in cases involving the private bar.

• **Providing earlier representation.** One county reported appointing private attorneys at first appearance rather than at formal arraignment 2 weeks later. In another county, attorneys are appointed 2 weeks prior to trial, rather than the day before trial.

• **Broadening the scope of assigned counsel representation.** In one county assigned counsel are now permitted to represent juveniles in status offenses and care and protection proceedings. Another county paid private attorneys for handling juvenile cases for the first time. Yet another established a panel of private attorneys to represent indigents in mental commitment cases.

• **Monitoring costs.** One county established a committee to review assigned counsel vouchers that had been reduced by local judges.

# Technical appendix

## Sampling plan construction

To construct the sample, the counties in each State were first listed in a geographically determined sequential order (see figure 7 for Maryland State sample). The sampling interval for each State was then determined by dividing the total population of the State by the number of counties to be sampled. In the case of Maryland the total population is 4,216,446. Dividing this figure by nine (the intended number of sample counties in Maryland) yields a sampling interval of 468,444. Four counties in Maryland have populations larger than this sampling interval—Montgomery, Prince Georges, and Baltimore counties, and the city of Baltimore (table 36). These large counties were thus included in the sample with certainty.

After subtracting the populations of these certain sample counties the sampling interval was recomputed for the remaining counties. Thus, the new total population figure

(1,519,932) was divided by the remaining number of desired sample counties (5), yielding a new sampling interval (303,986). This new sampling interval was again checked against the list of counties, and one more county—Anne Arundel—was also included in the sample with certainty. Subtracting Anne Arundel's population from the total and recomputing another new sampling interval ( $1,149,157 - 4 = 287,289$ ) yields no additional certainty counties, because none that remain meet or exceed that level of population.

The remaining noncertainty sample counties were then chosen by sampling with probability proportional to size. First, a random number was chosen between 1 and the sampling interval (287,289 in the case of the Maryland example). Suppose the random number drawn was 243,708: A county would have been chosen if this selection number fell into its sequence of numbers (e.g., if the number selected was greater than the cumulative sum of all previous

counties in the geographic sequential order but less than or equal to the cumulative sum, including the designated county). Frederick County would have been the next county chosen for the sample, because  $200,132 < 243,708 < 334,395$  (see table 36). The sample was completed adding the sampling interval to the random number and selecting additional counties in this same fashion.

243,708 (random number)  
 287,289 (sampling interval)  
 530,997 Howard County  
 287,289  
 818,286 Harford County  
 287,289  
 1,105,575 Wicomico County

until the required number of sample counties was obtained.

In response to the first question on the survey a number of respondents indicated that they considered themselves to provide representation under more than one system type. To determine the pattern of these

Maryland counties numbered for purposes of sampling

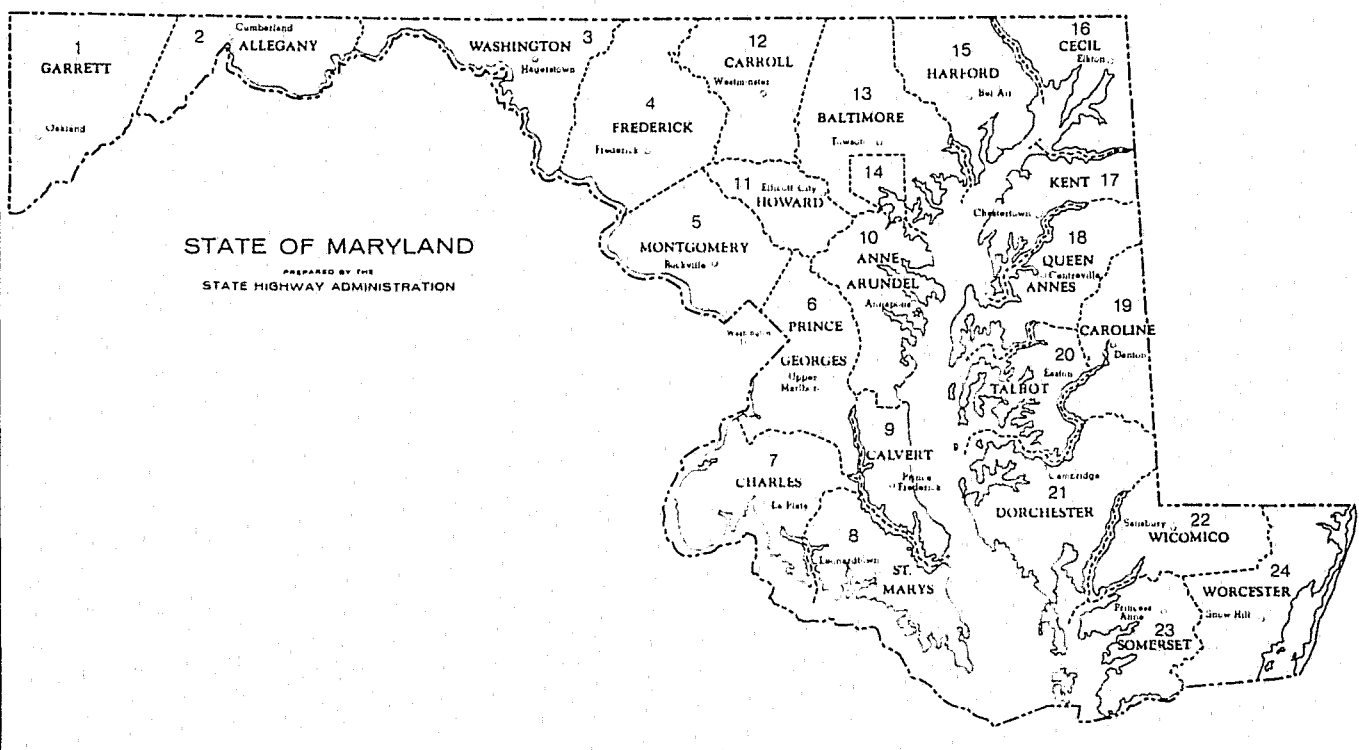


Figure 7

multiple responses project staff examined all valid responses from each of the 718 sample counties. On that basis it was determined that a completed questionnaire had been received from at least one primary program (the one providing basic representation in the jurisdiction) for 696 of the 718 counties or 96.9% of the sample counties. All primary questionnaires were then merged for any of the sample counties where multiple responses were received. For example, if there were two primary program questionnaires completed and one checked off the public defender system and the other a contract system the county was recorded as a public defender/contract program.

In the process of analyzing the primary programs that reported two or more program type responses, it was determined that most of them occurred in counties with a primary public defender program. These programs, as previously noted, are responsible for total representation in the county. The majority of work is performed by the public defender staff with supplemental representation provided through private assigned counsel and administered by the public defender program. Of the 13 counties recorded in the "other" column, 12 were public defender systems with both an assigned counsel and contract component.

The next step was to provide an estimate for indigent defense systems in each of the 50 States and the District of Columbia. Several steps were taken to arrive at these estimates. First, the multiple program responses for each county were collapsed into one. This was done by assuming that all counties reporting at least one public defender response would be designated as a public defender county. The one law school clinical program was designated as an assigned counsel program. The assigned counsel/contract programs were designated assigned counsel. The programs identified as "other" were designated public defender programs.

The next step was to develop weighted estimates for these three

County	County population	Cumulative*
Garrett	26,498	26,498
Allegany	80,548	107,046
Washington	113,086	220,132
Frederick	114,263	334,395
Montgomery	579,053	
Prince Georges	665,071	
Charles	72,751	407,146
St. Marys	59,895	467,041
Calvert	34,638	501,679
Anne Arundel	370,775	
Howard	118,572	620,251
Carroll	96,356	716,607
Baltimore County	665,615	
Baltimore City	786,775	
Harford	145,930	862,537
Cecil	66,430	922,967
Kent	16,695	939,662
Queen Annes	25,508	965,170
Caroline	23,143	988,313
Talbot	25,604	1,013,917
Dorchester	30,623	1,044,540
Wicomico	64,540	1,109,080
Somerset	19,188	1,128,268
Worcester	30,889	1,159,157

\*Cumulative population of noncertainty counties.  
 Source: 1980 Census of Population and Housing, Maryland, Advance Report (PHC80-V-22), U.S. Bureau of the Census, 1981.

types of programs within each State. Because the sample design was not self-weighting, nonresponse-adjusted sampling weights were computed as the reciprocal of the probability of selection of each sample county. Let:

- M = number of counties in a State
- m = number of counties sampled in a State
- m' = number of certainty counties sampled in a State
- m'' = number of nonself-representing counties sampled in a State
- n = number of sample counties for which program data were obtained
- n' = number of certainty sample counties for which program data were obtained
- n'' = number of nonself-representing sample counties for which program data were obtained
- Pop<sub>i</sub> = the total population size of i-th nonself-representing counties in a State

$$\sum \text{Pop}_i = \text{all nonself-representing counties in a State}$$

For the n' certainty counties in a State the sampling weight equals:

$$\frac{m'}{n'}$$

When program data were obtained for all certainty counties in a State, m = n' and the sampling weight equals one.

For the n'' nonself-representing sample counties in a State, the sampling weight equals:

$$\frac{\sum \text{Pop}_i}{n \times \text{Pop}_i}$$

In computing the sampling weights for the nonself-representing counties in a State, counties of very small population size could carry a very large weight. To avoid the deleterious effects that unequal weights can have on sampling variances, all sampling weights greater than or equal to 20.0 were truncated to 19.9, the largest allowable weight.

# County questionnaire

**The 1982 National Survey of Criminal Defense County Questionnaire**

Abt Associates Inc.  
55 Wheeler Street  
Cambridge, Massachusetts 02148

**Instructions for completing this questionnaire:**

1. The label at the bottom of this page contains the name of this county. We have identified your county as funding one or more indigent criminal defense programs (public defender, assigned counsel, contract system, or law school clinical programs). If this county does not provide partial or total funding for any indigent criminal defense programs, please contact Abt Associates Inc. at the designated telephone number given below.
2. This brief questionnaire contains three questions. Please answer each question by printing the requested information in the space provided.
3. In Question 2, you will be asked to provide expenditure information for each indigent criminal defense program funded by this county.
4. If you have any questions or need assistance in completing the questionnaire, please contact Cheryl Vernon or Lois Olinger, Survey Directors for this Bureau of Justice Statistics survey, at this toll-free number: 1-800-343-3019.
5. Please mail the completed questionnaire within 20 days in the preaddressed, prepaid envelope provided. While you are not required to respond, your cooperation is appreciated to make this first national indigent criminal defense survey comprehensive, adequate, and timely. Your individual responses will be known only to Abt Associates and will remain confidential.

1. How much money did the county expend (i.e., total operating expenditures) for the provision of defense services to indigents in the last fiscal year?  
\$ \_\_\_\_\_ .00 6-13/

Please specify the months and year for which your answer is applicable:

From: \_\_\_\_\_ to \_\_\_\_\_  
(month) (year) 14-17/  
\_\_\_\_\_ (month) (year) 18-21/

2. Of this expended amount, how much was spent for each of the indigent criminal defense programs in the county? (IF NONE, ENTER "0"; IF PROGRAM TYPE DOES NOT EXIST, ENTER "NA".)

Public Defender programs (under this system, a salaried staff of full-time or part-time attorneys render defense services through a public or private nonprofit organization):

Program names:  
\$ \_\_\_\_\_ .00 22-29/  
\$ \_\_\_\_\_ .00 30-37/  
\$ \_\_\_\_\_ .00 38-45/  
\$ \_\_\_\_\_ .00 46-53/  
Subtotal: \$ \_\_\_\_\_ .00 54-61/

Assigned Counsel programs (under this system, a list is developed of private bar members willing to accept indigent defense cases on a judge-by-judge or court-by-court basis. This system may or may not have an administrative component governing the appointment and processing cases by the private bar):

Program names:  
\$ \_\_\_\_\_ .00 62-69/  
\$ \_\_\_\_\_ .00 70-77/  
\$ \_\_\_\_\_ .00 6-13/  
\$ \_\_\_\_\_ .00 14-21/

Subtotal:  
\$ \_\_\_\_\_ .00 22-29/

Contract Attorney programs (under this system, contracts with individual attorney(s), bar association(s), or private law firm(s) are used to provide representation in required cases in the jurisdiction):

Program names:  
\$ \_\_\_\_\_ .00 30-37/  
\$ \_\_\_\_\_ .00 38-45/  
\$ \_\_\_\_\_ .00 46-53/  
\$ \_\_\_\_\_ .00 54-61/  
Subtotal: \$ \_\_\_\_\_ .00 62-69/

Law School Clinical programs (under this system, law school students and faculty from a law clinic provide indigent defense services):

Program names:  
\$ \_\_\_\_\_ .00 70-77/  
\$ \_\_\_\_\_ .00 6-13/  
\$ \_\_\_\_\_ .00 14-21/  
\$ \_\_\_\_\_ .00 22-29/  
Subtotal: \$ \_\_\_\_\_ .00 30-37/

**TOTAL SHOULD EQUAL ANSWER IN QUESTION 1**

Total:  
\$ \_\_\_\_\_ .00 38-45/

3. How much money did the county expend (i.e., total operating expenditures) for the provision of defense services to indigents in the four fiscal years prior to the last fiscal year reported in Question 1? (PLEASE ENTER MOST RECENT ON FIRST LINE BELOW AND WORK BACKWARDS.)

Please specify the months and year for which your answer is applicable:

Fiscal year prior to last fiscal year:

\$ \_\_\_\_\_ .00 46-53/

From: \_\_\_\_\_ to \_\_\_\_\_  
(month) (year) 54-57/

(month) (year) 58-61/

\$ \_\_\_\_\_ .00 62-69/

From: \_\_\_\_\_ to \_\_\_\_\_  
(month) (year) 70-73/

(month) (year) 74-77/

\$ \_\_\_\_\_ .00 6-13/

From: \_\_\_\_\_ to \_\_\_\_\_  
(month) (year) 14-17/

(month) (year) 18-21/

\$ \_\_\_\_\_ .00 22-29/

From: \_\_\_\_\_ to \_\_\_\_\_  
(month) (year) 30-33/

(month) (year) 34-37/

**The 1982 National Survey of Criminal Defense Program Questionnaire**

Abt Associates Inc.  
55 Wheeler Street  
Cambridge, Massachusetts 02138

Instructions for completing this questionnaire:

- The label at the bottom of this page contains the name of this indigent criminal defense program. It also lists the name of the study county. We have identified your program as serving this county. When a question refers to "the county" you should answer only for the county on the label. If this indigent criminal defense program does not serve some or all of the county, please contact Abt Associates Inc. at the designated telephone number given below.
- Please answer each question in sequence by circling the appropriate number or code and/or by printing the requested information in the space provided. In some cases you will be requested to skip certain questions based on your response. For some questions you will be asked to circle all responses that apply.
- Based on your answer to Question 1, you will be instructed on page 43 to answer Parts A, B, and/or C of this questionnaire. Please carefully follow these instructions. All respondents should complete Part D of this questionnaire which begins on page 45.
- If you do not know the answer to a question, write "DK" for don't know.
- If you have any questions or need assistance in completing the questionnaire, please contact Cheryl Vernon or Lois Olinger, Survey Directors for this Bureau of Justice Statistics survey, at this toll-free number: 1-800-343-3019.
- Please mail the completed questionnaire within 20 days in the preaddressed, prepaid envelope provided. While you are not required to respond, your cooperation is appreciated to make this first national indigent criminal defense survey comprehensive, adequate, and timely. Your individual responses will be known only to the research team and will remain confidential.

1. What type of indigent criminal defense program is this? (CIRCLE ALL THAT APPLY.)

A public defender program (under this system, a salaried staff of full-time or part-time attorneys render defense services through a public or private nonprofit organization), 1 6/

An assigned counsel program (this system is characterized by the appointment from a list of private bar members who accept cases on a judge-by-judge or court-by-court basis), 2 7/

A coordinated assigned counsel program (this system is similar to the assigned counsel system except that it has an administered component and a set of rules and guidelines governing the appointment and processing of cases handled by the private bar), 3 8/

A program that uses contracts with individual attorney(s), bar association(s), or private law firm(s) to provide representation in required cases in the jurisdiction, 4 9/

A law school clinical program (under this system, law school students and faculty from a law clinic provide indigent defense services), 5 10/

2. If any indigent criminal defense programs other than this program serve the county, please list them by name and address below. (If yours is a public defender program, please also include those programs where you have declared a conflict or are otherwise unavailable.)

CIRCLE TYPE OF PROGRAM

Primary Conflict Unavailability  
1.

Primary Conflict Unavailability  
2.

Primary Conflict Unavailability  
3.



**INSTRUCTIONS**

IF YOU CIRCLED "1" (PUBLIC DEFENDER PROGRAM) IN QUESTION 1, COMPLETE PART A.

IF YOU CIRCLED "2" (ASSIGNED COUNSEL PROGRAM) OR "3" (COORDINATED ASSIGNED COUNSEL PROGRAM) IN QUESTION 1, COMPLETE PART B.

IF YOU CIRCLED "4" (PROGRAMS THAT USE CONTRACTS) IN QUESTION 1, COMPLETE PART C.

IF YOU CIRCLED "5" (LAW SCHOOL CLINICAL PROGRAM) IN QUESTION 1, SKIP TO PART D.

IF YOU CIRCLED MORE THAN ONE RESPONSE IN QUESTION 1 (e.g., "1" and "2"), COMPLETE EACH INDICATED PART.

ALL RESPONDENTS SHOULD COMPLETE PART D

**PART A: PUBLIC DEFENDER PROGRAMS**

ANSWER PART A IF YOU CIRCLED "1" IN QUESTION 1.

3. How many full-time and part-time public defender lawyers were employed by this program in 1981? How many are employed currently? (IF NONE, ENTER 0.)

Full-time:  
 1981 \_\_\_\_\_ Currently \_\_\_\_\_  
 \_\_\_\_\_ 11-14/ \_\_\_\_\_ 15-18/

Part-time:  
 1981 \_\_\_\_\_ Currently \_\_\_\_\_  
 \_\_\_\_\_ 19-22/ \_\_\_\_\_ 23-26/

4. Is the Chief Public Defender of this program employed full-time or part-time? (CIRCLE ONE)

Full-time \_\_\_\_\_ 1  
 Part-time \_\_\_\_\_ 2 27/

5. Is this public defender program (CIRCLE ONE. PLEASE BASE YOUR RESPONSE ON THE ORGANIZATIONAL STRUCTURE, NOT THE FUNDING SOURCE.):

Part of the judicial branch \_\_\_\_\_ 01 28-29/

Part of the State executive branch \_\_\_\_\_ 02

An independent agency of the State government \_\_\_\_\_ 03

Part of county government \_\_\_\_\_ 04

An independent non-profit organization \_\_\_\_\_ 05

Other (SPECIFY): \_\_\_\_\_ 06

6. Please indicate the annual salary, and full-time or part-time status of the following positions in the county (CIRCLE ONE).

Position	Annual salary	Full-time position	Part-time position
Chief Prosecutor:	\$ _____ 30-34/	1	2 35/
Chief Public Defender:	\$ _____ 35-40/	1	2 41/
Lowest salaried attorney in Public Defender's office	\$ _____ 42-46/	1	2 47/
Highest salaried attorney in Public Defender's office (other than Public Defender)	\$ _____ 48-52/	1	2 53/

Chief Prosecutor: \$ \_\_\_\_\_ 30-34/

Chief Public Defender: \$ \_\_\_\_\_ 35-40/

Lowest salaried attorney in Public Defender's office \$ \_\_\_\_\_ 42-46/

Highest salaried attorney in Public Defender's office (other than Public Defender) \$ \_\_\_\_\_ 48-52/

**PART B: ASSIGNED COUNSEL PROGRAMS**

ANSWER PART B IF YOU CIRCLED "2" OR "3" IN QUESTION 1.

7. How many active private lawyers were there in 1981 in the geographic jurisdictions served by this program? (IF PROGRAM SERVES THE ENTIRE STATE, PLEASE ANSWER ONLY FOR THE COUNTY IDENTIFIED ON THE COVER PAGE.) \_\_\_\_\_ 54-47/

8. How many of these lawyers received appointments to represent indigent defendants as part of this program in 1981? \_\_\_\_\_ 58-60/

9. Of the lawyers who received appointments to represent indigent defendants as part of this program in 1981, what was the minimum, the maximum, and the average number of cases per lawyer?

Minimum \_\_\_\_\_ 61-63/  
 Maximum \_\_\_\_\_ 64-66/  
 Average \_\_\_\_\_ 67-69/

10. Did 5% or less of these lawyers represent 25% or more of the indigent defendants as part of this program in 1981?

Yes \_\_\_\_\_ 1 70/  
 No \_\_\_\_\_ 2 71-80/

11. Who appoints private attorneys to provide indigent defense services in this program? (CIRCLE ALL THAT APPLY.)

A judge \_\_\_\_\_ 1 6/

A clerk or other administrative personnel of the court \_\_\_\_\_ 2 7/

An administrator responsible for administering the assignment of attorneys to indigent defendants \_\_\_\_\_ 3 8/

A public defender \_\_\_\_\_ 4 9/

Other (SPECIFY): \_\_\_\_\_ 5 10/

12. Does this program have a list of eligible and/or willing attorneys to be assigned to indigent defendants?

Yes \_\_\_\_\_ 1 11/  
 No (SKIP TO Q. 16) \_\_\_\_\_ 2

13. How does a lawyer become included on this list? (CIRCLE ALL THAT APPLY.)

All lawyers are included \_\_\_\_\_ 1 12/

Affirmatively volunteer \_\_\_\_\_ 2 13/

Volunteer and be determined as qualified by administering personnel \_\_\_\_\_ 3 14/

Volunteer and participate in some continuing legal education or seminars each year \_\_\_\_\_ 4 15/

Other (SPECIFY): \_\_\_\_\_ 5 16/

14. Are there formal procedures to remove lawyers from this list?

Yes 1 17/  
No 2

15. Are lawyers on the list categorized by area of specialization?

Yes 1 18/  
No 2

16. In 1981, were lawyers in this program required to represent indigent defendants without compensation? (CIRCLE ALL THAT APPLY.)

In every case involving an indigent defendant (SKIP TO Q. 23) 1 19/

In more than one-half of the cases 2 20/

In about one-half of the cases 3 21/

In less than one-half of the cases 4 22/

When the public funds appropriated for representation of indigents ran out 5 23/

In no cases 6 24/

17. When assigned to represent indigent defendants in felony cases, how are attorneys paid? (CIRCLE ONE)

A separate out-of-court and in-court hourly fee 1 25/

A fee based on type of appearance (SKIP TO Q. 20) 2

A flat fee for appearance (SKIP TO Q. 20) 3

A flat fee for the case 4

Other type of fee (SPECIFY): \_\_\_\_\_ 5

18. What are the out-of-court and in-court hourly fees, flat fee, or other fee paid to attorneys in felony cases?

Out-of-court fee: \$ \_\_\_\_\_ .00 per hour 26-27/

In-court fee: \$ \_\_\_\_\_ .00 per hour 28-29/

Flat fee: \$ \_\_\_\_\_ .00 30-31/

Other fee: \$ \_\_\_\_\_ .00 32-33/

19. What is the maximum total fee for a felony case allowed an attorney?

\$ \_\_\_\_\_ .00 34-37/  
No maximum 1 38/

20. When assigned to represent indigent defendants in misdemeanor cases, how are attorneys paid? (CIRCLE ONE)

Misdemeanor cases not represented (SKIP TO Q. 23) 0 39/

A separate out-of-court and in-court hourly fee 1

A fee based on type of appearance (SKIP TO Q. 23) 2

A flat fee for appearance (SKIP TO Q. 23) 3

A flat fee for the case 4

Other type of fee (SPECIFY): \_\_\_\_\_ 5

21. What are the out-of-court and in-court hourly fees, flat fee, or other fee paid to attorneys in misdemeanor cases?

Out-of-court fee: \$ \_\_\_\_\_ .00 per hour 40-41/

In-court fee: \$ \_\_\_\_\_ .00 per hour 42-43/

Flat fee: \$ \_\_\_\_\_ .00 44-45/

Other fee: \$ \_\_\_\_\_ .00 46-47/

22. What is the maximum total fee for a misdemeanor case allowed an attorney?

\$ \_\_\_\_\_ .00 48-51/  
No maximum 1 52/

23. Does this program have a person other than a judge or clerk responsible for administering the program?

Yes 1 53/  
No 2

PART C: CONTRACT ATTORNEY PROGRAMS

ANSWER PART C IF YOU CIRCLED "4" IN QUESTION 1.

24. To how many of the following groups were contracts awarded in 1981 by this program to provide representation to indigent criminal defendants? (IF NONE, ENTER "0".)

Individual sole practitioners \_\_\_\_\_ 54-55/

A law firm or a group of private attorneys joined solely to provide indigent criminal representation under the contract \_\_\_\_\_ 56-57/

Bar association \_\_\_\_\_ 58-59/

Nonprofit organization \_\_\_\_\_ 60-61/

Other (SPECIFY): \_\_\_\_\_ 62-63/  
\_\_\_\_\_ 64/

25. What governmental unit, agency, or individual is primarily responsible for awarding contracts to provide representation to indigent criminal defendants? (CIRCLE ONE)

Judge 01 65-66/

County 02

City or town 03

Public defender 04

Bar association 05

State 06

Other (SPECIFY): \_\_\_\_\_ 07

26. Are bids solicited before a contract is awarded (i.e., are contracts competitively bid)?

Yes 1 67/  
No 2

27. What types of contracts are awarded? (CIRCLE ALL THAT APPLY.)

Fixed price (i.e., representation is provided in a specified number and type of cases for a fixed amount) 1 68/

Cost plus fixed fee (i.e., representation is provided at an estimated cost per case only until the total contract price is reached) 2 69/

Block Grant (i.e., representation is required for all cases in the jurisdiction regardless of the volume) 3 70/FR

Other type (SPECIFY):  
 \_\_\_\_\_ 4 71/  
 \_\_\_\_\_ 72/  
 \_\_\_\_\_ 73/

28. Are contracts monitored by an office or individual independent from the contracting firm or lawyer?  
 Yes 1 74/  
 No (SKIP TO Q. 30) 2

29. For which of the following functions is the monitor of the contract responsible? (CIRCLE ALL THAT APPLY.)

Quality of representation 1 75/  
 Review of budgets 2 76/  
 Approval of vouchers 3 77/  
 Client satisfaction 4 78/  
 Other (SPECIFY):  
 \_\_\_\_\_ 5 79/  
 \_\_\_\_\_ 80/BK

CONTRACT ADMINISTRATORS SHOULD ANSWER QUESTION 30 AND CASELOAD QUESTIONS IN PART D FOR THE ENTIRE CONTRACT PROGRAM IN THE COUNTY IDENTIFIED ON THE COVER PAGE. CONTRACT RECIPIENTS SHOULD ANSWER QUESTION 30 AND CASELOAD QUESTIONS IN PART D ONLY FOR THEIR ORGANIZATION.

30. Of attorneys who received indigent defendant cases under contract in 1981, what was the minimum, the maximum, and the average number of cases per attorney?

Minimum \_\_\_\_\_ 6-8/  
 Maximum \_\_\_\_\_ 9-11/  
 Average \_\_\_\_\_ 12-14/

PART D: GENERAL PROGRAM CHARACTERISTICS

ALL RESPONDENTS PLEASE COMPLETE PART D.

31. What is the geographic jurisdiction served by this program? (CIRCLE ONE)

Part of the county (e.g., a city or town) 1 15/

The entire county 2

Multicounty or judicial district that includes part of the county 3

Entire State 4

Other (SPECIFY):  
 \_\_\_\_\_ 5

32. In which types of cases are counsel appointed when a defendant cannot afford to hire a private attorney in the geographic jurisdiction served by this program? (CIRCLE ALL THAT APPLY.)

Felony 1 16/

Misdemeanor 2 17/

Capital or life imprisonment 3 18/

Juvenile (criminal) 4 19/

Juvenile (status offense) 5 20/

Family matters (support payments, etc.) 1 21/

Appeals 2 22/

Mental commitment 3 23/

Parole revocation 4 24/

Postconviction relief 5 25/

Other (SPECIFY):  
 \_\_\_\_\_ 6 26/

33. In the geographic jurisdiction served by this program, who is responsible for making the final determination of whether a defendant is indigent? (CIRCLE ONE)

Public defender makes the determination 1 27/

Any defendant requesting free representation is given it 2

A judge makes determination of indigency from the bench 3

Court personnel make determination 4

Independent screeners make determination 5

Other (SPECIFY):  
 \_\_\_\_\_ 6

34. Are there formal (written) criteria used in the indigency determination process?

Yes 1 28/  
 No 2

35. Please indicate the percentage of each of the following types of cases in the entire county in 1982 that involved indigent defendants. (CIRCLE ONE RESPONSE FOR EACH TYPE OF CASE.)

Percentage of cases in county involving indigent defendants	Type of cases					
	Felony	Misdemeanor	Juvenile	commitment	Appeal	
0-10%	01	01	01	01	01	01
11-30%	02	02	02	02	02	02
31-40%	03	03	03	03	03	03
41-50%	04	04	04	04	04	04
51-60%	05	05	05	05	05	05
61-70%	06	06	06	06	06	06
71-90%	07	07	07	07	07	07
91-100%	08	08	08	08	08	08
	29-30/	32-33/	35-36/	38-39/	41-42/	

CIRCLE WHETHER YOUR ANSWER IS

	Estimated	Documented by existing data				
	1	2	1	2	1	2
	31/	34/	37/	40/	43/	

36. In which of the following types of cases does this program represent indigents? (CIRCLE ALL THAT APPLY.)

Felony 1 44/

Misdemeanor 2 45/

Capital or life imprisonment 3 46/

Juvenile (criminal) 4 47/

Juvenile (status offense) 5 48/

Family matters (support payments, etc.) 1 49/

Appeals 2 50/

Mental commitment 3 51/

Parole revocation	4	52/
Postconviction relief	5	53/
Other (SPECIFY):		
_____	6	54/

37. How many of each of the following types of cases involving indigent defendants did this program receive in total in 1982? (IF NONE, ENTER "0." READ LIST.)

Type of case	Number of cases received	
Felony	_____	55-58/
Misdemeanor	_____	59-62/
Capital or life imprisonment	_____	63-66/
Juvenile (criminal)	_____	67-70/
Juvenile (status offense)	_____	71-74/
Family matters (support payments, etc.)	_____	75-78/
Appeals	_____	6-9/
Mental commitment	_____	10-13/
Parole revocation	_____	14-17/
Post conviction relief	_____	18-21/
Other (SPECIFY)	_____	22-25/
TOTAL	_____	26-30/

CIRCLE WHETHER YOUR ANSWER IS:

Estimated	1	31/
Documented by existing data	2	

38. Which of the following best describes how this program defines a case? (CIRCLE ONE)

One single charge against one or more defendants	01	32-33/
One or more charges, allegations, or proceedings that normally would be handled at a single trial or hearing	02	

One or more charges, allegations, or proceedings within a specific case category (felony, juvenile, appeal, misdemeanor, etc.), arising out of one event or a group of related contemporaneous events, brought contemporaneously against one client 03

As immediately above, but a misdemeanor that is charged along with a related felony is considered part of the felony case 04

One or more charges, allegations, or proceedings that have the same court docket number 05

One or more charges, allegations, or proceedings with the same prosecutor case number 06

Any project, activity, or record that requires creation of a new file jacket 07

39. Which of the following staff does this program employ? (CIRCLE ONE ANSWER FOR EACH.) If employed, how many are full-time and part-time?

	Yes	No	Full-time	Part-time
Investigator	1	2	34/	35-36/ 37-38/
Social worker	1	2	39/	40-41/ 42-43/
Paralegal	1	2	44/	45-46/ 47-48/
Law student	1	2	49/	50-51/ 52-53/
Administrative assistant	1	2	54/	55-56/ 57-58/
Secretary	1	2	59/	60-61/ 62-63/
Indigent screener	1	2	64/	65-66/ 67-68/
Fiscal officer	1	2	69/	70-71/ 72-73/
Training director	1	2	74/	75-76/ 77-78/
Other (SPECIFY):	1	2	6/	7-8/ 9-10/

40. Are the following services available in this program? What is the maximum allowable expense for each service that is available?

	Yes	No	Maximum allowable expense
Investigators	1	2	11/ \$ _____ .00 12-15/
Expert witnesses	1	2	16/ \$ _____ .00 17-20/
Transcripts	1	2	21/ \$ _____ .00 22-25/
Social services	1	2	26/ \$ _____ .00 27-30/

41. In felony cases involving more than one indigent defendant, are separate counsel appointed for each defendant? (CIRCLE ALL THAT APPLY.)

In every instance of codefendant 1 31/

When the initially appointed attorney requests separation of defendants 2 32/

When requested by defendants 3 33/

At the discretion of the court 4 34/

Never (SKIP to Q. 43) 5 35/

42. In 1981, in what percent of the felony cases involving more than one indigent defendant was separate counsel appointed for each co-defendant? (CIRCLE ONE)

1-5% 1 36/

6-20% 2

21-50% 3

51-75% 4

76-99% 5

100% 6

43. How soon after arrest is a case typically assigned to this program? (CIRCLE ONE)

Immediately after arrest 01 37-38/

Within 24 hours after arrest 02

Within 48 hours after arrest 03

Within 72 hours after arrest 04

Within 7 days after arrest 05

Within 21 days after arrest 06

More than 21 days after arrest 07

44. When a case is received by this program, is it: (CIRCLE ONE)

Assigned to an attorney who handles the case through trial (vertical representation) 01 39-40/

Assigned to different attorneys at various stages of the case (horizontal representation) 02

Another procedure (SPECIFY): 03

45. In this program, are legal training opportunities available to attorneys who represent indigent criminal defendants?

Yes 1 41/  
No 2

If "yes," please describe:

\_\_\_\_ 42-43/  
\_\_\_\_ 44-45/  
\_\_\_\_ 46-47/  
\_\_\_\_  
\_\_\_\_

46. Has the method of providing representation to indigent defendants in the county been revised, reformed, or reorganized within the past 3 years?

Yes 1 48/  
No 2

If "yes," please describe:

\_\_\_\_ 49-50/  
\_\_\_\_ 51-52/  
\_\_\_\_ 53-54/  
\_\_\_\_  
\_\_\_\_

47. How much money did this program expend (i.e., total operating expenditures) to provide defense services to indigents in the last fiscal year?

\$ \_\_\_\_\_ .00 55-62/

Please specify the months and year for which your answer is applicable:

From: \_\_\_\_\_ to \_\_\_\_\_  
(month) (year) 63-66/  
\_\_\_\_ (month) (year) 67-70/  
71-80/BK

48. Of this expended amount, how much came from each of the following sources? (IF NONE, ENTER "0".)

	<u>AMOUNT</u>	
Directly from		
State	\$ _____ .00	6-13/
County	\$ _____ .00	14-21/
City or town	\$ _____ .00	22-29/
Federal government	\$ _____ .00	30-37/
Costs of litigation (from trial tax)	\$ _____ .00	38-45/

Other (SPECIFY) \$ \_\_\_\_\_ .00 46-53/

TOTAL \$ \_\_\_\_\_ .00 54-61/

TOTAL SHOULD EQUAL ANSWER IN Q. 47

49. How much money did this program expend (i.e., total operating expenditures) to provide defense services to indigents in the four fiscal years prior to the last fiscal year reported in Question 47? (PLEASE ENTER MOST RECENT ON FIRST LINE BELOW AND WORK BACKWARDS.)

Please specify the months and year for which your answer is applicable:

Fiscal year prior to last fiscal year:  
\$ \_\_\_\_\_ .00 62-69/

From: \_\_\_\_\_ to \_\_\_\_\_  
(month) (year) 70-73/  
\_\_\_\_ (month) (year) 74-77/

\$ \_\_\_\_\_ .00 6-13/

From: \_\_\_\_\_ to \_\_\_\_\_  
(month) (year) 14-17/  
\_\_\_\_ (month) (year) 18-21/

\$ \_\_\_\_\_ .00 22-29/

From: \_\_\_\_\_ to \_\_\_\_\_  
(month) (year) 30-33/  
\_\_\_\_ (month) (year) 34-37/

\$ \_\_\_\_\_ .00 38-45/

From: \_\_\_\_\_ to \_\_\_\_\_  
(month) (year) 46-49/  
\_\_\_\_ (month) (year) 50-53/

50. How many felony cases involving indigent defendants in this program were disposed of by a plea of guilty prior to trial in 1981?  
\_\_\_\_\_ 54-57/

51. What percentage of these cases resulted in a defendant being sentenced to jail or prison?

\_\_\_\_\_ % 58-60/

52. How many felony cases involving indigent defendants in this program went to trial in 1981?  
\_\_\_\_\_ 61-63/

53. What percentage of these cases resulted in a defendant being sentenced to jail or prison?  
\_\_\_\_\_ % 64-66/

CIRCLE WHETHER YOUR ANSWERS TO Q. 50 - Q. 53 ARE:

Estimated 1 67/  
Documented by existing data 2

54. Are there any provisions in your court system that require an indigent defendant to pay costs or attorney fees as a result of a guilty plea or a finding of guilt at trial (recoupment)?

Yes 1 68/  
No 2

55. In what percentage of cases in 1981 was some payment made by the indigent defendant after defense services were provided?

0% 1 69/  
1-5% 2  
6-10% 3  
11-15% 4  
16-25% 5  
over 25% 6  
70-79/BK

Appendix B

**Modified instrument for telephone interviews**

**The 1982 National Survey of Criminal Defense Program Questionnaire**

Abt Associates Inc.  
55 Wheeler Street  
Cambridge, Massachusetts 02148

**Modified instrument for telephone interviews with respondents who did not complete mail firm.**

Instructions for completing this questionnaire:

1. The label at the bottom of this page contains the name of this indigent criminal defense program. It also lists the name of the study county. We have identified your program as serving this county. When a question refers to "the county" you should answer only for the county on the label. If this indigent criminal defense program does not serve some or all of the county, please contact Abt Associates Inc. at the designated telephone number given below.
2. Please answer each question in sequence by circling the appropriate number or code, and/or by printing the requested information in the space provided. In some cases you will be requested to skip certain questions based on your response. For some questions you will be asked to circle all responses that apply.
3. Based on your answer to Question 1, you will be instructed on page 48 to answer Parts A, B, and/or C of this questionnaire. Please carefully follow these instructions. All respondents should complete Part D of this questionnaire, which begins on page 50.
4. If you do not know the answer to a question, write "DK" for don't know.
5. If you have any questions or need assistance in completing the questionnaire, please contact Cheryl Vernon, Survey Director for this Bureau of Justice Statistics survey, at this toll-free number: 1-800-343-3019.

6. Please mail the completed questionnaire within 20 days in the preaddressed, prepaid envelope provided. While you are not required to respond, your cooperation is appreciated to make this first national indigent criminal defense survey comprehensive, adequate, and timely. Your individual responses will be known only to the research team and will remain confidential.

ADMINISTERED BY TELEPHONE TO  
"1st Round" 1-4/

PROGRAM  
NONRESPONDENTS 5/1  
(See attached Call Record)

1. What type of indigent criminal defense program is this? (CIRCLE ALL THAT APPLY.)

A public defender program (under this system, a salaried staff of full-time or part-time attorneys render defense services through a public or private nonprofit organization.) 1 6/  
(COMPLETE PART A)

An assigned counsel program (this system is characterized by the appointment from a list of private bar members who accept cases on a judge-by-judge or court-by-court basis.) 2 7/  
(COMPLETE PART B)

A coordinated assigned counsel program (this system is similar to the assigned counsel system except that it has an administered component and a set of rules and guidelines governing the appointment and processing of cases handled by the private bar.) 3 8/  
(COMPLETE PART B)

A program that uses contracts with individual attorney(s), bar association(s), or private law firm(s) to provide representation in required cases in the jurisdiction. 4 9/  
(COMPLETE PART C)

A law school clinical program (under this system, law school students and faculty from a law clinic provide indigent defense services.) 5 10/

2. If any indigent criminal defense programs other than this program serve the county, please list them by name and address below. (If yours is a public defender program, please also include those programs where you have declared a conflict or are otherwise unavailable.)

CIRCLE TYPE OF PROGRAM  
Primary Conflict Unavailability  
1.

Primary Conflict Unavailability  
2.

Primary Conflict Unavailability  
3.

INSTRUCTIONS

IF YOU CIRCLED "1" (PUBLIC DEFENDER PROGRAM) IN QUESTION 1, COMPLETE PART A.

IF YOU CIRCLED "2" (ASSIGNED COUNSEL PROGRAM) OR "3" (COORDINATED ASSIGNED COUNSEL PROGRAM) IN QUESTION 1, COMPLETE PART B.

IF YOU CIRCLED "4" (PROGRAMS THAT USE CONTRACTS) IN QUESTION 1, COMPLETE PART C.

IF YOU CIRCLED "5" (LAW SCHOOL CLINICAL PROGRAM) IN QUESTION 1, SKIP TO PART D.

IF YOU CIRCLED MORE THAN ONE RESPONSE IN QUESTION 1 (E.G., "1" and "2"), COMPLETE EACH INDICATED PART.

ALL RESPONDENTS SHOULD COMPLETE PART D

**PART A: PUBLIC DEFENDER PROGRAMS**

ANSWER PART A IF YOU CIRCLED "1" IN QUESTION 1

3. How many full-time and part-time public defender lawyers were employed by this program in 1981? How many are employed currently? (IF NONE, ENTER "0".)

Full-time:  
 1981 \_\_\_\_\_ Currently \_\_\_\_\_  
 11-14 15-18/

Part-time:  
 1981 \_\_\_\_\_ Currently \_\_\_\_\_  
 19-22 23-26/

4. Is this public defender program (CIRCLE ONE—PLEASE BASE YOUR RESPONSE ON THE ORGANIZATIONAL STRUCTURE, NOT THE FUNDING SOURCE.):

- Part of the judicial branch 01 28-29/
- Part of the State executive branch 02
- An independent agency of the State government 03
- Part of county government 04
- An independent non-profit organization 05
- Other (SPECIFY): \_\_\_\_\_ 06

**PART B: ASSIGNED COUNSEL PROGRAMS**

ANSWER PART B IF YOU CIRCLED "2" OR "3" IN QUESTION 1.

5. How many lawyers received appointments to represent indigent defendants as part of this program in 1981?  
 \_\_\_\_\_ 58-60/ BK

6. Of the lawyers who received appointments to represent indigent defendants as part of this program in 1981, what was the minimum, the maximum, and the average number of cases per lawyer?

Minimum \_\_\_\_\_ 61-63/  
 Maximum \_\_\_\_\_ 64-66/  
 Average \_\_\_\_\_ 67-69/

7. In 1981, were lawyers in this program required to represent indigent defendants without compensation? (CIRCLE ALL THAT APPLY. READ LIST.)

- In every case involving an indigent defendant (SKIP TO Q. 23) 1 19/
- In more than one-half the cases 2 20/
- In about one-half the cases 3 21/
- In less than one-half the cases 4 22/
- When the public funds appropriated for representation of indigents ran out 5 23/
- In no cases 6 24/

8. When assigned to represent indigent defendants in felony cases, how are attorneys paid? (CIRCLE ONE. READ LIST IF NECESSARY.)

- A separate out-of-court and in-court hourly fee 1 25/
- A fee based on type of appearance (SKIP TO Q. 20) 2
- A flat fee for appearance (SKIP TO Q. 20) 3
- A flat fee for the case 4
- Other type of fee (SPECIFY): \_\_\_\_\_ 5

9. What are the out-of-court and in-court hourly fees, flat fee, or other fee paid to attorneys in felony cases?

- Out-of-court fee \$ \_\_\_\_\_ .00 per hour 26-27/
- In-court fee \$ \_\_\_\_\_ .00 per hour 28-29/
- Flat fee \$ \_\_\_\_\_ .00 30-31/
- Other fee \$ \_\_\_\_\_ .00 32-33/

10. What is the maximum total fee for a felony case allowed an attorney?

- \$ \_\_\_\_\_ .00 34-37/
- No Maximum 1 38/

11. When assigned to represent indigent defendants in misdemeanor cases, how are attorneys paid? (CIRCLE ONE. READ LIST IF NECESSARY.)

- Misdemeanor cases not represented (SKIP TO Q. 23) 0 39/
- A separate out-of-court and in-court hourly fee 1
- A fee based on type of appearance (SKIP TO Q. 23) 2
- A flat fee for appearance (SKIP TO Q. 23) 3
- A flat fee for the case 4
- Other type of fee (SPECIFY): \_\_\_\_\_ 5

12. What are the out-of-court and in-court hourly fees, flat fee, or other fee paid to attorneys in misdemeanor cases?

- Out-of-court fee \$ \_\_\_\_\_ .00 per hour 40-41/
- In-court fee \$ \_\_\_\_\_ .00 per hour 42-43/
- Flat fee \$ \_\_\_\_\_ .00 44-45/
- Other fee \$ \_\_\_\_\_ .00 46-47/

13. What is the maximum total fee for a misdemeanor case allowed an attorney?

- \$ \_\_\_\_\_ .00 48-51/
- No Maximum 1 52/

14. Does this program have a person other than a judge or clerk responsible for administering the program?

- Yes 1 53/
- No 2

**PART C: CONTRACT ATTORNEY PROGRAMS**

ANSWER PART C IF YOU CIRCLED "4" IN QUESTION 1.

15. To how many of the following groups were contracts awarded in 1981 by this program to provide representation to indigent criminal defendants? (IF NONE, ENTER "0". READ LIST.)

Individual sole practitioners \_\_\_\_\_ 54-55/  
 \_\_\_\_\_  
 A law firm or a group of private attorneys joined solely to provide indigent criminal representation under the contract \_\_\_\_\_ 56-57/  
 \_\_\_\_\_  
 Bar association \_\_\_\_\_ 58-59/  
 \_\_\_\_\_  
 Nonprofit organization \_\_\_\_\_ 60-61/  
 \_\_\_\_\_  
 Other (SPECIFY): \_\_\_\_\_ 62-63/  
 \_\_\_\_\_ 64/

16. What governmental unit, agency, or individual is primarily responsible for awarding contracts to provide representation to indigent criminal defendants? (CIRCLE ONE.)

Judge \_\_\_\_\_ 01 65-66/  
 County \_\_\_\_\_ 02  
 City or town \_\_\_\_\_ 03  
 Public defender \_\_\_\_\_ 04  
 Bar association \_\_\_\_\_ 05  
 State \_\_\_\_\_ 06  
 Other (SPECIFY): \_\_\_\_\_ 07

17. Are bids solicited before a contract is awarded (i.e., are contracts competitively bid)?

Yes \_\_\_\_\_ 1 67/  
 No \_\_\_\_\_ 2

18. What types of contracts are awarded? (CIRCLE ALL THAT APPLY.)

Fixed price (i.e., representation is provided in a specified number and type of cases for a fixed amount) \_\_\_\_\_ 1 68/  
 \_\_\_\_\_  
 Cost plus fixed fee (i.e., representation is provided at an estimated cost per case only until the total contract price is reached) \_\_\_\_\_ 2 69/

Block Grant (i.e., representation is required for all cases in the jurisdiction regardless of the volume) \_\_\_\_\_ 3 70/

Other type (SPECIFY):

\_\_\_\_\_ 4 71/  
 \_\_\_\_\_ 72/  
 \_\_\_\_\_ 73/

19. Are contracts monitored by an office or individual independent from the contracting firm or lawyer?

Yes \_\_\_\_\_ 1 74/  
 No (SKIP TO Q. 30) \_\_\_\_\_ 2

CONTRACT ADMINISTRATORS SHOULD ANSWER QUESTION 30 AND CASELOAD QUESTIONS IN PART D FOR THE ENTIRE CONTRACT PROGRAM IN THE COUNTY IDENTIFIED ON THE COVER PAGE. CONTRACT RECIPIENTS SHOULD ANSWER QUESTION 30 AND CASELOAD QUESTIONS IN PART D ONLY FOR THEIR ORGANIZATION.

20. Of attorneys who received indigent defendant cases under contract in 1981, what was the minimum, the maximum, and the average number of cases per attorney?

Minimum \_\_\_\_\_ 6-8/  
 Maximum \_\_\_\_\_ 9-11/  
 Average \_\_\_\_\_ 12-14/

PART D: GENERAL PROGRAM CHARACTERISTICS

ALL RESPONDENTS PLEASE COMPLETE PART D.

21. What is the geographic jurisdiction served by this program? (CIRCLE ONE. READ LIST IF NECESSARY.)

Part of the county (e.g., a city or town) \_\_\_\_\_ 1 15/  
 \_\_\_\_\_  
 The entire county \_\_\_\_\_ 2  
 \_\_\_\_\_  
 Multicounty or judicial district that includes part of the county \_\_\_\_\_ 3  
 \_\_\_\_\_  
 Entire State \_\_\_\_\_ 4  
 Other (SPECIFY): \_\_\_\_\_ 5  
 \_\_\_\_\_

22. In which types of cases are counsel appointed when a defendant cannot afford to hire a private attorney in the geographic jurisdiction served by this program? (CIRCLE ALL THAT APPLY.)

Felony \_\_\_\_\_ 1 16/  
 \_\_\_\_\_  
 Misdemeanor \_\_\_\_\_ 2 17/  
 \_\_\_\_\_  
 Capital or life imprisonment \_\_\_\_\_ 3 18/  
 Juvenile (criminal) \_\_\_\_\_ 4 19/  
 Juvenile (status offense) \_\_\_\_\_ 5 20/  
 \_\_\_\_\_  
 Family matters (support payments, etc.) \_\_\_\_\_ 1 21/  
 Appeals \_\_\_\_\_ 2 22/  
 Mental commitment \_\_\_\_\_ 3 23/  
 Parole revocation \_\_\_\_\_ 4 24/  
 Postconviction relief \_\_\_\_\_ 5 25/  
 Other (SPECIFY): \_\_\_\_\_ 6 26/

23. In the geographic jurisdiction served by this program, who is responsible for making the final determination of whether a defendant is indigent? (CIRCLE ONE)

Public defender makes the determination \_\_\_\_\_ 1 27/  
 \_\_\_\_\_  
 Any defendant requesting free representation is given it \_\_\_\_\_ 2  
 \_\_\_\_\_  
 A judge makes determination of indigency from the bench \_\_\_\_\_ 3  
 \_\_\_\_\_  
 Court personnel make determination \_\_\_\_\_ 4  
 \_\_\_\_\_  
 Independent screeners make determination \_\_\_\_\_ 5  
 Other (SPECIFY): \_\_\_\_\_ 6  
 \_\_\_\_\_



24. Please indicate the percentage of each of the following types of cases in the entire county in 1981 that involved indigent defendants. (CIRCLE ONE RESPONSE FOR EACH TYPE OF CASE. FOR EACH TYPE OF CASE, DETERMINE PERCENTAGE INVOLVING INDIGENT DEFENDANTS.)

Percentage of cases in county involving indigent defendants	Type of Cases				
	Felony	Misdemeanor	Juvenile	Mental commitment	Appeal
0-10%	01	01	01	01	01
11-30%	02	02	02	02	02
31-40%	03	03	03	03	03
41-50%	04	04	04	04	04
51-60%	05	05	05	05	05
61-70%	06	06	06	06	06
71-90%	07	07	07	07	07
91-100%	08	08	08	08	08

29-30/ 32-33/ 35-36/ 38-39/ 41-42/

CIRCLE WHETHER YOUR ANSWER IS

	1	1	1	1	1
Estimated	1	1	1	1	1
Documented by existing data	2	2	2	2	2
	31/	34/	37/	40/	43/

25. In which of the following types of cases does this program represent indigents? (CIRCLE ALL THAT APPLY. READ LIST.)

Felony	1	44/
Misdemeanor	2	45/
Capital or life imprisonment	3	46/
Juvenile (criminal)	4	47/
Juvenile (status offense)	5	48/
Family matters (support payments, etc.)	1	49/
Appeals	2	50/
Mental commitment	3	51/
Parole revocation	4	52/
Postconviction relief	5	53/
Other (SPECIFY):	6	54/

26. How many of each of the following types of cases involving indigent defendants did this program receive in total in 1987? (IF NONE, ENTER "0". READ LIST.)

Type of case	Number of cases received
Felony	55-58/
Misdemeanor	59-62/
Capital or life imprisonment	63-66/
Juvenile (criminal)	67-70/
Juvenile (status offense)	71-74/
Family matters (support payments, etc.)	75-78/
Appeals	6-9/
Mental commitment	10-13/
Parole revocation	14-17/
Postconviction relief	18-21/
Other (SPECIFY):	22-25/
TOTAL	26-30/

CIRCLE WHETHER YOUR ANSWER IS:

Estimated	1	31/
Documented by existing data	2	

27. Which of the following best describes how this program defines a case? (CIRCLE ONE. READ LIST)

- One single charge against one or more defendants 01 32-33/
- One or more charges, allegations, or proceedings that normally would be handled at a single trial or hearing 02
- One or more charges, allegations, or proceedings within a specific case category (felony, juvenile,

appeal, misdemeanor, etc.), arising out of one event or a group of related contemporaneous events, brought contemporaneously against one client 03

As immediately above, but a misdemeanor that is charged along with a related felony is considered part of the felony case 04

One or more charges, allegations, or proceedings that have the same court docket number 05

One or more charges, allegations, or proceedings with the same prosecutor case number 06

Any project, activity, or record that requires creation of a new file jacket 07

28. Which of the following staff does this program employ? (CIRCLE ONE ANSWER FOR EACH.) If employed, how many are full-time or part-time?

	Yes	No	Full-time	Part-time
Investigator	1	2	34/ 35-36/	37-38/
Social worker	1	2	39/ 40-41/	42-43/
Secretary	1	2	59/ 60-61/	62-63/

29. Has the method of providing representation to indigent defendants in the county been revised, reformed, or reorganized within the past 3 years?

Yes	1	48/
No	2	

30. How much money did the county expend (i.e., total operating expenditures) for the provision of defense services to indigents in the last fiscal year?

\$ \_\_\_\_\_ .00 55-62/

Please specify the months and year for which your answer is applicable:

From: \_\_\_\_\_ to \_\_\_\_\_  
 (month) (year) 63-66/  
 (month) (year) 67-70/  
 71-80 BK

31. Of this expended amount, how much came from each of the following sources? (IF NONE, ENTER "0".)

	<u>AMOUNT</u>	
Directly from		
State	\$ _____ .00	6-13/
County	\$ _____ .00	14-21/
City or town	\$ _____ .00	22-29/
Federal government	\$ _____ .00	30-37/
Costs of litigation (from trial tax)	\$ _____ .00	38-45/
Other (SPECIFY)	\$ _____ .00	46-53/
TOTAL	\$ _____ .00	54-61/
<u>TOTAL SHOULD EQUAL ANSWER IN Q. 47</u>		

32. How much money did this program expend (i.e., total operating expenditures) to provide defense services to indigents in the four fiscal years prior to the last fiscal year reported in Q. 47. (PLEASE ENTER MOST RECENT ON FIRST LINE BELOW AND WORK BACKWARDS.)

Please specify the months and year for which your answer is applicable.

Fiscal year prior to last fiscal year.

\$ _____ .00	62-69/
From:	
_____ (month) _____ (year)	to 70-73/
_____ (month) _____ (year)	74-77/
\$ _____ .00	6-13/
From:	
_____ (month) _____ (year)	to 14-17/
_____ (month) _____ (year)	18-21/
\$ _____ .00	22-29/
From:	
_____ (month) _____ (year)	to 30-33/
_____ (month) _____ (year)	34-37/
\$ _____ .00	38-45/
From:	
_____ (month) _____ (year)	to 46-49/
_____ (month) _____ (year)	50-53/

## Appendix C

### State profiles

#### Alabama

##### Counties selected for survey:

- |               |                |
|---------------|----------------|
| 1. Jefferson  | 9. Marshall    |
| 2. Mobile     | 10. Madison    |
| 3. Lauderdale | 11. Etowah     |
| 4. Sumter     | 12. Talladega  |
| 5. Tuscaloosa | 13. Montgomery |
| 6. Limestone  | 14. Pike       |
| 7. Dallas     | 15. Lee        |
| 8. Chilton    | 16. Houston    |

##### Court of last resort:

##### Alabama Supreme Court

Has original jurisdiction to issue necessary writs and to answer questions of State law as certified by a Federal court.

Has statewide appellate jurisdiction on writ of certiorari from intermediate courts of appeal.

##### Intermediate appellate court:

##### Court of Criminal Appeals

May issue all necessary writs.

Has exclusive appellate jurisdiction over all felonies, misdemeanors (including ordinance violations and habeas corpus).

##### Court of Civil Appeals

May issue all necessary writs.

Has exclusive appellate jurisdiction in all civil cases where amount involved does not exceed \$10,000; all appeals from administrative agencies except Public Service Commission, domestic relations cases, and all extraordinary writs arising in said cases.

##### Courts of general trial jurisdiction:

##### Circuit Court

Sits in each county.

State divided into 39 judicial districts, each composed of from 1 to 5 counties.

Has jurisdiction in all felony prosecutions and in misdemeanors and ordinance violations that are included within the felony charge.

Hears de novo appeals from District Court in criminal and juvenile cases and also in cases from Municipal Court and Probate Court.

##### Family Court (7 courts)

Established as a division of Circuit Court by legislation of local application.

Has jurisdiction in juvenile and domestic relations cases.

##### Courts of limited or special jurisdiction:

District Court (Each county constitutes a district and has a District Court.)

Has jurisdiction over misdemeanors and ordinance violations (except where a municipal court exists).

May not hear felonies and misdemeanors that originated by Grand Jury indictment.

May hold preliminary hearings in felony cases and accept guilty pleas in cases not punishable by death.

##### Probate Court

Sits in each county.

Has original jurisdiction in probate of estates, guardianship, and other cases.

##### Municipal courts:

##### Municipal Court

Established in each municipality, except those that by ordinance chose not to have such courts.

Has jurisdiction in all municipal ordinance violations.

Has concurrent jurisdiction with District Court for violations of State law committed within police jurisdiction and which may be prosecuted as breaches of municipal ordinance.

##### Magistrates:

##### Referees

District Court may appoint full- or

part-time referees who are licensed to practice law.

Juvenile hearings may be conducted by referee, with right for rehearing before a judge.

##### Magistrates

Magistrates Agency created September 1, 1976, which includes all clerks of trial courts and others.

Divided into District Court and Municipal Courts Divisions.

Powers limited to—

Issuing arrest warrants.

Issuing arrest warrants (District Court Division only).

Granting bail in minor misdemeanor cases and under direction of court.

Receiving guilty pleas in minor misdemeanor cases where schedule of fines has been set.

##### Defense services to indigents

##### Statutory scheme

An indigent defense system for each circuit and district court of a county is determined as follows:

- in circuits with two or less judges, the presiding judge selects the system to be used
- in circuits with three or more judges, a majority of judges selects the system to be used
- in municipal courts, the governing body of the municipality selects the system to be used.

In each circuit an indigent defense commission is established. The commission, among other duties, advises the presiding circuit judge on the system to be used.

Statute: Ala. Code Sec. 15-12-2 et seq.

##### Actual system

Six counties in Alabama provide public defender services. The other 61 operate on an assigned counsel basis.

## Appendix C

### Costs

Indigent defense programs in each county are reimbursed for their services from the "Fair Trial Tax Fund" in the State treasury. Revenues for the "fund" are derived primarily from a \$7 fee (increased from \$2 in May 1981) imposed in criminal cases only upon conviction. In addition, a \$10 fee is imposed in each civil case in circuit court in which a jury is requested. The State legislature also has annually provided an appropriation of \$100,000 to the Fair Trial Tax Fund.

#### Total costs by source:

State	\$4,238,266
County	—
Other	—
Total	\$4,238,266

### Assigned counsel rates

#### Rates set by statute.

Hourly rate:	
Out-of-court	\$20
In-court	\$40

#### Maximums:

No distinction made in capital cases.	
Trial	\$1,000
Postconviction remedies	\$600
Other	—

#### Appeals (hourly rates):

Out-of-court	\$40
In-court	\$40
Maximum	\$1,000

#### Flat rate or per diem:

Felony	None
Misdemeanor	None
Appeal	None
Other	None

#### Expense limits:

Investigators	
Expert witnesses	
Transcripts	
Social services	
Travel	
Total	\$500

(Statute provides that counsel shall be reimbursed for any expense reasonably incurred allowing for reasonable expenses up to one-half of the allowable attorney fee.)

### Alaska

The state of Alaska has no counties. Survey will examine all four judicial districts.

#### Court of last resort:

##### Alaska Supreme Court

May issue injunctions, writs and all other processes necessary for complete exercise of its jurisdiction.

Has final appellate jurisdiction in all actions and proceedings. Appeal of right, however, lies only in those cases where there is no appeal of right to the Court of Appeals. Supreme Court may exercise its discretion to review a final decision of the Court of Appeals upon application of a party.

#### Intermediate appellate court:

##### Intermediate Court of Appeals

May issue injunctions, writs, etc., for complete exercise of jurisdiction.

Has appellate jurisdiction in actions from Superior Court:

- criminal prosecutors
- postconviction relief
- juvenile cases
- extradition and habeas corpus proceedings
- bail review
- sentence review.

Review of District Court actions:

- same as for Superior Court
- appeal of right to Court of Appeals, except:
  - if waived and appeal taken to Superior Court.
  - State has no right to test sufficiency of indictment or information and review of sentences alleged to be lenient.

Discretionary Review:

- final decision of Superior Court from review of District Court in categories listed above
- review of sentence imposed by District Court and appealed to Superior Court.

### Court of general trial jurisdiction:

#### Superior Court

Sits in all four judicial districts.

A unified court.

Has original jurisdiction in all criminal and civil matters, including but not limited to probate and guardianship of minors and incompetents.

Exercises jurisdiction in matters involving juveniles.

Has appellate jurisdiction over matters appealed from subordinate courts and administrative agencies. Appeals are on the record unless Superior Court grants trial de novo.

#### Courts of limited or special jurisdiction:

##### District Court

In each judicial District—  
Civil jurisdiction limited to actions not exceeding \$10,000 and small claims under \$2,000.

Misdemeanors and ordinance violations.

##### Magistrate Court

Similar criminal jurisdiction to District Court.

Civil jurisdiction in small claims under \$2,000.

##### Municipal courts:

None.

##### Magistrates:

Appointed by judges of Superior Court or Administrative Director of Courts.

Masters have no authority to issue orders but can make findings and recommendations to Superior Court judge for his or her disposition.

**Defense services to indigents**

Statutory scheme

By statute, Alaska has created a statewide public defender program which handles all cases involving indigent defendants, including misdemeanors, felonies, juvenile cases, mental health cases, and appeals.

The agency is created in the Office of the Governor. In addition to direct staff representation, the public defender may contract with one or more private attorneys to provide indigent representation.

Statute: Alaska Stat. Sec. 18.85.010 et. seq.

Actual system

The Alaska public defender program is organized within each of the four judicial districts and provides services through regional offices.

Costs

All funds for indigent defense services in Alaska are provided through State funds.

Total costs by source:

State	\$3,525,100
County	—
Other	—
Total	\$3,525,100

Assigned counsel rates

Rates set by court rule statewide.

By Alaska Stat. Sec. 18.85.130(a) attorneys "shall be awarded reasonable compensation according to a schedule of fees promulgated by the supreme court...." This schedule of fees is included in Rule 39 of Alaska Criminal Rules.

Hourly rate:

Out-of-court	\$40
In-court	\$40

Maximums:

None

Appeals:

Out-of-court	\$40
In-court	\$40
Maximum	—

Flat rate or per diem:

Felony	None
Misdemeanor	None
Appeal	None
Other	None

Expense limits:

Investigators	
Expert witnesses	
Transcripts	
Social services	
Travel	
Total	None

**Arizona**

All 14 counties selected for survey.

Court of last resort:

Arizona Supreme Court

Has appellate jurisdiction in all actions and proceedings.

Direct appeal is permitted in cases where life imprisonment or the death penalty is imposed.

Intermediate appellate court:

Court of Appeals

Two divisions: Phoenix and Tucson.

Has jurisdiction in all actions and proceedings permitted by law to be appealed from Superior Court, except cases where death or life imprisonment is imposed.

Court of general trial jurisdiction:

Superior Court

Has original jurisdiction in felony, misdemeanor, juvenile, and probate matters.

Has appellate jurisdiction over Justice of Peace Courts.

Courts of limited or special jurisdiction:

Justice of Peace Courts

Has jurisdiction in following criminal matters:

- o preliminary hearings in felony cases
- o misdemeanors and other offenses punishable by fine not exceeding \$1,000 or 6 months in jail (concurrent jurisdiction with Superior Court).

Municipal courts:

City Magistrate Court

Has jurisdiction over all cases arising under municipal ordinances and concurrent jurisdiction with Justice of Peace Courts over State law violations committed within city limits.

Appendix C

Magistrates:

Court Commissioner

Appointed by Superior Court judge.

Generally hears default matters, initial appearances in criminal cases, and certain "show cause" matters.

Referee

Appointed by Superior Court judge assigned to juvenile cases.

Similar powers to that of Court Commissioner in juvenile cases.

Traffic Hearing Officer

Appointed by Superior Court in juvenile matters to hear cases for children under 18 in nonfelonious motor vehicle violations.

Defense services to indigents

Statutory scheme

The Board of County Supervisors may establish a public defender office in any county with a population exceeding 100,000. Otherwise the supervisors provide funds for either an assigned counsel program or a contract with the private bar.

Statutes: Arizona Rev. Stat. Ann. Sec. 11-581 et. seq.

Actual system

There are two public defender programs in Arizona, Phoenix (Maricopa County) and Tucson (Pima County).

Five counties provide indigent defense services through assigned counsel programs and seven through contracts with the private bar.

Cost

Indigent defense services are paid for entirely by each county.

Total costs by source:

State	—
County	\$8,613,624
Other	\$7,615
Total	\$8,621,239

Assigned counsel rates

Rates set by custom in jurisdiction and judge discretion.

By Arizona Rules of Court, after review of the claim, "the court shall award the attorney a sum representing reasonable compensation for the services provided."

By Ariz. Rev. Stat. Ann. Sec. 13-4013(a), appointed counsel shall receive compensation in such amount as the court in its discretion deems reasonable." Fee schedules, therefore, vary throughout the State.

Hourly rate:

Out-of-court	\$40
	(\$45-
	felony)

These figures represent the most commonly reported rates for counties surveyed.

Maximums:

Capital case	—
Felony	\$1,000-
	\$2,500
Misdemeanor	\$1,000-
	\$2,500
Other	—

These figures represent the range of responses in surveyed counties.

Appeals (hourly rate):

None.

Flat rate or per diem:

Felony	None
Misdemeanor	None
Appeal	None
Other	None

Expense limits:

By statute in a capital case, the court shall appoint such investigators and expert witnesses as it deems reasonable at trial and any subsequent proceedings.

Expert witnesses (by statute) appointed by the court in a sanity hearing shall be allowed such fees as the court in its discretion deems reasonable.

Apart from these statutes, the expense limits allowed are determined by the individual judges.

Investigators	\$15/hr
	max \$250
Expert witnesses	
Transcripts	
Social services	
Travel	.15/mile
Total	

## Arkansas

### Counties selected for survey:

- |               |                 |
|---------------|-----------------|
| 1. Pulaski    | 10. Marion      |
| 2. Benton     | 11. Lonoke      |
| 3. Washington | 12. Union       |
| 4. Sebastian  | 13. Arkansas    |
| 5. Miller     | 14. Sharp       |
| 6. Johnson    | 15. Poinsett    |
| 7. Conway     | 16. Phillips    |
| 8. Clark      | 17. Mississippi |
| 9. Saline     |                 |

### Court of last resort:

#### Arkansas Supreme Court

Has general superintending control over all trial courts of law and equity.

Has power to issue all writs and orders in aid of its appellate and supervisory jurisdiction.

Appellate review of appeals from Court of Appeals, Circuit Court, and Chancery Court are in Supreme Court's discretion.

#### Intermediate appellate court:

#### Court of Appeals

Has authority to issue all orders and writs necessary to support its jurisdiction.

Has such appellate jurisdiction as granted by Supreme Court Rule.

#### Courts of general trial jurisdiction:

#### Circuit Court

State divided into 22 judicial districts from 1 to 7 counties each. There is a circuit court in each county.

- has original jurisdiction in all civil and criminal cases
- has appellate jurisdiction over all courts of limited jurisdiction.

#### Chancery Court

Same organization as Circuit Courts.

Has exclusive jurisdiction in, among other cases, juvenile matters, including delinquency.

#### Probate Court

Linked to Chancery Court—same judges.

Hears all probate matters, including guardianships, adoptions, and mental commitment cases.

#### Courts of limited or special jurisdiction:

#### County Court

One County Court with one judge in each of the State's 75 counties.

Has exclusive jurisdiction in all matters relating to county, including paupers, etc.

In absence of Circuit judge, may issue certain writs.

#### Court of Common Pleas

Established by certain counties, including Lonoke and Mississippi Counties.

Has limited civil jurisdiction.

#### Justice of Peace Courts

Conducts preliminary hearings in felony cases.

Jurisdiction over misdemeanor cases.

#### City Courts

Mayors of towns and second-class cities (populations 500 to 2,000) are vested with judicial powers of Justice of Peace.

Has same jurisdiction as Police and Justice of Peace Courts.

#### Municipal courts:

#### Municipal Court

Any city of more than 2,400 can establish a municipal court by ordinance.

Has exclusive jurisdiction over ordinance violations where there is no city court, and has concurrent jurisdiction with Justice of Peace Courts within city limits.

#### Police Court

May be established in cities of 500 to 2,000.

Same jurisdiction as Justice of Peace Court.

Also has jurisdiction in ordinance violations.

#### Magistrates:

#### Master in Chancery

Appointed by judge to subpoena witnesses, rule on admissibility of evidence, and generally conduct hearings on contested issues of fact and report findings to court.

#### Standing Master

Chancery Court master in divorce cases.

#### Referee in Probate

#### Referee (County Court)

Hears juvenile cases. Referee has same powers as County Court judge, and findings are binding on County Court.

Appeals are de novo to circuit court. Referees have been appointed in 43 of the State's 75 counties.

#### Referee (Municipal Court)

Small claims actions.

#### Defense services to indigents

#### Statutory scheme

Under the State Public Defender Act, when the majority of the legislators of any judicial district (there are 20 with 2 to 6 counties in each) petition the Governor to create a public defender office in their judicial district, the Governor creates a Public Defender Commission in that district composed of the county judge or judges of the district and the circuit judge or judges.

A district may apply at each regular or special session of the legislature.

## Appendix C

Each commission appoints the Public Defender for a 4-year term.

In addition, by statute in 1977 the legislature authorized the judge of any appropriate court to appoint and compensate private counsel.

Statute: Ark. Stat. Ann. Sec. 43-3304 et. seq.

### Actual system

Eighteen counties in Arkansas are served primarily by public defender programs. The remaining 57 counties are served by assigned counsel programs.

### Costs

All costs of providing indigent defense services in Arkansas are paid by the individual counties.

### Total costs by source:

State	—
County	\$1,614,030
Other	\$20,000
Total	\$1,634,030

### Assigned counsel rates

Rates set by statute, custom in jurisdiction, and judge discretion.

By statute (Ark. Stat. Ann. Sec. 43-2419) when any court in the State appoints private counsel (whether felony or misdemeanor) such court shall determine the amount of the fee and amount for reasonable investigation and make an order for the county for payment.

The statute also sets minimum and maximum limits of compensation, as reported below.

### Hourly rate:

This figure represents the most commonly reported rate for counties surveyed:

Out-of-court	\$50
In-court	\$50

### Maximums:

By statute, the amount of compensation for attorney's fee shall not be less than \$25 nor more than \$350 based on the experience of the

attorney and the time and the effort devoted to the preparation and trial, commensurate with fees paid other attorneys in the community for similar services.

### Appeals:

Informal maximum is \$350 per case. In special circumstances, larger amounts may be approved.

Flat rate or per diem:

Felony	None
Misdemeanor	None
Appeal	None
Other	None

### Expense limits:

By statute, the amount allowed for investigation shall not exceed \$100.

## California

### Counties selected for survey:

1. Los Angeles	9. Riverside
2. Orange	10. San Bernadino
3. San Diego	11. Kern
4. Santa Clara	12. Contra Costa
5. Alameda	13. Siskiyou
6. San Francisco	14. Sacramento
7. San Mateo	15. Merced
8. Santa Barbara	16. Butte

### Court of last resort:

#### California Supreme Court

Has original jurisdiction in habeas corpus, mandamus, prohibition, and certiorari.

Has direct appeal in all death penalty cases.

Any party may petition for review after Court of Appeals decision.

Supreme Court may take cases on its own motion.

### Intermediate appellate court:

#### Courts of Appeal

Has original jurisdiction in habeas corpus, mandamus, prohibition, and certiorari.

With exception of death penalty cases, all appeals are to this court from Superior Court.

Cases appealed from inferior courts to Superior Court may be transferred to Courts of Appeal.

### Court of general trial jurisdiction:

#### Superior Court

In each county there is a Superior Court of one or more judges.

Has trial jurisdiction in all felony cases.

Has original jurisdiction in habeas corpus and other extraordinary proceedings.

Handles juvenile, probate, and other cases.



Has appellate jurisdiction over Municipal and Justice Courts.

Courts of limited or special jurisdiction:

Municipal Court

Has trial jurisdiction in misdemeanor cases.

Magistrates in preliminary proceedings for felony cases, until probable cause for a bindover to Superior Court.

Justice Court

Established in judicial districts with 40,000 residents or less.

Same jurisdiction as Municipal Courts.

Municipal courts:

Municipal Court

See "Courts of limited or special jurisdiction."

Magistrates:

Referees are appointed by all courts with various duties.

Temporary judges may also be appointed.

Defense services to indigents

Statutory scheme

By statute, the Board of Supervisors of any county may establish a public defender for the county.

Two or more counties may join and form a joint public defender.

The supervisors also must determine whether the public defender should be appointed or elected.

By statute, where there is no public defender, or because of a conflict with the public defender or for other reasons, private counsel can be appointed by the appropriate court.

In addition, the court may contract with one or more responsible attorneys after consultation with the

Board of Supervisors. Such fees and expenses agreed upon cannot exceed the amount of funds allocated by the Board of Supervisors for the cost of assigned counsel in such cases.

Statute: Cal. Gov. Code Sec. 27700 et. seq.

Actual system

Forty-nine counties in California provide primary representation through a county defender program. The other nine counties are served through contracts with private attorneys or contracts with local bar associations.

Costs

The majority of funds for indigent defense services in California are provided by the counties. The State funds the State appellate defender program and provides a small sum for the local county programs.

Total costs by source:

State	\$10,778,000*
County	\$150,874,178
Other	\$5,108,916
Total	\$166,761,094

\*This figure includes \$7,003,000 in State funding for the State appellate defender program.

Assigned counsel rates

Rates set by custom in jurisdiction and judge discretion.

By Cal. Penal Code Sec. 987.2 et seq. and Sec. 1241, where there is no public defender or public defender cannot represent a defender, the court may appoint a private lawyer who shall be paid a reasonable sum for compensation and for necessary expenses, the amount of which shall be paid out of the general fund of the county.

The result is a wide discrepancy in fee schedule among the counties.

Hourly rate:

The hourly rate ranges from \$20/25 to \$45/50 in various counties throughout California.

Maximums:

The majority of counties set no maximum fee.

Appeals:

By statute, in any case in which counsel other than a public defender is appointed on appeal to the Supreme Court, counsel shall receive a reasonable sum for compensation and necessary expenses to be determined by the court and such payment shall be made by the State.

Flat rate or per diem:

Felony	None
Misdemeanor	None
Appeal	None
Other	None

Expense limits:

Investigators	None
Expert witnesses	None
Transcripts	None
Social services	None
Travel	None
Total	None

See statutory comments under "Rates set by statute."

In addition, by statute in capital cases, counsel for the defendant may request from the court funds for specific payment of investigators, experts and others for the preparation or presentation of the defense.

## Appendix C

### Colorado

#### Counties selected for survey:

- |              |              |
|--------------|--------------|
| 1. Boulder   | 9. Weld      |
| 2. Jefferson | 10. Moffat   |
| 3. Arapahoe  | 11. Mesa     |
| 4. Denver    | 12. La Plata |
| 5. Adams     | 13. Pitkan   |
| 6. El Paso   | 14. Fremont  |
| 7. Larimer   | 15. Douglas  |
| 8. Pueblo    | 16. Bent     |

#### Court of last resort:

##### Colorado Supreme Court

Has Power to issue writs and other orders.

Court may give its opinion on important questions when required by the Governor or Legislature.

Has final appellate review over every final judgment of all trial courts.

Has other appellate review as provided by law.

#### Intermediate appellate courts:

##### Courts of Appeal

Has no original jurisdiction.

Has initial jurisdiction over appeals from District Court, Superior Court, Denver Juvenile court with the following (among other) exceptions:

- cases where the constitutionality of a statute or municipal charter is in question
- writs of habeas corpus
- cases appealed from the County Court to the District Court or Superior Court
- cases appealed from the Municipal Court to the District Court or Superior Court.

#### Court of general trial jurisdiction:

##### District Court

There are 22 judicial districts of 1 to 7 counties. Each county has a District Court.

- has original jurisdiction, except in city and county of Denver, in all criminal, civil, probate and juvenile cases

• Denver District Court has original jurisdiction in civil and criminal cases only

- all but Denver District Court may review any final judgment of any county court within the District.

#### Courts of limited or special jurisdiction:

##### Denver Superior Court

Original jurisdiction in civil actions concurrent with Denver District Court.

Exclusive appellate jurisdiction, including de novo trials, over cases appealed from County Court.

##### Denver Probate Court

Exclusive jurisdiction in delinquency cases and all other actions involving children.

##### Denver Juvenile Court

Original and exclusive jurisdiction in all probate matters.

##### County Court

Except in Denver, has concurrent jurisdiction with District Court in misdemeanor actions (not including juvenile).

Handles all preliminary matters in felony cases.

##### Municipal courts:

##### Municipal Court

Established pursuant to local ordinance; does not have to be a court of record.

Tries all municipal ordinance violations.

##### Magistrates:

##### Referees:

##### District Court

Water Referee.

Domestic Relations Referee.

##### Denver Juvenile Court

Commissioner may hear any case within court's jurisdiction and report findings and recommendations to the court.

##### County Court

Small Claims Referee

##### Defense services to the indigent

##### Statutory scheme

In Colorado, a statewide public defender program has been created as an agency of the State judicial department.

The Colorado Supreme Court appoints a five-member public defender commission to administer the program.

An individual judge has the authority to appoint a member of the private bar when the public defender declares a "conflict."

Statute: Col. Rev. Stat. Sec. 21-1-101 et. seq.

##### Actual system

Colorado has a statewide public defense system with 19 field offices, an appellate office, and a central office serving 63 counties.

It has been the practice in the past, when the public defender system is funded below constitutional standards, to restrict the number of cases it will accept.

Private lawyers would then be appointed by the court and paid from the court-appointed counsel budget, at a cost which is 95.1% higher than public defender costs per case.

Recently, however, in an attempt to reduce such costly utilization of assigned counsel in overload situations, the State Public Defender contracted with the State Judicial Department for additional money and hired extra attorneys as public defender staff.

Costs

The costs of providing defense services to indigents in Colorado is provided exclusively by the State.

Total costs by source:	
State	\$8,468,313
County	—
Other	—
Total	\$8,468,313

Assigned counsel rates

Rates set by court rule statewide.

Colo. Rev. Stat. Sec. 21-1-105 stipulates that "the court shall fix reasonable compensation for an attorney appointed at any stage of the proceeding or on appeal."

Such fees were established by Supreme Court Order CJD No. 6.

Hourly rate:	
Out-of court	\$25
In-court	\$35*

\*Includes preliminary hearings.

Maximums:	
Capital case	—
Trial	
No trial	\$3,000
(class 1 felony)	\$1,500
Felony	
Trial	
No trial	\$1,500
(class 2)	\$750
Trial	
No trial	\$1,000
(classes 3,4,5)	\$500
Trial	
No trial	\$1,000
(Juvenile)	\$500
Trial	
No trial	\$200
(Guardian; Ad Litem)	\$100
Misdemeanor	
Trial	
No trial	\$200
	\$100

Appeals (hourly rates):

Out-of-court	\$25
In-court	\$35
Maximum	—
Flat rate or per diem:	
Felony	None
Misdemeanor	None
Appeal	None
Other	None

Expense limits:

There are no maximum expenses except as ordered by the individual judge, usually at the time of the counsel's appointment.

Connecticut

All eight counties contacted for survey.

Court of last resort:

Connecticut Supreme Court

Has power to issue all extraordinary writs.

Appeals from final judgments of Superior Court are taken to Supreme Court, except:

- small claims
- decisions of administrative agencies
- those matters in exclusive jurisdiction of Appellate Sessions of Superior Court.

No right for further review of Appellate Sessions in Superior Court, except by certification by the Appellate Session or by two judges of Supreme Court.

Intermediate appellate court:

Appellate sessions of the Superior Court

Has no original jurisdiction.

Jurisdiction limited to:

- criminal nonsupport cases
- criminal actions when maximum penalty allowed is a \$5,000 fine and/or 5 years imprisonment, and fine imposed is no more than \$1,000 and/or sentencing of 1 year.

Ordinance violations.

Any paternity proceedings.

Any nonfelony traffic proceedings.

Court of general trial jurisdiction:

Superior Court

Sole court of original jurisdiction for all causes of action, except for original jurisdiction of Probate Court.

Family Division hears domestic relations and juvenile matters.

Hears appeals from Probate Court and administrative agencies.

## Appendix C

### Courts of limited or special jurisdiction:

#### Probate Court

Usual testamentary proceedings.

Termination of parental rights, adoptions, guardianships, mental commitment proceedings, etc.

#### Municipal courts:

None.

#### Magistrates:

#### Superior Court Commissioner

All members of State bar in good standing are designated as Commissioners of Superior Court. Names from list are chosen to hear small claims matters.

May sign writs and subpoenas, and among other powers, can take depositions and issue subpoenas.

#### Defensive services to indigents

#### Statutory scheme

Connecticut General Statutes, Chapter 887, Sections 51-289 through 51-300 (effective 1978) provide for the following statewide organization:

- establishment of Public Defender Services Commission (7 members, 3-year terms), an autonomous body within Judicial Department for fiscal and budgetary purposes only
- appointment of Chief Public Defender and Deputy Chief Public Defender (4-year terms) to administer program
- appointment of personnel and provision of facilities, etc. to offer defense services to indigents in each judicial district
- appointment of Special Public Defenders (from a list) in habeas corpus, conflict, and some juvenile cases, to be paid from budget of Public Defender Services Commission. The public defender sets the compensation for these members of the private bar.

Statute: Conn. Gen. Stat. Ann. Sec. 51-289 et. seq.

### Actual system

Indigent defense in Connecticut is provided through a centrally administered, statewide system.

The chief Public Defender has headquarters in Hartford (with a branch office in New Haven) out of which all branch offices are administered.

Branch offices are located in each of the 12 Judicial Districts and in 19 of the 22 geographical areas.

There are, in addition, three offices providing services to juvenile indigents.

#### Costs

All costs of providing defense services to indigents in Connecticut are provided by the State.

#### Total costs by source:

State	\$4,524,870
County	—
Other	—
Total	\$4,524,870

#### Assigned counsel rates

Assigned counsel fees for the State of Connecticut are established by the Chief Public Defender pursuant to C.C.S. Sec. 51-291(L).

The fees are based on a distinction made between cases considered "on trial" and those involved in preliminary or post-trial proceedings.

Therefore, certain types of cases will be billed at different rates at different stages of the proceedings.

All cases "on trial" are billed according to the same schedule; fees for cases not on trial differ according to type and class of case.

Traditional distinctions between in-court and out-of-court fees are not generally made, except in the case of Class D felonies and misdemeanors, which can be billed only for court appearance time if not "on trial."

For any case declared "on trial," regardless of classification or penalty, the allowable fees are as follows:

- \$12.50 per hour for both in-court and out-of-court time; and
- \$75 per day maximum.

The same hourly and maximum rates apply to Class A, B, and C felonies (or crimes with a penalty of more than 10 years) when not on trial.

For Class D felonies, all misdemeanors, or crimes with a penalty of less than 10 years not on trial, attorneys can bill only for court appearance time.

The allowable fees are:

- \$12.50 per hour; and
- \$35 per day.

Again, out-of-court costs are not paid for in these classes of crimes. There are no set overall maximums for any class of crime.

In addition, there are no set limits for expenses such as investigators, expert witnesses, transcripts, social services or travel.

Such expenses must be approved by the Public Defender for the Commission prior to being incurred and are paid out of the Commission budget, per C.C.S. Sec. 51-292.

#### Fee schedule for attorneys in juvenile court

Noncourt time—preparation

- \$15.00 per hour for first 3 hours of preparation
- any time beyond 3 hours to be compensated at the rate of \$12.50 per hour.

Court time—adjudicatory, disposition, continuances, plea sessions

- continuances, plea sessions, or any other hearing requiring less than 30 minutes, up to a maximum of \$25.00
- \$50.00 for court hearing, adjudicatory or dispositive, on the merits, which requires more than 30 minutes and does not last more than 5 hours

• a hearing on the merits, lasting more than 5 hours can be compensated up to maximum of \$75.00 per day.

Detention hearings

- \$25.00 for a hearing of an hour or less
- any hearing lasting beyond an hour, up to maximum of \$50.00.

## Delaware

All three counties contacted for survey.

### Court of last resort:

#### Delaware Supreme Court

May issue all extraordinary writs.

May determine questions of law certified to it by other courts.

May render advisory opinion regarding State and Federal constitutional law upon request of Governor.

Has appellate jurisdiction in all criminal cases.

### Intermediate appellate courts:

None.

### Court of general trial jurisdiction:

#### Court of Chancery

Equity jurisdiction only.

#### Superior Court

Exclusive jurisdiction in felony cases, except those involving juveniles.

Civil cases.

Parental rights and adoption.

Appellate jurisdiction over Court of Common Pleas, administrative agencies, Alderman's Court, Municipal Court, and Justice of Peace Court. All appeals are de novo.

### Courts of limited or special jurisdiction:

#### Family Court

Exclusive jurisdiction in child abuse, abandonment, and misdemeanor crimes against children.

Exclusive jurisdiction in dependent, neglect, and delinquency cases.

## Justice of Peace Court

Limited criminal jurisdiction in minor misdemeanor cases and nonfelonious traffic cases (except in Wilmington).

Not a court of record.

### Municipal courts:

#### Municipal Court of Wilmington

Conducts preliminary hearings in felonies and drug related misdemeanors.

Criminal jurisdiction in Wilmington in misdemeanor, municipal ordinance, and traffic violation cases.

#### Alderman's Court

Limited to minor misdemeanors, traffic offenses, and parking violations.

### Magistrates:

#### Family Court Master

Hears family court matters.

#### Municipal Court Commissioners

Take citizen complaints.

Issue warrants and summons.

Take bail bond applications.

### Defense services to indigents

#### Statutory scheme

In Delaware a statewide public defender office has been created by the legislature.

The public defender is selected by the Governor for a 6-year term.

For cause, the court may on its own motion, or upon the application of the public defender, appoint private counsel and award reasonable compensation.

Statute: Del. Code Ann. Sec. 4601 et. seq.

## Appendix C

### Actual system

Delaware has a statewide public defender for all eligible defendants, with about 5% of the cases handled by assigned counsel because of conflicts.

The program has regional offices in each of the State's three counties.

### Costs

All costs for the operation of the statewide public defender program are provided by the State.

The cost of assigned counsel representation is provided by the counties.

Total costs by source:  
State \$1,759,700  
County \$88,905  
Other —  
Total \$1,848,605

### Assigned counsel rates

Rates set by custom in jurisdiction and judge discretion.

Del. Code Ann. tit. 29, Sec. 4605 stipulates that appointed counsel shall be awarded reasonable compensation.

In some jurisdictions, conflict cases are handled by private attorneys on a fixed salary.

There is a lump sum in the county budget for contractual services, and out of the budget the county attorney decides how many attorneys and at what salary they will do assigned counsel work.

Annual salaries may range from \$10,000 to \$25,000.

Other counties contract with one attorney to do all assigned counsel work.

The salary is determined through negotiation between the attorney and the county attorney.

### Hourly rate:

In other counties with an ad hoc assigned counsel system, rates are

set by court rule. A typical example would be:

Out-of-court \$25  
In-court \$35

### Maximums:

In some counties there are no specified maximums.

In other counties an award larger than a certain amount (e.g., \$500) needs a court finding that the case was "complicated and extended."

In addition, an award larger than a higher specified amount (e.g., \$1,000) must be reviewed by the county attorney who can present an objection.

### Appeals:

None.

### Flat rate or per diem:

None.

### Expense limits:

In some counties, contract attorneys pay their travel expenses, while the county picks up the expert witness, investigator, and transcript costs.

Although there are no established limits, the county attorney monitors the expenses.

Payment of these expenses may be subject to the prior approval of the county attorney.

In other counties, an attorney cannot spend more than a specified amount (e.g., \$250) on expenses without prior court order.

### District of Columbia

Entire district included in survey.

### Court of last resort:

### Court of Appeals

Implied power to issue extraordinary writs in aid of its appellate jurisdiction.

All final orders and judgments of Superior Court, including interlocutory order.

Criminal jurisdiction does not include any judgment with a fine of less than \$50 for an offense punishable by 1 year of imprisonment, or a fine of not more than \$1,000.

Review possible only upon application of party, and is in Court's discretion.

### Intermediate appellate court:

None.

### Court of general trial jurisdiction:

### Superior Court

Civil Division.

Family Division—Jurisdiction over actions of divorce, support, custody, adoption, paternity, delinquency and neglect, CHINS, and mental commitments.

Tax Division.

Probate Division.

Criminal Division.

Exclusive jurisdiction over any criminal (including traffic) case, no jurisdiction over Federal crimes.

### Courts of limited or special jurisdiction:

None.

### Municipal courts:

None.

Magistrates:

Superior Court Hearing Commissioner

Primarily responsible for conducting hearings in mental retardation proceedings, but not necessarily limited to this area.

Makes recommendation in writing as to appropriate disposition by Superior Court.

Defense services to indigents

Statutory scheme

There is established in the District of Columbia a citywide Public Defender Service (PDS).

Public defenders is governed by a board of trustees appointed by a panel presided over by the chief judge of the U.S. Court of Appeals (D.C. Circuit).

PDS is also charged with establishing and coordinating a system for appointment of private attorneys.

Statute: D.C. Code Ann. Sec. 22-2222 et. seq.

Actual system

PDS represents approximately 20% of indigent defendants and these include the more serious felony cases.

Public defenders work closely with assigned counsel providing some support services such as library, investigators, and social workers.

Costs

All funds for the provision of defense services to the indigent in the District of Columbia are provided by the District of Columbia government.

Total costs by source:	
State	—
County	\$8,291,000
Other	—
Total	\$8,291,000

Assigned counsel rates

Rates set by statute.

D.C. Code Ann. Sec. 11-2604 et. seq stipulates that an "attorney shall be compensated at a rate fixed by the Joint Judicial Administration, not to exceed the hourly scale of 18 U.S.C. 3006A (d)(1)" (same as below).

In addition, the statute sets the maximum limits reported below.

Hourly rates:	
Out-of-court	\$20
In-court	\$30

Maximums:

A lawyer may not receive more than \$42,000 per year in assigned counsel fees.

All case limits may be waived by chief judge of superior court.

Capital case	—
Felony	\$1,000
Misdemeanor	\$400
Other	—

<u>Appeals:</u>	
Out-of-court	—
In-court	—
Maximum	\$1,000

Flat rate or per diem:

None.

Expense limits:

Each case has a \$300 limit unless authorized by presiding judge.

Florida

Counties selected for survey:

- |                 |              |
|-----------------|--------------|
| 1. Pinellas     | 9. Leon      |
| 2. Hillsborough | 10. Alachua  |
| 3. Dade         | 11. Manatee  |
| 4. Broward      | 12. Lee      |
| 5. Palm Beach   | 13. Polk     |
| 6. Duval        | 14. Clay     |
| 7. Orange       | 15. Seminole |
| 8. Escambia     | 16. Brevard  |

Court of last resort:

Florida Supreme Court

May issue all extraordinary writs.

Has jurisdiction over criminal and civil appeals and petitions for writs of certiorari from District Court of Appeals, Circuit Court, County Court, agencies, and commissions.

Court reviews constitutional questions, capital cases in which death penalty was imposed, bond validations, and cases of public interest.

Intermediate appellate courts:

District Court of Appeal

May issue all writs necessary to complete exercise of its jurisdiction.

Jurisdiction to hear appeals taken as a matter of right over all criminal and civil cases from Circuit Courts, agencies, and commissions, except in matters directly appealable to Supreme Court.

District Court is court of final appellate jurisdiction, except for a narrow classification of cases made reviewable by the Florida Supreme Court.

Court of general trial jurisdiction:

Circuit Court

Twenty judicial Districts made up of one to seven counties each.

Exclusive original jurisdiction in:

- all actions not triable by County Court
- all probate matters
- juvenile matters
- all criminal cases.

Appendix C

Has appellate jurisdiction over matters from County Court, except when they are directly appealable to Florida Supreme Court.

Courts of limited or special jurisdiction:

County Court

One in each county.

Presently three divisions: Civil, Criminal, and Traffic.

Original jurisdiction in all misdemeanors not triable by the Circuit Court, and all county and municipal ordinance cases.

Municipal Courts:

None.

Magistrates:

None.

**Defense services to indigents**

Statutory scheme

By statute, each of Florida's 20 judicial districts is required to establish a public defender program.

All such public defenders are publically elected to a 4-year term at the State's general election.

Appellate representation is provided by several of these public defender programs on a regional basis.

Members of the private bar are appointed when necessary, because of either a conflict of interest among co-defendants or when the public defender is not available.

Statute: Fla. Stat. Ann. Sec. 27.50 et. seq.

Actual system

All 20 judicial circuits have a popularly elected public defender.

Appointments to the private bar in conflict cases and case overload are made by the individual judges.

Costs

The State provides the majority of indigent defense expenditures in Florida. By statute the county is required to pay for the cost of private assigned counsel and for some overhead items, such as office space, utilities, telephone, and custodial services.

During the present fiscal year (1983), for the first time, the State began to share the cost of private court-appointed attorneys.

Total costs by source:

State	\$28,499,973
County	\$9,680,323
Other	—
Total	\$38,180,296

Assigned counsel rates

Rates set by statute, custom in jurisdiction, and judge discretion.

By statute in Florida (Fla. Stat. Ann. Sec. 925.036) appointed counsel are to be compensated at an hourly rate fixed by the chief or senior judge of each judicial circuit, in an amount not to exceed the prevailing rate.

Maximum limits for compensation are set by the statute, as reported below.

Hourly rates:

Varies among the circuits.

Note that the hourly rate is fixed by the Chief or Senior Judge of the circuit while actual fees and expenses are determined and awarded by the trial judge.

Sample fees range from \$20/25 an hour to \$50/65 an hour.

Maximums:

Capital case (at trial)	\$2,500
Felony (life)	\$1,500-
Misdemeanor	\$2,000
Other (juvenile)	\$1,000

Appeals (hourly rates):

Established by circuit.

Out-of-court	—
In-court	—
Maximum	\$1,000

Flat rate or per diem:

None.

Expense limits:

None.

Under Florida statute expenses are allowed when reasonably incurred, including the costs of transcripts authorized by the court.



## Georgia

### Counties selected for survey:

- |              |                |
|--------------|----------------|
| 1. Fulton    | 10. Crawford   |
| 2. De Kalb   | 11. Gwinnett   |
| 3. Cobb      | 12. Jones      |
| 4. Chattooga | 13. Tift       |
| 5. Columbus  | 14. Oconee     |
| 6. Randolph  | 15. Washington |
| 7. Whitfield | 16. Columbia   |
| 8. Clayton   | 17. Appling    |
| 9. Dougherty | 18. Chatham    |

### Court of last resort:

#### Georgia Supreme Court

Has no original jurisdiction.

Appellate jurisdiction encompasses the trial and correction of errors of law in all questions involving construction of U.S. and Georgia, etc., constitutions.

Also includes review of habeas corpus and other extraordinary writs.

Has review of all capital cases.

Has review of cases certified to Supreme Court by Court of Appeals.

### Intermediate appellate courts:

#### Court of Appeals

Has no original jurisdiction.

Has appellate jurisdiction over cases heard in the Superior Courts, certain State and City Courts, and juvenile courts when exclusive jurisdiction has not been vested in the Supreme Court.

### Court of general trial jurisdiction:

#### Superior Court

There are 42 circuits of 1 to 8 counties each.

Has exclusive original jurisdiction in criminal cases where offender is subjected to loss of life or confinement in penitentiary, except in juvenile cases.

Has appellate jurisdiction in certain civil cases from County Court, Probate Court, and Justice of Peace Court.

### Courts of limited or special jurisdiction:

#### Probate Court

Has exclusive probate jurisdiction.

Has criminal jurisdiction over misdemeanor violations of Georgia State Highway Patrol Act of 1979, if there is no State or County Court in the county.

Can hear habeas corpus, except in extradition cases.

#### Juvenile Court

Established in all counties with more than 50,000 population or where 2 successive grand juries recommend creation (now in 55 of 159 counties); for remaining counties, Superior Court judge sits as juvenile judge.

Handles all juvenile matters.

#### State Court

Countywide jurisdiction concurrent with Superior Court in counties with more than 10,000 population.

County Court (Baldwin, Echols, and Putnam Counties).

Criminal jurisdiction in misdemeanor cases.

Civil Court (Biff and Richmond Counties).

Jurisdiction same as Justice of Peace Court—can issue warrants and serve as committal court in felonies and misdemeanors.

#### Municipal courts:

##### Justice of Peace Court

Created in all militia districts—presently 1,531 Justices of Peace.

Criminal jurisdiction to issue warrants, hold commitment hearings, and act as conservators of the peace.

##### Small Claims Court

#### Municipal Court

- only in Columbus and Savannah—countywide jurisdiction
- limited criminal jurisdiction in misdemeanor cases.

#### Magistrate Court

- In four counties (Baldwin, Rockdale, Clarke, and Glynn)
- criminal jurisdiction over minor criminal cases—similar to Justice of Peace Courts
  - Clark City Municipal Court also hears traffic cases
  - also hears county ordinance cases.

#### Recorders Court, Mayors Court, City Council Court, Police Court, Municipal Court

City charters created 338 courts.

Covers municipality.

Original jurisdiction in municipal ordinances, including traffic.

Wave powers of Justice of Peace.

#### Magistrates:

##### Superior Court Master

##### Juvenile Court Referee and Traffic Referee

Juvenile Court may appoint one or more to serve.

Judge may direct all delinquency cases to be heard in first instance by referee.

##### Cobb County Magistrate

May issue warrants, conduct commitments, and set bail.

##### Recorders Court Magistrate of DeKalb County

May issue warrants, hold committal hearings, and set bail.

##### Defense services to indigents

##### Statutory scheme

By statute, the Superior Court of a county, with the approval of the county government, may establish a public defender office.

## Appendix C

The Superior Court of the county appoints the public defender for a term of 2 years.

Those counties not establishing a public defender program provide representation either through an assigned counsel program or through a contract with members of the private bar.

Statute: Ga. Code Ann. Sec. 27-3203 et. seq.

### Actual system

The majority of Georgia's 159 counties are served by assigned counsel programs.

A few are served by public defenders and a few by contract programs.

### Costs

All expenditures for the provision of indigent defense services in Georgia are the responsibilities of the individual county.

Total costs by source:

State	—
County	\$5,672,712
Other	—
Total	\$5,672,712

### Assigned counsel rates

Rates set by custom in jurisdiction and judge discretion.

The counties establish rates according to the judge's discretion, pursuant to Ga-Code Ann. Sec. 27-3204(a).

### Hourly rate:

These figures represent the ranges of hourly rates reported by the counties surveyed:

Out-of-court	\$15-30
In-court	\$20-35

### Maximums:

Local programs generally set the maximum levels, although some do not.

These figures represent the ranges of maximums report by the counties surveyed:

Capital case	—
Felony	\$400-1,000
Misdemeanor	\$200-500
Other	—

### Appeals:

None.

### Flat rate or per diem:

Some counties pay on a flat rate basis. These figures are representative of the rates reported by the surveyed counties:

Felony	\$200
Misdemeanor	\$50-100
Appeal	—
Other	—

### Expense limits:

Counties may cover expenses "necessarily incurred on a discretionary basis."

## Hawaii

All four counties contacted for survey.

### Court of last resort:

#### Hawaii Supreme Court

Has power to exercise original jurisdiction in all questions arising under writs directed to courts of limited jurisdiction, and in other such matters.

### Appellate jurisdiction:

- hears and determines all questions of law, or of mixed law and fact, which are properly brought before it on any appeal allowed by law from any other court or a judge
- in its discretion, court may hear any question of law reserved by a Circuit Court, and other courts
- entertains, in its discretion, any case submitted without suit when there is a question that might become a proceeding, and the parties agree on the facts in controversy.

### Intermediate appellate court:

#### Intermediate Court of Appeals

Concurrent jurisdiction with the Supreme Court.

Assignment of cases based on following criteria:

- whether case involves a question of first impression or presents a novel legal question
- whether case involves question of State or Federal constitutional law
- whether case involves a question of State statute, county ordinance, or agency regulation
- whether there are inconsistent decisions between Court of Appeals and Supreme Court
- whether case involves a sentence of life imprisonment without parole. Cases involving these questions may be retained by the Supreme Court. Appeals of Intermediate Court decision are by certiorari to Supreme Court.

### Court of general trial jurisdiction:

#### Circuit Court

Trial court of general jurisdiction.

Exclusive jurisdiction in felony cases.

Family division hears juvenile and family matters.

Appellate jurisdiction over inferior courts.

Land Court

Tax Appeals Court

Courts of limited or special jurisdiction:

District Court

Conducts preliminary hearings in felony cases.

Has jurisdiction over all criminal offenses punishable by a fine or imprisonment of less than 1 year.

Has jurisdiction over ordinance violations.

Municipal courts:

None.

Magistrates:

District Court Per Diem Judge

Appointed by Chief Justice.

Provides auxiliary judicial functions.

**Defense services to indigents**

Statutory scheme

By statute, Hawaii has a statewide public defender system, which handles all indigent defense cases, with the exception of conflict cases.

The Governor appoints the defender council of five members to administer the statewide program.

The State public defender is appointed by the defender council to a term of 4 years.

Members of the private bar are appointed where necessary in conflict cases and where the public defender is not available.

Statute: Hawaii Rev. Stat. Sec. 46, 802 et. seq.

Actual system

Each of Hawaii's four counties is served by a regional office of the Hawaii State Public Defender.

Costs

All costs of providing defense services to the indigent in Hawaii are provided by the State.

Total costs by source:  
 State \$3,500,000  
 County —  
 Other —  
 Total \$3,500,000

Assigned counsel rates

Rates set by statute, custom in jurisdiction, and judge discretion.

Hawaii Rev. Stat. Sec. 611-5(b) stipulates that the fee schedule for assigned counsel shall not be more than or less than the prescribed ranges, as reported below.

Hourly rate:  
 None.

Attorneys submit bills at whatever rate they deem reasonable. The bills are then reviewed by the sitting judge.

Maximums:  
 Capital case\* \$1,500 max.  
 \$250 min.  
 Felony \$750 max.  
 \$50 min.  
 Misdemeanor \$300 max.  
 \$50 min.  
 Other \$300 max.  
 \$50 min.

\*There are no capital cases in Hawaii, but this fee is for cases where the penalty could exceed 20 years.

Appeals:

None.

Flat rate or per diem:  
 None.

Expense limits:  
 Expenses must be authorized in advance by the judge.

**Idaho**

Counties selected for survey:

1. Canyon	8. Gem
2. Ada	9. Shoshone
3. Kootenai	10. Twin Falls
4. Bannock	11. Jerome
5. Bonneville	12. Bingham
6. Latah	13. Cassia
7. Lewis	14. Bear Lake

Court of last resort:

Idaho Supreme Court

Has original jurisdiction to hear claims against the State and to issue all writs necessary to complete the exercise of its appellate jurisdiction.

Since creation of Intermediate Court of Appeals, Supreme Court hears appeals from its final decision.

Intermediate appellate court:

Intermediate Court of Appeals  
 (created 7/1/81)

Has been given jurisdiction to hear and decide all cases assigned to it by the Supreme Court, provided that the Supreme Court does not assign cases invoking its original jurisdiction or appeals from imposition of death penalty.

Supreme Court may transfer unargued cases before it to Intermediate Court of Appeals, and Court of Appeals may transfer cases back.

Right of appeal is not created where such right is not established by law.

Subsequent legislation or court rule may alter Court of Appeals role.

Court of general trial jurisdiction:

District Court

Has original jurisdiction in all cases and proceedings.

Has power to issue all writs necessary for the exercise of its powers.

Has appellate jurisdiction over all cases assigned to Magistrate Division of the District Court.

## Appendix C

### Court of limited or special jurisdiction:

None.

### Municipal courts:

None.

### Magistrates:

### Magistrate Division of District Court

Subject to rules promulgated by the Supreme Court, the administrative judge of each judicial district determines which cases are assigned to Magistrate Division.

May hear misdemeanor and quasi-criminal cases, issue warrants, etc.

May hear juvenile proceedings as established by statute.

### Defense services to indigents

#### Statutory scheme

Idaho Gen. Stats. Sec. 19-859 authorizes the Board of County Commissioners to provide for the representation of indigents in one of three ways:

1. By establishing and maintaining an Office of the Public Defender either singly or in conjunction with one or more other counties;
2. By arranging with the courts of criminal jurisdiction to assign attorneys through a systematic, coordinated plan; or
3. By adopting some combination of 1 and 2 above.

Statute: Idaho Code Sec. 19-851 et. seq.

#### Actual system

At the time of this survey there were 14 counties served by public defenders in Idaho.

Contract programs existed in most of the remaining 30 counties, along with a small number of assigned counsel programs.

### Costs

Indigent defense services in Idaho are funded exclusively by the counties.

Total costs by source:  
 State —  
 County \$1,833,935  
 Other —  
 Total \$1,833,935

### Assigned counsel rates

Rates set by custom in jurisdiction and judge discretion.

Idaho Gen. Stat. Sec. 19-860 states that any attorney other than a public defender assigned to represent a needy person should be paid a reasonable rate of compensation prescribed by the court.

This rate will be determined with regard to the complexity of the issues, time involved, and other relevant considerations.

The actual methods of appointing counsel in conflict cases and providing compensation for their services vary widely across the State as indicated in the following examples:

- the firm contracting with the county to provide indigent defense services pays two other firms a monthly retainer of \$750 each for the handling of conflict cases
- counsel are appointed by the court in conflict cases and are paid on an hourly basis
- the public defender office contracts with another firm to handle conflicts at the rate of \$30 an hour with a \$10,000 a year ceiling
- court-appointed counsel are chosen from a rotating list. Attorneys are paid a flat rate (e.g., \$35 an hour)
- county contracts with a law firm to provide defense for indigents and pays them on an hourly basis at a specified rate (e.g., \$35 an hour)

Hourly rate:  
 Out-of-court \$30-  
                   \$35  
 In-court \$30-  
                   \$45

These figures represent a range of typical hourly rates.

### Maximums:

None.

In most counties the sitting judge determines what is reasonable.

### Appeals:

Same as above.

### Flat rate or per diem:

None.

### Expense limits:

No limits reported.

Idaho Gen. Stat. Sec. 19-860 provides that the court shall determine the direct expenses necessary for representation following the appointment of counsel.

**Illinois**

Counties selected for survey:

- 1. Cook
- 2. Lake
- 3. Du Page
- 4. Adams
- 5. St. Clair
- 6. Jackson
- 7. Warren
- 8. Winnebago
- 9. Peoria
- 10. Christian
- 11. Macon
- 12. La Salle
- 13. Kane
- 14. McLean
- 15. Champaign
- 16. Will
- 17. Vermillion

Court of last resort:

Supreme Court

Discretionary original jurisdiction over cases relating to revenue and extraordinary writs, and other matters.

Appellate jurisdiction over appeals from death penalty, and over cases from Appellate Court raising constitutional questions.

Certiorari jurisdiction over other appeals from Appellate Court.

Intermediate appellate court:

Appellate Court

Has original jurisdiction to complete determination of any case on review.

Hears appeals from final judgments from Circuit Courts, except in cases directly appealable to Supreme Court.

Can provide direct review of administrative actions as provided by law.

Court of general trial jurisdiction:

Circuit Court

Original jurisdiction over all justiciable matters except where Supreme Court has original and exclusive jurisdiction.

Original jurisdiction to review administrative actions as provided by law.

Courts of limited or special jurisdiction:

None.

Municipal courts:

None.

Magistrates:

None.

**Defense services to indigents**

Statutory scheme

By statute, counties with a population of 35,000 or more are required to create public defender programs.

For counties with a population of less than 35,000, the county board may choose either a public defender or assigned counsel program.

Statute: Ill. Ann. Stat. Ch. 34 Sec. 5601 et. seq.

Actual system

All counties in Illinois above 35,000 have a public defender program.

Those counties below 35,000 are predominately assigned counsel.

Costs

The State funds a statewide appellate defender program.

All other costs are the responsibility of the counties.

Total costs by source:

State	\$ 3,000,000*
County	\$22,057,917
Other	\$ 152,395
Total	\$25,210,312

\* Full amount of State contribution is funding for State appellate program.

Assigned counsel rates

Rates set by statute and judge discretion.

Ill. Ann. Stat. ch. 38, Sec. 113-3 stipulates that the court shall determine a reasonable fee not to exceed the specified hourly and maximum limits reported below.

Hourly rate:

Out-of court	\$30
In-court	\$30

Maximums:

Capital case	\$2,000
Felony	\$1,000
Misdemeanor	\$750
Other	—

Appeals:

Out-of-court	\$30
In-court	\$30
Maximum	\$1,500

Flat rate or per diem:

None.

Expense limits:

Generally set by statute, however in practice, expenditures exceeding these limits are routinely approved.

Investigators	\$250
Expert witnesses (capital cases)	\$250
Transcripts	\$250
Social Services	\$250
Travel	—
Total	\$1,000

## Appendix C

### Indiana

#### Counties selected for survey:

- |             |                 |
|-------------|-----------------|
| 1. Lake     | 10. Marshall    |
| 2. Marion   | 11. Elkhart     |
| 3. Allen    | 12. Howard      |
| 4. Knox     | 13. Washington  |
| 5. Warrick  | 14. Bartholomew |
| 6. Greene   | 15. Grant       |
| 7. La Porte | 16. Delaware    |
| 8. Putnam   | 17. Switzerland |
| 9. Monroe   |                 |

#### Court of last resort:

#### Indiana Supreme Court

May issue any writs necessary to exercise its appellate jurisdiction.

Appellate jurisdiction over all cases that it may restrict by court rule.

Only appeals that may be taken directly to Supreme Court are those criminal cases where penalty of death or a sentence of 10 years or more is imposed.

In all criminal appeals, the court may review any question of law and review and revise the sentence imposed by the Trial Court.

#### Intermediate appellate court:

#### Court of Appeals

Has no original jurisdiction.

Supreme Court rules specify conditions under which Court of Appeals may hear appeals:

- an appeal as a matter of right must be available in all cases, including review of sentences in criminal cases
- except in criminal cases where penalty is death or sentence exceeds 10 years, or appeal is directly to Supreme Court, the Appeal of Right is to the Court of Appeals
- the court also is empowered to hear interlocutory appeals.

#### Courts of general trial jurisdiction:

#### Circuit Court

Statewide jurisdiction is not uniform.

Exercises jurisdiction in all cases, but in certain counties that jurisdiction is concurrent with the Superior Court.

#### Superior Court

Thirteen Superior Courts have concurrent jurisdiction with the Circuit Court.

Fourteen have concurrent jurisdiction in all but probate and juvenile matters.

Six have exclusive jurisdiction over juvenile and probate, and concurrent jurisdiction with Circuit Court in all other cases.

Several other courts have varying arrangements.

#### Courts of limited or special jurisdiction

#### County Court

Has original and concurrent jurisdiction in all Class D felony, misdemeanor, infraction, and ordinance violation cases.

Can also set bail in other criminal cases.

#### Probate Court (St. Joseph)

Exclusive probate jurisdiction in St. Joseph.

#### Municipal courts:

#### Municipal Court of Marion County

Same jurisdiction as County Court.

#### Small Claims Court of Marion County

#### City Court—

Criminal jurisdiction in misdemeanors where there is a fine of less than \$500 and a sentence less than 6 months.

Also has jurisdiction over city ordinance violations.

#### Town Court—

Same jurisdiction as City Court.

#### Magistrates:

#### Masters (all trial courts)

Handles cases referred by individual courts.

#### Probate Commissioner

#### Circuit Court, Superior Court, and Municipal Court of Marion County Master Commissioner

Among other duties, can certify affidavits and depositions, administer oaths and affirmations, issue and enforce subpoenas, issue arrest warrants and set bail thereon, and conduct preliminary hearings.

#### Defense services to indigents

#### Statutory scheme

By statute for counties of 400,000 or more, a criminal court judge may appoint one or more public defenders as necessary for the defense of indigents.

For counties with a population of less than 400,000, judges of courts of criminal jurisdiction are authorized to contract with any attorney or group of attorneys.

Statute: Ind. Code Ann. Sec. 33-9.

#### Actual system

At the time of the survey, 44 counties were served by public defenders, 44 by assigned counsel, and 4 by a contract system.

In Indiana, programs defined as public defenders include courts where individual judges appoint one private attorney to handle all but conflict cases and for which there is no centrally administered program.

#### Costs

The State funds a State appellate program.

All other costs in Indiana are contributed by the counties.

Total costs by source:  
State \$793,286\*  
County \$4,758,144

Other —  
Total \$5,551,430

\* Full amount of State contribution is funding for State appellate program.

Assigned counsel rates

Rates set by custom in jurisdiction and judge discretion.

The state statute (Ind. Code Ann. Sec. 33-9-10-2) provides that the judge of any court having criminal jurisdiction shall establish the fee to be paid to attorneys representing indigent defendants.

Hourly rate:

These figures represent the most commonly reported rates in the counties surveyed:

Out-of-court \$300  
In-court \$50

Maximums:  
Capital case None  
Felony None  
Misdemeanor None  
Other None

Supreme Court has set the following minimum rates, which have been adopted in several counties.

Murder	\$2,500
Class A felony	\$1,500
Class B felony	\$1,000
Class C felony	\$750
Class D felony	\$500
Class A misdemeanor	\$350
Class B/C misdemeanor	\$250
Death penalty adds	\$1,000

Appeals (hourly rate):

Minimum	\$1,500
Oral argument	\$500
Petition for rehearing	\$500
Petition for transfer to Supreme Court	\$400

Flat rate or per diem:  
Jury trial \$300/day

Expense limits:

None.

All expenses within discretion of trial court.

**Iowa**

Counties selected for survey:

- |              |                |
|--------------|----------------|
| 1. Polk      | 10. Wapello    |
| 2. Linn      | 11. Howard     |
| 3. Woodbury  | 12. Black Hawk |
| 4. Mills     | 13. Washington |
| 5. Dickinson | 14. Winneshiek |
| 6. Calhoun   | 15. Des Moines |
| 7. Dallas    | 16. Scott      |
| 8. Story     | 17. Dubuque    |
| 9. Hardin    |                |

Court of last resort:

Iowa Supreme Court

May issue all necessary writs to conduct the business of the court.

Has appellate jurisdiction only in cases of chancery and constitutes a court for correction of errors of law.

Intermediate appellate court:

Court of Appeals

May issue writs and other processes necessary for exercise and enforcement of its jurisdiction.

Has appellate jurisdiction only in cases in chancery.

Has subject matter jurisdiction in all criminal and postconviction cases.

Jurisdiction is limited to those matters for which an appeal has been brought before the Supreme Court and for which the Supreme Court has entered an order transferring the matter to the Court of Appeals.

Court of general trial jurisdiction:

District Court

A unified trial court.

Has original and general jurisdiction over all actions.

Jurisdiction divided between various types of judicial offices:

District Judges:

Full and complete jurisdiction.

District Associate Judges:

Part-time magistrates hear indictable misdemeanors and assigned juvenile matters.

Full-time Judicial Magistrates:  
Have concurrent jurisdiction with Associate District Judge.

Part-time Judicial Magistrates:  
Empowered to hear preliminary hearings, nonindictable misdemeanors and traffic cases, ordinance violations, and issue search warrants and emergency hospitalization hearings.

Courts of limited or special jurisdictions:

None.

Municipal courts:

None.

Magistrates:

District judge hearing juvenile cases may appoint referee.

Referees empowered to hear juvenile proceedings in first instance.

May make findings of fact and issue recommendations to court.

Parties entitled to rehearing before judge within 7 days of filing of referees' report.

Defense services to indigents

Statutory scheme

Chapter 336A of the Iowa General Statutes gives the county Board of Supervisors the authority to establish an office of the public defender.

Contiguous counties have the authority to establish a joint office.

In addition, judges have the authority to appoint members of the private bar.

Statute: Iowa Gen. Stat. Chs. 336A and 336B.

Actual system

At the time of the survey, 15 counties were served by a public defender and the remaining 84 by an assigned counsel program.

## Appendix C

### Costs

The State of Iowa funds a State appellate defender program.

All other costs are contributed by the individual counties.

Total costs by source:  
State \$267,208\*  
County \$6,119,848  
Other —  
Total \$6,387,056

\* Full amount of State contribution is for State appellate program.

### Assigned counsel rates

Rates set by custom in jurisdiction and judge discretion.

I.G.S. Sec. 815.7 entitles court-appointed counsel to reasonable compensation for their services, including costs of investigation and transcripts.

Vouchers are reviewed in some cases by the sitting judge, in other cases by a group of district judges sitting together.

Though it is reported that most areas of the State follow the rough guidelines below, fees paid in urban areas are likely to be higher than those paid in rural areas.

### Hourly rate:

No distinction reported between in-court and out-of-court costs.

Out-of-court \$35-40  
In-court \$35-40

### Maximums:

None.

### Appeals:

None.

### Flat rate or per diem:

None.

### Expense limits:

No apparent limits.

I.G.S. Sec. 815.5 requires that expert witnesses be paid "reasonable compensation" as defined by the courts.

Investigative services and transcripts are provided for in Sec. 815.7 as part of costs billable by appointed counsel.

Public Defenders are also authorized to provide investigative services per I.G.S. Sec. 336A.5.

### Kansas

#### Counties selected for survey:

- |              |                 |
|--------------|-----------------|
| 1. Shawnee   | 10. Butler      |
| 2. Johnson   | 11. Riley       |
| 3. Wyandotte | 12. Elk         |
| 4. Sedgwick  | 13. Lyon        |
| 5. Haskell   | 14. Allen       |
| 6. Ellis     | 15. Crawford    |
| 7. Barber    | 16. Douglas     |
| 8. Lincoln   | 17. Leavenworth |
| 9. McPherson |                 |

#### Court of last resort:

##### Kansas Supreme Court

Has original jurisdiction to issue extraordinary writs.

Any decision of Court of Appeals may be reviewed by Supreme Court in its discretion.

Decisions of Court of Appeals, which raise constitutional issues for first time, are reviewable as a matter of right.

Transfer of cases from Court of Appeals is authorized when case does not fall within Court of Appeals jurisdiction, or subject matter is of public interest, or caseload of Court of Appeals requires it.

Direct Appeal to Supreme Court in criminal cases from District Court in Class A or B felony cases, or where life sentence imposed.

Prosecution may directly appeal any order dismissing charges or arresting judgment.

#### Intermediate appellate court:

##### Court of Appeals

Jurisdiction to correct, modify, vacate, or revise any act, order, or judgment of a District Court.

In criminal cases, an appeal may be taken by the defendant as a matter of right from any judgment of District Court, except in cases of a guilty plea or a plea of nolo contendere, unless taken on jurisdictional or other grounds involving the legality of the proceedings.



All provisional remedies, injunctions, writs, and other questions of law may be appealed to Court of Appeals.

Court of general trial jurisdiction:

District Court

General original jurisdiction in all civil and criminal cases.

Three classes of judges:

District Judge—  
Full judicial power.

Associate District Judge—  
Concurrent jurisdiction with District Judge, except in class actions, etc.

District Magistrate Judge—  
Can conduct trials in misdemeanor cases and hear preliminary examinations in felony cases.

Has appellate jurisdiction as prescribed by law.  
• de novo over District Magistrate judge  
• over municipal court cases.

Courts of limited or special jurisdiction:

See Municipal Courts.

Municipal courts:

Municipal Court

Has jurisdiction to hear and determine cases involving city ordinances and trials without juries.

May issue search warrants.

Magistrates:

None.

Defense services to indigents

Statutory scheme

By statute in Kansas, the State Board of Indigent Defense Services was established in 1982 within the executive branch of State government.

The board is authorized to establish in each county or combination of

counties a system of appointed counsel, a system of contracts with the private bar, a public defender, or a combination thereof, on a full-time or part-time basis.

Statute: L1982, Ch. 142

Actual system

Public Defender Offices are located in the 3rd, 8th, and 28th judicial district with a district public defender in each office responsible for the operations of that office.

All other counties operate an assigned counsel program.

Costs

All costs of felony representation are provided through State funds.

All other costs are the responsibility of the counties.

Total costs by source:

State	\$2,595,032
County	\$916,961
Other	—
Total	\$3,511,993

Assigned counsel rates

Kan. Stat. Ann. statute Sec. 22-4501 et. seq. creates a board of supervisors that shall consist of a justice of the Supreme Court, the judicial administrator, two district judges, and five practicing attorneys.

This statewide board of supervisors establishes the assigned counsel fee rates, although the rates are subject to legislative appropriations.

Hourly rates:

The board of supervisors had recommended new increased rates for FY 1981 (\$35/hour in-court and \$25 out-of-court), which went into effect in July 1980.

The legislature had approved these new rates, but after seeing the increased costs involved, told the board to return to the FY 1980 rates.

Out-of-court	\$20
In-court	\$30

Maximums:

Capital case	\$250
	with guilty plea
Capital case	\$759
	without guilty plea
Felony	—
Misdemeanor	—
Other	—

Compensation in excess of these maximums may be approved only in exceptional cases, which are defined as

- cases involving a Class A or Class B felony charge
- cases tried on a not-guilty plea with 25 hours or more of in-court time
- cases with a guilty or nolo contendere plea with 10 hours or more of in-court time.

A total of no more than \$9,000 may be paid in any one case.

Appeals (hourly rate):

Out-of court	\$20
In-court	\$20
Maximum	\$100
	in court

Flat rate or per diem:

Felony	—
Misdemeanor	—
Appeal	\$150 (oral argument in Supreme Court)
Other	—

Expense limits:

Any claim in excess of \$300 for expenses for investigative, expert, or other services necessary to an adequate defense is subject to further review and approval by the board of supervisors.

Expenses must be approved in advance by court order, which also establishes a maximum limitation as to the costs of those services.

Investigators	\$300
Expert witness	\$300
	(\$30/hr)
Transcripts	\$1.50/page
Social Services	—
Travel	—
Total	—

**Kentucky**

**Counties selected for survey:**

- |              |              |
|--------------|--------------|
| 1. Jefferson | 10. Franklin |
| 2. Fayette   | 11. Kenton   |
| 3. McCracken | 12. Pulaski  |
| 4. Caldwell  | 13. Madison  |
| 5. Henderson | 14. Bath     |
| 6. Warren    | 15. Bell     |
| 7. Hardin    | 16. Perry    |
| 8. Bullitt   | 17. Boyd     |
| 9. Taylor    | 18. Pike     |

Court of last resort:

Kentucky Supreme Court

Has no original jurisdiction other than power to issue all writs necessary in the aid of its appellate jurisdiction or the complete determination of any cause, or as may be required to control the entire court system.

Constitution provides that appeals from Circuit Court judgments imposing a sentence of death or imprisonment for 20 years or more be appealed directly to Supreme Court.

Remainder of appellate jurisdiction established by Court Rules.

Intermediate appellate courts:

Court of Appeals

May issue all writs necessary in aid of its appellate jurisdiction.

Constitution specifies that appellate jurisdiction shall be provided by law.

An appeal may be taken as a matter of right from any conviction, final judgment, order, or decree of the Circuit Court, unless such actions were rendered on an appeal from the District Court.

An appeal may be taken by the State in criminal cases from an adverse decision as specified by statute and court rule.

Court of general trial jurisdiction:

Circuit Court

Has original jurisdiction in any justiciable cause not exclusively vested in some other court.

Has appellate jurisdiction over District Court decisions.

Courts of limited or special jurisdiction:

District Court

Has exclusive jurisdiction over any misdemeanor or violation, except when such charge is joined with a felony indictment.

Has concurrent jurisdiction with Circuit Court to conduct preliminary examinations in felony cases.

Court may accept pleas to misdemeanors that are reduced from felony charges.

All cases relating to minors are within exclusive jurisdiction of District Court.

Municipal courts:

None.

Magistrates:

Circuit Court Commissioner

Duties as delegated by Circuit Court.

District Court Trial Commissioner

Duties prescribed by Supreme Court.

May issue arrest and search warrants.

May set bail.

Can accept guilty pleas in offenses carrying fine of not more than \$500, and may impose fine.

In juvenile cases:

- makes custody and detention determinations
- conducts preliminary inquiries
- orders physical and mental exams
- in emergency cases, issues temporary custody orders.

May issue temporary orders for involuntary hospitalization for mentally ill, not to exceed 7 days.

**Defense services to indigents**

Statutory scheme

By statute, the Office for Public Advocacy has been created in Kentucky to provide for the establishment, maintenance, and operation of a State-sponsored and -controlled system for the defense of indigent persons.

Under this system, Jefferson County must establish a public defender system, while all other counties may choose a public defender, assigned counsel, or contract system.

Under this system, State funds are funneled to the local programs through the Office of Public Advocacy.

Statute: Ky. Rev. Stat. Sec. 31.010 et. seq.

Actual system

Public defender programs operate in slightly less than 50% of the counties in Kentucky.

The balance of the remaining counties are split between assigned counsel and contract programs.

Costs

Most of the funds for operation of the indigent defense system in Kentucky are contributed by the State.

Some counties also make a contribution, but many more do not.

Total costs by source:

State	\$4,516,700
County	\$539,052
Other	\$114,000
Total	\$5,169,752

Assigned counsel rates

Rates set by statute, custom in jurisdiction, and judge discretion.

Ky. Rev. Sta. Sec. 31.070 stipulates that the circuit court judge shall determine all necessary fees.

The statute also establishes the limits on compensation reported below.

Hourly rates:  
Out-of-court \$25  
In-court \$35

Maximums:  
Capital case \$2,500  
Felony \$1,250  
Misdemeanor \$500  
Other —

Appeals:  
Out-of-court \$25  
In-court \$25  
Maximum \$750

Flat rate or per diem:

None.

Expense limits:

None.

Expenses are allowed on a discretionary basis by the individual judge.

## Louisiana

Parishes selected for survey:

- |                   |                |
|-------------------|----------------|
| 1. E. Baton Rouge | 9. Lafayette   |
| 2. Jefferson      | 10. La Salle   |
| 3. Orleans        | 11. Quachita   |
| 4. Caddo          | 12. Iberia     |
| 5. Vernon         | 13. Terrebonne |
| 6. Calcasieu      | 14. La Fourche |
| 7. Natchitochas   | 15. Tangipahoa |
| 8. Grant          | 16. Washington |

Court of last resort:

### Louisiana Supreme Court

Cases are directly appealable to Supreme Court if a law or ordinance has been declared unconstitutional, or if a defendant has been convicted of a felony, or if a fine exceeding \$500 or imprisonment exceeding 6 months has actually been imposed.

In criminal matters, the court's jurisdiction extends only to questions of law.

Further review by the Court is in its discretion.

Each justice has power to issue extraordinary writs, subject to review by full court.

Intermediate Court of Appeals may certify any question of law before it goes to the Supreme Court.

Intermediate appellate court:

### Court of Appeals

May issue all extraordinary writs.

Has appellate jurisdiction over all civil, juvenile, and family court cases, except criminal prosecutions involving juveniles.

In general, court's jurisdiction extends to law and facts.

Has no jurisdiction in criminal cases.

Court of general trial jurisdiction:

### District Court

Has original jurisdiction in all criminal and civil matters.

Has exclusive original jurisdiction in felony cases.

Orleans Parish divided into Criminal District Court and Civil District Court.

Some appeals from inferior courts are heard, but juvenile court and family court excluded.

Criminal District Court of Orleans Parish hears appeals of misdemeanor cases from New Orleans Municipal Court and Traffic Court.

Courts of limited or special jurisdiction:

### City Court

Jurisdiction limited to those offenses that are not punishable by imprisonment, including ordinance violations.

May issue peace bonds, arrest warrants, set bail, and hold preliminary examinations in all non-capital cases.

### Parish Court

Has concurrent criminal jurisdiction with District Court over ordinance violations and offenses, but only those not punishable by imprisonment at hard labor.

### Family Court

Has original jurisdiction over all cases involving domestic relations, including child support, custody by habeas corpus, visitation, etc.

Also has same jurisdiction as Juvenile Court.

### Juvenile Court

Exclusive original jurisdiction in  
• CHINS  
• delinquency  
• certain felonies that may be transferred to adult court, after waiver by Juvenile Court  
• URESA cases.

## Appendix C

### Municipal court:

#### Municipal Court of New Orleans

Jurisdiction over all ordinance violations except those involving traffic matters.

Also has concurrent jurisdiction with Criminal District Court over violations of State statutes that do not involve traffic matters.

Maximum allowed penalty is a \$300 fine and/or 5 months in jail.

#### Traffic Court of New Orleans

Jurisdiction over all traffic violations, except where trial by jury is allowed.

#### Mayors Court

All Mayors have power of a Committing Magistrate.

Jurisdiction over all municipal ordinance violations with a maximum fine of \$200, and/or a term of imprisonment up to 30 days.

In drunk driving cases, may impose fine of up to \$500 and/or jail sentence of up to 60 days.

#### Magistrates:

##### Justice of Peace Court

Serves only as Committing Magistrate.

Has power to set bail in cases that are not necessarily punishable by imprisonment.

May also set peace bonds.

##### 19th Judicial District Court Commissioner

May hear and recommend disposition of criminal and civil cases arising out of the incarceration of State prisoners.

##### Civil District Court of Orleans Parish Commissioner

#### Criminal District Court of Orleans Parish Magistrate

Acts as committing magistrate in felony and misdemeanor charges.

Hears preliminary examinations.

May set bail.

May hear preliminary motions, accept pleas in misdemeanors, and conduct trials in misdemeanor cases.

May issue search and arrest warrants.

#### Criminal District Court of Orleans Parish Commissioner

Primary role to assist the magistrate.

Has same powers and duties as magistrate.

#### Mayor's Court Magistrate

Exercises powers and authority of Mayor over court.

#### Defense services to indigents

##### Statutory scheme

Louisiana Law requires the establishment of an indigent defender board in each judicial district.

Board members are selected by the district court from nominees provided by each bar association within the district.

Each district board is required to select either an assigned counsel or public defender program.

Statute: La. Code Crim. Proc. Sec. 15-141 et. seq.

##### Actual system

Slightly over two-thirds of Louisiana's 64 parishes operate a public defender program, some on a multiparish basis.

All other parishes operate on an assigned counsel basis.

### Costs

There is created within each judicial district an indigent defender fund, which consists of a tax on special costs by every court of original jurisdiction in the State at a rate of between \$4.50 and \$10.00 for each misdemeanor or municipal ordinance violation other than a parking violation.

The exact rate is established by a majority vote of the judges.

There is an additional charge of \$10.00 for each felony case involving a guilty plea or conviction.

This fund is available on an annual basis to the local program.

No other funds are made available in Louisiana.

#### Total costs by source:

State	—
County	\$5,925,256
Other	\$87,730
Total	\$6,012,986

#### Assigned counsel rates

Rates set by custom in jurisdiction and judge discretion.

The Louisiana Indigent Defender Board is charged by statute (La. Rev. Stat. Ann. Sec. 15:143(c)) with the responsibility for establishing statewide rates.

Because this Board has not been in existence since 1978, general rates are applied as follows:

Hourly rate:	
Out-of-court	\$25
In-court	\$35

#### Maximums:

Capital case	—
Felony	\$1,000
Misdemeanor	\$500
Other	—

Minimum fees are \$100 for felony and \$50 for misdemeanor.

**Appeals:**

None.

**Flat rate or per diem:**

None.

**Expense limits:**

None.

By statute (La. Rev. Stat. Ann. 15:149), counsel shall also be reimbursed for expenses necessarily incurred.

**Maine**

All 16 counties contacted for survey.

Court of last resort:

Supreme Judicial Court

May render advisory opinions.

Has original jurisdiction equal to Superior Court.

Sits as Law Court:

- may review questions of law certified from trial courts, even when case has not been completed, on certification from trial court or on agreed statement facts from parties
- in other matters when case completed.

Sits as Appellate Court:

- hears appeals from criminal cases
- reviews sentences in excess of 1 year
- appeals on questions of law in criminal and juvenile cases by the State, but limited to cross-appeals and in certain pretrial orders
- appeals from the Superior Court on questions of law juvenile cases.

Intermediate appellate court:

None.

Court of general trial jurisdiction:

Superior Court

Exercises original jurisdiction over all matters, either exclusively or concurrently with other courts, that are not within jurisdiction of Supreme Judicial Court or exclusively in jurisdiction of another court.

All felonies heard in Superior Court.

Can provide injunctive relief.

Hears civil, criminal, and juvenile appeals from District Court.

Courts of limited or special jurisdiction:

District Court

May receive guilty pleas in felony cases.

Conducts preliminary hearings in felony cases.

May try misdemeanor cases, including traffic.

Has exclusive jurisdiction in juvenile matters.

Probate Court

Includes jurisdiction over adoptions and guardianships.

Administrative Court

Tries actions to suspend, revoke, or refuse a license.

Municipal courts:

None.

Magistrates:

District Court Complaint Justice

May receive complaints and issue process for arrest.

May issue search warrants.

May endorse certificates of commitment of the mentally ill.

**Defense services for indigents**

Statutory scheme

State statute provides that judges of State superior and district courts shall appoint counsel to indigent defendants and order reasonable compensation for services performed.

Statute: Maine Rules of Court, Rules of Crim. Proce. Rule 44.

Actual system

Maine is a total ad hoc assigned counsel State.

Each judge is responsible for appointing counsel in his or her court and each judge uses his or her own method for identifying assigning counsel.

Costs

The State provides all funds for indigent defense services in Maine.

## Appendix C

Total costs by source:  
 State \$1,088,653  
 County —  
 Other —  
 Total \$1,088,653

### Assigned council rates

Rates set by court rule statewide and judge discretion.

On July 1, 1981, the Supreme Judicial Court issued a detailed fee schedule and recommended its adoption statewide.

The figures below reflect the rates in this schedule:

Hourly rate:	
Out-of-court (felony)	\$25
Out-of-court (misdemeanor)	\$20
In-court (felony)	\$30
In-court (misdemeanor)	\$25

### Maximums:

Total compensation payable is subject to the review of the presiding judge, who shall certify that such payment is fair compensation.

In some counties, informal limits are imposed.

Capital case	\$3,000-
with co-counsel	4,500
Felony	\$1,500
Misdemeanor	\$185
Other	—

Appeals (hourly rate):  
 Out-of-court \$25  
 In-court \$30  
 Maximum —

### Flat rate or per diem:

No statutory provision for flat rate or per diem reimbursement.

### Expense limits:

Investigators, expert witnesses, and transcripts are provided at courts discretion, pursuant to Me. Rev. Stat. Ann. Title 15, Section 810.

Investigators	—
Expert witness	—
Transcripts	—
Social services	—
Travel	\$15/hr .20/mile
Total	—

### Maryland

#### Counties selected for survey:

1. Montgomery	6. Frederick
2. Prince Georges	7. Howard
3. Baltimore	8. Harford
4. Anne Arundel	9. Caroline
5. Allegany	

#### Court of last resort:

#### Court of Appeals

Has original jurisdiction over bar matters and certain legislative and gubernatorial questions.

Has appellate jurisdiction to review decisions of Court of Special Appeals by certiorari.

Has exclusive appellate jurisdiction with respect to questions of law certified to it under the Uniform Certification of Questions of Law Act.

#### Intermediate appellate court:

#### Court of Special Appeals

Has no original jurisdiction.

Has initial appellate jurisdiction over all causes except those where Court of Appeals has been granted exclusive appellate jurisdiction.

#### Court of general trial jurisdiction:

#### Circuit Court

Each circuit court has full criminal and civil jurisdiction in all cases except where exclusive jurisdiction has been granted to another court.

Also has jurisdiction in juvenile cases, except in Montgomery County, where District Court has jurisdiction.

Has appellate jurisdiction over cases tried in District Court and Orphan's Court.

#### Courts of limited or special jurisdiction:

#### District Court

Has jurisdiction over violations of vehicle laws, misdemeanors, and

nonfelonious ordinance violations and certain statutory theft offenses where value of stolen property does not exceed \$500.

In Montgomery County, District Court has jurisdiction over juvenile causes.

#### Orphan's Court

The Probate Court.

In Montgomery County, probate matters are handled in the Circuit Court.

#### Municipal court:

None.

#### Magistrates:

#### Circuit Court

Master and Juvenile Master—Hears cases assigned by the court and makes findings and recommendations to Circuit Judges for disposition.

Auditor and Examiner—Power to audit and settle accounts.

#### District Court

Commissioner—Determines probable cause for warrants and criminal summons and conducts bail hearings.

#### Defense services for indigents

#### Statutory scheme

In Maryland, a statewide Office of Public Defender is established in the executive branch of State government.

The Governor appoints a three-member board of trustees to oversee the public defender system.

Each district has an advisory board appointed by the governor to oversee the local district public defender program.

The statewide board is charged with establishing a local private bar panel system to handle cases where the local public defender has a conflict or is unavailable.

#### Actual system

The statewide public defender system operates out of 12 regional offices located in each of Maryland's judicial districts.

#### Costs

All costs of indigent defense services in Maryland are the responsibility of the State.

#### Total costs by source:

State	\$10,270,310
County	—
Other	—
Total	\$10,270,310

#### Assigned council rates

Rates set by State Public Defender.

Md. Code Ann., art. 27A, Sec. 6(d) empowers the State Public Defender to promulgate rates that are integrated into its administration of assigned counsel panels.

#### Hourly rates:

Out-of-court	\$20
In-court	\$25

#### Maximums:

Capital case	—
Felony	\$1,000
Misdemeanor	\$250
Other	*

* Mental Health	\$500
Juvenile	\$250

#### Appeals (hourly rate):

Out-of court	—
In-court	—
Maximum	\$500

#### Flat rate or per diem:

None.

#### Expense limits:

Public defender provides staff investigative services to assigned counsel.

Public defender maintains list of expert witnesses, which it encourages assigned counsel to use, and prior authorization is required.

Investigators	No dollar
Expert witness	limits*
Transcripts	—
Social services	—
Travel	\$.12/mile**
Total	\$32/day

\* Expenses for transcripts are authorized and paid by the court.

\*\* When outside district in which appointed.

## Appendix C

### Massachusetts

All 14 counties will be contacted for survey.

#### Court of last resort:

##### Supreme Judicial Court

A single justice may exercise original jurisdiction in equity matters concurrent with Trial Court.

Certain matters pertaining to system are in exclusive original jurisdiction.

May issue necessary writs and process.

Has appellate jurisdiction in cases of 1st degree murder where a sentence of life imprisonment is imposed.

Has appellate jurisdiction where cause is certified by SJC or Appeals Court, or in any case that has broad public concern.

Has appellate jurisdiction of cases decided by Appeals Court only on certification.

#### Intermediate appellate court:

##### Appeals Court

Has no original jurisdiction.

Has concurrent appellate jurisdiction with SJC over proceedings heard in the Trial Court in criminal matters, except in cases when life imprisonment is imposed.

Also has jurisdiction to review proceedings relating to extraordinary writs.

#### Court of general trial jurisdiction:

##### Trial Court of the Commonwealth

Has 7 departments—

1. Superior Court Department:  
Has original jurisdiction in all criminal and civil actions except in cases where another court has exclusive original jurisdiction.

Appellate Division hears appeals from sentences imposed in first instance. Also trial de novo appeals from certain actions.

2. Housing Court Department:  
Has concurrent jurisdiction with Superior Court in criminal actions concerned with health, safety, or welfare of any place used for human habitation.

3. Land Court Department

4. Probate and Family Court Department:  
Has exclusive jurisdiction in probate and family matters.

5. Boston Municipal Court Department:  
Has criminal jurisdiction concurrent with Superior Court in misdemeanors and ordinance violations and felonies with less than 5-year penalties.

6. Juvenile Court Department:  
All delinquency and CHINS cases.

7. District Court Department:  
Same criminal jurisdiction as Boston Municipal Court.

Also conducts probable cause hearings in all felonies.

#### Court of limited or special jurisdiction:

None—Old courts of limited or special jurisdiction were incorporated into the Trial Court with court reorganization in 1978.

#### Municipal courts:

None (except see Boston Municipal Court).

#### Magistrates:

##### Trial Court

1. Masters  
• make findings of fact in matters assigned by courts  
• ascertain evidence  
• provide reports on issues  
• check pleadings, etc.  
• other related duties.

2. Housing Court Specialists

3. Clerk Magistrate  
• performs various Clerk of Court duties  
• rules on continuances

• rules on uncontested evidentiary issues  
• sets pretrial conferences  
• hears complaints on minor motor vehicle offenses  
• conducts preliminary probation violation hearings.

4. Guardian Ad Litem  
Acts as legal representatives for minors and others, including mentally retarded persons.

5. Bail Commissioner  
Determines releases on bail or personal recognizance.

#### Defense services to indigents

#### Statutory scheme

By statute the Massachusetts Defenders Committee (MDC) is established as a State agency responsible for primary representation in the courts of the Commonwealth.

In addition, judges have the authority to appoint members of the bar on an individual basis.

Statute: Ma. Crim. Proc. 276-37A.

#### Actual system

Because of the lack of adequate funding (\$3.5M) the MDC is primarily limited to representation in felony cases in the Superior Court.

The agency also does some probable cause work in the District Courts and has an appellate unit.

Also does some juvenile work in selected juvenile courts.

Under contract with the Chief Administrative Judge of the Commonwealth, 11 individual county bar associations (there are 14 counties) provides most of the juvenile work.

Individual lawyers provide the representation on behalf of the County Bar Advocate Program.

There is also a nonprofit agency, The Roxbury Defenders Committee, representing selected defenders in a limited number of courts.



Finally, there is still a rather large volume of cases that are assigned to the private bar in all 14 counties.

Costs

All costs of indigent defense services in Massachusetts are paid for by the State.

Total costs by source:

State	\$13,092,198
County	—
Other	—
Total	\$13,092,198

Assigned counsel rates

Rates set by court rule statewide.

Rules 8 (District and Municipal courts) and 53 (Superior Court)

Hourly rate:

Out-of-court	\$25*
In-court	\$35**

\* For time expended outside evidentiary hearing or trial, with maximum of 5 hours for preparation time and 1 hour for time related to a court appearance.

\*\* For time actually engaged in evidentiary hearing or trial.

Maximums:

Capital case	See below
Felony	\$1,000
Misdemeanor	\$300
Other	—

Rule 53 specifications for murder case:

Maximums:

District Court	\$100
All other services	\$2,500
Expenses (if no more than one trial)	\$100
For each retrial	\$2,500
Expenses	\$100

Maximums can be waived by court order.

Appeals:

None.

Flat rate or per diem:

Under the Bar Advocate Program attorneys may be paid either (1) a flat fee (e.g., \$150) for felonies or misdemeanors or (2) a standard fee (e.g., \$100) for the initial appearance plus an additional fee (e.g., \$50) for each continuing day.

Actual fees paid vary from county to county.

Expense limits:

Mass. Ann. Laws, Chap. 261 requires that expenses be paid for witnesses, transcripts, etc.

No limits are specified under the Bar Advocate Program.

Michigan

Counties selected for survey:

- |               |                    |
|---------------|--------------------|
| 1. Wayne      | 10. Grand Traverse |
| 2. Oakland    | 11. Calhoun        |
| 3. Macomb     | 12. Ingham         |
| 4. Kent       | 13. Isabella       |
| 5. Genesee    | 14. Saginaw        |
| 6. Marguette  | 15. Washtenaw      |
| 7. Muskegon   | 16. Monroe         |
| 8. Allegan    | 17. Sanilac        |
| 9. St. Joseph |                    |

Court of last resort:

Supreme Court

May issue orders of superintending control over court system.

Has appellate jurisdiction over all appeals pending or decided by Court of Appeals.

Intermediate appellate courts:

Court of Appeals

Has original jurisdiction to issue prerogative and remedial writs or orders necessary to maintain ability to decide cases.

Has appellate jurisdiction over all final judgments from Circuit Court and Court of Claims.

Also has appellate jurisdiction over Detroit's Recorder's Court, except from Traffic and Ordinance Division and Probate Court cases in adoption and other cases.

Court of general trial jurisdiction:

Circuit Court

Exclusive original jurisdiction in felony cases, except where a special criminal court has been created.

Hears appeals from final judgments from District, Probate, Common Pleas Courts, and Recorder's Court, Traffic and Ordinance Division. Appeals from Municipal Court are de novo.

Court of Claims

## Appendix C

### Recorder's Court of Detroit

Has original jurisdiction over all criminal cases arising within Detroit City limits.

Hears Habeas Corpus Petitions.

Traffic and Ordinance Division has exclusive original jurisdiction in all Traffic and Ordinance violations.

### Courts of limited or special jurisdiction:

#### District Court

Jurisdiction in misdemeanor cases where penalty is a fine and/or a jail term of up to 1 year.

Hears ordinance violations.

Arraignments, bail, and preliminary hearings in all felony and misdemeanor cases not cognizable in District Court.

Hears traffic cases.

#### Probate Court

Has exclusive original jurisdiction in all estate, mental health, and other related cases.

Also has exclusive original jurisdiction in delinquency and CHINS cases.

#### Common Pleas Court of Detroit

Has civil jurisdiction only.

#### Municipal court:

Has jurisdiction in felony preliminary hearings, misdemeanors involving a fine or imprisonment of less than 1 year, and traffic ordinances.

#### Magistrates:

#### Supreme Court and Court of Appeals

Prepares reports and recommendations for discretionary appeals.

#### Recorders Court Referee

Administers oaths, examines witnesses, and makes reports and recommendations in misdemeanor

and ordinance violation cases referred by court.

#### District Court Magistrate

As authorized, may arraign and sentence persons pleading guilty in certain cases with less than 90-day sentence.

May issue arrest and search warrants, set bond, etc.

#### Probate Court Register

Performs nonjudicial duties.

#### Defense services to indigents

##### Statutory scheme

The criminal code in Michigan provides for the appointment of counsel for indigents in all classes of cases.

The statute has been construed, however, to permit the establishment of a public defender program.

By State statute there is also a State appellate defender program established.

Statute: Mich. Stat. Ann. Sec. 28.1253.

##### Actual system

At the time of the survey, 5 counties operated with a public defender and the remaining 78 were about evenly split between assigned counsel and contract programs.

There is also a State appellate defender program.

##### Costs

The State funds the appellate defender program.

All other funds for indigent defense services in Michigan are provided by the counties.

Total costs by source:

State	\$1,873,100*
County	\$21,378,331
Other	\$150,000
Total	\$23,401,431

\*The total amount of the State contribution is funding for the State Appellate program.

#### Assigned counsel rates

Rates set by judge discretion.

Mich. Stat. Ann. Sec. 28.1253 stipulates that "assigned counsel shall receive an amount that the presiding judge shall in his discretion deem reasonable compensation..."

Hourly rate:

These figures represent the most commonly reported rates in the counties surveyed. In general, rates vary from county to county.

Out-of court	\$30
In-court	\$30

Maximums:

Varies from county to county.

Appeals:

Varies from county to county.

Flat rate or per diem:

Each of the circuits employing fee schedules relies on different payment plans.

In one circuit all services rendered up through a 2-day trial are reimbursed for \$300.

An appearance is typically billed at \$50.00; sentencing is also billed at \$50.00.

Substantial differences are found in the rates for which different days of trial are paid and even the number of hours in a trial day.

As the Wimsatt study reports: The first day of trial is paid at the rate of \$100 in some courts; \$150 and \$200 is paid in other circuits.

Expense limits:

Varies from county to county.

## Minnesota

### Counties selected for survey:

- |              |                |
|--------------|----------------|
| 1. Hennepin  | 10. Renville   |
| 2. Ramsey    | 11. McLeod     |
| 3. Dakota    | 12. Crow Wing  |
| 4. Anoka     | 13. Carver     |
| 5. St. Louis | 14. Freeborn   |
| 6. Polk      | 15. Carlton    |
| 7. Nobles    | 16. Washington |
| 8. Becker    | 17. Olmsted    |
| 9. Pope      |                |

### Court of last resort:

#### Supreme Court

Has original jurisdiction in remedial cases as prescribed by law.

May issue all necessary writs and orders.

May answer questions of law certified by U.S. Supreme Court or a Federal Court.

Has appellate jurisdiction over all cases.

### Intermediate appellate court:

None.

### Court of general trial jurisdiction:

#### District Court

Has original jurisdiction in all criminal and civil cases.

In Hennepin and Ramsey Counties, District Court has juvenile jurisdiction.

In 2nd and 4th Judicial Districts, Family Division created to hear all family matters.

Has appellate jurisdiction in every case in which an appeal is allowed from any other court.

### Courts of limited or special jurisdiction:

#### Probate Court (Hennepin and Ramsey Counties):

Has jurisdiction in law and equity to administer estates, guardianships, and incompetency proceedings.

### County Court

In criminal division, has jurisdiction over misdemeanors and may conduct preliminary hearings.

Probate division has jurisdiction of Probate Court.

Juvenile Division has concurrent jurisdiction with District Court.

Has exclusive jurisdiction over incompetency proceedings and delinquency matters.

### Conciliation Court

None.

### Municipal courts:

#### County Municipal Court (Hennepin and Ramsey Counties)

Has jurisdiction in criminal matters constituting misdemeanors.

### Magistrates:

#### District Court Referee

Hears assigned cases and makes recommendations to the judge.

#### Probate Court Referee

Hears assigned cases and makes recommendations to the judge.

#### County Court Probate Register

Performs ministerial functions.

#### County Court Judicial Officer

Has same authority as judge.

#### County Municipal Court Hearing Officer (Hennepin County):

Hears minor traffic violations.

### Defense services to indigents

#### Statutory scheme

By statute in Minnesota the two largest judicial districts (Hennepin and Ramsey, first and second, respectively) must have a public defender system.

In all other judicial districts, the judge may establish a district public defender system or an assigned counsel system.

Statute: Minn. Stat. Ann. Sec. 611.12 et seq.

### Actual system

Approximately half of Minnesota's counties are served by public defenders while the other half are served by assigned counsel systems.

### Costs

The State funds the appellate defender program.

All other expenditures are provided by the counties.

Total costs by source:

State	\$851,358*
County	\$9,463,006
Other	\$102,360
Total	\$10,416,724

\*Full amount of State contribution is funding for State appellate program.

### Assigned counsel rates

Rates set by custom in jurisdiction and judge discretion.

In approximately 20% of the counties the judges collaborate in setting uniform rates for the particular region in question.

No statutory authority.

Hourly rate:

Out-of-court	\$35
In-court	\$35

Rates apparently vary dramatically with some counties paying as much as \$60/hour for in-court time.

The above figures represent the rates most commonly reported in the survey.

### Maximums:

Varies widely, according to judge's discretion.

Maximums are more common for lesser offenses.

## Appendix C

Maximums are particularly low in rural areas.

Appeals:

None.

Flat rate or per diem:

No statutory provision for flat rate or per diem reimbursement, although some counties do impose such restrictions on certain types of cases.

For example, one county pays a flat rate of \$50 for each appearance for a mental commitment hearing.

Expense limits:

Minn. Stat. Ann. Sec. 611.21 stipulates the above maximum for compensation paid for investigative, expert, or other services necessary to an adequate defense.

Investigators	\$300
Expert witnesses	\$300
Transcripts	—
Social services	\$300
Travel	—
Total	—

### Mississippi

Counties selected for survey:

- |                    |                |
|--------------------|----------------|
| 1. Hinds           | 10. Yalobusha  |
| 2. Harrison        | 11. Chickasaw  |
| 3. Bolivar         | 12. Jones      |
| 4. Claiborne       | 13. Jackson    |
| 5. Copiah          | 14. Forrest    |
| 6. De Soto         | 15. Lauderdale |
| 7. Leflore         | 16. Lawndes    |
| 8. Rankin          | 17. Itawamba   |
| 9. Jefferson Davis |                |

Court of last resort:

#### Supreme Court

Each justice has authority to issue extraordinary writs.

Hears all appeals from all cases originating in Circuit and Chancery Courts, except when a guilty plea is entered.

Direct Appeal from County Court permitted for those noncapital felony cases transferred to County Court by Circuit Court.

Appeals from Justice and Municipal Courts are heard in Circuit Court, with appeal to Supreme Court permitted only when a constitutional question is raised, and then only with acceptance of the Circuit Court Judge.

Intermediate appellate court:

None.

Courts of general trial jurisdiction:

#### Circuit Court

Has original jurisdiction in all civil and criminal matters, unless jurisdiction is vested in another court.

Following courts have concurrent jurisdiction: Justice in criminal matters where the punishment does not exceed a fine and imprisonment in County Jail.

Appeals heard from Law Division of County Court and from Justice and Municipal Courts, except in those counties where there is a County Court.

### Chancery Court

Exercises original jurisdiction in, among other things:

- probate
- juvenile
- mental competency cases.

Has same authority as Circuit Court to issue extraordinary writs.

Youth Division has exclusive jurisdiction in all delinquency and CHINS cases.

Courts of limited or special jurisdiction:

#### County Court (16 counties)

Has criminal jurisdiction in all misdemeanor cases.

Conducts preliminary examinations in felony cases.

Has jurisdiction in all criminal, non-capital cases transferred from Circuit Court.

All matters to be heard in Justice Court may be heard in County Court.

Youth Division in all 16 County Courts, except in Harrison County (when it is in Family Court), which has exclusive jurisdiction in juvenile matters.

#### Family Court (Harrison Co.)

Has exclusive jurisdiction in all juvenile matters.

#### Justice Courts (5 counties)

Has concurrent criminal jurisdiction with Circuit Court in cases where fine or County Jail sentence may be imposed.

Municipal courts:

#### Municipal (Police) Court

Has jurisdiction over all municipal ordinance violations.

Sits as committing court in all felonies committed within the municipality and in all State criminal law violations committed in the county and outside the municipal boundaries.

In cities where no Family or County Court exists, Municipal Court has exclusive jurisdiction over juvenile matters.

Magistrates:

Chancery Court Master

Such duties as he or she is assigned by the court.

Chancery Court Special Commissioner

Same as above.

Circuit Court Referee

Same as above.

Circuit and Chancery Court Arbitrators

Same as above.

Family Court Referee

Same as above.

Defense services to the indigent

Statutory scheme

In Mississippi, individual counties, or two or more in cooperation, are empowered by State statute to create a public defender office by vote of the county Board of Supervisors.

The public defender is appointed by the circuit judge from a list of at least two candidates submitted by a county or region bar association.

Judges have the authority to appoint members of the private bar and thus create an assigned counsel program.

Statute: Miss. Code Ann. Sec. 25-32-1 et. seq.

Actual system

At the time of our survey approximately 20 of Mississippi's 82 counties operated a public defender program.

The balance are assigned counsel programs.

Costs

All funds for indigent defense services in Mississippi are provided by the counties.

Total costs by source:

State	—
County	\$2,134,112
Other	—
Total	\$2,134,112

Assigned counsel rates

Rates set by statute and judge discretion.

Miss. Code Ann. Sec. 99-15-17 establishes maximum allowable rates of compensation.

Hourly rate:

Great variation exists among the counties.

To the degree that some consistent pattern has emerged, other than judicial discretion and lower case maximums, it appears to be \$20 out-of-court and \$30 in-court.

Maximums:

\$1,000 maximum for representation in Circuit Court, whether on appeal or originating in said court.

\$200 maximum if the case is not appealed or does not originate in a court of record.

Capital case	\$2,000
Felony	—
Misdemeanor	—
Other	—

Appeals (hourly rate):

Out-of-court	—
In-court	—
Maximum	\$1,000

Flat rate or per diem:

None.

Expense limits:

Section 99-15-17 also states that the "...judge shall allow reimbursement of actual expenses."

Missouri

Counties selected for survey:

1. Jackson	10. Cooper
2. St. Louis	11. Boone
3. Greene	12. Laclede
4. Holt	13. Audrain
5. Clay	14. Gasconade
6. Vernon	15. Warren
7. Barry	16. St. Charles
8. Ray	17. St. Francois
9. Hickory	18. Stockland

Court of last resort:

Supreme Court

May issue and determine original remedial writs.

Has exclusive appellate jurisdiction in all cases involving all appeals with offenses punishable by a sentence of death or life imprisonment.

May finally determine all causes coming to it from the Court of Appeals, whether by certification, transfer, or certiorari, the same as an original appeal.

Intermediate appellate court:

Court of Appeals

May issue and determine original remedial writs.

Has general appellate jurisdiction in all cases except those within exclusive jurisdiction of Supreme Court.

Cases may be transferred to Supreme Court.

Court of general trial jurisdiction:

Circuit Court (sits in 43 Judicial Districts)

Has original jurisdiction over all cases and matters civil and criminal.

Associate Circuit Division hears misdemeanors, preliminary hearings in felony cases, municipal ordinance violations in municipalities with over \$400,000 with no municipal judge, and traffic cases.

Probate Division has exclusive original jurisdiction over all probate and mental health cases.

Appendix C

Municipal Division has exclusive jurisdiction over city ordinance violations.

Has no appellate jurisdiction.

Courts of limited or special jurisdiction:

None.

Municipal courts:

None.

Magistrates:

None.

Defense services to indigents

Statutory scheme

By statute, Missouri has created a statewide Public Defender Commission, which funds the cost of indigent defense services statewide.

The legislation allows regional public defender offices serving more than one judicial district.

As of the effective date of the act, April 1, 1982, cases were no longer referred to the private bar by local judges.

Instead, public defender offices were established throughout the State and defense service contracts awarded to local attorneys or law firms where defender offices were impractical.

Statute: Mo. Ann. Stat. Sec. 600.010 et. seq.

Actual system

At the time of our survey, the old system was in effect.

Under the old system a majority of the counties were served by assigned counsel programs.

Costs

All costs for indigent defense services in Missouri are the responsibility of the State.

Total costs by source:

State	\$4,408,413
County	—
Other	—
Total	\$4,408,413

Assigned counsel rates

Rates set by State Public Defender.

In those rare cases where private assigned counsel are employed, the rates of compensation are set at the discretion of the State public defender, pursuant to Mo. Rev. Stat. Sec. 600.017.

Hourly rate:

This figure represents the hourly rate most commonly imposed by the public defender.

It should be noted that under the statewide public defender system in Missouri, most conflicts are handled either by contract with the private bar or appointed to an adjoining public defender program.

Out-of-court	\$20
In-court	\$20

Maximums:

These figures represent the maximum limits most commonly imposed by the public defender.

Capital case	—
Felony (trial)	\$500-750
(plea)	\$250
Misdemeanor	\$250
Other	—

Appeals (hourly rate):

These figures represent the rates typically set by the public defender.

Out-of-court	\$25
In-court	\$20
Maximum	\$500

Flat rate or per diem:

None.

Expense limits:

None

**Montana**

Counties selected for survey:

- |                |                  |
|----------------|------------------|
| 1. Missoula    | 9. Lewis & Clark |
| 2. Cascade     | 10. Gallatin     |
| 3. Yellowstone | 11. Chouteau     |
| 4. Flathead    | 12. Park         |
| 5. Lincoln     | 13. Fergus       |
| 6. Beaverhead  | 14. Powder River |
| 7. Silver Bow  | 15. Richland     |
| 8. Lake        |                  |

Court of last resort:

Supreme Court

Has original jurisdiction to issue, hear, and determine writs of habeas corpus and other writs as provided by law.

Can issue all other extraordinary writs.

Appellate jurisdiction extends to all cases of law and equity.

Intermediate appellate courts:

None.

Court of general trial jurisdiction:

District Court

Has statewide jurisdiction in all felony cases.

Has jurisdiction in misdemeanors that are not assigned to courts of limited jurisdiction.

Can issue all necessary writs.

Has appellate jurisdiction over courts of limited jurisdiction.

Appeals are heard de novo, unless otherwise provided by law.

Courts of limited or special jurisdiction:

Justice of Peace Court

Has criminal jurisdiction in assaults, thefts of property not exceeding \$150, and misdemeanors punishable by fine not exceeding \$500 or imprisonment not exceeding 6 months, or both.

City Court

In cities and towns of less than 10,000 population  
• has concurrent jurisdiction with Justice of Peace Court  
• handles felony filings and preliminary exams, misdemeanors, and applications for search warrants.

Water Court

None.

Municipal courts:

Municipal Court (in cities of more than 10,000 population)

Has concurrent jurisdiction with District Court in forcible entry and detainer actions.

Has concurrent jurisdiction with Justice of Peace Court.

Hears ordinance violation cases.

Magistrates:

District Court Judge Pro Tempore

Has full power of judges to hear and determine cases.

District Court Master

Pursuant to court order, may hear evidence and report findings to judge.

Water Court Master

Defense services to indigents

Statutory scheme

By statute the Board of County Commissioners in any county may create a public defender office and appoint a salaried public defender.

All other counties operate on an assigned counsel or contract basis.

Statute: Mont. Rev. Code Sec. 46-8-202.

Actual system

At the time of our survey, four counties were served by a public defender, 37 by an assigned counsel, and 15 by a contract system.

Costs

All costs for indigent defense services in Montana are the responsibility of the counties.

Total costs by source:

State	—
County	\$1,399,785
Other	—
Total	\$1,399,785

Assigned counsel rates

Rates set by court rule statewide and judge discretion.

By statute (Mont. Rev. codes Ann. Sec. 46-8-201 et. seq.), wherever in a criminal proceeding an attorney represents or defends any person who is indigent, the attorney shall be paid such sum as a district court or justice of the State Supreme Court certifies to be a reasonable compensation and shall be reimbursed for reasonable costs incurred in the criminal proceeding.

The Supreme Court has established maximum allowable levels of compensation for criminal proceedings and appeals, as reported below.

Hourly rate:

These figures represent the most commonly reported rates for the surveyed counties. Rates vary from county to county, between \$20 and \$40 an hour.

Only three counties distinguish in-court from out-of-court time.

Out-of-court	\$20
In-court	\$30

Maximums:

This maximum applies to the costs of a criminal proceeding incurred without prior court approval, pursuant to Supreme Court rule.

Capital case	\$5,000
Felony	\$5,000
Misdemeanor	\$5,000
Other	\$5,000

Appeals (hourly rate):

The maximum applies to appeals financed by county funds.

It may be exceeded by the district court judge in justifiable cases.

Out-of-court	—
In-court	—
Maximum	\$2,000

Flat rate or per diem:

In some cases, the surveyed counties reported the use of the below flat rates of compensation.

Felony	\$50
Misdemeanor	\$50
Appeal	—
Other	—

Expense limits:

None.

Pursuant to the statute cited above, counsel shall be reimbursed for reasonable costs incurred in the proceedings.

## Appendix C

### Nebraska

#### Counties selected for survey:

- |                 |             |
|-----------------|-------------|
| 1. Lancaster    | 10. Adams   |
| 2. Douglas      | 11. Boone   |
| 3. Sarpy        | 12. Madison |
| 4. Scotts Bluff | 13. Thayer  |
| 5. Dawes        | 14. Stanton |
| 6. Lincoln      | 15. Cuming  |
| 7. Dawson       | 16. Gage    |
| 8. Buffalo      | 17. Cass    |
| 9. Hall         |             |

#### Court of last resort:

##### Supreme Court

May sit *en banc* or in two divisions of five justices each.

*En banc*, hears all appeals in homicide cases and where constitutionality of statute is challenged, and may review any decision of one of the divisions.

All District Court decisions can be appealed as a matter of right to the Court or a division thereof.

##### Intermediate appellate courts:

None.

##### Court of general trial jurisdiction:

##### District Court

Has both chancery and common law jurisdiction in all criminal and civil matters unless vested in other courts (e.g., probate, guardianship, or conservatorship, most juvenile matters, and ordinance violations).

Has appellate jurisdiction over appeals from County and Municipal Courts, and most administrative agencies.

##### Court of limited or special jurisdiction:

##### County Court

Has concurrent jurisdiction with District Court in criminal actions where penalty does not exceed 1 year of imprisonment or a fine of \$500.

Has exclusive original jurisdiction in, among other things:

- guardianship and conservatorships
- ordinance violations where no Municipal Court
- where there is no Special Juvenile Court for juvenile matters, except it is concurrent with District Court for what would be felony offenses.

Conducts preliminary examinations in felony cases.

##### Separate Juvenile Court

(in Douglas, Lancaster, and Sarpy Counties)

Has exclusive original jurisdiction in juvenile matters—same as for County Court.

##### Women's Compensation Court

##### Municipal courts:

##### Municipal Court (Douglas and Lancaster Counties)

Has exclusive original jurisdiction over municipal ordinance violations.

Has concurrent jurisdiction with County Court in civil and criminal cases.

##### Magistrates:

##### District and County Court Referees and Masters

Decide disputes and render decisions for court on stipulation of parties.

##### County Court Associate Judges

If an attorney, same authority as judge.

Limited authority if not an attorney.

##### Separate Juvenile Court Associate Judge

Determines cases as assigned by court.

##### Municipal Court Acting Judge

Serves in same capacity as judge.

### Defensive services to indigents

#### Statutory scheme

Each county is required to provide sufficient funding for indigent defense services.

The counties may select the type of services they desire, provided, however, that if a county chooses a public defender program, the public defender shall be elected to a 4-year term.

Public defender programs are required in counties with a population exceeding 200,000.

Statute: Neb. Rev. Stat. Sec. 29-1804 et. seq.

#### Actual scheme

At the time of our survey, 26 counties were served by a public defender, 62 by an assigned counsel, and 5 by a contract system.

There is some question, however, as to whether or not some of these public defender programs might more accurately be described as a contract program.

#### Costs

All costs of indigent defense services in Nebraska are the responsibility of the counties.

##### Total costs by source:

State	—
County	\$2,708,986
Other	—
Total	\$2,708,986

##### Assigned counsel rates

Rates set by custom in jurisdiction and judge discretion.

Neb. Rev. Stat. Sec. 29-1804 stipulates that the appointing courts shall fix reasonable fees and expenses.

##### Hourly rate:

These figures represent the most commonly reported by surveyed counties.



The rates vary from county to county and may be increased by the court at its discretion.

Out-of-court      \$35  
In-court            \$35

**Maximums:**

None.

**Appeals:**

None.

**Flat rate or per diem:**

None.

**Expense limits:**

None.

Reasonable expenses are allowed on a case-by-case basis.

**Nevada**

All 17 counties contacted for survey.

Court of last resort:

Supreme Court

May issue all extraordinary writs necessary to complete exercise of jurisdiction.

Appellate jurisdiction on questions of law alone in all cases in which the offense charged is within the original jurisdiction of the District Court.

Appellate jurisdiction extends to all cases in equity.

Intermediate appellate court:

None.

Court of general trial jurisdiction:

District Court

Has original jurisdiction in criminal cases not in jurisdiction of another court.

Also functions as juvenile court, having exclusive original jurisdiction over juvenile matters.

Has appellate jurisdiction over cases appealed from courts of limited jurisdiction.

May issue all necessary writs.

Courts of limited or special jurisdiction:

Justices' Court

Has jurisdiction over motor vehicle violations, petty vehicle violations, petty larceny, assault and battery, criminal mischief, and disturbances of the peace.

Municipal courts:

Municipal Court

Has jurisdiction over misdemeanors punishable by a fine and/or imprisonment not exceeding 6 months ordinance violations, abatement of nuisances, vagrancy, disorderly conduct, petty larceny, minor assault and battery, and breaches of the peace.

Magistrates:

District Court Juvenile Master

May swear witnesses and make findings of fact and recommendations on ad hoc basis.

If no hearing by the court is requested, the findings and recommendations of the Master becomes a decree of the court.

District Court Probate Commissioner

Defense services to indigents

Statutory scheme

By State statute the two largest counties, including Las Vegas and Reno respectively, are each required to establish public defender offices.

Each of the 15 remaining counties in the State has the option of establishing its own public defender office or joining with one or more counties to establish one public defender office to serve those counties.

In a separate section the State Public Defender Office is created, authorizing the State public defender to contract with attorneys in the State and with county public defenders to provide defense services to indigents.

The State public defender is appointed by the Governor to a 4-year term.

Statute: Nev. Rev. Stat. Sec. 180.010 et. seq. and Sec. 260.010 et. seq.

Actual system

Most of the 15 counties in Nevada have opted into the State public defender system.

From time to time, however, a few have opted in and out.

At the time of the survey, all but 2 of the 15 counties were part of the statewide system.

## Appendix C

### Costs

The State provides about 5% of the funds for indigent defense services in Nevada, the counties the remaining 95%.

Total costs by source:  
 State \$189,927  
 County \$3,578,686  
 Other —  
 Total \$3,829,489

### Assigned counsel rates:

Rates set by statute and judge discretion.

Fee schedule is set by Nev. Rev. Stat. Sec. 7.125.

Hourly rate:  
 Out-of-court \$20  
 In-court \$30

### Maximums:

The appointing court may grant a fee in excess of the applicable maximum in extraordinary circumstances.

Capital case \$2,500  
 Felony \$1,000  
 Misdemeanor \$300  
 Other\* \$300

\* Postconviction relief.

Appeals:  
 Out-of-court —  
 In-court —  
 Maximum —  
 (misdemeanor) \$300  
 (felony or gross misdemeanor) \$1,000

Flat rate or per diem:

None.

### Expense limits:

Pursuant to Nev. Rev. Stat. Sec. 7.135 an attorney is entitled to be reimbursed for expenses reasonably incurred for investigative, expert, or other services necessary to an adequate defense, subject to the prior approval of the judge.

Compensation to any person furnishing such service shall not exceed the below maximum.

Investigators \$300  
 Expert witnesses \$300  
 Transcripts —  
 Social services —  
 Travel —  
 Other —

### New Hampshire

All 10 counties contacted for survey.

### Court of last resort:

#### Supreme Court

Has general superintendence over all trial courts and may issue extraordinary writs.

Has appellate jurisdiction over questions of law from all courts, and administrative agencies in the State.

### Intermediate appellate courts:

None.

### Court of general trial jurisdiction:

#### Superior Court

Sits in both law and equity.

Has original and exclusive jurisdiction with District Court over felony cases.

Has concurrent jurisdiction with District Court over misdemeanor offenses.

Jury trials cannot be held in courts of limited jurisdictions; thus, all jury trials are held in Superior Court.

Hears misdemeanor appeals de novo from District Court.

### Courts of limited or special jurisdiction:

#### Probate Court

Among its duties hears mental commitments and adoptions.

#### District Court

Has original jurisdiction over all crimes and offenses involving a fine of up to \$1,000, or imprisonment up to 1 year.

Court's criminal jurisdiction does not extend to areas that have Municipal Courts.

Original juvenile proceedings held in District Court.

Municipal courts:

Municipal court

There are 15 Municipal Courts.

Has same criminal jurisdiction as the District Court.

Magistrates:

Supreme Court and Superior Court Judicial Referee

Retired justices may be assigned to assist either court, but are not authorized to preside at trials by jury or to enter judgments.

Superior Court Auditor, Master, Marital Master, and Referee

May be appointed by court to preside at hearings and present findings to court for disposition.

Defensive services to indigents

Statutory scheme

A statewide public defender agency is in operation in New Hampshire.

There is also a separate appellate defender program.

There is also provision for serious counties through an assigned counsel program with the approval of the State public defender.

Statute: N.H. Rev. Stat. Sec. 604-A:1 et.seq.

Actual system

Four of New Hampshire's largest counties are served by public defender offices.

The other six less populous counties are served by members of the private bar.

Costs

All expenditures for indigent defense services are the responsibility of the State.

Total costs by source:  
State \$2,146,999\*  
County —

Other —  
Total \$2,146,999

\* State contribution includes \$50,000 for the State appellate program.

Assigned counsel rates

Rates set by court rule statewide and judge discretion.

N.H. Rev. Stat. Ann. Sec. 604-A:4 stipulates that an attorney shall be reasonably compensated at a level fixed by the court.

However, the New Hampshire Supreme Court has promulgated a fee schedule for the State, as reported below.

Hourly rate:  
Out-of-court \$25  
In-court \$35

Maximums:

In murder cases the maximum limit does not apply.

However, the rule states that no justice of the Superior Court shall approve any unreasonable charge.

Capital case —  
Felony \$1,500  
Misdemeanor \$500  
Other\* \$500

\* Juvenile.

Appeals:

Although there is no official limit on fees, they are carefully scrutinized by the Court.

Out-of-court \$25  
In-court \$35  
Maximum —

Flat rate or per diem:  
Felony \$200  
Misdemeanor \$200  
Appeal \$200  
Other \$200

Expense limits:

None.

Investigative, expert, or other necessary services may be compensated upon a finding of necessity and reasonableness by a justice of the Superior Court.

New Jersey

Counties selected for survey:

- 1. Mercer
- 2. Camden
- 3. Ocean
- 4. Middlesex
- 5. Passaic
- 6. Bergen
- 7. Essex
- 8. Hudson

Court of last resort:

Supreme Court

May exercise such original jurisdiction as may be necessary to complete the review of any matter.

Exercises appellate jurisdiction as Court of Last Resort.

- Appeals as a matter of right:
  - in cases determined by Appellate Division of the Superior Court which involve Federal or State constitutional questions
  - in cases when a member of Appellate Division dissents
  - in capital cases
  - in other cases as provided by law.

- Interlocutory orders:
  - from trial court where death penalty may be imposed, including postconviction proceedings
  - to prevent irreparable injury
  - on certification from Appellate Division of the Superior Court.

Intermediate appellate court:

Appellate Division of the Superior Court

May exercise such original jurisdiction as may be necessary to complete review of any matter.

May hear appeals as a matter of right from the Law and Chancery Divisions of the Superior Court; from County District Court; and Juvenile and Domestic Relations Court (only in civil cases), and from summary contempt proceedings in Municipal Courts; as well as from Administrative Agency hearings.

Court of general trial jurisdiction:

Superior Court

- Divided into three divisions:
  - 1. Appellate
  - 2. Law
  - 3. Chancery

## Appendix C

Law Division has general jurisdiction over all criminal matters.

Chancery Division has concurrent jurisdiction with Juvenile and Domestic Relations Court as to custody, child support, and civil commitments.

Law Division has appellate jurisdiction over appeals from Municipal Court and from certain administrative agencies.

### Courts of limited or special jurisdictions:

#### County District Court

Among other matters has concurrent jurisdiction with the Municipal Court in ordinance violations and non-indictable offenses.

#### Juvenile and Domestic Relations Court

Has exclusive jurisdiction in following types of cases:

- juvenile delinquency
- dependency and neglect
- over child in child abuse cases.

#### Surrogates Court

Probate.

#### Tax Court

#### Municipal courts:

#### Municipal Court

Has jurisdiction over

- traffic offenses
- minor criminal violations
- ordinance violations
- probable cause hearings
- specified crimes where penalty does not exceed 1 year of imprisonment and offenses where value of property does not exceed \$500.

Criminal jurisdiction may be exercised concurrently with County District Courts.

### Magistrates:

#### Superior Court Special Masters

Hold hearings on cases assigned by courts.

#### Defense services to indigents

#### Statutory scheme

The New Jersey Public Defender was established by statute in 1967 and is located within the Department of the Public Advocate.

The public defender is appointed by the Governor with the advice and consent of the Senate for a 5-year term.

Private attorneys are appointed mainly in conflict cases and are called pool attorneys.

By statute the public defender may engage private counsel on a case-by-case basis as needed.

The State Public Defender also operates an appellate division.

Statute: N.J. Stat. Ann. Sec. 2A:158A-3 et. seq.

#### Actual system

The New Jersey Public Defender system consists of an appellate section and 19 regional offices.

#### Costs

All costs of indigent defense services in New Jersey are provided by the State.

Total costs by source:

State	\$19,681,656
County	—
Other	—
Total	\$19,681,656

#### Assigned counsel rates

Rates set by State Public Defender.

By statute (N.J. Stat. Ann. Sec. 2A:158-7) the State Public Defender is charged with the responsibility for preparing a schedule of payment rates for services rendered by nonstaff.

Private attorneys submit their vouchers to the public defender who makes a judgment for payment based on their experience.

Hourly rate:  
Out-of-court \$15  
In-court \$23

These figures represent the rates most commonly reported by the counties surveyed.

#### Maximums:

In some cases a maximum number of billable hours for research is established.

#### Appeals:

None.

#### Flat rate or per diem:

None.

#### Expense limits:

By statute, expenses of the private bar related to representation are determined by the State Public Defender.

Some of the rates include \$125 per day for experts; \$200 for medical reports; and \$200 to \$400 per day for court appearances.

## New Mexico

### Counties selected for survey:

- |               |               |
|---------------|---------------|
| 1. Bernadillo | 7. Los Alamos |
| 2. San Juan   | 8. Santa Fe   |
| 3. Dona Ana   | 9. San Miguel |
| 4. McKinley   | 10. Eddy      |
| 5. Valencia   | 11. Chaves    |
| 6. Luna       | 12. Curry     |

### Court of last resort:

#### Supreme Court

Has original jurisdiction to issue all extraordinary writs.

Has appellate jurisdiction over District Court decisions imposing the death penalty or life imprisonment and other cases where responsibility is not vested in the Court of Appeals.

By writ of certiorari from final judgments of Court of Appeals.

In cases that are certified by Court of Appeals.

### Intermediate appellate court:

#### Court of Appeals

Has no original jurisdiction.

Has appellate jurisdiction over any criminal action or postconviction remedy proceeding, except those cases in which a judgment of a District court imposes a death sentence or life imprisonment.

Also can review any violation of municipal or county ordinance where a fine or imprisonment is imposed.

### Court of general trial jurisdiction:

#### District Court

May establish two specialized divisions beyond regular duties.

1. Children's Court Division.
2. Family Court Division.

Has exclusive jurisdiction in all matters and causes not excluded by State constitution.

Children's Division has exclusive jurisdiction in all matters relating to juveniles.

If Family Court is established, it has same jurisdiction as Children's Division and exclusive jurisdiction in • incompetency or insanity in adults • guardianships.

Has jurisdiction over offenses committed against a child by an adult.

Has appellate jurisdiction in all cases originating in courts of limited jurisdiction.

### Courts of limited or special jurisdiction:

#### Magistrate Court

Has jurisdiction in misdemeanors and any other criminal actions as specified by law.

#### Probate Court

#### Small Claims Court of Albuquerque

#### Metropolitan Court of Bernadillo County

Consolidation of Magistrate, Municipal, and Small Claims Courts as of 7/1/80.

Has jurisdiction over misdemeanors and other crimes with fines less than \$1,000 and a sentence of less than 1 year.

Handles preliminary hearings.

### Municipal courts:

#### Municipal Court

Has exclusive jurisdiction over all municipal ordinance violations.

### Magistrates:

#### District Court Special Masters

Cases referred to masters in only exceptional matters.

## Defense services to indigents

### Statutory scheme

By statute, New Mexico has a statewide public defender system created as part of the State's criminal justice department.

The Chief Public Defender is appointed by the Governor and is responsible to a three-member board also appointed by the Governor.

The Chief Public Defender has the authority to designate one or more public defender districts.

The Chief Public Defender is also permitted to establish a private bar system of representation when the public defender, for any reason, cannot provide representation.

Statutes: N.M. Stat. Ann. Sec. 31-15-1 et. seq.

### Actual system

The system has offices located in the most populous areas such as Santa Fe, Albuquerque, and other cities.

In rural outlying areas, cases are handled through contracts with private lawyers or ad hoc private bar appointments.

The public defender budget is responsible for all costs: public defender, contract, and ad hoc appointment.

### Costs

All costs of indigent defense services in New Mexico are provided by the State.

Total costs by source:  
State \$3,981,763  
County —  
Other —  
Total \$3,981,763

### Assigned counsel rates

Fees are set by the State Public Defender.

Hourly rate:  
Out-of-court \$20  
In-court \$30

## Appendix C

Maximums:	
Capital case	—
Felony	\$800
Misdemeanor	\$800
Other	\$800

### Appeals:

These fees will be doubled on July 1, 1981.

Out-of-court	\$20
In-court	\$30
Maximum	\$1,000

### Flat rate or per diem:

Not applicable.

### Expense limits:

Expenses are allowed on an individual case basis.

## New York

### Counties selected for survey:

1. Kings	9. Niagara
2. Queens	10. Monroe
3. Nassau	11. Tioga
4. Suffolk	12. Cortland
5. New York	13. St. Lawrence
6. Bronx	14. Rockland
7. Erie	15. Ulster
8. Westchester	16. Albany

### Court of last resort:

#### Court of Appeals

Has no original jurisdiction.

Has appellate jurisdiction constitutionally limited to review questions of law, except:

- death penalty cases (deleted 10/10/80)
- cases where Appellate Divisions of Supreme Court finds new facts and enters judgment accordingly
- added 10/6/80: All appeals from Appellate Divisions of Superior Court and appeals in criminal cases from the Appellate Terms of the Supreme Court and from County Courts are taken to Court of Appeals.

### Intermediate appellate court:

#### Appellate Divisions of the Supreme Court

Appellate Divisions hear and determine appeals from judgments or orders of the Courts of original jurisdiction in criminal and civil cases.

#### Appellate terms of the Supreme Court

Appellate terms are established as needed by Justices of Appellate Division.

As directed, have jurisdiction to hear and determine appeals that may go to Appellate Divisions or to Supreme Court, but may not hear appeals

- from Supreme Court
- from Surrogate Court
- from Family Court
- from indictable criminal cases.

### Court of general trial jurisdiction:

#### Supreme Court

Has exclusive jurisdiction over felonies and indictable misdemeanors in New York City.

Also has unlimited jurisdiction, but usually hears cases that are outside jurisdiction of other courts.

#### County Court

Exercises unlimited jurisdiction over all crimes and other violations of law.

Has appellate jurisdiction to hear appeals from determinations of District, City, Town, and Village Justice Courts.

### Courts of limited or special jurisdiction:

#### Surrogate's Court

Probate.

#### Family Court

Has jurisdiction in cases involving families and children

- juvenile delinquency
  - CHINS
  - TPR's
  - guardianship and custody
  - other related matters.
- Also has "Designated Felony Act Parts" for hearing certain felony cases specified by statute.

#### Civil Court of NYC

#### Criminal Court of NYC

Jurisdiction to conduct felony arraignments and preliminary hearings.

Jurisdiction to hear, try, and determine all misdemeanors and ordinance violations.

#### District Court

Exercises same jurisdiction as Criminal Court of NYC.

#### Court of Claims

Municipal courts:

City Court

Same jurisdiction as Criminal Court of NYC.

Town Justice Court and Village Justice Court

Same criminal jurisdiction as Criminal Court of NYC.

Magistrates:

Trial Court Referee

Serves as needed.

Family Court Hearing Examiner

Can hold hearings as assigned and make recommendations to the court.

Defense services to indigents

Statutory scheme

Article 18-B of the New York statute requires each county to formulate a plan to provide representation for indigents.

The plan may consist of (a) a public defender; (b) a private legal aid bureau or society; (c) a bar association plan whereby private counsel are assigned by an administrator, or (d) any combination of the foregoing.

Statute: N.Y. County Law Sec. 716 et. seq.

Actual system

Public defender programs exist in all but 7 of New York's 62 counties.

Those counties operate a coordinated assigned counsel panel program.

Costs

The counties provide over 75% of the costs of indigent defense services in New York over all.

For most counties the figure is 100%.

The State provides for special priority programs in the larger metropolitan areas.

Total costs by source:

State	\$17,595,074
County	\$58,834,447
Other	—
Total	\$76,429,521

Full amount of State contribution is funding for the State appellate program.

Assigned counsel rates

Rates set by statute.

N.Y. Jud. Law Sec. 722-b stipulates that counsel shall receive compensation not exceeding the hourly rates and maximum limits reported below.

Hourly rate:	
Out-of-court	\$15
In-court	\$25

Maximums:

By statute, the court can in extraordinary cases exceed the maximum.

Capital case	\$1,500 (1 atty)
	\$2,000 (2+attys)
Felony	\$750
Misdemeanor	\$500
Other	\$500

Appeals:

Maximum limits for appeal from judgment of death are the same as those reported in "Maximums" above.

For all other types of appeals, compensation shall be fixed by the appellate court.

Out-of-court	\$15
In-court	\$25
Maximum	—

Flat rate or per diem:

None.

Expense limits:

None.

Pursuant to the above-cited statute, private counsel is to receive reimbursement for expenses reasonably incurred.

North Carolina

Counties selected for survey:

- |                |                |
|----------------|----------------|
| 1. Mecklenburg | 10. Robeson    |
| 2. Buncombe    | 11. Cumberland |
| 3. Burke       | 12. Person     |
| 4. Gaston      | 13. Wake       |
| 5. Wilkes      | 14. Sampson    |
| 6. Cabarrus    | 15. Lenoir     |
| 7. Forsyth     | 16. Granville  |
| 8. Rockingham  | 17. Craven     |
| 9. Guilford    | 18. Currituck  |

Court of last resort:

Supreme Court

Has jurisdiction to issue extraordinary writs.

Has jurisdiction to review death penalty or sentence of life imprisonment, except where guilty plea entered that is imposed by Superior Court.

In its discretion on the motion of any party, may certify cases filed in Court of Appeals for Supreme Court review, either before or after Court of Appeals review.

Intermediate appellate court:

Court of Appeals

Has no original jurisdiction.

May issue remedial and prerogative writs.

Hears following appeals (among others) by statute:

- final judgments of Superior Court, including judgments entered in a postconviction hearing
- any interlocutory orders
- any order or judgment entered by Superior Court from which an appeal is authorized by statute
- from judgments in juvenile proceedings.

Court of general trial jurisdiction:

Superior Court

Has original general jurisdiction throughout the State.

Appendix C

Has exclusive original jurisdiction over all felonies and may try misdemeanors in certain situations specified by law.

Has appellate jurisdiction over misdemeanors appealed from the District Court, which are heard trial de novo.

Court of limited or special jurisdiction:

District Court

Has jurisdiction in felony cases to conduct preliminary hearings.

Has exclusive original jurisdiction for the trial of criminal actions, including municipal ordinance violations below grade of felony.

Has exclusive original jurisdiction over juvenile matters.

Municipal courts

None.

Magistrates:

District Court Magistrate

In criminal actions--

Can accept guilty pleas and enter judgment in misdemeanor cases when punishment does not exceed 30 days or a \$50 fine.

Can do same in traffic cases and enter judgment according to a schedule of fines.

Can issue warrants and set bail in noncapital cases.

Can try worthless check cases where value is less than \$400.

**Defense services to indigents**

Statutory scheme

In North Carolina, public defender districts are established by specific statutory designation.

The public defender in each district is appointed by the Governor from a list submitted by attorneys resident in the district.

All public defenders are full-time with compensation set the same as that of a full-time district solicitor.

In districts without a public defender, the statute provides that the North Carolina State Bar Council shall make rules and regulations "relating to the manner and method of assigning counsel, the procedure for the determination of indigency, waiver of counsel, the adoption and approval of plans by any district bar regarding the method of assignment of counsel among the licensed attorneys of the district."

The State has also established a State appellate defender program.

Statute: N.C. Gen. Stat. Sec. 7A-465 et. seq.

Actual system

At the time of our survey, 14 counties were being served by a judicial district public defender.

The remaining 86 counties were served by an assigned counsel program.

Costs

In North Carolina, all expenditures for indigent defense services are the responsibility of the State.

Total costs by source:	
State	\$10,968,213*
County	—
Other	\$38,825
Total	\$11,004,038

\* State contribution includes \$325,000 for the State appellate program.

Assigned counsel rates

Rates set by custom in jurisdiction and judge discretion.

N.C. Gen. Stat. Sec. 7A-452 stipulates that the trial judge shall award reasonable compensation to appointed counsel.

Hourly rate:

These figures represent the rates most commonly reported by the counties surveyed.

In some cases in-court hourly rates are different for misdemeanors and felonies.

Out-of-court	\$30
In-court	\$40

Maximums:

These figures represent the ranges of maximum reported by the counties surveyed:

Capital Case	—
Felony	\$200-500
Misdemeanor	\$100-200
Other	—

Appeals:

Compensation for representation on appeal is set by appellate discretion.

Flat rate or per diem:

None.

Expense limits:

By statute (N.C. Gen. Stat. Sec. 7A-454), the court has discretion to approve fees for expert witnesses and necessary expense of counsel.



## North Dakota

### Counties selected for survey:

- |                |              |
|----------------|--------------|
| 1. Ward        | 9. Bottineau |
| 2. Burleigh    | 10. Wells    |
| 3. Cass        | 11. Stutsman |
| 4. Grand Forks | 12. Ramsey   |
| 5. McKenzie    | 13. Walsh    |
| 6. Stark       | 14. Ransom   |
| 7. McLean      | 15. Steele   |
| 8. Morton      |              |

### Court of last resort:

#### Supreme Court

Has original jurisdiction to issue, hear, and determine such original and remedial writs as may be necessary to exercise its jurisdiction.

Has appellate jurisdiction to hear appeals from the District and County Courts with increased jurisdiction.

Has appeals of criminal matters of right.

#### Intermediate appellate court:

None.

### Court of general trial jurisdiction:

#### District Court

There are seven judicial districts. Various divisions of the court may be created.

Has original jurisdiction in all cases, except as otherwise provided by law.

Family Division is specialized in order to protect rights of children, etc.

Juvenile Division has exclusive original jurisdiction over the following:

- proceedings in which a child is alleged to be delinquent, unruly, or deprived
- TPR's
- proceedings from out-of-State
- other matters relating to children.

Has appellate jurisdiction over all final judgments of County Justices and Municipal Courts, and probate appeals from County Courts.

### Courts of limited or special jurisdiction:

#### County Court (in 36 counties)

Essentially Probate jurisdiction.

#### County Court with increased jurisdiction (in 17 counties)

Has concurrent jurisdiction with District Court in all criminal actions below grade of a felony.

May issue warrants and set bail.

Has concurrent appellate jurisdiction with District Court from final judgments of Municipal Court

#### County Justice Court (in 36 counties)

Has criminal jurisdiction in misdemeanor violations of State law.

May conduct preliminary hearings, issue search and arrest warrants, and set bail.

#### Municipal courts:

##### Municipal Court

Has exclusive original jurisdiction to hear, try, and determine all city ordinance violations.

##### Magistrate:

##### District Court Juvenile Supervisor:

Has various responsibilities over investigations and actions in juvenile matters.

##### District Court Referee

May conduct hearings on any case in first instance on juvenile matters.

May preside at Juvenile Court hearings and report findings and recommendations and determine if an act of delinquency was committed.

#### **Defense services to indigents**

##### Statutory scheme

In 1981, the State established the North Dakota Legal Counsel for Indigents Commission.

The purpose of the Commission included the establishment of standards and guidelines for program operation throughout the State.

Under these procedures, counties could select a public defender, assigned counsel, or contract method for operations.

##### Actual system

At the time of the survey, three counties provided contract defense services and the remaining 50 had an assigned counsel program.

##### Costs

All costs of felony representation are the responsibility of the State.

All remaining costs are the responsibility of the counties.

##### Total costs by source:

State	\$571,000
County	\$376,633
Other	—
Total	\$947,633

##### Assigned counsel rates

Rates set by court rule statewide and judge discretion.

Rates are set by the North Dakota Legal Counsel for Indigents Commission, established by the North Dakota Supreme Court, pursuant to N.D. Cent. Code 27-01-01.1 et. seq. pursuant to N.D. Cent. Code.

The rates set by the commission as reported below are included in Supreme Court Policy 204.

##### Hourly rate:

Vouchers for payment may be submitted monthly.

Out-of-court	\$50
In-court	\$50

##### Maximums:

None.

Fees in excess of \$500 in a particular case require early prior written approval of the presiding judge.

## Appendix C

Fees in excess of \$2,000 also require notification by the judge of the presiding judge in the judicial district and the State Court Administrator.

In exceptional cases in which total defense expenses may exceed \$5,000 the presiding judge must set a total fixed fee payment, including counsel fees, witnesses, and investigating expenses.

The guidelines also state that judges should avoid setting maximum reimbursable time limits in a case, beyond which counsel is not compensated.

Appeals (hourly rate):  
 Out-of-court \$50  
 In-court \$50  
 Maximum —

Flat rate or per diem:

None.

Expense limits:

Expenses for investigators, expert witnesses, out-of-town witnesses, and court interpreters may be reimbursed with the prior written approval of the presiding judge.

Investigators	\$250*
Expert witnesses	\$250*
Transcripts	NC
Social services	—
Travel	\$500**
Total	—

\*Early prior written approval of the presiding judge is required if a lawyer anticipates cumulative investigatory or other defense expenses in a particular case in excess of this amount.

\*\*Early prior written approval of the presiding judge is required. Mileage and travel rates are provided in NDCC 44-08-04 and 54-06-09.

### Ohio

Counties selected for survey:

- |               |               |
|---------------|---------------|
| 1. Hamilton   | 10. Huron     |
| 2. Franklin   | 11. Lawrence  |
| 3. Cuyahoga   | 12. Lorain    |
| 4. Montgomery | 13. Summit    |
| 5. Butler     | 14. Stark     |
| 6. Auglaize   | 15. Jefferson |
| 7. Lucas      | 16. Portage   |
| 8. Clark      | 17. Lake      |
| 9. Pickaway   |               |

Court of last resort:

#### Supreme Court

Has original jurisdiction to issue extraordinary writs necessary to complete determination of any case on review.

Has jurisdiction over appeals from Court of Appeals in following:  
 • cases of felony on leave first obtained  
 • cases where conflicting decisions have been rendered by different divisions of Court of Appeals  
 • cases of public or great general interest  
 • matter of right of appeals in cases originating in Court of Appeals or involving the death penalty or a constitutional question.

Intermediate appellate court:

#### Court of Appeals

Has original jurisdiction to issue extraordinary writs necessary to complete determination of any case on review.

Has appellate jurisdiction to review any judgment or final order of any court of general or limited jurisdiction on questions of law.

In certain cases, court may weigh evidence and render judgment on questions of law and fact.

Court of general trial jurisdiction:

#### Court of Common Pleas

General Division has criminal jurisdiction over all crimes and offenses except misdemeanors where exclusive jurisdiction has been granted to a court of limited jurisdiction.

Juvenile Division has exclusive jurisdiction in juvenile matters.

#### Courts of limited or special jurisdiction:

##### Municipal court

Has criminal jurisdiction over all ordinance violations and misdemeanors.

Conducts preliminary hearings in felony cases.

Has appellate jurisdiction over Mayor's Courts; appeals are trial de novo.

##### County Court

Has criminal jurisdiction over traffic offenses and all misdemeanors.

Has same appellate jurisdiction as Municipal Court.

##### Court of Claims

##### Municipal courts:

##### Mayor's Court

Mayors of municipalities not having an established Municipal Court have concurrent jurisdiction with the limited jurisdiction court serving the municipality to hear and determine cases involving ordinance and traffic violations.

##### Magistrates:

##### Supreme Court and Court of Appeals Master Commissioner

Conducts hearings on certain motions for leave to appeal.

##### Court of Common Pleas Commissioner and Referee

##### Municipal and County Courts Referee

##### Defense services to indigents

##### Statutory scheme

Under Ohio law there is established an Ohio Public Defender Commission.

The Commission is charged with supervising and coordinating legal representation for indigents accused of crime in the State of Ohio.

A nine-member governing board is established and has the responsibility for appointing the State public defender to a 4-year term.

Under this plan, the individual county may establish a public defender program, an assigned counsel program, or a combination of both.

Statute: Ohio Rev. Code Ann. Sec. 120.03 et. seq.

Actual system

At the time of our survey, 30 counties received services through public defender programs.

The remaining 58 counties were served by an assigned counsel system.

Costs

Subject to the availability of funds, the State is required to reimburse counties for indigent defense services up to 50% provided that the county meets the necessary standards developed by the Ohio Public Defender Commission.

The balance is paid by the counties.

The 50% reimbursement rate has applied in all but 1 year since the Commission was established in 1976.

Total costs by source:	
State	\$9,597,422
County	\$8,498,911
Other	—
Total	\$18,096,333

Assigned counsel rates

Rates set by State Public Defender.

Ohio Rev. Code Ann. Sec. 120.04(B)(9) empowers the State Public Defender to establish a schedule of maximum fees.

Some of the counties have adopted this schedule; others have not.

These fees are reported below.

Hourly rate:	
Out-of-court	\$30
In-court	\$40
Maximums:	
Aggravated murder	\$12,500/1 atty. \$25,000/2 attys.
Aggravated murder (w/o specs)	\$4,000/1 atty.: \$6,000/2 attys.
Murder	\$3,000
Felonies (degrees 1-4)	\$1,000
Misdemeanors (degrees 1-4)	\$500

Juvenile Proceedings:	
Delinquency offenses	\$750
Guardian Ad Litem	\$150
All others	\$300

Postconviction proceedings:	
With evidentiary hearing	\$750
Without hearing	\$300

Habeas Corpus, Parole, Probation and all other proceedings not elsewhere classified	
	\$300

Appeals (hourly rate):	
Out-of-court	\$35
In-court	\$35
Maximum*	—

Death Penalty	\$4,000/ 1 atty. \$6,000/ 2 attys.
Aggravated murder (w/o specs)*	\$2,000
Felonies	\$1,000
Misdemeanors	\$500

Flat rate or per diem:	
Felony	—
Misdemeanor	\$50
Appeal	—
Other	—

Additional reimbursement shall be made for extraordinary cases at the regular hourly rates, up to \$200 per day, plus expenses, whenever a trial continues beyond the following periods:

Death penalty	25 days
Aggravated murder	13 days
Murder	8 days
Felonies (degrees 1-4)	4 days

In addition, some counties surveyed reported the use of the above flat fee for compensation in misdemeanor cases.

Expense limits:

Investigators*
Expert witnesses*
Transcripts
Social services
Travel
Total

Investigators provided by State Defender Commission on request by counsel.

\*Limits set by individual judges dependent on county policy; otherwise attorney services plus either investigator or expert witnesses are expected to stay within maximum established by Commission rule.

## Appendix C

### Oklahoma

#### Counties selected for survey:

- |              |               |
|--------------|---------------|
| 1. Oklahoma  | 10. Kay       |
| 2. Tulsa     | 11. Lincoln   |
| 3. Cleveland | 12. Pontotoc  |
| 4. Beckham   | 13. Pittsburg |
| 5. Major     | 14. Rogers    |
| 6. Caddo     | 15. Muskogee  |
| 7. Comanche  | 16. LeFlore   |
| 8. Stephens  | 17. Ottawa    |
| 9. Logan     |               |

#### Court of last resort:

#### Supreme Court

Has appellate jurisdiction over all civil appeals from the district court.

Certiorari jurisdiction as set forth under Court of Appeals.

#### Court of Criminal Appeals

Has exclusive appellate jurisdiction in all criminal cases appealed from the Municipal Criminal Court.

#### Intermediate appellate court:

#### Court of Appeals

Has power to dispose of any case assigned by the Supreme Court.

A decision of the Court of Appeals may be reviewed by the Supreme Court if a majority of its justices direct that certiorari be granted.

Supreme Court may by order recall a case from the Court of Appeals.

#### Court of general trial jurisdiction:

#### District Court

Unlimited original jurisdiction in all justiciable matters and power to issue writs, remedial or otherwise, necessary to effect its orders, judgments, and decrees.

Appeals from Municipal Court not of record heard as trial de novo.

#### Courts of limited or special jurisdiction:

#### Municipal Criminal Court of Record

Has original jurisdiction in cases of violation of any city ordinances.

### Workers' Compensation Court

#### Court of Tax Review

#### Court of Bank Review

#### Municipal courts:

#### Municipal Court Not of Record

Has original jurisdiction over all city ordinance violations.

May be required to supervise juveniles placed on parole, probation, or suspended sentence.

#### Magistrates:

#### Supreme Court Referee

Performs duties as prescribed by the Supreme Court.

#### District Court Referee

May be appointed in counties with over 100,000 population.

Referees must be attorneys.

May hear any juvenile case and report findings and recommendations to the judge.

#### Defense services to indigents

#### Statutory scheme

By statute, public defenders are created in two instances: (1) in counties with populations between 24,727 and 60,000 (Title 19 O.S. 1971, Section 137.1) and (2) in counties of 200,000 or more population (Title 19 O.S. 1971, Section 138.1).

Title 22 O.S., Section 1271 provides for compensation to court-appointed counsel in all counties with a population below 200,000.

The law provides that assigned counsel be paid out of the county fund.

Statute: Okla. Sta. Ann. tit. 10, Sec. 24 tit. 11, Sec. 28-110 et. seq.; and tit. 19, Sec. 137.1 et. seq.

### Actual system

At the time of the survey, there were 2 counties served by public defender programs, 66 counties served by assigned counsel, and 9 counties served by contract programs.

#### Costs

The State assumes all costs of the State Appellate Defender Program.

All other costs are generated in each district court for each county.

The county may supplement these funds as needed throughout the year.

#### Total costs by source:

State	\$240,000*
County	\$2,652,820
Other	\$99,133
Total	\$2,991,953

\* Full amount of State contribution is funding for the State appellate program.

#### Assigned counsel rates

Rates set by statute and judge discretion.

Okla. Stat. Ann. 22 Sec. 1271 stipulates that attorneys shall be paid a reasonable and just compensation not to exceed the maximum amounts reported below, the specific amounts to be left to the discretion of the presiding judge.

Hourly rate:	
Out-of-court	\$40
In-court	\$40

Maximums:	
Capital case	\$2,500
Felony	\$500
Misdemeanor	\$500
Other	—

#### Appeals:

Okla. Stat. Ann. Sec. 22 1074 stipulates that counsel appointed to conduct an appeal shall be provided compensation, as fixed by the judge.

Flat rate or per diem:

In some cases, the counties surveyed reported the use of the above flat rates of compensation.

Felony	\$95
Misdemeanor	\$95
Appeal	—
Other	—

Expense limits:

None.

Expert witnesses: Reasonable fee.

## Oregon

Counties selected for survey:

- |               |                |
|---------------|----------------|
| 1. Lane       | 8. Josephine   |
| 2. Marion     | 9. Klamath     |
| 3. Washington | 10. Linn       |
| 4. Multnomah  | 11. Benton     |
| 5. Clackamas  | 12. Hook River |
| 6. Tillamook  | 13. Umatilla   |
| 7. Douglas    |                |

Court of last resort:

Supreme Court

Has original jurisdiction to issue extraordinary writs.

May hear appeals on petition for review from the Court of Appeals.

Intermediate appellate court:

Court of Appeals

Has no original jurisdiction.

Has exclusive appellate jurisdiction.

Court of general trial jurisdiction:

Circuit Court

Except where otherwise provided by law, the Circuit Court has original jurisdiction in all matters.

Has appellate jurisdiction over cases from all courts of limited jurisdiction except the District Court.

Tax Court

Courts of limited or special jurisdiction:

District Court

Has jurisdiction in all misdemeanor cases where potential punishment is not more than 1 year imprisonment or a \$3,000 fine, and over all nonfelonious traffic cases. Has concurrent jurisdiction with Municipal Court in municipal charter violations.

Justice Court

Has jurisdiction in misdemeanor cases and nonfelonious traffic cases.

## County Court

County courts in Crook, Gilliam, Harvey, Jefferson, Morrow, Sherman, and Wheeler Counties have juvenile jurisdiction.

Municipal courts

Municipal Court

Has jurisdiction over regulations of incorporated cities and towns.

Has concurrent jurisdiction with Justice Court over nonfelonious traffic cases within municipal boundaries.

Magistrates:

Referees (all counties)

Handle civil cases.

Judge Pro Tempore

Supreme Court may appoint judge pro tempore when it determines efficient administration of justice requires it.

Each judge pro tempore has same authority and duties as a regular judge of the court to which he or she is assigned.

**Defense services to indigents**

Statutory scheme

On January 1, 1983, the indigent defense system in Oregon shifted from a county-organized, county-funded to a county-organized, state-funded system.

However, counties retained their option to create a public defender, assigned counsel, or contract system.

Under the new system the State Supreme Court through the State Court Administrator is responsible for overseeing the system.

Statute: Or. Rev. Stat. Sec. 151.010 et. seq.

Actual system

At the time of our survey, 13 counties were served by a public

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defender program, 20 by an assigned counsel system, and three by a contract system.

Our present information is that this system has changed very little since January 1, 1983.

Appellate representation is provided by a State appellate organization distinct from the local programs.

### Costs

As of January 1, 1983, all costs of indigent defense services are the responsibility of the State.

At the time of our survey all costs except for the State appellate program were paid for by the counties.

Total costs by source:	
State	\$582,000
County	\$12,057,051
Other	—
Total	\$12,639,051

The entire State expenditure was for the State appellate defender program.

### Assigned council rates

Rates set by statute and judge discretion.

Or. Re. Stat. Sec. 135.055 stipulates that appointed counsel shall, by order of the court and subject to the approval of the governing body of the county, be paid fair compensation for representation.

Such compensation is payable at a rate not less than the hourly rate reported below.

### Hourly rate:

Out-of-court	\$30
In-court	\$30

### Maximums:

Total compensation payable is subject to the review of the presiding judge, who shall certify that such payment is fair compensation.

In some counties, informal limits are imposed.

### Appeals (hourly rate):

No distinction between in-court and out-of-court.

Out-of court	\$30
In-court	\$30
Maximum	—

### Flat rate or per diem:

None.

No statutory provision for flat rate or per diem reimbursement.

### Expense limits:

Pursuant to the statute cited above, "the person for whom counsel has been appointed is entitled to reasonable expenses for investigation, preparation and presentation of the case."

Such person or their counsel must secure approval and authorization of payment of such expenses as the court finds are "necessary and proper," including but not limited to travel, telephone, reproduction of documents, and expert witness fees.

## Pennsylvania

### Counties selected for survey:

1. Allegheny	9. Snyder
2. Philadelphia	10. Dauphin
3. Montgomery	11. Lancaster
4. Crawford	12. Chester
5. Washington	13. Lehigh
6. Armstrong	14. Lackawanna
7. Cambria	15. Bucks
8. Blair	16. Delaware

### Court of last resort:

#### Supreme Court

Original jurisdiction to issue all necessary writs.

May assume plenary jurisdiction over any matter pending before any court if it involves an issue of immediate public importance.

Has exclusive jurisdiction over appeals from the general trial courts (i.e., Court of Common Pleas) in, among other cases:

- felonious homicide
- direct criminal contempt
- constitutional matters.

Has exclusive jurisdiction from all final orders of the Commonwealth Court, entered as original decisions in that court.

May review any decision of the two intermediate appellate courts.

### Intermediate appellate court:

#### Superior Court

Has original jurisdiction in mandamus and prohibition to trial courts, and habeas corpus only when such actions are ancillary to those under appeal.

Has exclusive appellate jurisdiction over final orders of Court of Common Pleas, except when such orders are within exclusive jurisdictions of Supreme Court or Commonwealth Court.

### Commonwealth Court

Same original jurisdiction as noted above for the Superior Court.

With the exception of those cases reserved for the Supreme Court, it has exclusive appellate jurisdiction in, among other cases, all criminal actions.

Court of general trial jurisdiction:

Court of Common Pleas

There are 59 judicial districts. The court may have specialized divisions.

Criminal Division in Alleghany County handles all criminal matters, both felony and misdemeanor.

Trial Division in Philadelphia handles some criminal cases, but misdemeanors are heard in Philadelphia Municipal Court.

Family Division handles all juvenile matters.

Where court has no specialized divisions, it hears those cases as a whole.

Has appellate jurisdiction over certain administrative agencies and orders of minor judiciary.

Courts of limited or special jurisdiction:

Community Court

If established, it supplants jurisdiction of District Justice Court and would have same jurisdiction.

Pittsburgh Magistrates Court

Has jurisdiction over all ordinance violations and traffic offenses.

May hold preliminary hearing and commit defendant to jail pending bindover.

District Justices Court

Except as otherwise provided, has jurisdiction in summary offenses, except for traffic.

May preside at arraignments and set bail.

May hear misdemeanors of third class if defendant pleads guilty.

Municipal courts:

Philadelphia Municipal Court

Jurisdiction as:

- committing magistrate in all criminal matters
- all criminal offenses with maximum prison sentence of 5 years, including indictable offenses under the vehicle laws
- summary offenses with maximum jail term of 90 days
- commissioners jurisdiction to set and accept bail and issue warrants.

Philadelphia Traffic Court

Jurisdiction over all summary offenses arising under State Vehicle Code and all ordinances enacted pursuant to that code.

Magistrates:

All courts have Masters, Commissioners, and Referees, whose duties are left to the discretion of the appointing judge.

Defense services to indigents

Statutory scheme

By State statute each of Pennsylvania's 67 counties is required to establish a public defender, appointed by the Board of County Commissioners.

Two or more counties may cooperate in the appointment of a public defender.

Specific duties of the public defender extend from "critical pretrial identification procedures" to appellate levels, and encompass juvenile, mental health, parole/probation revocation, and extradition proceedings.

The statute provides for the appointment by the court of attorneys other than the public defender.

Statute: Pa. Stat. Ann. tit. 16, Sec. 9960.3 et. seq.

Actual system

While all 67 counties are required to have public defenders, the majority of counties are rural and meet their obligation through part-time public defenders and part-time assistants.

Costs

All costs of indigent defense services in Pennsylvania are provided by the counties.

Total costs by source:

State	—
County	\$21,235,197
Other	\$100,000
Total	\$21,335,197

Assigned counsel rates

Rates set by statute, custom in jurisdiction, and judge discretion.

Pa. Stat. Ann. tit. 19, Sec. 1501 sets specific fees for murder cases.

P.A. Stat. Ann. tit. 16, Sec. 9960.7 authorizes appointment of the private bar in nonmurder cases and the award of reasonable compensation by the appointing judge.

Hourly rate:

Hourly fees of \$15 to \$25 were the most common reported in the survey.

Out-of-court

Capital case only:	\$25
Other:	\$15

In-court

Capital case only:	\$35
Other:	\$25

Maximums:

The statute provides a procedure for payment in excess of the limits because of extraordinary circumstances.

Capital case:	
1 atty.	\$2,000
2 attys.	\$2,500
(murder case)	
Felony	\$800
Misdemeanor	\$500
Other:	
Juvenile	\$500

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Appeals:  
 Out-of-court —  
 In-court —  
 Maximum \$500

Flat rate or per diem:

None.

Expense limits:

Tit. 19, Sec. 791 "Assigned counsel may also make written ex parte request to obtain investigative, expert, or other services necessary to an adequate defense. Upon finding after proper inquiry that such services are necessary, the court shall authorize counsel to obtain such services on behalf of a defendant. The court may, in its discretion, ratify their procurement if the court finds that timely procurement could not await prior authorization."

Higher limits are authorized for murder cases (19, Sec. 784).

Investigators	\$300
Expert witnesses	\$300
Transcripts	—
Social services	—
Travel	—
Total	—

### Rhode Island

All five counties contacted by survey.

#### Court of last resort:

##### Supreme Court

Empowered to issue prerogative writs and has other original jurisdiction as granted by law.

Has final and revisory appellate jurisdiction over all questions of law and equity.

Has jurisdiction in petitions for trials and new trials, appeals and certifications to the Court, and in special cases in which adversaries concur in stating questions for the opinion of the court.

#### Intermediate appellate court:

None.

#### Court of general trial jurisdiction:

##### Superior Court

Has original jurisdiction in all crimes, misdemeanors, and offenses except as otherwise provided by law. All indictments by grand juries are returned to the Superior Court.

Has appellate jurisdiction as provided by law; hears appeals from District and Probate Courts.

#### Courts of limited or special jurisdiction:

##### Family Court

Has jurisdiction over delinquency and CHINS cases.

##### District Court

Has jurisdiction over ordinance violations.

Has original jurisdiction over offenses punishable by a fine of not more than \$500 or 1 year imprisonment.

May issue habeas corpus.

### Probate Court

Probate jurisdiction, which includes mental commitments.

#### Municipal courts:

##### Municipal Court

Original jurisdiction in municipal ordinance violations. Court primarily handles parking violations.

#### Magistrates:

##### District Court Bail Commissioners

Bail Commissioners are justices of the peace who are authorized to set bail, and, in default of bail, commit to jail.

#### Defense services to indigents

##### Statutory scheme

By statute, a statewide office of public defender is created.

The Governor, with the advice and consent of the Senate, appoints the public defender to a 3-year term.

Statute: R.I. Gen. Laws Sec. 12-15-1 et. seq., Sec. 14-1-31.

##### Actual system

The State public defender program operates out of regional offices and serves all five counties in the State.

##### Costs

All funds for indigent defense services in Rhode Island are furnished by the State.

Total costs by source:	
State	\$1,299,684
County	—
Other	—
Total	\$1,299,684

##### Assigned counsel rates

Rates set by custom in jurisdiction, court rule statewide, and judge discretion.

Supreme Judicial Court sets rate.



Hourly rate:  
 Out-of court \$20  
 In-court:  
 (felony) \$30  
 (other) \$25

**Maximums:**

These figures represent guidelines,  
 not absolute maximums:

Capital case —  
 Felony:  
 (very serious) \$2,000  
 (less serious) \$1,000  
 Misdemeanor:  
 (Superior Court) \$500  
 (District Court) \$200  
 Other:  
 (Juvenile) \$1,500

Appeals:  
 Out-of-court —  
 In-court —  
 Maximum \$750

**Flat rate or per diem:**

None.

**Expense limits:**

Investigators:  
 Apparently little  
 used by assigned  
 counsel.  
 Expert witnesses \$100  
 (day or any  
 portion)

There is broad discretion in  
 approving individual vouchers for  
 necessary expenses throughout the  
 State.

**South Carolina**

**Counties selected for survey:**

- |                |                |
|----------------|----------------|
| 1. Greenville  | 9. Laurens     |
| 2. Richland    | 10. Dorchester |
| 3. Charleston  | 11. Sumter     |
| 4. Spartanburg | 12. Cherokee   |
| 5. Anderson    | 13. Lancaster  |
| 6. Aiken       | 14. Florence   |
| 7. Beaufort    | 15. Dillon     |
| 8. Lexington   |                |

**Court of last resort:**

Supreme Court

Has jurisdiction to issue all writs.

Has appellate jurisdiction in all  
 Chancery cases for both questions of  
 law and fact.

In law cases, can hear appeals on  
 certiorari.

Death sentences are appealed  
 directly to the Supreme Court.

Intermediate appellate court:

Court of appeals

May grant injunctions and remedial  
 writs for proper exercise of its  
 jurisdictions.

Has appellate jurisdiction over all  
 criminal cases appealed from the  
 Circuit Court and Family Court, and  
 in postconviction proceedings, ex-  
 cept where the death penalty has  
 been imposed.

Court of general trial jurisdiction:

Circuit Court

Has original jurisdiction in all cases  
 unless exclusive jurisdiction is  
 granted to another court. Civil  
 cases are heard in the Court of  
 Common Pleas Division and criminal  
 cases are heard in the General  
 Sessions Division.

Has appellate jurisdiction over  
 Probate, Magistrates, and Municipal  
 Courts.

Courts of limited or special  
 jurisdiction:

Family court

Jurisdiction over all juvenile mental  
 commitments.

Probate Court

Probate cases, including adult  
 mental commitments.

Magistrate's Court

Among other cases, has jurisdiction  
 in all criminal cases where the pen-  
 alty does not exceed \$200 fine or 30  
 days imprisonment.

Authorized to issue search and arrest  
 warrants for suspected gambling  
 operations.

Municipal courts:

Municipal Court

Has same jurisdiction as Magistrate  
 Court.

Has jurisdiction over municipal  
 ordinance violations.

Magistrates:

Circuit Court Special Masters

None.

**Defense services to indigents**

Statutory scheme

By statute in South Carolina, a  
 public defender system can be  
 created in any county by a majority  
 vote of the attorneys in the county  
 who are admitted to practice in  
 South Carolina and whose principal  
 office is located in the county.  
 Further provisions permit one public  
 defender program to serve two or  
 more counties.

If no public defender program is  
 created, the county establishes an  
 assigned counsel program or a  
 contract program with private  
 attorneys.

Statute: S.C. Code Sec. 17-3-10, 17-  
 3-60.

## Appendix C

### Actual system

There are 46 counties in South Carolina.

Seven counties have ad hoc assigned counsel systems.

By vote of the local bar, public defender systems have been established in 39 counties.

Three of these public defender programs serve more than one county.

In Greenville County there is both a public defender and contract program.

### Costs

The State provides \$265.53 per 1,000 population for each county program.

In addition, the State provides separate funds for private counsel in death penalty cases as well as State funds for expenses of both public defenders and private attorneys.

The State also provides funds for mental health cases and an appellate defender program.

All other costs are the responsibility of the counties.

Total costs by source:  
State \$1,708,244\*  
County \$1,690,109  
Other —  
Total \$3,398,353

\*State contribution includes \$456,477 in funding for the State appellate program.

### Assigned counsel rates

Rates set by statute and court rule statewide.

All fees and maximums as reported below are established by S.C. Code Sec. 17-3-50.

Limitations relating to expenses are set out by Supreme Court Rule 7.

Hourly rate:  
Out-of-court \$10  
In-court \$15

### Maximums:

Capital case \$750  
Felony \$500  
Misdemeanor \$500  
Other \*

\*Mental commitment \$50/case when there is a hearing; \$10 when there is no hearing. Committee appointed by statute prescribes.

By statute, where more than one private counsel is appointed to represent a person, the combined fee shall not exceed the maximum.

Appeals:  
Out-of-court \$10  
In-court \$15  
Maximum \$500

### Flat rate or per diem:

No statutory provision for flat rate or per diem reimbursement.

### Expense limits:

None.

S.C. Code Sec. 17-3-80 stipulates that appointed counsel shall be reimbursed for necessary expenses actually incurred, provided that they are approved by the trial judge.

By Supreme Court Rule 7 expenses are allowed only for fees of expert witnesses, cost of scientific tests or exhibits for trial demonstrations, costs of psychiatric examination, and extraordinary travel expenses.

No other expenses are allowed.

The only cost restriction is the limited State budget for expenses.

### South Dakota

#### Counties selected for survey:

1. Pennington	9. Edmunds
2. Minnehaha	10. Jerauld
3. Brown	11. Davison
4. Butte	12. Day
5. Shannon	13. Codington
6. Corson	14. Brookings
7. Walworth	15. Turner
8. Tripp	16. Yankton

#### Court of last resort:

##### Supreme Court

Supreme Court or any justice may issue any original or remedial writ.

Has appellate jurisdiction as provided by legislature. Right to appeal is mandatory. Criminal review may include sentence review.

#### Intermediate appellate court:

None.

#### Court of general trial jurisdiction:

##### Circuit Court

Original jurisdiction includes the following:

- exclusive original jurisdiction in all felony cases
- concurrent jurisdiction with magistrate in misdemeanors and ordinance violations
- proceedings relating to minors.

May issue and determine all writs.

Has appellate jurisdiction over Magistrate Court.

#### Courts of limited or special jurisdiction:

None.

#### Municipal courts:

None.

#### Magistrates:

##### Circuit Court Magistrates

Form Magistrate Court—may be lay magistrates or law-trained magistrates.

All magistrates may:

- issue arrest and search warrants
- handle preliminary hearings
- accept guilty pleas and impose sentences in criminal cases where penalty is a fine of not more than \$100 or 30 days.

Lawyer Magistrates are courts of record and may try the following cases:

- misdemeanors and ordinance violations
- mental commitments.

Nonlawyer magistrates are not courts of record and cannot try cases.

**Defense services to indigents**

Statutory scheme

South Dakota General Statutes Chapters 7-16A and 23A-40 give authority to the Board of County Commissioners of each county and governing body of any municipality to provide representation to indigents either through establishing and maintaining a public defender office, arranging with the courts to appoint attorneys through a coordinated, systematic plan, or a combination of these two systems.

Public Defender offices may be maintained singly or jointly by several counties and shall be monitored by advisory committees.

Statute: S.D. Comp. Laws Ann. Sec. 7-16A-1 et. seq.

Actual system

Public defender programs are in operation in only two of South Dakota's 66 counties.

The other counties are served by assigned counsel programs.

Costs

All costs of indigent defense services are provided by the counties.

Total costs by source:

State	—
County	\$1,352,047
Other	—
Total	\$1,352,047

Assigned counsel rates

Rates set by court rule statewide and judge discretion.

S.D.G.S. Codified Laws Ann. Sec. 23A-40-8 states that assigned counsel shall be paid a reasonable and just compensation for their services plus expenses and other costs incident to the proceedings.

Fee guidelines are set by the Supreme Court in consultation with the bar.

Payment of requested fees is at discretion of sitting judge.

Hourly rate:

Out-of-court	\$30
In-court	\$40

These figures represent the rates most commonly reported for the counties surveyed.

Maximums:

Capital case	—
Felony	\$200-
	\$500
Misdemeanor	\$100-
	\$200
Other *	\$100

These figures represent the ranges of maximums reported by the counties surveyed.

\* Parole revocation, limit set in Sec. 23A-40-8.

Appeals (hourly rate):

Out-of-court	\$30
In-court	\$40
Maximums	—

S.D. Codified Laws Ann. Sec. 23A-40-9 stipulates that the presiding judge of the circuit court shall allow a reasonable and just sum for services rendered and for necessary costs and expenses in any appeal to the Supreme Court.

Flat rate or per diem:

None.

Expense limits:

Investigators	—
Expert witnesses	—
Transcripts	\$1.50/
	page
Social services	—
Travel	—
Total	—

S.D.G.S. Sec. 23A-40-8 specifies that appointed counsel shall be paid for necessary expenses and costs incident to the proceedings in an amount to be fixed by the presiding judge of the circuit court or the magistrate.

## Appendix C

### Tennessee

#### Counties selected for survey:

- |               |                |
|---------------|----------------|
| 1. Shelby     | 10. Rutherford |
| 2. Davidson   | 11. Warren     |
| 3. Hamilton   | 12. Putnam     |
| 4. Knox       | 13. Roane      |
| 5. Obion      | 14. McMinn     |
| 6. Weakley    | 15. Grainger   |
| 7. Henderson  | 16. Greene     |
| 8. Montgomery | 17. Washington |
| 9. Maury      |                |

#### Court of last resort:

##### Supreme Court

Has no original jurisdiction.

Hears appeals from both Courts of Appeal and "bypass" appeals, in which there was no testimonial conflict in the trial court.

#### Intermediate appellate court:

##### Court of Appeals

Hears civil appeals.

##### Court of Criminal Appeals:

Like the Court of Appeals, it has no original jurisdiction.

Has appellate jurisdiction over all criminal cases, habeas corpus, and postconviction proceedings, extradition, and criminal contempt.

If sole issue concerns constitutionality of a statute or ordinance, it does not have jurisdiction.

#### Court of general trial jurisdiction:

##### Circuit Court

There are 31 judicial districts.

Has jurisdiction over all criminal cases, unless another court is expressly given jurisdiction.

##### Criminal Court

There are 13 such courts.

Has concurrent criminal jurisdiction with circuit court.

Like circuit court, has de novo appellate jurisdiction over lower courts.

##### Chancery Court

##### Courts of limited or special jurisdiction:

##### County Court

Has original jurisdiction in, among other cases, the following:  
o juvenile (unless judge is not a lawyer and there is potential confinement)  
o competency hearings.

##### General Sessions Court

Can hear misdemeanors if defendant pleads guilty or waives a jury trial.

A fine of not more than \$50 can be imposed.

##### Probate Court

##### Juvenile Court

Has been established in 16 counties.

Where established, has jurisdiction over juvenile cases usually handled by county court.

##### Trial Justice Court

Criminal jurisdiction in cases carrying a fine of no more than \$50 or a sentence of 11 months, 29 days.

##### Municipal courts:

##### Municipal Court

Jurisdiction over municipal ordinances.

Jurisdiction over other offenses where fine does not exceed \$50.

##### Magistrates:

##### Trial Court Commissioners

Empowered to issue subpoenas and take depositions.

##### Trial Court Special Masters

Empowered to conduct hearings, take evidence, and report to appointing court on particular issues.

Empowered to issue subpoenas.

##### Defense services to indigents

##### Statutory scheme

Under Tennessee statute, "Every person accused of any crime or misdemeanor whatsoever is entitled to counsel in all matters necessary for his defense as well as to facts as to law."

The statute permits the appointment of a public defender or the creation of an assigned counsel or contract program.

Statute: Tenn. Code Ann. Sec. 40-2002 et. seq.

##### Actual system

Only four of Tennessee's 95 counties are served by a public defender program.

Eighty-three are served by an assigned counsel system and eight by a contract system.

##### Costs

Virtually all of the county funds available for indigent defense services in the State occur in Shelby and Davidson Counties.

All other funds are supplied by the State.

Total costs by source:  
State \$2,054,782  
County \$1,529,560  
Other \$148,538  
Total \$3,732,880

##### Assigned counsel rates

Rates set by statute, custom in jurisdiction, and judge discretion.

Tenn. Code Ann. Sec. 40-2023 sets rates and limits for compensation.

The statute states that appointed counsel shall be entitled to reasonable compensation for their services within the specified limits.

Hourly rate (felonies only):  
Out-of court \$20  
In-court \$30

These figures represent the rates most commonly reported for the counties surveyed.

Maximums:  
Capital case \* —  
Felony \$500  
Misdemeanor \$500  
Other —

\* Compensation in all capital cases shall be a reasonable amount determined by the appropriate appellate court.

Appeals (hourly rate):  
Out-of-court —  
In-court —  
Maximum \$500

This figure represents the maximum compensation allowable for services rendered in both the Court of Criminal Appeals and the Supreme Court.

Flat rate or per diem:  
Felony \$100/day  
Misdemeanor \$100/day  
Appeal —  
Other \$50/day  
(juvenile)

Per diem limits may be exceeded only in capital cases.

Expense limits:  
None.

Counsel is entitled to reimbursement for reasonable and necessary expenses in accordance with the rules of the Supreme Court.

## Texas

### Counties selected for survey:

- |              |                |
|--------------|----------------|
| 1. Bexar     | 11. Cameron    |
| 2. Tarrant   | 12. Williamson |
| 3. Dallas    | 13. Montague   |
| 4. Harris    | 14. Freestone  |
| 5. El Paso   | 15. Kaufman    |
| 6. Lamb      | 16. Brazoria   |
| 7. Dickens   | 17. Van Zandt  |
| 8. Frio      | 18. Jefferson  |
| 9. Wilbarger | 19. Red River  |
| 10. Travis   |                |

### Court of last resort:

#### Supreme Court

Has original jurisdiction to issue all writs.

Has statewide final appellate jurisdiction in civil and juvenile cases only.

### Court of Criminal Appeals:

Has original jurisdiction to issue writs of habeas corpus and other writs necessary to its jurisdiction.

Has statewide final appellate jurisdiction in all criminal cases.

### Intermediate appellate court:

#### Court of Civil Appeals

Has intermediate appellate jurisdiction in civil cases only.

### Court of general trial jurisdiction:

#### District Court

Has original jurisdiction in all felonies.

Most District Courts exercise both civil and criminal jurisdiction, but in Metropolitan areas may have specialized divisions.

Several have been designated as Criminal District Courts, although some include delinquency cases.

Several Family District Courts have been created.

District Courts have appellate jurisdiction in probate matters and other administrative cases.

### Court of limited or special jurisdiction:

#### County Court:

Has exclusive original jurisdiction over all misdemeanors involving fines of less than \$200 or a jail sentence.

Criminal jurisdiction does not exist when there is a Criminal District Court.

May issue habeas corpus where authority conferred by the District Court.

Has de novo appellate jurisdiction over Municipal and Justice Courts.

#### Justice of Peace Court

Has original jurisdiction in criminal cases where fine does not exceed \$500.

May issue warrants and conduct preliminary hearings.

### Municipal courts:

#### Municipal Court

Has original and exclusive jurisdiction over ordinance violations (primarily traffic cases).

Has concurrent jurisdiction with Justice of Peace Courts in violations of State law within city limits, where fine does not exceed \$200.

### Magistrates:

#### Criminal Court of Appeals Commissioner

Duties as Court directs.

### Defense services to indigents

#### Statutory scheme

By statute, indigent defendants have the right to counsel who shall be appointed by the court and paid from the general fund of each county.

One county, Tarrant, has special statutory authority for a public defender system. (Tex. Rev. Civ. Stat. Ann. art. 341-1)

## Appendix C

Statute: Tex. Stat. Ann. arts. 341-1 et. seq.

### Actual system

Only two of Texas' 254 counties are served by a public defender program.

The other 252 operate an assigned counsel system.

### Costs

All costs of indigent defense services in Texas are the responsibility of county government.

Total costs by source:

State	—
County	\$19,286,780
Other	—
Total	\$19,286,780

### Assigned counsel rates

Rates set by statute, custom in jurisdiction, and judge discretion.

Tex. Code Crim. Proc. Ann. art. 16.05, Sec. 1 establishes allowable levels of compensation, as reported below.

The statute also provides for judicial discretion in setting reasonable fees in excess of the specified minimums.

### Hourly rate:

None.

### Minimums:

Capital case (In-court)	\$250/day
Felony	\$50/day
Misdemeanor	\$50/day
Other (habeas corpus)	\$50/day

With judges discretion can be paid at higher amount.

Reported consistent usage of the daily rate as the maximum.

### Appeals:

Out-of court	—
In-court	—
Minimum	\$350

Minimum \$500 for appeal of a death penalty case.

### Flat rate or per diem:

#### In court only:

Capital case (minimum)	\$50/day
Misdemeanor (minimum)	\$50/day
Appeal	—
Other (minimum)	\$50/day

#### Expense limits:

Investigators	\$500
Expert witnesses	\$500
Transcripts	—
Social services	—
Travel	—

Pursuant to the statute cited above, attorneys may be paid a reasonable fee set by the court for expenses incurred for purposes of investigation and expert testimony, not to exceed the amount reported above.

## Utah

### Counties selected for survey:

1. Utah	7. Tooele
2. Salt Lake	8. Iron
3. Davis	9. Sevier
4. Weber	10. Summit
5. Cache	11. Carbon
6. Box Elder	12. Grand

### Court of last resort:

#### Supreme Court

Has original jurisdiction to issue extraordinary writs.

Has final appellate jurisdiction in all cases.

#### Intermediate appellate court:

None.

#### Court of general trial jurisdiction:

##### District Court

Has original jurisdiction in all criminal and civil matters not excepted by constitution or law.

Has appellate jurisdiction over all appeals from courts of limited jurisdiction.

Appeals from Juvenile Court are heard in District Court unless a direct appeal is allowed by the Supreme Court.

#### Courts of limited or special jurisdiction:

##### Circuit Court

May exercise criminal jurisdiction in violations of municipal ordinances and in all misdemeanors.

##### Justice Court

Has criminal jurisdiction in Class B and C misdemeanors punishable by a fine of less than \$300 or not more than \$300 or 6 months imprisonment.

##### Juvenile Court

Has original jurisdiction in matters involving children, which includes delinquents and CHINS.

Municipal courts:

None.

Magistrates:

Juvenile Court Referee

May hear any case in court's jurisdiction in the first instance and report findings and recommendations to the court.

Defense services to indigents

Statutory scheme

Utah General Statutes authorizes the governing bodies of counties or municipalities to appoint counsel or provide representation for indigent defendants through legal aid or other associations.

Statutes: Utah Code Ann. Sec. 77-64-1 et. seq.

Actual system

At the time of the survey, 17 counties in Utah were served by public defender programs and the remaining 12 by contract systems.

Costs

Virtually all costs of indigent defense services in Utah are the responsibility of the counties.

Total costs by source:	
State	\$32,500
County	\$1,605,667
Other	\$161,900
Total	\$1,800,067

Assigned council rates

Rates set by custom in jurisdiction and judge discretion.

Utah Code Ann. Sec. 77-32-6 stipulates that the governing bodies of counties, cities, and towns shall authorize courts to award reasonable compensation and expenses to appointed counsel.

Hourly rate:

Out-of-court:

Felony	\$25
Misdemeanor	\$20

In-court:

Felony	\$30
Misdemeanor	\$25

These rates are those most commonly reported in the survey.

Maximums:

None.

Appeals (hourly rate):

Out-of-court	\$25
In-court	\$30
Maximum	—

Flat rate or per diem:

None.

Expense limits:

Investigators	—
Expert witnesses	—
Transcripts	—
Social services	—
Travel	\$15/hr.
	.20/mile
Total	—

Utah Code Ann. Sec. 77-64-1 stipulates that counties should provide investigatory and other facilities necessary for a complete defense.

Sec. 77-64-5 states that transcripts shall be paid for by the county.

**Vermont**

All 14 counties contacted for survey.

Court of last resort:

Supreme Court

May issue all necessary writs in aid of appellate jurisdiction.

Exercises appellate jurisdiction in all cases, civil and criminal.

Intermediate appellate court:

None.

Court of general trial jurisdiction:

Superior Court

Has original jurisdiction for criminal offenses.

May issue necessary writs.

Courts of limited or special jurisdiction:

District Court

Has criminal jurisdiction in felonies where maximum penalty is less than life imprisonment, in misdemeanors, and in municipal ordinance violations.

Has juvenile jurisdiction.

Hears mental commitment cases.

Probate Court

Municipal courts:

None.

Magistrates:

None.

Statutory scheme

The Office of Defender General is established by Chapter 163, Subchapter 3, of the Vermont State laws T.13 Sec. 5251.

The statute describes the Defender General's primary responsibility to provide needy persons with legal services under this chapter.

## Appendix C

He or she may provide these services personally, through public defenders employed by the Office of the Defender General, or through attorneys-at-law involved in a contractual arrangement with the Office of the Defender General.

The Defender General may establish offices to carry out his or her responsibilities; each public defender office shall be headed by a public defender selected by the Defender General.

Statute: Vt. Stat. Ann. tit. 13, Sec. 5251 et. seq.

### Actual system

Vermont has a statewide public defense system, with an Office of the Defender General in Montpelier and eight field offices located throughout the State.

Four contract offices provide representation in the other six counties.

There is also a separate appellate defender program in Vermont.

### Costs

All costs of indigent defense services in Vermont are the responsibility of the State.

Total costs by source:	
State	\$1,873,264
County	—
Other	—
Total	\$1,873,264

### Assigned counsel rates

Rates set by custom in jurisdiction, judge discretion, and assigned counsel coordinator.

Vt. Stat. Ann. tit. 13 Sec. 5205 states that the court assigning a case shall prescribe a reasonable rate of compensation for the attorney's services based on the complexity of the issues, the time involved, and other relevant considerations.

Act. No. 146 1981 Adj. session established an assigned counsel contract system with an assigned counsel coordinator responsible for

approving expenses and assisting with legal strategy.

Hourly rate:	
Out-of-court	\$25*
In-court	\$25*

\* When an assigned counsel contract has a conflict, an ad hoc appointment is made at this hourly rate.

Prior to the above-cited change in the system attorneys were paid at a rate of \$15 an hour.

Maximums:	
Capital case	—
Felony	\$700
Misdemeanor	\$500
Other	—

These figures represent the maximum compensation allowable for attorneys appointed to handle conflicts encountered by contract assigned counsel.

Prior to the establishment of the new system, ad hoc assigned counsel were paid a maximum of \$500 for a felony case and \$300 for a misdemeanor case.

### Appeals:

None.

### Flat rate or per diem:

None.

### Expense limits:

None.

Investigators	
Expert witnesses	
Transcripts	
Social services	
Travel	\$15/hr.
	.20 mile
Total	

The above-cited statute also stipulates that the assigning court shall determine the direct expenses, necessary to representation, for which an attorney should be reimbursed.

The Assigned Counsel Coordinator is now responsible for review of all vouchers submitted by assigned counsel, including expenses.

## Virginia

### Counties selected for survey:

1. Fairfax	10. Prince William
2. Grayson	11. Henrico
3. Montgomery	12. Richmond
4. Roanoke	13. Sussex
5. Norfolk	14. Newport News
6. Agusta	15. Suffolk
7. Albemarle	16. Virginia Beach
8. Culpeper	17. Pittsylvania
9. Arlington	

### Court of last resort:

#### Supreme Court

Original jurisdiction to issue all writs.

Appellate jurisdiction over all constitutional questions.

Direct appeal is permitted from a final order or judgment from lower courts.

### Intermediate appellate court:

None.

### Court of general trial jurisdiction:

#### Circuit Court

May issue mandamus prohibition and certiorari to lower courts.

Has original jurisdiction in all indictments for felonies and in presentations, information, and indictments for misdemeanors.

Has jurisdiction in juvenile cases involving murder where juvenile is waived to adult court.

Has appellate jurisdiction over lower courts.

### Courts of limited or special jurisdiction:

#### General District Court

Conducts preliminary examinations in felony cases.

Exclusive original jurisdiction in misdemeanors and municipal ordinance violations.



Has juvenile jurisdiction unless a Juvenile and Domestic Relations Court has been created.

Juvenile and Domestic Relations Court

Exclusive jurisdiction, where created, in juvenile and family matters.

Municipal courts:

None.

Magistrates:

Have various duties, including:

- issuance of arrest and search warrants
- bail
- if authorized, acceptance of guilty pleas in Class 4 misdemeanors, and imposition of fines up to \$100.

Defense services to indigents

Statutory scheme

The Virginia statute provides for a Public Defender Commission, whose duties include the appointment of public defenders in selected areas set out by statute, all of whom are full-time.

The statute also provides for State funding for indigent defense in all State-initiated proceedings, with compensation for services fixed by each of the courts in accordance with a specific fee schedule.

Statute: Va. Code Sec. 19.2-163.1 et. seq.

Actual system

The public defender program currently operates in four locations.

All of these four public defenders are full-time.

The courts rely on the ad hoc appointment of counsel in the remaining 99 counties.

Costs

All costs of indigent defense services in Virginia are provided by the State.

Total costs by source:

State	\$8,751,353
County	—
Other	\$24,958
Total	\$8,776,311

Assigned counsel rates

Rates set by statute, court rule statewide, and judge discretion.

Va. Code Section 19.2-163 stipulates that appointed counsel shall be compensated for their services in an amount fixed by the courts, not to exceed the specified maximums as reported below.

As of April 6, 1983, the statutory maximums have been superseded by Supreme Court rule, pursuant to the Appropriations Act effective as of that date.

Hourly rate:

None.

Maximums:

Capital case*	\$600
Felony:	
(20 yrs.)	\$382
(20 yrs.)	\$191
Misdemeanor	\$72-
	\$96
Other	—

See attached sheet for amended schedule of fees, effective April 6, 1983.

Appeals:

Discretion of Supreme Court.

Flat rate or per diem:

None.

Expense limits:

The circuit or district court shall direct the payment of such reasonable expenses as it deems appropriate under the circumstances of the case.

Washington

Counties selected for survey:

- |              |                  |
|--------------|------------------|
| 1. Snohomish | 8. Thurston      |
| 2. King      | 9. Kitsap        |
| 3. Pierce    | 10. San Juan     |
| 4. Spokane   | 11. Skagit       |
| 5. Clark     | 12. Grant        |
| 6. Yakima    | 13. Adams        |
| 7. Pacific   | 14. Pend Oreille |

Court of last resort:

Supreme Court

Has original jurisdiction to issue and determine extraordinary writs.

Has appellate jurisdiction in all cases, except civil actions involving less than \$200.

Intermediate appellate court:

Court of Appeals

Has no original jurisdiction.

Has exclusive appellate jurisdiction in all but death penalty cases.

Court of general trial jurisdiction:

Superior Court

Has exclusive original jurisdiction in criminal and juvenile cases, except where concurrent with District Court, Justice of Peace Court, and Municipal Court in cities over 400,000 population.

Has appellate jurisdiction over cases in trial courts.

Courts of limited or special jurisdiction:

District Court

Has concurrent jurisdiction with Superior Court and Municipal Court in cities with more than 400,000 population in misdemeanors, violations of city ordinances, and proceedings to keep peace. Cannot impose sentence of more than \$500 and/or 6 months of imprisonment.

Municipal Department (where created) hears ordinance violations and traffic cases.

## Appendix C

### Justice of the Peace Court (exists only in Columbia County)

Has same jurisdiction as District Court.

Hears all traffic cases.

### Municipal courts:

#### Municipal Court

Where exists, has exclusive original jurisdiction in all city ordinance violations.

In cities over 400,000 population, has concurrent jurisdiction as District Court in cases there enumerated.

### Magistrates:

#### Superior Court Commissioner

May perform duties of judge in Chambers.

#### Superior Court Referee

#### Superior Court Judge Pro Tempore

May try cases as a judge.

#### Justice of Peace and District Court Judge Pro Tempore

May sit as judge.

#### Municipal Court Judge Pro Tempore

May sit as judge.

#### Justice of Peace and District Court Commissioner

Have same authority as judge in criminal cases.

### Defense services to indigents

#### Statutory scheme

Washington's enabling statute permits the board(s) of county commissioners of one or more counties to establish a public defender office.

Authority also exists for the creation of an assigned counsel system or contract system.

Statute: Wash. Rev. Code Sec. 36.26.010 et. seq.

### Actual system

At the time of our survey, 6 counties were served by public defender programs, 31 by assigned counsel programs, and 2 by contract programs.

### Costs

Apart from funds available to the separate State appellate defender agency, the State contributes little money to indigent defense services.

The counties contribute virtually all of the funds.

The counties provide the vast majority of funds for local program operation.

The State funds the State appellate defender program.

Total costs by source:  
 State \$727,625\*  
 County \$12,022,991  
 Other \$1,925,178  
 Total \$14,675,794

\*State contribution includes \$500,000 in funding for the State Appellate Program.

### Assigned counsel rates

Rates set by judge discretion.

Wash. Rev. Code Ann. Sec. 10 01.110 stipulates that appointed counsel shall be entitled to reasonable fees and actual expenses necessarily incurred, to be fixed by appointing court.

Sec. 4.88.330 states that the Supreme Court will determine reasonable fees and travel expenses for representation on appeal.

In addition, in some counties the defender director sets the rate of compensation.

Hourly rate:  
 Out-of-court \$30  
 In-court \$30

These figures represent the rate most commonly reported for the counties surveyed.

### Maximums:

Capital case	—
Felony	\$1,000- \$2,500
Misdemeanor	\$200- \$500
Other	—

There are no specified statewide maximum limits.

These figures represent the ranges of maximums most commonly reported for the counties surveyed.

### Appeals:

None.

### Flat rate or per diem:

At least one county is reported to compensate for representation in juvenile court on a flat rate basis.

### Expense limits:

None.

Expenses are allowed on a case-by-case basis; see comment under "Rates set by:" above.

**West Virginia**

Counties selected for survey:

- 1. Kanawha
- 2. Wayne
- 3. Wyoming
- 4. Cabell
- 5. Putnam
- 6. Raleigh
- 7. Fayette
- 8. Jackson
- 9. Calhoun
- 10. Randolph
- 11. Marshall
- 12. Hancock
- 13. Marion
- 14. Barbour
- 15. Hampshire

Court of last resort:

Supreme Court

Has original jurisdiction in all extraordinary writs.

Appellate jurisdiction extends to criminal cases where there is a felony or misdemeanor conviction in the Circuit Court, or where Circuit Court has affirmed a conviction imposed by a lower court.

Intermediate appellate court:

None.

Court of general trial jurisdiction:

Circuit Court

Has original jurisdiction in all crimes and misdemeanors.

Has original jurisdiction in habeas corpus, mandamus, quo warrants, prohibition, and certiorari.

Appeals from Magistrate Court are heard de novo.

Courts of limited or special jurisdiction:

Magistrate Court

Has jurisdiction in misdemeanor cases.

Conducts preliminary examinations in felony cases.

May issue arrest warrants.

Except in capital cases, may set and admit to bail.

Municipal courts:

Municipal Court

Has jurisdiction over ordinance violations.

Magistrates:

Circuit Court Commissioner

Power to take depositions.

Circuit Court Juvenile Referee

Holds detention hearings.

Circuit Court Special Judge

Judge pro tem.

Defense services to indigents

Statutory scheme

As a result of legislation passed in 1981, the State created a West Virginia Public Legal Services Council.

The Council was charged with establishing public defender offices in certain judicial districts and overseeing the assigned counsel system in the rest of the State.

Statute: W. Va. Code Sec. 29-21-1 et. seq.

Actual system

At the time of the study, the public defender programs were not yet in existence and all 55 counties operated under an assigned counsel system.

Costs

All costs of indigent defense services in West Virginia are the responsibility of the State.

Total costs by source:

State	\$2,951,655
County	—
Other	—
Total	\$2,951,655

Assigned counsel rates

Rates set by statute and judge discretion.

W. Va. Code Sec. 51-11-8 sets rates and limits within which appointed counsel shall be compensated for actual and necessary services rendered, as reported below.

The circuit court shall fix the award for services and expenses.

Hourly rate:

Out-of-court	\$20
In-court	\$25

Maximums:

Capital case	\$1,000
Felony	\$1,000
Misdemeanor	\$1,000
Other	\$1,000

Appeals (hourly rate):

Out-of-court	\$20
In-court	\$25
Maximum	\$1,000

Flat rate or per diem:

None.

Expense limits:

Investigators	
Expert witnesses	
Transcripts	
Social services	
Travel	
Total	\$500

Pursuant to the above-cited statute, attorney expenses, including but not limited to necessary travel expenses, transcripts, investigative services, and expert witnesses shall be reimbursed up to the maximum amount reported above, unless the attorney obtains advance approval from the court to incur expenses in a larger sum.

Appendix C

**Wisconsin**

Counties contacted for survey:

- |              |               |
|--------------|---------------|
| 1. Dane      | 9. Green      |
| 2. Milwaukee | 10. Columbia  |
| 3. Waukesha  | 11. Marinette |
| 4. Douglas   | 12. Winnebago |
| 5. Barron    | 13. Dodge     |
| 6. La Crosse | 14. Racine    |
| 7. Monroe    | 15. Ozaukee   |
| 8. Marathon  | 16. Calumet   |

Court of last resort:

Supreme Court

Has original jurisdiction in cases of statewide concern.

May issue all writs.

Has appellate jurisdiction by petition for review from decisions of Court of Appeals, or on a petition to bypass Court of Appeals.

Intermediate appellate court:

Court of Appeals

May issue all writs.

Appeal of right from Circuit Court decisions are heard by Court of Appeals.

Court of general trial jurisdiction:

Circuit Court

Has original jurisdiction in all criminal and civil matters.

May have divisions (e.g., Juvenile, Family, Probate, etc.).

Appellate jurisdiction over Municipal Court.

Courts of limited or special jurisdiction:

None.

Municipal courts:

Municipal Court

Hears municipal ordinance violations.

Magistrates:

Court Commissioner

Performs duties as established by Appointing Court.

Performs various duties as prescribed by the Court.

Defense services to indigents

Statutory scheme

Under Wisconsin law, a statewide public defender system is created to provide both a public defender and assigned counsel system for all indigent cases (appeal, felony, misdemeanor, juvenile delinquency, juvenile status matters, mental commitment, probation and parole revocation, certain contempt cases and so-called special proceedings such as habeas corpus and extradition cases.)

The public defender appoints either staff counsel or private counsel (at least 25% of the cases) in all counties.

Statute: Wis. Stat. Ann. Sec. 15.78, Sec. 977.05 et. seq.

Actual system

As of the date of this survey 47 of Wisconsin's 72 counties were served by a public defender office and the remaining 25 by an assigned counsel program.

Costs

All of the funds for indigent defense services in Wisconsin are the responsibility of the State.

<u>Total costs by source:</u>	
State	\$13,350,200
County	—
Other	—
Total	\$13,350,200

Assigned counsel rates

\* Pursuant to Wis. Stat. Ann. Sec. 977.08(4) the payment schedule for appointed counsel is set by the Wisconsin State Public Defender Board.

Hourly rate:

Out-of-court	\$25
In-court	\$35

Maximums:

None.

The only restriction on compensation for appointed counsel is the possible limit on available State funds.

Appeals:

Out-of-court	\$25
In-court	\$35
Maximum	—

Flat rate or per diem:

None.

Expense limits:

The statute contains no provisions regarding reimbursement for attorney expenses.

The State Public Defender Administrative Rules Sec. 2.12 states that the public defender shall make available to private attorneys the services of staff investigators, or shall authorize the attorney to retain such investigatory services as may reasonably be required.

If expert assistance is required, the attorney must apply to the State public defender for permission to retain such assistance.

**Wyoming**

Counties contacted for survey:

- 1. Natrona            6. Washakie
- 2. Laramie           7. Albany
- 3. Sweetwater       8. Sheridan
- 4. Lincoln           9. Campbell
- 5. Fremont          10. Goshen

Court of last resort:

Supreme Court

Has original jurisdiction to issue all writs.

Has general appellate jurisdiction in all criminal and civil matters.

Intermediate appellate court:

None.

Court of general trial jurisdiction:

District Court

Has original jurisdiction in all criminal cases, and all law and equity cases.

Can issue all writs.

Has appellate jurisdiction over courts of limited jurisdiction.

Courts of limited or special jurisdiction:

County Court

Has jurisdiction over all misdemeanors.

Justice of the Peace Court

Has jurisdiction in public offenses below grade of felony in which punishment does not exceed a \$750 fine or 6 months imprisonment.

Municipal courts:

Municipal Court

Jurisdiction limited to municipal ordinance violations punishable by a maximum fine of \$200 or 90 days imprisonment.

Magistrates:

District and County Court Commissioners

In District Court, have authority as judge "in chambers." May determine cases of insanity or mental incompetency. In juvenile cases, may conduct detention hearings, but may not make final order.

In County Court, may conduct arraignments in misdemeanor cases and initial appearances in felony cases, issue warrants, and set bail.

Defense services to indigents

Statutory scheme

The Governor is mandated to establish one or more public defender districts having boundaries coextensive with the boundaries of one or more judicial districts.

The designation of these public defender districts is to be based on case load statistics, geographical characteristics, and other relevant factors.

The Governor is also mandated to appoint public defenders to each district after receiving recommendations from the district judge within the district.

The Governor has appointed one statewide public defender with the responsibility of administering the program on a statewide basis.

Statute: Wy. Stat. Sec. 7-1-109 et. seq.

Actual system

Theoretically, public defender staff services are available in all of Wyoming's 23 counties.

However, in many of the sparsely populated areas great reliance is placed upon the appointment of private attorneys.

Costs

Eighty-five percent of 11 indigent defense services in the State are the responsibility of the State and 15%

are the responsibility of the counties.

Total costs by source:

State	\$1,030,578
County	\$175,004
Other	—
Total	\$1,205,582

Assigned counsel rates

Rates set by custom in jurisdiction and judge discretion.

Wyo. Stat. Sec. 7-115 states that the appointing court shall prescribe a reasonable rate of compensation for attorney services, with regard to the "complexity of issues, time involved, prevailing local fees of attorneys...and other relevant consideration..."

Hourly rate:

Out-of-court	\$40
In-court	\$40

No "in-court/out of court" distinction.

These figures represent the most commonly reported rate for the counties surveyed.

Maximums:

Maximums are not specified in statute.

Appeals:

No specified rates or limits statewide.

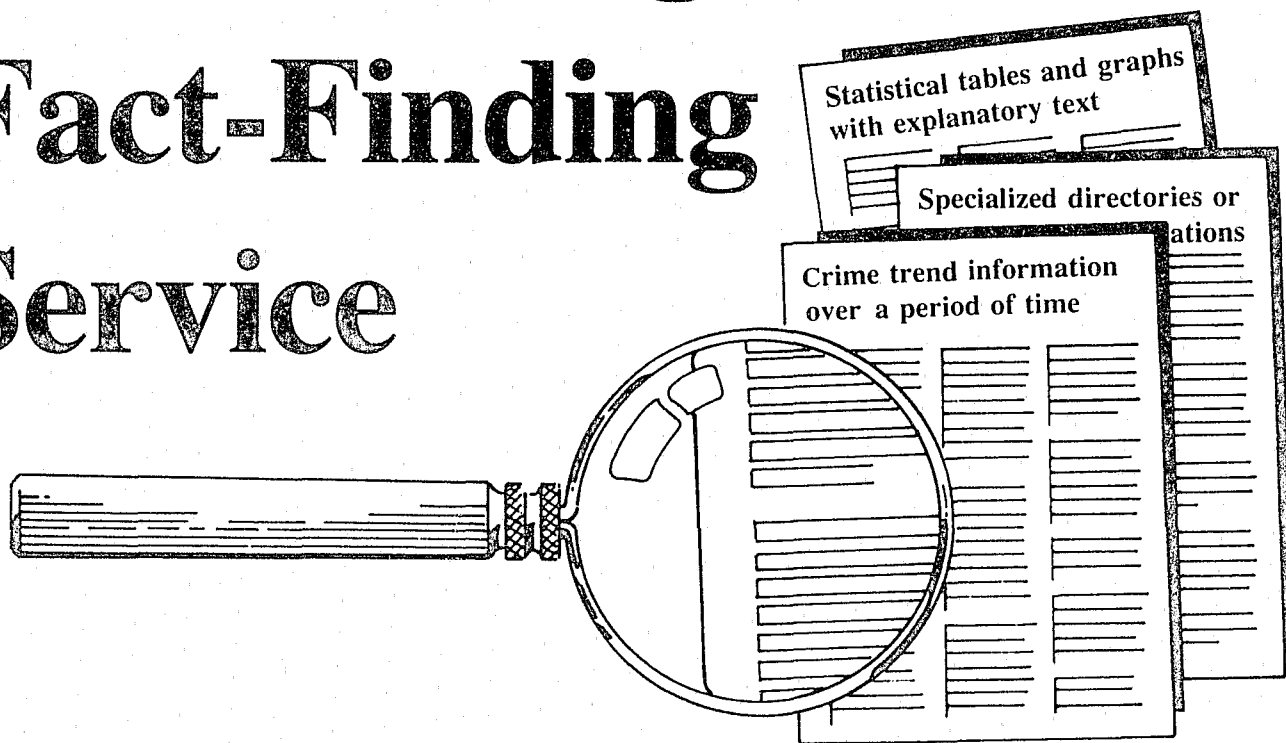
Flat rate or per diem:

None.

Expense limits:

Pursuant to the above-cited statute, the appointing court shall reimburse direct expenses necessary to representation.

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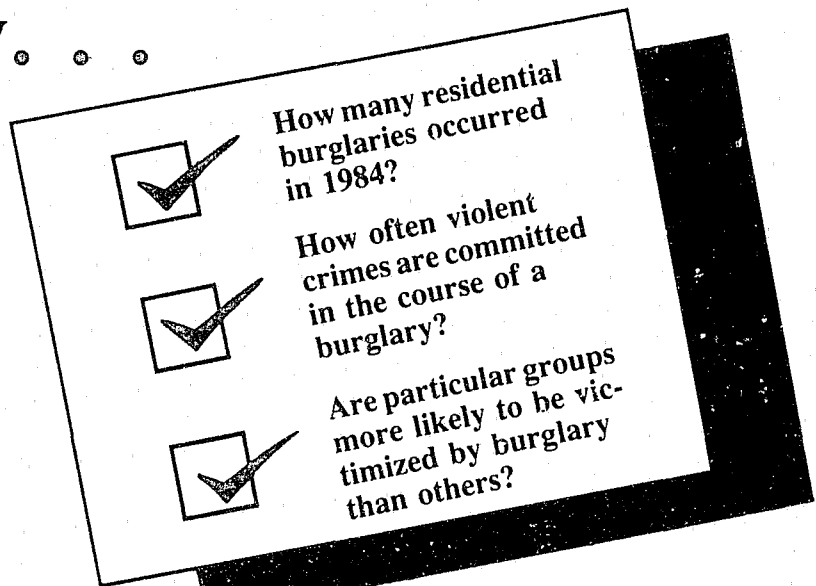
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(revised October 1986)

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Public-use tapes of BJS data sets and other criminal justice data are available from the Criminal Justice Archive and Information Network, P.O. Box 1248, Ann Arbor, MI 48106 (313-763-5010).

## National Crime Survey

Criminal victimization in the U.S.:

1984 (final report), NCJ-100435, 5/86  
1983 (final report), NCJ-96459, 10/85  
1982 (final report), NCJ-92820, 11/84  
1973-82 trends, NCJ-90541, 9/83  
1980 (final report), NCJ-84015, 4/83  
1979 (final report), NCJ-76710, 12/81

*BJS special reports:*

Preventing domestic violence against women, NCJ-102037, 8/86  
Crime prevention measures, NCJ-100438, 3/86  
The use of weapons in committing crimes, NCJ-99643, 1/86  
Reporting crimes to the police, NCJ-99432, 12/85

Locating city, suburban, and rural crime, NCJ-99535, 12/85  
The risk of violent crime, NCJ-97119, 5/85  
The economic cost of crime to victims, NCJ-93450, 4/84

Family violence, NCJ-93449, 4/84

*BJS bulletins:*

Households touched by crime, 1985, NCJ-101685, 6/86  
Criminal victimization, 1984, NCJ-98904, 10/85  
The crime of rape, NCJ-96777, 3/85  
Household burglary, NCJ-96021, 1/85  
Criminal victimization, 1983, NCJ-93869, 6/84  
Violent crime by strangers, NCJ-80829, 4/82  
Crime and the elderly, NCJ-79614, 1/82  
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