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Appendix F

Comparative State Narratives

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1. Connecticut

Population:	3,274,238	Primary Funding:	State
Density:	678.4 people per square mile	Primary System:	Public Defender
Poverty Rate:	9.9%		
Counties:	8	Death Penalty:	Yes

The state-funded Connecticut Division of Public Defender Services and Special Public Defenders (SPDs)- private attorneys who contract with the public defender to handle conflict and overload cases - provide virtually all indigent defense representation in Connecticut. The Public Defender has regional offices throughout the state, and has a budget of $28,079,848 for FY 2000. Representation in mental health commitment and juvenile dependency cases is provided by a court-appointed counsel program administered by the state Superior Court Operations office.

Indigent Defense Commission:

The seven members of the Public Defender Services Commission are appointed by various state government officials. The Commission has the following duties: adopt rules for Division of Public Defender Services; establish a compensation plan comparable to state's attorneys; establish employment standards; appoint Chief Public Defender and Deputy Chief Public Defender, and remove for cause following notice and hearing; and submit annual report to Chief Justice, Governor and Legislature.

Alternative Revenue:

Clients of the Division of Public Defender Services are asked to pay a fee of $25 as a contribution to their representation. Division attorneys or administrative staff screen applicants for eligibility to pay the fee, and collect the fee. Revenue from the fee goes to the Division of Public Defender Services, and the fee generated $84,576 in FY 1999.

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2. Delaware

Population:	724,842	Primary Funding:	State
Density:	340.8 people per square mile	Primary System:	Public Defender
Poverty Rate:	9.5%		
Counties:	3	Death Penalty:	Yes

Indigent Defense System:

The Delaware State Public Defender represents all indigent defendants in trial and appellate cases. The Public Defender has regional office throughout the state, and the state pays all expenditures for indigent defense. The FY 2000 budget for the Delaware State Public Defender is $7,192,300. Conflict cases are primarily handled by a pool of six private attorneys who contract with the state to handle conflict cases. The average annual, flat-fee contracts are for $42,460 (per attorney), not including work on Class A felony cases (an additional $12,000), or capitol and non-capitol murder cases, which usually Adds another $20,000 per year. The contract program is administered by a circuit judge, who selects the contract attorneys.

The Delaware Criminal Justice Council used funds received from the Byrne Grant to create a statewide video conferencing system. This system links up the local Attorney General and public defender with local police departments and courtrooms. The project expedites warrant processing, bail hearings, arraignments, evidentiary hearings and pro se motions filed by inmates and reduces police transportation and time. It is also used for statewide training for the state public defender system.

3. Florida

Population:	14,399,985	Primary Funding:	Primarily State
Density:	239.6 people per square mile	Primary System:	Public Defender
Poverty Rate:	8.6%		
Counties:	67	Death Penalty:	Yes

Indigent Defense System:

In Florida, the 20 judicial circuit public defenders are publicly elected and provide representation at trial. Appellate cases are handled on a regional basis by five of these offices. Conflict cases are handled by private court-appointed counsel, and the rates vary from judge to judge, and from

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circuit to circuit. By statute, the state is responsible for public defender salaries and "the necessary expenses of the office," and the counties pay for office overhead expenses and court-appointed counsel costs. While state funds are distributed to the circuit public defender offices based on a recently restructured funding formula designed to fairly distribute the monies, some counties make more funding available for indigent defense than others. This new funding formula has contributed to increase appropriations for the Florida Public Defender Association (FPDA), a network of Florida's 20 elected circuit public defenders. Its FY 1999 state appropriation of $126 million is a 6% increase from last year's appropriation.

On October 1, 1997, the Florida Capital Collateral Representative, a state-funded entity which represented indigent capital prisoners in the state and federal post-conviction proceedings, was split into three separate Capital Collateral Regional Counsel offices covering the northern, middle and southern regions of Florida. By legislation, the three offices function independently and operate as separate budget entities.

Indigent Defense Commission:

The FPDA is governed by a Board of Directors comprised of the 20 elected public defenders in Florida, two representatives of the assistant public defender staff and one representative apiece from public defender investigative and administrative staff. The Florida Public Defender Coordination Office (FPDCO) works with the FPDA.

The FPDA engages in activities that promote and develop the public defender system in Florida. The FPCDO coordinates FPDA meetings; collects caseload and budget information from public defenders; analyzes public defender workload; prepares annual formulae which are based on caseload and attorney unit cost and used by the three branches of government and the circuit public defenders in the budget request process; monitors pertinent legislative developments; conducts training for public defender staff; and circulates pertinent case law to the elected public defenders.

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Alternative Revenue:

As of January 1, 1997, any accused person or, if applicable, a parent or legal guardian of an accused minor or accused adult tax-dependant person, who files an affidavit declaring indigency and requesting representation by the public defender must pay a $40 fee at the time the affidavit is filed. Fees collected are deposited into the Indigent Criminal Defense Trust Fund, which is administered by the state Judicial Administration Commission (JAC), and are "to be used to *supplement* the general revenue funds appropriated by the Legislature to the public defenders"(emphasis added). The JAC is required to return these funds to the 20 circuit public defender's offices "proportional[ly] to each circuit's collections." Fla. Stat. Ann. §27.52 (as amended during the 1997 legislative session by HB 1906).

As originally enacted, §27.52 contained language stating that the affidavit would be accepted without the fee if the court, after reviewing the financial information in the affidavit, reduced or waived the fee of assessed it at the disposition of the case. However, in the amended version passed in the 1997 legislative session, this language was stricken, making Florida the only jurisdiction we are aware of that does not provide a waiver mechanism for its application fee. Commentary to ABA Standard 5-7.2 states that "a defendant may be required at the time representation is provided, to make a limited financial contribution if it can be done without causing substantial hardship." Florida's statute does not allow for those facing substantial hardship to avoid payment.

In passing this legislation, the Florida state legislature took steps to help ensure that the fee would be collected from those defendants who are capable of paying it. First, the law creating the administrative fee also aims to tighten up indigency screening by expanding the affidavit which applicants for public defender services must submit in order to be appointed counsel. The 1997 amendment to §27.52 requires that the affidavit of indigency contain a statement affirming the applicant's obligation to report to the court or to the indigency examiner a change in financial circumstances. Second, the State Court Administrator's office was allocated 20 positions statewide to conduct indigency screening so that the courts are not overburdened with new responsibilities and will be able to devote adequate time to administering the screening program. Under legislation passed during the 1997 legislative session, as incentive to the clerks of the court who oversee collection of the fee, the clerks may retain two percent of the application fees collected monthly for

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administrative costs prior to remitting the remainder to the Judicial Administrative Commission In FY 1998, $1.1 million was generated from the $40 application fee, a figure which was almost matched in FY 1999, when the fee brought in $1 million.

4. Maryland

Population:	5,071,604	Primary Funding:	State
Density:	489.2 people per square mile	Primary System:	Public Defender
Poverty Rate:	8.6%		
Counties:	23	Death Penalty:	Yes

Indigent Defense System:

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. The public defender program maintains 23 regional trial offices, as well as four trial offices in metropolitan Baltimore. Additionally, the Maryland State Public Defender has a capital defense division, a collateral review division, an appeals unit and a mental health unit.

In the most recent legislative session, the public defender office received a 2% increase in its FY 1999 budget - up to approximately $40 million. Though some of the increase will be used to offset the costs of representing children in termination of parental rights cases- a new responsibility for the Maryland Public Defender Office - most of the new money is slated to help pay for computers and staffing for both a pilot community court project and a social work unit.

Indigent Defense Commission:

The Governor of Maryland appoints the three member s of the Board of Trustees of the Maryland Office of the Public Defender. Two of the three members must be active attorneys and the State Public Defender is a non-voting ex officio member. The Board is required to: study and observe the operation of the Public Defender office; coordinate the activities of district Advisory Boards; appoint the Public Defender; and advise the Public Defender on all relevant matters.

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5. Missouri

Population:	5,358,692	Primary Funding:	State
Density:	74.3 people per square mile	Primary System:	Public Defender
Poverty Rate:	10.4%		
Counties:	114	Death Penalty:	Yes

Indigent Defense System:

The state-funded Missouri State Public Defender system provides representation to indigent defendants in all criminal cases. The State Public Defender has three divisions that provide representation to indigent defendants at trial, appeals and in capital proceedings. The Public Defender maintains 35 regional office to handle trial cases throughout the state and three appellate offices.

The Missouri State Public Defender has received substantial increases in state appropriations in recent years. In FY 1997, the organization received approximately $22.4 million from the state, an increase of 20% over their FY 1996 appropriation. Last year, the public defender office received a 10% increase, bringing its FY 1998 budget to approximately $24.8 million.

Indigent Defense Commission:

The seven members of the Public Defender Commission in Missouri are appointed by the Governor. The commission's responsibilities include: selecting the Director of the Office of the State Public Defender as well as his/her deputies; establishing employment procedures; reviewing office performance and monitoring the Director; ensuring the independence of the system through public education efforts; advising on budgetary matters; contracting with private attorneys; and approving a fee schedule for assigned counsel.

6. New Jersey

Population:	7,987,933	Primary Funding:	State
Density:	1,042 people per square mile	Primary System:	Public Defender & Contract Defender
Poverty Rate:	9.0%		
Counties:	21	Death Penalty:	Yes

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Indigent Defense System:

The state-funded New Jersey State Public Defender is a statewide program which is responsible for all indictable felony offenses and juvenile delinquency cases in New Jersey's thirteen count-based superior courts, along with direct appeals from these cases. The Public Defender maintains regional offices covering each of New Jersey's 21 counties.

Until recently, the state's counties were responsible for providing counsel to indigent defendants at the municipal level in misdemeanor cases. Despite a state supreme court decision in which the court held that attorneys representing indigent defendants in municipal court are not entitled to compensation, *Madden v. Delran Twp.*, 126 N.J. 591 (1992), in 1997, legislation established a funding mechanism for those municipal courts which did not employ a municipal public defender. (As of 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.) The legislation authorizes the collection of a waivable application fee of up to $200, payable over a four-month period, for individuals seeking the services of a municipal public defender. Funds collected through the application fee are deposited in a dedicated fund to be used exclusively to meet all cost incurred in providing indigent defense services at the municipal court level, including the cost of expert investigation and testimony.

Alternative Revenue:

In 1991, the New Jersey legislature, facing a budget crisis, directed the state public defender to consider alternative sources of revenue. In September of that year the public defender instituted a $50 administrative fee to be collected from its clients. N.J. Admin. Code Tit. 15 §16-3(f). All of the fee revenue collected by the public defender is used to offset the cost of providing indigent defense services. The state public defender already had an automated billing system for reimbursements and liens, so an introduction of an up-front fee required little additional overhead cost to the system. Prospective clients are told about the fee during either their initial contact with the public defender's office or when they apply for public defender representation. The fee is collected by the attorney or investigator who has the first contact with the client.

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The New Jersey Office of the Public Defender collects the $50 up-front fee from approximately 6-7% of those assessed. Revenue generated by the fee has remained relatively flat since its inception in 1991. In FY 1992, $187,000 was collected. Since the revenue has increased at a slow pace. The fee brought in $210,020 in FY 1997 and increased by less than 1%, to $211,555, in FY 1998.

In the 1997 legislative session a second public defender application fee was authorized in New Jersey, this one intended to cover the cost of a newly passed law requiring that each of New Jersey's 537 municipal courts employ at least one salaried municipal public defender. New Jersey's state-funded public defender system is responsible for all indictable offenses in the state's thirteen county-based superior courts, but no state monies are used to find indigent defense representation at the municipal level. New Jersey's municipal courts have jurisdiction over non-indictable felonies, misdemeanors, DWI/DUI cases, and traffic violations. Before the municipal public defender bill passed, only 383 of New Jersey's municipal courts employed a municipal public defender. The remaining 154 municipal courts required involuntary pro bono services of members of the private bar to represent indigent defendants in municipal court. Since January 1, 1998, a $200 application fee has been required of all applicants for representation by a municipal public defender. The revenue is used exclusively to meet the costs incurred by counties in providing the services of a municipal public defender, including the cost of investigation. SB 1886, the legislation authorizing the $200 fee, supplemented Title 2B of the New Jersey Statutes and repealed N.J.S 2B §12-28. The Spangenberg Group has not been able to gather any data regarding how much revenue these municipal court fees generate, due to the lack of any centralized information pertaining to these fees.

7. New Mexico

Population:	1,713,407	Primary Funding:	State
Density:	12.5 people per square mile	Primary System:	Public Defender & Contract Defender
Poverty Rate:	22.4%		
Counties:	33	Death Penalty:	Yes

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Indigent Defense System:

New Mexico's state-funded Public Defender Department provides primary representation in trial and appellate cases throughout the state. Approximately half of the state's counties (the more populous ones) are served by one of the State Public Defender Department's regional trial offices; private attorneys who contract with the Department represent indigent defendants in the remaining counties.

The New Mexico Public Defender Department's expenditure for FY 1999 was $21,564,800.

Alternative Revenue:

Since 1993, indigents in New Mexico have been asked to pay a $10 application fee. Revenue from the fee is deposited into the "Public Defender Automation Fund," which is used to buy and maintain computer hardware and software for the New Mexico Public Defender Department. In FY 1998, the fee brought in $114,683.

8. North Carolina

Population:	7,322,870	Primary Funding:	State
Density:	136.1 people per square mile	Primary System:	Assigned counsel with some Contract Defenders & Public Defenders
Poverty Rate:	12.5%		
Counties:	100	Death Penalty:	Yes

Indigent Defense System:

In North Carolina, the state pays for all indigent defense expenditures. Trial level representation is provided at the local level; each county has the responsibility of organizing its system. A handful of the state's 100 counties employ the public defender model while the rest use assigned counsel or contract defenders. Appellate representation is provide by the State Appellate Defender. The AOC spent $59,622,732 on indigent representation in FY 1998.

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9. Ohio

Population:	11,172,782	Primary Funding:	Mixed State & County
Density:	264.9 people per square mile	Primary System:	Public Defender
Poverty Rate:	11.6%		
Counties:	88	Death Penalty:	Yes

Indigent Defense System:

The Ohio Public Defender Commission provides direct representation in all capital trials, direct appeal and state posy-conviction cases. The Commission also oversees the delivery of non-capital trial level services throughout the state. 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.

Ohio's indigent defense system is funded through a combination of county and state monies. As mentioned above, the state-funded Public Defender Commission reimburses counties up to 50% of their expenditure, but the rate of reimbursement fluctuates each year, depending on the Commission's budget. Generally, it is between 40% and 50% of the amount paid by the county. This program is supported in large measure by an $11 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. For FY 2000, the Ohio Public Defender Commission has an operating budget of $62,393,829. Capital cases are handled by county public defenders or appointed counsel.

Indigent Defense Commission:

The nine members of the Ohio Public Defender Commission, five of whom are appointed by the Governor and four by the Ohio Supreme Court, provide, supervise and coordinate indigent legal representation in the state. The Commission's members establish rules for the Public defender regarding issues such as compensation, indigency standards and caseloads, as well as approve Public Defender budgets. The Commission chair and at least four Commission participants must be bar members.

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Alternative Revenue:

In each of the 11 counties in Ohio where indigent defense programs are administered by the State Public Defender, it has been determined that an application fee will be implemented by January 1, 2000. The fee will be $75, and the revenue will revert back to the county general fund. County public defenders will be responsible for screening defendants for eligibility and actually collecting the fee.

Many of Ohio's other counties have also established up-front fees. The amount and administration of the fee, however, varies from county to county.

10. Oklahoma

Population:	3,300,902	Primary Funding:	Mixed State & County
Density:	45.8 people per square mile	Primary System:	Public Defender & Contract Defender
Poverty Rate:	14.8%		
Counties:	77	Death Penalty:	Yes

Indigent Defense System:

In Oklahoma's two largest counties, Tulsa and Oklahoma (Oklahoma City), the counties fund indigent defense services at the trial and direct appeal levels. Both counties have full-time public defender offices.

In 1991, the Oklahoma legislature created and funded a new state agency for providing indigent defense services, the Oklahoma Indigent Defense System (OIDS). OIDS, with its five-member Board of Directors, is responsible for providing indigent defense services in 75 of Oklahoma's 77 counties. OIDS has separate, staffed capital trial, capital direct appeal, non-capital direct appeal and capital state post-conviction divisions. The majority of non-capital trial cases are handled by attorneys working under contract with OIDS. Impetus for the statewide system was a 1990 Oklahoma Supreme Court decision which held that the compensation system in effect for court-appointed counsel at the trial level was unlawful as an unconstitutional taking of property of court-appointed attorneys. *State v. Lynch*, 796 P2d 1150 (Okla. 1990).

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Following the 1997 legislative session, OIDS opened three non-capital trial satellite offices, and, in the 1998 legislative session, received funds to expand one of the three offices. For FY 2000, OIDS received a budget of $14,883,111.

Indigent Defense Commission:

The Governor of Oklahoma selects each of the five members who serve on the Oklahoma Indigent Defense System Board. At least three of the members must be lawyers. This Board makes policies for indigent defense programs, approves a budget for OIDS, appoints an advisory council of indigent defense attorneys, establishes policies on maximum caseloads and appoints the OIDS Executive Director.

Alternative Revenue:

Oklahoma requires any indigent defendant requesting representation by the Oklahoma Indigent Defense System to pay a $40 application fee to the court clerk. Today, all the revenue generated by the fee is allocated to the Court Clerk's Revolving Fund. However, at the fee's inception in 1992, 90% of the then-$15 fee went to the Indigent Defense Revolving Fund and just over 10% reverted back to the Court. This distribution scheme changed in 1996, when the fee was raised to $40 and statutory language specified that the first $20 collected should go to OIDS, and the balance would be deposited in the Court Clerk's Revolving Fund. In November of 1997 the state changed again, this time declaring that all revenue brought in would be transmitted to the Court Clerk's Revolving Fund.

11. Oregon

Population:	3,203,735	Primary Funding:	State
Density:	29.6 people per square mile	Primary System:	Public Defender, Assigned Counsel & Contract Defender
Poverty Rate:	12.8%		
Counties:	36	Death Penalty:	Yes

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Indigent Defense System:

In Oregon, the state provides all funding for indigent defense services. At the trial level, the Indigent Defense Services Division of the Administrative Office of the Courts administers contracts with each county program, which may choose a public defender, private bar contract or court-appointed counsel system. The State Public Defender handles direct appeals.

Alternative Revenue:

In 1997, ORS 151.487 was revised and became the primary vehicle for a new statewide program allowing courts to order persons who apply for court-appointed counsel in any case to pay in full or in part "the administrative costs of determining the eligibility of the person and the cost of legal and other services to be provided" prior to the conclusion of the case. As a result, the state implemented a recoupment program and a $20 application fee. The court must first determine whether the person applying for appointed counsel has thee financial ability to pay such costs without creating substantial hardship in providing basic economic necessities to the person or the person's dependent family. As in other states, failure to obey a court order to pay an application fee or contribution amount cannot be used as grounds for contempt or the withdrawal of court-appointed counsel. However, application fee and contribution amounts ordered by the courts are enforceable against the person "as if the order is a civil judgement," and a court's decision to order or to not order payment of either cost is subject to review at any time. Lastly, the State Court Administrator's guidelines and standards for operation of this new program prohibit delay in the appointment of counsel to individuals eligible for indigent defense services which may arise if the individuals disagree with the decisions regarding their eligibility or contribution amount.

The Oregon application fee and contribution program came into effect in November 1998, and has been operating in five counties on a pilot basis. The program is expected to expand to the entire state as of January 1, 2000. The application fee was set at $20 and all revenues generated go to the State Court Indigent Defense Account. The Office of the State Court Administrator is not able to discern between revenues generated by the application fee and money brought in by client contribution. These two sources generated approximately $360,000 in the five counties in FY 1999.

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12. Tennessee

Population:	5,319,654	Primary Funding:	Primarily State Some County
Density:	118.3 people per square mile	Primary System:	Public Defender
Poverty Rate:	14.5%		
Counties:	95	Death Penalty:	Yes

Indigent Defense System:

In Tennessee, with the exception of Shelby County (Nashville) and Davidson County (Memphis), which have their own respective county public defender offices funded through a combination of state and local monies, the state funds indigent defense and each judicial district has an independent public defender office. The Tennessee District Public Defenders Conference oversees the delivery of indigent defense services throughout the state. Its FY 1999 appropriation was $21 million, 4.7% increase from FY 1998. Another program, the Office of the Post-Conviction Defender, represents indigent defendants convicted of capital offenses who are seeking state post-conviction relief.

In the 1998 legislative session, the state legislature appropriated funds to conduct a weighted caseload study for judges, prosecutors and public defenders; this study was completed in spring of 1999.

Indigent Defense Commission:

The Tennessee Indigent Defense Commission of the Supreme Court of Tennessee is composed of 11 members who are appointed by the state Supreme Court. Duties of the Commission include: appointing officers; adopting rules for operation of the Commission; developing a comprehensive plan for indigent defense services in the state court system; collecting case information; determining reasonable caseloads for district defenders; set standards for criminal defense attorneys representing indigent defendants; setting compensation for assigned counsel; setting annual budget for court-appointed counsel expenditures; and developing a voucher review process.

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The Post-Conviction Defender Commission has nine members, appointed by the Governor, lieutenant governor, the Speaker of the House of Representatives, and the Supreme Court of Tennessee. Their tasks are to appoint the Post-Conviction Defender and prepare an annual budget for the Office of the Post-Conviction Defender.

Alternative Revenue:

Since July 1, 1997, Tennessee has required indigent defendants and parents or guardians of indigent minors facing juvenile proceedings to pay a $50 administrative fee. If a court finds that the defendant or guardian can pay more than $50, the fee can be increased to an amount not to exceed $200. Court clerks collect the fee, and 5% of the revenue reverts back to the court, while the other 95% is deposited into the state's general fund. In calendar year 1998, the fee generated $543,300.

13. Wisconsin

Population:	5,159,795	Primary Funding:	State
Density:	90.1 people per square mile	Primary System:	Public Defender
Poverty Rate:	8.6%		
Counties:	72	Death Penalty:	No

Indigent Defense System:

Wisconsin has an integrated state public defender system with regional trial offices providing trial and appellate representation throughout the state.

Indigent Defense Commission:

Wisconsin has a nine member commission appointed by the Governor and approved by Senate. At least five must be attorneys with the Chair elected by the Board. The commission's duties include: Appoint state Public Defender and establish salary; Approve budget and submit to Governor; Promulgate standards of indigency; Promulgate rules for assignment of private counsel in regard to standards, payments and pro bono programs; Perform all other duties necessary and incidental; Contract with federal agencies and local public defender organizations for provision of services.

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Alternative Revenue:

Technically there is no up-front application fee for indigent defendants seeking court-appointed representation in Wisconsin, but there is a bifurcated reimbursement system that in some ways resembles an application fee.

Under Wisc. Stat. Ann §977.075 (West Supp. 1996), the Board of the Office of the State Public Defender (SPD) is required to establish, by rule, fixed amounts for the cost of legal representation. Under the program adopted in August 1995, SPD staff screen defendants for indigency and inform them that they are expected to pay a per-charge fee for representation rendered. Each misdemeanor charge is assessed at $200, and felony representation runs $400 per charge. An appeal of a case that went to trial will cost the defendant $1,000, while reimbursement for representation in an appeal where there was no trial runs $400. However, under the bifurcated nature of the program, defendants can elect to pre-pay the reimbursement charges at substantially reduced rates, if they do so within 30 days from application for counsel. Felony and misdemeanor fees can be pre-paid at a rate of $50 per offense, while reimbursement for representation in an appellate trial case can be pre-paid at $100. Thus, a defendant facing two misdemeanor charges can elect to pay $100 within 30 days from appointment or pay $400 at the disposition of the case. If the defendant elects to pay a fee in installments, he or she loses out on the pre-payment discount. Following the screening interview, defendants are given a payment envelope.

As in other state, defendants will not be denied counsel if they are unable to pay the fee, but their accounts will be turned over to a collection agency retained by the SPD. All monies collected revert back to the public defender.

Start-up costs for the program were minimal, consisting of transferring two positions from public defender field offices to the central office to handle the payments. Initial projections for revenue generated by the program were forecast at $7 million, based on the number of charges defended by public defenders in past years. Actual collections totaled $626,000 in FY 1996, and increased to $825,900 in FY 1998.

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14. Vermont

Population:	588,654	Primary Funding:	State
Density:	60.8 people per square mile	Primary System:	Public Defender & Contract Defender
Poverty Rate:	10.6%		
Counties:	14	Death Penalty:	No

Indigent Defense System:

Vermont has a state funded public defender system with full-time staff offices in approximately half of the counties and contract counsel in the remaining counties providing trial and appellate representation. The Vermont Office of the Defender General reported a slight decrease in its FY 1998 budget appropriation for general operations ($5,304,722 down from $5,355,000). However, two separate, one-time appropriations - one for $132,000 to address a growing backlog in termination of parental rights cases, the other $175,000 for computer upgrades- gave the Office of the Defender General a net gain in its FY 1998 appropriation. Funding rates continued to increase through 2000, as the Defender General's budget for the current fiscal year is $6,321,581.

Alternative Revenue:

As of March 1996, Vermont has imposed a $25 fee on individuals applying for representation. The money collected by the fee is deposited into the public defender special fund, which is used almost exclusively to support public defense in Vermont. In FY 1998, the fee brought in $255,172. Juvenile clients requiring counsel are not required to pay the fee.

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Appendix G

Additional Comparative Data

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The 6th/24th Circuit Public Defender Corporation began at the start of FY 1995. Between FY 1994 and FY 1998, the circuits indigent defense caseload increased by 48.82%. This occurred at a time that the state's total indigent defense caseload increased by only 17.32% (from 31,974 to 37,511).

Caseload	1994	1995	1996	1997	1998
PD		2,592	4,074	4,666	5,227
AC	4,433	2,751	1,825	1,636	1,370
Total	4,433	5,343	5,899	6,302	6,597

Yet, during this same time period, the state's indigent defense expenditure grew by 23.37% (from $13,423,484 to $16,561,218) while the 6th/24th circuit increased by only 10.63%. In this circuit, we believe it is fair to say that the public defender corporation saved money for the state while ensuring that eligible clients received representation.

Expenditure	1994	1995	1996	1997	1998
PD		$679,860.00	$745,502.00	$853,055.00	$883,180.00
AC	$1,052,834.00	$726,034.00	$454,068.00	$425,971.00	$281,555.00
Total	$1,052,834.00	$1,405,894.00	$1,199,570.00	$1,279,026.00	$1,164,735.00

The other circuit that instituted a Public Defender Corporation during this time period was the 5th circuit. Because that PDC was established after the start of FY 1997, we believe that the real cost savings will not be felt until FY 1999 and beyond. As indicated in this report, we do not believe that enough of the indigent defense data is reliable after FY 1997 to draw definite conclusions. Still, the data that we do have indicated that the 5th circuit's indigent defense caseload has not been affected by the introduction of the PDC, though the indigent expenditure has increased.

Caseload	1994	1995	1996	1997	1998
PD				346	662
AC	640	739	851	469	199
Total	640	739	851	815	861

Expenditure	1994	1995	1996	1997	1998
PD				$337,950.00	$371,200.00
AC	$370,089.00	$369,747.00	$399,010.00	$270,033.00	$130,607.00
Total	$370,089.00	$369.747.00	$399,010.00	$607,983.00	$501,807.00

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Appendix H

State Indigent Defense Commission Table

STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
ALABAMA	None	Not applicable	None	Not applicable
ALASKA State Public Defender Agency (Executive Agency, Department of Administration)	None	Not applicable	Appointed by Governor from nominations of Judicial Council. Confirmed by majority of Legislature in joint sitting. Four-year term; renewal requires Legislative confirmation. Member of bar. Governor can remove for good cause.	Appoint, supervise and control assistant public defenders and other employees. Submit annual report to Legislature & Supreme Court on number and types of cases, dispositions and expenditures. Full-time; private practice prohibited.
ALASKA Office of Public Advocacy (Executive Agency, Department of Administration)	None	Not applicable	Public Advocate appointed by Governor. Serves at will of Governor.	Provides Guardians Ad Litem for abused and neglected children and status offenders. Provides representation in conflict cases from the Alaska Public Defender Agency. Acts as Public Guardian and Conservator for citizens with disabilities.
ARIZONA	None	Not applicable	None	Not applicable
ARKANSAS Arkansas Public Defender Commission (Executive Agency)	Seven members appointed by Governor: at least four licensed Arkansas attorneys experienced in criminal defense; at lease one County Judge. Governor designates one member as Chair. No more than two residents of same congressional district. No two members from same county. Serve five-year terms.	Establish policies and standards for Public Defender System. Approve budgets for trial public defender offices. Require annual reports from trial public defender offices. Appoint Executive Director. Evaluate performance of Executive Director, Capital, Conflicts & Appellate Office, trial public defenders and private assigned counsel. Maintain list of private attorneys willing and qualified to accept capital case appointments. Authorize contracts with trial public defenders.	Executive Director appointed by Commission. Must have experience in defense of capital cases. Serves at will of Commission.	Supervise capital conflict and appellate office. Maintain records of operation of public defender system. Prepare budget for Commission. Implement attorney performance procedures pursuant to Commission's standards. Maintain court opinions, statutes, etc. for use by trial pubic defenders and court- appointed counsel. Maintain appellate brief bank. Convene training program related to public defender system. Prepare annual report.
CALIFORNIA California Habeas Resource Center (Judicial Branch)	Five-member Board of Directors confirmed by the Senate. Each of the state's five Appellate Projects shall appoint one board member; all must be attorneys. No lawyer working as judge, prosecutor or in a law enforcement capacity is eligible. Four-year terms.	Appoint Executive Director.	Executive Director appointed by Board of Directors. Must be member of California State Bar during the five years preceding appointment and possess substantial experience in the representation of accused or convicted persons in criminal or juvenile proceedings during that time. Serves at the will of the Board.	Hire up to 30 attorneys to represent any indigent person convicted and sentenced to death in California in post-conviction actions in state and federal courts. Work with the Supreme Court to recruit attorneys to accept death penalty habeas case appointments and to maintain a roster of attorneys so qualified. Employ investigators and experts to provide services to appointed attorneys in capital post-conviction cases. Develop and maintain brief bank for use by appointed counsel. Review case billings and recommend compensation of members of the private bar to the court. Prepare annual report on the status of appointment of counsel for indigent prisoners in capital post-conviction cases.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
COLORADO Office of State Public Defender Commission (Judicial Agency)	Five members appointed by Supreme Court. No more than three from same political party. Three attorneys, two non-attorneys. No judges, prosecutors, public defenders or law enforcement personnel.	Appoint State Public Defender and discharge for cause.	State Public Defender appointed by Commission. Five-year, renewable term. Member of bar five years prior to appointment. Full-time position.	Employ and set compensation for all employees (rates approved by Supreme Court); establish regional offices as necessary; provide commensurate legal services to indigents accused of crimes as are available to non-indigents, independently of any political consideration or private interests.
COLORADO Office of Alternate Defense Counsel (Judicial Agency)	Nine members appointed by Supreme Court. No More than five from same political party. Six lawyer members, each representing one of the six congressional districts, all of whom are Colorado licensed lawyers practicing criminal law. Three members citizens not licensed to practice law in Colorado. No member at any time a judge, prosecutor, pubic defender or employee of a law enforcement agency. Serve four-year terms.	Select an Alternate Defense Counsel; serve as an advisory board to the alternate defense counsel; advise alternate defense counsel on development and maintenance of competent and cost-effective representation. Shall meet at least annually.	Alternate defense counsel appointed by Commission to renewable five-year term. Must be licensed to practice law in Colorado for at least five years prior to appointment. May not hold private practice. Serves at will of the Commission.	Employ and set compensation for all employees. Provide legal representation to indigent persons and partially indigent persons in circumstances when the state public defender has a conflict of interest by contracting with licensed attorneys and investigators. Legal services provided to indigents shall be commensurate with those available to non-indigents and independent of any political considerations or private interests.
CONNECTICUT Public Defender Services Commission (Autonomous body within judicial department for fiscal and budgetary purposes only.)	Seven member: two judges appointed by Chief Justice; one member appointed by each; Speaker of House, President Pro Tem of Senate, minority leader of House, minority leader of Senate. Chairman appointed by Governor. Three-year term. No more than three, other than chairman, from same party. Two of four non-judicial members non-attorneys. No public defenders.	Adopt rules for Division of Public Defender. Establish a compensation plan comparable to state's attorneys. Establish employment standards. Appoint Chief Public Defender and Deputy Chief Public Defender. Remove Public Defender and Deputy Public Defender for cause following notice and hearing. Submit annual report to Chief Justice, Governor and Legislature by October 15. (See duties of public defender.)	Chief Public Defender appointed by Commission to a four-year term. Member of state bar for five years. Full-time position.	Direct and supervise work of all personnel. Submit annual report, including data and recommendations for changes in law, to Commission by September 15. (Note extensive list in Sec. 51-291.)
DELAWARE Office of the Public Defender (Executive Agency)	None	Not applicable	Public Defender appointed by Governor. Six-year term. Qualified attorney licensed in Delaware.	Appoint assistant attorneys, clerks, investigators and other employees as necessary and set salaries. Determine indigency prior to arraignment. Prepare annual report.
DISTRICT of COLUMBIA D.C. Public Defender Service (independent agency)	Eleven member Board of Trustees. Appointed by panel of two U.S. Judges, two D.C. Judges and Mayor of D.C. Three-year term; not more than two consecutive. No judges. Four of Eleven members non-attorney residents of D.C.	Establish general policy but shall not direct conduct of particular cases. Submit fiscal year report to Congress, Chief Judges of U.S. Courts and D.C. Courts and D.C. Mayor. Arrange annual independent audit. Quarterly reports to court on matters relating to appointment systems. Appoint Director and Deputy Director and set their salaries.	Director appointed by Trustees. Serve at pleasure of Trustees. Member of D.C. Bar. No private practice.	Employ and supervise personnel. Set compensation not to exceed salary paid to U.S. Attorneys and staff.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
FLORIDA Florida Public Defender Association (FPDA); Florida Public Defender Coordination Office (FPDCO)	None per se, but the FPDA is governed by a Board of Directors comprised of the 20 elected public defenders in Florida, two representatives of the assistant public defender staff and one representative apiece from public defender investigative and administrative staff. The FPDCO works with the FPDA.	The FPDA engages in activities that promote and develop the public defender system in Florida. The FPDCO coordinates FPDA meetings; collects caseload and budget information from public defenders; analyzes public defender workload; prepares annual funding formulae which are based on caseload and attorney unit cost and used by the three branches of government and the circuit public defenders in the budget request process; monitors pertinent legislative developments; conducts training for public defender staff; and circulates pertinent case law to the elected public defenders.	Not applicable	Not applicable
GEORGIA Georgia Indigent Defense Council (separate agency within Judicial Branch)	Fifteen member council. Supreme Court selects members: ten lawyers; three lay persons; and two county commissioners. Selected for four-year terms.	Recommend standards and guidelines for local programs. Administer state funds to local public defender programs that comply with standards. Support local defenders. Provide local attorneys with technical, clinical help and training. Prepare budget.	Director selected by Council.	Duties and responsibilities not contained in Statute.
HAWAII Office of State Public Defender (Executive Agency, Department of Budget and Finance)	Five member Defender Council. Appointed by Governor. Serve at Governor's pleasure. One member from each county. Chairman selected by members.	Council shall be governing body of Office and State Public Defender. Shall appoint Public Defender. Approve employment decision of Public Defender.	State Public Defender appointed by Council. Four-year term. Qualified to practice law in Hawaii. Full-time position.	Subject to approval of Council: employ assistant public defenders, investigators and other support personnel. Assistant public defenders may be part-time and engage in private practice other than criminal law.
IDAHO State Appellate Public Defender (The Department of Self-Governing Agencies)	None	Not applicable	State Appellate Defender appointed by the Governor with advice and consent from the Senate from a list of 2-4 persons recommended by a Committee comprised of the President of the Idaho State Bar Association, Chairmen of the Senate Judiciary and Rules Committee, and a citizen at large appointed by the Governor. The Chief Justice of the Idaho Supreme Court, or her designee, is ex officio member of the Committee. Public defender must be attorney licensed to practice in Idaho with at least five-year experience practicing law. Four-year term; removed only for good cause.	Provide appellate and post-conviction representation to indigent defendants convicted of felony offenses in those counties which participate in the capital crimes defense fund; prepare annual report. Employ deputy state appellate defenders and other employees. Adopt necessary policies or rules.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
ILLINOIS Office of State Appellate Defender (agency of the Judicial Department)	Board of Commissioners. Nine members. Appointed by various courts and bars. Governor appoints Chair. Serves one six-year term.	Approve budge. Advise Appellate Public Defender on policy. Can recommend dismissal of the Appellate Public Defender.	State Appellate Defender appointed by Illinois Supreme Court. Four-year term. Qualified to practice law in Illinois.	Provide representation in criminal appeals. Establish offices around the state. Train and assist trial level defenders.
INDIANA Public Defender Commission (Policy Board for Capital and Non-Capital Representation) (Judicial Agency)	Public Defender Commission: Eleven members: three appointed by Governor; three appointed by Chief Justice; one appointed by Board of Indiana Criminal Justice Institute; two House members appointed by the Speaker of the House; two Senate members, appointed by Speaker Pro Tempore of the Senate. Four-year term. No law enforcement officers or court employees. Members designate one member Chair.	Set standards for indigent defense services in capital and non-capital cases. Adopt guidelines and fee schedule under which counties may be reimbursed. Make recommendations concerning the delivery of indigent defense services in Indiana. Prepare annual report on operation of public defense fund.	Not Applicable	Not applicable
INDIANA Public Defender of Indiana (State post-conviction public defender) (Judicial Agency)	None	Not applicable	Public Defender appointed by Supreme Court. Four-year term. Resident. Practicing lawyer in Indiana for three years.	Represent all indigent defendants in post-conviction proceedings.
IOWA Office of the State Public Defender (independent agency within Executive Branch)	None	Not applicable	State Public Defender appointed by Governor. Four-year term. Licensed to practice law in Iowa.	Oversee all 18 public defender offices. Coordinate non-public defender indigent defense program. Contract with attorneys when public defender unable to take case.
KANSAS State Board of Indigent Defense Services (Executive Branch Agency)	Nine members: five lawyers, four non-lawyers. Appointed by Governor and confirmed by Senate. Two members from First Congressional District, one of whom is a registered Kansas lawyer, and at least one member from each other Congressional District. At least one (and up to five) registered Kansas lawyer from each county with over 100,000 population. No members may be judicial or law enforcement personnel. Three-year terms.	Appoint Director and public defenders. Maintain statistics on indigent defense representation. Conduct training programs. Establish public defender offices. Enter into contracts with attorneys to provide indigent defense representation and with cities or counties for misdemeanor representation. Provide technical assistance to public defenders and private attorneys.	Board appoints Director who must be licensed in Kansas and demonstrate commitment and ability in criminal law.	Serve as Chief Executive Officer of Board. Supervise operation, policies, procedures of Board. Prepare annual report.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
KENTUCKY Department of Public Advocacy (independent state agency within Executive Branch) Public Defender Commission (Policy board for capital and non-capital representation) (Judicial Agency)	Nine appointed members plus deans of Kentucky law schools. Two members appointed by Governor. One by speaker, one by president of the senate, two by Supreme Court; two criminal lawyers appointed by Governor from list of five submitted by Bar Association, one appointed by Governor from list submitted by Kentucky Protection and Advocacy Advisory Board. Four-year term. No prosecutors or law enforcement officials. Chair elected by Commission to one-year term. Also a 17-member citizen advisory board appointed by the Public Advocate.	Recommend to Governor three attorneys as nominees for Public Advocate. Assist Public Advocate in selecting staff. Provide general supervision of Public Advocate and review performance. Engage in public education and generate political support. Review and adopt annual budget. Not interfere with handling of cases.	Public Advocate appointed by Governor from nominees submitted by Commission. Member of Kentucky Bar with five years experience. Four-year term.	Appoint Deputy Public Defender. Appoint assistant public defenders and other personnel. Serve as ex officio, non-voting member of Commission. Appoint 17-member Advisory Board for Protection and Advocacy Division.
LOUISIANA Louisiana Indigent Defender Program (separate agency within Executive Branch created by Supreme Court Rule)	Seven to fifteen members. Appointed by Chief Justice of Supreme Court with concurrence of majority of justice. Renewable three-year terms. One member from each of the six Supreme Court districts. One additional member from First Supreme Court District. Not more than three non-lawyer members. At least three experienced criminal lawyers.	Members elect Chair. Establish uniform standards and guidelines for statewide program. Subdivide state into regions. Select most appropriate system for delivery in each region. Select regional full-time public defenders. Set policy for the Expert Witness/Testing Fund and the District Assistance Fund. Set eligibility standards and guidelines for district defender boards to receive Expert Witness/Testing and District Assistance Funds.	Chief Executive Officer selected by Board. Attorney with five years prior experience in criminal practice. Board sets term.	Supervise attorneys in Appellate Division and Capital Litigation programs. Manage monies in Expert Witness/Testing Fund and District Assistance Fund. Assist Board in enforcing its standards and guidelines.
MAINE	None	Not applicable	None	Not applicable
MARYLAND Office of the Public Defender (Executive Agency)	Three-member Board of Trustees; two must be active attorneys. Appointed by Governor. Three-year term. Chair designated annually by Trustees.	Study and observe operation of Public Defender office. Coordinate activities of district Advisory Boards. Appoint Public Defender. Advise Public Defender on all relevant matters.	Public Defender appointed by Board of Trustees. Term is at the pleasure of Trustees. Attorney admitted in Maryland plus five years in practice.	Appoint Deputy Public Defender with Board approval. Appoint First District Defender in each judicial district. Appoint assistant public defenders with advice of District Defenders. Appoint other employees. Maintain at least one office in each district. General responsibility for operation of all offices. Maintain records. Supervise district defenders' maintenance of local attorney panels.
MASSACHUSETTS Committee for Public Counsel Services (independent agency; Judicial Branch for budget purposes only)	Fifteen members. Appointed by Justices of Supreme Judicial Court. Three-year term. Chair elected by the Committee.	Establish standards for public counsel and private counsel divisions. Establish uniform standards of indigency. Establish guidelines for training and for qualification and removal of counsel in public and private divisions. Prepare annual report. Appoint chief counsel and two deputies. Extensive list of other duties and responsibilities enumerated by Statute.	Chief Counsel appointed by Committee. Attorney. Serves at pleasure of Committee.	Overall supervision of various divisions of committee. Perform duties as defined by the Committee. Authorize all payments certified by judges for private counsel.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
MICHIGAN State Appellate Defender Office, Appellate Defender Commission (agency of Judicial Branch)	Seven members appointed by Governor. Two recommended by Supreme Court; one recommended by Court of Appeals; one recommended by Michigan Judges Association; two recommended by State Bar; one non-attorney. Four-year term. No member a sitting judge, prosecutor or law enforcement officer.	Choose State Appellate Defender. Develop appellate defense program. Develop standards for program. Maintain list of attorneys willing and qualified for appointment in indigent appellate cases. Provide CLE training for attorneys on list.	State Appellate Defender chosen by Commission. Can only be removed for cause.	Provide appellate representation. Maintain a manageable caseload. Prepare and maintain brief bank available to court-appointed attorneys who provide appellate services to indigents.
MINNESOTA State Board of Public Defense (separate agency within Judicial Branch)	Seven members. One district court judge appointed by Supreme Court. Four attorneys familiar with criminal law but not employed as prosecutors, appointed by Supreme Court. Two public members appointed by Governor.	Elect Chair and appoint State Public Defender. Chair may appoint Chief Administrator. Prepare annual report. Recommend budget for Board, Office of State Public Defender and Pubic Defense Corps. Establish procedures for distribution of funds for public defense. Set standards for state and district public defenders and court-appointed system.	State Public Defender appointed to four-year term. Full-time position.	Provide appellate and post-conviction proceeding representation in all indigent cases. Assist in trial representation in conflict of interest cases when requested by a district public defender or appointed counsel. Conduct training programs.
MISSISSIPPI Public Defender Commission of the State of Mississippi	Nine members, no active prosecutors may serve. The Governor, Lieutenant Governor, Speaker of the House of Representatives, Chief Justice of the Supreme Court of Mississippi, Conference of Circuit Judges of the State of Mississippi , Conference of County Court Judges of the State of Mississippi, President of the Mississippi Bar, President of the Magnolia Bar and the President of the Public Defenders Association each appoint one member. The Chairman of the Senate Judiciary Committee and House of Representatives Judiciary B Committee, or their designees, serve as legislative liaisons and non-voting members. Members serve three-year terms.	Appoint an Executive Director of the Statewide Public Defender Systems; establish, implement and enforce policies and standards for a comprehensive and effective public defender system throughout the state of Mississippi. The Commission may delegate to the Executive Director, in whole or in part, these duties.	Executive Director shall be an experienced criminal lawyer, licensed to practice law in Mississippi for four years prior to appointment.	Commission's duties, which it may delegate to the Executive Director, include: appoint a District Defender in each circuit court district; supervise the Conflicts and Appellate Divisions; develop indigency eligibility and caseload standards; establish qualifications and performance standards for all attorneys working for the statewide systems; re-assign conflict or overload cases from one district office to another; maintain lists of attorneys willing and able to accept appointments to individual cases, including capital cases; provide CLE and training seminars; compile and maintain a law library and brief bank for district defenders and private attorneys participating in the Statewide Public Defender System; assume all budgeting and reporting responsibilities for the system.
MISSOURI Office of State Public Defender (independent department in Judicial Branch)	Public Defender Commission: Seven members: four lawyers; no more than four from same party. Appointed by Governor with advice and consent of Senate. Six-year term. State Public Defender is ex officio member without vote. Chair elected by members.	Select director and deputies. Establish employment procedures. Review office performance and monitor director. Public education to ensure independence of system. Advise on budgetary matters. Contract with private attorneys. Approve fee schedule for assigned counsel.	Director appointed by Commission. Four-year term. Attorney with substantial criminal law experience, also experienced in personnel administration.	Administer and coordinate operation. Direct and supervise work of employees. Submit annual report of budget to Commission. Supervise training. Contract out for legal services with approval of Commission.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
MONTANA State Appellate Public Defender (Executive Branch Agency)	Five members. One trial level judge, nominated by Judges Association. Three attorneys, nominated by State Bar, who must have criminal defense experience. One lay person nominated by Governor. Staggered terms, one or two years.	Appoint Appellate Public Defender. Help gather attorney list for appointments of counsel at trial and state post-conviction. Draft criminal defense standards for counsel.	State Appellate Defender hired by Commission. No term limit.	Provides representation in state post-conviction or appeals if defendant claims ineffective assistance. Help in or assume responsibility in appeals. Assume case if trial or Supreme Court judge appoints.
NEBRASKA (Executive Branch Agency)	Commission for Public Advocacy. Nine members: six members for each judicial district; chair and two positions at large. Governor appoints from list prepared by State Bar. Non-salaried. Qualified attorneys with criminal defense experience or demonstrated commitment. Budget is from general funds and recovery of one-third of expenses from Nebraska's counties.	Provide legal services and resources to assist counties in providing effective assistance to indigent persons through its capital litigation, appellate and felony resource center divisions. Select a Chief Counsel.	Chief Counsel selected by Commission. Serves at will of Commission. Five years Nebraska practice. Criminal defense experience including capital case defense.	Overall supervision of appellate, capital and major case divisions and litigation support fund. Prepare budget and annual report. Establish and administer projects and programs for the operation of the Commission. Oversee training programs.
NEVADA State Public Defender (Judicial Branch Agency)	None	Not applicable	Four-year term. Selected by Governor. Nevada Bar member.	Establish statewide system for all counties who choose to be part of state system. Oversee activities of these programs. Prepare annual budget. Annual report to legislature.
NEW HAMPSHIRE Judicial Council (Judicial Branch Agency)	State-level Judicial Council. Fourteen members. One selected from each court level: Supreme, Superior, Probate; President of the New Hampshire Municipal and District Court Justices Association (ex officio); Attorney General (ex officio); President of New Hampshire Bar Association (ex officio); representative from Superior Court Clerks; seven others appointed by Governor, four of whom must be attorneys.	The Judicial Council's responsibilities related to indigent defense include contracting with local defender corporations and individual attorneys for provision of defense services and general supervision of indigent programs in regard to: allocation of cases between public defender program and assigned counsel; performance of counsel; competence of counsel; fiscal and budgetary matters.	See below.	Executive Director's responsibilities are contained in a contract with the Judicial Council.
NEW HAMPSHIRE New Hampshire Public Defender (Judicial Branch)	The new Hampshire Public Defender is a private non-profit corporation under contract with the Judicial Council and has an oversight Board of Directors.	Select Executive Director.	The Executive Director of the New Hampshire Public Defender is selected by the corporation's board of directors.	Represent indigent defendants in criminal cases or juveniles charged as delinquents in the District, Municipal, Superior and Supreme Courts.
NEW JERSEY Office of the Public Defender (Executive Agency, Part of Division of the Public Advocate)	None	Not applicable	Appointed by Governor with advice and consent of Senate. Five-year term. Attorney, experienced in practice in New Jersey.	Appoint deputy and assistant public defenders as well as support personnel. Establish State Public Defender system for all counties. Engage and compensate assigned counsel.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
NEW MEXICO State Public Defender (Executive Department)	None	Not applicable	Chief Public Defender appointed by and serves at pleasure of Governor. Attorney active for five years prior to appointment and is experienced in defense or prosecution.	Manage all operations of department. Set fee schedule for assigned counsel. Establish local public defender districts. Appoint district pubic defenders who serve at his/her pleasure.
NEW YORK Capital Defender Office (independent agency in Judicial Branch)	Three-member Board of Directors: one appointed by the Chief Judge of the Court of Appeals; one by the temporary President of the Senate; and one by the Speaker of the Assembly. Three-year terms.	Appoint a Capital Defender. Determine, with the Capital Defender, the number of attorneys, investigators and other staff necessary to the office.	Capital Defender selected by Capital Defender Office Board of Directors.	In consultation with Board of Directors, hire attorneys as deputy capital defenders, investigators and other staff. The Capital Defender Office provides both direct representation and consultation services; it also has responsibility for determining, in consultation with the Administrative Board of the Judicial Conference, attorney qualification standards.
NORTH CAROLINA Appellate Defender Office (Judicial Branch Agency)	None	Not applicable	Appellate Defender appointed by Chief Justice.	Provide appellate representation to indigents. Maintain appellate brief bank. Provide CLE training. Consult with attorneys representing defendants in capital cases. Recruit qualified, willing attorneys for state and federal death penalty post-conviction proceedings.
NORTH DAKOTA North Dakota Legal Counsel for Indigents Commission (Judicial Agency)	Eight members. Chief Justice appoints: one county government representative recommended by North Dakota Association of Counties; one judge recommended by Chief Presiding Judge; three recommended by State Bar; and two recommended by Attorney General. Three-year terms. Chief Justice appoints Chair. State Court Administrator provides staff.	Review cost and caseload data. Prepare annual report and budget. Provide planning, guidelines and technical assistance to counties and judicial districts re: indigent defense services. Adopt guidelines for indigent defense services. Review disputed fee decisions of trial judges.	None	Not applicable
OHIO Ohio Public Defender Commission (independent commission within the Executive Branch)	Nine members. Chair appointed by Governor. Four appointed by Governor; two of whom are from each political party. Four members appointed by Supreme Court. Chair and at least four members are bar members. Four-year terms.	Provide, supervise and coordinate legal representation. Establish rules for Public Defender such as compensation, indigency standards and caseloads. Approve budgets.	State Public Defender appointed by Commission. Attorney with minimum of four years experience. State Bar member.	Appoint Assistant State Public Defender. Supervise maintenance of Commission standards. Keep records and financial information. Establish compensation procedures.
OKLAHOMA Oklahoma Indigent Defense System Board (Executive Branch Agency)	Five members for five-year terms. Appointed by Governor, subject to advice and consent of Senate. At least three lawyers. Governor designates Chair.	Make policies for indigent defense programs. Approve budget. Appoint advisory council of indigent defense attorneys. Establish policies on maximum caseloads. Appoint Executive Director.	Executive Director appointed by and serves at pleasure of Board. Licensed as Oklahoma attorney for four years. Experienced in criminal defense.	Develop state system, with exception of Oklahoma and Tulsa counties. Prepare system budget. Keep list of private attorneys for capital and non-capital case appointments. Advisor to indigent defenders. Act on system's behalf in Legislative efforts. Conduct training.

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STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
OREGON State Public Defender Office (agency of Judicial Branch)	Six-member Board appointed by Chief Justice of Supreme Court for four-year terms.	Make policy for statewide appeals. Selects state Public Defender. Chairman chosen by committee. Responsible for establishing policy of program.	Selected by independent committee under Judicial Branch. Four-year term. Full-time; private practice prohibited.	Two levels - appellate (on-staff) and trial (contract provider). Report to Legislature biannually.
PENNSYLVANIA	None	Not applicable	None	Not applicable
RHODE ISLAND Office of the Public Defender (agency of Executive Branch)	None	Not applicable	Appointed by Governor with advice and consent of Senate. Three-year term. Attorney with five years experience.	Appoint , supervise and direct assistants as necessary. Develop and oversee statewide system by regions.
SOUTH CAROLINA Office of Indigent Defense (independent agency within Executive Branch)	Commission on Indigent Defense. Seven members appointed by Governor on recommendation of South Carolina Public Defender Association. One from each congressional district. One from state at-large who serves as Chair. Four-year terms.	Appoint Executive Director of Office of Indigent Defense. Supervise operations of Office of Indigent Defense.	Executive Director appointed by Commission.	Administer Office of Indigent Defense. Distribute state funds to counties. Compile statistics on indigent defense statewide. Report to General Assembly on indigent defense. Maintain list of attorneys qualified to accept appointments in death penalty cases. Administer collection and distribution of public defender application fees and surcharge fines imposed on specified criminal offenses. Supervise staff and carry out requirements of Commission.
SOUTH CAROLINA Office of Appellate Defense (independent state agency within Executive Branch)	Commission on Appellate Defense: Dean of the University of South Carolina Law School; President of the South Carolina Public Defenders Association; President of the South Carolina Bar Association; President of the South Carolina Trial Lawyers Association; Chairman of the South Carolina Judicial Council; Chairman of the Senate Judiciary Committee or his designee; and Chairman of the Judiciary Committee of the House of Representative or his designee. Commission elects Chairman for one-year term.	Appoint Chief Attorney. May, subject to rules of Supreme Court, recommend or establish policies for the operation of the Office of the Appellate Defense. Approve annual budget. Establish indigency criteria.	Chief Attorney appointed by Commission to four-year term. Licensed to practice law in South Carolina.	Submit budget to Commission. Establish training for employees. Represent indigent defendants in appeal of a conviction in trial court or decision of any proceeding in civil commitment or other involuntary placement.
SOUTH DAKOTA	None	Not applicable	None	Not applicable
TENNESSEE District Public Defenders Conference (agency of the Judicial Branch)	Not applicable, but see below.	Not applicable, but see below.	The District Public Defender Conference has an Executive Secretary who is elected by the Conference for eight-year term.	Assist district public defenders to coordinate their responsibilities. Serve as liaison among various branches of state government. Prepare budgets for each district for submission to state. Provide pubic defenders with minimum law libraries.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
TENNESSEE Tennessee Indigent Defense Commission of the Supreme Court of Tennessee (Judicial Branch)	Tennessee Indigent Defense Commission of the Supreme Court of Tennessee. Eleven members appointed by Supreme Court from recommendations made by petitioner organizations who pushed for creation of Commission through Supreme Court rule. Three-year terms. Chair appointed by Supreme Court.	Appoint officers. Adopt rules for operation of Commission. Develop a comprehensive plan for indigent defense services in state court system. Collect case information; determine reasonable caseload for district defenders; set standards for criminal defense attorneys representing indigent defendants; set compensation schedule for assigned counsel; set annual budget for court-appointed counsel expenditures; and develop voucher review process.	Not applicable, but see above.	Not applicable, but see above.
TENNESSEE Office of the Post-Conviction Defender and Post-Conviction Defender Commission	Nine members: two appointed by the Governor; two appointed by the Lieutenant Governor; two appointed by the Speaker of the House of Representatives; three appointed by the Supreme Court of Tennessee. Serve four-year terms.	Appoint Post-Conviction Defender; prepare annual budget for the Office of Post-Conviction Defender.	Post-Conviction Defender appointed by Post-Conviction Defender Commission. Four-year term. Must be lawyer in good standing with Supreme Court of Tennessee and possess demonstrated experience in capital case litigation.	Provide legal representation to indigent persons convicted and sentenced to death; hire assistant post-conviction defenders, investigators and support staff; maintain clearinghouse of materials and brief bank for public defenders and private counsel who represent indigents charged or convicted of capital crimes; provide CLE training and consulting services to lawyers representing defendants in capital cases; recruit qualified members of the bar to provide representation in state death penalty proceedings.
TEXAS	None	Not applicable	None	Not applicable
UTAH	None	Not applicable	None	Not applicable
VERMONT Office of the Defender General (agency of Executive Branch)	None	Not applicable	Defender General appointed by Governor with advice and consent of Senate. Four-year term.	Operates program thru public defenders and deputy public defenders or by contracting out to private attorneys. May establish local offices headed by a public defender. Contract with member of bar to serve as assigned counsel coordinator.
VIRGINIA Public Defender Commission (agency of Judicial Branch)	Nine members. Appointed by Speaker of the House in consultation with Senate and House Courts of Justice Committees. Three judges, three practicing attorneys, three lay people. Three-year terms.	Oversee administration of Public Defender Commission. Select Executive Director and individual head public defenders	Commission selects Executive Director who serves at pleasure of Commission. Member of Virginia State Bar and experienced.	Statute sets up office. Hire staff. Establish and oversee local public defender offices mandated by State Legislature.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
WASHINGTON Office of Public Defense (independent agency of the Judicial Branch)	Advisory Committee has nine members: three persons appointed by the Chief Justice; two non-attorneys appointed by the Governor; two Senators and two members of the House of Representatives; one person appointed by the Court of Appeals Executive Committee; and one member appointed by the Washington State Bar Association.	Submit three names to the Supreme Court for Director of the Office of Public Defense.	Director serves at the pleasure of the Supreme Court, which selects from list of three names submitted by Advisory Committee. Director must: have practiced law in Washington for at least five years, represented criminal defendants, and possess proven managerial or supervisory experience.	Administers all criminal appellate defense services; submits to State Legislature a biennial budget for costs related to appellate indigent defense; recommends indigency standards; collects information and reports to the legislature on indigency cases; coordinates with the Supreme Court and judges of each division of the court of appeals to determine how attorney services should be provided. The Office of Public Defender does not provide direct representation.
WEST VIRGINIA Public Defender Services (Executive Agency)	None	Not applicable	The Executive Director of Public Defender Services is appointed by the Governor with the consent of the Senate.	Public Defender Services administers, coordinates and evaluates local indigent defense programs in the state's 31 judicial districts. PDS is statutorily required to provide training and technical assistance to indigent defense providers and operates an appellate division to represent indigent defendants in appeals in the state's Supreme Court. The Executive Director of PDS is authorized to make grants to and contract with Public Defender Corporations in those judicial districts in which the Chief Judge and/or the majority of active local bar members have determined a need for a public defender office. By statute, all Public Defender Corporations must have a Board of Directors consisting of appointees by the local County Commissioner, the County Bar Association and the Governor. Currently, 23 of West Virginia's 55 counties are served by 15 Public Defender Corporations. The remaining 32 counties rely solely on assigned counsel to provide representation to indigent defendants.

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STATEWIDE INDIGENT DEFENSE SYSTEMS

STATE Type of Program	Commission	Commission Duties & Responsibilities	Public Defender Selection Process, Terms & Qualifications	Public Defender Duties & Responsibilities
WISCONSIN Wisconsin State Public Defender (independent agency within Executive Branch)	Nine members. Appointed by Governor, approved by Senate. At lease five must be attorneys. Three-year terms. Chair is elected by Board.	Appointed state Public Defender and establish salary. Approve budget and submit to Governor. Promulgate standards of indigency. Promulgate rules for assignment of private counsel in regard to standards, payments and pro bono programs. Perform all other duties necessary and incidental. Contract with federal agencies and local public defender organizations for provision of services.	State Public Defender appointed by Board. Member of Wisconsin Bar. Five-year term.	Supervise operation of all state and regional public defender offices. Maintain data and submit biennial budget to Board. Delegate cases to any member of Wisconsin Bar. Negotiate contracts out for representation as directed by Board. Appoint staff.
WYOMING State Public Defender (Executive Agency)	None	Not applicable	State Public Defender appointed by Governor. No term specified. Member of Wyoming Bar with experience in defense or prosecution.	Administer public defender program in districts and oversee operation of public defender system statewide. Assistant public defenders appointed by Governor and serve at pleasure of Public Defender. Public Defender may require them to be full-time. Public defender in each district appointed by Governor upon recommendations from District Judge and County Commissioners.

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APPENDIX B

Reimbursement Rate Calculations of Current Value (from 1990 to 2008)
Ralph McKinney, WV Public Defender Services

Rates of Compensation for Court-Appointed Counsel in Capital Cases at Trial:
A State-by-State Overview, June, 2007
The Spangenberg Group

Rates of Compensation for Court-Appointed Counsel in Non-Capital Felony Cases at Trial:
A State-by-State Overview, June, 2007
The Spangenberg Group

Federal Public Defender Web Site: Current Payment Rates
United States District Court

WV State Bar Membership Survey Results, 2004
WV State Bar

Letters from:
The Honorable Justice Joseph P. Albright
The Honorable Judge Ronald E. Wilson
Cathryn Nogay, Esquire

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REIMBURSEMENT RATE CALCULATIONS OF CURRENT VALUE (FROM 1990 TO 2008)

Ralph E. McKinney, Jr., RBA (WVSC), MBA (MU)

WV Public Defender Services

19 December 2008

ABSTRACT: This paper uses several methods to calculate the present value of the 1990 $45/$65 rate paid to AC Attorneys. Multiple calculations and sources are used to establish that (a) the 2008 CPI estimate is $73.45/$106.09; (b) the 2008 CPI overhead estimate per hour was $57.13; (c) the minimum comparable $45 per hour rate within Division of Personnel comparable classifications was $32.04 per hour without overhead and $87.05 with overhead; and (d) the most likely minimum comparable rate was $87.05/$126.22.

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INTRODUCTION

Since 1 July 1990, the reimbursement rates for appointed indigent criminal defense attorneys ("AC Attorneys") have been $45 per hour for in-court time and $65 per hour for out-of-court time (WVPDS, 2002). The rate changes were a result of litigation, brought by Milllard Jewell (see Jewell v. Maynard, 383 S.E. 2d 536 (1989)), and subsequent changes to WV Code §29-21-13a. The 1990 change was an effort to provide reimbursement to private appointed Counsel ("AC") AC Attorneys to cover overhead expenses and limited compensation for time rendered for legal services provided to indigents. These 1990 rates are the current 2008 rates being reimbursed today.

PURPOSE & SCOPE

The purpose of this paper is to facilitate discussions concerning the AC Attorney reimbursement rates of $45/$65 (in-court/out-of-court) effective 1 July 1990 in the present 2008 economy. This paper relates to indigent criminal defense activities only within the State of West Virginia. This paper will not address legal interpretations, the quality of legal representation, operations of public defender offices, or operations of AC attorneys. While some of these elements may be discussed, this paper will be limited in scope to the discussions surrounding the 1990 legislatively changed rates of $45/$65 and what these rates are estimated to be in today's economy.

RESEARCH QUESTION

Eighteen years have passed since the legislative rate changes have been made effective. As of the writing of this paper, those rates continue to be reimbursement rates. Since 1990, significant

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changes have occurred in the economy as a whole. Due to these changes, the WV Indigent Defense Commission presented the general question: "What would the rate be in today's market?"

METHODOLOGY

While the general assumption is that economic markets will increase over time, a possibility exists that decreases can occur. Therefore, a quantitative analysis concerning economic factors that could impact $45/$65 will be explored. For this analysis, several variables will be fixed:

- The effective passage date of 1 July 1990 for $45/$65 will be the starting point of this analysis. Dates prior to 1 July 1990 will not be considered. However, the information used for the litigation causing these changes precedes the 1989 ruling in Jewell (supra).
- The $45/$65 are for the reimbursement of overhead and time as defined by the WVPDS.
- Distinctions for geographical differences in West Virginia (e.g., Big Ugly, Charleston, Comfort, Huntington, Lewisburg, Martinsburg, Mullins, Yawkey, etc.) will not be made. The assumption will be that economic conditions are similar.
- The quality of legal representation will not be considered. Differences by case type or legal expertise will not be considered.

To answer the research question, information from several sources will be used to perform a quantitative analysis that will estimate what the $45/$65 rates might be in 2008. While there are several ways to calculate estimates, this paper will take a conservative approach for projections.

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DISCUSSIONS

Consumer Price Index as an Economic Measurement

Since 1990, the U.S. economy has experienced inflation. One of the most common measurements of inflation is the Consumer Price Index ("CPI") (BLS, 2008). The CPI measures changes, either increases or decreases, as a percentage of the prior year. Therefore, calculations must be made using an established base year (i.e., 1990) if those calculations will be for multiple consecutive years. Table 1 details the CPI as applied to $45/$65.

In **Jewell (supra)**, several findings concerning overhead costs and reimbursement rates were made. The following information is related to the research question: (a) *"...average hourly overhead costs of private lawyers is $35 per hour..."*; and (b) *"Rates for court-appointed work in the federal system are now $40 an hour for out-of-court work and $60 an hour for in-court work"*

Taking the smaller figure of $45/$65 ($45) and reducing that figure by the overhead expenses as reported in **Jewell (supra)** ($35), the AC Attorney compensation was set at $10 per hour. This $10 represents a little less than 30% of costs. One possible approach is to detail or project the overhead costs and add 30%. This would provide a guideline to determine the minimum amount of total compensation for AC Attorneys. Table 1 projects the CPI value of $35 from 1990 to 2008, as well as the value at $45/$65 an hour. A formula to project the $65 rate is **[(65-45)/45]*estimated 2008 rate**, or about 1.45 times the 2008 rate.

Another approach is to consider the percentage increase over the federal system. The same difference ($5) can be observed between the $45/$65 and the federal system $40/$60. Thus, the calculation should be based on the smaller federal figure of $40. Five dollars of $40 represents 12.5% increase over the federal system. This 12.5% may be applied to the current rates of the federal system

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to calculate a potential minimum rate for AC Attorneys. The current FPD rates are $100 and $170 per hour (FPD, 2008). Therefore, the estimated AC Attorney rate would be $112.50 and $182.50.

TABLE 1: CPI ADJUSTMENT for $45/$65 (1990 to 2008)
Source: Data is from BLS, 2008
Note: 2008 Data was not available; therefore, 2007 data was substituted for 2008.

Year	CPI Index	Out-Court	In-Court	Office
1990	Base Year	45	65	35
1991	4.2	46.89	67.73	36.47
1992	3.0	48.30	69.76	37.56
1993	3.0	49.75	71.85	38.69
1994	2.6	51.04	73.72	39.70
1995	2.8	52.47	75.79	40.81
1996	3.0	54.04	78.06	42.03
1997	2.3	55.29	79.86	43.00
1998	1.6	56.17	81.13	43.69
1999	2.2	57.41	82.92	44.65
2000	3.4	59.36	85.74	46.17
2001	2.8	61.02	88.14	47.46
2002	1.6	62.00	89.55	48.22
2003	2.3	63.42	91.61	49.33
2004	2.7	65.13	94.08	50.66
2005	3.4	67.35	97.28	52.38
2006	3.2	69.50	100.39	54.06
2007	2.8	71.45	103.20	55.57
2008*	2.8	73.45	106.09	57.13

Based on Table 1, the 1990 $45/$65 rates are estimated to be $73.45/$106.09 in 2008. This change was an increase of $28.45/$41.09 and represents a 63.2% total change in both rates. Over eighteen (18) years, the 63.2% averages an annual inflation rate of 3.51%, based on the consumer price index. The 1990 $35 overhead costs is estimated at $57.13 for 2008. Adding 30% to $57.13, the same percentage allowed in **Jewell (supra)**, current rate is projected at $74.26.

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Comparable Positions as detailed from the WV Division of Personnel

To further explore the $45/$65 rates, full-time salaried positions comparable to AC Attorneys can provide additional information to form a stronger basis to determine the minimum comparable estimated rates for 2008. The second economic measurement of rates will be a comparative analysis of $45/$65 against the Classification and Compensation information as posted by the West Virginia Division of Personnel (DoP, 2008). Reviewing these postings, five positions comparable to AC Attorneys were identified. These positions are discussed below.

The first position was **#9505 Attorney 1.** While this position requires graduation from an ABA law school, there is no requirement for admission to the WV State Bar. The only exception is in the case of the WV Department of Tax and Revenue where there is an admission requirement of less than one year. Additionally, the examples of work detail note *"Assists in hearings before courts of law..."* As written, this position does not provide for the practice of law outside of a supervisory environment. This position does not mimic the responsibilities of an AC Attorney.

The second position was **#9506 Attorney 2.** This position is an expansion of the Attorney 1 position. WV State Bar admission is a requirement and the work examples does allow for the practice of law on a limited basis. For example, *"Conducts hearings before courts of law..."* but only *"...[assists] in appeals before the Supreme Court of Appeals."* While this position is closer to an AC Attorney, there are limitations on what work can be performed without supervision. As such, the Attorney 2 position might be comparable to an AC Attorney handling misdemeanor cases and other non-felonies.

The third position was **#9507 Attorney 3.** This position expands the Attorney 2 position and has specific distinguishing characteristics that directly relate to AC Attorneys. *"Attorneys at this level conduct legal research related to the criminal rights of indigents and inmates, and represents same in criminal proceedings."*

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The fourth position was **#9504 Attorney Supervisor**. This position expands Attorney 3 with additional complex work and skill examples. Specifically, *"Drafts legal pleadings or briefs on complex criminal cases..."*

Finally, **# 9508 Child Advocate Attorney** requires admission to the WV BAR and two years experience as an attorney. The description of Child Advocate Attorney is similar to Attorney 2 except the focus is on juveniles.

Attorney 3 is the first position that makes a reference to indigent criminal defense. Therefore, the position of Attorney 3 may be the minimum standards for indigent criminal defense. However, five years experience is required. This is not the case for AC Attorneys. Therefore, each position will be detailed for comparison (See Table 2) by minimum salary. For each position, the minimum and maximum annual and hourly salaries will be illustrated. The annual hours per year were calculated to be 2,080 (40 hours per week at 52 weeks per year).

TABLE 2: COMPARABLE WV DoP SALARIES

	Annual Salary:		Hourly Rate:		
Classification	Minimum	Maximum	Minimum	Maximum	Average
Attorney 1	$35,736	$66,120	$17.18	$31.79	$24.49
Attorney 2	$38,244	$70,752	$18.39	$34.02	$27.71
Child Advocate Attorney	$40,932	$75,720	$19.68	$36.40	$28.04
Attorney 3	$43,400	$81,036	$20.87	$38.96	$29.92
Attorney Supervisor	$50,172	$92,808	$24.12	$44.62	$34.37

While Table 2 illustrates that hourly salaries are below the 1990 $45/$65 rate, the 1990 $45/$65 included office overhead and excluded benefits. Therefore, additional information is needed to properly

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compare the WV DoP salaries and the 1990 $45/$65: Paid hours not at work (Holiday hours; Annual Leave; sick leave) and benefits (health insurance (PEIA), pensions (PERS); and FICA taxes).

For the 2009 calendar year, WV State employees will observe ten (10) eight hour holidays and two (2) four hour holidays equating to eighty-eight (88) hours of holiday pay. Annual leave accumulation is contingent on an employee's length of service: less than five (5) years, fifteen (15) days or 120 hours are earned. While the two positions comparable to AC Attorneys (Attorney 3 and Attorney Supervisor) require more than five years of experience, this analysis will take a conservative approach and assume 120 hours. Contrary to annual leave, sick leave is constant at eighteen (18) days or 144 hours annually. Therefore, total leave is at 352 hours annually. Thus, 2,080 hours per year is actually 1,728 hours at "billable" attorney time. Table 3 provides information based on a 1,728 hour year.

TABLE 3: COMPARABLE DoP SALARIES (1,728 HOURS)

Classification	Annual Salary:		Hourly Rate:		
	Minimum	Maximum	Minimum	Maximum	Average
Attorney 1	$35,736	$66,120	$20.68	$31.79	$26.24
Attorney 2	$38,244	$70,752	$22.13	$34.02	$28.08
Child Advocate Attorney	$40,932	$75,720	$23.69	$36.40	$30.05
Attorney 3	$43,400	$81,036	$25.12	$38.96	$32.04
Attorney Supervisor	$50,172	$92,808	$29.03	$44.62	$36.83

As seen by Table 3, the range per hour was $20.68 to $44.62. However, based on the position classifications and descriptions, Attorney 1, Attorney 2, and Child Advocate Attorney should be excluded from consideration. Therefore, the hourly range becomes $25.12 to $44.62. Again, this range does not include any overhead expenses or legal costs associated with the practice of law. This only considers a partial compensation that each DoP classification details.

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Employer taxes are the responsibility of an AC Attorney and thus were considered part of the $45/$65 rates. Taking this analysis one step further, general classification benefits will be attributed to the salaries. For FICA taxes, the amount is 7.65% of the total salary. PERS (retirement) employer contributions are 10.5% of the WV DoP salary. Therefore, all salaries were allotted an additional 18.15% (7.65% to cover FICA and 10.5% for PERS). The 18.15% was done as a lump sum to avoid an overestimate resulting from miscalculating the benefits value.

A life insurance premium of $5.37 is paid monthly ($64.44 annually). Health insurance premiums are contingent upon plan type and number of participants. A typical family plan for 2009 was $10,740 annually. This includes employee contributions. For this paper, a reasonable and conservative assumption is that only 80% of the $10,740 (or $8,592) will be paid by the employer. The total insurance cost is calculated at $8,656.44. This amount was added after adding the percentage benefits.

The result of these estimates is detailed in Table 4. The benefits calculated represent the common benefits associated with these positions. Benefits such as unemployment compensation insurance and workers' compensation have not been included.

TABLE 4: COMPARABLE WV DoP SALARIES (1,728 hours & Calculated Benefits)

	Annual Salary:		Hourly Rate:		
Classification	Minimum	Maximum	Minimum	Maximum	Average
Attorney 1	$50,879	$86,777	$29.44	$50.22	$39.83
Attorney 2	$53,842	$92,250	$31.16	$53.39	$42.28
Child Advocate Attorney	$57,161	$98,385	$33.08	$56.94	$45.01
Attorney 3	$59,934	$104,400	$34.68	$60.42	$47.55
Attorney Supervisor	$67,935	$118,309	$39.31	$68.47	$53.89

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Table 4 illustrates that the DoP Salary with benefit range is between $29.44 and $68.47 without any consideration of overhead. Given this range, the mean would be calculated at $48.96 per hour [*Calculation*: 68.47 - 29.44 = 39.03 / 2 = 19.52 + 29.44 = mean].

Prosecutor & Legislative Salaries as an Economic Measurement

As prosecutors perform similar duties as AC Attorneys, a salary comparison is detailed in Appendix A. From this comparison, the 2008 hourly rates were $31.54 (based on 2,080 hours) and $37.96 (based on 1,728). Legislative salaries for attorneys were calculated for comparative purposes (see Appendix B). The average hourly rates were $36.44 (based on 2,080 hours) and $43.86 (based on 1,728). All rates are based on salary only and exclude benefits and office overhead.

STATISTICAL SUMMARY AND CONCLUSION

To better illustrate these estimates, a summary is presented in Table 5. Within Table 5, there are several areas without calculations. While estimates can be placed within these areas, these estimates would be less accurate in the reflection of the 2008 values as these estimates would be contingent upon other estimates.

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TABLE 5: SUMMARY OF RELEVANT CALCULATIONS FOR 2008 VALUE
Note: Figures in italic are projected estimates based on other calculations.

	Atty Time	Overhead	Out-Court	In-Court	
Jewell (supra) rates	10	35	45	65	
CPI	16.32	57.13	73.45	106.09	(Table 1, p. 5)
FPD			112.50	182.50	(pp. 4-5)
Attorney 1	24.49	*57.13*	*81.62*	*118.35*	(Table 2, p. 7)
	26.24	*57.13*	*83.37*	*120.89*	(Table 3, p. 8)
	39.83	*57.13*	*96.96*	*140.59*	(Table 4, p. 9)
Attorney 2	27.71	*57.13*	*84.84*	*123.02*	(Table 2, p. 7)
	28.08	*57.13*	*85.21*	*123.55*	(Table 3, p. 8)
	42.28	*57.13*	*99.41*	*144.14*	(Table 4, p. 9)
Child Advocate Attorney	28.04	*57.13*	*85.17*	*123.50*	(Table 2, p. 7)
	36.40	*57.13*	*93.53*	*135.62*	(Table 3, p. 8)
	45.01	*57.13*	*102.14*	*148.10*	(Table 4, p. 9)
Attorney 3	29.92	*57.13*	*87.05*	*126.22*	(Table 2, p. 7)
	32.04	*57.13*	*89.17*	*129.30*	(Table 3, p. 8)
	47.55	*57.13*	*104.68*	*151.79*	(Table 4, p. 9)
Attorney Supervisor	34.37	*57.13*	*91.50*	*132.68*	(Table 2, p. 7)
	36.83	*57.13*	*93.96*	*136.24*	(Table 3, p. 8)
	53.89	*57.13*	*111.02*	*160.98*	(Table 4, p. 9)
Prosecutor Salary	37.96	*57.13*	*95.09*	*137.88*	(p. 10)
Legislative Rates	43.86	*57.13*	*100.99*	*146.44*	(p. 10)

Based on the calculations as detailed within this paper, the value of the 1990 $45/$65 can be viewed a number of ways: The value can be viewed as

- $73.45/$106.09 based on the CPI adjustments;
- $87.05/$126.22 based on Attorney 3 minimum average;
- $91.50/$132.68 based on Attorney Supervisor minimum average;
- $95.09/$137.88 based on the average salary for Prosecutors;
- $100.99/$146.44 based on the average salary for legislative attorneys; and
- Any combination as detailed in Table 5.

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These estimates represent a basic valuation of what the 1990 $45/$65 rates might be based on after selective adjustments. However, advances in technology and advances in scientific methods as applied to criminal and legal proceedings have dramatically increased and have improved. These advances potentially increase overhead expenditures. Thus, these estimates should be considered the minimal reimbursement level for AC Attorneys.

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APPENDIX A

WV Prosecuting Attorney Salaries

For 2008

SOURCE: WV Prosecuting Attoneys Institute

Note: This information is the responsibility of the WVPAI and therefore, no assurances for validity or reliability are granted. The only assurance is that the raw information was not altered. However, the calculations concerning the raw information were performed by WVPDS. Also, part-time salaries were not extracted from WVPAI.

	Elected	0-5 yrs	6-11 yrs	12+ yrs
Berkeley	96,000	70,000	83,375	
		56,878	70,000	
		53,831	62,972	
		53,831		
		53,831		
		53,831		
Cabell	96,000	46,775	55,431	68,775
		43,150	58,850	
			50,411	
			49,850	
Harrison	96,600	52,000	66,500	
		77,500		
		59,400		
		60,000		
		65,760		
		50,000		
		40,000		
		52,650		
Jefferson	96,600	59,565	77,330	89,263
		57,475	64,790	89,263
			77,330	
Kanawha	96,600	44,000	61,000	98,500
		47,000	67,500	93,500
		42,000	47,000	68,500
		63,000	73,500	71,140
		45,000		78,500
		43,000		91,000
		42,000		
		45,000		
		50,000		
		50,000		
		47,000		
Monongalia	96,600	60,000	75,000	66,000

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		52,000	63,000	
			56,000	
Putnam	96,600	69,884		74,859
		52,584		
		41,078		
		41,078		
Raleigh	96,600	37,000	47,800	70,200
		36,000		59,500
				59,500
				46,500
Wood	96,600	60,500	80,000	87,899
		42,000	68,749	
		44,000		
		55,000		
Marion	94,500	50,000		
		50,000		
		46,174		
		50,000		
Mercer	94,500	46,000	52,900	57,000
			48,000	
Ohio	94,500	44,000		
Boone	92,200	58,200	72,700	
Fayette	92,200			
Greenbrier	92,200	45,000		66,000
				66,000
Hampshire	92,200			
Hancock	92,200	52,000		
Jackson	92,200	50,000		
		40,000		
Logan	92,200	52,500		
		52,500		
Marshall	92,200			
Mason	92,200	42,000		
Preston	92,200	57,000		
		48,500		
Wayne	92,200	47,315		
Brooke	59,400		38,092	
Grant	90,000			
Hardy	90,000			
Lewis	90,000			
McDowell	90,000			60,000
				60,000
Mineral	90,000			
Mingo	90,000			

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Morgan	90,000	45,000		
Nicholas	90,000	50,000	62,500	
		50,000		
Pocahontas	90,000			
Randolph	90,000	44,000		
		43,000		
Upshur	90,000		51,630	
			47,239	
Wyoming	90,000			43,000
Pleasants	59,400			
Wetzel	59,400			
Taylor	unknown			
Braxton	87,800			60,000
Lincoln	87,800			
Pendleton	87,800			
Tucker	87,800			
Barbour	87,800			
Doddridge	87,800	35,000		
Ritchie	87,800			
Roane	87,800			
Summers	54,120			
Tyler	54,120			
Calhoun	50,000			
Clay	50,160			
Gilmer	42,500			
Monroe	48,000			
Webster	50,000	43,000		
Wirt	unknown			
	4,475,400	3,256,790	1,729,449	1,624,899

11,086,538
169

N= 169

	Average	65,601
Hours=2080	Hourly Rate	$31.54
Hours=1728	Hourly Rate	$37.96

APPENDIX B

WV State Auditor's Office

State Employees Total Compensation for 2007 Calendar Year

Source: http://www.wvsao.gov/employeecomp.aspx

SENATE	RATLIFF JR, RAY E		$82,137.66	
SENATE	PAULEY, RITA A		$80,300.08	
SENATE	BOWLING, CONNIE A	AST AG	$75,550.16	
SENATE	HAGER II, HENRY D		$70,850.08	
SENATE	LILLY, MELISSA D		$67,337.58	
SENATE	JOHNSON, RUSSELL J	CHILD ADV ATTRNY	$67,037.58	
HOUSE OF DELEGATES	MCOWEN, MARK W		$90,428.32	
HOUSE OF DELEGATES	ALTIZER, JOSEPH A		$88,369.92	
HOUSE OF DELEGATES	TYLER, NANCY L		$83,924.24	
HOUSE OF DELEGATES	KRAUS, CANDACE C		$82,450.00	
HOUSE OF DELEGATES	THOMPSON, BRENDA K		$82,810.48	
HOUSE OF DELEGATES	KIMBLE, DANIEL E		$81,958.41	*
HOUSE OF DELEGATES	REED III, JOHN H		$75,687.50	*
HOUSE OF DELEGATES	ROSKOVENSKY, CHARLES M		$61,987.50	
HOUSE OF DELEGATES	SKINNER, BRIAN J		$67,337.58	
HOUSE OF DELEGATES	AVAMPATO, DENISE L		$54,544.63	
		Total		$1,212,711.72
		Average n=16		$75,794.48
		Hours (2,080)		$36.44
		Hours (1,728)		$43.86

These were removed from total salary.

SECRETARY OF STATE	KIMBLE, DANIEL E		$3,125.00
REAL ESTATE COMMISSION	REED III, JOHN H		$7,050.00

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Rates of Compensation Paid to Court-Appointed Counsel in Capital Cases at Trial: A State-By-State Overview, 2007

Introduction

Since 1996, The Spangenberg Group has periodically produced tables and narratives on behalf of the American Bar Association's Bar Information Program detailing compensation rates paid to court-appointed counsel who handle death penalty trial cases in the 38 states that permit the death penalty. The first table was published in July 1996, and the second, along with an accompanying narrative, was produced in April 1998. The most recent full update to the report was completed in April 2003. We receive repeated requests for the tables from attorneys, policy-makers and others.

The table that follows this narrative reflects the information collected during the course of our survey conducted between February and April of 2007. As in previous reports, we have included citations to the authority for the compensation rates and/or maximum fees.

It is not the purpose of this report to produce any type of assessment or evaluative ranking of states in terms of compensation rates paid to court-appointed counsel in capital cases. In many states, the compensation rates vary according to locality. Most of these states, referred to in this report as "reasonable compensation" states,[1] do not maintain centralized records on the precise amounts court-appointed counsel are paid.[2] To collect these data, in each "reasonable compensation" state, we interviewed public defenders, court administrators, private counsel, or others familiar with the jurisdiction's indigent defense system. The numbers reflected in the accompanying table and/or narrative are representative of the limited information provided to us through these interviews.

Additionally, while the compensation rate information in the table pertains only to court-appointed counsel, there are two other methods by which legal counsel is provided to indigent defendants. The three methods that jurisdictions use to provide indigent defense are:

- The assigned counsel model: Private attorneys are assigned to indigent criminal cases on either a systematic or ad hoc basis. Typically they are paid on an hourly basis or paid a flat fee per case.
- The contract model: A jurisdiction contracts with private attorneys, groups of attorneys, a bar association or a private, non-profit organization to provide representation in some or all of the indigent cases in the jurisdiction. In some jurisdictions, the public defender agency contracts with private attorneys to handle conflict of interest cases.

[1] A "reasonable compensation" state is one in which the state legislature places the responsibility for establishing the rate of compensation for court-appointed counsel on each individual criminal court judge (or other locality in some cases) throughout the state.

[2] Texas and Nebraska are notable exceptions in that each local jurisdiction reports the compensation rates paid to court-appointed attorneys, where applicable.

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- The public defender model: A public or private non-profit organization with full or part-time staff attorneys provides all or a percentage of the representation to indigent defendants in a jurisdiction. Many states have separate capital defender units which handle death penalty cases at trial.

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

Most jurisdictions use a combination of the above three models, thus it is inappropriate to conclude that one jurisdiction better funds its indigent defense system because it pays assigned counsel a higher rate of compensation than other jurisdictions. To determine the relative adequacy of funding of any state's indigent defense system, one must look at many factors; the comparable rates of compensation for court-appointed counsel is only one of these factors. Other factors include whether or not there is a statutory limit on the amount that may be paid per case and whether or not overhead and other expenses are paid on top of the hourly rate. Litigation in Mississippi, for example, resulted in court-appointed counsel being paid an hourly amount to cover overhead costs.[3] The accompanying table includes statutory maximums, where applicable, and whether they may be waived or not.

Thirty-eight states, as well as the U.S. government, permit the use of the death penalty. The table on the following page is the number of death row inmates by state as reported by the NAACP Legal Defense and Educational Fund.[4]

[3] *Wilson v. State*, 574 So.2d 1338 (Miss. 1990).

[4] "Death Row USA, Winter 2007," *Criminal Justice Project of the NAACP Legal Defense and Educational Fund, Inc.*, http://www.naacpldf.org/content/pdf/pubs/drusa/DRUSA_Winter_2007.pdf.

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Death Row Inmates by State

California	660	Mississippi	66	Utah	9
Florida	397	Missouri	51	Washington	9
Texas	393	*U.S. Government*	44	*U.S. Military*	9
Pennsylvania	226	Kentucky	41	Connecticut	8
Alabama	195	Arkansas	37	Maryland	8
Ohio	191	Oregon	33	South Dakota	4
North Carolina	185	Indiana	23	Colorado	2
Arizona	124	Idaho	20	Montana	2
Georgia	107	Virginia	20	New Mexico	2
Tennessee	107	Delaware	18	Wyoming	2
Louisiana	88	Illinois	11	New York	1
Oklahoma	88	New Jersey	11	New Hampshire	0
Nevada	80	Kansas	9		
South Carolina	67	Nebraska	9	**Total**	**3357**

Since the last full update of this report in 2003, many changes have taken place in regard to the death penalty. In our last report, the total number of death row inmates across the United States was 3,533. As of January 2007, the number of death row inmates (3,357) has decreased by nearly 5 percent. Several states (Indiana, Missouri, North Carolina, Oklahoma and Texas) have experienced a significant decrease in the number of death row inmates since 2003. On the other hand, the number of inmates on death row in California has increased considerably since our last full update. Formal moratoria have been placed on executions in Illinois (2000) and New Jersey (2006) because of general concerns about the death penalty. According to the Death Penalty Information Center, in 2006 and 2007 a number of states declared moratoria on the death penalty because of concerns over the method of execution.[5] In 2004, the highest court in New York, the Court of Appeals, declared the New York's death penalty statute unconstitutional.[6] As of June 2007, legislative attempts to correct the flaws in the statute have failed.

Previous updates of this report have revealed two clear trends: one toward the creation of specialized statewide capital trial units, the other toward increased compensation rates for court-appointed counsel in capital trial cases. At least fourteen states (Connecticut, Georgia, Kansas, Kentucky, Maryland, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, and Virginia) along with a number of circuit public defender offices in

[5] "Death Penalty in Flux," *Death Penalty Information Center*, http://www.deathpenaltyinfo.org/article.php?did=2289.

[6] *People v. LaValle*, 817 N.E. 2d 341 (2004).

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Florida, have separate units that handle and/or provide support for private counsel handling death penalty cases at trial. Additionally, the Louisiana Indigent Defender Assistance Board (LIDAB) contracts with non-profit organizations that specialize in providing capital trial representation. Of the five states with the largest number of death row inmates, none has a specialized statewide capital trial unit. In some states, there are programs that serve as a resource center for court-appointed attorneys representing indigent defendants in capital cases. For example, Texas Defender Service provides consulting services to those private bar attorneys representing indigent capital defendants. Undoubtedly, the availability of a specialized support organization encourages private attorneys to accept appointments in capital cases.

The trend toward increased rates of compensation also serves to increase the number of qualified attorneys willing to handle capital trial cases. Since our last survey, thirteen states (Colorado, Connecticut, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Montana, Nevada, New Jersey, North Carolina, and South Dakota) and the United States government have increased their hourly compensation rates for court-appointed attorneys. In Wyoming, where a range of possible rates is set by the high court, the range has increased since 2003. Three states (Kentucky, Nevada, and Ohio) have increased the maximum amount counsel can earn in a given case; Maryland removed its cap altogether. These rate increases across the country demonstrate that policy makers are recognizing that, in order to attract qualified counsel who are able to provide effective representation in capital cases, it is necessary to increase hourly rates of compensation.

Different Approaches to Compensating Assigned Counsel

The following section discusses six approaches taken by the states in determining compensation for court-appointed counsel. The approaches are broken down by the authority that sets the rates. These approaches are characterized as:

- Statutory hourly rate;
- Administrative or court rule;
- State public defender;
- State commission on indigent defense;
- Reasonable compensation; and
- Combination approach.

Since the last full report was published in April 2003, the authority for setting compensation rates has changed in three states: Georgia, Montana and Oregon. In 2003, the Georgia legislature passed the Georgia Indigent Defense Act, which established the Georgia Public Defender Standards Council (GPDSC). One of the responsibilities of the council is to establish compensation rates for court-appointed attorneys. As of January 2006, the Montana Public Defender Commission, created in the 2005 legislative session, assumed responsibility for setting rates for court-appointed attorneys, among other responsibilities. Prior to the establishment of the statewide system in Montana, the compensation rates paid to court-

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appointed attorneys in capital trials varied from county to county. In Oregon, court rule dictated the rates of compensation for court-appointed counsel prior to July 2003. Since then the Oregon Public Defense Services Commission, established in 2001, has assumed the responsibility of setting the hourly rate of compensation for court-appointed attorneys.

A comprehensive classification and explanation of the different methods for determining rates of compensation follows. When necessary, a detailed description of states' method for compensating counsel in capital cases at trial is given. Otherwise, please refer to the accompanying table for state-specified compensation rates.

Statutory Hourly Rate

In five states (Alabama, Florida, Illinois, Nevada, and South Carolina) rates of compensation for court-appointed attorneys are set by statute. Thus, the determination of compensation rates for court-appointed attorneys in capital cases is a legislative matter. The accompanying table includes the statutes which set compensation rates paid to court-appointed counsel in capital cases at trial.

Alabama

In Alabama, compensation rates for court-appointed attorneys are set by statute. In October of 2000, the rates were increased from $30 for out-of-court work and $50 for in-court work to $40 for out-of-court work and $60 for in-court work. The language in the statute also calls for the reimbursement of "reasonably incurred" expenses. In *James W. May v. State*, the Alabama Court of Criminal Appeals ordered that the court pay an additional amount for overhead; the presumptive hourly overhead in Alabama is $30.[7] In February of 2005, the Alabama Attorney General issued an opinion conflicting with the *May* decision, and from February 2005 to December 2006 the State Comptroller refused to pay overhead fees. The Alabama Supreme Court ordered the Comptroller to resume payment overhead costs in *Wright v. Childree* (2006).[8] While the average hourly overhead is $30, the overhead rate varies from case to case, and counsel must seek prior approval for the overhead expenses.

Florida

Each of Florida's twenty local circuit public defender offices handles capital trials; many offices have capital divisions. During the 2007 legislative session, the Florida General Assembly passed legislation that created five regional offices of conflict counsel to handle primary conflicts of the public defender offices. The legislation provides that private attorneys can still handle secondary and tertiary conflict cases, although they will no longer be administered by circuit indigent defense services committees. The legislation states that flat fees will be yearly

[7] *May v. State*, 672 So. 2d 1307 (Ala. Crim. App. 1993), cert. denied, *May v. State*, 672 So. 2d 1310 (Ala. 1995).

[8] *Wright v. Childree*, CV-05-1544 (2006).

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by the General Appropriations Act. According to the General Appropriations Act of 2007, the maximum flat fee paid in capital murder cases is $15,000 per attorney; in capital sexual battery cases, the maximum flat fee is $2,000. According to the legislation, a $15,000 maximum can be waived up to 200 percent or more if the flat fee in a particular case "would be confiscatory."

Illinois

The majority of Illinois' 102 counties have county-funded public defender offices. In conflict cases, the circuit court judge appoints counsel. During the 1999 legislative session, Illinois legislators approved a bill that set the rate of compensation for private attorneys representing an indigent client charged with a capital offense at $125 per hour. This statutory rate is adjusted every year according to the state's consumer price index. As of January 2007, the rate was $145.39. Additionally, in 2002, the legislature created the Capital Litigation Trust Fund to assist counties in the prosecution and defense of capital cases, but this is the only state money available for trial level indigent defense services in Illinois.

Administrative or Court Rule

The rates of compensation are set by either administrative or court rule in nine states: Colorado; Delaware; Indiana; New Hampshire; New York; South Dakota; Tennessee; Virginia; and Wyoming. Generally, the state's Supreme Court sets a rate, which is either written into the state's rules of criminal procedure or a Supreme Court directive or rule.

New York

In New York, the Capital Defender Office (CDO) was created by statute to provide representation and to support and assist at all stages of capital litigation. The CDO, along with an administrative board of the New York Judicial Conference, recommends compensation rates for court-appointed attorneys which New York's highest court, the Court of Appeals, must approve. Compensation rates for appointed counsel in capital trials were first set at $175 per hour for lead counsel and $150 per hour for co-counsel. However, the Court reduced these rates in December 1998, simultaneously altering the rate structure so that payment varies depending on whether the work was done before or after the prosecution announced its intent to seek the death penalty. Lead attorneys in capital cases are now reimbursed at a rate of $125 per hour for their work after the prosecution has given notice of intent to seek the death penalty, and $100 per hour before notice is given. Co-counsel receives $100 per hour after notice, and $75 per hour before notice.

The Court of Appeals declared New York's death penalty statute unconstitutional in 2004.[9] The ruling in *People v. LaValle* invalidated the death penalty in New York citing that the state's jury instructions were unconstitutional. The next year, the General Assembly Codes Committee voted against legislation reinstating the death penalty.

[9] *People v. LaValle*, *supra* note 6, at 3.

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Virginia

In 2002, the Virginia legislature authorized the creation of four regional capital defender offices. The Virginia Indigent Defense Commission oversees the four offices and establishes standards for court-appointed counsel in capital cases. Each capital case in the capital defender offices is assigned to two attorneys, one of whom (lead chair) is a salaried employee of the capital defender office. The Virginia Supreme Court has set a rate for court-appointed attorneys at $125 per hour with no limit.

Public Defender

The state public defender office determines the compensation rates for court-appointed attorneys in five states: Connecticut; Maryland; Kentucky; New Jersey; and New Mexico.

Kentucky

Kentucky's Department of Public Advocacy (DPA) has a Capital Trial Branch with seven experienced, well-trained attorneys. The Louisville Metro Public Defender also has a specialized death penalty unit consisting of four attorneys. The DPA limits the number of cases its capital branch attorneys can take at one time, and attorneys in the DPA field offices also handle capital cases. The DPA sets the compensation rate for court-appointed attorneys in conflict and overflow cases. The rate is currently $75 per hour with a maximum of $30,000 per attorney in any given case; the maximum can be waived in extraordinary circumstances.

New Mexico

New Mexico uses a request for proposals contract system in which attorneys are awarded cases on a rotating basis. The contractors are paid flat fees on an event-based schedule and according to whether they are lead or co-counsel. Lead counsel earns $5,000 for a first degree murder trial. Once the state files to seek the death penalty, lead counsel earns an additional $11,500. When the case goes to trial, lead counsel earns an additional $4,500, bringing the maximum that an attorney can earn from a capital case in New Mexico to $24,500. If co-counsel is assigned to a first degree murder case, that contractor will be paid a flat rate of $6,000. If the state seeks the death penalty as punishment, the co-counsel earns an additional $2,000; if the case goes to trial, the co-counsel receives $4,500. The maximum amount earned by co-counsel in capital cases in New Mexico is $12,500. In extraordinary circumstances, the maximum rates can be waived. Also, the flat rates listed above do not include overhead expenses, which are tracked by the contractor and paid by the state public defender.

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State Commission on Indigent Defense

In seven states (Arkansas, Georgia, Kansas, Missouri, Montana, North Carolina, and Oregon) compensation for court-appointed attorneys is determined by a statewide indigent defense commission or board.

Kansas

The Kansas Board of Indigent Defense Services (KSBIDS) has the authority to enter into contracts with court-appointed attorneys. The rate for court-appointed counsel in capital cases is $150 per hour with no per case maximum. However, KSBIDS has an in-house capital defense unit so contracting with counsel in capital cases is very rare.

North Carolina

The North Carolina Office of Indigent Defense Services (IDS) sets court-appointed counsel fees in North Carolina. The IDS Office has a specialized capital unit with regional offices. The rate set by the office for capital trials is $95 per hour. Each county also has standby attorneys who protect a defendant's rights between arrest and determination of indigency. These attorneys, referred to as "provisional attorneys," receive $85 per hour in capital cases. There are no maximum amounts paid per case.

Oregon

In Oregon, most capital trial cases are handled by attorneys working under contract with the Public Defense Services Commission. These contracts range from approximately $144,000 to $169,000 per year (based on a certain number of cases as allowed in the contract) per full-time equivalent attorney, which includes overhead and support staff. For those cases not handled by contract counsel, compensation for appointed counsel is set by the Public Defense Services Commission at $55 for lead counsel and $40 for co-counsel. These rates do not include routine expenses, such as photocopying, telephone, mileage, etc.

Reasonable Compensation

In nine states (Arizona, California, Idaho, Louisiana, Mississippi, Nebraska, Pennsylvania, Texas, and Washington) the establishment of compensation rates for court-appointed attorneys is left up to a locality. In most cases, the local court or judge determines the rate of compensation for counsel. Because the rate of compensation is decided at the local level, compensation rates in this category generally vary from county to county or district to district. In Ohio, while the Ohio Public Defender recommends an hourly rate, it has no binding effect and like other "reasonable compensation" states, the actual rate of compensation varies according to locality.

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Idaho

Idaho's indigent defense system is determined on a county-by-county basis; therefore, compensation rates and methods vary widely. In Idaho's most populated county, rates are negotiated for private counsel in conflict cases. The rates for capital conflict counsel in Ada County (Boise) generally range from $90 to $150 per hour both in- and out-of-court. There are no maximum fee caps in Idaho.

Louisiana

In Louisiana, most capital trial cases are handled by parish public defenders or contract counsel. Many public defender offices pay contract counsel an hourly rate for conflict cases. These rates vary widely throughout Louisiana; New Orleans, for example, pays an hourly rate of $110 for contract counsel while Caddo Parish (Shreveport) pays an hourly rate of $75.

To deal with conflict and overload cases, the Louisiana Indigent Defense Assistance Board (LIDAB) created four regional programs in which LIDAB contracts with non-profit groups in four regions to handle conflict capital cases. Because LIDAB contracts with non-profit groups, the attorneys handling conflict cases are generally salaried employees. However, LIDAB limits the number of the cases assigned through its regional contract programs.

Mississippi

Compensation rates for court-appointed counsel are set by local judges in Mississippi. Compensation rates vary from county to county, but by statute (as interpreted in *Wilson v. State*)[10] total compensation for trial work cannot exceed $2,000 per case in capital cases plus overhead expenses, which are set at a presumptive rate of $25 per hour. In practice, courts do not strictly follow the statutory limits, and hourly rates vary from court to court throughout Mississippi.

The Mississippi Office of Capital Defense Counsel began taking cases in 2001. Currently, the office has twenty open cases, sixteen of which employ county-funded co-counsel. The Office of Capital Defense Counsel has never received a sufficient appropriation to make appointments in all capital indigent defense cases. According to the Office's website, for example, there are 50-60 new cases per year needing court-appointed counsel. However, the Office of Capital Defense Counsel only has the resources for 20 cases per year. The remaining cases are handled by county-funded court-appointed counsel.

Nebraska

Judges set the rates of compensation in each district of Nebraska. Hourly rates of compensation for court-appointed counsel in capital cases range from $60 to $100; however the

[10] *Wilson v. State, supra* note 3, at 2.

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most frequently occurring rates in Nebraska are in the range of $70 per hour to $75 per hour. Lancaster County (Lincoln) pays assigned counsel $85 per hour for work both in- and out-of-court in capital cases. Most counties follow the model of paying the same rate for in- and out-of-court work. Douglas County (Omaha) is one notable exception; court-appointed attorneys from Douglas County earn $65 per hour for out-of-court work and $80 per hour for in-court work. Additionally, while most districts assign an hourly rate of compensation for court-appointed attorneys, many districts negotiate their compensation rate with court-appointed attorneys.

In 1995, the Nebraska legislature created and funded the Nebraska Commission on Public Advocacy, which provides legal services and state resources to assist counties in providing effective assistance to indigent persons through its capital litigation, appellate and felony case divisions. The Commission is structured to help those small rural counties that would have difficulty financing the defense in a capital case. Therefore, rather than assigning an hourly rate of compensation, some counties use the Commission on Public Advocacy for their capital cases.

Ohio

The Ohio Public Defender has a specialized death penalty division which deals with each stage of capital proceedings, including trial. Trial attorneys within the death penalty division also provide representation to indigent clients for conflict cases. In addition, the death penalty division public defenders assist and advise court-appointed capital attorneys.

The Ohio Public Defender Commission requires each county in Ohio to have a fee schedule for court-appointed counsel. In addition, the Ohio Public Defender sets a non-binding, recommended maximum fee schedule for appointed counsel. The Public Defender's recommended rate for court-appointed attorneys in capital cases is $95 per hour for both in- and out-of-court work. The maximum rate at which the Public Defender will provide reimbursement is $75,000. Most counties that handle death penalty cases pay a lower rate than the suggested $95 per hour.

The Ohio Public Defender Commission's 2005 Annual Report lists the hourly rates paid in each county for felonies, misdemeanors, juvenile, appeals, death penalty and other cases. The average hourly rate for capital felonies paid among the counties in FY 2005 was $46, although this does not include expenses (such as travel, printing, copying, etc.).

Pennsylvania

Because local judges determine the rates of compensation for court-appointed attorneys, rates vary widely throughout Pennsylvania. In Philadelphia, the local criminal court adopted a "Modified Guaranteed Fee System" in March of 1997 under which attorneys are paid flat preparation fees and per diem in-court fees. The fees are payable as follows:

Preparation Fees:

- Disposition after arraignment but prior to trial: $1,133
- Disposition at trial: $1,700

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- Mitigation appointment: $1,700

Per Diem Fees (at trial):

- Half day, 3 hours or less: $200
- Full day, more than 3 hours: $400
- Mitigation, half day: $100
- Mitigation, full day: $200

In Allegheny County (Pittsburgh), court-appointed attorneys are paid $50 per hour plus office expenses. They can also opt to get paid a flat rate of $250 for a half day and $500 for a full day of in-court work.

Texas

Each of Texas' 254 counties organizes and funds its own indigent defense delivery system. Before the Texas Fair Defense Act was signed into law in 2001, there was no systemic way of tracking the different assigned counsel compensation plans across the state. Now counties must develop and publish their plans for indigent defense systems to meet criteria set by the Texas Fair Defense Act.

Compensation rates for court-appointed counsel are established by district court judges and vary from county to county. The hourly compensation rates in capital cases range from $50-$200 both in- and out-of-court.[11] However, many counties do not rely solely on hourly rates. Many counties use fixed rates, and some, including Harris County (Houston), use a combination of fixed and hourly rates. Harris County pays an hourly rate for out-of-court work and a fixed daily rate for in-court work. Lead counsel earns $100 per hour for out-of-court work with a cap of $12,000, and co-counsel earns $80 per hour with a $9,600 cap. In-court daily fixed rates are event-based. Both lead counsel and co-counsel earn $400 per day for non-trial court appearances. For the in-court voir dire process, lead counsel earns $600 per day and co-counsel earns $500 per day. Finally, for in-court trials, lead counsel earns $800 per day while co-counsel earns $700 per day.

Combination System

In two states, Oklahoma and Utah, a combination of the aforementioned systems for determining the compensation rates is used. Both of these states employ an indigent defense system (capital or otherwise) that not all counties are required to follow. Local courts set the rate of compensation in those counties that are not part of the indigent defense system in these states.

[11] Based on the figures reported to the Texas Task Force on Indigent Defense. For county-by-county rates, please refer to http://tfid.tamu.edu/IDPlans/Feedocuments.asp.

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Oklahoma

The Oklahoma Indigent Defense System (OIDS) is the statewide program responsible for indigent defense representation in 75 of Oklahoma's 77 counties. The majority of cases within the system are handled by attorneys who contract with OIDS. Fifteen counties within the system are part of satellite offices that use salaried staff attorneys. Additionally, OIDS has a specialized division to handle capital cases at trial. For conflict and overload cases, the Executive Director of OIDS sets a statutory rate of compensation and per-case maximums. In capital cases, lead counsel earns an hourly rate of $60 for out-of-court work and $80 for in-court work with a maximum per case of $20,000. Co-counsel earns the hourly rate of $50 for out-of-court work and $70 for in-court work with a maximum per case of $5,000. The per-case maximums can be waived in extraordinary circumstances.

The two counties that do not participate in the Oklahoma Indigent Defense System are Oklahoma County and Tulsa County. Each of those two counties has its own public defender program, and the local courts set the compensation rate for attorneys appointed when the public defender cannot take the case. Tulsa County aligns itself closely with the rates established by OIDS, paying capital counsel $60 for out-of-court work and $80 for in-court work, with maximums of $20,000 for lead counsel and $5,000 for co-counsel. Oklahoma County also pays its court-appointed lead counsel a maximum of $20,000. However, counsel in Oklahoma County earn $50 for out-of-court work and $65 for in-court work. In cases with extraordinary circumstances, the Oklahoma County Public Defender recommends to the judge that additional funds beyond the maximum be allocated to court-appointed counsel.

Utah

Utah's indigent defense system is determined on a county-by-county basis. Counties elect to set up a public defender system run by the county, contract with individual attorneys, or contract with a legal organization. Currently, all counties in Utah have opted to use some sort of contract model for indigent defense services. Additionally, Utah's Indigent Defense Act allows counties to opt in to the Indigent Capital Defense Trust Fund.[12] As of 2007, 23 of Utah's 29 counties have chosen to participate in the fund. According to Rule 8 of Utah's Rules of Criminal Procedure, at least two attorneys must serve in capital cases. In cases in which the death penalty is a possible punishment but is not sought, the fund pays $60,000 to be split between counsel; in cases in which the death penalty is sought, the fund pays $100,000 to be split between counsel. The compensation of attorneys that are part of this system is determined by the Board of the Indigent Capital Defense Trust Fund.

The Federal Model: the Criminal Justice Act

At the federal level, the Criminal Justice Act of 1964 (18 U.S.C. § 3006A) authorizes payment for representation of indigent defendants accused of committing crimes. Under the act,

[12] Two other states -- South Dakota and Idaho -- have a similar trust fund that counties have the option of paying into for capital (or complex) cases.

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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 (CDO), and a panel of private attorneys.

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

Pursuant to 18 U.S.C. § 3005, two attorneys must be appointed to federal death penalty trial cases. The compensation of CJA panel attorneys is addressed by 21 U.S.C. § 848(q)(10)(A), which establishes the maximum compensation rate for work in and out of court at $125. The statute allows for a yearly increase in the rate to be determined by the Judicial Conference. The current rate set by the federal Judicial Conference is $163 per hour. According to the CJA Guidelines, there is no maximum amount that CJA panel attorneys can earn in capital proceedings.

Conclusion

In 1989, the American Bar Association adopted the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. The Guidelines were revised in February 2003 to reflect changes in the law and ABA policy. The more current version embodies the current consensus about what is required to provide effective representation in capital cases. The ABA adopted the Guidelines in order to "set forth a national standard of practice for the defense in capital cases in order to ensure high quality legal representation for all persons facing the possible imposition or execution of a death sentence by any jurisdiction." The revised edition of the Guidelines is available online at: http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/deathpenaltyguidelines2003.pdf.

Guideline 9.1, which concerns compensation of court-appointed counsel in capital trial cases, is printed below.

GUIDELINE 9.1- FUNDING AND COMPENSATION

A. The Legal Representation Plan must ensure funding for the full cost of high quality legal representation, as defined by these Guidelines, by the defense team and outside experts selected by counsel.

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B. Counsel in death penalty cases should be fully compensated at a rate that is commensurate with the provision of high quality legal representation and reflects the extraordinary responsibilities inherent in death penalty representation.

1. Flat fees, caps on compensation, and lump-sum contracts are improper in death penalty cases.

2. Attorneys employed by defender organizations should be compensated according to the salary scale of the prosecutor's office in the jurisdiction.

3. Appointed counsel should be fully compensated for actual time and service performed at an hourly rate commensurate with the prevailing rates for similar services performed by retained counsel in the jurisdiction, with no distinction between rates for services performed in or out of court. Periodic billing and payment should be available.

C. Non-attorney members of the defense team should be fully compensated at a rate that is commensurate with the provision of legal representation and reflects the specialized skills needed by those who assist counsel with the litigation of death penalty cases.

1. Investigators employed by defender organizations should be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor's office in the jurisdiction.

2. Mitigation specialists and experts employed by defender organizations should be compensated according to a salary scale that is commensurate with the salary scale for comparable expert services in the private sector.

3. Members of the defense team assisting private counsel should be fully compensated for actual time and services performed at an hourly rate commensurate with prevailing rates paid by retained counsel in the jurisdiction for similar services, with no distinction between rates for services performed in or out of court. Periodic billing and payment should be available.

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D. Additional compensation should be provided in unusually protracted or extraordinary cases.

E. Counsel and members of the defense team should be fully reimbursed for reasonable incidental expenses.

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Rates of Compensation for Court Appointed Counsel in Capital Cases at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Alabama[1]	$40	$60	None			Alabama Code § 15-12-21(d).
Arizona	Varies Maricopa County: $125 Pima County: Lead Counsel: $75 Co-counsel: $60		Varies Maricopa County: None Pima County: Lead Counsel: $15,000 Co-counsel: $7,500	Yes		Arizona Revised Statute Ann. § 13-4013 (A) grants authority to local court.
Arkansas	$90-$110		None			Arkansas Code Ann. § 16-87-211 authorizes the Public Defender Commission to set the rates.
California	Varies Los Angeles: Varies Sacramento: $150 San Mateo: Lead Counsel: $125 Co-counsel: $115		None			California Penal Code § 987.2 grants authority to local courts.
Colorado	$85[2]		$15,000	Yes		Rates set by Chief Justice Directive 04-04, per Colo. Rev. Stat. § 21-2-105.
Connecticut	$75		None			Conn. Gen. Stat. § 51-291(12) grants authority to the State Public Defender.
Delaware	$60		None			Delaware Code Ann. 29§4065 grants authority to court; Rule 44 of Rules of Criminal Procedure.

[1] In addition to the hourly rate set by statute, pursuant the *May v. State* counsel may also request an hourly overhead for "expenses reasonably incurred." The average and presumptive hourly rate for overhead costs is $30, which is almost always granted by the judge.

[2] This hourly rate excludes travel, which is paid at $54 per hour plus $0.33 per mile.

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Rates of Compensation for Court Appointed Counsel in Capital Cases at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Florida	N/A		$15,000	Yes	Yes	Fla. Stat. § 27.5304 sets maximums and states that flat fee amounts "shall be established annually in the General Appropriations Act."
Georgia	$95[3]		None			Official Code of Georgia § 17-12-8(b)(9) grants authority to the Georgia Public Defender Standards Council.
Idaho	Varies Ada County (Boise): $40	$50	None			Idaho Code § 19-860(b) grants authority to local judge.
Illinois	$145.39[4]		None			725 Illinois Compiled Statutes 124/10
Indiana	$101		None			Indiana Rules of Criminal Procedure Rule 24.
Kansas	$150		None			K.S.A. 22-4501 et. Seq. grants authority to Kansas Board of Indigents' Defense Services.
Kentucky	$75		$30,000 per attorney	Yes		Kentucky Rev. Stat. Ann § 31.235 grants authority to the Department of Public Advocacy.

[3] Hourly rate may be raised to previous rate of $125 given sufficient funding.

[4] While the Illinois Compiled Statutes sets the maximum hourly compensation rate at $125, it allows that the rate "shall be automatically increased or decreased, as applicable, by a percentage equal to the percentage change in the consumer price index-u during the preceding 12-month calendar year."

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State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Louisiana	Varies New Orleans: $110 Caddo Parish: $75		None			Louisiana Revised Statutes § 15-144 et. seq.
Maryland	$50		None			Ann. Code of Maryland Art. 27 § 6(d) grants Public Defender authority to promulgate administrative law.
Mississippi	Varies		$2,000 plus overhead which are presumptively set at $25 per hour[5]	No	Varies	Miss. Code. Ann. § 99-15-17 authorizes local judge; *Wilson v. State*, 574 So.2d 1338 (1990)
Missouri	N/A[6]		None			Missouri Rev. Stat. § 600.017 allows PD Commission to approve fee schedule.
Montana	$120		None			Administrative Rules of Montana Title 2.69.601 authorizes PD Commission to establish rates.
Nebraska	Varies. Range is from $60-$100. Douglas County (Omaha): $65 $80 Lancaster County (Lincoln): $85		None			Nebraska Revised Statutes § 29-3905 grants authority to local judge.
Nevada	$125		$20,000	Yes		Nevada Rev. Stat. § 7.125

[5] In practice, judges do not strictly follow the statutory maximum.

[6] The Missouri State Public Defender has a separate death penalty unit that handles the majority of capital cases. When a conflict arises, the case is transferred to another regional public defender office.

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Rates of Compensation for Court Appointed Counsel in Capital Cases at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
New Hampshire	$60[7]		$15,000	Yes		N.H. Constitution Part II, Art. 73A grants authority to the State Supreme Court; New Hampshire Supreme Court Rule 47.
New Jersey	$75		None			N.J. Statutes Ann. § 2A:158A-7(h) authorizes Public Defender to set rates.
New Mexico	N/A		Lead counsel: $24,500; Co-counsel: $12,500	Yes	Yes	New Mexico Statutes Ann. § 31-15-7(11) authorizes Chief Public Defender to formulate a fee schedule.
New York[8]	Pre-notice: Lead counsel: $100, Co-counsel: $75; Post-notice: Lead counsel: $125, Co-counsel: $100[9]		None			December 1998 Order of the New York Court of Appeals, pursuant to N.Y. Judiciary Law § 35-b (5)(a)

[7] Because the death penalty is pursued so infrequently in New Hampshire, a separate rate for assigned counsel handling capital cases is not established. The rate listed in the table is the same as the assigned counsel rate in felony cases.

[8] Existing death penalty statute declared unconstitutional by New York's high court in 2004.

[9] Rates vary depending on whether work is done before the prosecutor announces his/her intention to seek the death penalty (pre-notice), or if the work is done after the prosecutor's decision to seek the death penalty (post-notice).

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Rates of Compensation for Court Appointed Counsel in Capital Cases at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
North Carolina	Provisional counsel: $85; All other counsel: $95		None			General Statutes of North Carolina § 7A-498.5 grants authority to the Office of Indigent Defense Services.
Ohio	Varies State public defender recommends: $95		$75,000[10]	Yes		Ohio Revised Code Ann. § 120.33 grants local board of county commissioners authority to set rate; Ohio Revised Code Ann. § 120.04 authorizes public defender to recommend rates and set per case maximum.
Oklahoma[11]	Lead counsel: $60 Co-counsel: $50	Lead counsel: $80 Co-counsel: $70	Lead counsel: $20,000 Co-counsel: $5,000	Yes		22 Oklahoma Statutes § 1355.4 grants authority to the Executive Director of the Oklahoma Indigent Defense System.
Oregon[12]	Lead counsel: $55; Co-counsel: $40		None			Oregon Rev. Statutes § 151.216(f)(C) grants authority to the Public Defense Services Commission.

[10] The maximum rate set by the Ohio Public Defender is the rate at which the office will provide some reimbursement.

[11] Rates and maximums apply only to conflict and overload cases within the Oklahoma Indigent Defense System. Tulsa County and Oklahoma County have separate public defender programs.

[12] Rates apply only to cases that do not use contract attorneys; contractors handle the majority of cases in Oregon.

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State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Pennsylvania	Varies		Varies	Varies	Varies	16 Penn. Statutes § 9960.7 grants authority to trial court judge.
South Carolina[13]	$50	$75	$25,000	Yes		South Carolina Code § 16-3-26
South Dakota	$78		None			South Dakota Supreme Court sets rates, which are then incorporated into statute. S.D.C.L. § 23A-40-8
Tennessee	Lead counsel: $75; Co-counsel: $60	Lead counsel: $100; Co-counsel: $80	None			Tennessee Supreme Court Rule 13 § 3.
Texas	Varies Bexar County (San Antonio): Out of court: $80; Lead counsel (trial): $150, Co-counsel (trial): $140 Dallas County: $100 El Paso County: Lead counsel (trial): $50 out of court, $125 in court; Co-counsel (trial): $50 out of court, $100 in court		Varies		Varies	Texas Code of Criminal Procedure Art. 26.05 grants authority to local judge.
Utah	Varies[14]		Varies		$100,000 per case for attorneys in risk pool	Utah Code Ann. § 77-32-304.5 grants authority to county/municipality.

[13] While compensation rates are set by statute, judges often raise rates to $90-$110 and waive the maximum for "good cause shown."

[14] All counties in Utah use some sort of contract system for appointment of counsel. Counties also have the option of paying into a risk pool, the Indigent Capital Defense Trust Fund.

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Rates of Compensation for Court Appointed Counsel in Capital Cases at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Virginia	$125		None			Virginia Supreme Court sets rate.
Washington	Varies Recommended by State Bar Committee on Public Defense: no less than $125 King County: $75 Pierce County: $90		Varies	Varies	Varies	RCW § 36.26.090 grants authority to court; RCW § 10.101.030 requires counties to adopt standards including rates of compensation.
Wyoming	Varies: Up to $60, no less than $35	Varies: Up to $100	None			Wyoming Rules of Criminal Procedure Rule 44(e) sets range; Wyoming Code § 7-6-109 grants authority to court.
U.S. Government	$163		None			21 U.S.C. § 848(q)(10)(A)

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

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Selected Case Law Concerning Indigent Defendant Counsel Compensation

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Rates of Compensation for Court-Appointed Counsel in Non-Capital Felonies at Trial, 2007

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Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview, 2007

Introduction

Since 1997, The Spangenberg Group has periodically produced tables and narratives detailing compensation rates for court-appointed attorneys in non-capital felony cases at trial. The tables, which are prepared on behalf of the American Bar Association's Bar Information Program, provide state-by-state information concerning the hourly rates paid to assigned counsel and the authority for the rates. We receive repeated requests for the tables from attorneys, policy-makers and others. Frequent interest in this report is generated by a state legislature's consideration of changes to its attorney compensation rates.

The last comprehensive report was published in 2002. Since then, The Spangenberg Group has produced three reports which included selected updates in 2003, 2005 and 2006. In comparing statistics between the information that we gathered during our survey for this report and our last report, we will refer to the comprehensive report published in 2002.

It is not the purpose of this report to produce any type of assessment or evaluative ranking of the compensation rates reported in this article. First, many states have so-called "reasonable compensation" systems, in which the rates are set by the county or local judge and vary widely from county to county. Therefore no single rate can be defined for these states, making it impossible to place them in an ordinal ranking of rates paid to court-appointed counsel. Moreover, most of the "reasonable compensation" states do not maintain centralized records on the precise amounts court-appointed counsel are paid. To collect these data, we interviewed public defenders, court administrators, private counsel, or others familiar with the jurisdiction's indigent defense system. The numbers reflected in the accompanying table and/or narrative are representative of the limited information provided to us through these interviews.

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

- The assigned counsel model: private attorneys are assigned to indigent criminal cases on either a systematic or ad hoc basis. Typically they are paid on an hourly basis or paid a flat fee per case.
- The contract model: a jurisdiction contracts with private attorneys, a group of attorneys, a bar association or a private, non-profit organization to provide representation in some

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or all of the indigent cases in the jurisdiction.[1] In some jurisdictions, such as Delaware and Connecticut, the public defender agency contracts with private attorneys to handle most of the conflict of interest cases.

- The public defender model: a public or private non-profit organization with full or part-time staff attorneys and support personnel provides all or a percentage of the representation to indigent defendants in a jurisdiction. Employees of defender offices are paid a salary.

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

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

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

Hourly assigned counsel compensation rates are often inadequate to pay attorney overhead costs. Litigation in Mississippi has resulted in court-appointed counsel being paid an hourly amount to cover overhead expenses on top of the hourly rate for compensation.[2] This hourly rate for overhead expenses in Mississippi has no cap. Similarly, in Alabama, the Alabama Supreme Court has interpreted state law to provide for overhead reimbursement on top

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

[2] *Wilson v. State*, 574 So. 2d 1338 (Miss. 1990).

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of hourly rates for court-appointed attorneys.[3] In 2005, the Alabama Attorney General issued Opinion 2005-063, stating that overhead costs were not subject to reimbursement by Alabama law. Following the opinion, the state comptroller withheld overhead payments to court-appointed attorneys until the end of 2006, when the Alabama Supreme Court issued an opinion reinstating the payment of overhead expenses in *Wright v. Childree.*[4]

Finally, it is important to mention one concern with the court-appointed counsel compensation system, and that is the potential for a conflict of interest when judges approve the compensation and reimbursement claims of panel attorneys who appear before them. The *1992 Interim Report of the Committee to Review the Criminal Justice Act*[5] pointed out that when a judge approves a fee that is less than the amount sought, counsel may - rightly or wrongly - perceive the reduction as an "admonition, rebuke or retaliation for defense tactics." Judges, however, sometimes feel justified in cutting vouchers they feel are excessive for the type of case handled, relying on their own view of "what a case is worth." Through our experience in examining indigent defense systems around the country, we have also observed judges who are unwilling to waive fee caps in extraordinary circumstances; do not authorize experts and investigators; and/or do not provide substantial funding for experts and investigators. These practices, if done routinely, effectively reduce the authorized hourly rate or per-case maximum and serve as a disincentive for attorneys to provide competent representation.

Different Approaches to Compensating Assigned Counsel

The following section discusses seven approaches taken by the state legislatures in determining compensation for court-appointed counsel.[6] The approaches are broken down by the authority that sets the rates. These approaches are characterized as:

- Statutory hourly rate
- Administrative or court rule
- State public defender
- State commission on indigent defense
- Reasonable compensation
- Reasonable compensation, recommended rate
- Combination approach.

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[3] *May v. State*, 672 So.2d 1307 (Ala. Crim. App. 1993), cert. denied *May v. State*, 672 So.2d 1310 (Ala. 1995).

[4] *Wright v. Childree*, (CV-05-1544).

[5] For more discussion of the Criminal Justice Act, see the Federal Model Section on page 16 of this report.

[6] *Gideon v. Wainwright*, 372 U.S. 335 (1963) did not place indigent defense funding responsibility exclusively on state government. By statute, the state can transfer the responsibility for funding in whole or in part to county government. This is done in a number of states.

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Statutory Hourly Rate

Ten states (Alabama, Florida, Hawaii, Iowa, Massachusetts, Nevada, New York, South Carolina, West Virginia and Wisconsin) reimburse court-appointed counsel according to state statute. The rates paid in the District of Columbia are also set by statute. Therefore, rate establishment for court-appointed attorneys is a legislative matter. All of the pertinent statutory sections and the rates appear in the accompanying table.

Alabama

Alabama statutory law sets compensation rates at $40/hour for in-court work and $60/hour for out-of-court work. The statute authorizing these rates states, "Counsel shall also be entitled to be reimbursed for any expenses reasonably incurred in such defense to be approved in advance by the trial court." In *May v. State*, the Alabama Court of Criminal Appeals ordered the state to pay an additional amount for overhead as "expenses reasonably incurred."[7] The Alabama Attorney General issued an opinion against reimbursement of the fees, and the Alabama Comptroller Office withheld overhead fee payment starting in February 2005. However, in December of 2006 the Supreme Court of Alabama ruled that the Comptroller must pay overhead fees in *Wright v. Childree* retroactive to February 2005.[8] The presumptive and average hourly rate for overhead fees in Alabama is $30.

Florida

During Florida's 2007 legislative session, the Florida General Assembly created five regional conflict counsel offices, which will begin operating in October 2007. The offices will handle cases that are conflicts for the public defender offices. The legislation provides that private, court-appointed attorneys will take secondary or tertiary conflict cases and earn a flat fee per case. The flat fees depend on the type of case and will be set annually by the legislature. The statutory ceilings on individual case payments in felony cases are $2,500 for a non-capital, non-life felony and $3,000 for a life felony. The maximums may be waived in cases that require "extraordinary and unusual effort." Beginning in July 2007, the maximum flat fee schedule as specified in the General Appropriations Act is:

- Life Felony: $2,500
- Punishable by Life Felony: $2,000
- First Degree Felony: $1,500
- Second Degree Felony: $1,000
- Third Degree Felony: $750

[7] See *May v. State*, *supra* note 3, at 3.

[8] See *Wright v. Childree*, *supra* note 4, at 3.

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Before the passage of the 2007 legislation, Florida law granted local circuit indigent services committees the authority to set compensation rates, and the rates varied from circuit to circuit. Some circuits set an hourly rate while others used a flat rate and/or fee schedule.

Iowa

Senate Filing 415, adopted in 1999 and codified in Iowa Code § 13B.2A in 2001, created a five-member Indigent Defense Advisory Commission to advise the General Assembly and the state public defender regarding hourly rates and per-case fee limitations. The bill also implemented a statutory hourly fee for cases handled by court-appointed counsel, which was codified in Iowa Code. The current statutory hourly rates for court-appointed attorneys are $65 for Class A felonies and $60 for all other felonies. While the state legislature sets the hourly rate for court-appointed attorneys in Iowa, the state public defender sets per case maximums pursuant to Iowa Code § 13B.4.

Massachusetts

From 1996 until 2004, the hourly compensation rates paid to court-appointed attorneys were $54 for homicide cases, $39 for Superior Court cases, and $30 for all other cases. In 2004, two cases were filed in the Massachusetts Supreme Judicial Court that helped pave the way for an increase in court-appointed attorney rates, which increased both in 2004 and 2005. One petition, filed by the indigent defense oversight body in Massachusetts, the Committee for Public Counsel Services (CPCS), along with the ACLU, addressed the concerns of indigent defendants in Hampden County.[9] In Hampden County (Springfield), a shortage of attorneys willing to work for the low rates provided by legislative appropriation led to indigent defendants being arraigned without counsel, some of whom remained in custody without being appointed counsel. In *Lavallee v. Justices in the Hampden Superior Court*, indigent defendants petitioned the Supreme Judicial Court (SJC), arguing that their constitutional right to counsel was being violated. Preceding the decision of the SJC in *Lavallee*, a second petition, *Arianna S. v. Commonwealth of Massachusetts*, was filed on behalf of indigent defendants statewide.[10] The SJC granted the *Lavallee* plaintiffs relief by ordering the dismissal of charges without prejudice for those facing felony, misdemeanor, or municipal ordinance charges for more than 45 days without the appointment of counsel, and by ordering the release of inmates that had been detained for over seven days without assistance of counsel.[11] Faced with the *Lavallee* decision and the pending *Arianna* petition, in August 2004 the Massachusetts legislature raised the hourly rates across the board by $7.50 per hour; they also established a statewide legislative commission to study the court-appointed defender system. Following the commission's recommendations, in July 2005, the legislature raised the rates again to the current hourly rates: $100 for homicide cases, $60 for

[9] *Lavallee v. Justices in the Hampden Superior Court*, 442 Mass. 228 (2004).

[10] *Arianna S., et al. v. Commonwealth of Massachusetts, et al.*, SJ 2004-0282 (2004).

[11] However, after several felony defendants were released, the SJC amended the order and allowed the trial judges to appoint private attorneys who the trial judges felt were competent to handle the case.

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non-homicide Superior Court cases, and $50 for all other cases. There is no maximum cap for court-appointed attorney fees in Massachusetts.

New York

Until 2004, the hourly rates in New York were the same as they were since 1986: $25 out of court and $40 in court with a $1,200 maximum. In 2000, the New York County Lawyers' Association sued the City and State of New York, alleging that the statutory rate of compensation had resulted in the imminent danger of ineffective assistance of counsel for indigent defendants in criminal court in New York City. On February 5, 2003, Manhattan Supreme Court Justice Lucindo Suarez issued an order finding that the State of New York's failure to increase the rates of compensation for court-appointed lawyers in New York City violated constitutional and statutory rights to meaningful and effective representation and obstructs the judiciary's ability to function. [12] The order included a permanent injunction directing the State and City to compensate assigned counsel at $90 per hour for both in-court and out-of-court work until the Legislature modified the statutes or upon further order of the Court. Following issuance of this order, the New York State General Assembly approved a rate of $75 an hour in felony cases for all work, in or out of court, with a maximum of $4,400. The $4,400 cap may be waived upon showing of extraordinary circumstances.

Hourly Rate Per Administrative or Court Rule

In ten states (Colorado, Delaware, Maine, New Hampshire, Rhode Island, South Dakota, Tennessee, Vermont, Virginia and Wyoming) uniform, statewide hourly rates are established either by executive administrative rule (such as a state Supreme Court order) or court rule, often as set forth by the state's rules of criminal procedure. The practices in several of these states warrant brief discussion.

- Delaware

In Delaware, Rule 44 of the Rules of Criminal Procedure establishes a rate of $60 per hour. In practice, however, contract attorneys handle cases that public defenders cannot take, and the courts contract with attorneys at a flat yearly rate of $54,036. The rate established by the Rules of Criminal Procedure is used in Class A (serious) felonies when court-appointed attorneys are paid an additional $60 per hour after they work beyond the contractual 25 hours per case. The maximum that an attorney can earn per case beyond their contracted amount is $15,000. That amount can be waived in extraordinary circumstances.

[12] *New York County Lawyers' Ass'n. v. State of New York*, 196 Misc. 2d 761 (N.Y. Sup.Ct. 2003).

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Vermont

In Vermont, 13 V.S.A. §5205(a) grants the Vermont Supreme Court the authority to set a reasonable rate for court-appointed attorneys that do not contract with the state public defender. In 1992, by Administrative Order of the Vermont Supreme Court, the hourly rate of $25 was raised to $50, effective FY 1993, with the following maximums: $25,000 for felonies involving life imprisonment or the death penalty,[13] $5,000 for a major felony, and $2,000 for a minor felony. However, a legislative override between 1992 and 1999 kept court-appointed attorney hourly rates at $40. In July of 1999, Vermont began to adhere to the $50 per hour rate.

Appointment of attorneys in felony cases has become exceedingly rare since 2001 when the Office of the Defender General set up a system of contract attorneys to handle homicide, life in prison, and death penalty cases. Contract attorneys in this system are paid $103,000 per year. Vermont uses contract attorneys for other conflict cases as well. Therefore, in the past six years very few cases have been handled by attorneys who are paid the $50 hourly rate.

Virginia

In Virginia, the state Supreme Court has established rates of $90 per hour for all work in or out of court, but state statute restricts per-case payments to no more than $1,235 to defend charges punishable for more than 20 years and $445 to defend other felony charges. During the 2007 legislative session, the Virginia General Assembly passed legislation that would provide for waivers beyond the fee caps. Effective July 1, 2007, the maximum of $1,235 to defend charges punishable by more than 20 years in prison can be waived up to an additional $850; the maximum of $445 to defend all other felony charges can be waived up to an additional $155. The same legislation allows for counsel to request an additional waiver exceeding those amounts.

In the past, the Virginia Courts have scaled down the per-case maximum they will pay attorneys proportional to the funding the legislature has appropriated. The waiver amounts approved by the General Assembly are also subject to legislative funding. SB 1168 states, "If at any time the funds appropriated to pay for waivers under this section become insufficient ... no further waivers shall be approved." Since the waivers are dependent on legislative funding, without a significant appropriation, Virginia's relatively competitive hourly rates have little bearing.[14]

Wyoming

Rather than set a standard rate, the Rules of Criminal Procedure set a range and maximum hourly rate in Wyoming. For work performed out of court, the local court must

[13] Vermont currently does not have the death penalty.

[14] For FY 2007-2008, the Virginia General Assembly has appropriated an additional $8.2 million for these waivers.

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recommend a reasonable hourly rate between $35 and $60. Court-appointed attorneys cannot earn more than $100 per hour for work performed in court.

Public Defender

In seven states (Alaska, Connecticut, Kentucky, Maryland, Minnesota, New Jersey, and New Mexico) hourly compensation rates for court-appointed attorneys are set by the state public defender office or its statewide equivalent and are subject to legislative appropriation.

Alaska

In Alaska, non-capital felony cases not handled by the statewide public defender are handled by one of three types of counsel: staff, contract and court-appointed attorneys. The Office of Public Advocacy (OPA) has staff lawyers who handle a limited number of conflict cases. The OPA contracts with other lawyers at rates ranging between $65-$100 per hour, depending on the experience of the lawyer and his or her location. Attorneys who take appointed cases and are not under contract are paid $60 per hour for work in court and $50 per hour for work out of court. With findings of extraordinary circumstances, however, these rates can be raised; therefore, the average rates of court-appointed attorneys range from $60-$85 per hour. These lawyers are appointed by the Public Advocate. There are different maximums for various types of cases for court-appointed lawyers. The outside maximum is $4,000, but this can be waived in cases with extraordinary circumstances.

Connecticut

In Connecticut, "special public defenders" serve on either a contractual or a non-contractual basis to handle conflict of interest cases in which no public defender is available. Those appointed on a non-contractual basis are paid $65 per hour for both in- and out-of-court work. Special public defenders that enter into contracts with the Connecticut Public Defender earn a flat rate depending on the court in which the case is heard. For work in Judicial District Courts, attorneys are paid a flat rate of $1,000 per case. In the lower courts, the Geographical Area Courts, attorneys are paid a flat rate of $325 per case. In cases with extraordinary circumstances, the attorneys may be paid beyond the flat rates.

Kentucky

In Kentucky, the Department of Public Advocacy runs its statewide indigent defense system. Very few court-appointed cases go to private lawyers in Kentucky. Each of the 30 Department of Public Advocacy offices across the state has "conflict contracts" which reflect how private attorneys are compensated. In some cases, attorneys are paid a flat fee per case or a trial bonus. When the private attorneys are paid on an hourly basis, they earn $40 per hour for non-violent felonies and $50 per hour for violent felonies. The rates are capped according to the type of felony and whether the case goes to trial. (See table.)

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Minnesota

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

New Mexico

New Mexico uses a request for proposals contract system in which attorneys are awarded cases on a rotating basis. All attorneys within the contract system earn flat rates that vary according to the degree of the felony and the judicial district. For example, in the Second Judicial District (Albuquerque), counsel earn $650 for a first degree felony, $600 for a second degree felony, $550 for a third degree felony, and $500 for a fourth degree felony. The rates earned in the Second Judicial District are typical across the state. For non-capital first degree murder cases, attorneys earn a flat rate of $5,000. All of the flat rates can be waived if the contractor incurs "extraordinary expenses."

State Commission on Indigent Defense

In eight states (Arkansas, Georgia, Kansas, Missouri, Montana, North Carolina, North Dakota, and Oregon) the rates paid to court appointed counsel are set by statewide public defender commissions or boards.

Missouri

According to statute, the Missouri Public Defender Commission has the authority to set compensation rates for court-appointed attorneys, but it is extremely rare to appoint an attorney from outside of the public defender program to a conflict case. Approximately 75 percent of conflict of interest cases are handled by transferring the case from the branch office where the conflict was identified to another branch office. For cases not handled by public defender branch offices, the public defender appoints an attorney under a flat fee range agreement (e.g., $500-$750, depending on time and work needed). The attorney can request additional funds, and if those funds are granted, the hourly rate beyond the flat fee is $50.

North Carolina

In August 2000, the North Carolina General Assembly passed the Indigent Defense Services Act of 2000, which created the Office of Indigent Defense Services and charged it with the responsibility of overseeing the provision of legal representation to indigent defendants and others entitled to counsel under North Carolina law. Included in its responsibilities is the power to set the rates of compensation paid to assigned counsel. In 2007 the rates for assigned counsel

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in felony cases at trial were $65 an hour with no per-case maximum. This same rate applies to court-appointed attorneys in all non-capital cases.

North Dakota

As of January 1, 2006, the Commission on Legal Counsel for Indigents, which was created in the 2005 legislative session, assumed responsibility for establishing a statewide reasonable rate of compensation for appointed counsel. Before the establishment of the North Dakota Commission on Legal Counsel for Indigents, attorneys were paid under two-year contracts with judges in the state's seven judicial districts. Now, in areas without public defender offices, private attorneys contract with the commission. In conflict cases, court-appointed attorneys are paid a $65 per hour rate set by the commission with a maximum per case of $2,000 for felonies. However, that maximum may be waived in extraordinary circumstances.

Reasonable Compensation

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

Arizona

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

Maricopa County pays its court-appointed counsel on a flat fee basis according to the type of offense. Effective July 2007, the rates are as follows:

- Felony DUI; Class 4-6 Felonies: $900
- Classes 2 and 3 Felonies: $1,250
- Negligent Homicide: $5,000
- Manslaughter: $7,500

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- Second Degree Murder: $10,000
- Non-capital First Degree Murder: $15,000

In Pima County, the Office of Court-Appointed Counsel (OCAC) divides non-capital felonies into three categories – Group A, Group B, and first degree murder. OCAC pays a flat rate of $800 for up to 20 hours of work in Group A (less serious) felonies. If counsel gets prior approval from OCAC and a court order, he or she can work beyond the 20 hours at a rate of $50 per hour. For Group B felonies, which include more serious charges such as armed robbery, attempted murder, and dangerous crimes against children, attorneys earn a flat rate of $3,000 for up to 60 hours of work. Once again, with a court order and prior approval from OCAC, the attorney can earn an hourly rate of $60 for work beyond 60 hours. For first degree murder cases, OCAC pays an hourly rate of $75 with a $15,000 cap, which is routinely waived.

California

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

The majority of indigent cases in Los Angeles County are handled by the county public defender and alternative public defender. Conflict cases are handled by court-appointed counsel who contract with the Los Angeles County Bar Association Indigent Criminal Defense Appointments (ICDA). The hourly rates paid to those attorneys contracting with the ICDA range from $68 to $91 depending on the severity and sentence applied to the felony.

San Mateo County has no public defender program and relies exclusively on court-appointed counsel to provide indigent defense services. In 1968, San Mateo County contracted with the San Mateo County Bar's Private Defender Program (PDP) to provide legal representation of indigent defendants entitled to public counsel. Attorneys are compensated through an event-based fee schedule that is designed to provide no economic incentive to plea out a case. When a case is assigned, the attorney is paid a case fee of $375. Attorneys also receive additional flat fees for pretrial conferences ($80), preliminary hearings ($310-$350), and motions. During trial, court-appointed attorneys receive an hourly rate depending on whether it is a jury trial ($90 per hour) or not ($70 per hour). In certain circumstances attorneys may receive additional compensation of up to $1,250 for cases that require exceptional time and effort. For those cases with special circumstances, attorneys also receive an increased hourly rate ($85-$115 per hour) depending on the circumstances.

Idaho

In Idaho, court-appointed counsel rates vary widely across the state as indigent defense systems are determined on a county-by-county basis. In Ada County (Boise), conflict cases are

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handled by private contract attorneys. The hourly rates paid to conflict attorneys in Ada County are $40 for work performed out of court and $50 for work performed in court. There are no caps on how much an attorney can earn per case.

- Louisiana

In Louisiana, determination of compensation for court-appointed attorneys is left up to local indigent defender boards. Most of the district-based indigent defender boards utilize contract counsel to handle conflict of interest cases. Baton Rouge, for example, contracts with two attorneys per criminal court section to handle its conflict cases; the contracts are negotiable. In Caddo Parish (Shreveport), the Indigent Defender Office (IDO) contracts with attorneys for conflict and overload cases. Felony contracts pay $40,000 per year to panel attorneys.

Michigan

There is wide variation in court-appointed counsel fee schedules among Michigan's judicial circuits. Further, while some circuits pay hourly rates on a case-by-case basis, other circuits pay flat fees for plea and trial cases. In the 3rd Judicial Circuit (Wayne County), for example, attorneys handling criminal cases in the trial court are reimbursed according to a graduated, event-based schedule. Based on the event (e.g., motion, preliminary examination, etc.) and possible sentence, attorneys receive a particular fee. For instance, for a half day of trial, an attorney receives between $90 and $210, depending on the severity of the potential sentence. Other districts, such as the 21st (Isabella County), use contracts as the basis for compensation for counsel representing indigent defendants. Isabella County contracts with nine attorneys for a total indigent defense cost of $318,887 per year (increasing by 2% each year). Contract attorneys in Isabella County also earn a flat rate of $250 per day at trial.

- Mississippi

Compensation rates for court-appointed counsel in non-capital cases in Mississippi vary throughout the state. The general range of hourly rates paid to court-appointed attorneys in Mississippi is $45 to $65. The state has capped court-appointed compensation at $1,000 per case. Litigation in Mississippi challenging the constitutionality of the fee cap failed to increase or eliminate the per-case maximum, but succeeded in entitling court-appointed counsel to receive reimbursement for overhead costs.[15] In addition to submitting vouchers for payment of attorneys' fees, counsel in Mississippi submit vouchers for reimbursement of overhead costs for every hour worked. The presumptive rate for such expenses is $25 per hour.

- Pennsylvania

The rates paid to court-appointed counsel vary widely in Pennsylvania, with all decisions left to local judges. In Philadelphia, effective March 10, 1997, compensation for court-appointed

[15] See *Wilson v. State*, *supra* note 2, at 2.

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counsel shifted from an hourly basis to a "Modified Guaranteed Fee System," where attorneys are paid on a per-diem basis. The fee is payable as follows:

Preparation Fees:

- Non-homicide felony, disposition after arraignment but prior to trial: $400
- Non-homicide felony, disposition at trial: $650
- Homicide, disposition after arraignment but prior to trial: $1,133
- Homicide, disposition at trial: $1,700

Per Diem Fees:

- Non-homicide felony, 3 hours or less: $175
- Non-homicide felony, more than 3 hours: $350
- Homicide felony, 3 hours or less: $200
- Homicide felony, more than 3 hours: $400

In Allegheny County (Pittsburgh), court-appointed attorneys are paid $50 per hour plus office expenses. They can also opt to get paid a flat rate of $250 for a half day and $500 for a full day of in-court work. Fees are capped at $3,000 for homicides and $1,500 for serious, multiple incident felonies (such as rape).

•• Texas

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

The compensation plans and therefore compensation rates in Texas vary widely. The hourly rate for court-appointed attorneys for both in- and out-of-court work ranges from $30 to $175.[16] The hourly rate often depends on the type of felony, the particular event, and the experience of the attorney. Many counties use a combination system of hourly and fixed rates. Harris County (Houston), for example, uses this type of combination system. For out-of-court work, the county pays on an hourly basis depending on the degree of the felony. Court-appointed attorneys earn $100 per hour working on a first degree felony case, with a cap of $2,000. A second degree felony case pays an hourly rate of $75 with a maximum of $750, and a third degree felony pays an out-of-court rate of $50 with a $500 maximum. In-court fixed daily rates also depend on the degree of the felony, as well as whether the case is at trial or not. The

[16] Range determined from information provide to the Texas Task Force on Indigent Defense. For county-specific information, visit http://tfid.tamu.edu/IDPlans/Feedocuments.asp.

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daily rate for a first degree felony at trial is $500, while the daily rate for a third degree felony in court but not at trial is $150 with a $750 maximum.

Utah

In Utah, indigent defense systems are determined on a county-by-county basis. All of the counties in Utah have opted to contract either with private attorneys or independent organizations. Counties also have the option of setting up a public defender office. Salt Lake County, which handles about half of the felony cases in Utah, uses a contract system for court-appointed attorneys. The annual salary of the attorneys is determined by wage parity with prosecutors. Utah's Indigent Defense Act also allows for the use of a risk pool whereby counties can opt to pay into a fund that they can later draw from for felony cases; however, the minimum number of counties needed to participate in the fund has not been reached.

- Washington

Court-appointed counsel compensation rates vary widely in Washington. In King County (Seattle), the Office of Public Defense contracts with four non-profit defender agencies. For conflict cases, court-appointed counsel earn $50 per hour. The Office of Public Defense regularly pays beyond the $50 per hour rate for complex cases. Spokane County pays a flat fee of $1,100 for most felonies, and for more serious felony cases, court-appointed counsel is paid between $50 and $60 per hour.

Reasonable Compensation, Rate Recommended

In two states, Indiana and Ohio, although there is no set rate of compensation, a statewide body within the indigent defense system recommends a rate. Because indigent defense is organized and delivered at the local level in these states, the recommended rates have no binding effect.

Indiana

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

- Ohio

Each county in Ohio is required to have a fee schedule for court-appointed counsel. In addition, the Ohio Public Defender sets a non-binding, recommended maximum fee schedule for appointed counsel. The Ohio Public Defender recommended rates are currently $50 per hour out

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of court and $60 per hour in court. Recommended per case maximums in non-capital felony cases are: aggravated murder without death penalty specifications - $10,000 for two attorneys, $8,000 for one attorney; felonies with the possible punishment of life imprisonment, repeat violent offenders, and major drug offenders - $5,000; aggravated felony (first, second and third degree felonies) - $3,000; other felonies - $2,500. Most counties pay lower rates than those suggested by the Public Defender's Office. The Ohio Public Defender reimburses counties for up to 50% of the state or county rate (whichever is lower) paid to court-appointed counsel. Attorneys may petition the court for a waiver of the maximum if their county has an extraordinary fee clause in its fee schedule.

The Ohio Public Defender Commission's 2005 Annual Report lists the hourly rates paid in each county for felonies, misdemeanors, juvenile, appeals, death penalty and other cases. The average hourly rate for non-capital felonies paid among the counties in FY 2005 was $39. The $39 hourly rate does not include routine expenses (such as travel, printing, copying, etc.).

Combination System

In Illinois and Oklahoma, a combination of more than one system is used to determine the rates of compensation for court-appointed attorneys.

Illinois

Illinois statute sets compensation rates and maximums that apply to only Cook County (Chicago). In Cook County, statutory rates of compensation for court-appointed attorneys are $30 for out-of-court work and $40 for in-court work. These rates have not changed since 1975. The statute also sets the maximum amount per case at $1,250; this amount may be waived "if the trial court certifies that such payment is necessary to provide fair compensation."

The other 101 counties follow the "reasonable compensation" method, and local courts set the compensation rates. For example, Lake County contracts with five attorneys at a rate of $2,500 per month to handle conflict cases that cannot be handled by the Public Defender. Compensation in additional cases (beyond those handled by the five contract attorneys) is determined on a case-by-case basis.

- Oklahoma

In Oklahoma, the statewide Oklahoma Indigent Defense System (OIDS) is responsible for all indigent defense representation in 75 of the state's 77 counties. Counsel in these counties who are appointed by the court to felony cases are entitled to be paid statutory rates of compensation – $40 per hour out of court and $60 per hour in court with a $3,500 maximum. However, the majority of cases in these counties are handled by attorneys who work under annual contracts with OIDS or work as staff employees at satellite offices.

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Oklahoma and Tulsa counties both have separate county public defender systems. In Oklahoma County, court-appointed attorneys earn a flat fee of $500; in addition to the flat fee, the public defender may recommend that the judge grant additional payment for extraordinary expenses. For non-capital murder cases in Oklahoma County, court-appointed attorneys earn a flat rate of $1,800 plus $400 per day in trial. On average, court-appointed attorneys in Oklahoma County earn $40 per hour for non-murder felonies and $50 per hour for non-capital murder felonies. Tulsa County, on the other hand, pays an hourly rate with maximums set by local court rule. The hourly rate in Tulsa County is $60 for out-of-court work and $80 for in-court work. Tulsa County has a maximum cap of $3,000 for non-capital murder felonies and $1,000 for all other felonies.

The Federal Model: the Criminal Justice Act

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

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

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

CJA panel attorneys serve every district in the federal court system. In those districts where there is a Federal Public Defender Organization or a Community Defender Organization, panel attorneys are appointed to handle those cases in which the institutional defender has a

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conflict of interest -- approximately 25% of all cases. They handle all of the indigent defendant cases in those districts without a CDO or Federal Public Defender Organization.

Private attorneys are appointed on a case-by-case basis by a district court or court of appeals from a panel of lawyers approved by the court as qualified to handle federal criminal cases. The CJA establishes hourly panel attorney payments of $45 for out-of-court work and $65 for in-court work, but authorizes the Judicial Conference to approve higher rates. In April of 2001, the Judicial Conference raised the payment rates to $55 out of court and $75 in court. As of January 1, 2006, the CJA panel attorney rate is $92 in and out of court in all districts. This increase reflects the partial implementation by Congress of the annual pay adjustments authorized by the CJA. Attorneys may receive up to $7,000 for felony cases. This ceiling may be exceeded in complex or extended cases upon application to the court.

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

Findings

Based on the information contained in the accompanying table and the preceding narrative regarding court-appointed counsel rates, we find that:

- Since our last comprehensive report in 2002, hourly rates have increased in twelve states, Washington, D.C., and on the federal level;
- Of the states with rate increases, the majority had dramatic increases (i.e., over $20 per hour);
- Litigation has contributed to rate increases in two states;
- Per-case maximums have been raised in several states;
- Three states have implemented change that led to greater uniformity in rates statewide; and
- There is great disparity among rates across the country.

Since 2002, a number of changes have occurred in the hourly rates paid to court-appointed counsel. For instance, the federal government has raised the rates of compensation for court-appointed counsel in federal court from $90 to $92 an hour for work done both in and out of court. Hourly rates have been increased on a statewide basis in 12 states (Colorado, Delaware, Hawaii, Iowa, Kansas, Maryland, Massachusetts, Nevada, New Jersey, New York, Rhode Island, and South Dakota) and in the District of Columbia. In Wyoming, where the Rules of Criminal Procedure include a range of hourly rates, the range has increased over the past five years. Connecticut, Hawaii, and New York removed the distinction between in- and out-of-court rates; Connecticut kept its in-court rate for all cases, which was the greater of the two. Of the

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twelve states with rate increases, many increased their compensation rates dramatically over the five-year period. For example, in Hawaii the statutory hourly compensation rates for court-appointed attorneys in felony cases went from $40 out of court and $60 in court to $90 for both in and out of court. New Jersey doubled the hourly rates it paid to court-appointed attorneys from $25 out of court and $30 in court to $50 out of court and $60 in court.

Litigation in New York and Massachusetts challenged the constitutionality of the rates paid to court-appointed attorneys and served as a catalyst for an increase in hourly rates for court-appointed attorneys.[17] In New York, the New York County Lawyers' Association (NYCLA) filed a class action lawsuit in 2000 on behalf of the indigent clients of New York City court-appointed attorneys.[18] As a result of the lawsuit, the hourly rates for court-appointed counsel in New York have increased from $25 in court and $40 out of court to $75 for both in- and out-of-court work. In Massachusetts, two lawsuits that were filed in 2004 led to two rate increases in 2005 and 2006.[19] In that time period, hourly rates increased from $54 to $100 in homicide cases; $39 to $60 in Superior Court cases; and $30 to $50 in all other cases.

Many per-case maximums have changed since the last comprehensive report as well. Maximum rates have been raised in federal cases, the District of Columbia, and statewide in six states (Hawaii, Iowa, Maryland, Nevada, New York, and Rhode Island). In Virginia, the current maximums of $1,235 for felonies punishable by over 20 years imprisonment and $445 for all other felonies can now be waived up to an additional $850 and $155, respectively; previously, the maximums in Virginia were not waivable. Other states developed maximums that distinguish among different types of cases. The maximums paid in Kansas now reflect a differentiation between types of felonies; whereas the maximum for all felonies was $5,000 in 2002, the range depending on severity of the felony is now between $1,200 and $8,000. New Hampshire now has a higher maximum for homicide felonies, and West Virginia removed its maximum for those felonies punishable by life without the possibility of parole. Tennessee developed per-case maximum categories for preliminary hearings and trials in which the trial maximums are higher than the 2002 maximums. The maximums set in Kentucky are now distinguished by whether or not the case goes to trial; however, the per-case maximums have decreased in Kentucky since 2002.

Three states (Georgia, Montana, and North Dakota) have implemented reforms that have resulted in a greater uniformity of the rates paid to court-appointed counsel since 2002. In 2003, the Georgia legislature passed the Georgia Indigent Defense Act, which established the Georgia

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[17] See *New York County Lawyers' Ass'n. v. State of New York*, *supra* note 12, at. 6; *Lavallee v. Justices in the Hampden Superior Court*, *supra* note 9, at. 5; *Arianna S., et al. v. Commonwealth of Massachusetts, et al.*, *supra* note 10, at 5.

[18] For a more in depth discussion of *New York County Lawyers' Ass'n v. State of New York*, see narrative on page 5 of this report.

[19] For more discussion of *Lavallee v. Justices in the Hampden Superior Court* and *Arianna S., et al. v. Commonwealth of Massachusetts, et al.*, see page 5 of this report.

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Public Defender Standards Council (GPDSC). One of the responsibilities of the council is to establish compensation rates for court-appointed attorneys. As of January 2006, the Montana Public Defender Commission, created in the 2005 legislative session, assumed responsibility for setting rates for court-appointed attorneys, among other responsibilities. In both Georgia and Montana, the rates of compensation for court-appointed attorneys prior to the establishment of their statewide commissions varied across the state. Like Montana, North Dakota's statewide commission was created by the 2005 legislative session. The North Dakota Commission on Legal Counsel for Indigents (CLCI) was also assigned the responsibility for setting court-appointed counsel rates. Prior to the establishment of CLCI, court-appointed attorneys were paid through a contract system in which attorneys contracted with district judges for two years of service. All of these reforms result in a standardization of rates on a statewide basis.

As evident from the table that accompanies this report, there is great disparity among the states regarding the hourly rate paid to court-appointed attorneys in non-capital felony cases. For example, the hourly rate in Oregon and Wisconsin is $40 while the hourly rate in Nevada is $100. The same is true concerning per-case maximums. Many states do not use a maximum. Of those states that do use a per-case maximum, the maximums vary greatly. For example, the per-case maximum for felonies punishable by life imprisonment is a waivable $25,000 in Vermont while the cap for the same type of case in Virginia is $1,235, waivable up to an additional $850.

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Appendix
Selected Case Law Concerning Indigent Defendant Counsel Compensation

State v. Smith, 681 P.2d 1374 (Arizona, 1984)
In re: Rhem v. County of Richardson, 410 N.W.2d 92 (Neb. 1987)
State Ex Rel Stephen v. Smith, 747 P.2d 816 (Kansas S.Ct., 1987)
State v. Ryan, 444 N.W. 2d 656 (Nebraska, 1989)
White v. Board of County Commissioners, 537 So.2d 1376 (Fla. 1989)
State v. Lynch, 796 P.2d 1150 (Oklahoma S.Ct., 1990)
Wilson v. State, 574 So.2d 1338 (Miss. S.Ct., 1990)
May v. State, 672 S. 2d 1307 (Ala. App., 1993), cert. denied, May v. State, 672 S. 2d. 1310 (Ala. 1995)
Zarambia v. Superior Court, 912 P.2d 5 (Ariz. 1996)
New York County Lawyers' Association v. State of New York, 196 Misc. 2d 761 (N.Y. Sup.Ct. 2003)
Lavallee v. Justices in the Hampden Superior Court, 442 Mass. 228 (2004)
Arianna S., et al. v. Commonwealth of Massachusetts, et. al., SJ 2004-0282 (2004)
Wright v. Childree, CV-05-1544 (Ala. 2006)

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Alabama[1]	$40	$60	Felony with possible sentence of life without parole: No maximum Class A Felony: $3,500 Class B Felony: $2,500 Class C Felony: $1,500	Yes		Code of Alabama § 15-12-21
Alaska	$50	$60	Felony disposed following a trial - $4,000; Felony disposed of following a plea of guilty or nolo contendere, or by dismissal - $2,000	Yes		2 AAC 60.010 Alaska Administrative Code
Arizona	Varies		Varies	Yes	Varies	AZ Rev. Stat. Ann. § 13-4013(a) grants authority to local court
Arkansas	Non-capital homicide, Classes A and Y felonies: $70-$90; All other felonies: $60-$80.		None			Arkansas Code Ann. § 16-87-211 authorizes the Public Defender Commission to set the rates
California	Varies Los Angeles: ranges from $68-$91, depending on type of felony. Sacramento: ranges from $70-$90, depending on type of felony.				Varies	California Penal Code § 987.2 grants authority to local court
Colorado	Type A (violent): $60 Type B (non-violent): $56		Felony 1 (trial/no trial): $15,000/$7,500 Felony 2 (trial/no trial): $7,500/$3,500 Felonies 3-6 (trial/no trial): $5,000/$2,500	Yes		Rates set by Chief Justice Directive 04-04, per Colo. Rev. Stat. § 21-2-105.

[1] In addition to the hourly rate set by statute, pursuant the *May v. State* counsel may also request an hourly overhead for "expenses reasonably incurred." The average and presumptive hourly rate for overhead costs is $30, which is almost always granted by the judge.

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State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Connecticut	$65		None		Varies	Appointed counsel rates are set by the State PD in accordance with C.G.S. § 51-291(12).
Delaware	$60[2]		$15,000[3]	Yes	Yes	Del. Code Ann. 29 § 4605 grants authority to Supreme Court.
D.C.	$65		$3,600[4]	Yes		D.C. Code Ann. § 11-2604(a)
Florida	N/A		Non-capital, non-life felonies: $2,500; Life felonies: $3,000	Yes	Yes	Fla. Stat. § 27.5304 sets maximums and states that flat fee amounts "shall be established annually in the General Appropriations Act."
Georgia	$45	$60	None			OCGA § 17-12-8(b)(9) grants authority to the Georgia Public Defender Standards Council.

[2] Rate applies only to court-appointed attorneys in Class A felonies after 25 hours of work. Court-appointed counsel contract for $4,503 per month in Delaware.

[3] This maximum only applies to the hourly rate beyond contract in Class A felonies.

[4] In addition to a per-case cap, no attorney may earn more than $135,200 annually from court appointments in the District of Columbia.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Hawaii	$90		$6,000	Yes		H.R.S. § 802-5(b)
Idaho	Varies Ada County (Boise): $40	$50				Idaho Code § 19-860(b) grants authority to local judge.
Illinois[5]	Varies					725 IL.C.S. 5/113-3.
Indiana	Varies[6]					Ind. Code § 33-40-8-2 grants authority to local judge; Ind. Code § 33-40-5-4 authorizes Commission to set standard rates.
Iowa	Class A felonies: $65 All other felonies: $60		Felony punishable by life w/out parole (Class A): $18,000 Felony punishable by 25 years to life (Class B): $3,600 All other felonies (Classes C and D): $1,200	Yes		Iowa Code § 815.7; State Public Defender sets per case maximum in 493 I.A.C. 12.6 (1)

[5] Illinois' Compiled Statutes sets a statutory rate of $30 out of court and $40 in court with a $1,250 waivable maximum that applies only to Cook County; all other counties follow the "reasonable compensation" model in which the local court sets the compensation rate.

[6] In order to be reimbursed by the Indiana Public Defender Commission, courts must pay assigned counsel a minimum of $60 per hour. *See description on page 14 of narrative.*

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Kansas	$80		Non-trial: Non-drug offenses levels 6-10/ Drug offense under 6 hours in court: $1,200 Non-drug offenses levels 1-5/ Drug offense over 6 hours in court: $1,600 Trial: Non-drug offenses levels 5-10: $2,400 Non-drug offenses level 4/ Drug offenses levels 2-4: $3,200 Non-drug offenses levels 1-3/ Drug offenses level 1: $8,000	Yes		K.S.A. 22-4501 et. seq. grants authority to Kansas Board of Indigents' Defense Services.
Kentucky	Non-violent felonies: $40 Violent felonies: $50		Non-violent felonies (no trial): $600 Non-violent felonies (trial): $900 Violent felonies (no trial): $1,200 Violent felonies (trial): $1,500	Yes	Varies	K.R.S. Ann. § 31.235 grants authority to the Department of Public Advocacy.
Louisiana	Varies					Louisiana Revised Statutes § 15-144 et. seq.
Maine	$50		Murder: As determined by trial judge. Class A: $2,500 Class B/C against a person: $1,875 Class B/C against property: $1,250	Yes		Supreme Judicial Court Admin. Order JB 05-5.
Maryland	$50		$3,000	Yes		Ann. Code of Maryland Art. 27 § 6(d) grants Public Defender authority to promulgate administrative law.

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Rates of Compensation for Court Appointed Counsel in Non-Capital Felonies at Trial, 2007

State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Massachusetts	Homicide cases: $100; Superior Court non-homicide felonies and youthful offender cases: $60; All other felony cases in district court: $50.		None			Mass. General Laws Ann. Ch. 211D § 11.
Michigan	Varies Range is from $40-$89		Varies			Michigan Complied Laws Ann. § 775.16 grants authority to presiding judge.
Minnesota[7]	$50		None			No official authority; PD establishes rates.
Mississippi	Varies Range is from $45-$65		$1,000 plus overhead expenses, which are presumptively set at $25 an hour.	No		Miss. Code Ann. § 99-15-170 *Wilson v. State*, 574 So. 2d 1338 (1990).
Missouri	Rarely Used $50		None		Yes	Missouri Rev. Stat. § 600.017 allows PD Commission to approve fee schedule.
Montana	$60		None			Administrative Rules of Montana Title 2.69.601 authorizes PD Commission to establish rates.
Nebraska	Varies. Range is from $60-$80. Douglas County (Omaha): $65 $80 Lancaster County (Lincoln): $75		Varies	Yes		Nebraska Revised Statutes § 29-3905 grants authority to local judge.

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

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State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Nevada	$100		$20,000 facing life without the possibility of parole; $2,500 if facing less than life without parole.	Yes		N.R.S. 7.125
New Hampshire	$60		Homicide felonies: $15,000 All other felonies: $3,000	Yes		N.H. Constitution Part II, Art. 73A grants authority to the State Supreme Court; New Hampshire Supreme Court Rule 47.
New Jersey	$50	$60	None			N.J.S.A. § 2A: 158A-7 grants authority to the New Jersey Public Defender.
New Mexico	N/A		Varies		Yes	New Mexico Statutes Ann. § 31-15-7(11) authorizes Chief Public Defender to formulate a fee schedule.
New York	$75		$4,400	Yes		Article 18-B of the County Law § 722-b.
North Carolina	$65		None			General Statutes of North Carolina § 7A-498.5 grants authority to the Office of Indigent Defense Services.
North Dakota	$65		$2,000	Yes		North Dakota Century Code § 54-61-02(a)(1) grants authority to the Commission on Legal Counsel for Indigents.

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State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Ohio	Varies. Public Defender Standards recommend: $50	$60	Public Defender Commission recommends: Aggravated Murder: $8,000 (1 attorney), $10,000 (2 attorneys); Murder and Felony w/ possibility of life sentence/repeat Violent Offender/Major Drug Offender: $5,000; Felonies (degrees 1-3): $3,000; Felonies (degrees 4&5): $2,500.	Yes		Ohio Revised Code Ann. § 120.33 grants local board of county commissioners authority to set rate; Ohio Revised Code Ann. § 120.04 authorizes public defender to recommend rates and set maximum.
Oklahoma[8]	$40	$60	$3,500	Yes		22 Oklahoma Statutes § 1355.4 grants authority to the Executive Director of the Oklahoma Indigent Defense System.
Oregon[9]	$40		None			O.R.S. § 151.216(f)(C) grants authority to the Public Defense Services Commission.
Pennsylvania	Varies Philadelphia County pays on a per diem basis.		Varies		Varies	Pennsylvania Statutes Ann. Article 16 § 9960.7 grants authority to local judge.
Rhode Island	Murder cases: $100; if potential sentence is greater than 10 years: $90; if potential sentence is less than 10 years: $60.		Murder cases: $15,000; if potential sentence is more than 10 years: $10,000; if potential sentence is less than 10 years: $5,000.	Yes		General Laws of the State of RI § 8-15-2 vests authority w/ Chief Justice. Supreme Court Executive Order No. 95-01.

[8] Rates apply only to conflict and overload cases within the Oklahoma Indigent Defense System. Tulsa County and Oklahoma County have separate public defender systems.

[9] Rates apply only to cases that do not use contract attorneys; contractors handle the majority of cases in Oregon.

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State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
South Carolina	$40	$60	$3,500	Yes		Code of Law of S.C. Ann. § 17-3-50.
South Dakota	$78		None			S.D.C.L. § 23A-40-8.[10]
Tennessee	$40	$50	Preliminary hearings in general sessions or municipal court: $1,000; Trial court: $1,500	Up to $3,000[11]		Supreme Court Rule 13 § 2
Texas	Varies Bexar County (San Antonio): Ranges from $50-$75 out of court and $75-$125 in court. Dallas County: Ranges from $75-$100 El Paso County: $50 $65		Varies		Varies	Texas Code of Criminal Procedure Art. 26.05 grants authority to local judge.
Utah	Varies				Varies	Utah Code Ann. § 77-32-304.5 grants authority to county legislative body or district court.
Vermont[12]	$50		Felony involving life in prison; $25,000 Major felony: $5,000 Minor felony: $2,000	Yes		13 V.S.A. § 5205(a) grants authority to the Vermont Supreme Court.

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

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

[12] Hourly rate only applies to attorneys that are not under contract with the state public defender; since 2001, most cases have been appointed by means of contract.

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State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
Virginia	$90		$1,235 to defend charges punishable for more than 20 years; $445 to defend other felony charges.	Up to an additional $850 to defend charges punishable for more than 20 years; up to an additional $155 for all other felony charges.[13]		Code of Virginia § 19.2-163 grants authority to the Virginia Supreme Court and sets the per case maximums.
Washington	Varies King County: $50 Pierce County: $50-$62 Spokane County: (serious felonies) $50-$60 Skagit County: $65-$75		Varies Pierce County: Class A Felonies: $1,100 (no trial) $5,500 (trial) Classes B/C Felonies: $700 (no trial) $2,000 (trial)		Varies	RCW § 36.26.090 grants authority to court; RCW § 10.101.030 requires counties to adopt standards including rates of compensation.
West Virginia	$45	$65	No maximum for felonies punishable by life imprisonment without parole. All others: $3,000[14]	Yes		West Virginia Code Ann. § 29-21-13a(d).
Wisconsin	$40 plus $25 per hour for travel	$40	None			Wisconsin Statutes Ann. § 977.08(4m).
Wyoming	Varies: Up to $60, no less than $35	Varies: Up to $100	None			Wyoming Rules of Criminal Procedure Rule 44(e) sets range; Wyoming Code § 7-6-109 grants authority to court.

[13] Effective July 1, 2007.

[14] West Virginia also sets its maximum amount for expenses at $1,500 per case; this amount is waivable as well.

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State	Hourly Rate		Per Case Maximum	Is Maximum Waivable?	Flat Fee	Authority
	Out of Court	In Court				
U.S. Government	$92		$7,000	Yes		18 U.S.C. § 3006A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

Teresa L. Deppner, Clerk
Ted Philyaw, Chief Probation Officer



The Court will be closed on Monday, January 19th in observance of the Martin Luther King Jr. holiday.

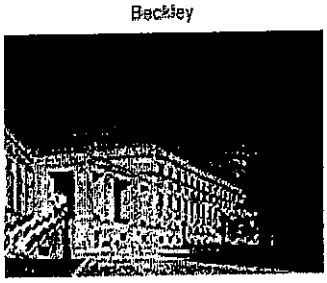
On Friday evening, September 19, 2008, the President signed S. 2450, enacting new Federal Rule of Evidence 502 (Pub. L. No. 110-322, 122 Stat. 3537). The new rule limits waivers of attorney-client privilege and work-product protection to facilitate discovery and reduce its cost. The law takes effect immediately. For more information, click here.

The Judicial Conference Advisory Committees on the Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules have proposed amendments to their respective rules and requested that the proposals be circulated to the bench, bar, and public for comment. The public comment period ends on February 17, 2009. The proposed amendments, rules committee reports explaining the proposed changes, and other information are posted on the Judiciary's Federal Rulemaking web site at http://www.uscourts.gov/rules.

Site Map

Points of Holding Court and Locations

CM/ECF Case Management Electronic Case Files



General Information	CM/ECF Information	Published Opinions	Rules, Procedures, Plans and Standing Orders
Clerk's Offices	Court Calendar	Jury & Naturalization Information	District Court Forms
Judges	District Court Fees	Post-Judgment Interest Rates	Employment Opportunities
Attorney Information	Prisoner and Other Pro Se Litigation	Student Education and Community Outreach	Other Links
Court History	Judicial Misconduct & Disability	Seminars Disclosure	MDL No. 1968 In Re Digitek

Welcome to the web site of the United States District Court for the Southern District of West Virginia. This site is designed to provide convenient access to information about the court and its operations. To ensure the integrity and security of this system, United States Government personnel may monitor and/or audit traffic on this web site. Any attempt to tamper with or otherwise misuse this system or information maintained herein may result in criminal prosecution.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

Teresa L. Deppner, Clerk
Ted Philyaw, Chief Probation Officer



HOME

NEW - Winning Strategies Training Program for CJA Panel Attorneys

Attorney Registration Form for Electronic Filing

Attorney Registration Form for E-Mail Notification Only

Certificate of Good Standing

Criminal Justice Act Plan

Fee for Admission to Practice

Local Rules for Attorney Admissions and Visiting Attorney Admissions

Notice of Change of Attorney Information

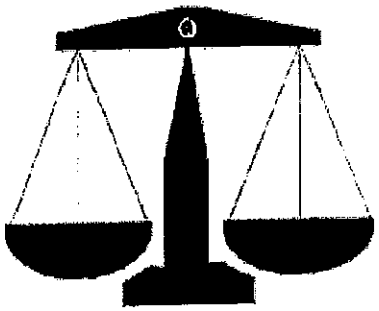
Order Appointing Senior Panel Attorneys to the CJA Plan Panel Advisory Committee and District Representative entered February 4, 2008

Rates for CJA Panel Attorneys

Statement of Visiting Attorney

Training Programs for CJA Panel Attorneys

ATTORNEY INFORMATION



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CJA Rates History - This document lists the mileage, hourly, and maximum rates allowed by the Administrative Office of the U.S. Courts for all years between 1996 and the present.

MILEAGE RATES

June 7, 1996 to September 7, 1998	31 cents per mile
September 8, 1998 to March 31, 1999	32.5 cents per mile
April 1, 1999 to January 13, 2000	31 cents per mile
January 14, 2000 to January 21, 2001	32.5 cents per mile
January 22, 2001 to January 20, 2002	34.5 cents per mile
As of January 21, 2002	36.5 cents per mile
As of January 1, 2003	36 cents per mile
As of January 1, 2004	37.5 cents per mile
As of February 4, 2005	40.5 cents per mile
As of September 1, 2005	48.5 cents per mile
As of January 1, 2006	44.5 cents per mile
As of February 1, 2007	48.5 cents per mile
As of March 19, 2008	50.5 cents per mile

HOURLY RATES

Before January 1, 1996	$60 in Court, $40 out
As of January 1, 1996	$65 in Court, $45 out
As of January 1, 2000	$70 in Court, $50 out
As of April 1, 2001	$75 in Court, $55 out
As of May 1, 2002	$90 in Court, $90 out
As of January 1, 2006	$92 in Court, $92 out
As of May 20, 2007	$94 in Court, $94 out
As of May 20, 2007 - Death/Capital Cases	$166 in Court, $166 out
As of January 1, 2008	$100 in Court, $100 out
As of Jan 1, 2008 - Death/Capital Cases	$170 in Court, $170 out

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MAXIMUM AMOUNTS

Before November 13, 2000	$3,500 Felony Case $750.00 All Others
As of November 13, 2000	$5,200 Felony Case $1,200 All Others $1,500 Misdemeanors $3,700 Appeals
As of December 8, 2004	$7,000 Felony Case $1,500 All Others $2,000 Misdemeanors $5,000 Appeals

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2004 WV STATE BAR MEMBERSHIP SURVEY RESULTS

1. Please check the following category which most appropriately describes your employment status:

	Response Percent	Response Total
Full time/does not require legal training	11.1%	115
Unemployed	0.4%	4
Retired	0.3%	3
Semi-retired or part-time	5.3%	55
Full-time attorney	**82%**	**853**
Dk/Na	1%	10
Total Respondents		**1040**
(skipped this question)		**5**

2. How long have you been a licensed attorney?

	Response Percent	Response Total
Under 5 years	21.5%	223
6 to 10 years	19.3%	201
11 to 15 years	15.6%	162
16 to 20 years	10.1%	105
21 to 30 years	**23.2%**	**241**
31 to 40 years	7.7%	80
40+ years	2.6%	27
Dk/Na	0%	0
Total Respondents		**1039**
(skipped this question)		**5**

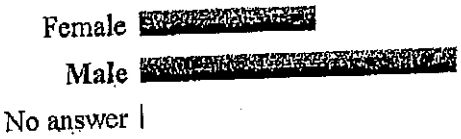
3. What is your age?

	Response Percent	Response Total
Under 30 years	13.3%	138
31 to 35	**16.9%**	**176**
36 to 40	15.2%	158
41 to 45	11.2%	117
46 to 50	13.8%	143

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51 to 55	13.6%	141
56 to 60	9.8%	102
61 to 65	3%	31
Over 65	3.3%	34
Dk/Na	0%	0
Total Respondents		**1040**
(skipped this question)		**5**

4. What is your gender?



	Response Percent	Response Total
Female	35.9%	373
Male	63.7%	662
No answer	0.4%	4
Total Respondents		**1039**
(skipped this question)		**6**

5. What is your race?



	Response Percent	Response Total
Caucasian	97.2%	1006
African-American	1.3%	13
Asian-American	0.2%	2
Hispanic-American	0.5%	5
Other	0.5%	5
Dk/Na	0.4%	4
Total Respondents		**1035**
(skipped this question)		**10**

6. What was your 2003 taxable gross income from your law practice:

	Response Percent	Response Total
Under $20,000	3.2%	33
$20,001 to $40,000	7.6%	78
$40,001 to $60,000	18.3%	187
$60,001 to $80,000	**20.5%**	**209**

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$80,001 to $100,000	8.7%	89
$100,001 to $150,000	12.7%	130
$150,001 to $250,000	11.6%	118
Over $250,000	8.5%	87
Dk/Na	8.8%	90
	Total Respondents	**1021**
	(skipped this question)	**23**

7. Of the following, which is your PRIMARY legal occupation?

	Response Percent	Response Total
Attorney in Private Practice	**70.5%**	**733**
Judge	0.7%	7
Government (except Judge)	0.9%	9
Government - Federal	2.9%	30
Government - State	10.7%	111
Government - County/Municipal	1.9%	20
Financial, Insurance, Utility or Other Business	2.2%	23
Professor of Law	0.5%	5
Legal Services Attorney	1.9%	20
Public Defender	2.1%	22
Dk/Na	1%	10
Other (please specify)	4.7%	49
	Total Respondents	**1039**
	(skipped this question)	**5**

8. Where did you receive your legal training?

	Response Percent	Response Total
WVU College of Law	**65.9%**	**685**
Other	34.1%	354
Dk/Na	0%	0
	Total Respondents	**1039**
	(skipped this question)	**6**

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9. Please characterize the quality of your education experience at the WVU College of Law.

	Response Percent	Response Total
Excellent	19.4%	199
Good	38%	389
Fair	9.1%	93
Poor	0.9%	9
Dk/Na	32.6%	334
Total Respondents		1024
(skipped this question)		21

10. What is the form of business under which you practice law?

	Response Percent	Response Total
Sole practitioner	12.7%	122
Sole practitioner sharing office space	1.8%	17
Associate	16.8%	161
Sole practitioner with associate	2%	19
Partner	10.9%	104
Legal Corporation	8.8%	84
Professional Limited Liability Company	24.1%	231
Dk/Na	22.9%	219
Total Respondents		957
(skipped this question)		88

11. What is the size of your law office, including yourself?

	Response Percent	Response Total
1 lawyer	17.1%	163
2 lawyers	10.4%	99
3 to 5 lawyers	15.5%	148
6 to 10 lawyers	8.8%	84
11 to 15 lawyers	4.5%	43

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16 to 25 lawyers	9.7%	93
26 to 50 lawyers	9.2%	88
Over 50 lawyers	15.2%	145
Dk/Na	9.7%	93
Total Respondents		**956**
(skipped this question)		89

12. Do you limit your practice to a specialty?

	Response Percent	Response Total
Yes	45.1%	429
No	**46%**	**437**
Dk/Na	8.9%	85
Total Respondents		**951**
(skipped this question)		94

13. Check the single field of law listed below from your individual time and effort produced the greatest dollar amount of fees last year.

	Response Percent	Response Total
Administrative Agencies	3.2%	31
Bankruptcy	1.8%	17
Commercial Law	3.6%	34
Criminal Law	7.2%	69
Estate and Probate	1.8%	17
General Practice	4.2%	40
Personal Injury, Defense	**16.5%**	**158**
Public Utilities	1.4%	13
Taxation	0.7%	7
Environmental	1.3%	12
Health	1.9%	18
Antitrust	0.1%	1
Appellate Work	0.3%	3
Coal, Oil and Gas	1.6%	15
Corporations	1.1%	11
Domestic Relations	2.8%	27

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Financial Institutions	0.7%	7
Employment Law	4.2%	40
Personal Injury, Plaintiff	12.4%	119
Real Estate	4.8%	46
Trial Work Not Personal Injury	3.4%	33
Education	0.6%	6
Dk/Na	14.8%	142
Other (please specify)	9.5%	91
	Total Respondents	**957**
	(skipped this question)	**88**

14. What percentage of fee-producing time did you devote to the field indicated in the previous question?

	Response Percent	Response Total
Less than 20%	1.6%	15
20% to 39%	6%	57
40% to 59%	13.4%	128
60% to 79%	20.4%	194
80% to 100%	**38.5%**	**367**
Dk/Na	20.1%	192
	Total Respondents	**953**
	(skipped this question)	**92**

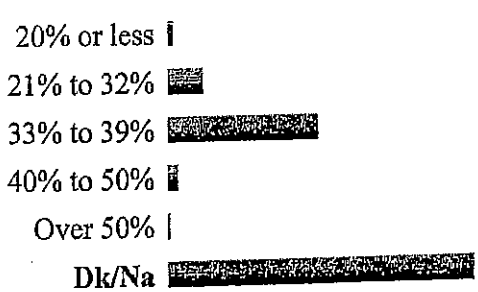
15. If you charge on a hourly basis, what is your usual hourly rate?

	Response Percent	Response Total
Less than $45	0%	0
$46 to $65	1.4%	13
$66 to $90	1%	9
$91 to $110	7.6%	72
$111 to $135	18%	170
$136 to $150	14.6%	138
$151 to $200	17%	160
Over $200	9.8%	92

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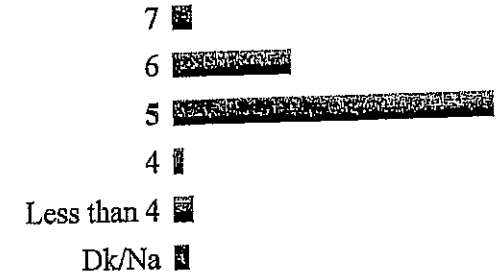
Dk/Na	**30.6%**	**288**
	Total Respondents	**942**
	(skipped this question)	**102**

16. If you charge on a contingency fee basis, what percentage do you charge most often?



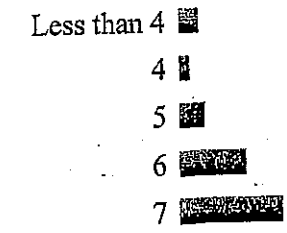
Response Percent	Response Total
1.1%	10
7.5%	68
29.7%	270
2.6%	24
0.1%	1
59%	**537**
Total Respondents	**910**
(skipped this question)	**133**

17. How many days per week do you devote to the practice of law?



Response Percent	Response Total
4.4%	42
23.4%	223
62.2%	**593**
2.5%	24
4.5%	43
3%	29
Total Respondents	**954**
(skipped this question)	**91**

18. On average, how many chargable hours whether directly billed or not do you produce a day?



Response Percent	Response Total
4.3%	41
2.8%	27
5.8%	55
13.1%	125
20.5%	195

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SUPREME COURT OF APPEALS
CHARLESTON, WEST VIRGINIA
25305

JOSEPH P. ALBRIGHT
JUSTICE

February 11, 2008

By Hand

Honorable Richard Thompson, Speaker
West Virginia House of Delegates
Room 234M, Building 1
State Capitol Complex
Charleston, West Virginia 25305

Dear Mr. Speaker:

Attached to this letter is a copy of a letter received from Judge Wilson of the First Judicial Circuit. It outlines a problem with regard to child abuse and neglect cases that is likewise applicable to panel attorneys representing parties in Public Defender Corporation conflict cases and panel attorneys representing parties in non-Public Defender Corporation counties.

The problem described by Judge Wilson is further exacerbated by the fact that the staff of the West Virginia Public Defender Services is more interested in forcing non-public defender counties to adopt the public defender system than in fairly administering the mixed panel-attorney/Public Defender Corporation system. Specifically, their adverse involvement is demonstrated in two very concrete ways. First, there is rarely any effort made to obtain an increase in the hourly rate for panel attorneys. Second, the Public Defender Corporation offices are funded fully, leaving the funds for panel attorneys woefully inadequate and exhausted, as Judge Wilson points out, early each spring, several months before a new fiscal year commences.

The problems Judge Wilson describes can only be resolved by two actions by the Legislature: (a) a reasonable increase in the hourly rate for panel attorneys; and (b) a substantial increase in the appropriation for public defender services with directions that the bills of panel attorneys be regularly and timely paid.

In my view, the two steps I just outlined should be divorced from and addressed entirely separately from the bureaucracy-building effort to force each and every county to have a public defender office. That is a separate issue. The failure to adequately and timely pay panel attorneys has, among other things, led to the disgraceful situation Judge Wilson outlines, where some lawyers

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have felt it necessary to sell their accounts receivable to a fronting corporation which then charges a steep interest rate to provide timely compensation at even a more reduced rate to these lawyers.

One problem on the other side of the ledger that does deserve attention is the degree to which panel attorneys' bills are in fact reviewed and critiqued for accuracy, overcharges, and overreaching. Under current law, the circuit judges have authority to address these problems, but the State Public Defender Service does not. Without any question, it would be proper to also permit the central office to review these bills and return them to the circuit judge for further review where questions appear regarding the accuracy or suitability of the bills. However, in my honest opinion, this is a relatively small part of the problem, probably exacerbated by the low rate of pay and the complete untimeliness of that pay.

Mr. Speaker, the problems Judge Wilson outlines, about which I have just commented, deserve correction now. I would be most happy to meet with your or any of your colleagues or staff to further discuss these problems if that will promote their resolution.

Sincerely,

Joseph P. Albright

JPA/psm

cc: Chief Justice Elliott E. Maynard
Justice Robin Jean Davis
Justice Larry V. Starcher
Justice Brent D. Benjamin
Judge Ronald E. Wilson
Steve Canterbury, Administrative Director

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FEB 11 2008

FIRST JUDICIAL CIRCUIT
OHIO, BROOKE AND HANCOCK COUNTIES

RONALD E. WILSON, JUDGE
HANCOCK COUNTY COURTHOUSE
NEW CUMBERLAND, WEST VIRGINIA
26047

TELEPHONE
304 / 564-3311 Ext. 231
FAX: 304 / 564-5602

February 8, 2008

The Hon. Elliott E. Maynard, Chief Justice
The Hon. Robin Jean Davis
The Hon. Brent D. Benjamin
The Hon. Larry V. Starcher
The Hon. Joseph P. Albright
Supreme Court of Appeals
State Capitol Building
1900 Kanawha Boulevard
Charleston, West Virginia 25305

Re: Attorneys in Child Abuse and Neglect Cases

Dear Justices:

I know that the Court is aware of the exploding number of child abuse and neglect cases in our state courts. In Hancock County alone the number of child abuse and neglect filings jumped from 16 in 2006 to 71 in 2007. Fortunately, because of the positive changes brought about by the Supreme Court of Appeals, Circuit Judges now have the rules and the training to protect children in these proceedings.

I want you to be aware of a growing problem that threatens the procedure we now have in West Virginia to provide fair, timely and efficient disposition of cases involving children. The problem is that the Public Defender Services is so under funded that it cannot timely pay court appointed abuse and neglect attorneys. As a result of the failure of the legislature adequately to

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fund the Public Defender Services to compensate attorneys for their work and expenses within a reasonable time period, an increasing number of attorneys are refusing to take abuse and neglect cases or are threatening to stop taking cases if they don't get any relief. This is causing a critical shortage of qualified and dedicated attorneys in these critically important cases.

For example, one of the most dedicated and qualified attorneys in the First Judicial Circuit, Cathryn A. Nogay, an attorney who has served as a guardian ad litem in child abuse and neglect cases for over a decade, recently informed the judges that she will no longer accept child abuse and neglect cases. Ms. Nogay has reluctantly reached this decision because of her frustration with our Public Defender program in West Virginia. Public Defender Services is more than six months behind in payment to attorneys and owes Ms. Nogay more than $39,500.00 for services billed in 2007. For more than ten years she has attempted to receive some help for this recurring problem. Instead of seeing any improvement, the problem has gotten progressively worse.

Some seasoned abuse and neglect attorneys are using the Daniels Corporation, (a third party company that "fronts" billed invoices to attorneys, for a steep interest rate) to obtain their money more promptly. Not only is it shocking that an attorney would have to do that to survive, it may get worse because the Daniels Corporation is now threatening to stop providing funds to West Virginia attorneys because of the money that it is owed by Public Defender Services. Another outstanding abuse and neglect attorney, a University of Virginia law school graduate, uses the Daniels Corporation and reports that he nets less than $5.00 per hour on court appointed cases. He also has said that he is not going to take any more cases if the situation doesn't improve by this Summer.

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You are also aware that Public Defender Services funding runs out of money in the Spring of each year and no payments are made until July 1 of the next fiscal year. We must do something about this problem before the system totally breaks down and children are harmed, and then we will all have to take emergency action to protect children. Abuse and neglect proceedings, more than any other area of the law, must have attorneys with a social conscience and a deep concern for children. The work of abuse and neglect attorneys is often devalued by trial attorneys who do not feel that they should not be involved in social work. Thus, the number of quality attorneys willing to accept abuse and neglect cases is much more limited than in criminal defense cases. In addition, abuse and neglect attorneys are required to receive a minimum of three hours continuing legal education before they are eligible to participate in these cases.

You are also aware that an overwhelming number of neglect cases require court appointed attorneys. In the simplest case of a father, mother, and a child, three attorneys have to be appointed. In most cases four or five is a more likely number. The system has worked because a small number of dedicated and conscientious attorneys have chosen to devote a substantial portion of their legal work to abuse and neglect cases. It is a very frustrating job. By its very nature, much of their work involves more social work than legal work. Children are being protected in this system and its success is based, in large part, upon the work of these attorneys. Their income is very modest and, because they are willing to devote a substantial portion of their time to these types of cases, they must be paid in a timely manner if they are to continue to maintain their offices.

In Jewell v. Maynard, 181 W.Va. 571, 383 S.E.2d 536 (1989) the Court found "that delay in payment in court-appointed cases has had as detrimental an effect upon the willingness of

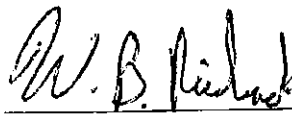
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public defender system, there will still continue to be a need for court appointed counsel such as in conflict of interest cases in which multiple defendants are involved.

Finally, the goal should not be to establish the cheapest system but the concern should be focused on the quality of representation. In that regard, I strongly believe that our trial courts should again be surveyed to determine their opinion regarding the quality of the two indigent defense mechanisms. The last survey found an insignificant difference between the two systems.

Finally, I commend the members of our commission for their diligent efforts concerning our mandate. However, I believe that the majority has, to a certain extent, been rushed to judgment by the statutorily fixed date of January 15, 2009. I believe that the state would be better served if a more thorough analysis of the data would be undertaken after this fiscal year to allow a more effective evaluation to be made after the recent legislative changes regarding processing of appointed counsel vouchers has taken full effect. I believe that this is needed before we make recommendations which could have a serious impact on the provision of indigent defense services.

Respectfully submitted,



William B. Richardson, Jr. /State Bar #4557

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lawyers to accept appointments as the low rate of pay itself." The Court also said that "the legislature must create some mechanism for periodic compensation of lawyers as services are performed." 181 W.Va. at 582.

We desperately need the Court's persuasive powers with the legislature, and as well the persuasive powers of our Administrative Director, to get involved with the problem now. The Public Defender Services program needs to be adequately funded and staffed so that we can eliminate the problem of the inordinate delay in the payment of Public Defender Vouchers. The legislature must understand that children will be harmed if we do not have enough dedicated lawyers representing children and parents in abuse and neglect cases. I am prepared to do whatever is necessary to help you do whatever is necessary to address this critical problem. I sincerely ask the Court's help in this effort.

Thank you for your consideration of this request.

With thanks and every good wish, I remain

Sincerely yours,

Ronald E. Wilson, Judge

CC: The Hon. Alan D. Moats,
Judge, 19th Judicial Circuit
Steven D. Canterbury,
Administrative Director
WV Supreme Court of Appeals
John A. "Jack" Rogers, Esq.
Executive Director
West Virginia Public Defender Services

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CATHRYN A. NOGAY
ATTORNEY AT LAW
P. O. BOX 2993
WEIRTON, WV 26062
(304)723-4430

January 20, 2008

Honorable Ronald E. Wilson
Judge, First Judicial Circuit
Hancock County Courthouse
New Cumberland, WV 26047

Dear Judge Wilson:

After much consideration I have decided I will no longer accept court appointed cases, particularly as Guardian ad litem in child abuse and neglect cases. A number of factors affected my decision, but the biggest factor is the never ending funding problems with the Public Defender Services. Abuse and neglect work is hard enough, both legally and emotionally, and those who choose to do it should have some expectation of fair and timely compensation. The PDS is now more than 6 months behind in payment, and owes me more than $39,500.00 for services billed in 2007. I have been writing letters, and lobbying my legislators and the Governor, for more than 10 years, asking that they address this problem, but it has only gotten progressively worse.

It has been a pleasure working with you, and I will, of course see all my current cases to completion. Thank you for your care and concern for the children, and families, in our cases - it has certainly made a positive difference in their lives. I have loved this work and hope to find another way to serve the children of Brooke and Hancock counties.

Thank you for your attention to this matter.

Sincerely yours,

Cathryn A. Nogay

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APPENDIX C

Statement of Opposition to Indigent Defense Commission Report

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STATEMENT OF OPPOSITION TO INDIGENT DEFENSE COMMISSION REPORT

I am writing to express my disagreement with certain portions of the recommendations of this commission. Although the enabling legislation for our commission was enacted in the spring of 2008, our members were not appointed until the fall and our first meeting was not held until early November of 2008. At that meeting, we received a large booklet which contained voluminous information. It included financial data for fiscal years 2006-2007, 2007-2008, and two reports from prior evaluations of the indigent defense system in W.Va. (legislative auditor, Jan,1999 & prior Indigent Defense Task Force report of 2000 which includes the Spandenberg report). Significantly, there has been no in-depth examination of the Public Defenders system since that time.

Besides, mandating the creation of our commission, the enabling legislation also significantly reduced the time frame within which appointed counsel vouchers could be submitted in cases. I believe that this change will significantly skew the data from fiscal year 2007-2008 and also 2008-2009. This is because under the previous system vouchers could be submitted for up to four years after completion of services. Under the present system vouchers must be submitted within 90 days on current cases and by December 31, 2008 on all previously closed cases.

Also, an evaluation of data reveals that appointed counsel cases average 1/6 of time as billed in court and 5/6 for out of court time. In my Circuit, counsel are frequently appointed who have offices in adjoining counties. Their appointment necessarily adds significant travel time to their expenses. This could be significantly reduced by tightening the law concerning appointment of local and regional counsel as is now provided. Local counsel could be more clearly defined as having an office in the county or circuit in which the crime was committed and regional counsel defined to be outside this boundary. This would significantly reduce billing for travel time.

Also, Judges should be given mare authority to remove lawyers or challenge billing for abuse of the process. For instance, we have data on the average cost to defend the various crimes set forth by law. Legislation or regulations could be enacted to provide that lawyers who consistently exceed this average by a set percentage be barred from appointments. Likewise, a limit could be placed on the total compensation allowed to any lawyer under the court appointed system.

Also, I am not totally convinced that public defenders are indeed less costly. For instance, compare 2000 per capita costs of Harrison County with Monongalia County or the 14th Judicial Circuit with the 5th Judicial Circuit. The public defender per capita costs for similar type populations are higher. Also, little or no consideration has been made of the continued costs to the system of public defender employees upon their retirement. Obviously, these costs have continued to escalate and remain a charge to the state. Finally, it is undisputed that costs increase, not decrease, following the adoption of a public defender system in a circuit. Also, even under a

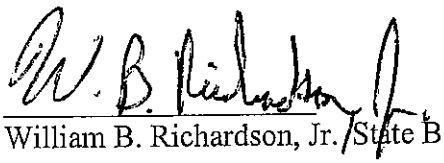
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public defender system, there will still continue to be a need for court appointed counsel such as in conflict of interest cases in which multiple defendants are involved.

Finally, the goal should not be to establish the cheapest system but the concern should be focused on the quality of representation. In that regard, I strongly believe that our trial courts should again be surveyed to determine their opinion regarding the quality of the two indigent defense mechanisms. The last survey found an insignificant difference between the two systems.

Finally, I commend the members of our commission for their diligent efforts concerning our mandate. However, I believe that the majority has, to a certain extent, been rushed to judgment by the statutorily fixed date of January 15, 2009. I believe that the state would be better served if a more thorough analysis of the data would be undertaken after this fiscal year to allow a more effective evaluation to be made after the recent legislative changes regarding processing of appointed counsel vouchers has taken full effect. I believe that this is needed before we make recommendations which could have a serious impact on the provision of indigent defense services.

Respectfully submitted,



William B. Richardson, Jr. State Bar #4557