

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS Commissioners
FROM: Training and Supervision Director Chris Guillory
SUBJECT: Commissioner requested information
DATE: August 16, 2022

On July 9th, 2022 commission staff received the following request for information:

Thank you for these detailed staff initiative proposals and the updated master budget page. As I have indicated previously, before we can address these proposals in detail, we will need comparative data from public defender and contract attorney programs in some demographically similar states. Such information will be essential to support MCILS budget increase initiatives with the public, the Legislature, and the Executive.

For the states of New Hampshire, Vermont, Iowa, South Dakota, Montana, and Idaho, the following information about each state's public defender system may be important:

1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?
2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?
3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?
4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years of experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?
5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?
6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?
7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?

Commission Staff produce the following along with attached references and resources.

COLORADO:

<p>1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?</p>	<p>State funded. However, their statute only enables them to do criminal cases. They do not do civil litigation (31)</p>
<p>2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?</p>	<p>FY 2020-21 is \$108,256,486. However, due to the State's budget balance mandate, the budget for FY2020-21 was reduced by an estimated 10 million.</p> <p>For FY23, their total budget request is approximately \$134,695,857. (36)</p> <p>Additionally, to support OSPD clients in the digital age, the OSPD was appropriated \$4,110,754 in IT capital to address the proliferation of electronic records and digital media that has impacted the workload, storage costs, and strategies across the criminal legal system.</p>
<p>3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?</p>	<p>1050 FTE. 577 attorneys, 173 investigators, 69 paralegals, 23 social workers, 154 administrative assistants and 54 centralized management and support positions. (37)</p> <p>However please note there is a variety of Investigators, Social workers, and support staff available. Their investigators, social workers and admin staff are all FTE's They will soon have several paralegals in the central admin office.</p>
<p>4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years' experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?</p>	<p>a) \$180K b) \$84,489 c) \$5,355 per month upon licensure.</p>
<p>5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?</p>	<p>The Office of Alternate Defense Counsel currently contracts with over 900 private lawyers and other professionals across CO to represent Indigent adults and youth where the OSPD has an ethical conflict of interest.</p>

<p>6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?</p>	<p>Hourly compensation for contracted attorneys is currently \$80. Paralegals/ Legal administrative assistance are \$33 an hour. (38)</p> <p>Currently, the rate for varying case types/ services are as follows: \$80/hour for Child Protective</p>
<p>7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?</p>	<p>Newly hired attorneys are required to participate in basic lawyer training, which is comprised of six segments each one to two days in duration (2)</p>
<p>Caseload standards</p>	<p>Currently, data regarding current caseload standards is not available. However, according to their FINAL FY22 budget, backlogged cases due to COVID placed a significant strain on their attorneys. Ultimately causing concern that the agency would not be able to fulfill their constitutionally- mandated mission under such constraints. (11)</p>
<p>Application process and Assignment expectations</p>	<p>Newly hired attorneys are assigned to handle misdemeanor and traffic cases in county court. Caseloads will vary by regional office depending on the size of the office and whether the office covers multiple counties. Assignment to more serious cases occurs once an attorney has demonstrated the necessary skill to conduct a felony jury trial and manage a full docket of felony cases. (1)</p>
<p>Notes</p>	

IDAHO

<p>1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?</p>	<p>Mixed state and local funding. However, most of the funding is predominantly from counties. (32)</p> <p>The state provides supplemental funding through PDC financial assistance. The current system includes appointment in child protective cases. However, appointment in guardianships varies by county. The Idaho Legislature adopted legislation in 2022 relieving counties from funding indigent defense and indigent care. Additionally, the State will need to adopt legislation to provide the structure for public defense. (52)</p>
<p>2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?</p>	<p>Total county indigent defense expenditures for FY21: \$43,815,289 (52)</p>
<p>3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?</p>	<p>a) 421 b) 394</p> <p>154 Admin Assistants 118 Paralegals 100 Secretary 19 Investigator 3 Social Worker</p> <p>(52)</p>
<p>4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?</p>	<p>a) ~ \$100K b) \$82K c) \$41K (52)(54)</p>
<p>5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?</p>	<p>For FY21 there were 211 contract public defender's (primary and conflict) providing representation. However, attorneys can contract with multiple counties resulting in a total of 376 reported positions across the states counties.</p> <p>Additionally, the total number of reported cases by type are as follows: a) 63,333 b) 14,025</p> <p>The exact number of contract attorneys providing representation in criminal and child protective/ other legal services was not disclosed.</p> <p>(52)</p>

<p>6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?</p>	<p>\$65/hour-\$135/hour. The agency does not have a report on other rate variables. (52)</p>
<p>7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?</p>	<p>The PDC has one position partially dedicated to managing PDC training opportunities and scholarships. The PDC's expenses for training in the most recent fiscal year (July 1, 2021-June 30, 2022) was \$30,538.90. This paid for 26 PDC virtual CLEs, PDC Public Defense Trial College, PDC/NAPD Leadership Institute and scholarship registrations for other defending attorney training opportunities. Some counties provide training/training funds for defending attorneys in their county. (52)</p>
<p>Caseload standards</p>	<p>If a Defending Attorney's Caseload exceeds the numeric standard, the attorney must disclose this in the Annual Report. The Report must include the reasons for the excessive Caseload or Workload, and if and how the representation met constitutional standards.</p> <p>Please note the maximum caseload by active case type standard per reporting period: Two (2) Capital Cases at a time; Two hundred ten (210) non-capital felony Cases; Five hundred twenty (520) misdemeanor Cases; Two hundred thirty-two (232) juvenile Cases; One hundred five (105) child protection or parent representation Cases; Six hundred eight (608) civil contempt or mental health Cases; and Thirty-five (35) non-capital substantive appeal Cases.</p> <p>Maximum caseload is 210 FCEs per year Assumes: Average case complexity, Adequate support, Even distribution of cases throughout the year, No supervisory responsibilities.</p> <p>(53)(52)</p>

<p>Application process and Assignment expectations</p>	<p>If a Defending Attorney's Caseload exceeds the numeric standard, the attorney must disclose this in the Annual Report. The Report must include the reasons for the excessive Caseload or Workload, and if and how the representation met constitutional standards.</p> <p>Please note the maximum caseload by active case type standard per reporting period: Two (2) Capital Cases at a time; Two hundred ten (210) non-capital felony Cases; Five hundred twenty (520) misdemeanor Cases; Two hundred thirty-two (232) juvenile Cases; One hundred five (105) child protection or parent representation Cases; Six hundred eight (608) civil contempt or mental health Cases; and Thirty-five (35) non-capital substantive appeal Cases.</p> <p>Maximum caseload is 210 FCEs per year Assumes: Average case complexity, Adequate support, Even distribution of cases throughout the year, No supervisory responsibilities.</p> <p>(53)(52)</p>
<p>Notes</p>	<p>The SAPD strives to provide superb representation to all of its capital clients and all indigent defendants on appeal from a judgment of conviction or denial of a petition for post-conviction relief. However, the SAPD can only provide representation to indigent defendants who were convicted in counties that participate in the state's capital crimes defense fund; as of 2017, this included all counties except Jefferson County. (34)</p> <p>Idaho's counties are authorized by Idaho Code Section 19-863A to create a voluntary capital crimes defense fund (CCDF) to ease the burden of the cost of trials for death penalty cases. The CCDF is created through a Joint Powers Agreement authorized by chapter 23, title 67, Idaho Code, and is administered by a seven-member Board of Directors elected by the counties. The counties on a per capita basis pay the cost of operating the CCDF. (35)</p> <p>"The State of Idaho is robbing its people of their Sixth Amendment rights—and Idaho's public defenders are given an impossible task because the Idaho government has failed to set up a constitutional system and get them all the support they deserve. We now look forward to proving the crisis that system continues to wreak for Idaho families, communities, and local economies." (49)</p>

IOWA

<p>1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?</p>	<p>State funded. two budgets, one supports the public defender office and employees of the state public defender and a separate budget that supports payment of contract attorneys. Contract attorneys are contracted with the public defender to take conflict, overflow, and lack of staff cases. (31)</p>
<p>2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?</p>	<p>SPD Indigent Defense Fund appropriation for FY22 is \$41,160,374, SPD Operations appropriation for FY22: \$29,483,120 IDF is contract attorneys and Operations is public defender employees. (per conversation/emails with Jacob Mason)</p>
<p>3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?</p>	<p>Public Defender Employees totaled 233 in FY22, 162 are attorneys and the remaining are investigators, secretaries, and admin staff. (per conversation with Jacob Mason)</p> <p>25 investigators, at least one per field office (18 field offices) and 45 full-time and one part-time admin staff (these are classified as Secretary 1,2,3 or Admin Assistant 1 or 2). Currently there are no paralegal positions, however, there are several staff that have paralegal training.</p> <p>Please note the following: The agency does not provide any office support other than the administrative support associated with submitting claims and completing contracts.</p>
<p>4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?</p>	<p>a) 112K b) 84K. However, the highest paid supervisors make 150K c) 66k (13)</p> <p>Per email correspondence with Jacob Mason, Assistant Public Defender: Supervisors and public defenders are paid between and range depending on their classification. There is no specific rate based on years of experience. Attorneys are hired at a salary commensurate with their experience, within the range for the open position. Contract attorneys are paid per hour, by case type</p>

<p>5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?</p>	<p>Approximately 600 attorneys actively contracted with their office to provide representation.</p> <p>Contract attorneys are paid per hour, by case type. In FY22 the rate was: Class A felony - \$76 Class B felony - \$71 Class C felony through Simple Misdemeanor - \$66 Juvenile(CINA/TPR/Delinquency) - \$66 Appeals - \$66 PCR - \$66</p> <p>(45)</p>
<p>6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?</p>	<p>Per Iowa Code § 815.7 For appointments made on or after July 1, 2021, the reasonable compensation shall be calculated on the basis of seventy-six dollars per hour for class “A” felonies, seventy-one dollars per hour for class “B” felonies, and sixty-six dollars per hour for all other cases. Paralegal time: \$25/hour. Paralegals are not allowed to bill except in a Class A felony case where only one attorney has been appointed. (4)</p>
<p>7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?</p>	<p>No cost trainings. Twice a year. PCR and Appellate training. Every month they have two trainings one for criminal and one for juvenile. Additionally, they have a full time CLE coordinator and produce 100 hours of CLE a year. 24 or more are offered over the lunch hour (12)</p> <p>There are two attorneys in the administrative office that provide training opportunities throughout the year as part of their job duties. The expenses related to the trial practicums run about \$12,000 per year. All other training expenses are nominal. All trainings are free to the participant.</p>
<p>Caseload standards</p>	<p>Do not have defined caseload limits. Employee public defenders tend to hover around 150 active cases at one time, but that is an average. Additionally, the agency tracks total number of claims submitted for contract counsel in order to monitor an approximation of cases handled. Typically, only one claim per case may be submitted.</p> <p>In FY21 they closed 57,107 cases and paid 61,970 claims.</p> <p>Each contractor handles about 100 cases per year while the PD had $57107/162=352.5$ cases per year, per PD.</p>

<p>Application process and Assignment expectations</p>	<p>To be eligible to contract with the state public defender for a type of case after January 1, 2015, the attorney must meet the minimum qualification requirements established by this rule for the particular type of case. Prior to contracting with the state public defender, an attorney shall certify the attorney's compliance with these requirements and, prior to renewal of the contract, shall certify compliance with any ongoing requirements. Satisfying these minimum requirements does not guarantee an attorney a contract with the state public defender. The state public defender retains the discretion to deny or terminate contracts if the state public defender determines that such action is in the best interests of the state. (14)</p>
<p>Notes</p>	<p>The agency uses a mixture on in/out house for CLE trainings and support.</p> <p>May 06,2022: "The Iowa Public Defender's Buena Vista County office is no longer accepting probation violation cases due to overload, according to a filing the office submitted last week."(50)</p>

Massachusetts

1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?	Organized and funded statewide. The funding does include representation for certain civil matters, such as the civil commitments to mental health institutions and care and protection (or child protective/guardianship) cases. (31)
2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?	\$265,209,857 (28)
3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?	Assigned attorneys may engage in the services of a paralegal when necessary and CPCS will reimburse for the services of paralegals at the maximum rate of \$25 an hour for the following tasks only: legal research, investigation, client interview, and trial assistance. CPCS will not reimburse for more than 10 hours of paralegal services per day. Attorneys must keep appropriate documentation of payments to paralegals
4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?	a) \$110,192.34 b) c) (55)
5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?	

<p>6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?</p>	<p>Murder Cases</p>	<p>\$110.00/hour</p>
	<p>Cases Requiring Superior Court Certification</p>	<p>\$75.00/hour</p>
	<p>Cases (Not Bail-Only Assignments) Requiring Youthful Offender Certification</p>	<p>\$75.00/hour</p>
	<p>Substantive Criminal Cases Heard in Superior Court</p>	<p>\$75.00/hour</p>
	<p>Criminal Cases not requiring Superior Court Certification Heard in District Court</p>	<p>\$60.00/hour</p>
	<p>Juvenile Delinquency Cases not requiring Youthful Offender Certification and GCL Cases</p>	<p>\$60.00/hour</p>
	<p>Bail-Only Assignments in District Court</p>	<p>\$60.00/hour</p>
	<p>Bail-Only Assignments in Superior Court</p>	<p>\$75.00/hour</p>
	<p>District Court Bail Reviews</p>	<p>\$60.00/hour</p>
	<p>Bail Petitions in the Superior Court</p>	<p>\$75.00/hour</p>
	<p>Mentors in all cases</p>	<p>\$75.00/hour</p>
	<p>Petitions for Review of Sex Offender Designation in Superior Court</p>	<p>\$75.00/hour</p>
	<p>Mary Moe cases (G.L. c. 112, § 12S)</p>	<p>\$75.00/hour</p>
	<p>SDP Commitments & Reviews</p>	<p>\$75.00/hour</p>
	<p>Writs of Apprehension (G.L. c. 123, § 12(e)) - 5.41 -</p>	<p>\$60.00/hour</p>
	<p>Commitment for Alcohol- or Substance Abuse (G.L. c. 123, § 35)</p>	<p>\$60.00/hour</p>
	<p>Concurrent felonies if substantive case heard in Superior Court</p>	<p>\$75.00/hour</p>
<p>Concurrent felonies if substantive case heard in District Court</p>	<p>\$60.00/hour</p>	

		<table border="1"> <tr> <td>Children and Family Law cases, excluding CRA Cases</td> <td>\$75.00/hour</td> </tr> <tr> <td>Mental Health Cases and SORB Administrative Hearings</td> <td>\$60.00/hour</td> </tr> <tr> <td>Other Criminal Cases not mentioned above</td> <td>\$60.00/hour</td> </tr> <tr> <td>CRA Cases</td> <td>\$60.00/hour</td> </tr> <tr> <td>Continuing Legal Education</td> <td>\$75.00/hour</td> </tr> </table>	Children and Family Law cases, excluding CRA Cases	\$75.00/hour	Mental Health Cases and SORB Administrative Hearings	\$60.00/hour	Other Criminal Cases not mentioned above	\$60.00/hour	CRA Cases	\$60.00/hour	Continuing Legal Education	\$75.00/hour
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7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?	<p>The Committee for Public Counsel Services provides representation in a variety of contexts, not judge criminal defense, and training opportunities exist for the attorneys practicing in each of these areas. Inquiry regarding expenses for trainings was not returned.</p> <p>For attorneys handling adult criminal defense, new private attorneys must take a 2-week training in order to be certified to take appointments to these cases. New full time staff attorneys attend “new lawyer training,” which is approximately one month.</p>											
Caseload standards	<p>Staff attorneys who represent adult criminal defendants are expected to maintain a weighted caseload of between 50-70 cases. However, not every case carries equal weight, so it would not be accurate to say that each attorney carries 50-70 cases.</p> <p>The state has a two-pronged control system. They have weighted caseloads where attorneys can only receive so many assignments of new cases per year based on weighted values of the case types they are receiving. Additionally, there is a limit on the number of hours they can bill to CPCS annually.</p>											
Application process and Assignment expectations	<p>Assignment Expectations: District Court cases are assigned through the county bar advocate programs. However, under the provisions of G.L. c. 211D, § 8, Indigents accused of murder, the chief counsel or his designee may assign the case to either the public defender division or the private counsel division, subject to the approval of the justice making the determination of indigency.</p> <p>Application Process: Attorneys must be eligible for the case type they are applying to represent. Experience requirements can be found within the assigned counsel manual. Attorneys must complete the application and corresponding instructions that are found on the CPCS website</p>											

Notes	<p>There are “significant” concerns in Springfield, Massachusetts, and other parts of Hampden County as public defenders scramble to cover shortages in other offices, according to a letter the state Committee for Public Counsel Services filed in court Sept. 21 to request an evidentiary hearing about the shortages. The letter indicates Worcester's public defender office can no longer take other offices' cases because it is "on the cusp of its own counsel crisis." (51)</p>
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Montana

1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?	State funded (31)
2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?	total expenditures July 1, 2021 through May 31 , 2022: \$38,497,597 (17)
3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?	169 Attorneys FTE 202 Attorneys Contract 121 Staff (non attorney)
4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?	a) \$103,219.20 *please be advised that the chief/ director position for the agency is currently vacant. The salary amount disclosed above was for the previous director in FY20. b) 3+ years experience is \$89,718.35. attorneys above this cap are eligible to receive a .35 cent an hour raise on base. c) \$76,855.60 (16)(56)
5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?	There were a total of 202 contractors FY21 (33)
6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?	Rate paid to contracted attorneys is \$71/ per hour. Data regarding whether pay rates vary by case type was not available. (17)

<p>7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?</p>	<p>For FY21, there were approximately 34 different trainings that were available to attorneys. A majority of trainings were hosted by internal personnel and one was hosted by NACDL. (39)</p> <p>The exact number of staff positions dedicated to training as well as the total expenses for training in the most recent fiscal year could not be determined. Correspondence with MT personnel regarding this inquiry was not returned.</p>
<p>Caseload standards</p>	<p>Currently, there are no specific limits on caseload standards. However, the following was found within their caseload management archive:</p> <p>When a contract attorney's workload will not allow time to adequately represent a client, the client's case shall be assigned to another contract public defender. If another local contract attorney cannot be found, the Contract/Quality Control Manager shall be so advised and assist in locating counsel for the client.</p> <p>When a public defender expresses a problem with his/her workload, the supervising attorney shall work with the public defender to alleviate the workload. (18)</p>
<p>Application process and Assignment expectations</p>	<p>Assignment expectations: All FTE attorneys must review their assigned open and inactive cases within the first week of the month using the Open and Inactive Cases by Attorney Report. Support staff will document each change made to case status, certifying that the database has been updated, and/or that notations were made to the case status notes on the file and return the report to the attorney. On a quarterly basis, supervisors must meet with each FTE attorney to review their monthly reports. This review is intended to ensure that the status of each case is current in the database. (19)</p> <p>Application process: Attorneys must be eligible for the case type they are applying to represent. Experience requirements can be found within the assigned counsel manual. Attorneys must complete the application and corresponding instructions.</p>

Notes	<p>"Twice in the past year District Court Judge Donald Harris held the Office of the State Public Defender in contempt for failing to assign attorneys to defendants quickly enough. In the 7-0 opinion signed Tuesday by Chief Justice Mike McGrath, the high court wrote Harris erred in his second contempt order when he ordered the Office of the State Public Defender to assign counsel to indigent defendants within three days, a rate not specified in state law." (25)</p> <p>Please note the following: Before wages for attorneys were raised this year, it was previously reduced from its original amount in an effort to save money in the state's annual budget. Unfortunately, the wage deduction potentially contributed to the decision mentioned above.</p>
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New Hampshire

<p>1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?</p>	<p>The state provides 100% of the funding for the state's entire indigent defense system, through a general fund appropriation in the state's operating budget that is appropriated to the judicial council. The entire indigent defense system in New Hampshire is provided and overseen by the New Hampshire Judicial Council, except the judicial council is not responsible for rules governing financial eligibility for appointed counsel and recoupment of indigent defense expenditures. Attorneys in the DHHS cases are paid out of the Judicial Council budget. They are paid out of the same line as the assigned counsel in criminal cases. (31)</p>
<p>2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?</p>	<p>\$31,732,906 (29)</p>
<p>3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?</p>	<p>239 Employees total: Administration: 10 IT department: 4 Staff Attorneys: 116 Managing Attorneys: 11 Investigators: 27 Social Workers: 3 Support Staff: 64 Appellate defender department has 1 managing attorney, 2 staff attorneys and 1 office administrator (5)</p> <p>The program employs all necessary staff and support personnel needed. Currently, the program employs a minimum ratio of 1:5 investigators per attorney.</p>
<p>4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?</p>	<p>a) \$120,966.04 b) \$72,122 +benefits c) \$58,245 +benefits</p> <p>(per conversation with head of the judicial council and executive director)</p>

<p>5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?</p>	<p>No role in CPP appointments or staffing. Currently, there are no practice standards or roster requirements for CPP cases. Thus, data regarding number of contracted attorneys providing representation is not available.</p> <p>However, please note the following: For FY22 case appointments, assigned counsel handled 1442 and contract counsel handled 3154, approximately. Additionally, 106 private attorneys accepted assigned cases and the agency had 32 contract attorneys. Although staffing fluctuated throughout the year, NHPD had approximately 125 attorneys on staff.</p> <p>Criminal expenditures for FY22: Assigned counsel: \$661,326 Contract attorneys: \$1,810,799 Public Defender: \$24,212,260 Services other than counsel: \$1,889,447</p> <p>(per conversation with head of the judicial council and executive director)</p>
<p>6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?</p>	<p>\$60-100 an hour contingent upon the charges severity (22)</p> <p>There ARE fee-caps for case types. To see caps please view the corresponding PDF (41)</p>
<p>7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?</p>	<p>New staff attorneys begin their career in a 5 week training program. Training begins the last Monday in August and continues roughly through the first week of October. There is also CLE opportunities twice a year for attorneys. Attorneys are paid during training and each new lawyer is paired with a mentor. (40)</p> <p>Inquiry regarding expenses and number of positions dedicated to training was not returned.</p>
<p>Caseload standards</p>	<p>FTE attorneys providing general felony, misdemeanor and juvenile delinquency representation shall maintain a caseload of not more than 70 open and active cases. However when caseloads are a mixture, there will be acknowledged maximums. According to Berry Dunn, a company that did a system analysis of department functions, in 2020 lawyers averaged 100 cases per attorney. Please note that this is more than the recommended caseload limit. (5)</p>

<p>Application process and Assignment expectations</p>	<p>Assignment expectations: Managing Attorneys take care to match an attorney's skill and experience with the appropriate level of case assignments. The Program regularly conducts trial skills training programs to gauge attorney performance, evaluate professional development, and to prepare attorneys for more difficult cases. Additionally, frequent and intense evaluations and feedback are provided to attorneys during their first year. The director of legal services reviews each evaluation to ensure that all attorneys are meeting expectations.</p> <p>Application process: All applicants must be J.D. degree candidates attending an ABA approved law school. Newly hired Public Defenders must either be members of the New Hampshire Bar or pass the next available Bar examination. Prior to being admitted to the NH Bar, new hires qualify to practice under the provisions of N.H. Supreme Court Rule 36. They are at-will employees who will be expected to work full-time in one of the Program's regional offices. The performance of new lawyers is evaluated at three months, and annually for three years to assure that each attorney's professional development is meeting program expectations. (5)</p>
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Notes	<p>Please note that the state currently is "treading water" in regards to retention of counsel and parity in representation. According to an article posted in the NH bulletin: "The state Supreme Court, New Hampshire Judicial Council, and New Hampshire Public Defender program say it's critical the state increase the hourly rates and caps on payments and make permanent the temporary pay raises public defenders received" (Timmins, '22) (48)</p> <p>The state does not have a CPP roster or required training/ qualifications to do those cases other than when they appoint counsel.</p> <p>"Tracy Scavarelli, NHPD's Director of Legal Services, recently told N.H. Bulletin that 49 of its staff attorneys — with a combined 450 years of legal experience — had resigned since the pandemic's onset, and burnout and low compensation clearly drove the departures. The danger for those entitled to effective representation is apparent. Despite the public defenders' dedication, the crushing caseload risks causing "the legal equivalent of medical malpractice," the local office's managing attorney Alex Parsons told The Sentinel last fall." (Timmins, '22) (48)</p> <p>"New Hampshire started a "hold list" of cases in December 2021 after state public defenders reached their maximum caseloads, and contract and private counsel's workloads hit capacity as well. At times, as many as 2,000 cases had not been assigned a lawyer in the past year. While that number has decreased, it remains at an unacceptable level, Blodgett said." (Hogan, '22) (60)"</p>
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New Mexico

<p>1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?</p>	<p>State appropriated funding and a centralized administration</p> <p>The Law Offices of the Public Defender strictly represent clients in criminal cases. However, please note that other state agencies are able to provide representation regarding CYFD cases, guardianships, or other civil legal services programs through contract funding.</p> <p>(6) (31)</p>
<p>2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?</p>	<p>\$52,032,394</p> <p>*Please note that the agency is required to pay rent on their office spaces out of general fund revenues, while prosecutors do not.</p> <p>(8)</p>
<p>3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?</p>	<p>43 administrative staff serving the 439 FTE and 130 contractors, while also auditing and monitoring invoicing by contract defenders. Administrative staff includes fiscal, human resources, information technology, and statewide administrative support staff AODA and the district attorney's offices have a total of 687 core staff f. FTE and 352.5 attorney FTE (23)</p> <p>Support staff is available at the choice of the attorney. LOPD NM has 43 administrative staff dedicated to serving the 439 FTE and 150 contractors, while also auditing and monitoring invoicing by contract defenders. Administrative staff includes fiscal, human resources, information technology, and administrative support staff. (9)</p>
<p>4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?</p>	<p>a) \$84,748-\$219,648 b) \$70,992.09-\$86K c) \$59,857.40</p> <p>(24)</p>
<p>5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?</p>	<p>In FY 2022 there were approximately 100-130 contract lawyers representing clients in criminal cases. An exact number cannot be quantified due to the agency gaining and losing contractors throughout the year.</p> <p>In addition, the New Mexico Procurement Code allows the agency to enter contracts with contractors, for contracts less than \$60,000.00 per fiscal year (i.e., non-competitive/non-RFP contracts). This also fluctuates throughout the year. (8)</p>

<p>6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?</p>	<p>The current base rate compensation for contract defenders is \$750 for first degree felonies (except capital crime which are compensated at \$5,400), \$700 for second degree felonies, \$645 for third degree felonies, \$540 for fourth degree felonies, \$300 for juvenile cases, and \$300 for misdemeanor driving while intoxicated and domestic violence cases.</p> <p>The State of New Mexico pays contract lawyers in civil cases \$95 (for those with zero to two years of experience) to \$165 (for over ten years of experience) per hour to defend it through the Risk Management Division's contracts.</p> <p>(7)</p> <p>*However, please note that it is becoming more difficult to recruit Contract Counsel, especially to the rural areas of New Mexico at the funded base rates. (23)</p>
<p>7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?</p>	<p>Contractor agrees to participate in at least seven (7) hours of training, during each year of the term of this contract, in those areas of the criminal law in which Contractor performs services pursuant to this contract. Contractor shall provide copies of the CLE certificates, MCLE annual reports, or written confirmation of attendance by the provider or the New Mexico State Bar to the Director on or before November 1 of each year.</p> <p>(8)</p>
<p>Caseload standards</p>	<p>Contractor shall not accept the assignment of new cases, if the fees for those cases would exceed the amount of funds under their contract. Contractor shall be responsible for tracking case assignments and may also contact the Director to reconcile records of cases assigned and funds expended. The size of a contract may be increased or decreased by the Agency based solely on the needs of the Agency. If a Contractor accepts cases exceeding the amount of funds available to them, the Agency does not guarantee payment on the accepted cases. (8)</p> <p>Additionally, please also consider that at current caseloads and staffing, LOPD attorneys must handle 203 new cases per attorney per year, regardless of whether those cases are misdemeanor cases or serious felony cases. Also, given current caseloads, LOPD lawyers, have, on average, about 10 hours to take all the steps necessary to provide each client with this assistance (57)</p>

<p>Application process and Assignment expectations</p>	<p>Assignment expectations: The Director will periodically evaluate and monitor whether Contractors are performing the following tasks when they first meet with a client following a new case Assignment.</p> <p>Application Process: there is a point system (/20) for applicants. Score and points that are awarded are contingent upon a variety of factors including but not limited to: the applicants ability toe meet the performance standards for Criminal Defense Representation, criminal law experience, relevant jury and bench trial experience, and their office organization; calendaring/ docketing system. Each Contractor in non-district office jurisdictions must submit orders of appointment and application fees on all assigned cases. If the application fee has not been waived or collected by the court, Contractor shall collect the \$10 application fee from the client[cash or money order only] and shall remit those fees, receipts and monthly logs to the Agency's CCLS's mailing address (8)</p>
<p>Notes</p>	<p>In a study published by the ABA in January 2022, shows that based on average annual caseload, the state needs an additional 602 full-time attorneys – more than twice its current level - to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment. In other words, with a consistent annual workload, New Mexico has only 33% of the public defense attorneys it needs to handle its adult and juvenile caseloads.</p> <p>"Chronic underfunding predictably led to increasingly unmanageable caseloads. In an effort to address the overload and ensure ethical representation for LOPD clients, public defense attorneys sought to limit appointments. In 2017, in <i>New Mexico v. Shoobridge</i>, LOPD asserted that public defense attorneys in Lea County were not able to meet their professional obligations of competency and diligence due to excessive caseloads." (LOPD, '22) (57)</p> <p>"In FY2018, the Legislature provided funding to support a 6.5% salary increase for LOPD employees. Then again in FY2019, the Legislature provided funding for a 4% salary increase for LOPD employees. Similar increases were afforded to the District Attorney offices and other public safety related agencies. While the raises were welcome and greatly appreciated, that did not address ongoing insufficiencies in base funding. (LOPD,'21) (58)"</p>

South Dakota

1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?	91% local funding 9% – assessment on criminal convictions (31)
2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?	<p>\$5,640,327 (21)</p> <p>Minnehaha County is the largest county in South Dakota by population with 191k people or roughly 21% of the states total population with ~181k residing in Sioux Falls.</p> <p>Public Advocate Office: \$1,308,108 PD office: \$4,332,219</p> <p>Please also consider the following: the DA budget for the most recent FY is \$6,713,766 (47)</p>
3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?	<p>Public advocates office has 7 attorneys including the public advocate, opened 2515 cases in 2021. Closed 2504. They had 1083mids, 939 felonies, 109 DHHS, 17 appeals and 72 juvenile cases.</p> <p>Minnehaha County Public Defender, which is the largest county in the state has an estimated 27 attorneys, 5 paralegals and 5 legal officers (secretaries). (per email response from Minnehaha County managing public defender</p>
4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?	<p>a) \$116,292 b) Start at \$97,864 c) \$82,347</p> <p>Please also note that the department head starts at \$128,398.40 (per email response from Minnehaha County managing public defender</p>
5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?	There is an estimated 15 lawyers in the community that obtain assignments from the court when both the PD and Advocates are conflicted. (per email response from Minnehaha County managing public defender

<p>6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?</p>	<p>Hourly rate is \$101/hour for contracted attorneys. \$30/hour for paralegal services. Services of a paralegal or investigator must comply with the section entitled "Experts". Additionally, court-appointed attorney fees will increase annually in an amount equal to the cost-of-living increase that state employees receive each year from the legislature. If the attorney is dissatisfied with the amount of compensation allowed by the judge presiding in the case, the attorney may request that a three-judge panel of circuit and/or magistrate judges appointed by the presiding judge, or the next most senior judge in the event the presiding judge was the judge presiding in the case, in that circuit review the claim for compensation and hold a hearing thereon. (20)</p>
<p>7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?</p>	<p>No dedicated training staff and no dedicated training budget.</p> <p>Please note the following: The state has robust recruitment and retention statistics due to their participation in the law school indigent defense program, which places their law students in their office as part of their practicum- this practice has proved to be a lucrative tool for the agency. They also participate in Gideon's Promise and their law school partnership. (per email response from Minnehaha County managing public defender)</p>
<p>Caseload standards</p>	<p>Currently, there are no standards for caseloads or limits. (per email response from Minnehaha County managing public defender)</p>
<p>Application process and Assignment expectations</p>	<p><i>Assignment expectations:</i> Each court appointed defense attorney shall receive training on mental illness, available mental health services, eligibility criteria and referral processes, and forensic evaluations in order to be eligible for court appointments. SDCL 23A-40-21. This training is available on the UJS website. Counsel appointed to represent abused or neglected children, including as guardian ad litem, shall certify that they have viewed and completed the A&N attorney training developed by the UJS. Upon completion of the training, counsel information is submitted to the State Court Administrator's Office and added to the list of certified A&N attorneys. UJS Policy 1-PJ-19. This training is available on the UJS website. (20)</p>

Notes	<p>Please note the following: Based on agency structure and how the agency receives funds, every defendant MUST repay the county the hourly rate designated by legislature. Fees are collected through the court ordering judicial liens when the case is disposed based on affidavits/reports filed by the public defenders in each case. Currently, the repayment rate for defendants is \$101/hour and \$30/hour for paralegal time. (per conversation with SDPD Executive Assistant)</p> <p>Also, please note that their employees, though county level, do qualify for federal public service loan forgiveness. They also are fully staffed and have no issues with recruitment or retention of counsel. (per conversation with SDPD Executive Assistant)</p> <p>This past March, attorneys received COLA and a 7% raise.</p>
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Vermont

1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?	State funded. (31) There are three tiers of service provision, with the first being county public defense offices. When there are conflicts with public defense, the case is then assigned to an assigned counsel contractor. And when there are conflicts with both public defenders and assigned counsel contractors, the court assigns an attorney on an ad hoc basis. (10)
2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?	The proposed FY23 Budget is \$21,091,329 . FY22 Budget Request was \$18,498,175. (30)
3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?	There are seven county staff offices with 35 attorneys and a variety of support staff, including investigators, secretaries, case managers and case aides. In addition, the Office manages over 100 contractors under both programs, and more than 100 ad hoc counsel handling conflict cases. In total, the Office handles approximately 20,000 cases each year. (27)
4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?	a) \$148,000 per year plus benefits b) \$85K c) \$74K (26) (30)
5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?	<p>Cost of Legal services for FY20-21 are as follows: AC Contractors: \$120k PD Contractors: \$136,786</p> <p>The data above includes operating expenses but does not include third-party services. There are 7 staff attorneys and 5 staff in the PRO and JD offices. There are approximately 40 juvenile contracts in the system. They have a total of 130 contracts statewide, but some attorneys hold multiple contracts. The majority of the contracts are conflict contracts, but approximately 25% of the contracts are Serious Felony Units, Caseload relief, or special projects contracts. Because the firms allocate their personnel as they see fit, that they have approximately 60 LECs (FTE) of attorneys working in the contract system</p> <p>NOTE: Ad hoc counsel is the most expensive way the ODG provides service. for FY21 actual expenditures for contract counsel were \$5,412,406.</p> <p>(42)</p>

<p>6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?</p>	<p>Contract attorneys do not get paid hourly. They are paid on an annual payment per ABA-Lawyer Equivalent Caseload Standard – that is, the annual payment that a public defender working 40 hours per week handling either (400 added misdemeanors per year; or 150 added felonies per year; or 200 added other cases per year (juvenile: CHINS, Delinquency, truancy; or probation or post-conviction relief cases).</p> <p>Caseloads are closely monitored and payments per LEC are adjusted annually based upon an algorithm. The standard minimum payment for contracts is \$150K per LEC. Juvenile and PCR attorneys are harder to attract, so they tend to make about \$200K/LEC, but again their minimum payment is \$150K/LEC. Many of these contracts are fractional in nature, handling from .25 up to 1.0 LEC. The rate does vary for SFUs. maximum rate for investigators up to \$75/hour, but with an average of around \$45/hour. Paralegal services range from \$30-40/per hour. (per conversation with the Defender General)</p>
<p>7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?</p>	<p>The Office of the Defender General conducts several trainings each year in criminal and juvenile law. They are usually held in December and June, although these times may vary.</p> <p>They have one dedicated director of training under contract. She is the former Deputy Defender General who retired a few years ago. She is paid \$24K/year. They have at least 10 people who have part of their job providing training – including the Defender General. Normal training budget is about \$50K per year, not including the coordinator. Due to COVID restraints, they offer ZOOM training every other week throughout the year, which has helped in reducing training costs.</p> <p>However, please be aware: Once they get back to more out-of-state training and in-person training those costs will go back to the \$50K per year. (per conversation with the Defender General)</p>

Caseload standards	<p>Public defenders routinely represent significantly more clients than is recommended under guidelines developed in 1973 to assure competent representation by the National Advisory Commission on Criminal Justice Standards and Goals. This Lawyer Equivalency Caseload (LEC) Guideline provides that no single lawyer should accept more than either 150 added felony clients, 400 added misdemeanor clients or 200 juvenile clients in a year, or some combination of the three categories. For many years, the ODG has utilized this LEC formula as a measure of the workload of its staff. (43)</p> <p>Contract counsel has no more than 20 pending cases and usually toggles around 10-15. Every one of their classes is a life in prison case, or a murder (or attempted murder). They get paid \$130K per year, with hopes of raising pay to a \$150K minimum, then \$175K the following year. (per conversation with the Defender General)</p> <p>NOTE: Their attorneys have a pending caseload of 50-100 cases on average. Usually, they are around 70 cases. If the Defender General sees cases getting above 100, they will deploy a caseload relief contractor to that county (for staff office), or reassign cases from a conflict contractor to a caseload relief contractor. (per conversation with the Defender General)</p>
Application process and Assignment expectations	<p>Application Process: Qualifications for public defense and assigned counsel contracts are current admission to the Vermont Bar, handicap accessibility to the practice, and a demonstrated ability to provide high quality representation with an emphasis on trial practice and courtroom skills while managing a heavy caseload. The contracts are performance based and provide for a monthly payment based on historical caseload. Contractor is required to carry professional liability insurance in the amount of \$500,000 per occurrence.</p> <p>Assignment Expectations: First obligation upon appointment as Assigned Counsel is to notify the Defender General of your appointment.</p> <p>(27)</p>

Notes	<p>The Office of the Defender General has evolved into a complex service delivery system consisting of two separate programs, Public Defense and Assigned Counsel. There are three tiers of service provision, with the first being the local public defense staff offices. When there are conflicts with public defense, the case is then assigned to a local assigned counsel contractor. And when there are conflicts with both the public defenders and the assigned counsel contractors, the court assigns an attorney on an ad hoc basis. Additionally, eight Serious Felony Units are available to cost-effectively handle life in prison and other serious felony cases. (43)</p> <p>Per conversation with the Defender General: "they have been unable to hire an entry level attorney at Step 1 for a few years now. They are now having to convince lawyers to take positions in rural counties by paying them more than they pay plan would typically warrant for entry level attorneys."</p>
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