

**State, County and Local Expenditures for Indigent Defense Services
Fiscal Year 2008**

Prepared for:

The American Bar Association
Standing Committee on Legal Aid and Indigent Defendants
Bar Information Program

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Introduction

The Sixth Amendment to the United States Constitution guarantees to all persons accused of a crime the right to counsel in their defense. The United States Supreme Court has clarified that the Sixth Amendment requires the government to make counsel available for persons accused of crime who cannot afford to hire an attorney. The right to appointed counsel applies to the federal government under the Sixth Amendment and to the states under the due process clause of the Fourteenth Amendment. States have responded to the Court's mandate by developing a variety of systems through which indigent defense services are provided.

In 1932, the Supreme Court first confirmed the federal right to appointed counsel for indigent defendants in state court to defendants facing a sentence of death.¹ Since the 1960s, the Supreme Court has expanded the list of cases in which counsel must be appointed for indigent individuals.² This includes, among other things, felonies, misdemeanors and direct appeals for adults and cases in which juveniles are tried as delinquents. It also includes some non-criminal proceedings, such as when a parent is facing termination of parental rights. In many states, the right to counsel has been expanded by state statute or state supreme court decisions to include cases not addressed by the Supreme Court, such as capital and non-capital post-conviction cases or child support matters.

To carry out these federal and state mandates to offer counsel for indigent individuals, some states and localities have created public defender programs, while others use private attorneys who

¹ *Powell v. Alabama*, 287 U.S. 45 (1932).

² The first case extending the right to counsel to indigent defendants was *Gideon v. Wainwright* 372 U.S. 335 (1963), which specified that defendants who have been charged with a serious crime and are unable to hire counsel are entitled to the appointment of counsel at the state's expense. Later opinions extended the right to additional cases and critical proceedings: *Douglas v. California*, 372 U.S. 353 (1963) (direct appeals in states that provide that process); *Miranda v. Arizona*, 384 U.S. 436 (1967) (custodial interrogation); *In re Gault*, 387 U.S. 1 (1967) (juvenile proceedings resulting in possible confinement); *U.S. v. Wade*, 388 U.S. 218 (1967) and *Gilbert v. California*, 388 U.S. 263 (1967) (post-indictment lineups); *Coleman v. Alabama*, 399 U.S. 483 (1969) (critical stages of preliminary hearings); *Johnson v. Avery*, 393 U.S. 483 (1969) (collateral attack (in limited circumstances)); *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (any crime, including misdemeanor and petty offense cases, that actually leads to imprisonment); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) (certain probation and parole revocation hearings); *M.L.B. v. S.L.J.* 519 U.S. 102 (1996) (defense against the State's termination of parental status); *Alabama v. Shelton*, 122 U.S. 1764 (2002) (any crime, including a minor misdemeanor, where defendant receives a suspended or probated sentence to imprisonment); *Padilla v. Kentucky*, 08-651 (2010) (competent legal advice on collateral consequences of guilty pleas). There is no federal constitutional right to counsel in state post conviction proceedings.

are appointed on a case-by-case basis or who work under contract accepting appointments. Most use a combination of these methods. Just as delivery systems vary, the systems for funding indigent defense services vary. In some states, all funding is provided entirely by the state while in others funding is a shared responsibility among the state, counties and municipalities. Pennsylvania is the only state that leaves the entire responsibility for funding indigent defense up to its counties.

This report provides a description of each state's indigent defense delivery system, the total indigent defense expenditure in fiscal year 2008, and the system's funding structure. The reader will find information about the methodology used to collect this information and an overview of the expenditure data within this introduction; however, the data presented should be viewed in the context of each state's individual system. The heart of this report provides such information. Each state's indigent defense system is described in a separate narrative that outlines the methods of providing counsel to indigent defendants and recent events or changes in the indigent defense system. Recent changes in indigent defense systems are the result of legislative changes and systemic litigation. In addition to the narrative, each state's expenditure information and sources are described in the technical appendix. Each piece should be carefully considered before using the data provided in this report.

Data Collection & Methods

Collection of the data included in this report was accomplished by contacting public defenders, court administrators, administrators of assigned counsel programs, legislative analysts, state and county budget offices, county associations, and public defender associations. In many states, it is difficult to obtain accurate expenditure information because indigent defense is funded and provided at the county level and no statewide effort is made to collect information from localities. Frequently, there are few available resources to assist counties in setting up and maintaining databases that help to accurately store and provide detailed reports of expenditure information.

This report expands on previous reports by contacting individual counties to gather expenditure information. This effort decreased the need to estimate expenditures for large

geographical areas or entire states. Although not every county contacted responded or provided expenditure information, the additional data collection allowed for a more precise estimation procedure than was possible in previous reports. For each state where any estimation was necessary, a detailed description of the methodology is provided in the technical appendix. The technical appendix also provides information on data sources and any itemizations of the total expenditures that were provided.

It is important to appreciate the limits of this report. First, the expenditure information does not include expenditure data from municipalities, unless those expenditures are reported to another county or state agency. It is common for municipal courts to provide counsel through an office or program funded by a state or county agency, however, in a number of states municipal courts provide counsel that are paid by the municipality, rather than the county or state.

Second, the types of cases included under the umbrella of indigent defense differ from state-to-state. This complicates both the collection of expenditure data and the comparison of the data across states. For this report, state and county contacts were asked to provide as much detail as possible when supplying expenditure data, including breakdowns of civil and criminal indigent defense expenditures. Unfortunately, it proved impossible for several states and many counties to provide this level of detail. In states where breakdowns of criminal and civil expenditures were provided, civil costs *are included* in the total expenditure. That said, many jurisdictions were unable to provide complete data on the break-down of expenditures for civil representation. For example, in some counties representation that is provided to children and families is handled by different offices than those that had the cost data. As a result, the data provided in this report should be viewed as conservative estimates and should be used with caution.

For readers of past reports, some of the trends or figures presented here may appear differently than those reported previously. There are several reasons for this. First, conditions have changed in the states, some for the better and for a few, for the worse. In fact, only seven states showed a decline in expenditures from 2005 to 2007. The historic recession that began in late 2007 has severely reduced government resources in many jurisdictions although its full effect has not been felt until 2009 and 2010, and thus may not be seen in the data provided in this report. At the same

time, some states have deepened their commitment to indigent defense in recent years. In 2006, for example, the Alabama Supreme Court ordered the state to pay overhead costs to assigned counsel when representing an indigent defendant.³ Second, state data collection and reporting have become more accurate, as governments embrace empirical research and pursue evidence-based decision making. As their data gathering grows to be more precise, so too do the numbers in this report. Third, the research in this report has been quite extensive, thus reducing the reliance on estimated cost data than in prior reports. Finally, as described above, the current report employs a consistent method in treating expenditures for civil representation. Readers should be aware of these methodological issues when seeking to employ these data or calculating any trends over time by state. The technical appendix describes the data and the various sources of information provided. It should be examined carefully when exploring the data included in this report for additional analysis. As indigent defense systems increase their ability to track their expenditures more precisely, future reports will be able to provide more exact data. Future reports also will seek to distinguish the various types of indigent representation provided in each state.

³ Wright v. Childree, 972 So.2d 771 (Ala.2006).

Overview of Indigent Defense Services

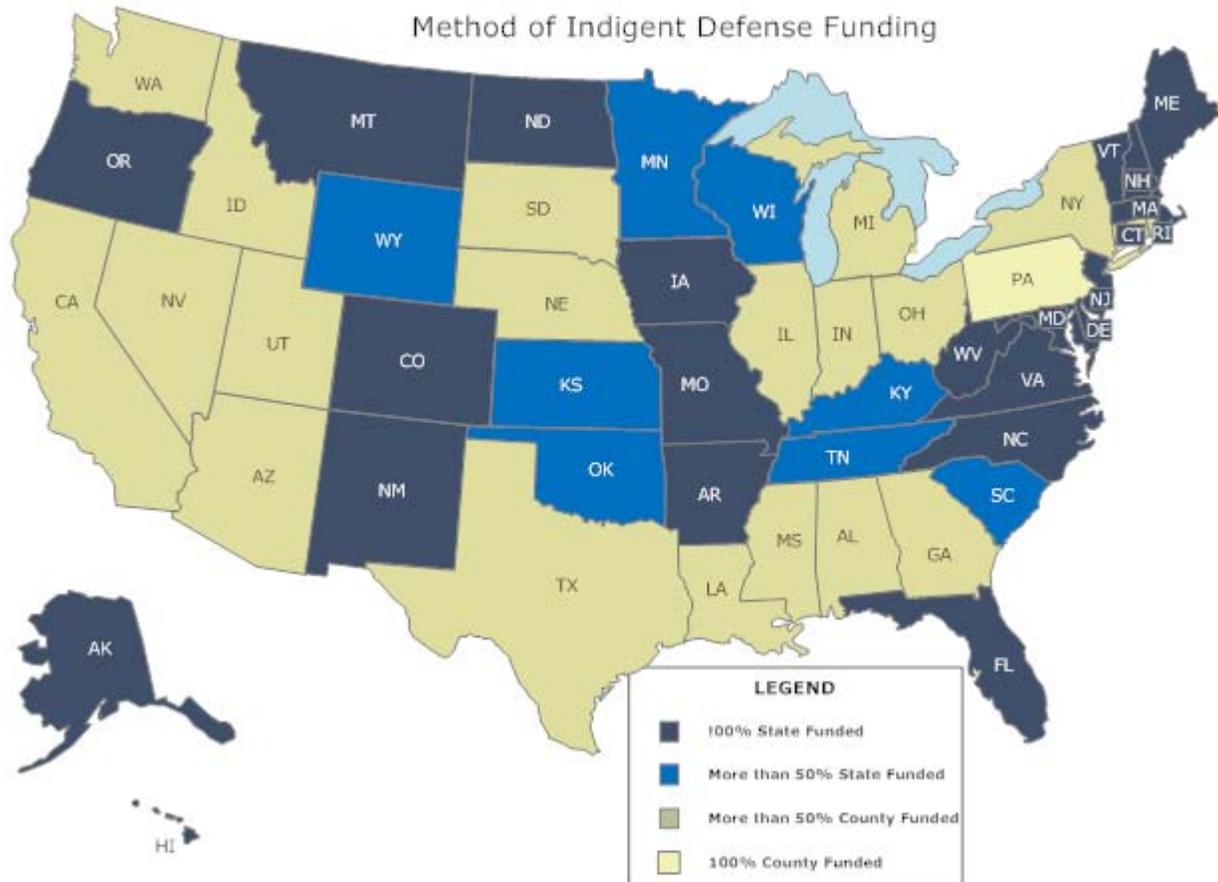
Nearly two-thirds of the states have some sort of statewide commission that oversees the provision of indigent defense services. Typical duties of such commissions include the creation of indigent defense standards and guidelines and the selection of program administrators or chief public defenders.⁴ However, state administration does not necessarily correlate to state funding. In fact, only 23 states completely fund their indigent defense system. Another five states provide more than 85 percent of the state’s indigent defense expenditures. Another three states provide between 50 and 84 percent funding. Only one state leaves funding entirely to the counties, Pennsylvania. The remaining states have a mix of funding sources with less than 50 percent coming from the state. Table 2 presents this information in tabular format.

Table 2					
Method of Indigent Defense Funding					
100% State Funded⁵	99% - 85% State Funded	50% -84% State Funded	100% County Funded	More than 50% County Funded	
Alaska Arkansas Colorado Connecticut Delaware Florida Hawaii Iowa Maine Maryland Massachusetts Missouri Montana New Hampshire	New Jersey New Mexico North Carolina North Dakota Oregon Rhode Island Vermont Virginia West Virginia	Kentucky Minnesota Tennessee Wisconsin Wyoming	Kansas Oklahoma South Carolina	Pennsylvania	Alabama Arizona California Georgia Idaho Illinois Indiana Louisiana Michigan Mississippi Nebraska Nevada New York Ohio South Dakota Utah Texas Washington

⁴ National Right to Counsel Committee. (2009). Justice Denied: America’s Continuing Neglect of Our Constitutional Right to Counsel. Washington, DC: The Constitution Project. Available at: <http://tcpjusticedenied.org>. Additional reports on state indigent defense commissions can be found on the website of the American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants (<http://www.abanet.org/legalservices/sclaid/>).

⁵ This category includes *only* those states that provide 100% of expenditures.

The following map presents the method of indigent defense funding data by state. In this depiction, states that have between 50 and 99 percent state funding have been consolidated into one category.

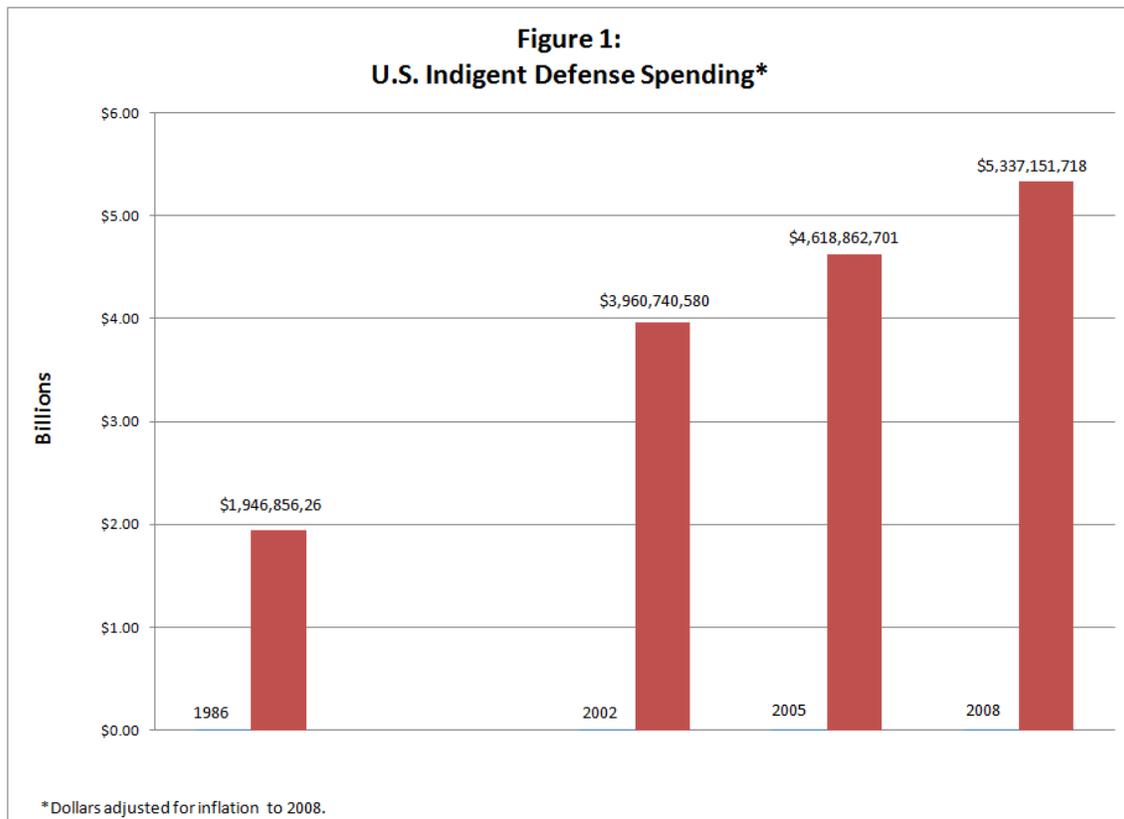


General Trends

As indigent defense systems have matured and evolved since the 1960s, costs have increased significantly. In 1986, the first time expenditure data for all fifty states was compiled, it was estimated that just under \$1 billion, or \$991,047,250, was spent on indigent defense services in the U.S.⁶ In 1986, indigent defense systems across the nation were in crisis and woefully underfunded.

⁶ R. Spangenberg. (1988). *Criminal Defense for the Poor, 1986*, Washington, DC: U.S. Department of Justice Bureau of Justice Statistics.

While spending increased to \$3.3 billion in FY02,⁷ \$4.1 billion in FY05,⁸ to nearly \$5.3 billion in FY08, many systems remain in crisis. In Figure 1, we present these data in dollars that have been adjusted for inflation using the Consumer Price Index. The appendix of tables provides this graph in unadjusted dollars.



Total indigent defense spending by state continues to vary widely for many reasons. For example:

- States with the death penalty that have a large number of individuals on death row, such as California, Florida and Texas, have significantly higher indigent defense costs.

⁷ Spangenberg, R., Beeman, M.L., & Downing, J. (2003). State and County Expenditures for Indigent Defense Services in Fiscal Year 2002. Prepared for The American Bar Association Bar Information Program. Chicago, IL: The American Bar Association.

⁸ Saubermann, Jennifer M., & Spangenberg, R. (2006). State and County Expenditures for Indigent Defense Services in Fiscal Year 2008. Prepared for The American Bar Association Bar Information Program. Chicago, IL: The American Bar Association.

- Some states, require by statute that counsel be appointed in minor misdemeanors, including traffic offenses, as well as ordinance violations, as these are treated as jailable offenses. Other states treat such offenses with fines only, thereby eliminating the requirement of counsel.
- The right to counsel in civil proceedings varies by state, and often represents a significant portion of total expenditures.
- The law in some states prohibits representation of co-defendants in all circumstances. Other states permit joint representation in preliminary matters or until an actual conflict is discovered.
- In some states, such as California, public defenders are paid higher salaries than in other states, such as Virginia. In addition, the fees for court-appointed counsel vary by jurisdiction.

To help put these differences in context, this report describes the indigent defense systems used in each of the 50 states, as well as the District of Columbia and the federal system. Some of the descriptions are more detailed than others. Information describing each state's indigent defense system was gathered in the summer of 2009. The technical appendix concludes this report with detailed information on the source of the expenditure information presented by state. Also included are additional breakdowns, if available, of the total expenditure information. *The information in the technical appendix is not to be viewed as supplementary.* Rather, the information is central to understanding the expenditure information provided throughout the report. Users should carefully review this information before using the expenditure information for other purposes.

State Indigent Defense Systems & Expenditures
2008

Alabama **Population: 4,661,900** **41 Judicial Circuits (67 Counties)**

The provision of indigent defense services continues to be fragmented in Alabama. In accordance with Title 15 Chapter 12 of the State Code, Alabama's system is divided by the 41 judicial circuits without a state-level oversight office.¹⁰ Each circuit court determines what type of service delivery model to utilize and adopts rules to structure the delivery system. Across the circuits, there are three representation models, with the majority of the circuits using an appointed counsel system. In this type of system private attorneys apply to be included on a list of approved counsel and are periodically appointed to represent an indigent defendant for an approved hourly rate.

Approximately ten circuits rely on a contract defender system. In 2005, these circuits were criticized for evaluating and awarding contracts by cost alone, thus neglecting standards of quality defense.¹¹ Five circuits have a public defender office: the Sixth District (Tuscaloosa County), the Tenth District (Jefferson County – family court only), the Eighteenth District (Shelby County), the 20th district (Escambia County), the 38th district (Conecuh and Monroe Counties); however, not all offices operate on a full-time basis or serve all types of cases.

Indigent services in Alabama are funded by a combination of the Fair Trial Tax Fund and the state's general funds.¹² The Fair Trial Tax Fund is constructed with filing fees and additional charges added to civil and criminal cases. The Fair Trial Tax Fund was designed to collect funds to be used to reimburse counties for indigent defense service costs. In recent years, the Fair Trial Tax Fund has had insufficient funds to cover counties' costs and the state has had to use general funds to reimburse counties in full. In fiscal year 2008, total indigent defense expenditures were **\$67,050,276**.¹³ Of this total, \$23,554,979 was from the Fair Trial Tax Fund and \$43,495,297 was reimbursed from the state's general funds.

Indigent defense expenditures have increased in recent years in part as a result of the Alabama Supreme Court's decision in *May v. State*¹⁴ and *Wright v. Childree*.¹⁵ The Supreme Court, as a result of this decision has required the state to reimburse assigned counsel for overhead expenses resulting from the attorney general's order. The overhead expenses that were collected are to be reimbursed to assigned counsel and the hourly rate of \$70 for out-of-court work and \$90 for in-court work was ordered as of the date of the Supreme Court's decision. On February 1, 2005, the attorney general issued *Op. Att'y Gen., No. 2005-063*, which concluded that the comptroller did not have to pay office overhead expenses, excluding those of public defender offices or contract counsel, citing § 15-12-21(d), *Ala.Code 1975*. The attorney general argued that these expenses were not incurred by defending one client as termed in § 15-12-21, *Ala.Code 1975* and began withholding payment for these expenses on February 1, 2005. However, in December 2006, the Alabama Supreme Court ruled in *Wright v. Childree* that the comptroller must reimburse overhead expenses that were "reasonably incurred in the defense of a

¹⁰ Alabama Acts 1975, No. 1205, §9-103.

¹¹ ABA <http://www.abanet.org/legalservices/sclaid/defender/brokenpromise/downloads/al.pdf>

¹² Alabama Administrative Office of the Courts- personal communication, 2009.

¹³ For a complete description of this figure, refer to Technical Appendix, page 1.

¹⁴ *May v. State*. 672 So.2d 1307 (Ala. Ct. of Criminal Appeals, 1993).

¹⁵ *Wright v. Childree*, 972 So.2d 771 (Ala.2006).

defendant.”¹⁶ The court ordered the comptroller to issue payments for expenses incurred in cases 2005 and 2006.

Alabama is the only state that does not provide counsel for indigent death row inmates after they exhaust their initial appeals. In 2007, the U.S. Supreme Court refused to hear an appeal from Alabama death row inmates who believe they lack adequate legal representation after their initial appeals. There are currently 200 people on death row in Alabama.

Alabama does not have a state-wide indigent defense commission; however, by statute, local indigent defense commissions are appointed with five members.¹⁷ The commissions are appointed and overseen by the presiding circuit judge or a majority of judges if there are three or more judges in a circuit. There are many groups working to establish a state-wide indigent defense commission. In 2000, and again in 2004, a bill was drafted to establish a State Indigent Defense Commission which would have authority over the mechanics of indigent defense delivery and the budget for providing such services.¹⁸ These bills were never introduced to the legislatures due to a lack of clear support. Chief Justice Sue Bell Cobb of the Alabama Supreme Court re-established the Chief Justice’s Indigent Defense Study Commission. Working with Alabama Appleseed, the Study Commission proposed legislation for the 2009 regular session that would create the Office of Indigent Defense Services and the Alabama Indigent Defense Commission. The Commission would provide oversight to the proposed Office of Indigent Defense Services. The Study Commissioners hoped the proposed Office of Indigent Defense Services would bring uniformity to the system. The proposed legislation would also eliminate the per-hour indigent defense fees and replace them with a flat fee. At the time that the legislation was filed, hourly rates were \$70 out of court and \$90 in court. Thirty dollars of the \$90 is overhead. The bill, HB0214, did not pass in the 2009 legislative session, but it did make it out of the Senate Judiciary Committee and was referred to the House Committee on Government Appropriations. Advocates in Alabama will be continuing their work in the next legislative session.¹⁹

The total expenditures in Alabama for FY-2008, is **\$67, 050,276**.

¹⁶ The Court of Criminal Appeals in *Ex parte Barksdale*, 680 So.2d 1029, 1030 (Ala.Crim.App.1996),

¹⁷ Alabama Acts 1975, No. 1205, §9-104; Acts 1995, No. 95-757, p. 1770, §1.

¹⁸ Alabama Appleseed (2008). Indigent Defense Reform. Available at: http://alabamaappleseed.org/index.php?option=com_content&view=article&id=52&Itemid=64 Last accessed on August 12, 2009.

¹⁹ Full text Alabama HB 0214
<http://www.trendtrack.com/texis/tt/alsearch09/gettext.html?billid=60823&amend=&billnum=HB214>

Alaska **Population: 686,293** **13 Public Defender Offices (27 Divisions)**

Indigent defense in Alaska is funded entirely by the state and provided by the Alaska Public Defender Agency, as mandated by Alaska Statute 18.85.²⁰ The governor appoints the Public Defender from two or more nominees from the judicial council. The appointment is subject to confirmation by the legislature in joint session. The Public Defender serves a term of four years and can be retained for a second four year term with the approval of a majority of the members of the legislature in joint session.

Established in 1969, the Public Defender Agency provides constitutionally mandated legal representation to indigent clients appointed by the court. There are four main divisions under this Agency: criminal, civil, appellate, and administrative. The criminal division represents individuals charged with felony and misdemeanor offenses from arraignment through trial and sentencing, as well as felony and misdemeanor petitions to revoke probation. The civil division handles child in need of aid cases, and represents minors in juvenile delinquency cases, and individuals subject to civil commitment proceedings. The appellate division handles appeals statewide for criminal, child in need of aid cases, juvenile delinquency cases, as well as post-conviction relief applications and parole hearings. The administrative section provides statewide administrative services and support to the Agency's thirteen regional offices located throughout the state.

The Office of Public Advocacy is a separate agency and provides counsel to defendants in conflict cases from the Public Defender Agency. The office has a number of other functions, including advocacy for children in court cases, advocacy for victims of elder fraud, providing representation for respondents in adult guardianship cases and providing representation for parents in custody cases.

The total expenditure for Alaska's indigent defense system was **\$28,940,500**.²¹

²⁰ A.S. Sec. 18.85

²¹ For a complete description of this figure, refer to Technical Appendix, page 1.

By statute, each county in Arizona develops its own system of indigent defense service delivery. There are two urban counties in Arizona: Maricopa County (Phoenix) and Pima County (Tucson). Within the largest county in Arizona, Maricopa County, there are four agencies that provide indigent defense services. The Office of the Public Defender handles most cases. Conflict cases are sent to the Office of the Legal Defender or the Office of the Legal Advocate. There is also an agency that contracts with private counsel. In 2001, Maricopa County was described as having significant problems with their indigent defense delivery system, including case overload and high staff turnover.²² In the county's most recent annual report, it appears that the county has made significant changes to reform the system.²³

Pima County is the second largest county in Arizona. Indigent defendants in Pima County can be assigned to one of three offices: The Pima County Public Defender, Pima County Legal Defender's Office, or the Office of Court Appointed Counsel. The Office of Court Appointed Counsel works with the courts to assign indigent defendants to the Public Defender, the Legal Defender, or a contract attorney. The office also administers contracts with attorneys, and determines eligibility for indigent counsel. The Pima County Public Defender represents indigent defendants in felony cases, juvenile delinquency matters, appeals, and extradition hearings in the jurisdiction of the Pima County Superior Court, Juvenile Court or Arizona Appellate Courts. Finally, the Pima County Legal Defender Office handles conflict cases from the Public Defender and any over-flow cases that the Public Defender Office cannot handle.

Smaller counties in Arizona provide indigent defense services in a number of different combinations of offices and systems, including public defender offices, legal defender offices, court-appointed counsel, and contract counsel.

Nearly all costs of providing indigent defense services are borne by the counties in Arizona. In fiscal year 2008, the total expenditure for indigent defense for all counties in Arizona was \$120,942,184.²⁴ The state contributed \$1,149,300 for a total of \$122,091,484.

In 1999, the Arizona Senate Bill 1013 was passed into law, creating what has become known as Fill the Gap (FTG) legislation.²⁵ The FTG legislation established three funds, one of which is dedicated to providing modest funding to the counties for indigent defense. These funds, called the "Fill the Gap" funds are dispersed based on a formula using county population and three-year average case filings. The sources of funding for the FTG fund are:

²² NACDL. (2001, February). A Discussion on Indigent Defense in Arizona.

²³ Law Office of the Public Defender, Maricopa County. (2008). Annual Report, 2008. Available at: http://www.pubdef.maricopa.gov/docs/annual_reports/FY08%20AnnualReport.pdf Last accessed August 13, 2009.

²⁴ For a complete description of this figure, refer to Technical Appendix, page 1-2.

²⁵ Arizona Revised Statutes §11-539, §11-588 and §12-102.02.

- A penalty assessment of 47 percent levied on all fines, penalties, and forfeitures imposed by the courts for both criminal and civil cases, including traffic violations, as well as an additional seven percent fine on specified cases. An additional surcharge of five percent on filing fees is also mandated by this law. A percentage of this money is allocated to the County Attorneys FTG Fund (21.61%); the Indigent Defense FTG Fund (20.53%); and the Courts FTG Fund (57.37%).²⁶
- A seven percent additional assessment to fines and other court fees. 14.66 percent of the money collected from this assessment is distributed to the Indigent Defense FTG Fund.
- A general fund appropriation both from the state and the counties.

In FY2008, the FTG fund dedicated to indigent defense provided **\$1,149,300** to counties in Arizona. The general fund contribution was \$150,100 and fine revenue was \$999,200.²⁷

The total FY2008 expenditure for indigent defense in the state of Arizona was **\$122,091,484**.²⁸

²⁶ FTG Annual Report 2008. Available at: http://www.azcjc.gov/pubs/home/FY2008_Fill_The_Gap_report.pdf Last accessed August 13, 2009.

²⁷ Ibid p.72

²⁸ For a complete description of this figure, refer to Technical Appendix, page 1-2.

The state of Arkansas has assumed some financial responsibility of indigent representation since 1993. Under Act 1193 of 1993, the Arkansas Public Defender Commission was created and tasked with monitoring county-based indigent defense delivery systems, overseeing the small Capital, Conflict, and Appellate Office, and assuring minimum standards were met by appointed counsel.²⁹ In 1995, the Commission increased staffing to better serve capital defendants. Finally, in the Arkansas General Assembly's 1997 session, the state assumed most of the responsibility for funding indigent defense throughout the state, except for small county contributions toward running the county offices.³⁰ Pursuant to this legislation, as of January 1, 2008, the state began paying salaries of public defenders, some support staff and private, assigned counsel with oversight provided by the Commission. The Commission also paid expert witness and investigation expenses. Additionally, the Commission was given increased duties, including allocating resources, providing judges with recommendations on whom to employ as public defenders, maintaining all personnel and payroll systems, and paying all private, appointed counsel.³¹

The Arkansas Public Defender Commission is now responsible for the payment of the salaries of public defenders, secretaries and other support staff with public defender offices, while counties maintain their responsibility for the cost of facilities, equipment, supplies and other office expenses of public defender offices. Trial public defenders are responsible for the representation of indigent defendants in all felony, misdemeanor, juvenile, guardianship and mental health cases, as well as all traffic offenses punishable by incarceration. The Commission's Capital, Conflicts and Appellate Division provides legal services to indigent defendants in capital and appellate cases, and cases in which local Public Defenders have a legal or ethical conflict. The Commission sets compensation rates for court-appointed counsel. There are county or regional public defender offices in each of the state's 23 judicial districts, and in some districts there is more than one office.

Arkansas has continued to increase the duties of the Commission in more recent legislative sessions. In 1999, the Ombudsman Division was created and began employing social workers and support staff tasked with ensuring children sentenced to the Division of Youth Services are safe and receiving the necessary services. However, due to recent economic conditions, this division has suffered staffing cuts. In 2001, the Commission was able to secure 22 new attorney positions to respond to the ever-increasing caseloads in many districts. Also, in 2001, the Commission was able to establish conflict offices around the state, increase payment for part-time public defenders who handle appellate work, and was given the authority to set payment for private, assigned counsel (previously this duty fell to local judges resulting in

²⁹ Act 1193 of 1993 (codified at Ark. Code Ann. § 16-87-201 through 214) in response to the Arkansas Supreme Court's ruling in *Independence County v. State*, 312 Ark. 472, 850 S.W.2d 842 (1993).

³⁰ Act 1341 of 1997.

³¹ Arkansas Public Defender Commission, Budget Manual.

inconsistent rates of payment). This final responsibility saved the state more than \$253,000 to the State Treasury in 2002.³²

In 2003, the Commission worked to pass Act 1778 which assesses a \$10 fee included on every bail written by every bail or bond company in Arkansas. This fee is deposited into the Public Defender User Fee Fund. These monies are used to reimburse counties for office expenses (\$3 of each \$10 fee goes back to the counties to offset these costs) and other public defense expenses.³³ This fund also includes a \$100 fee assessed for each indigent defendant, payable upon plea or conviction. This fee is paid to the court or prosecuting attorney's office, and later is forwarded to the Public Defender User Fund. Judges are able to waive this fee under a myriad of circumstances.

The capacity of the Commission has continued to increase in 2003, 2005, and 2007 legislative sessions where the Commission has been successful in their request for additional staffing, for both attorney and support staff positions.

The total fiscal year 2008 expenditure for indigent defense in Arkansas was **\$26,244,216**.³⁴

³² Ibid at. p. 321.

³³ Ibid. at p. 320.

³⁴ For a complete description of this figure, refer to Technical Appendix, page 2. In recent years, offices maintaining records on expenditures have improved allowing for more accurate reporting than was previously possible.

California indigent defense services are delivered on a county-by-county basis. Each county selects its method of delivery, including a public defender, assigned counsel, or contract counsel. The majority of the larger counties in California have elected to establish public defender offices. California counties with public defender offices include: Alameda, Calaveras, Contra Costa, El Dorado, Lassen, Los Angeles, Mono, Monterey, Nevada, Orange, Placer, Riverside, San Diego, San Francisco, San Joaquin, Santa Barbara, Santa Clara, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tulare, Tuolumne, Ventura, and Yolo. Los Angeles, Orange, and Santa Clara counties also maintain and utilize alternate Public Defender Offices. Many of these offices also have a conflict program with full-time lawyers handling conflicts of the public defender.

California has an Office of the State Public Defender, established in 1976, that represents indigent defendants on post-conviction appeals. The Office was originally formed to represent individuals on appeal; however, since 1990, the office has been exclusively focused on representing clients in post-conviction capital appeals, due to the number of defendants on death row who often wait very long periods of time to be assigned counsel.

The Habeas Corpus Resource Center (HCRC) was established in 1998 as a part of the judicial branch to represent defendants in state and federal habeas corpus proceedings. The office, located in San Francisco, also provides training and support to private attorneys who represent defendants in habeas corpus proceedings.

California also has the California Appellate Project, created by the State Bar in 1983 “as a legal resource center to implement the constitutional right to counsel for indigent persons.”³⁵ The project operates offices in Los Angeles and San Francisco. The San Francisco office handles capital cases statewide and the Los Angeles office is assigned to non-capital appeals in the Second District. Other non-profit organizations handle non-capital appeals for other districts. The First District Appellate Project in San Francisco is assigned to the First District’s appeals. The Central California Appellate Program in Sacramento handles appeals for the Third District (Sacramento) and the Fifth District (Fresno). Appellate Defenders, Inc. in San Diego handles appeals in the Fourth District. The Sixth District Appellate Project is assigned to appeals in the Sixth District (San Jose).

In 2007, an empirical study of criminal defense representation sponsored by the California Commission on the Fair Administration of Justice found that 18 counties “lack the resources necessary to provide the defense investigation required by the Constitution, and by both national and California state bar standards.”³⁶

In 2009, a study revealed that “in California, for every \$8 spent on prisons and corrections, only \$1 is spent on indigent defense.”³⁷

In fiscal year 2008, the total indigent defense expenditure for California was **\$776,710,939**.³⁸

³⁵ See www.capsf.org last accessed on September 14, 2009.

³⁶ See www.cwsi.edu last accessed on August 21, 2009.

³⁷ See www.sfpublicdefender.org last accessed on August 21, 2009.

³⁸ For a complete description of this figure, refer to Technical Appendix, page 2-3.

Indigent defense in Colorado is provided by the State Public Defender. The first state public defender was appointed in 1970 after the legislation passed the Administrative Re-Organization Act and the court system began overseeing the appointment of indigent representation. Shortly after, the Office of the Public Defender was created as an independent state agency.

State Public Defender provides representation in criminal and juvenile delinquency cases to indigent defendants in Colorado. The system comprises a statewide administrative office, 21 regional trial offices, and a centralized appellate office that handles felony appeals from every jurisdiction in the State. The system employs approximately 300 trial attorneys, 30 appellate attorneys, support staff and investigators.

In fiscal year 2008, the office had 486.5 FTE, opened 90,151 new cases (new filings received), and closed 90,969 cases. In total, the Colorado State Public Defender carried 114,103 cases throughout the same time period.

The Office of Alternate Defense Counsel was created by Senate Bill 96-205. The Office is funded to provide representation for indigent persons where the Office of the Public Defender has an ethical or legal conflict of interest. There are no full-time staff attorneys within the office, rather, representation is provided by private attorneys who are appointed to a list of qualified attorneys. The appointment and payment of the assigned counsel are handled by the Alternate Defense Counsel office. The office handled more than 14,000 cases in fiscal year 2008.

There are two commissions that oversee indigent defense in Colorado. In 1979, the Public Defender statute (C.R.S. *sec.* 21-1-101, *et seq.*) was amended to include a Public Defender Commission appointed by the Chief Justice of the Colorado Supreme Court. The Commission includes three attorneys and two lay citizens who are responsible for appointing and removing the State Public Defender from office. The Office of Alternate Defense Counsel is also overseen by a Commission consisting of nine members. This committee is tasked with appointing and removing the director of the Office of Alternate Defense Counsel and providing general guidance for the office's operations.

In fiscal year 2008, the total expenditure for indigent defense in Colorado was **\$81,270,241**.³⁹

³⁹ For a complete description of this figure, refer to Technical Appendix, page 3.

The state-funded Connecticut Division of Public Defender Services provides the majority of indigent defense representation in Connecticut. The Division comprises three components: The Public Defender Services Commission, the Office of the Chief Public Defender, and the individual public defender offices throughout the state.

The Public Defender Services Commission is the policy-making body and appointing authority for the Division. Section 51-291 C.G.S. specifies that the Commission is an “autonomous body within the judicial department for fiscal and budgetary purposes only.” Seven members are appointed for three-year terms by the Governor, the Chief Justice, the Speaker of the House, the Senate President Pro Tempore, and the House of Representatives Minority and Majority Leaders. The Commission is responsible for appointing all personnel, establishing compensation plans, expenditures, and establishing policies and procedures relating to the operations of the Division.

The Office of the Chief Public Defender is charged with the statewide administration of the public defender system and the provision of specialized legal representation. The office oversees the individual offices in the thirteen judicial districts, the twenty geographical areas, and the thirteen juvenile venues of the Superior Court that provide legal services to indigent persons throughout the State. In addition, there are six specialized units in the Office of the Chief Public Defender that are responsible for representing clients in capital cases, appeals, habeas corpus proceedings, matters before the Psychiatric Security Review Board, and juvenile post-conviction matters. The office’s Special Public Defender Division oversees the appointment of private attorneys to handle conflict and overload cases. Private attorneys accept cases on a contract or case-by-case basis.

The Public Defender has regional offices throughout the state. Public Defenders may be appointed to represent individuals in any criminal action, habeas corpus proceeding arising from a criminal matter, extradition proceeding, or delinquency matter. Representation is provided to clients in both adult and juvenile misdemeanor and felony cases, including appeals and other post-conviction matters. The Division currently has a staff of 408 with 400 permanent full-time, seven permanent part-time, and one federally funded position. As of June 2008, there were two full-time vacancies. The Commission also has contracts with 293 members of the private bar to provide representation as Special Public Defenders in adult and juvenile cases where conflicts of interest preclude representation by public defender staff.

In 1995, a state court civil rights class action was filed by the ACLU on behalf of indigent defendants against the governor and the public defender commission seeking injunctive relief.⁴⁰ Plaintiffs alleged that overwhelming caseloads and inadequate resources in the statewide Public Defender Program prevented the plaintiffs’ class from receiving their right to a constitutionally adequate level of representation. Prior to the filing of the complaint, The Spangenberg Group (TSG) conducted a statewide study of the Connecticut Public Defender System. The case was scheduled for trial in 1998, however, it was resolved by consent decree which called for a reduction of caseloads, an increase in staffing, reform of the delivery and oversight of special public defender services, and enhancement of training and supervision to public defender staff. The litigation ultimately resulted in substantial increase of services to the state public defender.

In fiscal year 2008, the Connecticut Division of Public Defender Services expended a total of **\$48,074,375**.⁴¹

⁴⁰ Rivera v. Roland, 1996 Conn. Supra Lexis 2800 (Oct. 21, 1996)

⁴¹ For a complete description of this figure, refer to Technical Appendix, page 3.

Indigent defense in Delaware is a state-funded, public defender based program.⁴² The Delaware State Public Defender represents all indigent defendants in trial and appellate cases. The State Public Defender is appointed by the Governor for a six-year term. The Office has one central, administrative office and two regional offices, which employ approximately 143 staff members, including 128 full-time employees.⁴³ Nearly ten percent of the 143 positions are federal or grant funded positions. The Delaware Public Defender has been commended for its innovation seeking out and obtaining alternative funding to expand the program.⁴⁴ In recent years, the program has also become a leader in providing training to their public defenders. Specifically, the office has focused on rehabilitation and treatment, and providing education on forensic evidence.

Most conflict cases are handled by a pool of private attorneys who are contracted by the state. The few conflict cases that are not handled by contract counsel are appointed to private attorneys at a rate of \$50 per hour. The Delaware Administrative Office of the Courts pays these attorneys and tracks data on conflict counsel.

The total indigent defense expenditure for fiscal year 2008 in Delaware was **\$18,383,901**.⁴⁵

⁴² 29 Del. C. 1953, § 4601; 54 Del. Laws, c. 227, § 1.

⁴³ The Spangenberg Group. (2004). Delaware Public Defender 2004 Review. Available online at: <http://publicdefender.delaware.gov/Docs/Spangenberg.pdf> Last accessed on August 15, 2009.

⁴⁴ Ibid at p. 3.

⁴⁵ For a complete description of this figure, refer to Technical Appendix, page 3.

The Public Defender Service (PDS) program provides indigent defense services to individuals in the District of Columbia. The organization was founded in 1960 as the Legal Aid Agency, charged with legal representation for indigent persons. Following the U.S. Supreme Court's *Gideon v. Wainwright* decision in 1963 the organization increased their commitment for indigent defense services. The National Capital Revitalization and Self-Government Improvement Act of 1997 (the "Revitalization Act") and its 1998 amendments established the PDS as a federally funded, independent legal organization. With this enactment and the fiscal year 2007 Appropriation Act, Public Defender Services now receives direct appropriations from Congress.

Guided by a Board of Trustees comprising eleven members, the Public Defender Service attorneys handle criminal appeals, the majority of parole revocation hearings, Drug Court sanction hearings, people facing involuntary commitment in the mental health system, children with special education needs facing delinquency charges, and clients in civil proceedings that were triggered by their criminal charges or their incarceration. There are seven legal practice groups at PDS: the Trial Division, the Appellate Division, the Mental Health Division, the Special Litigation Division, the Parole Division, the Community Defender Division, and the Civil Legal Services Division.

In the District, PDS and the DC Courts share responsibility for providing constitutionally mandated legal representation to people who cannot pay for their own attorney. Under the District's Criminal Justice Act (CJA), the courts generally appoint PDS to the more serious, complex, resource-intensive, and time-consuming criminal and juvenile delinquency cases. The courts assign the remaining cases, those that are less serious as well as the majority of misdemeanor and traffic cases, to a panel of court-approved private attorneys ("CJA attorneys"). PDS, through its CJA Office, assists the court with the administration of the CJA program by conducting financial eligibility interviews of arrestees and defendants, and facilitating the assigned counsel program.

The total fiscal year 2008 expenditure for indigent defense in the District of Columbia was **\$80,685,000**.⁴⁶

⁴⁶ For a complete description of this figure, refer to Technical Appendix, page 4.

Prior to 1998, funding for Florida's judicial system was provided by both the state and counties, with the latter forced to fund an increasing share of the court system through local property taxes. While the state provided some funding, counties were responsible for conflict of interest cases and overload case costs. In 1998, the state constitution (Article V) was amended and the state was to assume full financial responsibility for indigent defense beginning in 2004. The 2003 special legislative session and the 2004 regular session passed substantial appropriations to comply with the changes to the constitution. Funding for the amendment to Article V comes solely from the state general revenue fund.

Since the state of Florida became fully responsible for indigent defense funding in 2004, delivery has been through a system of public defenders. For each of the 20 judicial circuits, there is a public defender who has been a member of the Florida Bar for at least five years and who has been elected at a general election for a period of four years.⁴⁷ These public defenders provide representation at the trial level, while appellate representation is handled by five regional offices. Conflict cases are appointed to qualified, private attorneys.

In addition to the major shift in funding, the new legislation created circuit indigent defense services committees, funded by the state, to oversee conflict attorneys in all criminal cases. Each circuit committee now establishes the rates paid to conflict attorneys, subject to state appropriations.

While Florida statute 27.701 provides for three Capital Collateral Regional Counsel (CCRC) offices, legislation passed in 2003 provided for a pilot program that eliminated the CCRC North office and redistributed to the CCRC Middle and South offices. These offices provide representation to indigent capital prisoners in state and federal post-conviction proceedings. In January 2007, Florida's Auditor General published a report finding that the CCRC Middle and South offices provided a higher incidence of relief to death row inmates than private court-appointed attorneys in the North region.⁴⁸

In fiscal year 2008, the total expenditure for indigent defense in Florida was \$354,034,506⁴⁹

⁴⁷ Florida Statute 27.5

⁴⁸ Florida Auditor General "Capital Collateral Regional Counsel – Pilot Project – Performance Review"

⁴⁹ For a complete description of this figure, refer to Technical Appendix, page 4.

In April, 2003, the Georgia General Assembly enacted a bill to reform Georgia's indigent defense system. Effective January 1, 2005, Georgia's system changed to create judicial circuit-based public defender offices set up in each of the state's 49 judicial districts, replacing a county-based system. The state-funded circuit public defenders provide representation in superior and juvenile court and in direct appeals from these courts. City and county governments may choose to pay for a contract with the circuit public defender to provide indigent defense services in lower courts. Even if counties choose to opt out of the statewide system and maintain the public defender offices that were in place at least two years prior to July 1, 2003, public defender offices and their staff will still be subject to statewide standards for indigent defense. Public defenders were selected for 43 of Georgia's 49 judicial circuits by panels composed of five members: one each appointed by the Governor, the Lieutenant Governor, the Speaker, the Chief Justice and the chief judge of the Superior Court. Also, as of January 1, 2005, the office of the Multi-County Public Defender, a state-funded capital trial unit, was replaced by the Office of the Georgia Capital Defender, which will have expanded duties. There are currently 43 full-time circuit public defender offices throughout the state. Six counties opt out of the statewide program, as permitted by the legislation. In addition, there are a number of regional conflict defender offices that handle conflict cases and overload from the public defender offices.

The bill also created the Georgia Public Defender Standards Council (GPDSC), which is composed of 11 members, two each appointed by the Governor, the Lieutenant Governor, the Speaker, the Chief Justice of the Supreme Court, and the Chief Judge of the Georgia Court of Appeals.⁵⁰ The eleventh member is a circuit public defender, initially appointed, but subsequently elected, by the 49 Circuit Public Defenders. The GPDSC appointed an executive director to provide support services for circuit public defenders including administrative help, education and training programs. The director also developed rules, policies and standards for public defenders, and GPDSC is responsible for monitoring and enforcing the standards and policies.

In the 2004 legislative session, a funding bill, HB 1EX, created additional fees and surcharges specifically earmarked to fund the new indigent defense system, effective July 2004. There was an increase of \$15 in the filing fee in all civil actions, a 10 percent surcharge on criminal fines, a 10 percent surcharge on bails or bonds with a \$50 cap, and a newly created \$50 waivable application fee for indigent defendants. The collection from these fees/fines was anticipated to reach \$32.1 million in fiscal year 2005 and \$42.08 million in fiscal year 2006. Of the fees imposed, the counties keep the revenue generated from the \$50 application fees collected by the lower courts, and all other fees are remitted to the State treasury.

In May 2007, SB 246 was signed by the governor, establishing a study committee on indigent defense. This committee was tasked with studying the different indigent defense delivery models, as the state-funded, judicial circuit based system has been experiencing significant budget shortfalls and criticisms on the quality of representation. The last meeting of the study committee was in January 2008. The committee found that while there were significant challenges, the new state-funded system was in its infancy and needed time and resources to succeed.

The total fiscal year 2008 expenditure for indigent defense in Georgia was **\$94,113,626**.⁵¹

⁵⁰ *O.C.G.A. § 17-12-1 (c), Georgia Indigent Defense Act of 2003*

⁵¹ For a complete description of this figure, refer to Technical Appendix, page 4-5. In recent years, offices maintaining records on expenditures have improved allowing for more accurate reporting than was previously possible.

Section 802-B of the Hawaii Revised Statutes established the Office of the Public Defender. The Office was founded in February 1970 and has been administratively attached to the Department of Budget and Finance since 1980. The Office has a trial office in each of the four judicial districts, including two on the island of Hawaii, and an appellate office that serves the entire state. The Appellate office, situated in the Honolulu office, handles appeals generated by the trial offices and cases where the office has been appointed as substitute counsel in the appeal. The Honolulu office also serves as the main administrative and fiscal office for the entire agency.

The Defender Council serves as the governing body of the Office of the Public Defender. The five-member council is appointed by the Governor, with at least one member appointed from each county in the State. The State Public Defender is appointed by the Defender Council.

Court-appointed counsel represent defendants in conflict of interest cases, and the hourly rate of compensation for court-appointed counsel increased significantly in 2006, from \$40 per hour for out-of court work and \$60 per hour for in-court work to \$90 per hour across the board.

The fiscal year 2008 total expenditure for Hawaii's indigent defense system was **\$9,626,208**.⁵²

⁵² For a complete description of this figure, refer to Technical Appendix, page 5.

Idaho runs its indigent defense services through the counties, with each county selecting the type of system to use. Counties in Idaho use public defenders, assigned counsel, contract counsel, or some combination of the three.

The Idaho State Appellate Public Defender Office was created in compliance with the legislative intent outlined in the State Code section 19-868. The State Appellate Public Defender is appointed by the Governor for a four-year term. The Appellate Office has a Capital Litigation Unit and an Appellate Unit. The Capital Litigation Unit represents all indigent defendants sentenced to death on or after September 1, 1998 who are from a county that participates in the Capital Crimes Defense Fund.⁵³ Representation is provided during post-conviction proceedings in district court, and in appeals from both the judgment of conviction and post-conviction orders. Representation is terminated upon completion of the state appellate review. The Appellate Unit represents indigent defendants when the appeal is of a felony conviction in district court in non-death penalty cases, an order denying post-conviction relief in felony, non-death penalty cases, or an order denying habeas corpus relief.⁵⁴

The total fiscal year 2008 expenditures in Idaho were **\$18,163,730**.⁵⁵

⁵³ I.C. 19-870(1)(d).

⁵⁴ I.C. 19-870 (2) (a-c).

⁵⁵ For a complete description of this figure, refer to Technical Appendix, page 5. This figure may reflect a different trend from numbers presented in the 2005 State and County Expenditure Report. In recent years, offices maintaining records on expenditures have improved allowing for more accurate reporting than was previously possible.

Indigent defense services in Illinois operate on a county-based system.⁵⁶ Each county in the state with 35,000 or more inhabitants has an office of the public defender. In counties with smaller populations, the county board may choose to either create a public defender office or use an alternate system of providing indigent defense services. There are two or more adjoining counties within the same judicial circuit, the two counties are able to create a shared public defender office.

Illinois has a State Appellate Defender Office, created through the State Appellate Defender Act.⁵⁷ The Defender represents indigent defendants on appeal when appointed by the Illinois Supreme Court, the Appellate Court, or the Circuit Court. The appellate office has district-level offices in each of the five appellate districts of the state, and has Supreme Court and Capital Post-Conviction Units.

In *Green v. Washington*, the Federal District Court in Chicago held that the petitioners, indigent defendants incarcerated in Illinois prisons whose appeals had not been filed for one year or more, were deprived of their right of due process of law.⁵⁸ The cause of the problem was chronic underfunding of the Illinois First District Office of the State Appellate Defender which was directly related to its inability to handle its caseload. Further, the court noted that the Illinois General Assembly had been on notice for at least eight years that there was inadequate staff to represent the increasing number of indigent appellants. Despite the lack of appellate staff, the Illinois General Assembly decreased the appellate defenders appropriation. Facing a history of inaction from both the judicial and the legislative branches of the Illinois government, the court held both the judicial and legislative branches of the Illinois government had allowed the violation of constitutional rights to continue despite full knowledge and ample opportunity to cure on the part of government defendants. The court asked the state of Illinois to propose an appropriate remedy and the legislature appropriated additional funds for the use of private attorneys to address the backlog appeals and substantially increase funding for the Office of the State Appellate Defender.

In 2000, the state legislature enacted the Capital Crimes Litigation Act, which established the Capital Litigation Trust Fund to provide state funds for the representation of defendants in death penalty cases. Private attorneys representing an indigent client charged with a capital offense are reimbursed at a rate that is adjusted every year according to the state's consumer price index, with no maximum.

Illinois also has a Death Penalty Trial Assistance Division that is funded through the Capital Litigation Trust Fund. In addition to the five appellate offices and the Death Penalty Trial Assistance Division, there is a Supreme Court Unit, which handles death penalty appeals, a Post-Conviction Unit, and an Expungement Program, which provides information but no representation on the expungement and sealing of criminal records. All of these offices are state funded.

The total expenditures for fiscal year 2008 in the state of Illinois were **\$123,879,559**.⁵⁹

⁵⁶ County Public Defenders Chapter 55, Section 5, Article 3, Division 3-4

⁵⁷ 725 Illinois Compiled Statutes, Act 105.

⁵⁸ *Green v. Washington*, 919 F.Supp. 1238 (N.D. Ill. 1996)

⁵⁹ For a complete description of this figure, refer to Technical Appendix, page 5.

Prior to 1989, the counties in Indiana were required to pay all trial costs of indigent defense representation. The counties could select a public defender program, a contract private bar program or an assigned counsel program. At the present time there are three other statewide programs, which include the state public defender of Indiana, the Indiana Public Defender Council. The State Public Defender of Indiana is a statewide entity that represents indigent defendants in state post-conviction proceedings and in a limited number of direct appeals. The State Public Defender is appointed by the Indiana Supreme Court and is a judicial branch agency. The Indiana Public Defender Council, governed by an 11-member Board of Directors, is a support center for attorneys who represent indigent criminal defendants. The Council provides training programs and various publications for indigent defense practitioners, including the provision of information in electronic format.

In 1989, the state established the Indiana Public Defender Commission (IPDC) to assist counties in defraying the cost of defense representation in capital cases. Based upon recommendations of the Commission, the Indiana Supreme Court amended Criminal Rule 24 to include mandatory standards for appointment, workload and qualifications of counsel in capital cases. These standards became effective February 1, 1993. If there is compliance with this rule, the IPDC reimburses counties 50 percent of their defense costs in capital cases. The Executive Director of the Division of State Court Administration adjusted the hourly rate paid in capital cases from \$96 to \$101 per hour for cases filed after January 1, 2007.

In non-capital felonies and juvenile cases, the Commission is authorized to reimburse counties for 40 percent of their expenses if the county is in compliance with guidelines and caseload standards. Counties must adopt comprehensive plans assuring the independence of the defense function and adhere to IPDC standards for providing defense services. In both capital and non-capital cases, reimbursements approved by the IPDC cover attorneys' fees, as well as costs of experts, investigators, and other support services.

Currently, 58 of the state's 92 counties have comprehensive plans approved by the Commission, and are eligible for reimbursement in non-capital cases. Sixty-five percent of the state's population resides in the 58 eligible counties. In 1989, the IPDC had \$650,000 appropriated. In fiscal year 2005, the annual appropriation had grown to more than \$8 million, and in fiscal year 2008 \$15.25 million was appropriated, though less than \$15.1 million was expended. While there has been considerable growth in amount of funds appropriated to the IPDC for county reimbursement, it remains insufficient to provide a 40 percent reimbursement to all eligible counties. In fiscal year 2008, the IPDC was able to reimburse approximately 37 percent of non-capital expenditures in eligible counties. The state currently provides representation for juvenile, felony, and misdemeanor cases.

The total fiscal year 2008 expenditure for indigent defense in Indiana was **\$63,936,602**.⁶⁰

⁶⁰ For a complete description of this figure, refer to Technical Appendix, page 5- 6. In recent years, offices maintaining records on expenditures have improved allowing for more accurate reporting than was previously possible.

Iowa 2008 Population: 3,002,555 19 Public Defender Offices (99 Counties)

The Iowa State Public Defender coordinates the provision of indigent defense services within the state. The State Public Defender is appointed by the governor for a four-year term. The office is guided by a five-member Indigent Advisory Commission. Representation is provided by State Public Defender offices or private counsel contracted by the State Public Defender or appointed through the courts. Indigent defense is funded entirely by the state.

In 1989, the state of Iowa assumed the cost of providing indigent defense services, replacing the state's counties as the primary providers. The move toward state funding coincided with the creation of a state-funded, unified court system. The State Public Defender oversees all indigent defense payments, including those for public defender staff offices (there are 19 adult and juvenile trial-level offices throughout the state and one civil commitment unit), attorneys working under contract with the public defender, and attorneys who accept court-appointed cases. The state public defender also has an appellate office. In Fiscal Year 2008, the State Public Defender Offices had 203 FTEs and handled 55,850 adult cases, 13,302 juvenile cases, 80 civil commitments, and 444 appeals.

In fiscal year 1993, the State Public Defender started the Contract Attorney Program to handle criminal cases for a set hourly fee. In cases not covered by Contract Attorneys, representation is provided by Court Appointed Attorneys. In addition, the Office of the State Public Defender contracts with the Iowa Department of Corrections to provide legal advice to inmates in the Iowa Correctional Facilities.

In fiscal year 2008, the total expenditure for indigent defense in the state of Iowa was **\$52,509,430**.⁶¹

⁶¹ For a complete description of this figure, refer to Technical Appendix, page 6.

The Board of Indigents' Defense Services (BIDS) provides felony criminal defense services in the state of Kansas through public defender offices, contract attorneys, and assigned counsel. These services are funded by the state. The counties have retained responsibility for funding and providing counsel for misdemeanor and juvenile cases.

Created in 1982, the Board consists of nine people appointed by the Governor and subject to confirmation by the Senate. BIDS maintains eight regional trial offices and two trial-level satellite offices. The office also operates a central appellate office, the Death Penalty Defense Unit and satellite office, a capital appeals office, a capital appeals and conflicts office, and the Northeast Kansas Conflict Office.

In fiscal year 1996 BIDS established the Death Penalty Defense Unit in response to the re-enactment of the death penalty in Kansas. The purpose of the office is to establish and administer procedures and to provide services that result in the highest quality defense of persons accused of capital murder. There is also a capital appeals office and a separate capital appeals and conflict office.

Assigned attorneys in Kansas are compensated at a rate of less than \$80 per hour for their work. The rate was raised from \$30 to \$50 in 1988 and then from \$50 to \$80 starting in fiscal year 2007 by the 2006 Legislature. The agency was also directed to monitor assigned counsel expenditures and open public defender offices where cost effective. After a period of monitoring, the agency conducted public hearings for eleven counties that would no longer be cost effective using assigned counsel at a rate of \$80 per hour. Local counties requested to maintain an assigned counsel delivery system and the Board recommended a reduced hourly rate of \$62 and \$69 per hour, which is more cost effective than opening a public defender office in these counties. The 2007 legislature changed the language of the assigned counsel compensation statute to allow the agency to negotiate a rate of compensation less than the previously mandated \$80 per hour. The agency's board reviews exceptional claims for fees submitted by assigned counsel. Fees for felony cases are capped at \$1,600 for cases that are not tried, and \$8,000 for cases that go to trial. Additional amounts can be paid by the Board if the judge approves the fees for extraordinary cases.

The fiscal year 2008 total expenditure for indigent defense was **\$30,644,098**.⁶²

⁶² For a complete description of this figure, refer to Technical Appendix, page 6.

The Kentucky Department of Public Advocacy (DPA) is an independent statewide entity that oversees the delivery of indigent defense services in the state's 120 counties.⁶³ By statute, the state is responsible for funding indigent defense in Kentucky. Several counties have elected to use their own plan for delivery of services, in which case the county contributes local funds to augment the state appropriation. The DPA now operates public defender programs in every county, with some offices covering multiple counties. In Jefferson, Fayette, and Boyd Counties (which include the cities of Louisville and Lexington), public defender representation is provided by private, non-profit corporations outside of the DPA that receive a combination of county and state funds. A 12-member Public Advocacy Commission assists the DPA with budgetary and certain supervisory responsibilities and conducts public education about the purpose of the public advocacy system.

The DPA's Trial Division is divided into six regions managed by a regional manager. The Trial Division has a specialized Capital Trial Branch. The DPA also has a Post-Trial Division, with a Central Appeals Branch, a Post-Conviction Branch, and a Juvenile Post-Dispositional Branch. The DPA also has an Education and Strategic Planning Division that oversees and presents extensive trial, post-trial, and leadership education for staff. A Law Operations Division and a Protection and Advocacy Division, funded primarily with federal money, provide advocacy services for the developmentally disabled and mentally ill. Most recently, the agency has begun a Social Work Pilot Program. From October 2006 to October 2007, this program measured the impact of social workers in public defender offices in three regions. Among other services, social workers helped secure treatment and identified alternative sentencing options. If the program were to be implemented statewide, it is estimated that it would save the state between \$3.1 and \$4 million per year.⁶⁴ The Kentucky Department of Public Advocacy has a law operations division and a protection and advocacy division and a social work pilot program with no mention of expenditures. Unfortunately because of cost considerations the social work pilot program is no longer in existence.

The DPA receives approximately 15 percent of its funding from several non-general fund revenue sources. For example, the DPA receives 25 percent (\$62.50) of the \$250 service fee assessed against individuals convicted of DUI. The DPA also receives 3.5 percent of a \$100 court cost in criminal cases, up to an annual cap of \$1.75 million. This fee was established after the 2002 General Assembly repealed the public advocacy administrative fee, which had been largely unsuccessful in generating income for indigent defense. A third source of revenue is a partial fee, or costs charged to an indigent defendant whom a judge determines is able to afford a portion of the cost of representation. Kentucky law also requires each county to appropriate 12.5 cents per-capita of the county population to a fund established to cover expert witness fees and other comparable expenses associated with providing indigent defense services.

In fiscal year 2008, the Department of Public Advocacy represented indigent defendants in 148,257 cases.⁶⁵ The total expenditure for indigent defense for the same period was **\$38,500,000.**⁶⁶

⁶³ Established by KRS Chapter 31.

⁶⁴ 2008 Annual Litigation Report. http://dpa.ky.gov/NR/rdonlyres/1140A71A-FE51-464D-A2BD-20E1E79B7B11/0/DPA_2008_CaseloadReport.pdf Last accessed August 13, 2009.

⁶⁵ Ibid.

⁶⁶ For a complete description of this figure, refer to Technical Appendix, page 6.

Until 1994, all indigent defense services in Louisiana were funded and delivered at the local level. In 1994, following its landmark decision in *State v. Peart*, 612 So.2d 780 (La. 1993), and a statewide study of Louisiana’s indigent defense system conducted by The Spangenberg Group, the Louisiana Supreme Court promulgated a rule creating the Louisiana Indigent Defender Board, later called the Louisiana Indigent Defense Assistance Board (LIDAB).

In 2007, Act 307 (HB436) was signed by the governor, creating the Louisiana Public Defender Board (in place of the LIDAB). The Board is charged with improving the criminal justice system and the quality of criminal defense services, while ensuring equal justice for all individuals charged with a criminal act. Act 307 presumes those systems that were in place prior to April 7, 2007 are acceptable and are allowed to stay in place until it is shown that the system does not meet standards and guidelines set by the LPDB. The majority of districts utilize individual attorneys contracted for their service, while seven districts have full-time public defender programs.

By statute, all Louisiana courts of original criminal jurisdiction impose a \$35 assessment on all traffic, misdemeanor and felony charges (with the exception of Jonesboro City Court). City, municipal and Mayor’s courts with a population of more than 5,000 also impose the \$35 assessment. These assessments comprise the primary source of indigent defense funding for parishes. The state also contributes money toward indigent defense through two separate funds. The LPDB’s District Assistance Fund awards funds to each district based on a newly developed funding formula. Compliance with LPDB’s standards is required to receive these funds.

Funded by the Louisiana Public Defender Board (LPDB), the Louisiana Appellate Project (LAP) provides appellate services for indigents in all non-capital felony appeals arising in all of the districts, including felony-grade adjudications for juveniles (capital appeals are handled by The Capital Appeals Project). All district indigent defender boards have contracted with the LAP to supplement its staff with these services. There is no cost to the district public defender for these services; it is a form of supplemental assistance.

In fiscal year 2008 the total expenditure for indigent defense in the state of Louisiana was **\$45,391,629**.^{67,68}

⁶⁷ For a complete description of this figure, refer to Technical Appendix, page 6.

⁶⁸ This figure includes \$875,878 provided to Orleans Parish in federal grant monies.

The state funds indigent defense services in Maine, which relies exclusively on an assigned counsel system to provide representation in all adult criminal and juvenile cases, abuse and neglect cases, and guardian ad litem and Children in Need of Protection Services (CHIPS) proceedings. Currently, funds are administered through the Administrative Office of the Courts.

In the summer of 2009, Governor Baldacci signed LD 1132 into law, establishing the Maine Commission on Indigent Legal Services. Based on recommendations of the Indigent Legal Services Commission, the independent Commission will have its own budget and will be responsible for the day to day operation of Maine's indigent defense system, including the appointment and payment of indigent representation. The Commission will also provide the state with a single office that is responsible for the quality and performance of appointed counsel. The Commission will take over these functions on July 1, 2010. John D. Pelletier will serve as the Commission's first Executive Director.

Founded in 2007, the Maine Indigent Defense Center (MIDC) advocates for indigent defense reform in the state. The MIDC has sought assistance from indigent defense experts and national associations and organizations in an effort to shed light on the indigent defense problems and improve the quality of representation indigent defendants receive in Maine. Attorney, Rob Ruffner, was a member of the Indigent Legal Services Commission which recommended a state-funded Commission to oversee the indigent defense system and ensure assigned counsel provide quality representation in Maine.

In fiscal year 2008, the total expenditure for indigent defense in Maine was **\$9,684,139**.⁶⁹

⁶⁹ For a complete description of this figure, refer to Technical Appendix, page 6.

Indigent defense services in Maryland are fully state-funded. The Maryland State Public Defender is an independent agency under the executive branch and the Public Defender appoints the district defenders for each of Maryland's 12 judicial districts.⁷⁰ A three-member Board of Trustees named by the Governor appoints the Public Defender and provides advice to the Public Defender in relevant matters. Within the past year, the three member Board of Trustees has been increased in order to meet the requirements of the Act.

The public defender program maintains trial divisions in all 15 Circuit, District and Juvenile Courts throughout the state. Additionally, the Maryland State Public Defender has statewide capital defense, appellate, children in need of assistance (CINA), collateral review, and mental health divisions. The Office has over 1,000 employees, of which more than 400 are attorneys. Conflict of interest cases are handled by court-appointed counsel.

The Office also maintains a division called the Northwest Neighborhood Defenders program. This program, modeled after a program in New York City, strives to address client's civil legal service needs, in addition to their criminal defense. Clients are provided access to many services that help address and resolve issues underlying criminal justice contact. The program serves defendants in northwest Baltimore.

In fiscal year 2008, the total indigent defense expenditure in the state of Maryland was **\$89,151,647**.⁷¹

⁷⁰ Annotated Code of Maryland, Article 27A, § 1.

⁷¹ For a complete description of this figure, refer to Technical Appendix, page 7.

Massachusetts' state-funded Committee for Public Counsel Services (CPCS) is a fifteen-member body established to oversee the provision of legal representation to indigent persons in the Commonwealth. Members are appointed by the state's Supreme Judicial Court. Legal representation of indigent defendants, parents and children is provided by a hybrid system of approximately 3,000 private attorneys (called bar advocates) and a full-time, staff public counsel division with 13 regional offices and approximately 200 staff attorneys handling criminal cases. The specific types of cases to be handled by the private counsel division and the public counsel division are set by statute. Bar advocates are appointed in the majority of district court cases, which include misdemeanor cases and initial appearances in some felony cases. Support for and supervision of these attorneys is provided by the Private Counsel Division, the Children and Family Law Division (CAFL) and the Mental Health Litigation Unit. An additional 28 staff attorneys working in CAFL offices throughout the state represent clients in state intervention/child welfare cases. It is estimated that private counsel provide representation to more than 90 percent of the over 200,000 new criminal and civil cases assigned to CPCS each year.

The thirteen CPCS regional public defender offices are staffed by full-time public defenders representing criminal defendants only in superior court or felony-level cases. In addition, there is an appellate defender office and two CPCS family law offices with full-time staff representing parents and children in child protective cases. In addition, CPCS contracts with twelve local Bar Advocate Programs, located in the various counties, to provide oversight of the private bar advocates.

In the early 2000's, there were two cases in Massachusetts that argued that the indigent defense system in the state was so woefully inadequate that defendants pending trial are receiving or have a strong likelihood of receiving ineffective assistance of counsel.⁷² In *Lavallee v. Justices*, indigent defendants in Hampden County, Massachusetts, sued the state for failure to provide them with counsel at or after arraignment. Petitioners alleged that chronic underfunding of the assigned counsel system resulted in an insufficient number of attorneys willing to accept assignments at the current compensation rates and requested that the court authorize increased compensation. The Massachusetts Supreme Judicial Court agreed that indigent defendants were being denied the right to counsel under the state's Constitution due to a shortage of attorneys, attributable to low rates of compensation. The court ruled that there was no need to articulate a specific harm for each defendant since the ongoing harm of depriving them of the right to counsel warranted relief.

In 2005, the Massachusetts Legislature made significant systemic changes to the Massachusetts system of indigent defense and substantially increased the appropriation for indigent defense services. A bill was passed that increased hourly compensation rates for court-appointed counsel, significantly expands the statewide public defender program, strengthens sixteen indigency verification procedures and establishes two new commissions, one to study decriminalization and one to examine alternative revenue sources to fund indigent defense. Unfortunately, the legislature has not created either of the two commissions at the present time. The bill significantly expanded the statewide public defender program by adding eleven pilot

⁷² *Arianna S. v. Commonwealth of Massachusetts*, SJ 2004-0282 (2004); *Lavallee v. Justices in Hampden County Superior Court*, 812 N.E.2d 895 (Mass. 2004)

public defender programs for representation in misdemeanor cases, resulting in 114 new attorney positions. This increase nearly doubled the number of public defenders in the state. The legislation also allowed for the hiring of 20 additional attorneys to handle children and family law and/or juvenile delinquency cases. During the fiscal year 2005 legislative session, money to fund the offices was not appropriated; however, during the 2006 legislative session, money was appropriated to fund the offices for fiscal year 2007. The increase in compensation rates for court-appointed counsel resulted in nearly a \$29 million, or 24 percent, increase in statewide indigent defense expenditures from fiscal year 2005 to fiscal year 2006.

Given these recent changes and increases in compensation, the total cost of indigent defense in Massachusetts has increased in recent years. In fiscal year 2008, the total expenditure for indigent defense in Massachusetts was \$186,706,437.^{73,74}

⁷³ For a complete description of this figure, refer to Technical Appendix, page 7.

⁷⁴ This figure includes expenditures for dependency and other child and family cases where the state requires counsel. These cases represent approximately 25% of the budget.

At the trial level, Michigan indigent defense operates on a county basis, with each of the 83 counties selecting its preferred system. As of 2004, only Chippewa, Bay, and Washtenaw Counties had separate public defender offices. Kent and Wayne Counties have not-for-profit corporation defender offices. In Wayne County, which includes Detroit, the Defender office handles only 25 percent of the felonies with the remainder going to assigned counsel. In 2009, Wayne County took the juvenile representation contract from the Defender office and let the contract go to private law firms. The remaining counties utilize various systems of assigned and contract counsel, the majority of which contract with private firms. Each of the counties has sole responsibility for the funding of trial-level indigent defense.

The Washtenaw County PD was established in 1971 by the Board of Commissioners with the aid of a federal grant. In Wayne County, public defenders handle 25 percent of defense cases, while a private firm handles the remaining 75 percent.

A charter before the Governor in June of 2009 and voters in November would authorize the creation of a public defender's office in Macomb County, Michigan. This would allow the county's future executive or board of commissioners to create an office in the future, if they desired. There is outcry over the pay for court-appointed lawyers in the County, though many argue that raising the rates is a better alternative than overhauling the entire system of indigent defense. The county's fee schedule was last updated 6 years ago, with fees ranging from \$50 to \$500 a day.

In June 2009, the House Judiciary Indigent Defense Subcommittee introduced proposed legislation (HB 5676, 2009) to improve Michigan's public defender system. "The bill would create a seven-member public defender commission to oversee an overhaul of the state's public defender system."⁷⁵ At the present time the bill has not received a favorable outcome in the legislature.

The Appellate Defender Act was signed into law in 1978, and created the Appellate Defender Commission within the State Court Administrator. The Appellate Defender Commission is an independent, seven-member body which provides oversight to two divisions. The first division, the State Appellate Defender Office, is state-funded, staffed by a full-time State Appellate Defender, and mandated to handle 25 percent of the state's indigent appellate cases. The second division, the Michigan Appellate Assigned Counsel System, is responsible for ensuring that all other indigent appellants receive competent representation through a statewide, private assigned counsel system. Administrative costs for the Appellate Assigned Counsel System are paid by the state, while the counties are responsible for the costs of counsel.

In fiscal year 2008, the total expenditure for indigent defense in the state of Michigan was **\$77,943,867.**⁷⁶

⁷⁵ <http://michiganmessenger.com/21180/house-committee-considers-bill-on-indigent-defense> originally published June 18, 2009.

⁷⁶ For a complete description of this figure, refer to Technical Appendix, page 7. In recent years, offices maintaining records on expenditures have improved allowing for more accurate reporting than was previously possible.

Minnesota **2008 Population: 5,220,393** **10 Judicial Districts (87 Counties)**

The Minnesota State Board of Public Defense is a fully state-funded agency within the judicial branch that provides trial and appellate defender services. A seven-member commission selects a State Public Defender and sets standards for public defenders and court-appointed counsel. The state is divided into ten judicial districts where each district has at least one full time Public Defender. These offices provide criminal defense services to indigent persons in felonies, gross misdemeanors, misdemeanors, juvenile delinquency, and Children In Need of Protective Services (CHIPS) cases. There are also two regional appellate defender offices providing services to indigent clients in direct appeals of their convictions, post-conviction proceedings, and to prisoners who need assistance with legal problems. The State Public Defender also represents individuals who are subject to supervised release/parole revocations and individuals who are subject to community notification hearings and prison disciplinary proceedings.

Indigent defense services became fully state-funded in 1995. Prior to that time, the Board of Public Defense was responsible for representation in all appeals, felony and gross misdemeanor cases in the state, and in misdemeanor and juvenile delinquency cases in five of 10 judicial districts.

Most conflict of interest cases are handled by part-time public defenders who are employed by the State Board of Public Defense but who maintain private offices. In addition, the State Public Defender works closely with Public Defense Corporations that are non-profit, community based law offices that focus on specific regions throughout the state.

Recently, the Minnesota State Board of Public Defense asked to be relieved of representation in civil cases in several parts of the state. This was due to a serious problem of inadequate funding for the state public defender in criminal and juvenile delinquency cases.

In fiscal year 2008, the total indigent defense expenditure in Minnesota was **\$73,293,026.**⁷⁷

⁷⁷ For a complete description of this figure, refer to Technical Appendix, page 7.

In 2000, Mississippi made major changes to indigent defense in the state by repealing the Mississippi Statewide Public Defender Act of 1998 and creating two state-funded offices responsible for capital defense. The repealed Public Defender Act established a statewide commission on indigent defense, and would have created district defender offices in each judicial district, with an executive director overseeing the offices. The Act was intended to provide Mississippi with a statewide, state-funded system for representing indigent defendants in felony cases. The district defender offices, however, were never funded. Indigent defense services at the non-capital trial level are paid for and provided as they were before the Act was repealed, on a county-by-county basis. Counties have the option of creating a public defender or assigned counsel program. Many have opted to create part-time public defender programs, whereby attorneys work under contract with the county providing indigent defense representation. There are only four full-time county public defender programs in the state; however, most of the remaining 78 counties have part-time public defenders. After the Act was repealed, the legislature created two statewide and state-funded offices for representation of indigent defendants in death penalty cases, the Mississippi Office of Capital Defense Counsel and the Mississippi Office of Capital Post-Conviction Counsel. However, during fiscal year 2005 legislative session both death penalty offices were transitioned from general fund agencies to special fund agencies, now funded by criminal case assessments.

The Mississippi Office of Capital Defense Counsel represents indigent defendants in capital trial and direct appeal proceedings. The director of the office has discretion to appoint outside counsel to provide representation to defendants with whom the office has a conflict of interest and to handle cases the office cannot properly handle due to its caseload level. The Mississippi Office of Capital Post-Conviction Counsel represents indigent inmates under sentence of death in post-conviction proceedings. The office may continue to represent said individuals in federal habeas corpus proceedings if the office is appointed to do so by a federal court.

In an effort to achieve systemic reform in the funding of indigent defense in Mississippi a lawsuit was filed on behalf of taxpayers asking the state of Mississippi to be ordered to pay for the cost of indigent defense representation, which, by statute, in Mississippi is funded primarily by the counties.⁷⁸ In 2000, Quitman County claimed that the state breached its duty under the state's constitution to provide representation for indigent defendants and the county could not afford the expense of providing adequate representation. When the case was first appealed, the Mississippi Supreme Court rejected the state's motion to dismiss and remanded the matter for trial, concluding the counties had standing to sue because the county-based system of indigent defense adversely impacted counties and their taxpayers. The court also indicated that if the allegations of chronic underfunding by the state were shown to lead to systemic constitutional deficiencies in providing the right to counsel, the county would be entitled to relief in the form of increased state appropriation. The county was required to prove beyond a reasonable doubt that the cost of an effective system of indigent criminal defense, the county's inability to fund such a system, and the failure of the existing system to provide indigent defendants in Quitman County were the tools of inadequate defense. However, the county presented no evidence to the court of any post-conviction proceedings which challenged the effectiveness of appointed counsel. The county did not present proof from any defendant who claimed to receive ineffective assistance, nor did they identify any single case where ineffective assistance was alleged. No proof was presented that any case had ever been overturned in Quitman County because of ineffective assistance. The State Supreme Court then affirmed dismissal of the suit.

⁷⁸ State v. Quitman County, 807 So. 401(Mississippi 2001).

Effective July 1, 2005, an Office of Indigent Appeals was created, becoming operational in January 2007. The office is funded by criminal case assessments. The act creating the office provided for a director and five appellate defender assistants plus support staff. There is a provision in the act for hiring conflict and overflow attorneys without fee caps. In addition, the legislature created a Public Defender Training Division to provide training and resources to Mississippi's public defenders.

As stated above, Mississippi transitioned both of its death penalty offices from general fund agencies to special fund agencies. The statute increases criminal case assessments on all violations (traffic tickets, fish and game, felonies, DUI, and other misdemeanors) and earmarked \$2.29 of each individual's assessment for the Capital Post-Conviction Counsel Office and \$1.89 of each individual's assessment for the Office of Capital Defense Counsel. An additional \$2.33 of each criminal case assessment is for the newly-created Office of Indigent Appeals. Also, money collected from fines is to be kept on the local level to fund the criminal justice system, including payment of court-appointed counsel, jury costs, and experts. However, the money is placed into each county's general fund, and no entity tracks the amounts collected to determine whether the money is spent on the criminal justice system. Finally, the Office of Capital Defense Counsel receives \$1 from a criminal assessment fee on all felony and misdemeanor convictions that is earmarked for a special fund to pay experts.

In fiscal year 2008, the total indigent defense expenditure for the state of Mississippi was **\$14,871,747.**⁷⁹

⁷⁹ For a complete description of this figure, refer to Technical Appendix, page 7. In recent years, offices maintaining records on expenditures have improved allowing for more accurate reporting than was previously possible.

The state-funded Missouri State Public Defender (MSPD) system provides representation to indigent defendants in all criminal cases. The Defender system is supervised by an eight-member Commission, appointed by the Governor. The Commission is in charge of hiring the State Public Defender director, determining the philosophy and the administrative rules of the Missouri defender system, and reviewing the Director's budget request.

The State Public Defender has three divisions: Trial, Capital Litigation and Appellate/Post-Conviction. Overall, the Defender system employs over 560 people throughout the state with approximately 350 attorneys. There are 36 regional offices to handle trial cases, three capital division district offices throughout the state, and six district offices for the Appellate/Post-Conviction division.

The Trial Division employs over 300 full-time attorneys. This division also houses the Commitment Defense Unit which represents individuals against whom the government has initiated "civil" commitment proceedings based on the allegation that the citizen is a "sexually violent predator" (SVP). This unit has attorneys throughout the state which exclusively represent clients facing commitment proceedings.

The Capital Litigation division employs lawyers who represent clients in the initial and appellate stages of cases. Post-conviction practice includes handling direct appeals from felony convictions after trial, post-conviction trial court challenges after trial or guilty plea and appeals from post-conviction proceedings. Post conviction practice also includes providing representation to death-row clients at the trial court level and in the Supreme Court of Missouri.

Most trial-level conflict of interest cases are handled by another regional office in the state. In addition, the MSPD Office is currently expanding its attorney contract program to provide caseload relief for the MSPD attorneys. As more funds become available, the MSPD will contract with private attorneys to take units of ten to twenty-five cases of a designated type for a contract fee.

As of 2009, the Missouri Public Defender system has not had significant increases in its budget for almost ten years. For many years this dire situation was brought to the attention of both the legislative and executive branches of government by the Missouri Public Defender Commission. After years of substantial work, the state public defender and the state bar finally resulted in the decision by the Supreme Court of Missouri which had the potential to remedy one of the most poorly funded public defender systems in the country.

Recently, the Missouri Public Defender Commission promulgated an administrative rule providing that when the director of the program determines that a particular office has exceeded the maximum caseload standards set forth by the Commission for three consecutive calendar months, the director could limit the office's availability to accept additional cases by filing a certification of limited availability with the presiding judge of each circuit or chief judge of each appellate circuit affected. The rule further provides that once certification is filed with the circuit court, each district defender should file with the court a final list of categories of cases that would no longer be accepted by the district office until the office was reinstated to full availability. Moreover, while an office was certified as of limited availability, it would not accept any of the cases on the list of excluded case types.

The director of the Missouri Public Defender Commission determined that several district public defender offices had exceeded the maximum caseload standard for a period of three consecutive months and certified each district to be in limited availability status. The category of cases for which the office found itself on unavailability in one circuit was probation violations. After being notified of the public defenders unavailability for probation violations, a circuit judge nonetheless appointed the public defenders to represent an indigent defendant facing the exact charge.

Subsequently, a writ of prohibition was filed with the Missouri Court of Appeals, Western District. After the court of appeals failed to provide necessary language, the case was appealed to the Missouri Supreme Court. The court held that under the caseload management portion of the rule adopted by the Public Defender Commission, the proper remedy for the public defender is to certify the office's having limited availability once their maximum caseloads are exceeded for three consecutive months. The court further held that when such certification occurs, the rule requires appellate defendants to be notified by the presiding judge and prosecutors of the impending unavailability of services.

In fiscal year 2008, the total indigent defense expenditure was \$34,596,651.⁸⁰

⁸⁰ For a complete description of this figure, refer to Technical Appendix, page 8.

In June 2005, the Montana Legislature passed the Montana Public Defender Act, which completely shifted funding and oversight of indigent defense from the counties to the state. Momentum to pass the legislation came from a lawsuit filed by the ACLU that state's indigent defense system was unable to provide meaningful and effective assistance of counsel.⁸¹ Several months after the lawsuit was filed, the attorney general approached the ACLU and said he thought that he could get the same result from the legislature during the next session. He asked, therefore, that a stay be granted by the petitioners. In fact they did enter a stay for a number of months and the attorney general was correct that the legislature acted firmly to avoid the results of the litigation.

The Act created an eleven-member Public Defender Commission to supervise the provision of defense counsel. There is now a statewide chief public defender, administrative officer, training coordinator and contract supervision personnel. Regional deputy public defenders will be appointed as needed. The Act requires the Commission to establish statewide indigent defense standards including caseload standards, a conflict of interest policy, and training. Previously, counties operated a variety of indigent defense programs including public defender offices, contract attorneys, and ad hoc court-appointed counsel systems. The absence of statewide oversight resulted in widely varying levels of compensation and quality of representation among the State's 56 counties. The new Act seeks to remedy these problems by providing for a Commission that will regulate the quality of indigent defense. The newly created Commission will also absorb the only statewide office from the old system, a state-funded, three-person appellate public defender office, that handles direct appeal and post-conviction cases where ineffective assistance of counsel is alleged. A five-member commission had provided oversight for the office, which will now be the responsibility of the new Commission.

Previously, funding for the indigent defense system in Montana came primarily through a state reimbursement program to county courts in felony criminal cases; if state funding fell short, the counties paid the balance. This system had been in place since fiscal year 2003 when the State of Montana shifted primary responsibility for payment of indigent defense costs from the counties to the State using the reimbursement system. Prior to that, counties provided all funds for trial-level representation and received reimbursement for 65 percent of their district court indigent defense expenditures (including felony, misdemeanor and juvenile cases) from a fund administered by the state supreme court. In fiscal year 2003, counties continued to pay the initial costs for public defender offices and for counsel appointed in youth-in-need-of-care cases but the State reimbursed the counties for 100 percent of their expenditures. Those attorneys who take indigent defendant cases under contract, or who are paid by the hour, were, and continue to be, reimbursed directly by the State. The new system, effective as of July 1, 2005, requires the state to pay for indigent defense directly, without the county reimbursement mechanism, and the State now funds misdemeanor cases in justice and municipal courts.

The Commission may employ counsel through a contract system or other delivery models as deemed appropriate. The right to court-appointed counsel has also been widened in Montana to include not only indigent defendants charged with a felony or misdemeanor for which there is a possibility of incarceration, but to include proceedings to determine parentage, for parents and children in termination of parental rights proceedings, in post-conviction cases, habeas corpus proceedings, for parents or guardians in involuntary commitment proceedings of a developmentally disabled person, in involuntary commitment proceedings – including those for

⁸¹ White v. Martz, Montana First Judicial District Court, Lewis and Clark County, CDV-2002-133

alcoholism, and for a witness in a criminal grand jury proceeding. There are also a number of categories for which a person is entitled to assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, including juvenile delinquency cases and a number of cases involving juveniles and mentally disabled individuals.

In fiscal year 2008, the total indigent defense expenditure for the state of Montana was **\$19,441,376.**⁸²

⁸² For a complete description of this figure, refer to Technical Appendix, page 8.

Nebraska's indigent defense is organized within each of its 93 counties. Counties are able to select their method of delivery from public defenders, assigned counsel, or contract counsel. Counties with populations over 100,000 and those with approval from the county board have public defender offices. Omaha, Douglas, and Lancaster Counties have public defender offices. In addition, where public defenders are established with a population over 100,000, the chief public defender in those counties is publicly elected.

Most funding is provided by the counties; however, the Nebraska Commission on Public Advocacy provides limited legal services and resources to assist counties through its capital litigation and appellate divisions and major case resource center. In cases in which the Commission on Public Advocacy is involved, counties do not pay any of the costs of the defense. The Commission, created by the state legislature in 1995, consists of nine attorneys appointed by the governor from a list of attorneys submitted by the executive council of the Nebraska State Bar Association after consultation with the board of directors of the Nebraska Criminal Defense Attorneys Association. The Commission appoints a chief counsel to oversee the office.

In 2001, the Commission was authorized to reimburse counties for 25 percent of their felony case representation costs if they met standards and guidelines developed by the Commission. In fiscal year 2002 the Commission received \$660,000 in funding. However, before the Commission could begin reimbursing the counties, due to a state budget deficit, the \$660,000 was removed from the Commission's budget. To date, that money has not been reinstated.

Concerned about the uncertainty of general revenue funding, in the 2004 legislative session the Commission successfully sought a change in the way in which it is funded. Now the agency is funded by filing fees. An across-the-board increase in the filing fee in criminal and civil cases was enacted to create non-general revenue funds for the Commission. The goal of the change was to allow the Commission to continue the staffed programs that were already in place; however, counties must still cover the costs of any services they receive from the Commission.

In fiscal year 2008, the total indigent defense expenditure for the state of Nebraska was **\$23,852,662.**⁸³

⁸³ For a complete description of this figure, refer to Technical Appendix, page 8. In recent years, offices maintaining records on expenditures have improved allowing for more accurate reporting than was previously possible.

In the 1980s, the Nevada State Legislature placed the State Public Defender's Office within the Department of Health and Human Services. The Office serves indigent adults and juveniles in those counties with populations under 100,000 which do not have a county public defender office. The Governor of Nevada appoints the State Public Defender to a four year term.

Public defender systems in Las Vegas and Reno make up three-quarters of the funding for indigent defense in Nevada.

NRS 260.010 requires counties with populations over 100,000 persons to provide public defenders to indigent defendants at the county's cost. Smaller counties with populations less than 100,000 persons have the option of providing county-based public defenders, contracting with private-bar attorneys, or using the state public defender system. Clark (Las Vegas) and Washoe (Reno) counties are the only counties in Nevada with populations over 100,000 and are, thus, responsible for providing indigent defense services at the county level with minimal state assistance.

The Nevada Supreme Court entered an order on January 4, 2008, which provides as follows: "It is hereby ordered that the public defenders in Clark County and Washoe County shall advise the County Commissioners of their respective counties when they are unavailable to accept further appointments based on ethical considerations relating to their ability to comply with the performance standards."⁸⁴ The performance standards adopted in Nevada are modeled after those recommended by NLADA and are substantially similar. Although implementation of this order initially was delayed some months later, the Nevada Supreme Court declared that the standards are fully applicable. However, at the present time, caseloads in Clark and Washoe counties remained exceedingly high and no action has been taken relative to the court's order.

In fiscal year 2008, the total indigent defense expenditure in Nevada was **\$76,747,360.**⁸⁵

⁸⁴ In Re the Review of Issues Concerning the Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases, ADKT No. 411 (Nev. Jan. 4, 2008)

⁸⁵ For a complete description of this figure, refer to Technical Appendix, page 8.

New Hampshire 2008 Population: 1,315,809 9 Regional Offices (10 Counties)

New Hampshire has a state funded system. The State Public Defender, which operates as an independent, private non-profit corporation, provides primary representation in trial and appellate cases. The public defender has nine regional offices, one administrative center, and an appellate office that is affiliated with the Franklin Pierce Law Center. The Public Defender handles juvenile delinquency cases in local district and Family Courts, adult clients in misdemeanor, felony, homicide and capital cases in the District and Superior Courts, and appellate advocacy in the State Supreme Court. Attorneys in the Public Defender Program carry caseloads made up of a wide variety of delinquency and criminal cases. Defenders provide “vertical representation” to clients from their initial appointment to the final disposition of the case. Also, the State Public Defender does not provide representation for criminal defendants facing federal charges or charges in other states. For conflict cases, the 24-member New Hampshire Judicial Council administers assigned counsel and contract defender programs.

In fiscal year 2008, New Hampshire spent **\$21,333,374** on indigent defense services.⁸⁶

⁸⁶ For a complete description of this figure, refer to Technical Appendix, page 9.

The state-funded New Jersey State Public Defender is a statewide program responsible for all indictable felony offenses and juvenile delinquency cases in New Jersey's thirteen county-based superior courts, along with direct appeals from these cases. The Public Defender has two main divisions, Trial and Appellate. There are 21 regional offices covering each of New Jersey's counties. In addition, there are 2 statewide offices for the Appellate Division that provide representation for adult and juvenile clients.

The New Jersey State Public Defender also oversees four other special sections: the Office of Law Guardian (OLG), Office of Juvenile Service (OJS), Office of Parental Representation (OPR) and the Special Hearings Division. The OLG and the OPR are kept administratively separate to prevent the appearance of conflict. The OLG, a special unit within the Office of the Public Defender, provides representation to children in family court matters involving charges of abuse, neglect, or termination of parental rights. This Office has seven trial regions with 13 offices throughout the state. It also maintains a separate appellate unit currently consisting of seven attorneys. The Office of Juvenile Services, which has one centralized statewide office, was established to improve juvenile legal representation throughout the state. The office also collaborates closely with social workers to complement the legal work provided by attorneys. The Office of Parental Representation (OPR) provides legal representation through either staff or pool attorneys to parents charged with neglect or abuse. The OPR oversees one administrative office and 6 regional offices throughout the state and is currently in the process of establishing an appellate section. The Special Hearings Division is responsible for providing representation in Megan's law "tier classification" hearings – legal proceedings that determine the scope of notification given to a certain community about the presence of a sex offender. This Division maintains four regional offices throughout the state.

The State Public Defender is responsible for establishing a private, court-appointed attorney program for conflict cases. The Public Defender sets the rates of compensation for these court-appointed counsels.

Misdemeanors in New Jersey are tried in municipal court. Since 1998, municipalities have been required to appoint a municipal public defender, the cost of which may be offset by a (waiveable) public defender application fee of up to \$200, payable over a four-month period, charged to individuals who use the defender's services. Before the law was enacted, in July 1997, only 383 of New Jersey's 537 municipal courts employed a municipal public defender. The remaining 154 municipal courts required involuntary pro bono services of private bar members. Funds collected through the application fee are deposited in a dedicated fund to be used exclusively to meet all costs incurred in providing indigent defense services at the municipal court level, including the cost of expert investigation and testimony.

In fiscal year 2008, the total indigent defense expenditure was \$107,838,000.⁸⁷

⁸⁷ For a complete description of this figure, refer to Technical Appendix, page 9.

The New Mexico Public Defender Department is a centralized, state funded program headed by the Chief Public Defender. The Department provides representation through a Trial Division and an Appellate Division. At the trial level, approximately half of the state's counties (the more populous ones) are served by one of the State Public Defender Department's 10 regional trial offices. At the appellate level, the state has one centralized office which is managed by the Appellate Defender. The Defender system also has centralized offices for appellate, mental health, capital and post-conviction cases. Overall, the Department employs about 375 people, of which over 200 are lawyers and the remainder are investigators, social workers, paralegals and support staff. Department lawyers handle approximately 60,000 cases a year. The Public Defender Department contracts with over 130 private lawyers who represent clients in conflict cases or in areas where there are no staff offices. There is no board of directors for the New Mexico public defender department.

Seventeen of the state's remaining counties are served entirely by Contract Counsel Legal Services which has one centralized office in the state. The Contract Counsel Legal Services is funded by the state government as is the public defender system. These private attorneys handle all aspects of criminal defense cases including misdemeanor, juvenile, felony, murder, capital offenses and appeals.

The capital indigent defense system in New Mexico is underfunded and risks violating defendants' constitutional rights. In 2007, two court appointed attorneys in a capital case in New Mexico filed a motion in the state Supreme Court asking to be compensated at an hourly rate, to be allowed to withdraw, and/or to withdraw the notice to seek the death penalty.⁸⁸ The lawyers also informed the court that even if the death penalty was withdrawn it would require an additional \$200,000 per attorney to adequately represent the defendant. The New Mexico Supreme Court agreed that \$100,000 per lawyer was inadequate under the extraordinary circumstances of the case. As the court explained, the "inadequacy of compensation in this case makes it unlikely that any lawyer could provide effective assistance, and therefore, as instructed by the United States Supreme Court, ineffectiveness is properly presumed without inquiry and to actual performance."⁸⁹ The Court then discussed various options in the case but determined that the proper course was to stay the prosecution of the case in which the death penalty remained an option unless additional funding for a defense counsel was appropriated by the legislature. The death penalty was removed from the case because the appropriation was not forthcoming from the state legislature.

In fiscal year 2008, the state of New Mexico spent approximately \$41,300,000 on indigent defense.⁹⁰

⁸⁸ New Mexico v. Young, 172 P.3d.138 (N.M. 2007).

⁸⁹ Ibid.

⁹⁰ For a complete description of this figure, refer to Technical Appendix, page 9.

New York's criminal indigent defense system is primarily funded by its 62 counties, which, by statute, may utilize a public defender program, a private legal aid society, and/or a coordinated assigned counsel system to provide indigent defense services. The state provides some monies to counties through its Indigent Legal Services Fund (ILSF) and provides full funding for representation of children in dependency and delinquency cases. Funding for representation of adults in dependency cases is the responsibility of the counties. The Office of the State Comptroller administers the Fund to the state, counties, and New York City based on expenditures for indigent legal defense.

Although the counties are primarily responsible for funding indigent defense services, after the recent increase in assigned counsel fees the state legislature created the ILSF under State Finance Law.⁹¹ ILSF was created to help the state pay for indigent defense expenditures in Family Court and to help the counties pay for all other indigent defense costs. The state funds may not be used by counties or cities to supplant local funds that these entities "would otherwise have had to expend for the provision of counsel and expert, investigative and other services pursuant to article eighteen-b of the county law." Rather, the state funding must be used to supplement local funds.

ILSF is funded by four revenue sources created by the state to help fund the new assigned counsel fees, which took effect January 1, 2004. Approximately half of the total state expenditures for indigent defense come from these four revenue sources. The funding sources are: a \$35 DMV fee for lifting a license suspension; \$27 of a \$52 OCA fee for county-based criminal history checks; a \$50 increase in attorney registration fees; and a \$10 increase in mandatory surcharges for parking violations. By statute, the first \$25 million in collected revenue each year goes to the state to reimburse the Law Guardian Program, with the remainder distributed by the State Comptroller to the counties to reimburse them for a portion of their cost. A county's ILSF distribution amount is determined by calculating the total amount of statewide county expenditures, divided by the percentage of the individual county's total share. In the first year of ILSF, state revenue sources brought in \$76.5 million, which left \$51.5 million to be distributed to the counties. This distribution amount was slightly short of the \$51.9 million increase in county expenditures from 2003 to 2004. In the second year, the state revenue brought in \$79.2 million. After subtracting the first \$25 million for the Law Guardian Program, the remaining \$54,221,048 was distributed to the counties in March 2006.

Recently, The Public Defense Act of 2009 has been introduced to the legislature to cap fiscal liability for public defense services and establish the Public/Indigent Defense Commission to begin the administration of public defense services in New York beginning in 2012.

With regards to representation of indigent defendants in capital cases, in June 2005 New York's highest court struck down the state's death penalty statute in *People v. LaValle*⁹², finding a

⁹¹ Effective January 1, 2004, court-appointed counsel in New York received a substantial increase in compensation. Prompted in part by Manhattan Supreme Court Justice Lucindo Suarez's February 2003 order in *New York County Lawyers' Association v. State of New York*, 763 N.Y.S.2d 397 (Sup. Ct. N.Y. Co. 2003), finding that the current rates of compensation were constitutionally deficient and thus prevented defendants from receiving meaningful and effective representation in New York City, the New York State Assembly raised the old rate of \$25 an hour for out-of-court work and \$40 an hour for in-court work fees to mirror those proposed in Governor George E. Pataki's 2003-2004 budget proposal. The new statutory rate is \$75 an hour in all cases, including appeals, except misdemeanors, where the rate is \$60. In all cases where the hourly rate is \$75, the per-case cap is \$4,400, an increase from \$1,200, while the per-case cap in misdemeanor cases is \$2,400, up from \$800. Additional changes increase the cap for fees provided to experts and investigators from \$300 per investigative, expert or other service provider to \$1,000 per retainer. A court may exceed the caps in extraordinary circumstances.

⁹² *People v. LaValle*, 3 N.Y.3d 88 (2004),

central element of the statute's sentencing provisions unconstitutional. Attempts to revive the law in the 2005 legislative session failed, leaving New York without the death penalty. As a result of the legislature's inability to reenact a suitable death penalty statute, Fiscal Year 2006 funding for the Capital Defender Office (CDO) was cut by 70 percent, retroactive to April 1, 2005. The CDO was established in 1995 under New York State's death penalty statute to provide representation and to support and assist at all stages of capital litigation. The CDO had staff in three offices that provided direct representation and also contracted with private attorneys and other indigent defense organizations, such as the New York Legal Aid Society Capital Defense Unit in New York City.

Since the mid-1990s, New York City has experienced noteworthy changes in the way it delivers indigent defense services. Until 1995, the Legal Aid Society of New York provided all primary representation for trial, appeal, and juvenile cases (as well as civil legal representation) in New York's five boroughs. The city now contracts with a number of organizations that handle a portion of the City's primary indigent defense cases. There are alternate defender programs in each of New York City's five boroughs, and three additional non-profit appellate defender programs. The Legal Aid Society continues to represent the majority of indigent defendants in New York City.

In April 2009, New York City became the first city to cap the number of criminal cases a public defender is able to work on annually. Although the legislation has been criticized, it requires that standards be established by 2012, with implementation throughout the following four years as funding permits.

In fiscal year 2008, the total indigent defense expenditure for the state of New York was \$444,059,992.⁹³

⁹³ For a complete description of this figure, refer to Technical Appendix, page 9.

North Carolina**2008 Population: 9,222,414****100 Counties**

In North Carolina, the state pays for all indigent defense expenditures. Until 2001, counties were solely responsible for organizing the delivery of trial-level indigent defense services. By 2005, 13 of the state's 100 counties employed the public defender model. Currently, 17 of the state's counties use the public defender model while the rest have assigned counsel or contract defenders.

In 2000, the North Carolina General Assembly enacted the Indigent Defense Services Act of 2000, which created an independent agency within the state's Judicial Department called the Office of Indigent Defense Services (the "IDS Office") and includes a 13-member Commission on Indigent Defense Services (the "IDS Commission"). The IDS Office and IDS Commission have broad authority over the delivery of indigent defense services in North Carolina.

The chief responsibility of the IDS Commission is to develop and improve programs through which the IDS Office provides legal representation to indigent persons. The IDS Commission appoints the Director of the IDS Office and develops standards governing the provision of services under the Indigent Defense Services Act. The IDS Commission is also responsible for determining the methods for delivering legal services to indigent persons throughout the state; however, legislative approval is required to create or abolish a public defender office.

The IDS Office has three main divisions: the Office of the Appellate Defender, the Office of the Capital Defender and the Office of the Juvenile Defender. The Appellate Defender and the Juvenile Defender each have one statewide office while the Capital defender has one statewide office and three regional offices. The IDS maintains 16 defender districts where each district, headed by a Public Defender, encompasses one or more counties. By 2008, two new district public defender offices were created through the 2007 Appropriations Act. In addition, the IDS expanded some of its existing public defender offices by adding 20 new attorney and 10 new support staff positions.

The IDS also oversees the two special non-criminal sections: the Office of Special Counsel and the Office of Parent Representation. The Office of Special Counsel is in charge of Civil Commitment and Guardianship proceedings and the Office of Parent Representation represents indigent parents in neglect, abuse, dependency, and termination of parental rights proceedings.

In 2009, the legislature in North Carolina created a Racial Justice Act limited to death penalty cases. Following a study which raised questions about the representation in death penalty cases, the Racial Justice Act was passed which allows individuals charged with the death penalty to have a new hearing that involves only whether or not there was racial bias at the trial level. At the present time there are about 165 defendants on death row and 150 or more have sought a review for the provision of racial discrimination in their death penalty trial.

In fiscal year 2008, the total indigent defense expenditure in North Carolina was **\$117,691,234**.⁹⁴

North Dakota**2008 Population: 641,481****6 Regional Offices (53 Counties)**

⁹⁴ For a complete description of this figure, refer to Technical Appendix, page 9.

In April 2005, North Dakota enacted legislation to reform the state's indigent defense system. The previous system, although almost entirely state-funded, had long suffered from independence problems and insufficient funding. The new system features a seven-member Commission on Legal Counsel for Indigents, responsible for "developing and monitoring a process for the delivery of state-funded legal counsel services for indigents" and selecting a director responsible for carrying forth policy of the Commission on a day-to-day basis. The North Dakota Commission on Legal Counsel maintains six full-time public defender offices, the most recent of which was created in the summer of 2008. Private contractors provide indigent defense services in areas where there is no public defender or in conflict cases.

The process leading to creation of the new system began in 2003, when the North Dakota Legislative Council was directed by resolution "to study the state's method of providing legal representation for indigent persons and desirability of establishing a public defender system." In response to the resolution, the President of the State Bar of North Dakota formed a task force to work with the Legislative Council Criminal Justice Interim Committee in fashioning an acceptable legislative package for the 2005 session. In November 2003, the State Bar of North Dakota Task Force on Indigent Defense (SBAND Task Force) enlisted the assistance of The Spangenberg Group to conduct a study of the state's indigent defense system. The study was jointly sponsored by the SBAND Task Force and the American Bar Association Bar Information Program. Prior to these changes, North Dakota was the only state in the country that used an indigent defense model relying on private attorneys working under contract with judges. Attorneys agreed to accept flat fee contracts requiring them to handle an unlimited number of cases in a given county or judicial district.

The new Commission on Legal Counsel replaces the North Dakota Legal Counsel for Indigents Commission (NDLCIC). That body, whose eight members were appointed by the Chief Justice of the Supreme Court from nominations by judges, the state bar, the Attorney General and the Legislative Assembly, was charged with reviewing indigent defense caseload data, preparing recommended indigent defense budgets, and adopting assigned counsel eligibility qualifications. However, the NDLCIC was essentially advisory in nature; it had no real authority and no staff. In addition to developing standards governing indigent defense services, the Commission is responsible for establishing and implementing a process of contracting for legal counsel services; establishing public defender offices in regions of the state as the commission considers necessary and appropriate; determining a reasonable rate of compensation for lawyers appointed to represent indigent persons; establishing a method for accurately tracking and monitoring caseloads of contract counsel and public defenders; and approving and submitting a biennial budget to the Office of Budget.

Funding for the indigent defense system comes primarily from the general fund. However, revenue from a \$25 application fee assessed on defendants seeking appointed counsel goes to a special fund in the state treasury, the Indigent Defense Administration Fund. Monies in the fund may only be used by the Commission on Legal Counsel for Indigents in the administration of the indigent defense system.

Prior to the creation of the Commission on Legal Counsel, there were no public defenders providing representation throughout the state. A commission has now authorized several counties to form a public defender system and they are presently in operation.

In fiscal year 2008, North Dakota spent approximately **\$5,000,000** on indigent defense services.⁹⁵

⁹⁵ For a complete description of this figure, refer to Technical Appendix, page 9.

The nine-member Ohio Public Defender Commission oversees the Office of the Ohio State Public Defender, which provides direct representation in a limited number of cases and distributes state reimbursement funds to counties to help defray the cost of locally delivered indigent defense services. The Public Defender has six divisions: Legal, Administrative, Juvenile, Trial, Death Penalty, and Mitigation and Investigation Division. The Legal Division focuses on appeals and post-trial activities of criminal cases. The Administrative Division provides common necessary services such as accounting, training, and personnel management. In January 2008, the Juvenile section was transformed into its own division to represent youth who have been committed to the Ohio Department of Youth Services. The Death Penalty Division represents defendants in death penalty trial, direct appeal, state post-conviction, and federal habeas cases. Approximately one half of the staff and resources of the Ohio Public Defender are devoted to death penalty cases. The Mitigation and Investigation Division provides assistance for capital and non-capital trial level cases throughout the state.

The Office of the Public Defender oversees a Multi-County Public Defender Program in 10 of Ohio's 88 counties. Under this program, the Ohio Public Defender contracts with local private attorneys or law firms in the region who provide trial and appellate indigent defense services. The Multi-County Program operates three offices throughout the state. In addition, the Commission operates a branch public defender office in one county, which is funded in the same manner as all other county programs (a combination of county funds and state reimbursements). Other indigent defense services are provided at the county level.

Ohio's counties may select their own delivery model, and those counties which comply with the Commission's standards are eligible for partial reimbursement for expenditures in connection with these services. The state-funded Public Defender Commission reimburses counties for up to 50 percent of their indigent defense expenditure, including attorney fees, investigator/expert fees, and travel expenses, but the rate of reimbursement fluctuates each year, depending on the revenue obtained. Generally, reimbursement is between 40 and 50 percent of the amount paid by the county; however, in fiscal year 2005 the amount was 31 percent. This program is supported in large measure by a \$15 assessment on all criminal convictions other than minor traffic offenses; the assessment is added to the bail premium of all defendants who post bond or at the disposition of the case if no bail is posted. The assessment, which increased from \$11 to \$15 as of October 1, 2003, is frequently waived by judges for indigents.

In fiscal year 2008, the total indigent defense expenditure in Ohio was **\$121,596,527**.⁹⁶

⁹⁶ For a complete description of this figure, refer to Technical Appendix, page 10.

Oklahoma employs an Indigent Defense System, a state agency created in 1991 in compliance with the Indigent Defense Act, 51 O.S. Section 1355 et seq. The System provides trial, capital, appellate, and post-conviction defense services to indigent defendants, both adult and juvenile, in 75 counties throughout the state. Individuals charged in Oklahoma and Tulsa Counties are not represented by the System, rather separate full-time public defender offices.

The Capital Trial Division-Norman represents individuals in capital cases. In FY 1997, a separate Capital Trial Division – Tulsa - was created to represent individuals in certain Eastern-Northeastern area of the state. The Non-Capital Trial Division has opened four satellite offices, located in Clinton, Mangum, Okmulgee, and Sapulpa, providing services to cases in particular counties. The Appellate Program consists of three Divisions, the General Appeals Division, the Capital Direct Appeals Division, and the Capital Post-Conviction Division.

In cases of conflict of interest or staff overload, cases that would go to the System are contracted to private attorneys who represent defendants at rates established by the System.

Oklahoma and Tulsa counties are entirely responsible for funding indigent defense within their counties

In Oklahoma County, Chief Public Defender Robert Ravitz, who assumed the position in 1987, runs the County PDO, established by statute 19 O.S. 138.1 et seq. The Office has a Felony Division, a Misdemeanor Division, an Appellate Division, a Juvenile Division, and a Civil Division.

In fiscal year 2008, the total indigent defense expenditure in Oklahoma was **\$31,343,519.**⁹⁷

⁹⁷ For a complete description of this figure, refer to Technical Appendix, page 10. In recent years, offices maintaining records on expenditures have improved allowing for more accurate reporting than was previously possible.

Indigent defense services in Oregon are entirely state-funded. In 2001, the Oregon legislature created the state-funded Public Defense Services Commission (PDSC), which in turn was required to establish an Office of Public Defense Services (OPDS). The Commission, whose seven members are appointed by the Chief Justice, serves as the governing body for the Office. As of July 1, 2003, the Commission assumed all duties and services of the Indigent Defense Services Division (IDSD) of the State Court Administrator's Office. These services include administration of county contracts for all indigent defense representation (trial and appellate, except those cases that the state appellate office handles) in Oregon's state courts. County programs may choose a public defender, private bar contract, or court-appointed counsel system.

The first duty of the Commission was to assume responsibility for the majority of appellate criminal defense, which was handled by the State Public Defender's Office. Effective October 1, 2002, the Public Defender's Office and its governing Public Defender Committee were abolished, with all duties transferred to the Commission. All staff remained with the new entity, however the Commission has authority to abolish positions and change duties to the extent that it finds it desirable to do so.

Oregon's statewide indigent defense program is responsible for numerous types of cases, including termination of parental rights, dependency (adults and juveniles), civil commitment, Psychiatric Security Review Board, child support contempt, felonies, misdemeanors, juvenile delinquency, appeals, and habeas corpus petitions.

The OPDS has two main divisions: Contract and Business Services (CBS) and the Appellate Division. The CBS is a 16-member unit in charge of the managerial duties of the OPDS. The Appellate Division provides representation in criminal cases, juvenile dependency cases and parole cases in the state appellate court or the US Supreme Court. In early 2008, the OPDS established a new Juvenile appellate section. Consequently, the OPDS witnessed a major reorganization of its criminal appellate section to accommodate this new division. Some positions were integrated and new employees were hired both in the Appellate division and its new juvenile section. Moreover, this reorganization called for a budget level adjustment for caseload growth.

In *State ex rel. Metropolitan Public Defender Services, Inc. v. Courtney*, the provider of indigent defense services for three counties filed a mandamus action asking the Oregon Supreme Court to order the legislature to restore funding for indigent defense.⁹⁸ Due to appropriation reductions, a four month moratorium on the appointment of counsel was implemented in certain criminal and juvenile courts. In response to the lawsuit, the court recognized that it had the inherent power to ensure that the judicial branch operates as an independent branch of government, free from undue interference by the other branches, and it further assumed without deciding its power included ordering the legislature to provide funding for the core functions of the judiciary. It also acknowledged that the impact of the budgetary crisis was unprecedented and is regrettable. Nevertheless, the court refused to order the restoration of funding because it did not find that the judiciary was prevented from carrying out its core functions. It is still unclear in Oregon whether the courts inherent authority extends to ordering the legislature to appropriate sufficient funds to ensure the judiciary's independence and ability to meet its constitutional obligations.

In fiscal year 2008, the total indigent defense expenditure in Oregon was **\$97,992,306**.⁹⁹

⁹⁸ *State ex rel. Metropolitan Public Defender Services, Inc. v. Courtney*, 64 P.3rd 1138 (Oregon 2003).

⁹⁹ For a complete description of this figure, refer to Technical Appendix, page 10.

The Public Defender Act of 1968 (P.L. 1144, No. 358, Section 1) provides for the establishment of a Public Defender in each county in Pennsylvania. The PD is appointed by the Board of County Commissioners, and represents qualified individuals in juvenile delinquency proceedings, adult criminal trials, appellate proceedings, post-conviction appeals, and probation and parole proceedings. The state of Pennsylvania does not contribute any money to the funding of these Defenders, leaving the burden of financial responsibility to each county.

Some efforts have been undertaken by the state bar and the public defender association to create a state public defender commission in Pennsylvania. Several years ago a study was conducted by The Spangenberg Group (TSG) in all 67 counties in Pennsylvania and the results of the study demonstrated that indigent defense in Pennsylvania was underfunded and the public defenders were seriously overworked. There was a call for a statewide commission from the study; however, this recommendation has not been implemented to date.

In fiscal year 2008, the total indigent defense expenditure was **\$95,403,110**.^{100, 101}

¹⁰⁰ The State of Pennsylvania operates under calendar years, rather than fiscal years.

¹⁰¹ For a complete description of this figure, refer to Technical Appendix, page 10. This figure may reflect a different trend from numbers presented in the 2005 State and County Expenditure Report. In recent years, offices maintaining records on expenditures have improved allowing for more accurate reporting than was previously possible.

Rhode Island has a statewide, state-funded public defender system, funded primarily through general revenue. The Office of the Public Defender has four main divisions: Appellate, Family Court, Parental Rights, and Criminal Trial. The Office of the Public Defender provides direct representation to indigents charged with misdemeanors and felonies in all district and superior courts. The Public Defender also represents juvenile delinquents and the parent or guardian in abuse and neglect cases. Court-appointed attorneys represent defendants in conflict of interest cases. There is no board of directors at the present time involved in the office of the public defender of Rhode Island.

The Defender maintains five offices throughout the state. It currently has 44 attorneys who are supported by eight investigators, four social workers, two interpreters, and a large clerical and intake staff. About 20,000 cases are referred to the Defender annually, with a majority of these cases coming from the urban areas of the state.

The Rhode Island Public Defender also maintains a Community Partnership Council, an in-house committee composed of Public Defender employees including attorneys, social workers, intake personnel, and support staff. The committee works closely with community resources to ensure equality and fairness in the law through community education about legal rights and the criminal justice system.

The Office of the Public Defender also takes an active role in legislative initiatives to improve the indigent defense system in Rhode Island. It cooperates with other defense institutions in the state to either advocate for laws or oppose proposals that undermine justice in legal defense. The Office has been successful in initiating the Rhode Island Protection Act for those who may have been wrongfully convicted and the Jury Diversity Act which addresses the disparity in the racial and ethnic makeup of the community and the jury pool in some counties. The Defender hopes to continue to improve the justice system through legislative means by advocating for more amendments or new laws.

The Rhode Island public defender system has received substantial special funds over the last ten years to establish a forensic unit which is clearly one of the best in the country.

In fiscal year 2008, the total indigent defense expenditure in Rhode Island was **\$12,671,983**.¹⁰²

¹⁰² For a complete description of this figure, refer to Technical Appendix, page 10.

South Carolina 2008 Population: 4,479,800 16 Judicial Circuits (46 Counties)

With the passage of the South Carolina Indigent Defense Act of 2007, South Carolina's indigent defense system changed from a system of non-profit defender corporations. The system is now based on the state's 16 judicial circuits, each with a Circuit Public Defender in charge of public defender services in the counties within that circuit. Circuit PDs are State employees, and are appointed to four year terms by the SC Commission on Indigent Defense. Funding for each circuit comes from the State and each of the counties within that circuit. The system now has a board of directors which establishes policy for the state.

The South Carolina legislature created the Office of Appellate Defense in 1979, with the Appellate Defense now a division of the Commission on Indigent Defense. The Division of Appellate Defense is administered by a Chief Attorney, and the Division represents defendants in criminal appeals to the South Carolina Supreme Court and the Court of Appeals, handling approximately 1,000 appeals each year.

In fiscal year 2008, the total indigent defense expenditure for South Carolina was **\$33,848,926.**¹⁰³

¹⁰³ For a complete description of this figure, refer to Technical Appendix, page 11.

Each of South Dakota's 66 counties organizes and funds its own indigent defense delivery system; the majority of counties use contract or assigned counsel systems, though some counties use public defender offices. There are three full-time public defender offices in the state.

Counties may opt to participate in a catastrophic indigent defense fund. The fund is administered by the County Commissioners' Association. Essentially, the fund acts as insurance against small counties' extraordinary costs for complex cases, such as death-penalty cases, that may occur in their jurisdiction. Those counties with such catastrophic cases may apply to the commission for reimbursement of up to 90 percent of all indigent defense costs above \$25,000. Member counties are then assessed an amount of the total by the requesting county, based on their population. Currently, 55 of South Dakota's 66 counties participate in the fund.

Additionally, a portion of a \$30 fee levied on any penalty, assessment or fine is used to reimburse counties for a portion of their expenditures for indigent defense services. South Dakota state law allocates \$6 from court costs to a court-appointed attorney and public defender payment fund and \$1 to an abused and neglected child defense fund. The State Treasurer annually distributes these monies to counties based on the amounts spent by each county for public defenders and court appointed attorneys in criminal and abuse and neglect cases.

In fiscal year 2008, the total indigent defense expenditure in South Dakota was **\$8,846,289**.¹⁰⁴

¹⁰⁴ For a complete description of this figure, refer to Technical Appendix, page 11. This figure may reflect a different trend from numbers presented in the 2005 State and County Expenditure Report. In recent years, offices maintaining records on expenditures have improved allowing for more accurate reporting than was previously possible.

The statewide system of public defenders was created in 1989 as an alternative to the use of court-appointed private attorneys. Each of the 31 district public defenders in Tennessee is elected.

There is a Tennessee State Public Defender conference in Nashville that has an executive director and a staff and an executive committee made up of a number of elected public defenders in Tennessee. Tennessee is one of two states, Florida being the other, that has elected public defenders in nearly every judicial district. The public defender conference has the responsibility of dispersing funds and making policy decisions in regard to the program on a statewide basis.

Founded in 1917, the Shelby County (Memphis) Public Defender's Office is the oldest Public Defender's Office in Tennessee. The Davidson County (Nashville) Public Defender's Office was created by a Private Act of the Tennessee Legislature in 1961, and the first Davidson County Public Defender was elected in 1962. In 1963, the original Metro Charter recognized the continuation of the Davidson County Public Defender's Office. The Public Defender is elected for a four-year term.

In 2008, the public defender in Knoxville, Tennessee, Mark Stephens, sought caseload relief through motions that were begun in 2008.¹⁰⁵ The public defender filed a motion asking five trial court judges to suspend appointments temporarily to his office and misdemeanor cases. The trial court judges granted Stevens an evidentiary hearing during which numerous witnesses testified, including experts, and substantial statistical data was presented. After a delay of about eight months, the five judges finally issued a two and a half page order denying all relief while completely ignoring the record developed during the hearing. Now, more than two years later, the case is on appeal and scheduled to be heard by an intermediate Tennessee appellate court.

In June of 2009, Governor Bredesen of Tennessee signed off on a state budget that includes an additional \$5 million for indigent defense. The money will pay for the remaining claims for fiscal year 2008, including attorneys' fees and expert witness costs. The state's \$21.4 million indigent defense fund was depleted in May 2009, and court appointed lawyers were continuing to take cases without receiving any compensation.

"In 1994, the Tennessee Supreme Court established the Indigent Defense Commission of the Supreme Court of Tennessee and gave it responsibility "for developing and recommending to the Court a comprehensive plan for the delivery of legal services to indigent defendants in the state court system" (See *In re Indigent Criminal Justice System*, 883 S.W.2d 133, 134 (Tenn. 1994)). However, recommendations of the Commission were not adopted by the Supreme Court of Tennessee and the Commission lapsed."

In fiscal year 2008, the total indigent defense expenditure in Tennessee was **\$70,603,182**.¹⁰⁶

¹⁰⁵ Petition of Knox County Public Defender, General Sessions Court for Knox County, Tennessee, Misdemeanor Division, Docket No. Not Assigned, February 20, 2009.

¹⁰⁶ For a complete description of this figure, refer to Technical Appendix, page 11.

In 2001, the Texas legislature enacted the Texas Fair Defense Act, which substantially reformed the indigent defense system in Texas. Reports prepared by the State Bar of Texas, Texas Appleseed, and The Spangenberg Group documented serious problems with the indigent defense system in Texas, which placed total responsibility for organizing and funding indigent defense programs on the 254 counties. The Fair Defense Act created the Texas Task Force on Indigent Defense (Task Force) to assist local governments in improving the delivery of indigent defense services and to provide state oversight of services.

The Task Force is a standing committee of the Texas Judicial Council and is composed of eight ex officio members and five members appointed by the Governor, and has a staff of seven. The Task Force promulgates policies and standards that counties must adhere to in order to receive state funds administered by the Task Force. Counties maintain responsibility for providing a large percentage of funds and organizing their indigent defense programs, but in order to comply with the Act, each county must establish: 1) procedures for providing prompt access to appointed counsel; 2) fair and neutral methods for selecting appointed counsel; 3) qualifications for appointed counsel; 4) financial standards and procedures for determining when a person is indigent; and 5) procedures and fee schedules for appointed counsel, experts and investigators. Until the Act was in place, the only state money available for indigent defense in Texas had been a small amount of funds appropriated to partially compensate attorneys handling capital state post-conviction cases, and to pay for support services in these cases.

As part of its mandate, the Task Force awards counties formula grants and discretionary grants to assist in funding indigent defense services. Formula grants are allocated to counties through a formula based upon population figures or any other criteria designated by the Task Force. Discretionary grants are awarded “to encourage courts and counties to examine their indigent defense processes to improve the local system by developing innovative programs.” Grants are awarded on a competitive basis and to be eligible to receive grant money counties must comply with the requirements of the Fair Defense Act. Counties must agree to contribute monetarily to the programs, eventually taking over the full responsibility for funding the new programs.

In addition to the West Texas capital regional public defender, the legislature created a statewide post-conviction capital public defender system in the last legislative session. The task force also has announced the award of \$4.1 million to Harris County (Houston) to create a county-wide public defender system. Harris County is the largest county in the country that is without a public defender system.

Fiscal year 2008 marked the seventh fiscal year of a statewide indigent defense program in Texas. By fiscal year 2008, 15 counties established public defender offices with the two most recent being a regional office to serve Bowie and Red River Counties and a West Texas Capital Regional Public Defender created by Lubbock County and serving 65 counties. The total Texas population receiving constitutionally guaranteed assistance to counsel has increased from 324,412 persons in fiscal year 2002 to 448,495 persons in fiscal year 2008, a 38 percent increase. Over this same period, from fiscal year 2002 to fiscal year 2008, indigent defense expenses have increased from \$114 million to \$174 million, a 52.6

percent increase. Specifically, in fiscal year 2008, the total indigent defense expenditure for the state of Texas was \$174,163,919.¹⁰⁷

¹⁰⁷ For a complete description of this figure, refer to Technical Appendix, page 11. In recent years, offices maintaining records on expenditures have improved allowing for more accurate reporting than was previously possible.

Utah once received no state funding whatsoever. However, as this narrative discloses, there is now only one fully county-funded system -- Pennsylvania. Utah's Indigent Defense Act is Title 77 Chapter 32 in the State Code.

Counties in Utah rely on various models of indigent defense delivery. Utah County, Salt Lake County, Grand County, Sumner County, and Weber County operate public defender offices, while other counties in the state, most with smaller populations, contract with individual attorneys or use assigned counsel to provide indigent representation.

Under UCA 78-35a-202, persons convicted of a capital crime and sentenced to death are allowed to challenge the conviction and have counsel appointed. If a defendant requests counsel and is determined by the court to be indigent, costs of counsel and other reasonable litigation expenses incurred in providing the representation are paid from state funds by the Division of Finance; this fund is commonly referred to as the Post Conviction Indigent Defense Fund. The Division of Finance also manages two other accounts: The Indigent Inmate Defense Fund and the Indigent Capital Defense Fund. The Indigent Inmate Defense Fund is for inmates convicted of crimes while in prison. Sanpete County uses this account for inmates accused of crimes committed at the state prison in Gunnison. No other counties contribute to this account at this time. The Indigent Capital Defense Fund provides money to defend indigents charged with capital crimes in participating counties. The Division of Finance assesses the twenty-four participating counties each year. State funds from these various programs have been added to the expenditures and are, in fact, state funds, and therefore Utah no longer is one of two states with no state funds at all.

In early 2009, the ACLU was working to develop a lawsuit challenging the inadequacies of the Utah indigent defense system. The ACLU of Utah argued that the state is not meeting its constitutional obligation to provide adequate defense for criminal defendants unable to afford representation. This amount was appropriated to the Post Conviction Indigent Defense Fund in fiscal year 2008 and is the only state contribution to indigent defense.

In fiscal year 2008, the total indigent defense expenditure was **\$21,829,719**.¹⁰⁸

¹⁰⁸ For a complete description of this figure, refer to Technical Appendix, page 11-12. This figure may reflect a different trend from numbers presented in the 2005 State and County Expenditure Report. In recent years, offices maintaining records on expenditures have improved allowing for more accurate reporting than was previously possible.

The Vermont Office of the Defender General provides indigent defense services with state funding. The Defender General is appointed by and serves at the pleasure of the Governor. The first tier of indigent service provision is Public Defense offices. Conflict cases are then assigned to an assigned counsel contractor. In cases of conflict with both public defenders and assigned counsel contractors, the court assigns an attorney on an ad hoc basis.

The Office of the Defender General maintains twelve full-time public defender offices throughout the state. Seven of these are staff offices and five are public defense contract offices, which are private law firms assigned a contract with the defender general to provide indigent defense services. There is no board of directors in the office of defender general. The public defense program oversees the administrative staff, Appellate Division, Juvenile Division and the Prisoner's Rights Office. The Office is responsible for providing representation to adult, indigent criminal defendants in felony and misdemeanor cases, direct appeals, and in certain probation and parole revocation proceedings. Through the Juvenile Division, the program represents juveniles in various proceedings, including those in which a child is alleged as delinquent, CHINS proceedings, and when the parent is the subject of a court proceeding to terminate the parental rights on the basis of conduct that could be grounds for a criminal conviction. The Prisoner's Rights Office represents those in the custody of the Commissioner of Corrections. Two offices also handle post-adjudication matters. There are three caseload relief contractors who assist staff offices throughout the state. The office of the Public Defender also oversees a Serious Felony Unit to provide representation for cases involving potential life term imprisonment or in major felonies.

In the Assigned Counsel Program, the Office of the Defender General employs either Assigned Counsel Contractors or Ad hoc Counsel for criminal or juvenile cases. The Office aims to provide at least two contractors per county to handle conflict cases. Ad Hoc counsel is assigned when there is conflict with all staff and contract attorneys.

The total indigent defense expenditure in fiscal year 2008 for the state of Vermont was **\$10,284,021.**¹⁰⁹

¹⁰⁹ For a complete description of this figure, refer to Technical Appendix, page 12.

In Virginia, where the state funds indigent defense, trial and appellate representation is provided either by attorneys from 26 regional trial public defender offices, four capital defender offices, one appellate office, or by appointed counsel, who handle conflicts from the public defender offices and cases filed in counties where there is no public defender office. Prior to 2004, each of the local public defender offices was under the control and supervision of a Chief Public Defender who was selected by the Virginia Public Defender Commission, which was legislatively created in 1972.

Effective July 1, 2004, a newly created Virginia Indigent Defense Commission (VIDC) has the responsibility of overseeing the provision of legal counsel to indigent defendants in Virginia. The organization is charged with overseeing the training and certification of both private court-appointed attorneys and public defenders. The newly established VIDC replaces the Virginia Public Defender Commission. There was previously no oversight system for private court-appointed counsel. The Virginia Indigent Defense Committee has a board of directors that make policy and standards for the entire program.

Among its other responsibilities, the VIDC is responsible for establishing official standards of practice for court-appointed counsel, creating guidelines for the removal of an attorney from the official list of attorneys qualified to receive court appointments, and appropriate caseload limits for public defender offices; maintaining, hiring and employing executive directors and public or capital defenders for each public defender and regional capital defender office established by the General Assembly; and ensuring that each public defender office collects and maintains caseload data. The Commission is required to report to various legislative committees each year on the status of indigent defense in the state, including Virginia's national ranking in pay for court-appointed counsel. Specific requirements regarding certification of court-appointed attorneys were created by statute and became effective July 1, 2005. In fiscal year 2008, the VIDC took steps to improve training and standards of practice of lawyers throughout the state.

In the 2007 General Assembly session, the legislature took additional steps to improve the indigent defense system in Virginia. For private court appointed counsel, new legislation was passed to allow payment above the lowest existing statutory caps in the country and to establish new guidelines on reporting requirements and forms for reimbursement. For Public Defender Offices, the 2007 General Assembly and the Governor attempted to address some of the challenges faced by the system including a high turnover and vacancy rate. Hence in fiscal year 2008, the VIDC increased salaries and created additional positions especially in Capital Defender Offices. Although the long-term effects of increased funding are not yet evident, the turnover rate decreased by 8 percent and the number of cases handled by the public defender increased by approximately 10 percent in fiscal year 2008.

In fiscal year 2008, the total expenditure for indigent defense in the state of Virginia was **\$96,924,204**.¹¹⁰

¹¹⁰ For a complete description of this figure, refer to Technical Appendix, page 12.

Public defense in Washington at the trial court level is provided within local county and city systems. In 2005, the Washington Legislature amended Chapter 10.101 RCW to establish a state indigent defense improvement program, first funded in 2006. The state is providing a small number of grants to cities and counties to supplement their funding. The Office of Public Defense implements the grant program according to its mission regarding “the constitutional and statutory guarantees of counsel and to ensure the effective and efficient delivery of indigent defense services funded by the state...” (RCW 2.70.0005 as amended by Chapter 313 Laws of 2008). The Office of Public Defense is an independent agency of the judicial branch, permanently authorized by the Legislature in 2008.

The Office of Public Defense (OPD) administers state funds appropriate for the Parents Representation Program for dependency cases, appellate indigent defense services, and criminal trial indigent defense services. OPD contracts with over fifty attorneys to represent indigent cases in appeals for criminal cases, dependency proceedings, parental rights terminations, criminal contempt convictions, and involuntary civil commitments. In 2008, 38 counties applied for and received a pro rata share of state funding under Chapter 10.101 RCW. Also in 2008, the OPD issued a status report chronicling the progress made by the counties and cities in five fundamental public defense activities identified by the office as being critically important but deficient in Washington indigent defense, including providing representation at initial appearances, waivers of counsel by juveniles, contract provisions generating conflicts of interest, counties’ adoptions of public defense ordinances and caseload limitations, and attorney compensation levels. The Office concluded that although indigent defense in Washington has improved in recent years, the system is still troubled and lacking resources.¹¹¹

In 2005, a class action lawsuit was brought by the ACLU against Grant County in the state of Washington.¹¹² The goal was injunctive relief against the county on constitutional grounds, which, at the time, provided defense services to public defenders and contracts with private lawyers. The complaint alleged that funding for indigent defense was inadequate, caseloads were excessive, there was no oversight of the defense system, defense services lacked independence, and defendants were deprived of investigation and experts. In October 2005, the presiding trial court judge rules that defendants had a well-grounded fear of immediate invasion of the right to effective assistance of counsel. Soon afterwards, plaintiffs’ lawyers and Grant County officials entered into a settlement agreement in which the county agreed to reduce excessive caseloads, guarantee that public defender lawyers are qualified to handle serious felony cases, and provide adequate funding for investigators and expert witnesses. The settlement included a six year provision for appointing a monitor to oversee Grant County’s compliance with the terms of the settlement agreement.

The Washington State Bar Association has a Council on Public Defense which monitors progress in defender reform and makes recommendations to the Bar Board of Governors.

In fiscal year 2007, the total expenditure for indigent defense in Washington was **\$153,103,936**.^{113,114}

¹¹¹ Office of the Public Defender. 2009. 2008 Status report on public defense in Washington State. Available online at: http://www.opd.wa.gov/Reports/Trial%20Level%20Services/090506_2008_SttsRprtonPblcDfns.pdf last accessed on August 17, 2009

¹¹² Best v. Grant County (No. 04-2-00189-0)

¹¹³ FY2007 is the most current data available from the Office of the Public Defender. This total includes expenditures for dependency representation.

¹¹⁴ For a complete description of this figure, refer to Technical Appendix, page 12.

Since 1989, West Virginia Public Defender Services (PDS) has administered, coordinated, and evaluated local indigent defense programs in the state's 31 judicial districts. PDS provides indigent defense in two ways: Public Defender Corporations and Private Appointed Counsel. Public Defender Corporations, headed by a Board of Directors, are in-charge of indigent defense in their respective judicial districts. Each office has almost complete local administrative control over its jurisdiction but remains fully state-funded. Currently, 27 of West Virginia's 55 counties are served by 23 public defender corporations. When fully staffed, the PDS employs around 116 attorneys and 74 support staffers. The remaining 28 counties rely solely on assigned counsel to provide representation to indigent defendants. The PDS pays for all private counsel salaries and their expenses. Local judges maintain almost complete control over this aspect of the indigent defense system, appointing counsel and approving or rejecting every proposed bill.

The PDS has four main divisions: Administration/Public Defender Operations Division, Appellate Division, Criminal Law Research Center Division, and Accounting /Voucher Processing Division. Public Defender Services pays for representation at the trial and appellate level as well as in cases of abuse, neglect, mental commitment and juvenile proceedings. The PDS does not provide for direct representation from their office except in a limited number of appellate cases.

On July 1, 2008, the Indigent Defense Commission was established following the 2008 legislative session. Prior to this, the creation of a Public Defender Corporation was essentially left to the discretion of the local community. Initiatives to create new corporations were sometimes met with considerable opposition at the local level due to financial reasons. In addition, the Board of Directors had total administrative control over each public defender corporation. With the new Indigent Defense Commission, there is now additional oversight of the highly localized indigent defense system in West Virginia. The Commission is in charge of creating new public defender offices and integrating or dissolving existing public defender corporations. In addition, the Commission also makes recommendations to the state legislature regarding improvements to the indigent defense system on issues such as rates of compensation, requirements for training, and low private counsel billing.

In fiscal year 2008, the total expenditure for indigent defense in the state of West Virginia was **\$36,975,545**.¹¹⁵

¹¹⁵ For a complete description of this figure, refer to Technical Appendix, page 13.

Wisconsin has an integrated state public defender system with regional offices providing trial and appellate representation through the Office of the State Public Defender (SPD). The Public Defender Board, which consists of nine members selected by the Governor and confirmed by the State Senate for staggered three-year terms, appoints the State Public Defender to supervise the operation, activities, policies, and procedures of the SPD.

The SPD is organized into four divisions: trial, appellate, assigned counsel and administrative. There are 38 field offices, 36 of which are trial-level offices, providing representation in every county in the state. The trial level division provides representation for cases in adult criminal, civil commitment (including the commitment of sexually violent persons), probation or parole revocation, contempt of court and termination of parental rights cases. The Trial Division also represents juveniles in delinquency, commitment, paternity, children in need of protection and termination of parental rights cases. The Appellate Division has two offices that provide post-conviction or post-judgment representation for indigents at the trial and appellate levels. The Assigned Counsel Division, which has one statewide office, provides support services, trainings, and certifications to private attorneys assigned to SPD cases. It processes requests for investigator and expert services as well as monitors private attorney performance together with the Trial and Appellate Divisions. Certain assigned attorneys also handles conflict and overflow cases.

The SPD maintains an Office of Legal Counsel, an Office of Training and Development, and a Chief Information Officer. Overall, the SPD employs around 550 employees as well as 1200 private bar attorneys, which represent conflict cases and address case overload.

In fiscal year 2005, SPD staff attorneys represented approximately 54 percent of indigent defendants, where 38 percent were represented by certified private attorneys on a rotation basis for an hourly rate, and the remaining 7 percent to private bar attorneys via fixed fee contracts for misdemeanors only. In fiscal year 2007, SPD handled around 142,400 indigents and SPD staff attorneys represented 52 percent of these clients. Around 40 percent are represented by certified private bar attorneys on a rotational basis at an hourly rate of pay while approximately 7 percent are represented by certified private bar attorneys on fixed fee contracts.

In fiscal year 2008, the total expenditure for indigent defense in the state of Wisconsin was **\$89,852,800**.¹¹⁶

¹¹⁶ For a complete description of this figure, refer to Technical Appendix, page 13.

The state-funded Wyoming State Public Defender handles indigent adult criminal and juvenile delinquency trial and appellate cases in the circuit, district, and juvenile courts, with 15 offices throughout the state, including 1 main office and 14 field offices. The main office houses the administrative, fiscal, human resources, and IT sections, as well as the appellate office. The field offices handle indigent defense in one or more counties. The Public Defender's Office acts as an independent operating agency under the executive branch of the state government. The state is responsible for 85 percent of the cost of the state public defender program, paid through general revenue funds, with counties contributing the remaining 15 percent of the cost. The State Public Defender is appointed by and serves at the pleasure of the governor.

The Wyoming Public State Defender has around 80 employees, 19 of which are part-time employees. Of these 80 employees, there are 46 attorneys in trial and appellate divisions, 17 legal assistants, five administrative assistants, three fiscal personnel, and five investigators. Additionally, there are 27 independent contractors who work part-time for the State Defender.

In 2008, the State Public Defender modified its organizational structure. Eight new positions were added and there was an increase in funding for independent contractors. One new field office was opened and two offices were integrated. In addition, the 2005 State and County Expenditure Report stated that there was a Capital Case Unit. This unit was disabled in 2008 and the State Public Defender began using attorneys throughout the state who are qualified and have been trained according to the *ABA Guidelines for Appointment and Performance of Defense Counsel in Capital Cases, Revised Edition, 2003*.

In fiscal year 2008, the total expenditure for Wyoming indigent defense was **\$8,949,900**.¹¹⁷

¹¹⁷ For a complete description of this figure, refer to Technical Appendix, page 13.

The Criminal Justice Act of 1964 (18 U.S.C. 3006A) governs the provision of legal services to indigent defendants accused of committing federal crimes. Under the Act, each United States District Court is required to develop a plan for furnishing counsel and investigative, expert and other services necessary for adequate representation in trial and appellate proceedings. The Criminal Justice Act (CJA) authorizes three methods for a court to provide counsel to indigent defendants: a Federal Public Defender Organization, a Community Defender Organization, and a panel of private attorneys. Currently there are 79 authorized federal public defender organizations serving 90 of the 94 federal judicial districts. These organizations employed 2,446 full-time civilian employees in 2008.

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

A Community Defender Organization (CDO) is a non-profit legal services organization incorporated under state laws and supervised by a board of directors. CDOs may operate under grants approved by the Judicial Conference or they may opt to be reimbursed for their services on a case-by-case basis under the statutorily prescribed hourly rates that also apply to panel attorneys appointed under the Criminal Justice Act. None have opted to be reimbursed on a case-by-case basis.

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

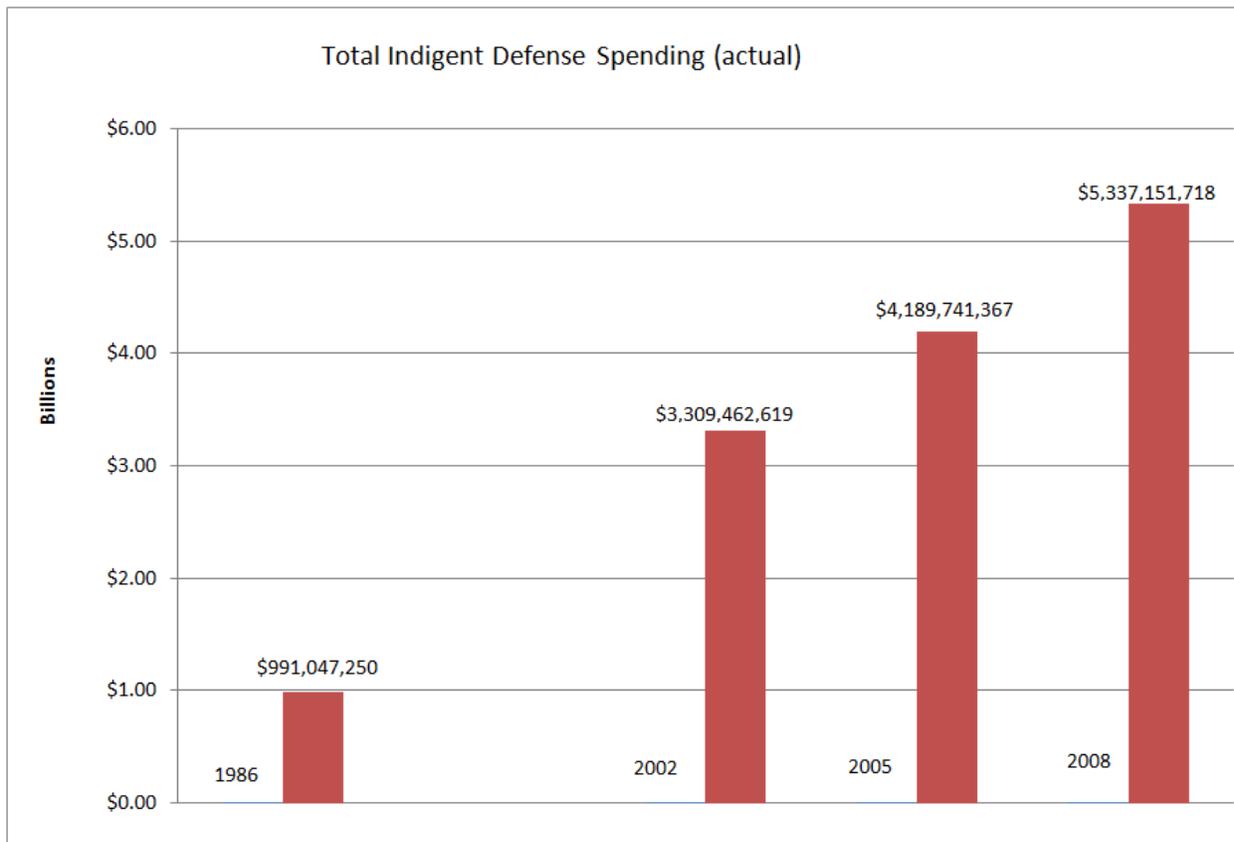
In 2008, Congress approved an hourly rate increase for CJA panel attorneys from \$94 to \$100 per hour in non-capital cases, and from \$166 - \$170 per hour in capital cases.

In 2008, the total expenditure for providing representation and operating federal public defender organizations was approximately \$849,000,000.¹⁰⁹ This figure does not include additional monies the federal government provided to assist in funding state indigent defense programs.

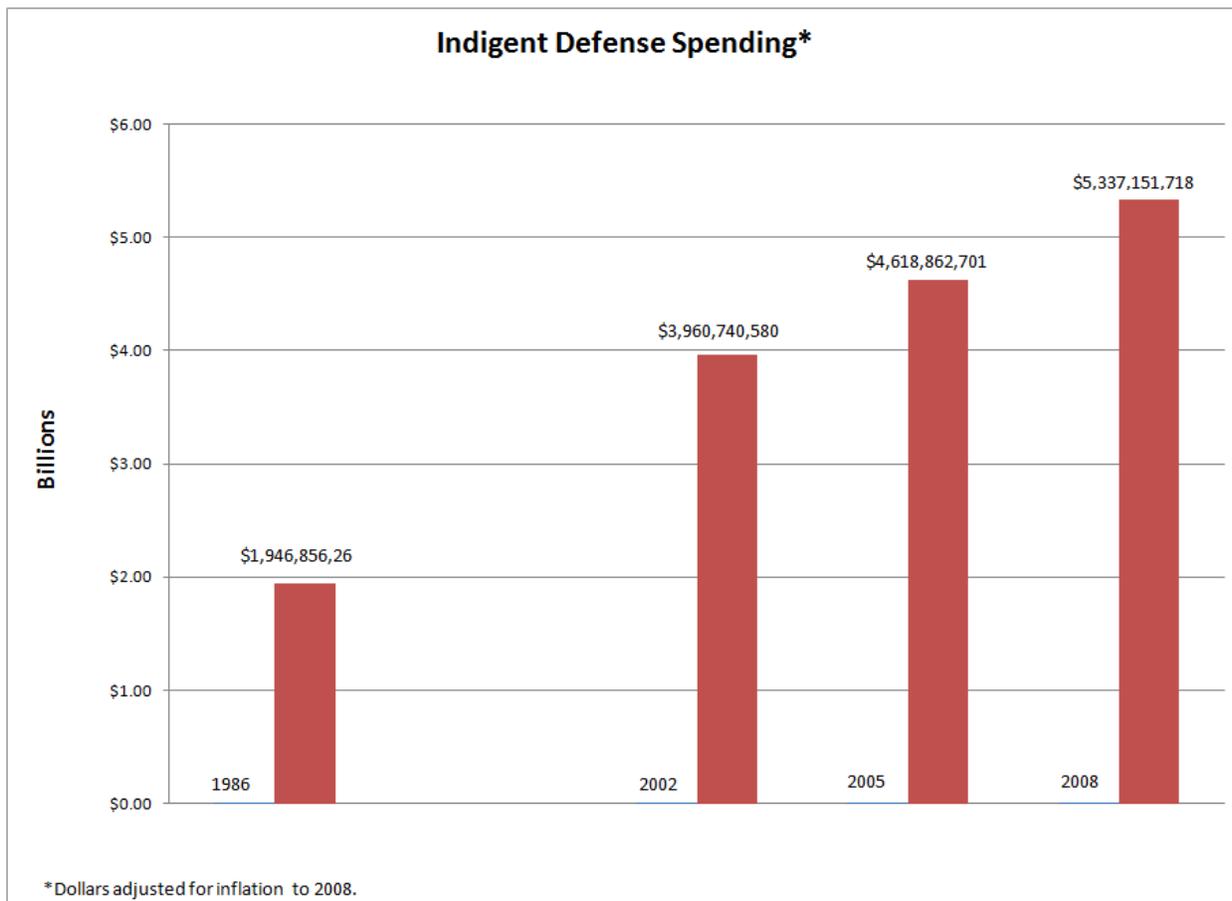
¹⁰⁹ Actual expenditures have not been released to-date. This figure is provided in the federal budget.

Figures and Tables

Graph 1



Graph 2



<i>Table 1</i>				
<i>2008 State, County and Local Expenditures</i>				
State	State Expenditure	County / Local Expenditure	Total Expenditure	Percent State Funding
Alabama	\$43,495,297	\$23,554,979	\$67,050,276	54%
Alaska	\$28,940,500		\$28,940,500	100%
Arizona	\$1,149,300	\$120,942,184	\$122,091,484	1%
Arkansas	\$26,244,216		\$26,244,216	100%
California	\$79,707,420	\$697,003,519	\$776,710,939	10.30%
Colorado	\$81,270,241		\$81,270,241	100%
Connecticut	\$48,074,375		\$48,074,375	100%
Delaware	\$18,383,901		\$18,383,901	100%
District of Columbia*	\$80,685,000		\$80,685,000	0%*
Florida	\$354,034,506		\$354,034,506	100%
Georgia (CY)	\$35,010,269	\$59,103,357	\$94,113,626	37.20%
Hawaii	\$9,626,208		\$9,626,208	100%
Idaho	\$2,070,700	\$16,093,030	\$18,163,730	11.40%
Illinois	\$24,424,476	\$99,455,083	\$123,879,559	19.70%
Indiana	\$15,074,416	\$48,862,186	\$63,936,602	23.60%
Iowa	\$52,509,430		\$52,509,430	100%
Kansas	\$23,412,091	\$7,232,007	\$30,644,098	76.40%
Kentucky	\$36,500,000	\$2,000,000	\$38,500,000	94.80%
Louisiana (CY) ⁺	\$15,309,916 ¹	\$30,081,713	\$45,391,629	33.70%

¹ [This figure includes \\$875,878 provided to Orleans Parish in federal grant monies.](#)

Maine	\$9,684,139		\$9,684,139	100%
Maryland	\$89,151,647		\$89,151,647	100%
Massachusetts	\$186,706,437		\$186,706,437	100%
Michigan	\$5,943,867	\$72,000,000	\$77,943,867	7.60%
Minnesota	\$66,348,000	\$6,945,026	\$73,293,026	90.50%
Mississippi	\$4,283,281	\$10,588,466	\$14,871,747	28.80%
Missouri	\$34,596,651		\$34,596,651	100%
Montana	\$19,441,376		\$19,441,376	100%
Nebraska	\$1,200,000	\$22,652,662	\$23,852,662	5.00%
Nevada	\$504,569	\$76,242,791	\$76,747,360	0.70%
New Hampshire	\$21,333,374		\$21,333,374	100%
New Jersey	\$107,838,000		\$107,838,000	100%
New Mexico	\$41,300,000		\$41,300,000	100%
New York	\$164,128,710	\$279,931,282	\$444,059,992	37.30%
North Carolina	\$117,691,234		\$117,691,234	100%
North Dakota	\$5,000,000		\$5,000,000	100%
Ohio	\$39,461,002	\$82,135,525	\$121,596,527	32.50%
Oklahoma	\$19,494,864	\$11,848,655	\$31,343,519	62.20%
Oregon	\$97,992,306		\$97,992,306	100%
Pennsylvania		\$95,403,110	\$95,403,110	0%
Rhode Island	\$12,671,983		\$12,671,983	100%
South Carolina	\$22,013,084	\$11,835,842	\$33,848,926	65.00%
South Dakota	\$804,000	\$8,042,289	\$8,846,289	9.10%

Tennessee	\$61,267,935	\$9,335,247	\$70,603,182	86.80%
Texas	\$21,495,880	\$152,668,039	\$174,163,919	12.30%
Utah	\$74,000	\$21,755,719	\$21,829,719	0.30%
Vermont	\$10,284,021		\$10,284,021	100%
Virginia	\$96,924,204		\$96,924,204	100%
Washington	\$30,153,834	\$122,950,102	\$153,103,936	19.70%
West Virginia	\$36,975,545		\$36,975,545	100%
Wisconsin	\$83,852,800	\$6,000,000	\$89,852,800	93%
Wyoming	\$7,606,650	\$1,342,350	\$8,949,900	85%
TOTAL (States Only)	\$2,392,145,655	\$2,096,005,163	\$4,488,151,718	33%
Federal Defender Orgs	\$849,000,000*		\$849,000,000	-
TOTAL (State & Federal)			\$5,337,151,718	-

[*Indicates federal monies.](#)

Technical Appendix

Alabama

Total FY2008 expenditure- **\$67,050,276**.

Of the total above, \$23,554,979 was from the Fair Trial Tax Fund (monies provided to the state fund by the counties) and \$43,495,297 was reimbursed from the state's general funds.

Expenditure data was collected from the Administrative Office of the Courts (AOC). The AOC collects information on revenues from counties to the Fair Trial Tax Fund and on the total expenditures the state reimburses from both the Fair Trial Tax Fund and the state's general funds.

Indigent defense expenditures have increased dramatically in recent years as result of the Alabama Supreme Court's decision in *Wright v. Childree*.¹ On February 1, 2005, the attorney general issued *Op. Att'y Gen., No. 2005-063*, which concluded that the comptroller did not have to pay office overhead expenses, excluding those of public defender offices or contract counsel, citing § 15-12-21(d), *Ala.Code 1975*. The attorney general argued that these expenses were not incurred as part of defending one client as termed in § 15-12-21, *Ala.Code 1975* and began withholding payment for these expenses on February 1, 2005. However, in May 2007, the Alabama Supreme Court ruled that the comptroller must reimburse overhead expenses that were "reasonably incurred in the defense of a defendant."² The court ordered the comptroller to issue payment for expenses incurred in cases from 2005 forward.

Alaska

Total FY2008 expenditure- **\$28,940,500**

Expenditure data were collected from budget analysts at the Office of Management and Budget. In addition, these data were confirmed with the Public Defender Agency and the Office of Public Advocacy. The total FY2008 expenditure for the Public Defender Agency was \$19,336,500. The total FY2008 expenditure for the Office of the Public Advocate (to include only the portion of expenditures used to provide representation in conflict of interest cases for indigent defendants) was \$9,604,000. This amount was calculated with some estimation as the Office of the Public Advocate does not maintain their budget in categories that allow for absolute calculation of the conflict case expenditures. The office provided a range of \$9,604,000- \$10,372,000 that was expended on conflict cases. TSP used the lowest number in this range to provide the most conservative total expenditure for the state.

Arizona

Total FY2008 Expenditure- **\$122,091,484**

No single agency or organization collects indigent defense expenditure data in Arizona. Researchers called county public defender offices, budget offices, and treasurer offices in each of the state's 15 counties in an effort to collect the expenditure data. Offices were called at least three times, over a two-month period, in an attempt to gather expenditure data. In addition to leaving voicemails, follow-up emails were sent when an email address could be obtained for the

¹ *Wright v. Childree*, 972 So.2d 771 (Ala.2006).

² The Court of Criminal Appeals in *Ex parte Barksdale*, 680 So.2d 1029, 1030 (Ala.Crim.App.1996).

contact. In counties where no response or data could be obtained, the expenditures were estimated by calculating the per capita indigent defense expenditure for each county data could be obtained. Data were explored for systematic variation based on population and geographical location; however, no systematic variation was evident in the data that was obtained from counties. As such, the mean and median per capita indigent defense expenditure was calculated for the state as a whole. As the mean did not differ from the median in large measure, the state's mean per capita expenditure was multiplied by each missing county's population (obtained from the U.S. Census Bureau) to obtain an estimated total expenditure for those counties. In Arizona, the estimated counties comprise approximately 7% of Arizona's population. Using this estimation procedure, the total expenditure for indigent defense for all counties in Arizona was **\$120,942,184** in FY2008. In FY2008 the state contributed **\$1,149,300** for indigent defense to counties in Arizona. The general fund contribution was \$150,100 and fine revenue was \$999,200.

Arkansas

Total FY2008 Expenditure- **\$26,244,216**

Data was provided by the State Budget Manager at the Department of Finance and Administration. This cost does not include a small amount of office expenses that the counties contribute to indigent defense. Unfortunately, the counties in Arkansas were not able to provide these figures as these expenses are not maintained at the level possible to disaggregate from other office space expenses from other agencies.

The following table breaks the total expenditure down by a number of additional categories.

State of Arkansas - Public Defender/Indigent Defense Representation for Fiscal Year 2008

Agency	Program Description	FY08 Expenditures
Office of the Public Defender	Trial Office	\$ 17,315,340
Office of the Public Defender	Operations	\$ 1,662,899
Office of the Public Defender	Ombudsman Program	\$ 145,852
Court of Appeals	Court Appointed Attorneys	\$ 159,954
Supreme Court	Court Appointed Attorneys	\$ 182,637
Administrative Office of the Courts	Dependency & Neglect	\$ 6,724,299
Administrative Office of the Courts	CASA (Court Appointed Special Advocates)	\$ 53,235
Total - Fiscal Year 2008		\$ 26,244,216

California

Total Expenditures FY2008- **\$776,710,939**

To obtain county expenditure data, TSP researchers called county public defender offices, budget offices, and treasurer offices in each of the state's 58 counties in an effort to collect the expenditure data. Offices were called at least three times, over a two-month period, in an attempt to gather expenditure data. In addition to leaving voicemails, follow-up emails were sent when an

email address could be obtained for the contact. In counties where no response or data could be obtained, the expenditures were estimated by calculating the per capita indigent defense expenditure for each county data could be obtained. Then, the mean and median per capita indigent defense expenditure was calculated for the state. As the mean did not differ from the median in large measure, the state's mean per capita expenditure was multiplied by each missing county's population (obtained from the U.S. Census Bureau) to obtain an estimated total expenditure for those counties. The estimated counties comprise approximately 24% of California's population.

The total expenditure from counties was \$697,003,519, while the appellate office expended \$79,707,420 during the same fiscal year. Appellate expenditure information was provided by the Office of the State Public Defender and confirmed with the State Treasurer's Office.

Colorado

Total FY2008 Expenditure- **\$81,270,241**

All indigent defense expenditures in Colorado are state-funded. Expenditure data were provided by the Administrative and Operations Division at the Office of the Public Defender and the General Assembly Joint Budget Committee. The Office of the Public Defender expended \$45,976,775 in FY2008. In addition, \$21,719,056 was expended by the Office of Alternate Defense Counsel.

This total includes representation provided by the provision of guardians ad litem, attorney child and family investigators, and child's representatives appointed on behalf of minors and children (under the age of 18) which is provided by Colorado's Office of the Child's Representative at an expense of \$13,574,410. This office provided representation in 13,626 cases in FY2008.

Connecticut

Total FY2008 Expenditure- **\$48,074,375**

All indigent defense expenditures in Connecticut are state-funded. Data was provided by the Connecticut Division of Public Defender Services and confirmed by the state budget office. The Connecticut Division of Public Defender Services provides all expenditure information in their annual report available online.

Delaware

Total FY2008 Expenditure- **\$18,383,901**

All indigent defense expenditures in Delaware are state-funded. These data were provided by the Delaware State Budget Office. The Delaware Public Defender expended \$14,624,600 and \$2,616,208 was expended on providing representation in conflict of interest cases.

The total above includes the following expenses incurred representing individuals in civil proceedings:

CASA Attorneys \$261,000

Family Court Attorneys \$654,393

Elder Law Program \$50,100

Court Appointed Attorneys in involuntary commitment proceedings \$177,600

District of Columbia

Total FY2008 expenditure- **\$80,685,000**

These data was provided by the District of Columbia Office of Revenue Analysis. The Public Defender Services office expended \$32,710,000 and “CJA” attorneys expended \$31,864,000.

This total includes the following expenditures which were incurred representing individuals in civil proceedings:

Counsel for Child Abuse and Neglect Cases- \$14,456,000

Guardianship Cases - \$1,655,000

Florida

Total FY2008 Expenditure- **\$354,034,506**

All indigent defense expenditures in Florida are state-funded. These data were provided by the Public Safety Unit within the Office of Policy and Budget, Executive Office of the Governor.

This total includes providing representation in the following types of cases:

Public Defender Due Process - \$19,801, 327

Criminal Conflict - \$19, 572,697

Registry Attorneys - \$1,365,983

Public Defenders - \$189,908, 910

Appellate Public Defenders- \$14,422,703

Capital Collateral Regional Counsel - \$7,441,599

Regional Conflict Counsels - \$14,968,068

Child Dependency/Civil Conflict* - \$15,240,199

Sexual Predator Civil Commitment Litigation- \$3,729, 171

*Includes children-in-need-of-services/families-in-need-of-services, dependency, emancipation, guardianship, termination of parental rights in addition to other civil cases.

Georgia

Total CY2008 Expenditure - **\$94,113,626**

Of the above total \$35,010,269 were provided by the state and \$59,103,357 was provided by the counties.

These data were provided by the Georgia Public Defender Standards Council, county budget offices, and county public defender offices.

Hawaii

Total FY2008 Expenditure - **-\$9,626,208.**

These data were provided by the Department of Budget and Finance in Hawaii.

Idaho

Total FY2008 Expenditure- **\$18,163,730.**

The total state contribution was \$2,070,700. The total county contribution was \$16,093,030.

These data were provided by the Budget and Policy Analysis Division within the Idaho Legislative Services Office and the Idaho Supreme Court.

Illinois

Total FY2008 Expenditure- **\$123,879,559.**

The total state expenditure was \$24,424,476. This figure was provided by State Appellate Public Defender Office and verified by the state budget offices.

No single agency or organization collects county indigent defense expenditure data in Illinois. Researchers called county public defender offices, budget offices, and treasurer offices in each of the state's 102 counties in an effort to collect the expenditure data. Offices were called at least three times, over a two-month period, in an attempt to gather expenditure data. In addition to leaving voicemails, follow-up emails were sent when an email address could be obtained for the contact. In counties where no response or data could be obtained, the expenditures were estimated by calculating the per capita indigent defense expenditure for each county data could be obtained. Then, the mean and median per capita indigent defense expenditure was calculated for the state. Given the differences between the mean and median, the median was used to estimate the missing county expenditure data. The state's median per capita expenditure was multiplied by each missing county's population (obtained from the U.S. Census Bureau) to obtain an estimated total expenditure for those counties. In Illinois, the estimated counties comprise approximately 27% of the state's population. The total county expenditure was estimated to be \$99,455,083.

Indiana

Total FY08 Expenditure - **\$63,936,602**

The total state contribution was \$15,074,416. This included \$14,411,614.67 in state reimbursements to eligible counties for non-capital cases and \$662, 801.29 reimbursed to counties for capital cases.

The remaining \$48,862,186 was expended by the counties of Indiana (not reimbursed by the state).

These data were provided by the Indiana Public Defender Commission, and the Trial Court Management staff at the Indiana Supreme Court, Division of State Court Administration.

Iowa

Total FY2008 Expenditure **\$52,509,430.**

The figure above includes \$21,813,138 expended by the state public defender offices and \$30,696,291 of assigned and contract counsel costs. Data were provided by the State Budget Office and the Office of the Public Defender.

Kansas

Total FY2008 Expenditure- **\$30,644,098.**

This total includes \$9,562,036 in assigned counsel costs and \$13,850,055 in public defender costs paid by the state. These data were provided by Kansas Indigent Defense Services.

The counties of Kansas expended approximately \$7,232,007. The counties are responsible for providing representation in misdemeanor and juvenile proceedings. This total is an estimate derived from data provided by Kansas Indigent Defense Services and the Kansas Juvenile Justice Authority.

Kentucky

Total FY2008 Expenditure- **\$38,500,000.**

Approximately \$2,000,000 were expended at the county-level. The remaining \$36,500,000 was provided by the state. Data were provided by the Department of Public Advocacy.

Louisiana

Total FY2008 Expenditure- **\$45,391,629.**

The total state contribution was \$15,309,916, of which \$875,878 was provided to New Orleans from federal grant monies. The parishes contributed the remaining \$30,081,713. Data were provided by the Louisiana Public Defender Board.

Maine

Total FY2008 Expenditure- **\$9,684,139.**

The total above includes representation provided in Child Protective Services cases. These costs totaled \$2,330,018 in FY2008. Data were provided by the Maine Indigent Defense Center.

Maryland

Total FY2008 Expenditure- **\$89,151,647.**

The above data was provided by financial analysts in the Office of the Public Defender and confirmed with the state budget offices.

Massachusetts

Total FY2008 Expenditure - **\$186,706,437.**

This total includes expenditures for providing representation in child protective services, parental representation, and other types of civil proceedings where representation is provided to indigent persons. The total expenditure for these cases comprises about 25% of the total expenditures. These data were provided by the Committee for Public Counsel Services.

Michigan

The total FY2008 Expenditure- **\$77,943,867.**

The total state contribution was \$5,943,867. The state collects some information on county expenditure data and estimated the county cost for FY2008 to be \$72,000,000. These data were provided by the Michigan Campaign for Justice.

Minnesota

Total FY2008 Expenditure- **\$73,293,026.**

The state contributed \$66,348,000, while Hennepin County contributed \$6,945,026. These data were provided by the Minnesota State Budget Office.

Mississippi

The total FY2008 Expenditure- **\$14,871,747.**

The state contributed \$4,283,281, of which \$2,807,363 was capital appellate costs and \$1,475,918 was non-capital, felony appellate costs.

No single agency or organization collects county indigent defense expenditure data in Mississippi. Researchers called county public defender offices, budget offices, and treasurer offices in each of the state's 82 counties in an effort to collect the expenditure data. Offices were called at least three times, over a two-month period, in an attempt to gather expenditure data. In addition to leaving voicemails, follow-up emails were sent when an email address could be obtained for the contact. In counties where no response or data could be obtained, the expenditures were estimated by calculating the per capita indigent defense expenditure for each county data could be obtained. Then, the mean and median per capita indigent defense expenditure was calculated for the state. Given the differences between the mean and median, the median was used to estimate the missing county expenditure data. The state's median per capita expenditure was multiplied by each missing county's population (obtained from the U.S. Census Bureau) to obtain an estimated total expenditure for those counties. In Mississippi, the estimated

counties comprise approximately 32% of the state's population. The total county expenditure was estimated to be \$10,588,466.

Missouri

Total FY2009 Expenditure - **\$34,596,651.**

Data were provided by Missouri State Public Defender and confirmed by the Missouri State Budget Office.

Montana

Total FY2008 Expenditure- **\$19,441,376.**

Data were provided by the Montana Public Defender and confirmed by the state's budget office.

Nebraska

Total FY2008 Expenditure- **\$23,852,662**

The state provided \$1,200,000 for capital defense funding, the remaining \$22,852,662 was provided by the counties. However, no single agency or organization collects county indigent defense expenditure data in Nebraska. Researchers called county public defender offices, budget offices, and treasurer offices in each of the state's 93 counties in an effort to collect the expenditure data. Offices were called at least three times, over a two-month period, in an attempt to gather expenditure data. In addition to leaving voicemails, follow-up emails were sent when an email address could be obtained for the contact. In counties where no response or data could be obtained, the expenditures were estimated by calculating the per capita indigent defense expenditure for each county data could be obtained. Then, the mean and median per capita indigent defense expenditure was calculated for the state. There was little difference between the mean and median per capita expense for those counties where data was obtained, therefore, the mean was used to estimate the expenditures for the missing counties. The state's mean per capita expenditure was multiplied by each missing county's 2008 population (obtained from the U.S. Census Bureau) to obtain an estimated total expenditure for those counties. In Nebraska, the estimated counties comprise approximately 33% of the state's population. The total county expenditure was estimated to be \$22,652,662.

Nevada

Total FY2008 Expenditure- **\$76,747,360.**

The total state contribution was \$504,569, while the counties contributed \$76,242,791. Data were provided by county public defender offices, and the Nevada Administrative Office of the Courts.

New Hampshire

Total FY2008 Expenditure- **\$21,333,374.**

All indigent defense expenditures in New Hampshire are state-funded. Of the total above, \$16,580,646 was expended by public defender offices. The remainder covered contract counsel, assigned counsel, and other indigent defense services. Data was provided by the New Hampshire Budget Office and public defender expenditure cost information was confirmed with the Public Defender office.

New Jersey

Total FY2008 Expenditure- **\$107,838,000.**

The total expenditures for trial services was \$98,554,000 and \$9,284,000 for appellate services. These data were provided by the Office of the Public Defender and the Department of the Treasury, under the Office of Management and Budget.

New Mexico

Total FY2008 Expenditure- **\$41,300,000.**

All indigent defense expenditures in New Mexico are state-funded. These data were provided by the New Mexico State Public Defender.

New York

Total FY2008 Expenditure- **\$444,059,992.**

The total state contribution was \$164,128,710 and the total county contribution was \$279,931,282.

These data and additional information were provided by the New York State Defenders Association, the Administrative Office of the Courts, and various county public defender offices within the state.

North Carolina

Total FY2008 Expenditure- **\$117,691,234.**

These data were provided by the North Carolina Indigent Defense Commission.

North Dakota

Total FY2008 Expenditure- **\$5,000,000.**

The above figure was an estimate provided by the Commission on Legal Counsel for Indigents.

Ohio

Total FY2008 Expenditure- **\$121,596,527.**

The total state expenditure was \$39,461,002. The counties operate on a calendar year system; therefore, these data are for CY2008. The county-level system expenditure totaled \$82,135,525.

Oklahoma

Total FY2008 Expenditure- **\$31,343,519.**

The total state contribution was \$19,494,864. Oklahoma and Tulsa counties must fund their own public defense systems. The total county expenditure was \$11,848,655. These data were provided by the Oklahoma Indigent Defense System, the Tulsa County Public Defender, and the Oklahoma County Public Defender. Additional information was provided by the Oklahoma Administrative Office of the Courts.

Oregon

Total FY2008 Expenditure- **\$97,992,306.**

Data was provided by the Office of Public Defense Services.

Pennsylvania

Total CY2008 Expenditure- **\$95,403,110.**

No single agency or organization collects indigent defense expenditure data in Pennsylvania. Researchers called county public defender offices, budget offices, and treasurer offices in each of the state's 67 counties in an effort to collect the expenditure data. Offices were called at least three times, over a two-month period, in an attempt to gather expenditure data. In addition to leaving voicemails, follow-up emails were sent when an email address could be obtained for the contact. In counties where no response or data could be obtained, the expenditures were estimated by calculating the per capita indigent defense expenditure for each county data could be obtained. Then, the mean and median per capita indigent defense expenditure was calculated for the state. As the mean did not differ from the median in large measure, the state's mean per capita expenditure was multiplied by each missing county's population (obtained from the U.S. Census Bureau) to obtain an estimated total expenditure for those counties. In Pennsylvania, the estimated counties comprise approximately 17% of the state's population. Using this estimation procedure, the total expenditure for FY2008 totaled \$95,403,110.

Rhode Island

Total FY2008 Expenditure- **\$12,671,983.**

The Public Defenders Office covers most of the individuals, which consisted of a total of \$9,302,799 from all funds, of which \$9,030,938 was from state general revenues and \$271,861 was in federal grants. The Court system contains a defense of indigents program for those cases that would present a conflict of interest if represented by the PD's Office. This program expended \$3,369,184 in general revenues in FY2008. These data were provided by the State of Rhode Island Budget Office.

South Carolina

Total FY2008 Expenditure- **\$33,848,926.**

The state contributed \$22,013,084 and the counties provided \$11,835,842. All counties provide some funding in South Carolina, but unevenly and not based on a particular formula. This includes expenditures for civil representation. These data were provided by the South Carolina Commission on Indigent Defense.

South Dakota

Total FY2008 Expenditure- **\$8,846,289.**

The above total \$8,042,289 was provided at the county-level. The state contributed \$804,000. These data were provided by the Office of the State Treasurer.

Tennessee

Total FY2008 Expenditure- **\$70,603,182.**

Of this total, \$61,267,935 was provided by the state. Two counties, Shelby and Davidson must also provide a portion of the funds for indigent defense. The county-level cost was \$9,335,247. Shelby and Davidson counties receive additional funding from the state (which is included in the state total above). These data were provided by the Shelby and Davidson public defender offices, the Tennessee Administrative Office of the Courts, and the Fiscal Division of the District Public Defenders Conference.

Texas

Total FY2008 Expenditure- **\$174,163,919**

The total state contribution was \$21,495,880. The total county contribution was \$152,668,039. These data were provided by the Texas Task Force on Indigent Defense.

Utah

Total FY2008 Expenditure- **\$21,829,719**

The state contributed \$74,000 from the state's post-conviction ID Fund. The counties provided the remainder of funding. While no single agency or organization collects indigent defense expenditure data in Utah, researchers called county public defender offices, budget offices, and treasurer offices in each of the state's 29 counties in an effort to collect the expenditure data. Offices were called at least three times, over a two-month period, in an attempt to gather expenditure data. In addition to leaving voicemails, follow-up emails were sent when an email address could be obtained for the contact. In Utah, data was collected for all but one county. In this county, the expenditure was estimated by calculating the per capita indigent defense expenditure for each county data could be obtained. Then, the mean and median per capita indigent defense expenditure was calculated for the state. As the mean did not differ from the median in large measure, the state's mean per capita expenditure was multiplied by the missing county's population (obtained from the U.S. Census Bureau) to obtain an estimated total expenditure for those counties. In Utah, the estimated county comprised less than 1% of the state's population.

Vermont

Total FY2008 Expenditure- **\$10,284,021.**

Indigent defense expenditure data was provided by the Office of the Defender General and includes both public defender and assigned counsel systems.

Virginia

Total FY2008 Expenditure- **\$96,924,204.**

The Virginia Indigent Defense Commission expended a total of \$40,988,067. Of this total, \$40,962,255 was expended from the general fund, and \$25,842 was expended from the non-general fund. This data was provided by the Virginia Indigent Defense Commission.

An additional **\$34,400,144** was expended by the state to provide additional court appointed counsel. This data was provided by the Virginia Supreme Court.

The total includes the expenses incurred providing counsel in civil proceedings. The total for these cases is **\$21,535,997.**

Washington

Total FY2008 Expenditures- **\$153,103,936.**

The total state contribution was \$30,153,834 and the total county and municipality contribution was \$122,950,102. These totals include expenditures for dependency representation. These data were provided by the Washington State Office of Public Defense.

West Virginia

Total FY2008 Expenditure- **\$36,975,545.**

Of the above total, \$16,461,834 was for Public Defender costs and \$20,513,711 was for assigned or contract counsel.³ These data were provided by the West Virginia Public Defender Services.

Wisconsin

Total FY2008 Expenditure- **\$89,852,800.**

The total state contribution was \$83,852,800 and nearly \$6,000,000 from county contributions. These data were provided by the Director of State Courts and the State Public Defender Budget Director.

Wyoming

Total FY2008 Expenditure- **\$8,949,900.**

Of this total, \$7,606,650 was provided by the state and \$1,342,350 was provided by the counties.

This information was provided by the Office of the Public Defender.

³ Time period for submission of assigned counsel vouchers in West Virginia changed and a six month period was provided to allow the submission of older vouchers. Therefore, figures do not reflect FY2008 work; also, the assigned counsel total includes \$4,509,806 in supplemental appropriation and represents payment for only nine months.