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**State and County Expenditures for Indigent Defense Services  
in Fiscal Year 2002  
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## Introduction

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

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

To carry out these federal and state mandates to offer counsel for indigent individuals, some states and localities have created public defender programs, while others use private attorneys who are appointed on a case-by-case basis or who work under contract accepting appointments. Most use a combination of these methods. Just as delivery systems vary, the systems for funding indigent defense services vary. In some states, all funding is provided by the state while in others funding is a shared responsibility among the state, counties and municipalities. There are only two states that leave the entire responsibility for funding indigent defense up to the counties: Pennsylvania and Utah.

As indigent defense systems have matured and evolved since the 1960s, costs have increased significantly. Comprehensive, state-by-state information on indigent defense expenditure and system type was last collected in 1986. At that time, it was estimated that just

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<sup>1</sup>*Powell v. Alabama*, 287 U.S. 45 (1932).

<sup>2</sup> *Gideon v. Wainwright* 372 U.S. 335 (1963) extended the right to indigent defendants charged with a "serious" crime, and later opinions extended the right to additional cases and critical proceedings: any crime, including misdemeanor and petty offense cases, that actually leads to imprisonment - *Argersinger v. Hamlin*, 407 U.S. 25 (1972); any crime, including a minor misdemeanor, where defendant receives a suspended or probated sentence to imprisonment - *Alabama v. Shelton*, 122 U.S. 1764 (2002); direct appeals (in states that provide that process) - *Douglas v. California*, 372 U.S. 353 (1963); custodial interrogation - *Miranda v. Arizona*, 384 U.S. 436 (1967); juvenile proceedings resulting in possible confinement - *In re Gault*, 387 U.S. 1 (1967); post-indictment lineups - *U.S. v. Wade*, 388 U.S. 218 (1967) and *Gilbert v. California*, 388 U.S. 263 (1967); critical stages of preliminary hearings - *Coleman v. Alabama*, 399 U.S. 483, (1969); certain probation and parole revocation hearings - *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); collateral attack (in limited circumstances) - *Johnson v. Avery*, 393 U.S. 483 (1969); defense against the State's termination of parental status - *M.L.B. v. S.L.J.* 519 U.S. 102 (1996). There is no federal constitutional right to counsel in state post conviction proceedings.

under \$1 billion, or \$991,047,250, was spent on indigent defense services in the states.<sup>3</sup> Access to comparative indigent defense expenditure information is of critical importance to policy-makers and others when assessing the adequacy of funding or when considering changes to an indigent defense program. The Spangenberg Group, acting on behalf of the American Bar Association Bar Information Program, has now compiled the most comprehensive expenditure information on indigent defense since 1986. The accompanying table shows that in FY 2002, combined county, state and federal government spending on indigent defense totaled an estimated \$3.3 billion. Federal government expenditure was almost half a billion dollars (\$485,900,000).<sup>4</sup>

The Spangenberg Group is a research-based consulting organization that specializes in improving indigent defense programs. Since 1986, The Spangenberg Group (TSG) has been under contract with the American Bar Association's Bar Information Program (BIP), which provides support and technical assistance to individuals and organizations working to improve their jurisdictions' indigent defense systems.

Collection of the data in the accompanying table was accomplished by contacting public defenders, court administrators, administrators of assigned counsel programs, legislative analysts, and representatives of non-profit agencies, county associations, and public defender associations.

In some states, it is very difficult to get accurate statewide expenditure information because indigent defense is funded and provided on a county level, and no statewide effort is made to collect information from the localities. Because of this, estimates of indigent defense expenditure have been provided for several states. Further, in a few states, FY 2002 information was unavailable, thus data is included for FY 2001. The table does not include indigent defense expenditure data from municipalities. All misdemeanors in New Jersey are handled at the municipal level, thus costs of misdemeanor representation are not included for that state.

Another factor that complicates collection and comparison of indigent defense expenditure data is that the types of cases included under the umbrella of indigent defense differ from state to state. The indigent defense system in Oregon, for example, includes termination of parental rights, dependency (adults and juveniles), civil commitment, Psychiatric Security Review Board, child support contempt, felony, misdemeanor, juvenile delinquency, appeals, and habeas corpus cases. In Colorado, on the other hand, the expenditure figure in the accompanying table covers representation in adult and juvenile criminal cases and appeals only; the costs for counsel in various civil cases where the right to counsel applies are not part of the state's indigent defense expenditure.

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<sup>3</sup> R. Spangenberg, The Spangenberg Group, *Criminal Defense for the Poor, 1986*, U.S. Department of Justice Bureau of Justice Statistics Bulletin (1988).

<sup>4</sup> A number of states with state-funded public defender systems, such as Arkansas, Hawaii and Wyoming, require counties to provide office space for public defender offices. The expenditure figures in the accompanying table do not include this type of in-kind cost.

There are a number of reasons why the amounts spent by states on indigent defense vary a good deal. For instance:

- States with the death penalty that have hundreds of individuals on death row, such as California, Florida and Texas, can see significantly higher indigent defense costs.
- In some states, such as California, public defenders are paid much higher salaries than in other states, such as Virginia.
- The law in some states prohibits representation of co-defendants in all circumstances. Other states permit joint representation in preliminary matters or until an actual conflict is discovered.
- Some states, by statute, require counsel in minor misdemeanors, including traffic offenses, as these are treated asailable offenses. Other states punish such offenses with fines only, thereby eliminating the requirement of counsel.

To help put these differences in context, the following section briefly describes the indigent defense systems used in the 50 states, as well as the District of Columbia, and indicates any recent and significant changes to the systems. Some of the descriptions are more detailed than others. The longer descriptions tend to be in states where indigent defense services are undergoing changes and/or are not provided in a centralized, statewide fashion, such as Georgia or New York, or where the funding system involves more lengthy explanation, such as in Virginia or Kentucky. Information describing each state's indigent defense system was gathered in the spring and summer of 2003.

More than half of the states have some sort of statewide commission that oversees the provision of indigent defense services. Typical duties of such commissions include creation of indigent defense standards and guidelines and selection of program administrators or chief public defenders. Information on these programs is available in a BIP document, *Statewide Indigent Defense Systems, 2001*. A list of websites for indigent defense commissions appears at the end of this document. Information on what court-appointed counsel are paid throughout the country in capital and non-capital felony cases is available in two other BIP documents: *Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview* (August 2003) and *Rates of Compensation for Court-Appointed Counsel in Capital Cases at Trial: A State-By-State Overview, 2003*. All three BIP documents are available on the ABA SCLAID website: [www.abanet.org/legalservices/sclaid/defender.html](http://www.abanet.org/legalservices/sclaid/defender.html).

## Indigent Defense Delivery Systems in the United States

### Alabama

2002 Pop: 4,486,508

No. of Counties: 67

The provision of indigent defense services in Alabama varies from county to county. While three of the state's 67 counties operate public defender offices, only one of these operates full-time, the rest rely upon either appointed counsel or contract attorneys. Funding for indigent defense in Alabama comes from the Fair Trial Tax Fund, which is comprised of fees which are added to the filing fee in civil cases, and costs in criminal cases. The Fair Trial Tax Fund is designed to reimburse counties for all indigent representation. If revenues from the Fair Trial Tax Fund are insufficient to cover the counties' costs, the state provides funds to cover the deficit. In recent years, this deficit has grown, and the state has been required to contribute greater amounts to cover indigent defense funding shortfalls.

Assigned counsel compensation increased significantly in the 1990s. In 1975, the Alabama state legislature established the rate of compensation for court-appointed counsel at \$20 per hour for out-of-court work and \$40 per hour for in-court work, with a non-waiveable maximum fee of \$1,000 for all cases except capital cases. In 1999, the legislature eliminated the non-waiveable \$1,000 cap and increased the hourly rate to \$30 per hour for out-of-court work and \$50 per hour in-court, effective June 10, 1999. The legislature further approved an additional hourly rate increase to \$40 per hour out-of-court and \$60 per hour in-court, effective October 1, 2000. Maximum rates in non-capital cases are now \$3,500 for a Class A Felony, \$2,500 for a Class B Felony, \$1,500 for a Class C Felony, \$2000 for a juvenile delinquency case and \$1,000 for all other cases. The caps are waiveable upon showing of good cause.

On top of the compensation for professional services rendered, Alabama courts are required to pay appointed counsel a presumptive hourly rate of \$30 for overhead for each hour billed as the result of a lawsuit. *May v. State*, 672 So.2d 1307 (Ala. Ct. of Crim. Appeals, 1993), determined that the words "reasonable expenses" in the statute could be interpreted as average hourly overhead. The combined actions of the *May* order and the Alabama legislature's increase to attorney fees effectively raised the hourly rates to \$70 per hour for out-of-court work and \$90 per hour for in-court work. These changes have produced a dramatic impact on expenditures for indigent defense in Alabama. The total expenditure for indigent defense rose from \$17 million in FY 1998 to over \$21 million in FY 1999, and up to \$30 million in FY 2000. In FY 2002, total expenditures were up to \$37,698,402, of which \$22 million was paid by the state. It is estimated total expenditures for indigent defense in FY 2003 will reach \$40 million.

### Alaska

2002 Pop.: 643,786

No. of Divisions: 27

All indigent defense representation in Alaska is state funded, and there are two primary providers of services: the Alaska Public Defender Agency, and, for conflict, domestic violence,

termination of parental right and juvenile dependency cases, the Office of Public Advocacy. Regional offices are located throughout the state. The Office of Public Advocacy contracts with private attorneys for some cases.

## **Arizona**

**2002 Pop.: 5,456,453**

**No. of Counties: 15**

By statute, each county in Arizona selects its system for delivery of indigent defense services, and the state has a mix of county public defenders, contract attorneys and assigned counsel. Six counties (Cochise, Coconino, Mohave, Navajo, Pima and Yuma) have both primary and secondary public defender offices. In addition to its two defender offices, Pima County has a contract program that accounts for half of the county's expenditure on indigent defense. Maricopa County (Phoenix) has primary, secondary and tertiary public defender programs, with contract counsel handling any other overflow or conflict cases. La Paz, Pinal and Yavapai counties have a single public defender office. The remaining five counties rely solely on contract counsel.

Over 99% of all funding for indigent defense representation in Arizona is provided by the counties. Two alternative revenue sources provide the additional one percent. During its 1998 session, the state legislature established a \$25.00 assessment fee for indigent defendants seeking representation. Judges have the option of whether to order the fee, however, inability to pay the up-front fee cannot result in denial of counsel for indigent defendants. Revenue collected is diverted to a Special Fund for Public Defenders to defray local costs of indigent defense. Pima County (Tucson) is one of the few counties that assess this fee. In addition, all county public defender offices receive a small amount of money administered by the Supreme Court to use for training. The source of the public defender training fund is two dollars of the \$12 fee assessed on all persons who pay a court ordered penalty, fine or sanction on a time payment basis.

In 1984 the Arizona Supreme Court in effect adopted the National Advisory Commission (NAC) caseload standards in a landmark decision involving a county indigent defense system that was challenged as systemically denying effective assistance of counsel. State v. Joe U. Smith, 681 P2d 1374.<sup>5</sup> As a result of this case, public defender programs in several Arizona counties have been successful in limiting their individual attorney caseloads to the NAC numerical limits by filing motions or by agreement with the county.

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## **Arkansas**

**2002 Pop.: 2,710,079**

**No. of Counties: 75**

<sup>5</sup> Standard 13.12 of the National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, developed in 1973, reads: "The caseload of a public defender office should not exceed the following: Felonies per attorney per year: not more than 150; Misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; mental health cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25."

Under legislation passed by the Arkansas General Assembly in the 1997 session, effective January 1, 1998, the state assumed the major responsibility for funding indigent defense in Arkansas, and the Arkansas Public Defender Commission, for the first time, was given input into the selection of local public defenders. Funding responsibility for the state's trial court system, which includes trial-level indigent defense services, was transferred from county government to the state. The Arkansas Public Defender Commission is now responsible for the payment of the salaries of public defenders, secretaries and other support staff with public defender offices, while counties maintain their responsibility for the cost of facilities, equipment, supplies and other office expenses of public defender offices. Trial public defenders are responsible for the representation of indigent defendants in all felony, misdemeanor, juvenile, guardianship and mental health cases, as well as all traffic offenses punishable by incarceration. The Commission's Capital, Conflicts and Appellate Division provides legal services to indigent defendants in capital and appellate cases, and those in which local Public Defenders have conflicts. The Commission sets compensation rates for court-appointed counsel.

**California**

**2002 Pop.: 35,116,033**

**No. of Counties: 58**

In California, by statute, trial representation is funded on a county-by-county basis. Each county selects a primary provider of services: public defender, assigned counsel or contract defender. With the exception of San Mateo County, all of the state's larger counties have elected to establish a county public defender. For conflict cases, many counties contract for services and/or create a second public defender program.

In an effort to address long-standing problems associated with finding counsel to handle direct appeals and state post-conviction proceedings in capital cases in California, 1997 legislation created the California Habeas Corpus Resource Center (HCRC). The HCRC, located in San Francisco, handles state and federal habeas corpus proceedings for inmates on California's death row and provides training and support for private attorneys who take on these cases. The Center's staff of 60 employees includes attorneys, investigators, paralegals, and other support staff. The bill also expanded the state-funded Office of State Public Defender (OSPD), which handles direct appeals in capital cases, authorizing the hiring of 15 additional attorneys and support staff. The OSPD has two regional law offices, located in Sacramento and San Francisco.

Additionally, the California Appellate Project (CAP), created by the State Bar of California in 1983 as a non-profit entity to recruit, evaluate, train and assist counsel appointed by the California Supreme Court in direct appeal and state post-conviction capital cases, serves as a resource center for private counsel handling capital cases. All appellate and post-conviction offices are funded by the state.

**Colorado**

**2002 Pop.: 4,506,542**

**No. of Counties: 63**

The state-funded Colorado State Public Defender provides representation in criminal cases to indigent defendants in Colorado from its regional trial offices and central appellate office. A commission hires and fires the chief public defender. Conflict of interest cases are handled by appointed counsel who qualify for inclusion on the list of eligible attorneys maintained and administered by the state-funded Alternate Defense Counsel. A separate commission hires and fires the Alternate Defense Counsel and also provides input and advice to the program.

**Connecticut**

**2002 Pop.: 3,460,503**

**No. of Counties: 8**

The state-funded Connecticut Division of Public Defender Services provides virtually all indigent defense representation in Connecticut. The policy-making body and appointing authority for the Division is the Public Defender Services Commission. Its seven members are appointed for three-year terms by the Governor, the Chief Justice and the leaders of the General Assembly. Specialized units in the Office of Chief Public Defender are responsible for representation of clients in capital cases, appeals before the Connecticut Supreme Court and Appellate Court, habeas corpus proceedings, matters before the Psychiatric Security Review Board, and juvenile post-conviction matters. The office's Special Public Defender Division oversees appointment of private attorneys to handle conflict and overload cases. Private attorneys accept cases on a contract or case-by case basis. The Public Defender has regional offices throughout the state.

**Delaware**

**2002 Pop.: 807,385**

**No. of Counties: 3**

The Delaware State Public Defender represents all indigent defendants in trial and appellate cases. The Public Defender has a central office and two regional offices. The state pays all expenditures for indigent defense. Conflict cases are primarily handled by a pool of private attorneys who contract with the state to handle conflict cases. The annual, flat-fee contracts are for \$42,000 (per attorney), not including work on capital and non-capital murder cases.

**District of Columbia**

**2002 Pop.: 570,898**

**No. of Counties: 0**

Federal funds pay for indigent defense services provided by the Public Defender Service (PDS) program, an independent agency of the District of Columbia governed by an eleven-member Board of Trustees that provides representation in the District of Columbia Superior Court and Court of Appeals. PDS represents adults charged with felony and misdemeanor offenses and juveniles charged with serious acts of delinquency. PDS also represents individuals who have been involuntarily hospitalized for treatment of mental illness and persons who have been found incompetent to stand trial or who have been found not guilty by reason of insanity. There are five legal practice groups at PDS: the Trial Division, the

Appellate Division, the Mental Health Division, the Special Litigation Division, and the newest practice group, the Civil Legal Services Division.

Additional felony, misdemeanor, traffic and other criminal cases are handled by private attorneys appointed by the court under the federal Criminal Justice Act (CJA). PDS, through its CJA Office, assists the court with the administration of the CJA program by conducting financial eligibility interviews of arrestees and defendants, and facilitating the assigned counsel program.

## **Florida**

**2002 Pop.: 16,713,149**

**No. of Counties: 67**

In Florida, 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 circuit to circuit. State funds are distributed to the circuit public defender offices according to a formula intended to fairly distribute the monies, but some counties make more supplemental funding available for indigent defense services than others do. By statute, the state is responsible for public defender salaries and "the necessary expenses of office," and the counties pay for office overhead expenses and court-appointed counsel costs. That funding arrangement is slated to change in 2006, when the state will begin to pay for the costs of court-appointed counsel.

Two state-funded offices of the Florida Capital Collateral Representative provide representation to indigent capital prisoners in state and federal post-conviction proceedings. Additional cases are handled by court-appointed counsel.

## **Georgia**

**2002 Pop.: 8,560,310**

**No. of Counties: 159**

In Georgia, funding for indigent defense representation currently comes primarily from the counties, with limited state assistance from two state-funded organizations: the Georgia Indigent Defense Council (GIDC) and the Office of the Multi-County Public Defender. That arrangement will change in 2005, when a new indigent defense system comes into place.

The state legislature created GIDC, a statewide oversight body for Georgia's county-organized and county-funded indigent defense systems, in 1979. However, it was not until 1989 that the state first appropriated \$800,000 for GIDC to distribute to counties that meet its indigent defense standards and guidelines. In FY 2002, GIDC distributed \$5,990,000 among 152 of the state's 159 counties. In addition, the Multi-County Public Defender, a state-funded capital trial unit established in 1992, had an FY 2002 state appropriation of \$1,032,000. The Multi-County Public Defender monitors every death penalty case in Georgia from trial through direct appeal, provides consultation to public defenders or private attorneys working on death penalty cases, and acts as lead counsel in a limited number of death penalty cases.

GIDC receives additional revenue from Clerks and Sheriffs Fund, which consists of interest generated by accounts in which sheriffs are required to deposit all cash bonds and in which the clerks of state, superior, magistrate and probate courts are required to deposit all funds paid to the registry of the court. This money is distributed by GIDC to counties that meet its standards and guidelines. GIDC also receives funding from the State Bar's Interest on Lawyers Trust Account (IOLTA), to pay for staff and overhead.

County funding continues to be the single largest source of funds for indigent defense in Georgia (counties spent \$43,545,814 on indigent defense in FY 2002). In December 2002 a commission appointed by the Chief Justice of Georgia Supreme Court recommended, among other things, that indigent defense services be funded primarily by the state, and that services be provided with greater state oversight and accountability through judicial circuit public defender offices. The Chief Justice's Commission on Indigent Defense based its recommendations on a statewide study conducted by The Spangenberg Group.

In April, 2003, the Georgia General Assembly enacted a bill that will reform Georgia's indigent defense system. The bill created the Georgia Public Defender Standards Council, which will be composed of 11 members, two each appointed by the Governor, the Lieutenant Governor, the Speaker, the Chief Justice of the Supreme Court, and the Chief Judge of the Georgia Court of Appeals. The eleventh member will be a circuit public defender, initially appointed, but subsequently elected, by the 49 Circuit Public Defenders.

The Council will appoint an executive director who will provide support services for circuit public defenders including administrative help, education and training programs. The director will also develop rules, policies and standards and submit these to the Council for approval. The Council will monitor and enforce the standards and policies. The Council will assume the powers and duties of the Georgia Indigent Defense Council on December 31, 2003.

Effective January 1, 2005, Georgia will have judicial circuit-based public defender offices. Public defenders will be selected for each of Georgia's 49 judicial circuits by panels composed of 5 members: one each appointed by the Governor, the Lieutenant Governor, the Speaker, the Chief Justice and the chief judge of the Superior Court. Members must reside in the judicial district and have experience or an interest in indigent defense. The state-funded circuit public defenders will provide representation in Superior Court and Juvenile Court and in direct appeals from these courts. City and county governments may contract with the circuit public defender to provide indigent defense services in lower courts. Even if they do not, they and their staff will still be subject to the Council's standards for indigent defense. Also, as of January 1, 2005, the office of the Multi-County Public Defender will be replaced by the Office of the Georgia Capital Defender, which will have expanded duties.

## **Hawaii**

**2002 Pop.: 1,244,898**

**No. of Counties: 5**

Hawaii has a state-funded, state-wide public defender system. The Office of the Public Defender has an appellate office, four trial offices (two on the island of Hawaii and one each in

Maui and Kauai) and one part-time office on Molokai. The Defender Council serves as the governing body of the Office of the Public Defender. Council members are appointed by the Governor with at least one member appointed from each county of the State. The State Public Defender is appointed by the Defender Council. Court-appointed counsel represent defendants in conflict of interest cases.

## **Idaho**

**2002 Pop.: 1,341,131**

**No. of Counties: 44**

At the trial level, indigent defense services are funded and provided on a county-by-county basis in Idaho. Counties determine what type of system to use: public defender, assigned counsel, contract or combination. A state-funded Appellate Defender created in 1998 handles all criminal appeals in the state, as well as state post-conviction proceedings in capital cases. Additionally, counties may voluntarily contribute to and draw from the legislatively-created Capital Crimes Defense Fund to help fund the costs of criminal defense in cases where the penalty of death is a legal possibility. Only those counties which contribute to the Capital Crimes Defense Fund are able to use the services of the State Appellate Public Defender. The fund is organized and administered in accordance with a joint powers agreement by the participating counties.

## **Illinois**

**2002 Pop.: 12,600,620**

**No. of Counties: 102**

The majority of Illinois' 102 counties have county-funded trial public defender offices (by statute, counties with populations of 35,000 or more are required to have a public defender); the balance use either contract defenders or assigned counsel. Many of the public defender offices operate part-time. In conflict cases, the circuit court judge appoints counsel and sets the compensation rate.

The state funds the Office of State Appellate Defender, which has five regional offices throughout the state and handles direct appeals and state post-conviction cases. In 2000, the state legislature enacted the Capital Crimes Litigation Act, which established the Capital Litigation Trust Fund to provide state funds for the representation of defendants in death penalty cases. Private attorneys representing an indigent client charged with a capital offense are reimbursed at a rate that is adjusted every year according to the state's consumer price index, with no maximum. In 2003 the hourly rate was not to exceed \$134.20.

## **Indiana**

**2002 Pop.: 6,159,068**

**No. of Counties: 92**

Prior to 1989, state funding for indigent defense in Indiana supported two entities: the State Public Defender of Indiana and the Indiana Public Defender Council. The State Public

Defender of Indiana is a state-wide entity that represents indigent defendants in state post-conviction proceedings and in a limited number of direct appeals. The State Public Defender is appointed by the Indiana Supreme Court and is a state, judicial branch agency. The Indiana Public Defender Council, governed by an 11-member Board of Directors, is a support center for attorneys who represent indigent criminal defendants. The Council provides training programs and various publications for indigent defense practitioners, including the provision of information in electronic format.

In 1989, the state established the Indiana Public Defender Commission (IPDC) to assist counties in defraying the cost of defense representation in capital cases. Based upon recommendations of the Commission, effective February 1, 1993, the Indiana Supreme Court amended Criminal Rule 24, in order to include mandatory standards for appointment, workload and qualifications of counsel in capital cases. If there is compliance with this rule, the IPDC reimburses counties 50% of their defense costs in capital cases.

Subsequently, the Commission was authorized to reimburse counties for 40% of their expenses in providing indigent defense services in non-capital felony cases and in juvenile delinquency matters. In order to receive such reimbursements, counties must adopt comprehensive plans assuring the independence of the defense function and adhere to IPDC standards for providing defense services. In both capital and non-capital cases, reimbursements approved by the IPDC cover attorneys' fees, as well as costs of experts, investigators, and other support services.

As of September 2003, 54 counties had qualified for 40% reimbursements in non-capital cases. However, the IPDC's annual appropriation for fiscal year 2003-2004 is only \$7 million, which is insufficient to provide 40% reimbursements for all eligible counties. Accordingly, as required by Indiana law, county reimbursement claims in non-capital cases will be pro-rated until additional funds are appropriated by the legislature.

## **Iowa**

**2002 Pop.: 2,936,760**

**No. of Counties: 99**

In 1989, the state of Iowa assumed the cost of providing indigent defense services, replacing the state's counties as the primary providers, although counties contribute a portion of the money that is spent on juvenile defense. The move toward state funding coincided with the creation of a state-funded, unified court system. The state public defender oversees all indigent defense payments, including those for public defender staff offices (there are 17 trial-level offices throughout the state), attorneys working under contract with the public defender and attorneys who accept court-appointed cases. The state public defender also has an appellate office.

## **Kansas**

**2002 Pop.: 2,715,884**

**No. of Counties: 105**

The state-funded Kansas Board of Indigents Defense Services (BIDS) is responsible for all indigent defendant felony and appeal cases, while the state's counties retain responsibility for funding and providing counsel for misdemeanor and juvenile cases. Created in 1982, BIDS maintains a central appellate office and regional trial offices throughout the state, while misdemeanor and juvenile representation is provided by county contract defenders and assigned counsel. The Board consists of nine persons appointed by the Governor and subject to confirmation by the Senate. In FY 1995 BIDS established the Death Penalty Defense Unit in response to the re-enactment of the death penalty in Kansas. The purpose of the office is to establish and administer procedures and to provide services that result in the highest quality defense of persons accused of murder when the potential penalty is death.

## **Kentucky**

**2002 Pop.: 4,092,891**

**No. of Counties: 120**

The Kentucky Department of Public Advocacy (DPA) is a statewide entity that oversees the delivery of indigent defense services in Kentucky's 120 counties. By statute, the state is responsible for funding indigent defense in Kentucky. Only a few counties choose their own plan for delivery of services, in which case the county contributes local funds to augment the state appropriation. The DPA has full-time public defender offices in 112 of the state's 120 counties and contracts with private counsel to provide part-time services in the remaining eight counties. The General Assembly funded two more offices to open in 2003 that will cover an additional five counties. The Department estimates that all 120 counties will be covered by a full-time office by July 2004. In Louisville and Lexington, public defender representation is provided by private, non-profit corporations outside of the DPA which receive a combination of county and state funds. A 12-member Public Advocacy Commission assists the DPA with budgetary and certain supervisory responsibilities and conducts public education about the purpose of the public advocacy system.

The DPA's Trial Division is divided into six regions managed by a regional manager. The Trial Division has a specialized Capital Trial Branch. The DPA also has a Post-Trial Division, with a Central Appeals Branch, a Post-Conviction Branch and a Juvenile Post-Dispositional Branch. The DPA also has an Education and Strategic Planning Division that oversees and presents extensive trial, post-trial, and leadership education for staff. A Law Operations Division and a Protection and Advocacy Division, funded primarily with federal money, provide advocacy services for the developmentally disabled and mentally ill.

The DPA receives approximately 10% of its funding from several non-general fund revenue sources. For example, the DPA receives 25% of the \$250 service fee assessed against individuals convicted of drunk driving. The DPA also receives 3.5 percent of court costs collected, up to an annual cap of \$1.75 million. A third source of revenue is a partial fee, which resembles recoupment. A judge makes a determination at the appointment stage and stages thereafter if a client can afford to pay partially for the cost of representation or not and if so then sets an amount. All of the partial fees come back to defenders. If it is from a county where there is not a full-time office, it goes back to the defenders in that county. Otherwise, it

comes back to DPA.

Kentucky law also requires each county to appropriate 12.5 cents per capita of the county population to a fund established to cover expert witness fees and other comparable expenses associated with providing indigent defense services.

## **Louisiana**

**2002 Pop.: 4,482,646**

**No. of Parishes: 64**

Until 1994, all indigent defense services in Louisiana were funded and delivered at the local level. In 1994, following its landmark decision in *State v. Peart*, 612 So.2d 780 (La. 1993), and a statewide study of Louisiana's indigent defense system conducted by The Spangenberg Group, the Louisiana Supreme Court promulgated a rule creating the Louisiana Indigent Defender Board, now called the Louisiana Indigent Defense Assistance Board (LIDAB). For its first year, the state legislature appropriated \$5 million for the statewide LIDAB to directly supplement the budgets of local indigent defender boards, defray the costs of court-ordered defense experts and tests throughout the local boards, and more adequately fund counsel representing indigent defendants charged with capital crimes.

While Louisiana's parishes continue to cover the majority of costs associated with indigent defense, through LIDAB, the state also contributes monies towards indigent defense. Through its District Assistance Fund, available to Louisiana parishes which comply with LIDAB qualification and performance guidelines, the LIDAB provides monies toward trial-level representation, and through its Expert Witness/Testing Fund, LIDAB makes monies available for experts and investigators. The LIDAB also maintains the list of counsel certified to accept appointments in capital cases, in accordance with Louisiana Supreme Court Rule 31. LIDAB's Louisiana Appellate Project represents indigents in felony appeals across the state. As of July 1, 2001, the Project began handling direct capital appeals through a separate section, the Capital Appeals Project. Also, LIDAB runs the Capital Post-Conviction Project, which was created in response to statutory law mandating that LIDAB provide post-conviction representation for persons sentenced to death.

Apart from funds received from LIDAB, each parish is authorized by statute to establish assessments on all criminal violations, including traffic, misdemeanor and felony charges. These assessments comprise the primary source of indigent defense funding for parishes.

Local indigent defender boards (IDBs) are mandated by statute in each judicial district, which comprise parishes. Each parish in the district has a representative on the IDB. Nominees are submitted by local bar associations and members are generally selected by local district court judges. The IDBs oversee local indigent defense programs, which includes administering assigned counsel panels, entering contracts with contract defenders, and selecting public defenders. Each IDB is required to select an indigent defense system for the district: an assigned counsel, contract or public defender program. In districts comprising more than one parish, the board may select different delivery systems for the parishes.

**Maine****2002 Pop.: 1,294,464****No. of Counties: 16**

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

**Maryland****2002 Pop.: 5,458,137****No. of Counties: 23**

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. A three-member Board of Trustees named by the Governor appoints the Public Defender and provides advice to the Public Defender in relevant matters. The public defender program maintains trial divisions in all Circuit, District and Juvenile Courts throughout the state. Additionally, the Maryland State Public Defender has statewide capital defense, appellate, children in need of assistance (CINA), collateral review, and mental health divisions. Conflict of interest cases are handled by court-appointed counsel.

**Massachusetts****2002 Pop.: 6,427,801****No. of Counties: 14**

Massachusetts' state-funded Committee for Public Counsel Services (CPCS) is a fifteen-member body established to oversee the provision of legal representation to indigent persons in the Commonwealth. Members are appointed by the state's Supreme Judicial Court. Legal representation is provided by a hybrid system of 2,400 private attorneys and a full-time staff public defender program.

Representation in criminal (misdemeanor, felony, juvenile delinquency and youthful offender) and civil (child welfare, mental health, sex offender registry board, sexually dangerous persons discharge reviews, and nursing home) matters is provided by private attorneys. The attorneys are trained and certified by CPCS, which develops standards and guidelines for counsel in various case types. Appointments in criminal cases are administered by county Bar Advocate programs while CPCS provides courts with lists of certified attorneys from which to make appointments in child welfare and youthful offender cases. Judges are no longer involved in making attorney appointments in criminal cases in Massachusetts.

In addition, the Committee oversees the operation of a state public defender department comprised of 115 full-time attorneys, as well as administrators and administrative staff, who provide legal services to indigent parties in various case types including felonies, appeals, and child welfare cases. (Staff public defenders handle felonies in superior court while panel

attorneys represent defendants in superior court felony conflict of interest cases and in misdemeanors and felony preliminary hearings, which are heard in district court.) There are 13 CPCS regional offices and two CPCS family law offices from which CPCS staff attorneys provide legal services.

## **Michigan**

**2002 Pop.: 10,050,446**

**No. of Counties: 83**

At the trial level, each of Michigan's 83 counties funds and organizes its own indigent defense delivery system, using a public defender, assigned counsel or contract attorney program. Wayne County (Detroit) is one of the few large metropolitan areas in the U.S. that provides indigent defense representation primarily with private, court-appointed attorneys.

At the appellate level, the Appellate Defender Commission is a statutorily created, independent, seven-member body which provides oversight to two divisions. The first division, the State Appellate Defender Office, is state-funded and mandated to handle 25% of the state's indigent appellate cases. The second division, the Michigan Appellate Assigned Counsel System, is responsible for ensuring that all other indigent appellants receive competent representation through a statewide, private assigned counsel system. Administrative costs for the Appellate Assigned Counsel System are paid by the state while counsel are compensated by the counties.

## **Minnesota**

**2002 Pop.: 5,019,720**

**No. of Counties: 87**

The Minnesota State Board of Public Defense is a fully state-funded judicial branch agency that provides trial and appellate defender services. A seven-member commission selects a State Public Defender and sets standards for public defenders and court-appointed counsel. Ten Judicial District Public Defender Offices provide criminal defense services to indigent persons in felonies, gross misdemeanors, misdemeanors, juvenile delinquency, and Children In Need of Protective Services (CHIPS) cases. The State Public Defender's Office (SPD) provides services to indigent clients in direct appeals of their convictions, post-conviction proceedings, and to prisoners who need assistance with legal problems. The SPD represents individuals who are subject to supervised release/parole revocations and individuals who are subject to community notification hearings and prison disciplinary proceedings.

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

Most conflict of interest cases are handled by part-time public defenders who are employed by the State Board of Public Defense but who maintain private offices.

**Mississippi****2002 Pop.: 2,871,782****No. of Counties: 82**

In 2000, Mississippi made major changes to indigent defense in the state by repealing the Mississippi Statewide Public Defender Act of 1998 and creating two new state-funded offices responsible for capital defense. The Public Defender Act established a statewide commission on indigent defense, the position of Executive Director, and the office of District Defender in all judicial districts. When enacted, the Act was intended to provide Mississippi with a statewide, state-funded system for representing indigent defendants in felony cases. The District Defender offices, however, were never funded. Indigent defense services at the non-capital trial level are again paid for and provided as they were before repeal of the Act: on a county-by-county basis. Counties have the option of creating a public defender or assigned counsel program. Many have opted to create part-time public defender programs whereby attorneys work under contract with the county providing indigent defense representation. There are only three full-time county public defender programs in the state.

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

**Missouri****2002 Pop.: 5,672,579****No. of Counties: 114**

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, appeal and in capital proceedings. The Public Defender maintains 35 regional offices to handle trial cases throughout the state and three appellate offices. Most trial-level conflict of interest cases are handled by another regional office in the state. A Commission appointed by the Governor selects the State Public Defender's director and deputies and provides oversight for the program.

**Montana****2002 Pop.: 909,453****No. of Counties: 56**

In Montana, a mix of county public defenders, contract defenders and appointed counsel provide representation at the trial level. A state-funded, three-person appellate public defender office created in 1992 handles direct appeal and post-conviction cases where ineffective assistance of counsel is alleged. A five-member commission provides oversight for the office. As of FY 2004 (July 1, 2003), the state assumed 100% of all the costs of district court indigent

defense and youth-in-need-of-care costs, which previously were partially funded with state monies.

Previously, counties provided all funds for trial-level representation and received reimbursement for 65% of their district court indigent defense expenditures (including felony, misdemeanor and juvenile cases) from a fund administered by the state supreme court. The fund was comprised of proceeds from the state motor vehicle registration fee, which was collected at the county level. Now, counties will continue to pay the initial costs for public defender offices and for counsel appointed in youth-in-need-of-care cases (child abuse and neglect or termination of parental rights), but the State will reimburse them for 100% of their expenditures. Indigent defense counsel in all other cases who work under contract or who are paid by the hour will be paid directly by the state.

## **Nebraska**

**2002 Pop.: 1,729,180**

**No. of Counties: 93**

In Nebraska, each of the state's 93 counties organizes its own indigent defense system. State statute requires elected public defenders in counties with more than 100,000 population (which affects just three of 93 counties). Most funding is provided by the counties, however, the Nebraska Commission on Public Advocacy provides limited legal services and resources to assist counties through its capital litigation and appellate divisions and major case resource center. In cases in which the Commission on Public Advocacy is involved, counties pay one-third of the costs of the defense and the state absorbs the other two-thirds. The Commission, created by the state legislature in 1995, consists of nine attorneys appointed by the governor from a list of attorneys submitted by the executive council of the Nebraska State Bar Association after consultation with the board of directors of the Nebraska Criminal Defense Attorneys Association. The Commission appoints a chief counsel to oversee the staffed office.

In 2001, the Commission was authorized to reimburse counties for 25% of their felony case representation costs if they met standards and guidelines developed by the Commission. In FY 2002 the Commission received \$660,000 in funding. Concerned about the uncertainty of general revenue funding, in the 2004 legislative session the Commission successfully sought a change in the way in which it is funded. Now the agency is funded by filing fees. An across-the-board increase in the filing fee in criminal and civil cases was enacted to create a source of funds for the Commission. The goal of the change was to allow the Commission to reimburse counties that meet its standards, continue the staffed programs it already has and offer its services in capital cases without charging the counties.

## **Nevada**

**2002 Pop.: 2,173,491**

**No. of Counties: 16**

By statute, Nevada counties with a population in excess of 100,000 must have public defender offices. The two counties affected by the statute - Clark County (Las Vegas) and

Washoe County (Reno) - fund their own public defender programs. Nevada's remaining counties have the option of contributing to the state/county funded State Public Defender, or funding their own services to provide representation to indigent defendants. Besides Clark and Washoe counties, one other county - Elko County - also has a public defender program. The remaining 13 counties use flat-fee or low-bid contract programs to represent indigent defendants. Seven of the sixteen counties participate in the Nevada State Public Defender program.

The Nevada Public Defender program also administers state funds to pay private counsel to handle post-conviction cases.

## **New Hampshire**

**2002 Pop.: 1,275,056**

**No. of Counties: 10**

New Hampshire has two state-funded programs. The State Public Defender, which operates as an independent, private non-profit corporation, provides primary representation in trial and appellate cases through nine regional offices and an appellate office that is affiliated with the Franklin Pierce Law Center. For conflict cases, the New Hampshire Judicial Council administers assigned counsel and contract defender programs.

## **New Jersey**

**2002 Pop.: 8,590,300**

**No. of Counties: 21**

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 county-based superior courts, along with direct appeals from these cases. The Public Defender maintains regional offices covering each of New Jersey's 21 counties. In addition, the State Public Defender is responsible for establishing a private, court-appointed attorney program for conflict cases. The Public Defender sets the rates of compensation for court-appointed counsel.

Misdemeanors in New Jersey are tried in municipal court. Since 1998, municipalities have been required to offer municipal public defender services. P.L. 1997, Chapter 256, effective March 22, 1998, requires every New Jersey municipality to appoint a municipal public defender, the cost of which may be offset by a (waiveable) public defender application fee of up to \$200, payable over a four-month period, charged to individuals who use the defender's services. (Before the law was enacted, in July 1997, only 383 of New Jersey's 537 municipal courts employed a municipal public defender. The remaining 154 municipal courts required involuntary pro bono services of private bar members.) Funds collected through the application fee are deposited in a dedicated fund to be used exclusively to meet all costs incurred in providing indigent defense services at the municipal court level, including the cost of expert investigation and testimony. As with all other states, the amount of funding for indigent defense at the municipal level in New Jersey is not included in the accompanying table.

**New Mexico****2002 Pop.: 1,855,059****No. of Counties: 33**

New Mexico's state-funded Public Defender Department provides primary representation in trial and appellate cases throughout the state. The program has centralized units for appellate, mental health, capital and post-conviction cases. At the trial level, approximately half of the state's counties (the more populous ones) are served by one of the State Public Defender Department's regional trial offices; private attorneys who contract with the Department represent indigent defendants in the remaining counties. The Chief Public Defender is appointed by and serves at the pleasure of the Governor.

**New York****2002 Pop.: 19,157,532****No. of Counties: 62**

New York's criminal indigent defense system is primarily funded by its 62 counties, which, by statute, may utilize a public defender program, private legal aid society and/or a coordinated assigned counsel system to provide indigent defense services. The state provides limited monies to counties through its Aid to Indigent Defense Fund and provides full funding for representation of children in dependency and delinquency cases. Funding for representation of adults in dependency cases is a county responsibility.

Since the mid-1990s, New York City has experienced noteworthy changes in the way it delivers indigent defense services. Until 1995, the Legal Aid Society of New York provided all primary representation for trial, appeal and juvenile cases (as well as civil legal representation) in New York's five boroughs. Since 1995, the city has diversified its primary providers of indigent defense services by contracting with a number of non-profit organizations which now handle a portion of the City's primary indigent defense cases. There are now alternate, non-profit defender programs in each of New York City's five boroughs and three additional non-profit appellate defender programs. One additional program, the Neighborhood Defender Service of Harlem is a small, community-based law office that provides legal representation to inner city residents in upper Manhattan through a holistic team defense involving civil and criminal attorneys, social workers, investigators, paralegals, and college and law school interns.

Unlike other criminal indigent defense services in New York, all attorneys' fees and expenses associated with the defense of indigent defendants accused of capital crimes in New York are funded by the state. 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 has contracted with attorneys and other indigent defense organizations (e.g., the New York Legal Aid Society Capital Defense Unit) for representation in capital cases.

In 2003, two developments addressed assigned counsel compensation rates in New York, which until then had not been increased since 1986. By statute, counsel in criminal cases were paid \$25 an hour out of court and \$40 an hour in court, up to \$1,200 in felony cases and \$800 in misdemeanor cases. Appellate counsel received \$40 an hour with a \$1,200 per-case cap. On a

finding of extraordinary circumstances, judges had statutory authority to exceed the per-case caps and indeed did so with regularity in New York City.

In 2000, the New York County Lawyers' Association (NYCLA) filed a lawsuit in state court against the state of New York and New York City alleging that the state's failure to take measures to ensure adequate levels of compensation had placed New York City's private assigned counsel system on the brink of collapse, creating an imminent threat of widespread due process and right to counsel violations. *New York County Lawyers' Association v. New York*, No. 102987/00. 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 obstructed the judiciary's ability to function.

The order included a declaratory judgment that the rate-setting portions of the statutes are unconstitutional as applied in New York City and 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, with no cap, until the Legislature modifies the statutes or upon further order of the Court. Justice Suarez' permanent injunction requires New York City to raise the rates for representation of indigents in criminal courts and representation of indigent adults in Family Court. The order also applies to the state, which is responsible for funding the representation of children in dependency and delinquency proceedings in Family Court in New York. The order is currently under review by the appellate courts.<sup>6</sup>

In its 2003 session, following issuance of the order in the NYCLA case, the New York State Assembly increased the statutory compensation rates for court-appointed attorneys to \$75 an hour in all cases, including appeals, except misdemeanors, where the rate is \$60. The per-case cap in felony cases and appeals rose to \$4,400 and up to \$2,400 for misdemeanors. The caps may be exceeded in extraordinary circumstances. A host of court-related fees, including the attorney registration fee, will be raised to cover the increased rates. It is not clear how the legislative changes will affect the order in the NYCLA case. The new rates go into effect January 1, 2004.

**North Carolina**

**2002 Pop.: 8,320,146**

**No. of Counties: 100**

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<sup>6</sup> Davis Polk & Wardwell represented the New York County Lawyers Association *pro bono*. On behalf of its client, the law firm retained Robert L. Spangenberg to serve as expert witness in the lawsuit. After an intensive review of the assigned counsel system in New York City conducted in the Spring of 2001, The Spangenberg Group found that the low compensation for assigned counsel has contributed to attrition in recent years in the number of private attorneys willing to accept court-appointed cases.

At a 16-day bench trial in 2002, testimony was heard from 41 witnesses, including expert witnesses Robert Spangenberg and David Newhouse of The Spangenberg Group, Norman Lefstein, Professor of Law and Dean Emeritus of Indiana University School of Law - Indianapolis and Jane M. Spinak, Edward Ross Aranow Clinical Professor of Law and Director, Clinical Programs at Columbia Law School.

In North Carolina, the state pays for all indigent defense expenditures. Until 2001, counties were solely responsible for organizing the delivery of trial-level indigent defense services. Thirteen of the state's 100 counties employ the public defender model while the rest used assigned counsel or contract defenders.

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

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

## **North Dakota**

**2002 Pop.: 634,110**

**No. of Counties: 53**

The indigent defense system in North Dakota is 100% state-funded. Judges contract with attorneys to provide indigent defense services in the state's seven judicial districts, with the 53 counties responsible only for funding assigned counsel representation of indigent defendants facing mental health commitment proceedings.

In 1981, the North Dakota Supreme Court created, through administrative rule, a statewide indigent defense oversight commission, the North Dakota Legal Counsel for Indigents Commission (NDLCIC), whose responsibilities include: reviewing indigent defense caseload data, preparing recommended indigent defense budgets, and adopting assigned counsel eligibility qualifications. The eight-member council is appointed by the Chief Justice of the Supreme Court from nominations by judges, the state bar, the Attorney General, and the Legislative Assembly. The Commission is largely advisory in nature.

## **Ohio**

**2002 Pop.: 11,421,267**

**No. of Counties: 88**

The nine-member Ohio Public Defender Commission oversees the Office of the Ohio State Public Defender, which provides direct representation in a limited number of cases and distributes state reimbursement funds to counties to help defray the cost of locally delivered indigent defense services. Through the State Public Defender's Legal Division, it provides representation in state and juvenile habeas corpus claims. Its Death Penalty Division represents

defendants in death penalty trial, direct appeal, state post-conviction and federal habeas cases.

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

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

## **Oklahoma**

**2002 Pop.: 3,493,714**

**No. of Counties: 77**

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 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 cases at the trial level are handled by attorneys working under contract with OIDS. A number of conflict and overload cases are handled by private attorneys who are appointed on a case-by-case basis and compensated on an hourly basis. Impetus for the new 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 under the state constitution. *State v. Lynch*, 796 P.2d 1150 (Okla. 1990).

Since 1997, OIDS has opened four trial public defender offices to accept non-capital court appointments in 16 counties. The offices are located in areas where contract expenses have been typically higher than in other areas of the state, or where the agency's governing Board determined there was an inadequate level of interest expressed by the private bar in providing the

necessary legal services.

## **Oregon**

**2002 Pop.: 3,521,515**

**No. of Counties: 36**

Indigent defense services in Oregon are entirely state-funded. In 2001, the Oregon legislature created the state-funded Public Defense Services Commission (PDSC), which in turn was required to establish an Office of Public Defense Services (OPDS). The Commission, whose seven members are appointed by the Chief Justice, serve as the governing body for the office. As of July 1, 2003, the Commission assumed all duties of the Indigent Defense Services Division (IDSD) of the State Court Administrator's Office. The Commission is an independent entity within the judicial branch, whereas the IDSD was part of the judicial department.

The first duty of the Commission was to assume responsibility for the majority of appellate criminal defense, which for 38 years was handled by the State Public Defender's Office. Effective October 1, 2002, the Public Defender's Office and its governing Public Defender Committee were abolished, with all duties transferred to the Commission. All staff remained with the new entity, however the Commission has authority to abolish positions and change duties to the extent that the commission finds it desirable to do so.

On July 1, 2003, all services of the IDSD were transferred to the Commission. These services include administration of county contracts for all indigent defense representation (trial and appellate, except those cases which the state appellate office handles) in Oregon's state courts. County programs may choose a public defender, private bar contract or court-appointed counsel system.

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

## **Pennsylvania**

**2002 Pop.: 12,335,091**

**No. of Counties: 67**

Each of Pennsylvania's 67 counties organizes and funds its own indigent defense delivery system. By statute, each county must have a local public defender. Pennsylvania is one of just two states that provides no state funding for indigent defense programs (Utah is the other state).

## **Rhode Island**

**2002 Pop.: 1,069,725**

**No. of Counties: 5**

Rhode Island has a statewide, state-funded public defender system with a statewide

appellate office and three regional offices that handle trial cases. The Office of the Public Defender provides direct representation to indigents charged with misdemeanors and felonies in all district and superior courts. The Public Defender also represents juvenile delinquents and the parent or guardian in abuse and neglect cases. Court-appointed counsel represent defendants in conflict of interest cases.

## **South Carolina**

**2002 Pop.: 4,107,183**

**No. of Counties: 46**

South Carolina has public defender programs in each of its 46 counties. Counties have the primary responsibility to fund their public defender offices, but the state provides supplemental funding for indigent defense services to each county based upon population size. There is a separate, state-funded appellate program.

The Commission on Indigent Defense and the Office of Indigent Defense were established in the 1993 legislative session. The Office of Indigent Defense establishes indigency determination criteria, develops qualifications for services of public defenders' offices and administers appropriate distribution of funding for indigent defense. Additionally, the Office establishes and supervises training programs for public defender offices across the state and implements a central reporting system for the accurate compilation of statistical data regarding the operation of public defender offices. The Office serves as a clearing house and distribution source for publications and materials involving indigent criminal defense. The Commission on Indigent Defense is appointed by the Governor upon the recommendation of the South Carolina Public Defender Association. The Commission hires the Office's Executive Director.

The Office of Indigent Defense oversees the allocation of state funds to local trial indigent defense programs from two revenue sources: an up-front public defender application fee and a criminal conviction surcharge. These funding mechanisms were created in response to a 1992 South Carolina Supreme Court decision which found South Carolina's low statutory rates of compensation paid to court-appointed counsel in capital cases (\$15 per hour in-court and \$10 per hour out-of-court) to be constitutional, but concluded that the statutory limitation was only a limitation on the State's obligation to compensate counsel; the individual counties were responsible for supplementing the state's allowances. *Bailey v. State (South Carolina)*, 309 S.C. 455 (1992).

Originally \$25, the up-front application fee is now \$40 and is assessed from defendants who are screened for eligibility to receive court-appointed counsel. The revenue collected from the application fee goes to the Office of Indigent Defense. Every individual convicted of a criminal charge in general sessions, magistrate or municipal courts is assessed a criminal conviction surcharge totaling 107.5% of his or her fine. From this surcharge revenue, the Office of Indigent Defense receives a fixed amount of \$1.75 million each year in addition to roughly 10% of the total collected in fines. The Office of Indigent Defense distributes these funds to the local programs according to a formula.

**South Dakota****2002 Pop.: 761,063****No. of Counties: 66**

Each of South Dakota's 66 counties organizes and funds its own indigent defense delivery system; the majority of counties use contract or assigned counsel systems but some counties use public defender offices. Counties may opt to participate in a catastrophic indigent defense fund. The fund is administered by a committee appointed jointly by the Governor and the County Commission Agency. Essentially, the fund acts as insurance against small counties' extraordinary costs for complex cases, such as a death-penalty case, that may occur in their jurisdiction. Each county contributes annually to the fund and those counties with such catastrophic cases may apply to the commission for reimbursement up to 90% of all indigent defense costs above \$25,000. Currently, 55 of South Dakota's 66 counties participate in the fund.

Additionally, a portion of court costs is used to reimburse counties for a portion of the county expenditure for indigent defense services. This money is distributed through the State Treasurer's Office. South Dakota state law allocates \$6 from court costs assessed in all criminal cases to a court-appointed attorney and public defender payment fund and \$1 to an abused and neglected child defense fund. The State Treasurer annually distributes these monies to counties based on the amounts spent by each county for public defenders and court appointed attorneys in criminal and abuse and neglect cases. In FY 2002, 65 counties were reimbursed for assigned counsel and public defender services, and 51 counties received monies for the representation of abused and neglected children.

**Tennessee****2002 Pop.: 5,797,289****No. of Counties: 95**

In Tennessee, with the exception of Shelby County (Nashville) and Davidson County (Memphis), which have their own respective 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. Public defenders are publically elected officials.

The Tennessee District Public Defenders Conference is a statewide system of elected public defenders from each judicial district. The Executive Committee of the Public Defenders Conference is the decision-making body of the Conference. The Conference helps public defenders across the state discharge their official duties and assists with the enactment of laws and rules of procedure necessary for the effective administration of justice.

The Office of the Executive Secretary is the central administrative support for the District Public Defenders Conference. The executive secretary is responsible for budgeting, payroll, purchasing, personnel, and administration of all fiscal matters pertaining to the operation of district public defender offices. Other duties include coordinating defense efforts of the various district public defenders, development of training programs, and maintaining liaison with various state government agencies. The executive secretary is elected by the district public defenders for a four-year term.

Private counsel appointed to handle conflict cases are paid by the state. Another state-funded program, the Office of the Post-Conviction Defender, represents indigent defendants convicted of capital offenses who are seeking state post-conviction relief.

## **Texas**

**2002 Pop.: 21,779,893**

**No. of Counties: 254**

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

The Task Force is a standing committee of the Texas Judicial Council and is composed of eight ex officio members and five members appointed by the Governor. The Task Force promulgates policies and standards which counties must adhere to in order to receive state funds administered by the Task Force. Counties are still responsible for funding and organizing their indigent defense programs, but in order to comply with the Act, each county must establish 1) procedures for providing prompt access to appointed counsel; 2) fair and neutral methods for selecting appointed counsel; 3) qualifications, for appointed counsel; 4) financial standards and procedures for determining when a person is indigent; and 5) procedures and fee schedules for appointed counsel, experts and investigators.

In 2002, the Task Force awarded approximately \$7 million in state grant funds to 238 qualifying counties to improve indigent defense. Each of Texas' 254 counties organizes and funds its own indigent defense delivery system. While a few counties have public defender programs, the majority rely upon assigned counsel or contract defenders.

Until the Act was in place, the only state money available for indigent defense in Texas had been a small amount of funds appropriated to partially compensate attorneys handling capital state post-conviction cases, and to pay for support services in these cases.

## **Utah**

**2002 Pop.: 2,316,256**

**No. of Counties: 29**

Utah is one of only two states in the country that provides no state funding for indigent defense services at the trial or appellate level. While there are three public defender programs in the state, the majority of counties use contract or assigned counsel to represent indigent defendants. Twenty of Utah's 29 counties participate in a capital defense risk pool. Those counties which contribute money to the pool can draw from it to reimburse attorneys in capital cases, for up to \$80,000 for two attorneys per case.

**Vermont****2002 Pop.: 616,592****No. of Counties: 14**

Vermont has a state-funded public defender system, the Office of the Defender General, with full-time staff offices in approximately half of the counties and contract counsel in the remaining counties providing trial and appellate representation. Staff attorneys handle approximately 75% of the cases in which assignments are made. Contract counsel provide representation in public defender conflict-of-interest cases and in counties where there is no public defender office.

The Office of the Defender General is responsible for providing representation to adult, indigent criminal defendants in felony and misdemeanor cases, direct appeals, and in certain probation and parole revocation proceedings. The program represents juveniles in various proceedings, including those in which a child is alleged as delinquent, CHINS proceedings, and when the parent is the subject of a court proceeding to terminate the parental rights on the basis of conduct that could be grounds for a criminal conviction. The Office of the Defender General has a central appellate office. The Defender General is appointed by and serves at the pleasure of the Governor.

**Virginia****2002 Pop.: 7,293,542****No. of Counties: 95**

In Virginia, where the state funds indigent defense, trial and appellate representation is provided either by attorneys from 20 regional public defender offices (serving almost one-half of the state's population) or by appointed counsel, who handle conflicts from the public defender offices and cases filed in the other counties where there is no public defender office. Each of the local public defender offices is under the control and supervision of a Chief Public Defender who is selected by the Virginia Public Defender Commission, which was legislatively created in 1972.

Inadequate compensation for court-appointed attorneys has been a chronic problem in Virginia. Virginia and Mississippi are the only states in the country where maximum fees for court-appointed counsel cannot be waived. In Mississippi, however, attorneys are entitled to an hourly rate on top of their attorney fees to pay for overhead expenses, and there is no limit on this overhead compensation. In addition to having non-waivable per-case maximums, Virginia has the lowest per-case maximum fee for non-capital cases in the country. In 2002, the maximum allowable fee for a felony punishable by more than 20 years was set at \$1,235 and for all other felonies \$445. However, the statutory amounts authorized in the legislative code were not completely funded in Virginia's budget. Thus, in Circuit Court, the actual amount paid for felony cases with a sentence of more than 20 years was \$1,096 rather than \$1,235, and for felonies up to 20 years, the actual amount paid was \$395 rather than \$445.

The current statutory maximum for all criminal court appointments in District Court,

which has criminal jurisdiction over all misdemeanors and hears preliminary hearings in felony cases, is \$120 and the statutory maximum for representation in Circuit Court on behalf of a juvenile is \$100. Once again, the state failed to appropriate enough money to meet these maximum levels and so the actual amount paid for District Court cases is \$112, rather than \$120.

Compensation of court-appointed attorneys is paid from the Criminal Fund, which is administered by the Virginia Supreme Court. It is the Virginia Supreme Court, not the state legislature, that establishes the hourly compensation rates for court-appointed counsel. The Supreme Court has set an hourly fee of \$90 for work performed in or out of court. This hourly rate is higher than the hourly rates paid in most states, but the low statutory maximum rates render the hourly rate almost meaningless.

## **Washington**

**2002 Pop.: 6,068,996**

**No. of Counties: 39**

Indigent defense services in Washington are funded and organized on the county level for trial representation, and counties rely on public defender, assigned counsel and contract models. In appellate cases, the state-funded Office of Public Defense contracts with private firms and attorneys in each of the state's three appellate divisions to provide representation in non-capital appeals. In death penalty appeals, a private attorney is appointed by the Supreme Court and compensated by the Office of Public Defense. Misdemeanor appeals are handled at the county level, except in the rare situation when the case raises an issue which the Supreme Court wishes to address. Eleven counties currently have public defender programs as their primary indigent defense delivery system; the remaining counties use contract or assigned counsel programs as the primary system.

## **West Virginia**

**2002 Pop.: 1,801,873**

**No. of Counties: 55**

In West Virginia, 100% of the statewide indigent defense funding comes from a general-fund appropriation. Since 1989, West Virginia Public Defender Services (PDS) has administered, coordinated and evaluated local indigent defense programs in the state's 31 judicial districts. PDS also provides training and technical assistance to indigent defense providers and operates an appellate division to represent indigent defendants in appellate cases in the 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 has determined a need for a public defender office. Currently, 23 of West Virginia's 55 counties are served by 18 public defender corporations. The remaining 32 counties rely solely on assigned counsel to provided representation to indigent **defendants**. The Executive Director is appointed by the Governor.

## **Wisconsin**

**2002 Pop.: 5,441,196**

**No. of Counties: 72**

Wisconsin has an integrated state public defender system with regional offices providing trial and appellate representation throughout the state. The Public Defender Board, which consists of nine members selected by the Governor and confirmed by the State Senate for staggered three-year terms, appoints the State Public Defender to supervise the operation, activities, policies and procedures of the Office of the State Public Defender (SPD). The SPD is organized into four divisions: trial, assigned counsel, appellate, and administrative. In addition, the SPD maintains an Office of Legal Counsel, an Office of Training and Development, and a Chief Information Officer.

The Wisconsin State Public Defender assigns conflict of interest cases to private attorneys who are certified by the SPD. There are several levels of trial and appellate certification. Certification levels are based on the complexity of the cases and/or the need for specialized training.

SPD staff attorneys represent approximately 64% of the indigent defendants in Wisconsin. Another 26% are assigned to certified private bar attorneys on a rotational basis at an hourly rate of pay. The remaining 10% (misdemeanors only) are assigned to certified private bar attorneys via fixed fee contracts.

## **Wyoming**

**2002 Pop.: 498,703**

**No. of Counties: 23**

The state-funded Wyoming State Public Defender handles indigent adult criminal and juvenile delinquency trial and appellate cases, with 16 branch offices throughout the state. The Public Defender's Office acts as an independent operating agency under the executive branch of the state government. The state is responsible for 85% of the cost of the state public defender program; counties contribute the remaining 15% of the cost. The State Public Defender is appointed by and serves at the pleasure of the governor.

## **Federal Model: the Criminal Justice Act**

The Criminal Justice Act of 1964 (18 U.S.C. §3006A) governs the provision of legal services to indigent defendants accused of committing federal crimes. Under the Act, each United States District Court is required to develop a plan for furnishing counsel and investigative, expert and other services necessary for adequate representation in trial and appellate proceedings. The Criminal Justice Act (CJA) authorizes three methods for a court to provide counsel to indigent defendants: a Federal Public Defender Organization, a Community Defender Organization, and a panel of private attorneys. Currently there are 58 federal public defender offices serving 66 districts and 15 community defender offices serving 17 districts. The remaining 11 districts are served by panels of private attorneys.

A Federal Public Defender Organization consists of one or more full-time, federal salaried attorneys who are prohibited from having private law practices. The head of a Federal

Public Defender Organization, the federal public defender, is appointed by the respective court of appeals to a renewable four year term and is paid a salary fixed by the court of appeals at a rate not greater than that of the United States Attorney (prosecutor) for that district. A Federal Public Defender Organization operates under a budget approved by the Administrative Office of the United States Courts.

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

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

## INDIGENT DEFENSE SYSTEM COMMISSION WEBSITES

State	Commission	Website
Arkansas	Arkansas Public Defender Commission	
California	California Habeas Resource Center	
Colorado	Office of State Public Defender Commission	<a href="http://www.state.co.us/defenders/">http://www.state.co.us/defenders/</a>
	Office of Alternate Defense Counsel	<a href="http://coloradoadc.com/">http://coloradoadc.com/</a>
Connecticut	Public Defender Services Commission	<a href="http://www.ocpd.state.ct.us/index.htm">http://www.ocpd.state.ct.us/index.htm</a>
District of Columbia	D.C. Public Defender Services	<a href="http://www.pdsdc.org/">http://www.pdsdc.org/</a>
Florida	Florida Public Defender Association (FPDA); Florida Public Defender Coordination Office (FPDCO)	<a href="http://www.nettally.com/fpda/">http://www.nettally.com/fpda/</a>
Georgia	Georgia Indigent Defense Council	<a href="http://www.gidc.com/">http://www.gidc.com/</a>
Hawaii	Office of State Public Defender	<a href="http://www.state.hi.us/budget/pd/pd.htm">http://www.state.hi.us/budget/pd/pd.htm</a>
Illinois	Office of State Appellate Defender	<a href="http://www.state.il.us/defender/">http://www.state.il.us/defender/</a>
Indiana	Public Defender Commission	<a href="http://www.state.in.us/judiciary/admin/public_def/index.html">http://www.state.in.us/judiciary/admin/public_def/index.html</a>
Iowa	Office of the State Public Defender	<a href="http://www.spd.state.ia.us/">http://www.spd.state.ia.us/</a>
Kansas	State Board of Indigent Defense Services	<a href="http://www.ksbids.state.ks.us/">http://www.ksbids.state.ks.us/</a>
Kentucky	Department of Public Advocacy	<a href="http://dpa.state.ky.us/dpa.htm">http://dpa.state.ky.us/dpa.htm</a>
Louisiana	Louisiana Indigent Defense Assistance Board	<a href="http://www.lidab.com/">http://www.lidab.com/</a>
Maryland	Office of the Public Defender	<a href="http://www.opd.state.md.us/">http://www.opd.state.md.us/</a>

<b>State</b>	<b>Commission</b>	<b>Website</b>
Massachusetts	Committee for Public Counsel Services	<a href="http://www.state.ma.us/cpcs/">http://www.state.ma.us/cpcs/</a>
Michigan	State Appellate Defender Office, Appellate Defender Commission	<a href="http://www.sado.org/">http://www.sado.org/</a>
Minnesota	State Board of Public Defense	<a href="http://www.pubdef.state.mn.us/">http://www.pubdef.state.mn.us/</a>
Missouri	Office of State Public Defender	<a href="http://www.publicdefender.state.mo.us/Home.htm">http://www.publicdefender.state.mo.us/Home.htm</a>
Montana	State Appellate Public Defender	
Nebraska	Commission for Public Advocacy	<a href="http://www.state.ne.us/home/nepa/">http://www.state.ne.us/home/nepa/</a>
New Hampshire	Judicial Council	
North Carolina	Office of Indigent Defense Services	<a href="http://www.aoc.state.nc.us/www/public/html/ids_commission.htm">http://www.aoc.state.nc.us/www/public/html/ids_commission.htm</a>
North Dakota	North Dakota Legal Counsel for Indigents Commission	<a href="http://www.court.state.nd.us/Court/Committees/Leg_Coun/Committee.htm">http://www.court.state.nd.us/Court/Committees/Leg_Coun/Committee.htm</a>
Ohio	Ohio Public Defender Commission	<a href="http://www.state.oh.us/opd/">http://www.state.oh.us/opd/</a>
Oklahoma	Oklahoma Indigent Defense Systems Board	<a href="http://www.state.ok.us/~oids/">http://www.state.ok.us/~oids/</a>
Oregon	Public Defense Services Commission	<a href="http://www.ojd.state.or.us/aboutus/pds/">http://www.ojd.state.or.us/aboutus/pds/</a>
South Carolina	Office of Indigent Defense	<a href="http://www.scoid.state.sc.us/">http://www.scoid.state.sc.us/</a>
Tennessee	Office of the Post-Conviction Defender and Post-Conviction Defender Commission	
	Tennessee District Public Defenders Conference	
Texas	Task Force on Indigent Defense	<a href="http://www.courts.state.tx.us/tfid/TFID%20entrance.htm">http://www.courts.state.tx.us/tfid/TFID%20entrance.htm</a>
Virginia	Public Defender Commission	<a href="http://www.publicdefender.state.va.us/index.htm">http://www.publicdefender.state.va.us/index.htm</a>

<b>State</b>	<b>Commission</b>	<b>Website</b>
Washington	Office of Public Defense	<a href="http://www.opd.wa.gov/">http://www.opd.wa.gov/</a>
Wisconsin	Wisconsin State Public Defender	<a href="http://www.wisspd.org/">http://www.wisspd.org/</a>

**Prepared by The Spangenberg Group, 2003**

**THE SPANGENBERG GROUP**  
**50 STATE AND COUNTY EXPENDITURES FOR INDIGENT DEFENSE**  
**SERVICES FY 2002**

State	Fiscal Year	State Expenditure	County Expenditure	Total Expenditure	Percentage of State Funds
Alabama	2002	\$37,698,403	\$0	\$37,698,403	100.0%
Alaska	2002	\$23,493,700	\$0	\$23,493,700	100.0%
Arizona	2002	\$150,000	\$77,643,965	\$77,793,965	0.002%
Arkansas	2002	\$13,165,489	\$0	\$13,165,489	100.0%
California	2002	\$30,541,000	\$468,311,799	\$498,852,799	6.1%
Colorado	2002	\$40,629,765	\$0	\$40,629,765	100.0%
Connecticut	2002	\$34,897,045	\$0	\$34,897,045	100.0%
Delaware	2002	\$9,223,500	\$0	\$9,223,500	100.0%
District of Columbia	2002			\$55,140,000 <sup>1</sup>	00.0%
Florida	2002	\$144,800,000	\$35,875,000	\$180,675,000	80.1%
Georgia	2002	\$9,423,078	\$44,632,008	\$54,055,086	17.4%
Hawaii	2002	\$10,011,173	\$0	\$10,011,173	100.0%
Idaho	2002	\$1,217,700	\$7,352,599*	\$8,570,299	14.2%
Illinois	2002	\$29,456,856	\$86,759,701*	\$116,216,557	25.3%
Indiana	2002	\$14,168,000	\$16,687,264	\$30,855,264	45.9%
Iowa	2002	\$37,576,468	\$1,166,884	\$38,743,352	97.0%
Kansas	2002	\$15,615,850	\$4,498,419*	\$20,114,269	77.6%
Kentucky	2002	\$26,739,314	\$1,464,776	\$28,204,090	94.8%
Louisiana	2001	\$7,800,000	\$23,930,000	\$31,730,000	24.6%
Maine	2002	\$9,624,000	\$0	\$9,624,000	100.0%
Maryland	2002	\$58,528,208	\$0	\$58,528,208	100.0%
Massachusetts	2002	\$94,427,468	\$0	\$94,427,468	100.0%
Michigan	2002	\$5,950,000	Not Available	\$5,950,000	N/A
Minnesota	2002	\$54,000,000	\$0	\$54,000,000	100.0%
Mississippi	2002	\$1,157,825	\$9,216,692*	\$10,374,517	11.2%
Missouri	2002	\$31,601,168	\$0	\$31,601,168	100.0%
Montana	2002	\$4,739,824*	\$4,553,824	\$9,293,648	51.0%
Nebraska	2002	\$660,000	\$13,000,000	\$13,660,000	4.8%
Nevada	2002	\$627,300*	\$23,156,124*	\$23,783,424	2.6%
New Hampshire	2002	\$13,396,398	\$0	\$13,396,398	100.0%
New Jersey	2002	\$79,695,000	\$0	\$79,695,000	100.0%
New Mexico	2002	\$29,000,000	\$0	\$29,000,000	100.0%

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State	Fiscal Year	State Expenditure	County Expenditure	Total Expenditure	Percentage of State Funds
New York	2002	\$47,261,644	\$217,000,000	\$264,261,644	17.9%
North Carolina	2002	\$73,859,355	\$0	\$73,859,355	100.0%
North Dakota	2002	\$1,900,000	\$0	\$1,900,000	100.0%
Ohio	2002	\$42,188,424	\$51,649,078	\$93,837,502	45.0%
Oklahoma	2002	\$16,102,393	\$8,215,748	\$24,318,141	66.2%
Oregon	2002	\$87,806,912	\$0	\$87,806,912	100.0%
Pennsylvania	2000	\$0	\$86,947,485*	\$86,947,485	0.0%
Rhode Island	2002	\$7,315,800	\$0	\$7,315,800	100.0%
South Carolina	2001	\$14,836,835	\$7,172,276	\$22,009,111	67.4%
South Dakota	2002	\$2,060,785	\$4,293,282	\$6,354,067	32.4%
Tennessee	2002	\$42,024,312	\$6,101,405	\$48,125,717	87.3%
Texas	2002	\$7,540,649	\$106,296,379	\$113,837,028	6.6%
Utah	2002	\$0	\$6,527,506*	\$6,527,506	0.0%
Vermont	2002	\$7,461,030	\$0	\$7,461,030	100.0%
Virginia	2001	\$76,338,842	\$0	\$76,338,842	100.0%
Washington	2002	\$3,525,123	\$60,000,000	\$63,525,123	5.5%
West Virginia	2002	\$24,730,658	\$0	\$24,730,658	100.0%
Wisconsin	2002	\$67,420,000	\$0	\$67,420,000	100.0%
Wyoming	2002	\$3,045,644	\$537,467	\$3,583,111	85.0%
<b>State Total</b>	<b>2002</b>	<b>\$1,395,432,938</b>	<b>\$1,372,989,681<sup>2</sup></b>	<b>\$2,823,562,619<sup>3</sup></b>	<b>50.4<sup>4</sup>%</b>
Federal Expenditure: Criminal Justice Act Funding	2002	\$485,900,000			
<b>National Total</b>	<b>2002</b>	<b>\$3,309,462,619</b>			

\* Figure represents estimate, see notes for explanation.

1. The money appropriated by the federal government to the District of Columbia for indigent defense is neither a state nor a county expenditure, thus it is just listed in the total expenditure column.
2. A number of states with state-funded public defender systems, such as Arkansas, Hawaii and Wyoming, require counties to provide office space for public defender offices. The expenditure figures in the table do not include these costs.

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3. This figure includes the \$55,140,000 allocated by the federal government for indigent defense representation in the District of Columbia, and because this amount is neither a state nor a county expenditure, the “State Expenditure” total plus “County Expenditure” total is less than this total expenditure figure.
4. This percentage does not include the funds allocated to the District of Columbia. *See* note 3.

*\*Notes on Estimates:*

In a number of states we were required to estimate the indigent defense expenditure. This is due to a lack of reliable data, either at the state or county level. Below are the states in which the indigent defense expenditures were estimated and the methodology used to make these estimates.

1. In **Illinois, Pennsylvania, Nevada** and **Mississippi** there is no statewide agency that collects county indigent defense expenditure data. However, in recent years, a statewide study on indigent defense has been conducted in each of these states by The Spangenberg Group. In **Illinois, Pennsylvania, and Nevada**, these studies produced a statewide indigent defense expenditure figure for 1999, 2000 and 1999 respectively. Our estimate for the 2002 county indigent defense expenditures in **Illinois** and **Pennsylvania** were arrived at by increasing the reported expenditures by 5% for each year that has elapsed since the state-wide reports were published.

The statewide study in **Mississippi** did not yield a statewide expenditure figure, but an estimate for the cost per capita for indigent defense services in 1999 was \$3.65. This figure was multiplied by **Mississippi's** population, as reported in the 2000 census.

2. In **Kansas** and **Montana** we were provided with the state, but not the county, expenditure. To estimate the counties' expenditures in each of these states, we calculated the rate of increase in state funding since 1986. The 1986 figure was taken from the Bureau of Justice Statistics Bulletin: “Criminal Defense for the Poor, 1986.” We took the 1986 county expenditure, as found in the report, and increased it by the same percentage as the state funding increased over the same period (1986 to 2002). As of July 1, 2003, the state assumed 100% of the costs of indigent defense in Montana.
3. In **Idaho** and **Utah** we were unable to find reliable figures for the county indigent

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defense expenditure. **Utah**'s indigent defense system is entirely county funded. **Idaho**'s state-funded State Appellate Defense system is new since 1986. To estimate the indigent defense expenditure in 2002 for these states we calculated the average percentage increase from 1986 to 2002 for all states that had reliable data. We then applied that rate of increase to the county expenditure for Idaho and Utah in 1986.

4. At the time of our data collection, **Michigan** was unable to provide us with updated county expenditures.