

T H E S P A N G E N B E R G G R O U P

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

State	Primary Indigent Defense System for Capital Trial Representation*	Hourly Rate		Per Case Maximum	Authority
		Out-of-Court	In-Court		
Alabama	Contract Counsel , Assigned Counsel & County Public Defender (in three counties)	\$70 ¹	\$90	None	Alabama Code §15-12-21(d)
Arizona	County Public Defender, Contract Counsel & Assigned Counsel	Varies from county to county, ranging from \$45-\$100		Varies from county to county. In Maricopa County (Phoenix), attorneys are paid a flat fee of \$10,000 per capital case, and an additional \$10,000 if the case goes to trial. In Pima county (Tuscon) Attorneys are paid \$75 an hour with a \$15,000 maximum and second chair are \$60 an hour with a \$7,500 maximum.	Ariz. Rev. Stat. Ann. §13-4013(a) and Az. R. Crim. P. 6.7(b) both require that the trial court judge award "reasonable compensation."
Arkansas	Part-time County Public Defender, assisted by Arkansas Public Defender Commission's Capital, Conflicts and Appellate Office.	\$90-\$110		None.	Arkansas Code Annotated §16-87-2121 authorizes the Public Defender Commission to "set the rate of compensation [for court appointed counsel]."

¹Alabama statutory law sets compensation rates at \$40/hour for in court work and \$60/hour for out of court work. The language in the statute authorizing these rates states, "Counsel shall also be entitled to be reimbursed for any expenses reasonably incurred in such defense to be approved in advance by the trial court." In *James W. May v. State*, the Alabama Court of Criminal Appeals ordered the state to pay an additional amount for overhead as "expenses reasonably incurred." The presumptive hourly overhead is \$30 an hour, bringing the typical hourly compensation to \$70 an hour out of court and \$90 an hour in court.

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California	County Public Defender, Contract Counsel & Assigned Counsel	Varies from county to county, ranging from \$50-\$150+		None. In Los Angeles, total payments generally range from \$60,000 to \$200,000 per attorney.	California Penal Code §987.2(a) provides that assigned counsel "shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court."
Colorado	State Public Defender	\$65		\$7,500 if no trial; \$15,000 if trial. However, these caps are routinely waived.	Co. Rev. Stat. §21-1-105 provides that assigned counsel "shall be awarded reasonable compensation and reimbursement for expenses necessarily incurred," while the Colorado Supreme Court sets the hourly compensation rates.
Connecticut	State Division of Public Defender Services**	\$60		None	Pursuant to C.G.S. §51-293, established in accordance with C.G.S. §51-291(12), appointed counsel rates are set by the State Public Defender and approved by the Public Defender Commission.
Delaware	Office of the Public Defender of the State of Delaware	Under contract terms, contractors assigned to capital cases are paid \$60 after waiving their first 50 hours.		None	Delaware Code Annotated 29§4605 specifies "the attorney shall be awarded reasonable compensation and expenses necessarily incurred..."

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Prepared for the Bar Information Program of the American Bar Association's Standing Committee on Indigent Defendants.

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Florida	Circuit Public Defender	Varies from Circuit to Circuit, ranging from \$40-\$100. Dade County: \$80		Varies by county. In Dade county attorneys will not receive compensation for hours billed in excess of 10 hours on an day in which the attorney was in trial for more than 4 and a half hours.	While Florida Statutes §925.036(d) establishes a \$3,500 cap for compensation to counsel in capital trial cases, the cap was held unconstitutional by the Florida Supreme Court in <i>White v. County Board of Commissioners</i> 537 So.2d 1367 (Fl. 1989).
Georgia	County Public Defender & Assigned Counsel assisted by Georgia Multi-County Public Defender**	\$45 ²	\$60 ³	None	Georgia Code Annotated §17-12-5(a) requires the Superior Court to prescribe compensation and approve expenses necessarily incurred.
Idaho	County Public Defender & Assigned Counsel	Varies from county to county, but generally: first chair: \$75-\$100, second chair: \$50-\$75		None	Idaho Code §19-856 specifies that "the court shall prescribe reasonable compensation for [appointed counsel] and approve the expenses necessarily incurred by him in the defense of the needy person."

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² For the 141 of 159 counties participating in the Georgia Indigent Defense Council's grants to counties subsidy program.

³ Ibid.

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		Out-of-Court	In-Court		
Illinois	County Public Defender, Contract Counsel & Assigned Counsel	Varies from county to county. Statewide the range is \$100-\$134.20 In Cook County the range is \$75-\$134.20		None	725 ILCS 5/113-3(c) requires payment of a "reasonable fee" to assigned counsel. 725 ILCS 124 created the Capital Litigation Trust fund out of which court appointed counsel in capital cases are compensated. In 2002 the maximum hourly rate paid by the trust is \$134.20.
Indiana	County Public Defender & Assigned Counsel	Varies from county to county, but \$90 \$90 for those counties that comply with R.Crim. P. 24		None for those counties that comply with R. Crim. P. 24	Indiana R. Crim. P. 24
Kansas	State Board of Indigents' Defense Services** & Assigned Counsel	\$100		None	K.S.A. 22-4523 and Kansas Board of Indigents' Defense Services Regulation 105-5-2(b) both provide that the Board may enter into contracts with private counsel by negotiation.

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Kentucky	State Department of Public Advocacy** & Contract Counsel	\$50	\$50	\$12,500 plus reasonable expenses.	Pursuant to Chapter 31 of the Kentucky Revised Statutes Annotated, the Kentucky Department of Public Advocacy contracts with private counsel to handle conflict capital trial cases at \$50 per hour, in- or out-of-court, up to \$12,500.
Louisiana ⁴	Parish Public Defender & Contract Counsel	\$57.65	\$57.65	None	Louisiana Indigent Defender Board Standard 11-2.1, pursuant to Louisiana Supreme Court Rule 31(e)
Maryland	State Office of the Public Defender	\$30	\$35	\$12,500	Annotated Code of Maryland Art.27A §6(d) requires that the State Public Defender establish a fee schedule for court-appointed counsel.
Mississippi	County Public Defender, Assigned Counsel & The Mississippi Office of Capital Defense Counsel**	Varies from county to county.		\$1,000 plus overhead expenses per <i>Wilson v. State</i> , 574 So.2d 1338 (1990), which are presumptively set at \$25 per hour.	Miss. Code Ann. §99-15-17

⁴ The Louisiana Office of Indigent Defense Assistance Board (LIDAB) has created four Regional Capital Conflict Programs which assigns two staff lawyers for cases that are conflicted out by the parish defenders or parishes that cannot afford to contract with an attorney to handle a capital case. It is anticipated that this program will take the place of LIDAB's hourly contracts, making LIDAB's hourly rate moot.

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Missouri	State Public Defender**	N/A	N/A		Pursuant to Chapter 600 of Mo. Rev. Stat., for conflict and overload capital trial cases, the Missouri Public Defender enters into flat-fee contracts with private counsel for \$10,000 to \$13,000 for lead counsel and \$5,000 to \$8,000 for co-counsel. Reimbursable expenses are not included in these contract totals.
Montana	County Public Defender, Assigned Counsel & Contract Counsel	Varies from county to county.	None		Montana Code Ann. §46-8-201(1) specifies that the district court judge is to pay assigned counsel "reasonable compensation."
Nebraska	County Public Defender, Contract Counsel, Assigned Counsel or Commission on Public Advocacy**	Varies from judge to judge, ranging from \$40-\$100 \$40-\$100 In Lancaster County: \$85	None		Nebraska Code 29-1804.12 requires that the district court judge "fix reasonable expenses and fees."
Nevada	County Public Defender & State Public Defender	\$75	\$12,000		Nev. Rev. Stat. §7.125

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New Hampshire	State Public Defender	\$60 ⁵	\$60	\$15,000 but may be waived.	N.H. Rev. Stat. §604-A:4 requires that appointed counsel be "reasonably compensated ...and...reimbursed for expenses reasonably incurred," while New Hampshire Supreme Court Rule 47 establishes the hourly and maximum compensation rates.
New Jersey	State Office of the Public Defender	\$50	\$50	None	The New Jersey Public Defender sets the compensation rate for appointed counsel pursuant to N.J.S.A. §2A: 158A-7(h).
New Mexico	State Public Defender Department & Contract Counsel	N/A	N/A	N/A	Pursuant to N.M. Stat. Ann. §31-15-7(11), for conflict and overload cases, the New Mexico Public Defender contracts with private attorneys for the retention fee of \$20,000 for first chair and \$10,000 for second chair per capital trial case (excluding expenses and payments for gross receipts tax and expert witnesses).

⁵ Per Supreme Court Rule 47 which establishes the assigned counsel compensation rate in felony cases. Because the death penalty is so infrequently pursued in New Hampshire, there is no established rate for assigned counsel handling capital trial cases.

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New York	Capital Defender Office**, County Public Defender & Assigned Counsel	Pre notice: Lead Counsel: \$100; Co-counsel: \$75 Post-notice: Lead Counsel: \$125; Co-counsel: \$100 ⁶	None		November 21, 1996 Order of the New York Court of Appeals, pursuant to N.Y. Judiciary Law §35-b(5)(a).
North Carolina	Local Public Defender & Assigned Counsel	\$85	None		General Statutes of North Carolina §7A-498.5 (C) grants authority to the Office of Indigent Defense Services.
Ohio	County Public Defender & Assigned Counsel	Varies from county to county, ranging from: \$30-\$60 ⁷ \$30-\$60	\$50,000 ⁸ but may be waived.		Ohio State Public Defender is authorized to set the maximum compensation rate per Ohio Revised Code §120.04 and Ohio's 88 county commissions set the hourly compensation rate for their respective counties.

⁶ As of December 1998, rates vary depending on whether work is done before the prosecutor announces his/her intention to seek the death penalty (pre-notice), or if work is done after the prosecutor's decision to seek the death penalty (post-notice).

⁷ One county in Ohio uses the fee schedule of \$20/hour for out-of-court and \$30/hour for in-court work. The rest range from \$30-40/hour out-of-court and \$40-\$50/hour in-court.

⁸ \$50,000 represents the maximum amount that can be paid to both the first chair and the second chair.

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Oregon	Contract Counsel	Lead Counsel: \$55 Co-counsel: \$40		None	Or. Rev. Stat. Ann. §151.430(5) specifies that appointed counsel is entitled to compensation, and Oregon Judicial Department Indigent Defense Payment Policies and Procedures 3.1(B) sets the hourly rate.
Pennsylvania	County Public Defender	Varies from \$40-\$75. As of Spring 1997, rates in Philadelphia shifted to a per diem basis.		Varies. In Philadelphia, however, the amount paid to counsel is subjected to judicial review.	16 P.S. §9960.7 requires appointed counsel "be awarded reasonable compensation, and reimbursement for expenses necessarily incurred," to be established by the trial court judge. In Philadelphia, Local Court Rule 406, ⁹ establishes the hourly and maximum compensation rate.
South Carolina	County Public Defender	\$50 \$75 However, the rates are often raised to \$90-\$110 by the judges.		\$25,000, but may be waived.	South Carolina Code §16-3-26

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South Dakota	County Public Defender, Contract Counsel & Assigned Counsel	\$67	\$67	None	S.D.C.L. §23A-40-8 ¹⁰
Tennessee	District Public Defender	Lead counsel: \$75	\$100	None	Tenn. Code §40-14-206 provides that rules governing reimbursement of appointed counsel are to be prescribed by the Tennessee Supreme Court and Rule 13 establishes the rates.
		Co-counsel: \$60	\$80		
Texas	Assigned Counsel, Contract Counsel and County Public Defenders (in a few of Texas' 254 counties)	Varies from county to county.		Varies	Texas Statutes Annotated Art. 26.05(a) specifies that appointed counsel "shall be paid a reasonable attorney's fee" and "shall be reimbursed for reasonable expenses."
Utah	County Public Defender & Contract Counsel ¹¹	Varies from county to county.		\$80,000 per case for both attorneys in the 20 out of 29 counties that participate in a risk pool.	Utah Code Annotated §77-32-3(3) provides that assigned counsel is entitled to compensation.

¹¹ Contract public defenders in Salt Lake City are paid a total of \$80,000 to split between two attorneys.

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Virginia	Local Public Defender or Assigned Counsel	Varies from circuit court judge to circuit court judge. The Virginia Supreme Court recommends \$125		None	Code of Virginia §19.2-163(2) provides that appointed counsel is to be awarded "an amount deemed reasonable by the court."
Washington	County Public Defender, Contract Counsel & Assigned Counsel	Varies from county to county, but generally: \$60-\$125		None	Revised Code of Washington Annotated §36.26.090 specifies that appointed counsel is to be awarded "reasonable compensation."
Wyoming	State Public Defender	No less than \$25 per hour; no more than \$50 per hour		None	Wyoming Stat. §7-6-109(b) states that the appointing court may recommend a reasonable rate of compensation and Wyoming Supreme Court Rule 44 sets the compensation rate for non-capital felony cases.
U.S. Government (Federal Death Penalty Prosecutions)	Federal Public Defender, Community Defender Organizations & Criminal Justice Act Panel Attorneys	\$125	\$125	None	21 U.S.C. §848(q)(10)(A) states that for all federal capital prosecutions commenced on or after April 24, 1996, the presiding judicial officer shall set an hourly compensation rate not to exceed \$125 per hour.

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